

Exhibit No.: _____
Issue(s): Forced Arbitration/Property Management
Portal/Income Eligible Programs/Public
Service Announcements/Class Cost of Service/
Rate Design/High Prairie Wind Farm
Witness/Type of Exhibit: Marke/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2024-0319

SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

UNION ELECTRIC COMPANY
D/B/A AMEREN MISSOURI

CASE NO. ER-2024-0319

February 14, 2025

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1 **I. INTRODUCTION**

2 **Q. Please state your name, title, and business address.**

3 A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (OPC or Public Counsel),
4 P.O. Box 2230, Jefferson City, Missouri 65102.

5 **Q. Are you the same Dr. Marke who filed direct testimony in this case?**

6 A. I am.

7 **Q. What is the purpose of your surrebuttal testimony?**

8 A. I am responding to the rebuttal testimony of other parties' witnesses on select topics. The
9 following is a list of those topics and the witnesses:

- 10 • Forced Arbitration
 - 11 ○ Ameren Missouri witness Niren Sainani
- 12 • Property Management Portal
 - 13 ○ Ameren Missouri witness Aubrey Kcmar
 - 14 ○ Missouri Public Service Commission Staff ("Commission" and "Staff,"
15 respectively) witness Sarah Fontaine
 - 16 ○ Renew Missouri ("Renew") witness Dana Gray
- 17 • Income Eligible Programs
 - 18 ○ Ameren Missouri witness Page Selby
 - 19 ○ Consumer Council of Missouri ("CCM") witness Jackie Hutchinson
 - 20 ○ Staff witness Amy L. Eichholz
- 21 • Public Service Announcements
 - 22 ○ Ameren Missouri witnesses Steven Wills and Kelly Doria

- 1 • Rate Design and Class Cost of Service
- 2 ○ Ameren Missouri witness Nicholas Bowden
- 3 ○ Staff witness Sarah L.K. Lange
- 4 ○ CCM witness Caroline Palmer
- 5 ○ Missouri Energy Consumer Group (“MECG”) witness Eric S. Austin
- 6 • High Prairie Wind Farm
- 7 ○ Ameren Missouri witnesses Ajay Arora and John Reed

8 My silence regarding any issue should not be construed as an endorsement of, agreement
9 with, or consent to any other party’s filed position.

10 **II. FORCED ARBITRATION**

11 **Q. What recommendations did you have regarding the arbitration clause included in**
12 **Ameren Missouri's terms of services for the use of its website?**

13 A. I recommended that the Commission order Ameren Missouri to remove all forced
14 arbitration language as a conditional term for use of its website, mobile application, or any
15 future operation absent explicit approval from the Commission.

16 **Q. What were various parties’ responses to your recommendations?**

17 A. Only Ameren Missouri provided rebuttal testimony on this issue, and they rejected my
18 recommendation. Ameren Missouri witness Niren Sainani stated:

19 Missouri law regulates many aspects of how a public utility can operate, including
20 in its interactions with customers. However, Missouri does not prohibit public
21 utilities from including in the terms and conditions of service requirements to
22 arbitrate claims. Any efforts to legislate such a prohibition have failed.¹

23 Ms. Sainani provides a footnote at the end of this select quote directing readers to Senate
24 Bill 1441 (2024) as evidence that such efforts to prohibit utilities from including arbitration
25 clause language have failed.

¹ Rebuttal Testimony of Niren Sainani p. 5, 16-19.

1 **Q. What is your response?**

2 A. I will begin by observing that SB 1441 (2024) was a bill sponsored by Senator Trent in 2024
3 that was summarized as follows:

4 This act provides that any person convicted of the offense of tampering with a
5 judicial officer and the offense of tampering with a judicial proceeding shall not be
6 eligible for parole, probation, or conditional release.²

7 My plain reading of that bill's summary suggests that SB 1441 (2024) is not applicable in
8 any manner to utility regulation.

9 As to the lawfulness of enforcing a forced arbitration provision, I am not an attorney and
10 will not opine on the legality of Ameren Missouri's attempt to isolate elements of its
11 operations (use of the Company's website or mobile application) from Commission
12 oversight. The OPC will address that argument in greater detail in its brief.

13 **Q. Then what is your response to Ms. Sainani's rebuttal testimony?**

14 A. As stated in my direct testimony, a regulated natural monopoly should not be allowed to
15 unilaterally remove disputes regarding a part of its service from Commission jurisdiction
16 simply because a customer chooses to utilize the company's website. However, that is
17 exactly what Ameren has done with its forced arbitration provision. Ameren Missouri's
18 customers also should not be required to pay through tariffed rates costs that are not related
19 to its service. In other words, if Ameren does not consider its website or mobile application
20 to be related to its services, the costs of the website and mobile application should be
21 removed from the cost of service. From my perspective, this presents a mutually exclusive
22 dilemma.

- 23 • If the website and mobile application are not necessary for safe and adequate service,
24 then costs related to the Company's website and mobile application should be
25 removed from the cost of service in this rate case.

² Missouri Senate (2024) SB 1441 Modifies provision relating to offenses involving the judiciary.
https://www.senate.mo.gov/24info/BTS_Web/Bill.aspx?SessionType=r&BillID=5242851

- 1 • Alternatively, if the website and mobile application are necessary for safe and
2 adequate service, and the use of that website and mobile application is contingent
3 on agreeing to give up valuable legal rights, including that you can't take the
4 Company to court, then Ameren Missouri is acting in violation of the Commission's
5 explicit statute for failing to seek Commission approval of a term of its agreement
6 with its customers.

7 It cannot be both.

8 **Q. Has anything come to light since you filed direct testimony that supports your**
9 **position?**

10 A. Yes. Ameren Missouri responded to the OPC's Data Request Nos. 8002 and 8003.³ In its
11 response to Data Request No. 8002, Ameren Missouri stated that customers must agree to
12 the terms and conditions that contain the forced arbitration clause to receive basic text
13 notification alerts, including alerts regarding outages. This is specifically identified by the
14 language of Ameren Missouri's Text and Email Alerts Program Terms and Conditions,
15 which are attached as GM-3.⁴ Therefore, even if a customer chooses not to register for an
16 online account or to use Ameren Missouri's website or mobile application if they receive
17 outage text notifications, it appears that they may be precluded from filing a claim against
18 Ameren Missouri in court.

