BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Commission's Proposed Rule 20 CSR 4240-10.155 Relating to Affiliate Transactions Respecting Electrical Corporations, Gas Corporations, Heating Companies, Certain Water Corporations and Certain Sewer Corporations.	))))))	File No. OX-2025-0104

AMEREN MISSOURI'S RESPONSIVE COMMENTS

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and provides the following responsive comments respecting the rules proposed in this docket:

<u>OFFICE OF THE PUBLIC COUNSEL'S ("OPC") DECEMBER 6, C0MMENTS</u>

1. **Subsection (2)(F).** While the Company will later comment on some of the less impactful of OPC's suggested changes to the rule proposed in this docket, the Commission should clearly understand that overall, OPC's comments reflect its attempt (a) to create a false and misleading straw man argument that would, as a practical matter, severely handicap if not eliminate the Company's ability to realize for its customers the tremendous benefits a centralized service company has brought and continues to bring for its customers, and (b) to ignore the Commission's prior decisions on the purpose of the affiliate transaction rules and the transactions which the asymmetrical pricing standards and related provisions in the rules are, and are not, intended to reach. The implications of this for Missouri utility customers should not be underestimated. Under OPC's paradigm, either utilities will have to receive variances from these provisions on a continual basis, or they will have to make foundational changes to the structure of their organizations. Such changes would be immensely expensive and complex and would likely result in inferior service to customers at a higher cost. It would also be largely inconsistent with industry best practices.

2. **OPC's Straw Man Argument is Flawed and Rests on a False Premise.** OPC recycles an argument it made in the workshop docket about the affiliate transaction rules[1] by claiming that use of a service company "subsidizes" the service company and would "enrich the shareholders" of the utility. It is from that flawed premise that OPC's entire argument to eliminate subsection (2)(F) and instead "append" it to subsection (2)(B) is based. OPC's claim is false. As Staff clearly recognizes, as evidenced by the rule it proposed in the workshop docket (File No. AW-2018-0394) which contained subsection (2)(F) verbatim, the spirit and intent of affiliate transaction rules are fully implemented by exempting service company activities from the asymmetric pricing and other unnecessary and unworkable standards that, while making sense when applied to certain nonregulated affiliates of a utility, never made sense when applied to service company support.

3. As for the first of OPC's flaws, by definition, subsection (2)(F) requires a service company to provide its services at cost with no profit. If it costs the service company (in the Company's case, Ameren Services Company or "AMS") $500,000 to provide accounting services to Ameren Missouri, Ameren Missouri pays $500,000 – not a penny more or less. Consequently, Ameren Corporation shareholders – who own both Ameren Missouri and AMS – cannot possibly be "enriched" because on a consolidated basis it cost $500,000 to provide the services The incentive to choose to acquire services from a services company in order to enhance its profits, as OPC claims to arise from the rule, simply does not exist.

4. The second fatal flaw in OPC's argument is that the purpose and intent of an affiliate transaction rule is not to act as though a service company is the equivalent of accounting firm A, or environmental firm B, etc. It is not, and it never has been. Service companies act as an extension of the utility itself and are integrated into utility operations and processes in many complex ways

[1] See File No. AW-2018-0394, Public Counsel's Further Response to Staff's Draft Affiliate Transaction Rule Amendments (Dec. 9, 2019).

that would be impossible to achieve with accounting Firm A or environmental firm B and would be even more impossible to switch periodically between third party providers as new bidding resulted in changes of providers of key services. The benefit of the service company model, though, is that it allows the utility to leverage significant economies of scale as services that are needed across larger corporate organizations can be provided more efficiently and cost effectively than if each operating company replicated the same functional capabilities within its organizational structure. The Staff itself recognizes that the very nature of a service company is that it is uniquely positioned to take advantage of these efficiencies and economies of scale by providing shared services to affiliates in the same holding company that are highly unlikely to be capable of realization if a utility operating company tried to maintain, for example, its own accounting, environmental, legal, etc. departments, or tried to disperse these kinds of services across a myriad of outside providers – for profit providers – because surely no one expects an accounting firm (to take one example) to provide its services at cost. As former longtime Commission Auditing Department Manager Mark L. Oligschlaeger testified in File No. EO-2017-0176, in support of a variance from the current rules – a variance that is in effect replaced by subsection (2)(F) of the proposed rule:

