

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company d/b/a)
Ameren Missouri's Application for Approval of)
Revised Tariff Sheet Nos. 54, 54.4, & 54.7 to)
Continue to Default Certain Residential)
Customers to the Evening/Morning Savers Rate)
Plan, Motion for Waiver of 60-Day Notice) **Case No. ET-2024-0156**
Requirement, Motion for Expedited Treatment,)
and if Expedited Treatment Not Granted,)
Alternative Motion for Approval of Substitute)
Revised Tariff Sheets to Delay Defaulting Certain)
Residential Customers to Smart Savers Rate Plan)
Beyond March 31, 2024.)

STAFF'S RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and in satisfaction of the Commission's *Notice and Order Directing Filing* of November 6, 2023, states as follows:

Facts:

1. On November 3, 2023, the Union Electric Company, doing business as Ameren Missouri, filed its *Application* containing four requests. Specifically, those four requests are:

- (i) Approval of the revised electric tariff sheet nos. 54, 54.4 & 54.7 2 attached hereto as Schedule 1, "so that Ameren Missouri may continue to default residential customers to the Evening/Morning Savers rate plan instead of the high-differential Smart Savers rate plan";
- (ii) Waiver of the 60-day notice requirement under 20 CSR 4240-4.017(1)(D);
- (iii) An expedited decision in accordance with 20 CSR 4240-2.080(14); or

(iv) In the alternative, if the Commission does not grant expedited decision on this *Application* by December 4, 2023, the Company seeks approval of substitute electric tariff sheets, which are attached as Schedule 5, to delay the defaulting of certain residential customers to the high-differential Smart Savers rate plan beyond March 31, 2024.

2. Together with the *Application*, Ameren filed two sets of proposed tariff sheets bearing an effective date of December 3, 2023; affidavits of two knowledgeable officers; and copies of its Fictitious Name Registration and its Certificate of Good Standing. Additionally, the *Application* includes a motion for expedited treatment, in which Ameren asks the Commission to approve the tariffs no later than December 4, 2023, because, Ameren states, the Company needs sufficient time “to finalize or avoid publishing the TOU HD Default Comms pieces, and confirm accurate information is being sent to impacted residential customers regarding whether they will in fact be subject to high-differential TOU default or the low-differential Evening/Morning Savers default. If the Company were to finalize and begin sending the approximately 215,000 impacted residential customers the new TOU HD Default Comms, and then the Commission approves the limited tariff revisions set out in Schedule 1, a sincere concern for customer confusion would arise. There will be no negative effect, on the Company’s customers or the general public, if the Commission acts by the date desired by the Company.”

3. On November 6, 2023, the Commission issued its *Notice and Order Directing Filing*, requiring its Staff to submit a recommendation no later than November 13, 2023.

Discussion:

The very short interval allowed Staff to prepare a recommendation necessarily precludes the sort of tariff analysis normally undertaken by Staff. Therefore, Staff cannot determine whether the proposed change will result in more revenue for Ameren. However, as Ameren notes in its *Application*, this matter is indistinguishable from the recent TOU tariff modification brought by Evergy, Case No. ET-2024-0061.¹ The same legal considerations apply to this *Application* that Staff pointed out with respect to Evergy's *Application* in the prior case.

In the absence of the consideration of all relevant factors, approval of the proposed modification would constitute unlawful single-issue ratemaking. Single-issue ratemaking is generally prohibited in Missouri “because it might cause the [Commission] to allow [a] company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.” ***State ex rel. Public Counsel v. Public Service Com'n***, 397 S.W.3d 441, 448 (Mo. App., W.D. 2013); ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 51-58 (Mo. banc 1979) (“***UCCM***”). The tariff changes proposed here by Ameren, in the absence of a general rate case proceeding, necessarily constitute illegal single-issue ratemaking. Of particular relevance here, the Missouri Supreme Court has stated, “[e]ven under the file and suspend method, by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that

¹ The Commission recently denied the *Application for Rehearing* filed in that case by the Office of the Public Counsel, the first step in the appellate process.

no hearing is required and that the filed rate should not be suspended.”
UCCM, supra, p. 49.

A tariff is a schedule of rates and charges. ***Public Service Com'n of State v. Missouri Gas Energy***, 388 S.W.3d 221, 227 (Mo. App., W.D. 2012). “In the context of cases before the [PSC], the terms ‘tariff’ and ‘rate schedule’ are synonymous.” ***In the Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n***, 509 S.W.3d 757, 782–83 (Mo.App. W.D. 2016); ***State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n***, 311 S.W.3d 361, 364 n. 3 (Mo.App.W.D.2010). Under traditional, cost-of-service ratemaking, a tariff can only be modified after a general rate proceeding during which all relevant factors are considered. Between rate cases, the tariff is fixed and immutable. Under the “Filed Tariff Doctrine,”² the tariff and the rates it contains is binding on the Company, its customers, and the Commission itself. ***In the Matter of Missouri-American Water Co. and DCM Land, LLC v. Office of the Public Counsel***, No. SC99978 (Mo. banc, August 15, 2023) slip op. at p. 7: “In addition to binding the utility and the public, the tariff also binds the Commission.” The filed tariff may be modified only through the ratemaking process prescribed by the general assembly.

² Also known as the “Filed Rate Doctrine.” “... the ‘filed rate’ doctrine has its genesis in ***Montana-Dakota Utilities Co. v. Northwestern Public Service Co.***, 341 U.S. 246, 251-252, 71 S.Ct. 692, 695, 95 L.Ed. 912 (1951). There, this Court examined the reach of ratemakings by FERC's predecessor, the Federal Power Commission (FPC). * * * [M]any state courts have applied the filed rate doctrine of ***Montana-Dakota*** to decisions of state utility commissions and state courts that concern matters addressed in FERC ratemakings.” ***Nantahala Power and Light Co. v. Thornburg***, 476 U.S. 953, 962, 964, 106 S.Ct. 2349, 2354-55, 2356, 90 L.Ed.2d 943, ___ (1986). Missouri courts have uniformly applied the Filed Rate Doctrine to decisions of the PSC, see, e.g., ***State ex rel. AG Processing, Inc. v. Public Service Commission***, 311 S.W.3d 361 (Mo. App., W.D. 2010); ***Bauer v. Southwestern Bell Tel. Co.***, 958 S.W.2d 568 (Mo. App., E.D. 1997).

Recommendation:

Staff recommends that the Commission suspend, for 120 days plus six months, the proposed tariff filed herein by Ameren and undertake general rate case proceedings in which all relevant factors may be considered. In the alternative, Staff recommends that the Commission reject the proposed tariff.

WHEREFORE, as explained herein, because the Commission may only approve the tariff changes proposed by Ameren following a general rate case, Staff hereby moves that the Commission suspend those tariffs for 120 days plus six months as allowed by law, give appropriate notice, set a procedural schedule, and enter into general rate case procedures; and grant such other and further relief as is just in the circumstances. Alternatively, the Commission should reject the proposed tariffs.

Respectfully submitted,

/s/ Kevin A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **9th day of November, 2023**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Kevin A. Thompson