³ See GM-1 and GM-2.

⁴ This is technically a separate Terms and Conditions document. However, in the first paragraph of that document, it incorporates the general Terms and Conditions, which contains the forced arbitration clause, stating:

YOUR PARTICIPATION IN THE AMEREN COMPANIES' ("AMEREN") TEXT AND EMAIL ALERTS PROGRAM (THE "PROGRAM") IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS (these "PROGRAM TERMS AND CONDITIONS") AS WELL AS **AMEREN'S GENERAL TERMS AND CONDITIONS WHICH GOVERN USE OF ITS WEBSITE AND PROGRAMS GENERALLY** (THE "GENERAL TERMS AND CONDITIONS"), AVAILABLE AT <https://www.ameren.com/privacy/terms-and-conditions>. THE GENERAL TERMS AND CONDITIONS ARE INCORPORATED HEREIN BY REFERENCE AND COLLECTIVELY, THE PROGRAM TERMS & CONDITIONS AND THE GENERAL TERMS & CONDITIONS ARE HEREINAFTER REFERRED TO AS THE "TERMS & CONDITIONS." (emphasis added) See also GM-3.

1 In response to Data Request No. 8003, Ameren Missouri also stated that customers must
2 accept the terms and conditions to create an online account to access the information
3 available in their account dashboard. As explained in the Surrebuttal Testimony of the
4 OPC’s witness, Ms. Lena Mantle, this means that a customer cannot access the
5 informational benefits of his or her automated meter infrastructure (“AMI”) enabled meter
6 without agreeing to the terms and conditions, including the forced arbitration clause.
7 However, that same customer will be forced to pay for the AMI meter and all of its related
8 costs through his or her rates, regardless of whether they access the informational benefits
9 of the meter.

10 This shows just how broadly Ameren Missouri applies the forced arbitration clause. In
11 today’s digitally connected world, it can hardly be argued that Ameren Missouri’s website,
12 mobile application, and text notification service are not critical components of its provision
13 of service. However, as I explained above, this situation presents a mutually exclusive
14 dilemma. Ameren Missouri should not be able to require customers to give up valuable
15 legal rights to access critical or necessary components of service, at least without
16 Commission approval. If, on the other hand, Ameren Missouri does not view these
17 components as critical or necessary, then it should not be allowed to recover the costs, plus
18 a profit on those costs, through customers’ rates.

19 **III. PROPERTY MANAGEMENT PORTAL**

20 **Q. What recommendations did you have regarding Ameren Missouri’s Property**
21 **Management Portal?**

22 A. I made two specific recommendations regarding the Property Management Portal. First, I
23 recommended that the portal temporarily cease operations until appropriate safeguards
24 could be put into place. Second, I recommended a below-the-line independent third-party
25 audit of the Company’s privacy policies and privacy controls under a similar framework to
26 what was approved in Spire’s last general rate case (Case No. GR-2022-0179).

1 **Q. What were various parties' responses to your recommendations?**

2 A. Staff witness Sarah Fontaine stated:

3 Staff is concerned with the lack of oversight and verification regarding who is
4 gaining access to property account information and whether tenants/customers have
5 given permission for the sharing of specific account information.⁵

6 Ameren Missouri witness Aubrey Krcmar stated:

7 Ameren has plans to execute a Property Management Portal Modernization capital
8 project in 2025, which we expect to be in-service by 12/31/25. This portal
9 modernization project will strengthen the security posture by implementing a role-
10 based authorization flow that will require an Ameren administrator to approve
11 (and/or reject) all portal end users. Once the project commences, we plan to ensure
12 that appropriate authentication, authorization, and audit flows/mechanisms are in
13 place to confirm the safety, privacy, and security of our customers. We will also be
14 exploring options to verify that portal users own the properties for which they access
15 account information from the portal or have a property management agreement with
16 the owners of said properties. With the Property Management Portal in place today,
17 the functionality does not exist for the storing of Tenant Lease Addendums.
18 However, with our Property Management Portal Modernization project scheduled
19 for 2025, we will be exploring options to maintain additional records, including the
20 Tenant Lease Addendums.⁶

21 Renew Missouri witness Dana Gray stated:

22 On the whole, I find the Ameren Missouri Property Management portal and BEEP
23 website to be extremely useful and would suggest that other utilities follow their
24 example by creating similar websites. I recommend the Commission to allow
25 Ameren Missouri to continue to provide property owners with access to individual
26 meters, with account holder consent, for benchmarking purposes and access to 12-

⁵ Rebuttal Testimony of Sarah Fontaine p. 5, 11-13.

⁶ Rebuttal Testimony of Aubrey Krcmar p. 4, 1-13.

1 month average costs for individual meters, with account holder consent to provide
2 potential tenants with approximate utility costs.⁷

3 **Q. What is your response?**

4 A. It is encouraging to hear that Ameren Missouri will update its portal in 2025; however, what
5 that means, when it will be implemented, and what will happen in the meantime are all
6 unanswered questions.

7 In response to Ms. Gray, I also agree that the Property Management Portal is a valuable
8 resource for a small segment of customers, and I am not advocating for the permanent
9 removal of the portal. However, I do not believe the Company has taken the proper
10 precautions to adequately secure customer data, and this creates a very real liability for both
11 customers and the Company.

12 **Q. Did any party explicitly respond to your recommendation to temporarily cease the**
13 **Property Management Portal until appropriate controls were put in place?**

14 A. No.

15 **Q. Did any party explicitly respond to your recommendation that Ameren Missouri**
16 **undergo a below-the-line independent third-party audit of the Company's privacy**
17 **policies and privacy controls?**

18 A. No.

19 **Q. Has any new information come to light since your filed direct testimony that would be**
20 **germane to these recommendations?**

21 A. Yes.

22 On December 5, 2024, the Federal Energy Regulatory Commission ("FERC") found that
23 Ketchup Caddy, LLC and Philip Mango (CEO of Ketchup Caddy) engaged in a scheme to
24 register demand response resources with the Midcontinent Independent System Operator,
25 Inc. ("MISO") without those resources' knowledge or consent, thereby violating section

⁷ Rebuttal Testimony of Dana Gray p. 7, 9-15.