> Service Companies are common within utility structures containing multiple regulated entities, as this type of affiliate provides the benefits of economies of scale for the provision of goods and service for regulated utilities compared to the cost of each regulated utility providing the good or service for itself on a stand-alone basis.[2]

Mr. Oligschlaeger is absolutely correct in pointing out that the service company structure is common within the utility industry in many jurisdictions. In fact, the vast majority of the major rate regulated utilities across the country obtain goods and services from service companies.

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[2] Direct Testimony of Mark L. Oligschlaeger, File No. EO-2017- 0176, p. 8, ll. 3-8.

5. Mr. Oligschlaeger went on to state:

> Staff finds good cause for this variance [i.e., essentially what subsection (2)(F) in the proposed rule accomplishes] primarily because the service company structure can be reasonably assumed to be less costly in most situations than arrangements in which the utility receives goods and services from unaffiliated entities at market value. The expected lower costs associated with the provision of service company goods and services are due to the inherent economies of scale available in the offering of centralized services to multiple entities, as well as the fact that Ameren Services *does not include a profit margin* for the charges associated with provision of its goods and services, unlike the case of unaffiliated/independent third party vendors.[3]

6. Mr. Oligschlaeger's testimony – from a public utility regulatory commission auditor with nearly 40 years of experience in that role at the Commission – completely debunks OPC's lawyer's argument (not backed up by any facts or actual experience but by argument of its advocate) that "Generic Accountants, Inc." could be reasonably expected to provide the services for $400,000 instead of $500,000, all while charging a profit. That claim is another central but flawed aspect of OPC's straw man. Just as the Commission and OPC itself does not contract out its auditors, engineers, attorneys and other support staff, the implication that utilities could do so at a cheaper cost than employing those positions at a service company is untrue and on its face, makes no sense. If it were true, Mr. Clizer would not be an employee of OPC because OPC would hire an attorney from a law firm to do his work. And the Commission would not have a Staff but would instead oversee a group of contracted service providers to review utility expenditures and make recommendations to the Commission. But that is not what happens because there is value to having staff with the skill set and knowledge to effectively work in utility regulation, just as there is value in having employees whose sole focus and competency is in running utilities.

7. Moreover, what any affiliate transaction rule is really attempting to do is to make sure there is no misalignment of incentives between the holding company parent and customers in

[3] Id. p. 10, ll. 4 – 11 (emphasis added).

terms of such costs. For a service company, there isn't. It is axiomatic that Ameren Corporation has every incentive to make sure AMS' costs are as low as they reasonably can be to meet the needs of the affiliates to which it provides services because allowing AMS to have higher costs than necessary, as earlier noted (and confirmed by Mr. Oligschlaeger) does not benefit or otherwise "enrich" Ameren Corporation. Indeed, if AMS costs increase between rate cases, (e.g., due to normal increases in labor and benefit costs, which are the majority of AMS costs), Ameren Corporation's bottom line is negatively impacted due to regulatory lag. And as Mr. Oligschlaeger also recognized, the Commission ultimately has authority over inclusion of AMS costs in rates via the rate case process, where the prudence of such costs can be examined.[4]

8. In that regard, under Missouri law some may argue the utility is required – because AMS charges to Ameren Missouri reflect an affiliate transaction – to provide prima facie evidence of the prudence of such costs in each rate case. *See Office of the Public Counsel v. Atmos Energy Corp.*, 409 S.W.2d 371 (Mo. *banc* 2013) (Holding that transactions between a for-profit marketing affiliate and a regulated utility do not receive a presumption of prudence). Ameren Missouri has repeatedly done so and repeatedly demonstrated that the existence of AMS is saving it and its customers substantial sums of money.[5] See excerpts from prior Company testimonies reflecting benchmarking showing the significant cost advantages for Ameren Missouri of taking goods and services from AMS attached hereto as Exhibits A, B, C, and D. As that benchmarking shows, since

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[4] Id. p. 10, ll. 12 – 14. When the Commission adopted the current rule, there were concerns in the industry spurred at the time by significant restructuring in the form of retail choice – which was under serious discussion in Missouri at the time – whereby the utilities' generation would be spun off into an unregulated generation company. In that situation, holding company financial incentives arguably might not have been aligned with retail customer incentives. This was a major driver of the existing rules and their asymmetrical pricing standards, but those considerations simply do not exist with respect to Ameren Corporation and Ameren Missouri.

