

Exhibit No. 262

Commission Staff – Exhibit 262
Lisa M. Ferguson
Surrebuttal/True-Up Direct Testimony (Gas)
File Nos. ER-2021-0240 & GR-2021-0241

Exhibit No.:

*Issue(s): Board of Directors Documentation,
Sales/Use Tax Audit, CWC State
Income Tax Lag, True-Up*

Witness: Lisa M. Ferguson

Sponsoring Party: MoPSC Staff

*Type of Exhibit: Surrebuttal /
True-up Direct Testimony*

Case No.: GR-2021-0241

Date Testimony Prepared: November 5, 2021

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

SURREBUTTAL / TRUE-UP DIRECT TESTIMONY

OF

LISA M. FERGUSON

**UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI**

CASE NO. GR-2021-0241

*Jefferson City, Missouri
November 2021*

**** Denotes Confidential Information ****

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LISA M. FERGUSON
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OF
LISA M. FERGUSON
UNION ELECTRIC COMPANY,
d/b/a AMEREN MISSOURI
CASE NO. GR-2021-0241

7 Q. Please state your name and business address.

8 A. Lisa M. Ferguson, 111 N. 7th Street, Suite 105, St. Louis, MO 63101.

9 Q. By whom are you employed?

10 A. I am employed by the Missouri Public Service Commission ("Commission") as a
11 member of the Auditing Staff ("Staff").

12 Q Are you the same Lisa M. Ferguson who filed *Direct Testimony*, contributed to
13 Staff's *Revenue Requirement Cost of Service Report* filed September 3, 2021 as well as filed
14 *Rebuttal Testimony* on October 15, 2021 in this case?

15 A. Yes, I am.

16 Q. What is the purpose of your surrebuttal testimony in this proceeding?

17 A. My surrebuttal testimony will address the rebuttal testimony of Ameren Missouri
18 witnesses Tom Byrne and Mitchell Lansford regarding Ameren's Board of Directors
19 Documentation and the Sales/Use Tax Audit; and the electric rebuttal testimony of The Office of
20 the Public Counsel (OPC) witness John R. Riley regarding Cash Working Capital for state
21 income tax.

22 **AMEREN'S BOARD OF DIRECTORS DOCUMENTATION**

23 Q. On page 7, lines 13-15 of his rebuttal testimony, Ameren Missouri witness
24 Tom Byrne mentions that Staff has concerns with the extra time it took Ameren Missouri to

1 respond to Staff's request to review Ameren Board and Board Committee documentation in this
2 case. Does Staff's concern lie only with this current case?

3 A. No. Even if Ameren Missouri files a rate case every year to a year and a half there
4 is a significant amount of important information to review.

5 Q. Ameren Missouri witness Byrne also mentions that there were delays in providing
6 the data in this case due to COVID. Has Staff had times prior to COVID where there were delays
7 in receiving the board documentation?

8 A. Yes.

9 Q. Has Staff simply asked Ameren Missouri if it would be willing to provide Board
10 and Board Committee information between its rate case filings?

11 A. Yes. I personally have informally asked on at least two different occasions
12 whether Ameren Missouri would be willing to maintain the board documents so that Staff could
13 request to view the information while also not trying to complete a rate review.

14 Q. On page 8, lines 12-14 of his rebuttal testimony witness Byrne mentions that Staff
15 has requested review of board documentation in rate cases and Fuel Adjustment Clause cases but
16 not in any other situation. Is that statement accurate?

17 A. No. In addition to asking Ameren Missouri if it would be possible for Staff to
18 begin reviewing Board and Board Committee documentation between rate cases, Staff has
19 requested to review Board documentation in regards to Ameren Missouri's renewable CCN's
20 (Certificate of Convenience and Necessity) for its wind projects and other similar projects.

21 Q. On page 8, lines 16-17 of his rebuttal testimony, witness Byrne mentions that it
22 is not appropriate in his opinion for Staff to access the sensitive documents at all times and

1 for no reason at all. Does the Staff of the Commission have the discretion to review the
2 documentation and workings of the monopoly utilities at any point?

3 A. Yes¹. Ameren Missouri is a monopoly utility in the state of Missouri and is
4 subject to regulation by the Missouri Public Service Commission. The Commission Staff has the
5 responsibility to advise the Commission regarding the utility and the only way to do so is by
6 having the time and availability to review relevant documentation. In fact, it is surprising to Staff
7 that Ameren Missouri is not willing to informally or even formally allow Staff continuous access
8 for review.