1 222(a) of the Federal Power Act (FPA) and section 1c.2(a) of FERC's regulations, which
2 prohibit energy market manipulation. FERC also found that Ketchup Caddy violated
3 sections 69A.3.5 and 69A.7.1 of the MISO Open Access Transmission, Energy and
4 Operating Reserve Markets Tariff (MISO Tariff) by offering uncontracted resources into
5 the annual Planning Resource Auctions (PRA) that MISO uses to procure capacity
6 necessary to maintain reliability of the MISO grid. Approximately \$27 million in civil
7 penalties were charged to Ketchup Caddy and Mango.⁸

8 Then, on January 6, 2025, FERC approved a Stipulation and Consent Agreement between
9 the Office of Enforcement (Enforcement) and Voltus, Inc. (Voltus) and Gregg Dixon (CEO
10 of Voltus) in which Voltus would pay \$10.9 million in penalties and return \$7.1 million in
11 profits to settle allegations that it registered uncontracted and over-stated demand response
12 resources with the MISO. Additionally, Dixon agreed to pay a \$1 million penalty and to
13 step down from Voltus' board of directors.⁹

14 **Q. How are these cases germane to this issue?**

15 A. Both fraudulent activities occurred as a result of lax data privacy measures in place on the
16 Ameren Illinois website. Both Ketchup Caddy and Voltus were able to scrap¹⁰ and cull¹¹
17 commercial and industrial customer data without those customers' consent or knowledge
18 through Ameren Illinois' business customer portal.

19 The absence of proper privacy consent and verification was highlighted in the Ketchup
20 Caddy FERC order as follows:

21 After meeting with Mango, Company A Employee 1, and Company A Employee 2,
22 Meinershagen spent approximately the next year (from about May 2018 to March

⁸ Howland, E. (2024) FERC orders Ketchup Caddy to pay \$27M for MISO demand response fraud. *UtilityDive*.
<https://www.utilitydive.com/news/ferc-ketchup-caddy-miso-demand-response-fraud/734844/>

See also GM-4 for FERC Order in Docket No. IN23-14-000.

⁹ Howland, E. (2025) Voltus agrees to pay \$18M to settle allegations it violated MISO demand response rules.
UtilityDive. <https://www.utilitydive.com/news/voltus-ferc-miso-demand-response-settlement/736640/>

See also GM-5 for FERC Order in Docket No. IN21-10-000.

¹⁰ Scrapping data is a process of using a computer program to extract data from another program's output.

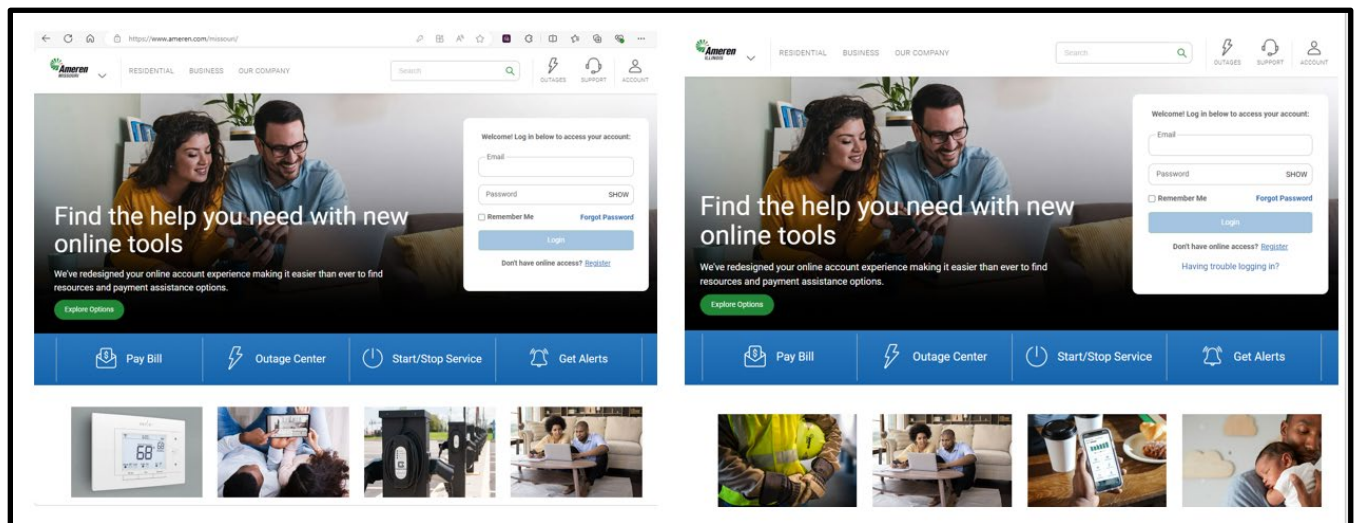
¹¹ Culling data is the process of reducing the amount of data by using filters to remove irrelevant information.

2019) creating a tool to scrape and cull customer data from Ameren’s website. This process required Meinershagen to initially confirm on the Ameren website that he “ha[d] received permission from the account holder to view this data.” Though Meinershagen admitted that he had not personally obtained the requisite permission, he testified that he asked Mango about whether they had permission to view the data, and Mango said, “That’s fine. You know, all the other competitors do the same thing.”¹²

Q. Does Ameren Illinois operate a similar website as Ameren Missouri?

A. Yes. Functionally, it appears to be the same. This can be seen in Figure 1 below.

Figure 1: Ameren Missouri and Ameren Illinois webpages (2/12/25)



Q. Then why were only Ameren Illinois commercial customers impacted and not Ameren Missouri customers?

A. This is because Ameren Missouri commercial customers are aggregated by Ameren Missouri through its MEEIA mechanism. There are no third-party aggregators participating in Missouri today.

¹² See GM-4, p. 9-10.

1 **Q. With that in mind, do you have any modifications to make to your recommendations**
2 **regarding the Property Management Portal and Ameren Missouri’s customer-facing**
3 **web programs?**

4 A. I believe my concerns surrounding Ameren Missouri’s Property Management Portal have
5 been validated by the aforementioned FERC orders. This underscores the need to act
6 immediately and ensure that proper controls are in place. As such, I continue to maintain
7 my recommendations from direct testimony that Ameren Missouri temporarily cease
8 operations of the Property Management Portal until proper privacy controls are in place and
9 that an independent third-party audit, paid below the line, be conducted of the Company’s
10 privacy policies and privacy controls.

