**Exhibit No.:** _____
**Issue(s):** High Prairie Renewable Energy Center
**Witness/Type of Exhibit**: Payne/Surrebuttal
**Sponsoring Party**: Public Counsel
**Case No**.: ER-2024-0319

# SURREBUTTAL TESTIMONY

# OF

# MANZELL PAYNE

Submitted on Behalf of the Office of the Public Counsel

## UNION ELECTRIC COMPANY
## D/B/A AMEREN MISSOURI

CASE NO. ER-2024-0319

*** _____ ***
**Denotes Highly Confidential Information that has been redacted.**

February 14, 2025

# PUBLIC

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**OF**

**MANZELL M PAYNE**

**UNION ELECTRIC COMPANY**

**D/B/A AMEREN MISSOURI**

**CASE NO. ER-2024-0319**

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

A. Manzell Payne, Utility Regulatory Auditor, Office of the Public Counsel ("OPC" or "Public Counsel"), P.O. Box 2230, Jefferson City, Missouri 65102.

**Q. Are you the same Manzell Payne who filed direct testimony for the Office of the Public Counsel in this case?**

A. Yes.

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

A. The purpose of my surrebuttal testimony is to respond to rebuttal testimony of Union Electric Company D/B/A Ameren Missouri's ("Ameren Missouri" or the "Company") various witnesses as it relates to the High Prairie Renewable Energy Center ("High Prairie"). More specifically, I will respond to Company witnesses, Steven Wills, Ajay Arora, and John J. Reed. I will also be responding to Staff witness Claire M. Eubanks' recommendation for monthly reporting regarding High Prairie and its turbines that are being repaired or replaced.

**HIGH PRAIRIE RENEWABLE ENERGY CENTER**

**Q. For context, please summarize your position on High Prairie from your direct testimony.**

A. In that testimony, I recommended that the Commission remove 25% to 38% of Ameren Missouri's costs related to the High Prairie Renewable Energy Center from its revenue requirement in this case. This would account for the fact that High Prairie was non-operational for 25% of the time in 2023 and 38% of the time from January 1st to November 18th in 2024. My argument is strictly based on the used and useful standard to ensure that Ameren Missouri's customers are getting safe and adequate service at "just and reasonable" rates.



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**Q. Do you have an update to your position related to the non-operational hours of High Prairie in 2024?**

A. Yes. In my direct testimony, the range for the non-operational hours for 2024 was from January 1st to November 18th due to that being the date of Ameren Missouri's response to OPC Data Request No. 2024. It is my understanding that as of December 31st, 2024, the facility was still only operating 12 turbines, while 160 turbines were non-operational due to the collapsed wind turbines mentioned in my direct testimony. This increases the non-operational hours from 38% to 45%[1] in 2024. Therefore, I am adjusting the range of my disallowance recommendation to be from 25% to 45% to account for the non-operational hours in 2023 and 2024, respectfully.

**Q. What was Ameren Missouri's response to your recommended disallowance in this case for High Prairie due to prolonged curtailment of operations because of the continued taking of endangered species and now the collapsed wind turbines?**

A. Company witnesses, Ajay Arora, John J. Reed, and Steven Wills all reject my recommendation to the Commission to disallow a portion of the costs associated with High Prairie. The arguments of Mr. Arora and Mr. Reed are similar to their responses to Dr. Geoff Marke's disallowances for High Prairie in prior rate cases, Case Nos. ER-2022-0337 and ER-2021-0240.

Mr. Arora's testimony mainly focused on the issue of managerial prudence and the accusation that I use hindsight to form my opinion on High Prairie. He also accuses me of ignoring past cases and the position of OPC witness Dr. Geoff Marke in those cases, while additionally accusing the OPC of going back on the stipulation and agreement that it entered into regarding the Certificate of Convenience and Necessity ("CCN") for High Prairie.

Mr. Reed's testimony presents selective case studies to draw a distinction between "used and useful" and "economic used and useful", while also presenting the "prudence" principle to give his opinion on their appropriateness in this case.

[1] The calculation for estimated downtime can be found in my workpaper labeled MMP-S-4 – High Prairie Outage Calculation.



