

Exhibit No.:
Issue: Unregulated Competition Waiver
Witness: J Luebbert
Sponsoring Party: MoPSC Staff
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MISSOURI PUBLIC SERVICE COMMISSION
INDUSTRY ANALYSIS DIVISION
ENGINEERING ANALYSIS DEPARTMENT

REBUTTAL TESTIMONY
OF
J LUEBBERT

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

CASE NO. ER-2019-0335

Jefferson City, Missouri
January 2020

Staff Exhibit No. 115
Date 3/4/20 Reporter JLB
File No. ER-2019-0335

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1 fees¹ required by its tariff and allow the opportunity to provide incentives in an effort to try to
2 sway developers into taking service from Ameren Missouri as opposed to a cooperative or in
3 the case of some proposed incentives, a non-electric heating supplier such as natural gas.

4 Q. Are the requested changes necessary?

5 A. No. Ameren Missouri has not provided substantial factual evidence to
6 demonstrate that the changes to the tariff are necessary, instead relying on anecdotal examples
7 of instances in which Ameren Missouri might have been able to sway a developer into taking
8 service from Ameren Missouri had the proposed provisions been available. Ameren Missouri
9 did not seek an unregulated competition waiver for any of the examples provided in Mark C.
10 Birk's direct testimony. Furthermore, Ameren Missouri has requested only three unregulated
11 competition waivers since 2002. If unregulated competition was such a concern, it seems that
12 Ameren Missouri would be requesting waivers far more frequently. The change to the process
13 proffered by Ameren Missouri appears to be a solution looking for a problem.

14 Q. Do the proposed changes to the unregulated competition waiver process comply
15 with the Commission's Utility Promotional Practices Rules?

16 A. No. The proposed changes conflict with two provisions of 20 CSR 4240-
17 14.020.² 20 CSR 4240-14.020(1)(E) states that:

18 (1) **No public utility shall offer or grant any of the following**
19 **promotional practices³ for the purpose of inducing any person to**
20 **select and use the service or use additional service of the utility:**

¹ Up to \$600,000 annually.

² In Case No. AW-2018-0385 the Commission issued an order opening a working case regarding the review of the Commission's Promotional Practices rule on July 17, 2018.

³ 20 CSR 4240-14.010 (6)(L): Promotional practices shall mean any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing the person to select and use the service or use additional service of the utility or to select or install any appliance or equipment designed to use the utility service, or for the purpose of influencing the person's choice or specification of the efficiency characteristics of appliances, equipment, buildings, utilization patterns or operating procedures.

1 **(E) The provision of free, or less than cost or value, wiring,**
2 **pipng, appliances or equipment to any other person;**
3 provided, that a utility, engaged in an appliance merchandising
4 sales program, shall not be precluded from conducting legitimate
5 closeouts of appliances, clearance sales and sales of damaged or
6 returned appliances; **[Emphasis added.]**

7 Ameren Missouri is requesting the ability waive extension costs and offer incentives with the
8 intent of inducing developers to select and use Ameren Missouri service. 20 CSR 4240-
9 14.030(2) states:

10 **(2) No public utility or its affiliate, directly or indirectly, in any manner**
11 **or by any device whatsoever, shall offer or grant to any person any**
12 **form of promotional practice except as is uniformly and**
13 **contemporaneously extended to all persons in a reasonable defined**
14 **class. No public utility or its affiliate, in the granting of a promotional**
15 practice, shall make, offer or grant any undue or unreasonable
16 preference or advantage to any person or subject any person to any
17 undue or unreasonable prejudice or disadvantage. **No public utility or**
18 **its affiliate shall establish or maintain any unreasonable difference**
19 **in the offering or granting of promotional practices either as**
20 **between localities** or as between classes to whom promotional
21 practices are offered or granted. **[Emphasis added.]**

22 If approved as filed, Ameren Missouri's proposed tariff changes would allow Ameren Missouri
23 to offer waivers that are not uniform, are not contemporaneously extended to all customers in
24 a given class, and could differ between localities based on proximity to unregulated
25 competitors.

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1 Q. Did Ameren Missouri request variances from CSR 4240-14.020(1)(E) or
2 20 CSR 4240-14.030(2)?

3 A. I am not aware of any variance request for those rules filed by Ameren Missouri
4 in this case.

5 Q. If Ameren Missouri had requested such variances in this case, would Staff
6 recommend that the Commission approve those variances?

7 A. No, for the same reasons Staff highlights herein.

8 Q. What are some of the key terms defined by the Ameren Missouri tariff in regards
9 to Ameren Missouri's line extension policy as they relate to Mr. Birk's proposed changes?