11 Additionally, although I recommend no explicit cost disallowance on this issue in direct
12 testimony—I am now modifying that recommendation in light of the aforementioned FERC
13 cases. Ameren Missouri customers have paid and will continue to pay for the use of Ameren
14 Missouri’s website. If that website is not secure, and if parts of the website need to be
15 suspended indefinitely because proper controls are not in place, it hardly seems fair that
16 customers should be paying a return on those investments. As such, I recommend a 15%
17 reduction of the return on (“profit”) amount in account 303 (Miscellaneous Intangible
18 Plant), which represents the failure of Ameren Missouri’s management to maintain
19 minimum customer privacy protections related to its ratepayer-funded web applications.
20 This results in a cost disallowance of \$4,605,839.

21 **IV. INCOME-ELIGIBLE PROGRAMS**

22 **Q. What recommendations did you make regarding income-eligible programs in direct**
23 **testimony?**

24 A. I recommended the following changes to Ameren Missouri’s income-eligible programs:
25 • Ameren Missouri’s Low-Income Weatherization Assistance Program (“LIWAP”)
26 ○ Increase program expenditures to \$2 million (currently at \$1.2 million) under
27 the existing 50/50 ratio;

- 1 • Keeping Current and Keeping Cool
- 2 ○ Reduce the length of the program from 24 months to 12 months. This would
- 3 avoid any budget billing adjustments and rollover;
- 4 ○ Reduce agency incentive for enrollment to \$25 (from \$50) to recognize the
- 5 change from a two-year to a one-year program;
- 6 ○ Place a greater emphasis on formalizing the requirements to bundle programs
- 7 such as LIHEAP, LIWAP, Auto Pay, and Alerts for participating customers;
- 8 ○ Direct Ameren Missouri to create a video commercial and post it on its
- 9 website supporting the program for marketing to this niche demographic, as
- 10 well as a “how-to” video tutorial regarding the application process; and
- 11 ○ Finally, to allow participating customers no more than two missed payments
- 12 before they are removed from the program.

- 13 • New Start Energy Relief Pilot Program
- 14 ○ Extend eligibility to customers who have had to use a domestic violence
- 15 shelter and need assistance to pay off outstanding Ameren Missouri debt to
- 16 start new service; and
- 17 ○ Extend partnering organizations to the St. Louis Housing Authority (or
- 18 similar organization) with a focus on seniors in public housing who are
- 19 threatened with losing their housing due to past due Ameren Missouri bills.

- 20 • Critical Medical Needs Program (“CMNP”)
- 21 ○ Change the requirement that CMNP be the last bill assistance dollars
- 22 utilized;
- 23 ○ Increase investment in software technology for screening applicants and
- 24 flagging customers in Ameren Missouri’s online payment portal; and
- 25 ○ Increase staffing by one to three individuals to address increased workload.

26 **Q. Did other parties recommend income-eligible program changes?**

27 A. Yes, CCM witness Jacqueline A. Hutchinson recommended that Keeping Current/Keeping
28 Cool funding be increased to \$6 million annually under the 50/50 sharing ratio and for

1 another third-party program review. Additionally, both Ms. Hutchinson and Renew
2 Missouri witness James Owen recommended a low-income community solar program in
3 conjunction with funding from the Federal Government’s Solar for All initiative.

4 **Q. What responses did these suggestions elicit from other parties to this case?**

5 A. It varied. Ameren Missouri witness Page Selby was generally supportive of my program
6 modifications but did not support the increased funding for LIWAP or “how to” videos on
7 the Company’s website. Additionally, Ms. Selby suggested that more conversations need
8 to occur regarding the details surrounding my recommendations for the CMNP.

9 Neither the Company nor Staff appeared to be in support of the low-income solar programs
10 in this rate case proceeding. Instead, those parties recommended the Certificate of
11 Convenience and Necessity (“CCN”) proceedings as a more proper venue.

12 Finally, neither Staff nor the Company supported Ms. Hutchinson’s request to raise Keeping
13 Current to \$6 million.

14 **Q. What is your response?**

15 A. I remain cautiously optimistic that these issues will be resolved in settlement discussions.
16 Like Ms. Selby, I appreciate “the spirit” with which these recommendations were made.
17 That being said, I maintain my original position that LIWAP funding should be increased
18 to \$2 million in total. The program has been successful, and the budget has not been updated
19 in fourteen years. Controlling for inflation alone, this program should be adjusted from \$1.2
20 million to approximately \$1.7 million. Add on the increased uncertainty around the
21 economy, an additional \$300K is more than warranted.

22 It should also be noted that Ms. Selby and her team need to be commended for their excellent
23 work, patience, and creativity with these programs. Income-eligible bill assistance programs
24 are an extremely challenging design with a demographic that often lacks appropriate
25 resources to adequately advocate on their behalf. Successful implementation of these
26 programs requires synergies across many different actors with various levels of resources.
27 These programs are critically important for the utility, the community, and the state at large.

1 As it stands, I have nothing but praise for the year-over-year increase in participation
2 numbers and work to date by Ameren Missouri.

3 **Q. Do you have any comments regarding raising the program budget of Keeping**
4 **Current?**

5 A. I do. I have no problem supporting an increased spending amount for Keeping Current at
6 the level offered by Ms. Hutchinson. Parties to Ameren Missouri's Keeping Current
7 collaborative were recently shown data that I believe suggests the funding is warranted in
8 light of decreased LIHEAP funding, increased participation rates, increased cost of service,
9 and general uncertainty surrounding the economy.

10 **Q. Do you have any comments regarding the low-income community solar**
11 **recommendations?**

12 A. It is apparent now that Missouri's Solar for All funding is in jeopardy and is highly unlikely
13 to materialize. As such, much of the proposed recommendations surrounding the possibility
14 of a federally subsidized low-income community solar program no longer seem reasonable.
15 I am not opposed to continued dialogue on this topic moving forward, but I cannot support
16 a low-income community solar program without first understanding who is bearing those
17 costs and how the program will be executed.