[5] It is not clear that the reasoning of the Supreme Court's decision involving *Atmos* applies to transactions with a non-profit services company but nonetheless, Ameren Missouri has consistently provided evidence as part of its direct, prima facie case in its rate cases.

Ameren's service company structure began, administrative and general ("A & G) cost levels have been consistently lower than the sum of the estimated stand-alone cost levels, indicating that "the merged companies' costs, including AMS' allocated costs, are lower than they likely would have been absent the mergers [and use of AMS]."[6] Put another way, the mergers that have resulted in the Ameren corporate group as it exists today have "been able to drive down costs of the businesses. The source of reduced costs is from the consolidation of common corporate and A & G functions which now reside at AMS."[7]

9. The Commission itself has clearly recognized what affiliate transactions are and are not directed toward. In the Commission's July 1, 2008 Report and Order in File No. EM-2007-0374, the Commission granted a variance to what are now Evergy Missouri Metro and Evergy West so that Evergy Missouri Metro (not a service company per se but whose employees provide shared services to Evergy affiliates) noting that "the purpose of the Commission's Affiliate Transactions Rule is to prevent cross-subsidization of [a] regulated utility's non-regulated operations, not to prevent transactions at cost between two regulated affiliates." That variance was later extended to Westar Energy when Evergy was formed. Put another way, the Commission recognized that the asymmetric pricing applicable to regulated utility and for profit unregulated utility affiliates exists for the purpose of preventing subsidization: "The affiliate transaction rule is premised on asymmetric pricing to prevent a public utility from subsidizing its affiliates." Id. As discussed earlier, there is no subsidization when it comes to a public utility obtaining at-cost services from its service company which is precisely why subsection (2)(F) is appropriate.

[6] Exhibit D, p. 18. The Company requests that the Commission take official notice of the entirety of the testimonies of which Exhibits A to D are a part as they address in greater detail AMS' role, the prevalence of service companies across the country, and the appropriateness of not subjecting them to the asymmetric pricing and related provisions of the rule. The Company elected not to attach them to these responsive comments given that, in total, they cover several hundred pages of material.
[7] Id. at p. 21.

10. The bottom line is that the rule the Commission has proposed in this docket formalizes the position of its Staff, and its own position and rulings on these issues, rather than maintaining the current, difficult and arguably unworkable situation where utilities are forced into obtaining ongoing variances because the letter of the current rule is regulating and impeding beneficial at-cost goods and services exchanges between regulated entities and between regulated entities and the shared services company affiliates. OPC wants to maintain an unnecessary status quo based on what? A flawed premise with false claims of "subsidy" that in fact does not exist, as discussed above.

11. **If Adopted, OPC's Proposed Rule Would Be Extremely Impractical to Implement.** The practical problems associated with implementing OPC's proposal are significant, and make it effectively unworkable. First of all, if Ameren Missouri had to bid out all of its services that are currently provided by AMS it would have to hire a sizable team of people to develop and issue requests for proposals, vet responses and award contracts where appropriate, followed by periodic repetition of these activities. If, as we expect, profit-seeking vendors are unable to price services below AMS' FDC, they would eventually stop bidding altogether. On the other hand, if some vendors submitted "low ball" offers (even below their cost of providing the service) to get their feet in the door and won contracts, the practical problems would be even worse. Would AMS fire all of its experienced accountants if an accounting firm submitted a low-ball contract for one year of service? If so, at the end of the year Ameren would no longer have the ability to provide accounting services internally and it (and its customers) would have no choice but to continue to utilize outside vendors, now likely at a much higher cost. Moreover, every time a new vendor won the contract with a low-ball bid there would be substantial risk to the Company and its customers in the transition from one provider to another. And any experience gained by the previous provider would be lost. This is not a trivial issue, as the types of corporate functions provided by services

companies – accounting, legal, human resources, information technology, just to name a few -- are integrated into complex operations and business processes that require experience and expertise, and cannot transition from one provider to another without substantial effort and cost. Because of these serious practical problems, OPC's proposal creates significant risks for the utility and its customers and would not result in lower costs for customers over the long run.