10 A. Ameren Missouri's tariff⁴ defines Extension Allowance, Marginal Revenue,⁵
11 Extension Charge, and Extension Cost. These definitions are important when considering the
12 proposed changes to Ameren Missouri's unregulated competition waiver process because the
13 waiver permits or enables Ameren Missouri to circumvent the policy with little or no
14 justification and without prior Commission approval.

15 Q. How does Marginal Revenue compare to the estimated annual revenue stream
16 from a customer?

17 A. The simple answer is that the annual revenue stream from a customer ignores
18 substantial costs that will be incurred to serve the new load. Marginal Revenue accounts for
19 the estimated annual revenue stream over the first five years of service and the incremental
20 energy, capacity, and marginal network and infrastructure support costs. The estimated annual
21 revenue stream does not account for these substantial associated costs of service and is not a

⁴ 1st revised Sheet Nos. 111 and 112.

⁵ The estimated average annual revenue measured over the first 5 years of life associated with the line extension project, less incremental energy, capacity, and marginal network and infrastructure support cost.

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1 useful metric in determining economic benefits as they might pertain to existing customers.
2 Using the estimated annual revenue stream is beneficial in determining whether Ameren
3 Missouri stands to profit from the extension through additional revenues, but fails to recognize
4 the substantial costs to serve the new customer that is ultimately borne by Ameren Missouri's
5 existing customers. The current Ameren Missouri line extension policy caps the Extension
6 Allowance for a given project by considering the estimated marginal revenue over the first five
7 years of service to the customer in order to minimize the economic impacts of serving the new
8 customer on existing customers.

9 Q. Has the line extension policy of Ameren Missouri been reviewed recently?

10 A. Yes it has. On February 6, 2019, the Commission approved a Stipulation and
11 Agreement between Ameren Missouri, Missouri Division of Energy, Staff, and the Office of
12 the Public Counsel regarding the line extension policy and the associated tariff sheets.
13 The Stipulation and Agreement included a substantial rewrite of Ameren Missouri's line
14 extension policy. One provision of that agreement is that Ameren Missouri will compile a
15 report to examine how well the tariff is working to align cost causation after five years.^{6,7}
16 Ameren Missouri has clearly stated line extension allowances within its tariff that are designed
17 to be cost based and recoverable over five years of service to the customer. Ameren Missouri's
18 tariff defines Extension Allowance as "an economically justifiable investment which may be
19 made by the Company for distribution line extensions, service extensions, or a combination
20 thereof..."⁸ When describing the Stipulation and Agreement in an on the record presentation

⁶ Provision 9 of the Second Stipulation and Agreement in Case No. ET-2018-0132.

⁷ Report due in year six.

⁸ 1st Revised Sheet No. 111.

1 regarding Case No. ET-2018-0132 on December 4, 2018, Ameren Missouri counsel

2 Wendy Tatro stated:

3 The stipulation implements a different process. It moves to a marginal
4 cost method. So when a non-residential customer requests a line
5 extension, Ameren Missouri will compare the extension cost, that's the
6 estimated installed cost, to the extension allowance, which is marginal
7 revenue divided by the cost-of-service factor, over a five-year view.
8 The customer pays for any extension costs that are above the extension
9 allowance. Now, we think this approach is superior in that it recognizes
10 customers may contribute additional revenue, which can be used to pay
11 for the line extension. And **requiring customers to pay amounts**
12 **above the extension allowance prevents other customers from**
13 **subsidizing and prevents upward rate pressure.** Customers who are
14 not required to pay a line extension cost under this methodology or who
15 pay the required extension costs will exert a downward or neutral
16 impact on customer rates.” [Emphasis added.]

17 The Commission ordered approval of the Stipulation and Agreement on February 6, 2019.
18 Now, less than six months⁹ since this revised line extension policy was approved by the
19 Commission, Ameren Missouri is proposing a new waiver process that would enable the
20 company to circumvent the tariffed policy to compete for certain distribution system extensions
21 in areas in which electrical cooperatives have assets in close proximity. Ameren Missouri
22 proposes that merely maintaining a record of potential competition should be a sufficient
23 justification for providing special incentives to a potential customer.

⁹ Mr. Birk filed Direct testimony on July 3, 2019.

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1 Waiving the associated extension charge¹⁰ either partially or completely, without
2 Commission approval, may result in extensions of the distribution system not being
3 economically justified over a 5-year period. The beneficiaries of such occurrences are the
4 developers, resulting in increased profit margins through experiencing lower interconnection
5 costs, as well as Ameren Missouri by increasing its rate base through higher distribution system
6 investment costs. The loser, in such a scenario, is quite clearly ratepayers.