18 **V. PUBLIC SERVICE ANNOUNCEMENTS**

19 **Q. What recommendations did you make regarding public service announcements**
20 **("PSAs") over Time-of-Use rates in direct testimony?**

21 A. My recommendations in direct testimony were based in part on enabling a future scenario
22 where a roll-out of larger differentials is appropriate and in a position for successful
23 adoption by the public. I recommended that the Commission order Ameren Missouri to
24 explain to the public through a series of PSAs in the most easily understood means necessary
25 the four following points:

- 1 1. Exactly why time-of-use (“TOU”) rates are being offered and encouraged (Value
2 statement);
- 3 2. That the TOU option allows for customer choice;
- 4 3. That customers should save money in the short (monthly bill savings) and long
5 (deferred capital investments) term if they adjust their behavior (and often if they don’t
6 change at all); and
- 7 4. That savings do not require excessive actions on the part of customers (e.g., you don’t
8 need to turn off your AC in the summer, etc...).

9 **Q. What was Ameren Missouri’s response?**

10 A. Ameren Missouri witnesses Steven Wills and Kelly Doria both rejected my
11 recommendations on this topic.

12 Mr. Wills stated:

13 I appreciate the sentiment, and generally agree that there are real benefits that can
14 arise from broader adoption of advanced TOU rates. That said, there are also real
15 barriers to that widespread adoption that can and should be navigated carefully
16 subject to the Company’s discretion to manage its own business prioritization
17 around customer communications. For that reason, I do not think it is appropriate
18 for the Commission to weigh in with a dictate about TOU communications for
19 modified TOU rates that are not even proposed in this case.¹³

20 Ms. Doria, for her part, spoke about the inappropriateness of the “Public Service
21 Announcement” designation. Ms. Doria stated:

22 PSAs are messages in the public interest disseminated by the media without charge
23 to raise public awareness and change behavior. They are mostly used to raise
24 awareness of dangerous or life-threatening events or experiences. Since TOU is a

¹³ Rebuttal Testimony of Steven Wills p. 37, 16-21.

1 rate option, news outlets would require companies like Ameren Missouri to pay to
2 run these messages.¹⁴

3 **Q. What is your response to Mr. Wills?**

4 A. I am disappointed in Mr. Wills' response. To be clear, I am not recommending a full-
5 fledged campaign, nor am I recommending customers be transitioned to a greater
6 differential rate design on an opt-out basis. As was evident from the vocal and large turn-
7 out at Ameren Missouri's local public hearings, customers cannot continue to absorb
8 continuous 15% rate increases every two years on top of the many surcharge increases (to
9 say nothing for similar or greater rate increase requests for water and natural gas service).
10 This fact is compounded by the reality that capital investment costs for everything, but
11 especially generation, have increased rapidly and show little sign of abating as nearly every
12 utility is scrambling to invest in more generation to meet hyperscale load projections.

13 My collective "read of the room" is that affordability is now and will continue to be at the
14 forefront of customer's concerns. It is incumbent that everyone: consumer advocates,
15 regulators, and especially the utility maximize all existing investments and do whatever we
16 can to keep rates affordable. Pricing electricity to align more with the actual costs of that
17 service is the most obvious and cheapest means to produce savings for customers.

18 The reality is that AMI hardware and software represent an enormous, continued investment
19 that has not produced the benefits that ratepayers were promised. Properly educating
20 customers on the value proposition of TOU rates, and especially how adjusting energy usage
21 can result in greater cost savings for all customers, is essential to enable a successful
22 transition. The challenges experienced during the Evergy TOU roll-out should not be an
23 excuse to abdicate the responsibility Ameren Missouri has in maximizing its AMI
24 investment to its fullest potential.

¹⁴ Rebuttal Testimony of Kelly Doria p. 12, 10-14.

1 The OPC is actively working with Evergy in this area, and I see no compelling reason why
2 Ameren Missouri cannot continue with its education campaign so that further TOU adoption
3 can be obtained and costs can be mitigated.

4 **Q. What is your response to Ms. Doria?**

5 A. I will concede that I may have used the wrong nomenclature in framing my request for a
6 continued education video as a PSA. A virtual video would be a more apt description.

7 Until reading Ms. Doria's testimony, I was not aware that PSAs are cost-free. Of course,
8 this calls into question the cost recovery request the Company has over the Louie the
9 Lighting Bug campaign, which I believe has been characterized in the past as a PSA. Further
10 clarification through discovery is probably warranted.

11 **Q. Has your recommendation changed in light of Ameren Missouri's rebuttal testimony?**

12 A. No, it has not. Increased inflation and supply chain uncertainty have already impacted the
13 economy, and it is not out of the realm of possibility that a looming energy crisis is upon us
14 due to the increased demand driven by data centers. Speaking frankly, we do not have the
15 luxury or the reserve capacity margins to put off educating the public on time-of-use rates.

16 **VII. CLASS COST OF SERVICE AND RATE DESIGN**

17 **Class Cost of Service Studies**

18 **Q. What is the status of various parties' Class Cost of Service Studies and/or**
19 **recommendations?**

20 A. Volumes of testimony full of sound and fury, signifying unreconcilable positions. Stop for
21 a moment and consider that Ameren Missouri has four witnesses filing testimony on this
22 topic—more than any other issue in this case. And there is no revenue impact to the
23 Company over it. It is difficult to unravel all of the many small and large disagreements
24 between parties, but the primary issue stems around Staff's methodological approach which
25 purports to be a more modern, accurate, and cost-causative approach than the Company
26 study and the various intervenors' abridged studies.

1 **Q. Is there some truth to that claim?**

2 A. Of course there is, but it is also important to recognize that the electric rate structure of any
3 utility has decades of embedded history, bureaucratic inertia, and punctuated political
4 decisions. Moreover, the industry has undergone significant structural changes (e.g., the
5 emergence of wholesale markets, the many surcharge mechanisms, technological turnover,
6 etc...) that further complicate the process and make this entire endeavor impossible to
7 categorically say “yes, there is only one correct study.” That being said, I believe the
8 Commission should not discourage or silence the Staff on their work in this area. A lot of
9 ink has been spilled both here and at the Capitol over the need to reform and modernize all
10 elements of regulation and utility operations. That same logic should apply to how we
11 allocate and assign costs, and how we price electric service.

