

**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)
Requirement, Motion for Expedited Treatment,) File No. ET-2024-0156
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.)

RESPONSE TO STAFF'S RECOMMENDATION

Pursuant to the *Notice and Order Directing Filing* issued by the Missouri Public Service Commission (“Commission”) on November 6, 2023, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) responds to the *Staff's Recommendation* submitted on November 9, 2023 as follows:

I. Introduction

1. On November 3, 2023, Ameren Missouri filed its *Application* to revise three electric tariff sheets attached thereto as Schedule 1 to allow Ameren Missouri to continue to default residential customers to the low-differential Evening/Morning Savers rate plan instead of the high-differential Smart Savers rate plan, waive the 60-day notice requirement, expedite decision, and alternatively, approve interim substitute electric tariff sheets.

2. On November 9, 2023, Staff filed its recommendation in response to the Company's *Application*. Staff recommends the Commission suspend the three revised tariff sheets proposed by Ameren Missouri's Application to undertake general rate case proceedings, or in the alternative, the Commission reject the proposed three revised tariff sheets.

3. Before turning to the legal points raised by Staff, the Company must first clarify

two statements from *Staff's Recommendation*.

4. *Staff's Recommendation* states: "...Staff cannot determine whether the proposed change will result in more revenue for Ameren [Missouri]." ¹ And that makes sense — no one has a crystal ball to predict the myriad factors that could result in more (or less) revenue for Ameren Missouri, such as future weather patterns. But, as explained in Ameren Missouri's *Application*, and affirmed by the Company's Director of Regulatory Affairs, Steven Wills, the various residential rate plans were designed to be revenue neutral. ² *Staff's Recommendation* does not (and cannot) contradict the fact that the five residential rate plans were designed to be revenue neutral. In fact, what that means is that, if the Commission *had* determined the Evening/Morning Savers should continue to be the default rate in the last rate case, the compliance rates calculated to implement the outcome of the case would have been identical.

5. *Staff's Recommendation* explains that Ameren Missouri's *Application* "...is indistinguishable from the recent TOU modification brought by Evergy, Case No. ET-2024-0061." ³ While Ameren Missouri's *Application* acknowledges that it is similar to Evergy's TOU default modification, ⁴ Ameren Missouri's *Application* is distinguishable on at least a couple important points.

A. First, as explained in the *Application*, a significant change in circumstances occurred between when the Commission issued its Report and Order in the Company's most recent electric general rate case, File No. ER-2022-0337, and when the Company filed its *Application*: the Commission *at least in part* justified the new high-differential default

¹ File No. ET-2024-0156, Staff Recommendation, filed Nov. 9, 2023, at p. 3.

² File No. ET-2024-0156, Ameren Missouri's *Application*, filed Nov. 3, 2023, at para. 8a & Schedule 3 to *Application*, Affidavit of Steven Wills, at para. 15.

³ See Footnote 1.

⁴ File No. ET-2024-0156, Ameren Missouri's *Application*, filed Nov. 3, 2023, at paras. 3 & 23.

TOU for Ameren's Missouri's customers defaulting after March 31, 2024 on a desire for consistency with Evergy's then-recent new high-differential default TOU, but the Commission recently modified Evergy's default TOU.⁵

B. Second, Ameren Missouri has been defaulting residential customers to the low-differential Evening/Morning Savers rate plan (if another rate plan is not selected) for years since beginning of its deployment of AMI meters.⁶ In contrast, Evergy has had AMI meters fully deployed for years, and had not previously employed any TOU defaulting process for residential customers. Thus, Ameren Missouri's *Application* is distinguishable from Evergy's TOU modification because Ameren Missouri's *Application* is seeking to continue the same TOU defaulting process as it currently employs, which will make the customer experience consistent for all Ameren Missouri's residential customers and avoid amplifying customer confusion regarding why residential customers would be treated differently based on the timing of when they initially receive their AMI meter.

II. Legal Arguments

6. Turning to the legal points, *Staff's Recommendation* to reject Ameren Missouri's request to modify the default time-of-use ("TOU") rate plan to which residential customers not otherwise selecting a rate plan will be defaulted⁷ is premised on a fundamental misapplication of

⁵ File No. ET-2024-0156, Ameren Missouri's *Application*, filed Nov. 3, 2023, at para. 13.

⁶ As of October 31, 2023, Ameren Missouri had 656,824 residential customers enrolled in a TOU rate plan, and over 89% of residential customers had defaulted to the Evening/Morning Savers rate. See *Application*, at paras. 3a & 4.