7 Q. Do the examples provided in Mr. Birk's direct testimony include documentation
8 to support the claims of unregulated competition?

9 A. No they do not. Mr. Birk did not illustrate that having the ability to offer special
10 incentives without prior Commission approval was necessary in order to persuade a developer
11 to choose Ameren Missouri. The examples rely on verbal communications from developers
12 who stand to maximize their own profits by obtaining the cheapest line extension possible. One
13 of the major flaws in Mr. Birk's proposal is that it would essentially allow a developer to
14 continually minimize their own costs, leveraging cooperative offers against Ameren Missouri
15 offers at the expense of all other ratepayers. Further, the mere presence of an unregulated entity
16 in an area being developed should not be the sole decision point for contemplating waiving
17 charges associated with extensions of service and/or construction deposits.

18 Q. Has the turnaround time on the most recent waiver requests been unreasonable?

19 A. No. In fact, the turnaround time from filing an application to receiving a
20 Commission Order has been fewer than 30 days in each of the last two requests by Ameren
21 Missouri. Staff requested that Ameren Missouri provide all communications since 2016
22 between Ameren Missouri and developers in which the developer expressed concern regarding

¹⁰ Extension Charge = Extension Cost – Extension Allowance

1 the turn-around time of a necessary unregulated competition waiver. Ameren Missouri
2 responded that, "Communications were verbal between Ameren MO Division employees and
3 developers."¹¹

4 Q. Does the proposed tariff language attached to Mr. Birk's testimony alter the
5 applicability of unregulated competition waivers?

6 A. Yes. The existing tariff language allows Ameren Missouri to waive all or part
7 of any charges associated with extensions of service and/or construction deposits, as well as
8 additional non-tariff charges, upon Commission approval. The newly proposed language would
9 permit Ameren Missouri to waive all or part of applicable charges and also allows payments
10 to be offered effectively offsetting the prospective customer's or developer's electric-service
11 related costs with minimal required record keeping and without requiring specific Commission
12 approval. Not only would this language let Ameren Missouri waive extension charges but it
13 also allows additional incentives in addition to the waiver without Commission approval. Staff
14 recommends that the Commission reject this proposition outright as it provides an avenue for
15 Ameren Missouri to provide preferential treatment to certain customers or developers without
16 sufficient restrictions and/or requirements without prior Commission approval.

17 Q. Can you identify some areas of the proposed tariff language that are vague or
18 unrestrictive?

19 A. The sections of the revised tariff language regarding availability, incentive
20 limits, and filing requirements contain vague and undefined terms that would grant Ameren
21 Missouri a level of latitude that is unreasonable. The proposed tariff language provided by
22 Mr. Birk would enable Ameren Missouri to comply with its tariff without adequately

¹¹ Response to Staff Data Request No. 0546.

1 demonstrating and documenting actual competitive alternatives. If approved, the availability
2 and filing requirements of the tariff would make it difficult to make an argument against the
3 prudence of a given project, even if the decision to approve the waiver or grant incentives was
4 indeed an imprudent decision.

5 The availability and filing requirements sections require only minimal documentation
6 and justification in making the waiver available to developers. For example, Ameren Missouri
7 would only be required to document the existence of competition with another electric service
8 provider. Ameren Missouri's intended record keeping for such a requirement is to, "create a
9 Google Earth "mark-up" illustrating the area for development, with our lines marked in
10 proximity to the development as well as the cooperative's lines."¹² The fact that another entity
11 could serve a development should not be the most restrictive requirement that would allow
12 Ameren Missouri to not only waive line extension fees designed to be cost based but also to
13 provide additional incentives. The proposed tariff language does not even define "the nearest
14 proximity" that would be necessary to justify the use of the waiver.

15 The availability section also requires Ameren Missouri to find that:

16 . . . there is a demonstrable economic benefit to Company's existing
17 customers achieved over a reasonable period of time in serving the
18 prospective customer that meet or exceed the amount of the Incentives
19 offered by a competing electric provider.

20 Allowing Ameren Missouri the latitude to waive its tariff provisions based on Ameren
21 Missouri's own estimates for costs and marginal benefits that could be incurred over a time
22 period that Ameren Missouri deems reasonable without prior Commission approval, is

¹² Response to Staff Data Request No. 0547.