12. **Ameren Missouri's Own Experience with Utilization of a Service Company Demonstrates that OPC's Position is a Solution in Search of a Problem.** As explained in detail in testimony submitted in File No. EO-2017-0176 by former Ameren Missouri Senior Director of Regulatory Affairs Tom Byrne, AMS has provided services to Ameren Missouri at cost for nearly 30 years. Indeed, the Commission in effect approved the service company structure relied upon by Ameren Missouri when it approved the formation of Ameren at the end of 1997, because that structure was before the Commission as part of the merger and the then-version of the General Services Agreement between AMS and other Ameren affiliates, including Ameren Missouri, was included in that docket. While the agreement has been updated since then, its basic terms and structure remain the same. As Mr. Byrne's testimony explains:

> Ameren Corporation was formed on December 31, 1997 *following the unanimous approval by this Commission*, and approval from the ICC, the FERC, and the United States Securities and Exchange Commission ("SEC"), of a merger between Ameren Missouri[4] and an ICC-regulated integrated public utility, Central Illinois Public Service Company ("CIPS"). Following the merger, the common stockholders of Ameren Missouri and CIPS became the stockholders in Ameren, and Ameren became the owner of 100% of the issued and outstanding stock of both Ameren Missouri and CIPS. *Ameren also then owned 100% of the issued and outstanding stock of a new centralized services company, AMS. This same basic structure continues to exist today, and it is the structure that was proposed for approval by this Commission*, the ICC, FERC, and the SEC when Ameren was created. Under this structure, starting January 1, 1998, AMS began providing a variety of administrative and support services to Ameren Missouri and to CIPS under a General Services Agreement ("GSA") which provided for such services to be provided by AMS at cost – as I mentioned earlier AMS would operate on a non-profit basis and would simply charge the affiliates receiving services from it in an amount that equaled exactly the costs AMS incurred (e.g., for its employees' labor and benefits, for its office equipment and supplies,

etc.). * * * As Mr. Reed explains,[[8]] use of a centralized service company like AMS was then and remains a common means to capture economies of scale and scope from the ownership by a holding company of two or more operating companies. This is common sense when one considers the fact that before Ameren was formed, each of Ameren Missouri and CIPS had a separate legal department, accounting department, environmental health and safety department, IT department, shareholder services department, etc., but after the merger, inefficient duplication of those services could be and was eliminated.

Q. Were there other drivers of the formation of AMS aside from the obvious economic efficiencies to be gained by forming a holding company and then consolidating these kinds of administrative and support services into a centralized services company?

A. Yes, there were. At the time Ameren was formed, the Public Utility Holding Company Act of 1935 ("PUCHA 1935") required holding companies with utilities operating in multiple states to utilize a centralized services company like AMS. To obtain SEC approval of its formation, pursuant to Section 10(c)(2) of PUHCA 1935, Ameren had to demonstrate that the combination of Ameren Missouri and CIPS would serve the public interest by fostering the economic and efficient development of an integrated public utility system; i.e., combining companies and using a service company would be more efficient. And while this is more common sense, it would make no sense at all for the Boards of Directors and stockholders of Ameren Missouri and CIPS to approve the merger if those efficiencies were not going to result. Put another way, *it is in Ameren's (and its stockholders') financial interest to operate under the most efficient structure it can, just as it is in Ameren Missouri's customers' interest that it do so.* Moreover, *Ameren also had to obtain approval of the GSA from the SEC and that approval depended upon the SEC concluding that the contract would be performed "economically and efficiently for the benefit of [the companies serviced] at cost fairly and equitably allocated among such companies"; i.e., that use of a shared services company was fair and efficient for customers.* PUHCA 1935, Section 13. Note that PUHCA 1935 mandated that AMS provide its services at cost, which is what it has been doing since 1998.