12 **Q. What is your response?**

13 A. Due to time and resource constraints, OPC did not perform its own CCOS in this proceeding
14 and will ultimately make a recommendation in its position statement based on the final
15 responses in surrebuttal testimony and the potential overall revenue requirement impact to
16 be experienced by customers. As it stands today, I recommend against any revenue neutral
17 shift in the context of the large rate increase request that is being contemplated due to the
18 bill impact size. I also recommend an equivalent percentage increase in rates across all
19 classes. Alternatively, I would support Staff’s position on policy grounds due to present-
20 day economic conditions and the detrimental impact the rate relief will comparatively have
21 on residential customers.

22 **EV Rate**

23 **Q. MECG witness Austin recommended a modified Electric Vehicle (“EV”) rate for LGS**
24 **and SP customers in direct testimony. What were the parties’ responses?**

25 A. Staff opposed MECG’s rate design under the premise that it would undermine accretive
26 earnings assumed in justifying the Charge Ahead portfolio, would not align with the
27 principles of cost causation, and were generally against the concept of specialty end-use

1 rates. Ameren Missouri appeared to oppose the recommendation on the grounds that MECG
2 failed to participate in the non-residential rate design dockets held this past year.

3 **Q. What is your response?**

4 A. I agree with Staff and Ameren Missouri on this issue for the same points articulated. I would
5 also add concerns over gradualism, complexity, free ridership, and the knock-on effect of
6 exacerbating demand peaks in an already tight wholesale market. A greater discussion is
7 probably warranted surrounding EV rates in the future when adoption rates start to become
8 at all meaningful.

9 **Residential Customer Charge**

10 **Q. What is the customer charge?**

11 A. A fixed charge to customers each billing period, typically to cover metering, meter reading
12 and billing costs that do not vary with size or usage. Also known as a basic service charge
13 or standing charge.

14 **Q. What kind of costs should be recovered in the customer charge?**

15 A. To state the obvious, customer-related costs should be recovered in the customer charge.
16 These should be costs sensitive to connecting a customer irrespective of the customer's load
17 (e.g., meter, billing). That is, customer-related costs exist even when kW demand and kWh
18 are zero.

19 When adding one or more customers on the system raises the utility's cost regardless of
20 how much the customer uses (billing is an example) then a fixed charge to reflect that
21 additional fixed cost the customer imposes on the system makes perfect economic sense.
22 Utilities can justify a customer charge recovering these basic costs because they are directly
23 related to the number of customers receiving an essential monopoly service. The idea that
24 each household has to cover its customer-specific fixed cost also has obvious appeal on
25 grounds of equity. This is contrasted with system-wide "fixed" costs, such as maintaining
26 the distribution network, which do not change if one customer were to drop off the system.

1 **Q. What is the end-result of raising or lowering the customer charge?**

2 A. An increase to the customer charge positively impacts above-average use customers and
3 negatively impacts below-average use customers. On the other hand, a decrease to the
4 customer charge positively impacts below-average use customers and negatively impacts
5 above-average use customers. Stated differently, “in general,” a lower customer charge
6 tends to favor low-income customers, renters, and customers who have invested in energy
7 efficiency and solar (or plan on investing in those items).¹⁵ In contrast, a higher customer
8 charge favors affluent customers, inefficient customers, and electric space-heating
9 customers. It also provides greater revenue certainty for the utility and therefore lowers the
10 overall risk profile to the utility.

11 **Q. What amount is Ameren Missouri proposing for a residential customer charge?**

12 A. Ameren Missouri has effectively proposed a proportional increase to the customer charge
13 tied to the overall increase in the revenue requirement. That is, if Ameren Missouri’s rate
14 relief request was approved in its entirety the residential customer charge would increase
15 from \$9.00 to \$10.43.

16 **Q. Does any party support that increase?**

17 A. No. Both Staff and CCM have recommended that the charge remain as is. Staff’s argument
18 points to reduced overhead costs for meter reading associated with AMI, and CCM makes
19 a policy argument to maintain the charge as is to allow low-income customers greater
20 control over their bills.

21 **Q. What was the Company’s response?**

22 A. Ameren Missouri witness Nicholas Bowden argues that Staff’s argument is flawed because
23 it assumes that AMI and online billing are costless. Mr. Bowden then rejects CCM’s
24 argument regarding low-income customer impact by providing data on a self-identified
25 subset of low-income customers where he shows that more low-income customers benefit

¹⁵ I say “in general”, as there will be affluent customers who have below average use and low-income customers with above-average usage.

1 from a lower customer charge, but the detrimental impact is greater for those low-income
2 customers who are inefficient and/or are space-heating customers.

3 **Q. What is your response?**

4 A. I agree with Staff, and although I will not speak for them, I will observe that their
5 recommendation is not “no customer charge” but for it to remain the same. That is very
6 different than arguing that AMI should result in increased customer charge costs, which is
7 what Mr. Bowden is arguing. That is also frankly contrary to what Ameren Missouri has
8 claimed in espousing savings for customers from AMI investments.

9 Regarding Mr. Bowden’s data, I welcome this level of input and it warrants further
10 discussion. Pricing utility service can be a challenge and will necessarily result in winners
11 and losers regardless of the outcome. I have historically taken the position that, all things
12 being equal, customer choice and control matter, which is one reason I continue to advocate
13 for a reasonable customer charge. I would welcome further discussion on this data set in the
14 future.

15 **Q. How did stakeholders reach such different conclusions over the inputs into the**
16 **residential customer charge?**

17 A. Different methodologies utilized in their CCOS studies produce different results. However,
18 this specific issue comes down to how FERC Accounts 364-368, or the fixed distribution
19 investments, are allocated.