1 unreasonable. The phrase “reasonable period of time” is not defined in the tariff. The very
2 section of Ameren Missouri’s tariff to which the proposed waiver would apply contemplates a
3 period of up to five years to recover the associated costs of an Extension Allowance. Staff
4 maintains that a period up to five years allows sufficient time for startup and levelized load,
5 which would improve the accuracy of future Marginal Revenue estimates. However, estimating
6 marginal revenue is an inexact process. The more time included in a given economic analysis
7 also increases the variability in the estimation and potentially magnifies any errors in the
8 assumptions relied upon. If the extension allowance is exceeded due to a waiver, then the
9 applicable assumptions need to be as reliable as possible. The decision to add customers and
10 waive extension costs in excess of extension allowance places an inappropriate amount of risk
11 on captive ratepayers.

12 The incentive levels section does not indicate if the incentive level limits are capped by
13 calendar year, fiscal year, or 12-month rolling period.

14 The section of the tariff language concerning filing requirements is deficient in regard
15 to justifying a given project. Currently, if Ameren Missouri wants to receive a waiver for a
16 given project, Ameren Missouri is incentivized to provide transparent estimations and maintain
17 effective communications with Staff in the hopes of receiving a timely recommendation to the
18 Commission. Ameren Missouri is requesting authorization to document information and
19 provide it to Staff on an annual basis. This fundamental change from the current process that
20 requires Ameren Missouri to justify a given waiver and obtain prior Commission approval is
21 inappropriate as it shifts the burden of justification from Ameren Missouri to Staff and other
22 stakeholders. Thus, if the Commission approves Ameren Missouri’s proposed changes, the

1 onus of justification is removed from Ameren Missouri, which results in Staff being tasked with
2 proving imprudence based on limited information that is obtained after the fact.

3 Q. What are some of the incentives for Ameren Missouri that could lead to
4 customer detriment due to the proposed changes to the unregulated competition waiver process?

5 A. The proposed tariff changes allow Ameren Missouri the ability to provide
6 incentives that are likely to result in being a detriment to customers. Ameren Missouri would
7 be incentivized to waive certain distribution system upgrade costs affording it the opportunity
8 to request rate base treatment of a higher cost distribution system investment. One of the
9 examples provided by Mr. Birk includes the installation of ground source heat pumps. It is not
10 clear at this time how the proposed changes to the tariff would interact with Ameren Missouri's
11 Missouri Energy Efficiency Investment Act (MEEIA) portfolio.¹³ However, if there was an
12 interaction between the waiver process and the MEEIA portfolio, Ameren Missouri would
13 potentially be simultaneously incentivizing load growth, adding assets for rate base,¹⁴
14 recovering MEEIA program costs, increasing its throughput disincentive (or presumed lost
15 sales), and increasing savings that would be counted toward its MEEIA earnings opportunity.
16 Simultaneous incentivization of load growth and energy efficiency would likely result in
17 benefits that inure to the developer and Ameren Missouri at the expense of ratepayers.
18 Therefore, if the Commission approve any changes to the unregulated competition waiver
19 process, Staff recommends the Commission order that MEEIA measures may not be offered
20 simultaneously with the waiver of extension costs or incentives provided through the
21 unregulated competition waiver.

¹³ Response to Staff Data Request No. 0547 states "There is currently no interaction with MEEIA programs with regard to ground source heat pumps for new developments."

¹⁴ For which Ameren would be given an opportunity to earn a return of and on its investment.

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1 Q. Could you please summarize your recommendations?

2 A. I recommend that the Commission reject the proposed changes to Ameren
3 Missouri's unregulated competition waiver process. However, if the Commission accepts any
4 of the proposed changes regarding providing incentives as part of the unregulated competition
5 waiver process, I recommend that the Commission order that MEEIA measures may not be
6 offered simultaneously with the waiver of extension costs or incentives provided through the
7 unregulated competition waiver.

8 Q. Does that conclude your testimony?

9 A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

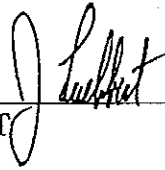
In the Matter of Union Electric Company)
d/b/a Ameren Missouri's Tariffs to Decrease)
Its Revenues for Electric Service) Case No. ER-2019-0335

AFFIDAVIT OF J LUEBBERT

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW J LUEBBERT and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Rebuttal Testimony*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

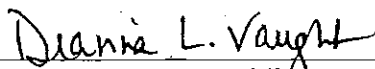


J LUEBBERT

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 21st day of January, 2020.

DIANNA L. VAUGHT
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: July 18, 2023
Commission Number: 15207377



Notary Public