9 Q. On page 8, lines 18-23, of his rebuttal testimony, Mr. Byrne states that Ameren
10 Missouri is willing to agree to any steps to make sure that the Board documentation is available
11 to Staff on a timelier basis in rate cases and states that this should provide the Staff with plenty
12 of time to review these documents during the 11-month period of a rate case. Does this alleviate
13 Staff's concern?

14 A. No. Mr. Byrne himself discusses on page 7, lines 14-16 of his electric rebuttal
15 testimony, the size and complexity of Ameren Missouri rate cases. Staff may have 11 months to
16 review all information in the Board Documentation, but it also has to process the rate case itself
17 by reviewing all books and records of the utility, filing three rounds of testimony and filing at
18 least two sets of accounting schedules.

¹ Section 393.140(8), RSMo (2016) Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited.

1 Q. If Staff wishes to propose an adjustment in a rate case based upon information
2 discovered through Board documentation, does Staff truly have the entire 11-month period of the
3 rate case to do so?

4 A. No. Staff would have from the time their audit begins until its direct filing to
5 make that proposed adjustment. As Mr. Byrne is inclined to argue, Staff must propose their
6 "case in chief" in its direct filing. That allows Staff a mere 4 to perhaps 4 ½ months to review
7 documents from a period of a year or more for Ameren's Board, Ameren Missouri's Board, 6 or
8 so Committees, Executive Leadership Team (ELT), Ameren Leadership Team (ALT), and Senior
9 Leadership Team (SLT). This is while attempting to process the rate case for which there could
10 be 50-75 issues easily to review all aspects of Ameren Missouri's utility business. This rate case
11 process has only become more complex with all of the additional rate making mechanisms that
12 the utility has had the opportunity to add to its repertoire and how those mechanisms affect base
13 rates. In addition, Staff does not merely respond to only the issues that the utility brings up in its
14 cases. If that were the case, some costs could possibly be improperly recovered in the cost of
15 service as shown through the corrected lobbying adjustments in this rate case. Staff reviews all
16 aspects of the utility's operations. It is also extremely likely that the assigned Staff has additional
17 responsibilities to also analyze, review and prepare recommendations on other cases/projects at
18 the same time as reviewing a utility's rate case.

19 Q. Is there another Missouri utility that continuously maintains its Board and
20 Board Committee documents for Staff members to come review when their schedule and
21 caseload allows?

1 A. Yes. Evergy and its legacy company's KCPL, GMO and Aquila have been
2 providing their documentation for continuous review by Staff for many years. In fact, Evergy
3 maintains a file cabinet for which only Staff has access. Staff must set up a mutually agreeable
4 time to come to review the documents, of which that has not appeared to be an issue to date,
5 agree to transcribe, not actually photocopy information; and sign in and out when actually
6 physically accessing the documents. Evergy's board documentation has a very similar make up
7 as Ameren Missouri in that it has parent and affiliate boards and multiple committees.

8 Q. Why is Staff bringing this issue now before the Commission?

9 A. Informal Staff requests for this access began several years ago, but Ameren
10 Missouri has been either ignored or denied the requests. Staff does not understand why accessing
11 this information is at all a detriment to Company when they are required to allow Staff review of
12 the documentation. This situation should assist the Company as well because the information
13 would continuously be ready for review and not an issue for either Company or Staff when it
14 came time for Ameren Missouri to file its rate cases as these rate cases are complex for the
15 Company to prepare as well and this would provide fewer things for Ameren Missouri and its
16 staff to prepare prior to the rate review, and if not eliminate, at least significantly lessen the
17 documentation that would need to be pulled, reviewed for redaction, and compiled for Staff.

18 **SALES/USE TAX AUDIT**

19 Q. On page 6, lines 9-22, Ameren Missouri witness Lansford takes issue with Staff's
20 position in direct testimony for removal of costs related to the Missouri Department of Revenue's
21 audit of Ameren Missouri's sales and use taxes as non-recurring. What are sales and use taxes?