20 The appropriate allocation of these costs are not a new problem. In his 1961 seminal work,
21 Principles of Public Utility Rates, James Bonbright concludes that there is no sound basis
22 for the allocation of these costs as either customer or demand:

23 But if the hypothetical costs of a minimum-sized distribution system is properly
24 excluded from the demand-related costs for the reasons just given, while it also
25 denied a place among the customer costs for the reason stated previously, to which
26 cost function does it belong then? **The only defensible answer, in my opinion, is**
27 **that it belongs to none of them. Instead, it should be recognized as a strictly**

1 **unallocable portion of total costs.** And this is the disposition that it would probably
2 receive in an estimate of long-run marginal costs. But the fully-distributed cost
3 analyst dare not avail himself of this solution, since he is the prisoner of his own
4 assumption that “the sum of the parts equals the whole.” **He is therefore under**
5 **impelling pressure to “fudge” his cost apportionments by using the category of**
6 **customer costs as a dumping ground for costs that he cannot plausibly impute**
7 **to any of his other cost categories** (emphasis added).¹⁶

8 **Q. Is the allocation process involved in the fixed distribution costs arbitrary?**

9 A. Like Bonbright, I believe so. If the allocation can be dramatically changed by replacing one
10 persuasive allocation criterion with another with no less plausibility, then the process
11 ultimately functions as suggestive “guideposts” for the Commission to consider when
12 setting how revenue will be collected. Economist William J. Baumol concurred:

13 No form of cost allocation can pretend to be compatible, generally, with efficiency
14 in resource allocation, no matter how sophisticated its derivation.¹⁷

15 It is also unfair to allocate these cost increases uniformly because any standard of
16 “uniformity” inherently handicaps one class of customers to the benefit of another. As
17 Economist Richard L. Schmalensee notes:

18 It is not a matter of improving cost studies or methodologies; costs that do not vary
19 with the volume of service cannot be allocated on a cost-causative basis to individual
20 services. Indeed, any allocation of fixed costs is necessarily arbitrary. . . . Shippers
21 of diamonds, coal and feathers would prefer that the railroad allocate the fixed
22 common costs of the railroad tracks on the basis of volume, value, and weight
23 respectively, but none of these allocators is objectively better than the others. Since
24 these fixed costs do not vary with the volume shipped, there is no objectively

¹⁶ Bonbright, J., et al. (1988) Principles of Public Utility Rates p. 492

¹⁷ Baumol, W.J. & D. Fischer (1986) Superfairness: Applications and Theory. Cambridge. p. 146

1 ‘reasonable share of the joint and common costs of facilities’ to allocate, and yet
2 each party has a passionate stake in the outcome of the allocation.¹⁸

3 **Q. If allocations are in part arbitrary, what should the Commission rely on?**

4 A. I suggest that the Commission be cognizant that reasonable minds can and will differ over
5 the appropriate allocation of the distribution system. Moreover, the Commission is not
6 bound to set the customer charge based solely on the results of any CCOS study. Cost studies
7 (both marginal and embedded) rely on a host of simplifying assumptions in order to produce
8 workable results. Since one objective of regulation is to serve as a proxy for competition, to
9 impose upon a single provider the disciplines of competitive markets, it is reasonable to
10 consider the structure of prices in competition when pricing monopoly services. Two
11 relevant facts emerge. The first is that goods and services in competition are invariably
12 available and priced on a unit basis. And the second is that the extent to which more
13 restrictive pricing schemes exist is a measure of the lack of competition in that particular
14 market. In a competitive market, a consumer who does not consume a product or service
15 does not nevertheless pay for the mere ability to consume it. Thus, as a general matter, prices
16 should be structured so that, if a consumer chooses not to purchase a good or service, he or
17 she has no residual obligation to pay for some portion of the costs to provide that good or
18 service. In this sense, from the consumer’s perspective, costs should be “avoidable.”
19 Looking at how energy markets operate, it is apparent that the marginal cost of electricity
20 generation goes up at higher-demand times, and all generation gets paid during those high
21 peak prices. That means extra revenue for Ameren Missouri’s baseload plants above their
22 marginal costs, and those revenues can go to pay the fixed costs of said plants. The same
23 argument goes for transmission lines, where price differentials between locations means that

¹⁸ Qtd in (1999) Federal Communications Commission filings found in:
<http://apps.fcc.gov/ecfs/document/view;jsessionid=yRkfTYLdrdGzpzSNVhHML9FcznF98ppyPfQ1vMgvSky3cDnL14LY!1281169505!1675925370?id=1319580003>

1 the transmission line generates revenue above its marginal cost (which is effectively zero),
2 and can go to pay the fixed cost of transmission lines.

3 In fact, the fixed costs of generation and transmission should generally be covered without
4 resorting to increased fixed monthly charges. Likewise, distribution costs are driven by
5 demand, number of customers, and energy needs. This is true both in the short and long
6 runs. Utilities are continually investing in distribution plants—new facilities, upgrades, and
7 replacements—in response to changes in load, and therefore costs can be avoided.
8 Collecting this revenue through a fixed customer charge suggests that on-peak consumption
9 is less costly than in fact it is.

10 An efficient price signal recognizes resource allocation is most efficient when all goods and
11 services are priced at marginal cost. For efficient electricity investments to be made, the
12 marginal cost should be based on the appropriate timeframe. Bonbright states:

13 I conclude this chapter with the opinion, which would probably represent the
14 majority position among economists, that, as setting a general basis of minimum
15 public utility rates and of rate relationships, the more significant marginal or
16 incremental costs are those of a relatively long-run variety—of a variety which treats
17 even capital costs or “capacity costs” as variable costs.¹⁹

18 A fixed charge including long-run marginal costs provides no price signal relevant to
19 resource allocation, since customers cannot reduce consumption enough to avoid the charge.
20 In contrast, an energy charge reflecting long-run marginal costs will encourage customers
21 to consume electricity efficiently and, thereby avoid inefficient future utility investments.²⁰

22 Economist Jim Lazard provides a useful analogy for Commission consideration:

¹⁹ Weston F. (2000) Charging for distribution utility services: issues in rate design. The Regulatory Assistance Project. <https://www.raponline.org/wp-content/uploads/2016/05/rap-weston-chargingfordistributionutilityservices-2000-12.pdf>

²⁰ Whited, M. et al. (2016) Caught in a fix Synapse Energy Economics <http://www.synapseenergy.com/sites/default/files/Caught-in-a-Fix.pdf>

1 A person living alone pays much less to the grocery store, where all fixed costs are
2 built into the per-item prices, than a family of six, and we consider that fair," Lazar
3 said. The per-item price is like the per-kWh price, which is where grocery store and
4 the utility must meet their revenue requirements. A fixed charge is like a price all
5 customers would pay to enter the store. "A market cannot charge \$20 to enter the
6 store, because the customer would go to another store," Lazar said. "The purpose of
7 regulation is to enforce on monopolies the pricing discipline that markets enforce
8 under competition."²¹

9 **Q. What is your recommendation?**

10 A. Historically, distribution costs have been recovered through the energy charge in light of
11 economic and public welfare characteristics. More recently, an emphasis on public policy
12 goals focusing on customer empowerment, energy efficiency, and environmental
13 stewardship have reinforced those decisions. I see very little reason to deviate from that
14 rationale. This is especially true in light of Ameren Missouri's historical MEEIA
15 investments. I recommend that the residential customer charge remain at \$9.00.