Q. Wasn't PUHCA 1935 repealed?

A. Yes, it was repealed by the Energy Policy Act of 2005 ("EP Act of 2005"),[5] and responsibilities that were formerly housed at the SEC relating to affiliate transactions were transferred to the FERC. There was an approximately two and one-half year delay between the time of the transfer of those responsibilities from the SEC to FERC and when the FERC adopted comprehensive rules applicable to centralized service company and utility transactions. But on February 21, 2008, the *FERC issued Order No. 707 (modified and clarified in part by Order No. 707-A ((July 19, 2008)) and by that order formally continued the requirement that centralized service company charges be charged to the utilities to which the services are provided at cost.*[6] *Consequently, federal law*

[8] See John P. Reed direct testimony in File No. EO-2017-0176.

did then, and does today, require that Ameren Missouri pay for AMS services at cost.

Q. PUHCA 1935 required use of a centralized services company; was that true of the EP Act of 2005?

A. While the EP Act of 2005 did not *require* use of a centralized services company, it certainly allowed one and for good reason: as I noted earlier (and as Mr. Reed also addresses) utilizing a centralized services company benefits the utilities served by it and its customers alike. The FERC's rules that I just cited specifically contemplate use of a centralized services company and, as noted, charges from that services company are required to be at cost. In summary, Ameren's holding company structure was developed because it made economic sense for the (then) two operating utilities, it was required by PUHCA 1935, and it has been continued essentially unchanged over the ensuing 20-plus years because it still makes economic sense for the operating utilities that it serves. [9]

13. **It makes no sense whatsoever to continue to subject service company services to the asymmetric pricing and related provisions of the rule – as OPC seeks to do by "appending" subsection (2)(F) to subsection (2)(B) -- which would only force utilities to obtain what amounts to permanent variances so that customers can gain the benefits of service company utilization.** As noted, no major utility subject to the current affiliate transaction rules are or would be in literal compliance with the current rule – which OPC in this regard essentially seeks to retain – absent a permanent variance that subsection (2)(F) of the proposed rule grants. The proposed rule grants it because the Staff, as evidenced by the rule it proposed in the workshop docket and Mr. Oligschlaeger's testimony cited above, and the Commission, as evidenced by proposing the rule and its granting the prior variances, both recognize that a provision like subsection (2)(F) is necessary and appropriate to reduce the regulatory burden of relying on variances so that service company benefits can be realized.

[9] Direct Testimony of Tom Byrne, File No. EO-2017-0176, p. 21, l. 7 to p. 24, l. 9 (emphasis added).

14. **OPC's Attempt to Turn Employees – Human Resources (i.e., human beings) – Into "Assets" Should be Rejected.** OPC, justifying its addition of a definition of "asset" by claiming that "there has been confusion as to whether employees are considered assets,"[10] apparently wants to restrict employees within a holding company family from taking new positions – usually advancements but sometimes transfers to gain efficiencies – with an affiliated entity, a restriction that has never existed before. Employees, while under the supervision of their employers, are not and should not be considered controlled by them, as OPC's definition assumes. Indeed, employees should be free to work for whomever they want to work, and companies should be free to decide whether an employee or set of employees can most cost-effectively and efficiently complete their work and deliver value in providing safe and adequate service as, for example, a utility employee or as a service company employee. The definition also makes no sense. For example, the proposed rule contains a definition of "opportunity sales," which refers to "maximize utilization of assets that remain under regulation." Employees are not "under regulation." Utilities are, but not the humans that work for them.[11]

Respectfully submitted,

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[10] Mantle "Memorandum", p. 2.
[11] The Commission recognized as much in its *Order Closing Case* in File No. GO-2003-0354 where it declined to treat employees as part of a utility's franchise, works, or system (i.e., recognized employees are not "assets"), stating that after the employees' transfers the functions were still being performed.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 9th day of December, 2024.

/s/ *James B. Lowery*
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