1 A. The state's sales tax is imposed on the purchase price of tangible personal property
2 or taxable service sold at retail. Use tax is imposed on the storage, use or consumption of tangible
3 personal property in the state. The 4.225% state sales and use tax is distributed into four funds to
4 finance portions of state government. Cities and counties may impose a local sales and use tax
5 and special taxing districts (such as fire districts) may also impose additional sales taxes.
6 Any seller who sells more than five hundred thousand dollars' worth of goods per year and
7 provides a purchaser with a sales receipt or sales invoice in conjunction with a sale, as defined
8 under section 144.010, shall clearly state on such sales receipt or sales invoice the total rate of
9 all sales tax imposed on the sale referenced by such document. This total rate shall reflect any
10 applicable state or local sales tax authorized under the laws of this state. Generally, the
11 department collects and distributes only state and local sales and use taxes. A sales or use tax
12 return must be filed for the reporting period even if there is no tax to report.²

13 Q. Are these audit costs non-recurring for Ameren Missouri?

14 A. After further discovery of the issue, Staff learned that Ameren Missouri
15 continually monitors and analyzes the amounts paid to the taxing authorities for sales and use
16 taxes in an attempt to keep taxes incurred to the minimum amount owed. Due to the size of the
17 utility and its level of sales, the company is typically a candidate for periodic audits. According
18 to the response to Staff data request 640.2, for the last ten year period, Ameren Missouri has been
19 subject to an audit by DOR (Department of Revenue) of its sales/use taxes two times, including
20 this audit. Each audit of this type during the last decade has covered a period of 3-4 tax years.
21 It is apparent that these audits are recurring but not annual in nature and sometimes last multiple

² Missouri Statutes Chapter 144.

1 years. Costs incurred by Ameren Missouri related to each sales and use tax audit may range a
2 number of years subsequent to the tax years being audited. ** [REDACTED]
3 [REDACTED]³ [REDACTED]
4 [REDACTED]
5 [REDACTED] ** Since the tax years being audited are known but the
6 period of time Ameren Missouri may incur costs for this audit is not known, Staff believes it is
7 appropriate to normalize the costs over the time period being audited. This current audit covers
8 a three year period, as such Staff recommends inclusion of the audit costs but normalized over a
9 three year period.

10 **STATE INCOME TAX – CWC IMPACT**

11 Q. On page 4, lines 8-9 and lines 17-19 of his electric rebuttal testimony, OPC
12 witness John R. Riley proposes the Commission adopt a 365-day expense lag when calculating
13 the net lag for the state income tax offset. He states that this is necessary as Ameren Missouri
14 has a state net operating loss (NOL) and due to state income tax credit carryforwards, it is unlikely
15 that Ameren Missouri will incur Missouri state income tax in the near future. Is that a true
16 assessment of Ameren Missouri's state tax status?

17 A. No. When Staff was reviewing Ameren Missouri's income tax issue, Staff
18 reviewed all tax returns and tax calculations. Ameren Missouri and Ameren Corporation are in
19 a taxable position for 2021 and 2022. The state income tax credit carryforwards that Mr. Riley

3 ** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] **

1 mentions relate to Ameren's regulated affiliate Ameren Illinois. Those state income tax credit
2 carryforwards that Mr. Riley mentions relate to Ameren Illinois' cost of service but not Ameren
3 Missouri. Thus, Staff's proposed cash working capital expense lag as proposed in its direct
4 testimony is appropriate.

5 **TRUE-UP DIRECT**

6 Q. What are the results of Staff's true-up audit of gas operations?

7 A. After performing its true-up audit, Staff's revenue requirement for Ameren
8 Missouri's gas operations is \$4,332,425.

9 **Accumulated Deferred Income Tax (ADIT)**

10 Q. How has Staff updated its position regarding ADIT?

11 A. Staff has included accumulated deferred income tax balances as of September 30,
12 2021.

13 **Excess Income Tax Tracker**

14 Q. Has Staff updated its position for the excess income tax tracker?

15 A. Yes. Staff has included the most current amortization regarding the excess
16 income tax tracker as of the third quarter 2021.

17 **Natural Gas Storage Inventory**

18 Q. Did Staff review Ameren Missouri's gas storage inventory for true up?

19 A. Yes. Staff included the 13-month average ending September 30, 2021 in the cost
20 of service.

21 Q. Does this conclude your surrebuttal/true-up direct testimony?

22 A. Yes, it does.

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 Adjust Its) Case No. GR-2021-0241
Revenues for Natural Gas Service)

AFFIDAVIT OF LISA M. FERGUSON

STATE OF MISSOURI)
) ss.
COUNTY OF ST. LOUIS)

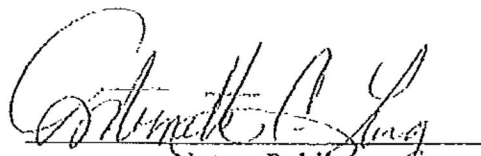
COMES NOW LISA M. FERGUSON, and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Surrebuttal/True-Up Direct Testimony of Lisa M. Ferguson*; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


LISA M. FERGUSON

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of St. Louis, State of Missouri, at my office in St. Louis, on this 3rd day of November, 2021.


Notary Public