16 **VIII. HIGH PRAIRIE WIND FARM**

17 **Q. What was Ameren Missouri's response to OPC's recommendation for a cost**
18 **disallowance related to the High Prairie Wind Farm due to prolonged curtailments**
19 **related to excess taking of federally endangered and protected species?**

20 A. Much the same as it was in Ameren Missouri's last two general rate cases, Case Nos. ER-
21 2021- 0240 and ER-2022-0337. In both cases, High Prairie's failure to meet the regulatory
22 principle of used and useful was never explicitly addressed because:

23 *The Signatories agreed to the settled "black box" revenue requirement increase*
24 *amount using their own assumptions.*^{22, 23}

²¹ 6 Trabish, Herman K. (2018) Are regulators starting to rethink fixed charges? Utility Dive.
<https://www.utilitydive.com/news/are-regulators-starting-to-rethink-fixed-charges/530417/>

²² Case No. Er-2021-0240 Unanimous Stipulation and Agreement p. 2.

²³ Case No. Er-2022-0337 Stipulation and Agreement p. 2.

1 In this case (as was the same in the previous two cases), Ameren Missouri witnesses Ajay
2 Arora and John J. Reed rejected OPC's recommendation regarding cost disallowance of the
3 High Prairie Wind Farm. Similar to the aforementioned cases, Mr. Arora's testimony
4 generally focused on the issue of managerial prudence as he presented a retrospective
5 examination of the High Prairie Certificate of Convenience and Necessity ("CCN") Case
6 where he accused me of going back on the stipulation and agreement that OPC entered into.
7 Mr. Reed's testimony takes a slightly different approach from Mr. Arora (but consistent
8 with his previous filings on this topic) by providing a history with select abbreviated case
9 studies of two variations of the "used and useful" and the "prudence" principle as well as
10 his opinion on their appropriateness as it applies to this case. My position and response to
11 these arguments are consistent with my past testimony attached in GM-6 through GM-10.
12 For brevity, I have elected not to copy and paste my arguments into this document but have
13 attached them and incorporate them by reference here for the Commission's consideration.

14 **Q. Has anything substantively changed regarding High Prairie's operations since the last**
15 **rate case?**

16 A. Like a top 40 music station, the hits have kept coming for High Prairie. On top of the
17 curtailments for excessive take of endangered species, there have been three separate
18 incidents of wind turbines collapsing leading to even further curtailment of operations.
19 Figure 1 and Figure 2 provide visuals of the most recent turbine collapse.

1 Figure 1: Another Turbine Down in Schuyler County (High Prairie Wind Farm)²⁴



2
3 Figure 2: Video Snippet of the High Prairie Wind Turbine Collapse²⁵



4
²⁴ KTVOtv (2024) Another turbine collapses in Schuyler County, Ameren to investigate. Nov. 1, 2024.
https://www.youtube.com/watch?v=k-X3ikh_xXM

²⁵ Wiggins, T. (2024) Another turbine collapses in Schuyler County, Ameren to investigate. KTVO.
<https://ktvo.com/news/local/another-turbine-collapses-in-schuyler-county-ameren-to-investigate> Oct. 31, 2024.

1 Like before, Ameren Missouri has continued its forced seasonal curtailment due to the risk
2 of exceeding the take rate of endangered Indiana Bats. My arguments made in Case Nos.
3 ER-2021-0240 and ER-2022-0337 are as true today as they were then. The continued
4 seasonal curtailment of operations continues to reinforce my earlier position that a level of
5 cost disallowance is warranted. Additionally, there remains (and likely always will) the
6 continued threat that any further incremental killing of an endangered Indiana Bat could
7 result in more punitive measures for a wind farm that has already been sporadically
8 operational for the entirety of its existence.

9 **Q. Do you have final comments to make on this topic?**

10 A. Yes.

11 As I have in the previous two rate cases, I am not raising a prudency disallowance argument.
12 My argument rests on adhering to the principle supporting the regulatory compact, the used
13 and useful principle, and ensuring rates are “just and reasonable.” The issue before the
14 Commission is one of equity and fairness surrounding a long-term capital investment that
15 (barring some extraordinary technological breakthrough) will almost assuredly get worse
16 over time.

17 Any consideration of what to do regarding the uneconomic failure of High Prairie should
18 begin with a recognition that the competitive market would classify utility generation assets
19 as either economic or uneconomic, in whole or in part. Under competition, utilities' recovery
20 would not be affected by how good, or bad, or how sophisticated, or arbitrary their mistaken
21 decisions were when made. The failure of individual firms is a notable feature of
22 competition, part of the process through which competition selects and rewards the properly
23 run firms. Utility regulation is at its heart, economic regulation. In fact, this entire rate case
24 process is supposed to provide a suitable proxy for the lack of competition associated with
25 natural monopolies. The theoretical justification for regulatory intervention and imposed
26 entry barriers from competition for electric utilities was to have government push prices
27 down to the "efficient" level where excess profits would not exist and pricing would

1 approximate marginal costs. Economic standards discipline firms that make mistakes and
2 compensate those that plan well. As such, it is incumbent that the Commission issue its
3 order with that responsibility at the forefront. At an absolute minimum, the Commission
4 should keep the High Prairie challenges in mind when assessing the appropriate “reward”
5 deserved and actual “risk” incurred that Ameren Missouri experiences in setting the
6 Company’s return on equity.

7 **Q. Does this conclude your direct testimony?**

8 A. Yes.