⁷ Ameren Missouri's *Application* also requests waiver of the 60-day notice requirement under 20 CSR 4240-4.017(1)(D), and an expedited decision in accordance with 20 CSR 4240-2.080(14). But, if the Commission does not grant expedited decision by December 4, 2023, the Company alternatively seeks approve of substitute electric tariff

the single-issue ratemaking prohibition, and a misunderstanding of the "filed rate doctrine."

7. Staff asserts: "The same legal considerations apply to [Ameren Missouri's] *Application* that Staff pointed out with respect to Evergy's *Application* in the prior case."⁸ And yet those same legal considerations were found by the Commission in Evergy's TOU default modification case, File No. ET-2024-0061, to not be applicable. Indeed, the Commission's *Order Approving Amended Application and Tariff* specifically addressed Staff's single-issue ratemaking concern as follows:

Staff is concerned that approving the tariff would result in single-issue ratemaking. But Evergy is not requesting that the Commission change any of the current rate choices under the available TOU plans. Instead, it is requesting that from the multiple TOU rate options included in Evergy's current tariff, that the Commission switch the default TOU rate from the high-differential TOU to the low-differential TOU rate.⁹

**Ameren Missouri's Application is Plainly NOT Violative of
the Single-Issue Ratemaking Principle**

8. Via its *Application*, and consistent with Evergy's recent default TOU modification approved by the Commission in File No. ET-2024-0061, Ameren Missouri is not requesting that the Commission change any rates and is not seeking any change in the revenue requirement stipulated by parties and approved by the Commission in File No. ER-2022-0337. Rather, Ameren Missouri is requesting the Commission change the default TOU rate to the low-differential TOU rate already approved by the Commission and already used as the default TOU up until the Commission's decision in File No. ER-2022-0337, which is really a default rate design decision.

9. *Staff's Recommendation* perplexingly cites the UCCM case¹⁰ as particularly relevant: "the

sheets to delay the defaulting of certain residential customers to the high-differential TOU Smart Savers rate plan beyond March 31, 2023. Staff's Recommendation does not address these three other requests.

⁸ Footnote 1.

⁹ File No. ET-2024-0061, Order Approving Amended Application and Tariff, issued Sept. 27, 2023, eff. Oct. 8, 2023, at p. 4.

¹⁰ State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. En Banc 1979).

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 no hearing is required and that the filed rate should not be suspended.'"¹¹ The UCCM case involved the use of an automatic Fuel Adjustment Clause or "FAC" whereby the utility was allowed to pass on to consumers any increase or decrease in the cost of fuel automatically.¹² Here though there is no adjustment to rates requested, and no attempt to automatically flow changes in operational expenses to customers in between general rate cases.

10. Notably, Staff's perspective on what constitutes single-issue ratemaking appears to have changed in the last decade. In Staff's Response to Ameren Missouri's Motion to Dismiss in the Noranda rate complaint, File No. EC-2014-0224, approximately nine years ago, Staff asserted that Noranda's request to shift recovery of tens of millions of dollars a year to other rate classes, but not to change the annual revenue requirement, was a mere rate design process issue. And, Staff described:

Certainly, there are legal parameters that guide the rate design process, but the prohibition on single-issue ratemaking is not one of them. This point is apparent in the fact that every reported case on single-issue ratemaking discusses items of cost, some which have increased and others of which have declined or remained static.

In [the UCCM case], the lead case, the Court discussed in detail how increases in the fuel costs of electric utilities are, to some significant degree, subject to management control and thus possibly offset by economies elsewhere. Other cases, such as *Hotel Continental*, explain that some costs are different by nature and thus not subject to the single-issue ratemaking prohibition. Still other cases, focusing on an accounting device termed an "Accounting Authority Order," explain how the deferral of selected costs from one period to a later one for possible inclusion in the revenue requirement does not violate the prohibition. None of these cases applied the single-issue ratemaking prohibition in a rate-design context.¹³

¹¹ File No. ET-2024-0156, Staff Recommendation, filed Nov. 9, 2023, at pp. 3 – 4.

¹² State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. En Banc 1979).

¹³ File No. EC-2014-0224, Staff's Response and Suggestions in Opposition to Ameren Missouri's Motion to Dismiss,

11. In the Noranda complaint case, File No. EC-2014-0224, the Commission agreed with Staff's assertion that single-issue ratemaking is not a concern in the rate design context as follows:

...Ameren Missouri argues that the complaint would require the Commission to engage in unlawful single-issue rate making. Single-issue ratemaking is a concept whereby the Commission would adjust rates based on a narrow examination of a single factor without considering all other relevant factors. Single-issue rate making is improper because consideration of only one factor could show that a company is underearning or overearning, resulting in a rate increase or decrease, while some other factor that is not examined would show that the costs associated with the single-factor were off-set by changes in costs associated with other, unexamined, factors. The result of such single-issue ratemaking could be an inaccurate assessment of the company's revenue requirement, resulting in unjust and unreasonable rates.

However, concerns about single-issue rate making do not apply to this complaint because this complaint is about rate design, not revenue requirement. In other words, the complainants are asking the Commission to change the balance by which the company's revenue requirement is collected from the various customer classes. The overall amount collected by the company, its revenue requirement, would not be changed. Therefore, single-issue ratemaking is not a concern.¹⁴

12. It is absolutely unclear how Staff would assert that Noranda's request to shift recovery of tens of millions of dollars per year from its rate class to other rate classes would be considered a rate design issue, but Staff believes Ameren Missouri's (and Evergy's similar) request to merely change the rate plan to which customers will be defaulted would not be considered a rate design issue or at least not a revenue requirement issue.

13. Just as the Commission correctly found that Evergy's similar TOU default modification request is/was not single-issue ratemaking, so too should the Commission confirm that Ameren Missouri's TOU default modification is not violative of the single-issue ratemaking principle.

filed March 26, 2014, at p. 9 (internal citations omitted).

¹⁴ File No. EC-2014-0224, Order Regarding Ameren Missouri's Motion to Dismiss, issued & eff. April 16, 2014, at p. 3.

**Ameren Missouri's Application Does NOT Even Implicate, Let Alone Violate,
the Filed Tariff Doctrine**

14. Based on what appears to be a flawed understanding of the “filed tariff doctrine,” Staff asserts that the doctrine would prohibit the Commission from ruling on the Company’s application without a full rate case filing and a ten-month suspension period.¹⁵ The filed rate doctrine would be triggered if the Company was seeking to not charge the TOU rates that the Commission established, but that is not the case here. Instead, the Company wants to modify how the defaulting process will be implemented and not change any of the rates themselves. The “filed rates” will continue to be available for customers to choose.

15. Staff’s Recommendation does not address or even reference section 393.140(11), RSMo., which allows tariff changes like the minor revisions proposed to electric tariff sheet nos. 54, 54.4 and 54.7 as set out in **Schedule 1** to the *Application* to go into effect on 30 days’ notice, or even less than 30 days’ notice if good cause is shown.

16. Furthermore, the Commission has historically exercised its discretion to approve or modify the terms of various public utility programs and related tariffs outside the context of general rate cases, and has conducted rate design proceedings in which rates and rate designs were modified on a revenue-neutral basis outside the context of a general rate case.¹⁶ There should be no question that the Commission has the authority to grant the Company’s request in this proceeding.

WHEREFORE, Ameren Missouri requests that the Commission accept its response to *Staff’s Recommendation* and give it due consideration in rendering any applicable decision.

¹⁵ File No. ET-2024-0156, Staff Recommendation, filed Nov. 9, 2023, at p. 4.

¹⁶ See e.g., File No. ET-2021-0109/0110, Application of Evergy Metro, Inc. d/b/a Evergy Missouri Metro for Approval of Tariff Revisions, Order Approving Compliance Tariffs, Dec. 28, 2020 (Evergy’s Customer Forward Program); File No. ET-2020-0022, Order Approving Stipulation and Agreement, In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Approval to Expand Its Community Solar Pilot Program and Associated Tariff, May 28, 2020 (Ameren Missouri’s Community Solar Pilot Program); File No. ET-2019-0237/-0238, Application of Kansas City Power & Light Company for Approval to Modify Existing Tariffs for Residential Time of Use, Notice Regarding Revised Tariff Sheets (Evergy’s revisions to TOU tariff to exclude holidays from the on-peak definition allowed to become effective by operation of law); Case No. EO-78-163, In the matter of the investigation of the rate design of Union Electric Company, Report and Order, 23 Mo.P.S.C. (N.S.) 429, March 26, 1980; Case No. EO-78-161, In the matter of the rate design of Kansas City Power & Light Company, Report and Order, 25 Mo.P.S.C. (N.S.) 605, Feb. 28, 1983.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 15th day of November, 2023.

/s/ Jermaine Grubbs
Jermaine Grubbs