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Mr. Wills' testimony focused mainly on my calculation of operational hours for the disallowance and focuses on the bat mitigation curtailments during the summer. He also states that from a wind resource perspective, not all hours are created equal. I will respond to each witness below.

**Q. Has your testimony deviated substantially from previous OPC witness testimony on the operations of High Prairie?**

A. No. The position of OPC witness Dr. Geoff Marke, in the most recent rate case, Case No. ER-2022-0337, was similar in the fact that he too asked the Commission to disallow costs due to the prolonged curtailments that High Prairie was experiencing due to the taking of endangered and protected species. My direct testimony took this position and expanded on it to include the additional curtailments for the collapsed wind turbines that occurred in 2024.

I expanded on Dr. Marke's position because of the substantial curtailments related to the collapsed turbines. The latest wind turbine collapsed on October 31st of 2024. Because of these collapses, it is my understanding that as of December 31, 2024, the wind farm was operating 12 of its original 175 wind turbines[2]. Effectively 6.98% of the wind turbines were operational. ***_____
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_____ *** This reason, along with the curtailments for the killing of bats and

[2] The facility originally had 175 wind turbines. Since 3 wind turbines collapsed in 2024, there are only 172 wind turbines left. It is my understanding that of those 172 remaining wind turbines, only 12 are operating.
[3] ***
_____
***
[4] *** _____ ***



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endangered species, reinforces my position that cost disallowances are indeed necessary and warranted.

**Response to Ajay Arora**

**Q. Mr. Arora accuses you of ignoring the stipulation and agreement the OPC entered into and the OPC's prior positions on this issue. What is your response?**

A. In no way have I ignored the stipulation and agreement that the OPC entered into. I have not argued the prudence of Ameren Missouri's acquisition or the limited continued operations of the facility. I have and am continuing to argue the facility's use and usefulness. Customers are paying for a wind farm to function as intended, not one that had only 12 out of 175 wind turbines available to be used at the end of 2024. My recommendations for this case are based on the facts that are still forming and are based on the used and useful principle. The information that I have presented in my direct testimony and now in my surrebuttal testimony is solely for context so that the Commission can weigh in on the balance that is the regulatory compact.

Mr. Arora is also wrong in thinking that I formed my opinions and approach in this case by ignoring the arguments of the OPC regarding High Prairie in prior cases. Just like in any case, a witness will review the facts of a case and make their opinion. In this case, I did not bring up the previous arguments of Dr. Marke or any other OPC witness and their positions on High Prairie, simply because I did not have to. Mr. Arora has done that himself through his rebuttal testimony while attacking Dr. Marke. The basis of Mr. Arora's argument is that the Company did not act imprudently. I have not said that they have.

**Q. Mr. Arora states that the Company is not a guarantor of production and suggests that ratepayers should bear the financial risk of High Prairie's lower-than-expected performance, so long as the utility was not imprudent in its planning or operations. What is your response to this?**

A. First, I would like to point out that I am not making a prudence argument. Again, I am making a used and useful argument. Second, Mr. Arora's reasoning fails to acknowledge the fundamental regulatory principle that rate recovery should be tied to actual usefulness to customers. Even if curtailments are not imprudent, it does not automatically mean that ratepayers should pay full price for an underutilized asset.



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A regulated utility is not a competitive market participant. Rather, it operates as a regulated monopoly with guaranteed cost recovery from ratepayers. And unlike independent power producers, which assume market risks, a regulated utility does not have the right to recover costs for an asset that is not providing full value to customers. If the customers must bear the risk of underperformance, what risk does the utility bear in this arrangement? This shifts all financial burdens onto captive ratepayers.

Furthermore, when Ameren Missouri presented High Prairie to the Commission, it presented it as an approximately 400 MW facility. (Application 5, Commission Case No. EA-2018-0202). In that case, Ameren Missouri identified the necessity of High Prairie and its intended benefits to customers. However, High Prairie has not met this threshold due to the curtailments for both killing endangered species and collapsing turbines, thus Ameren Missouri is consistently failing to deliver even close to what it told the Commission the wind farm would provide.

Risk allocation should be shared and not one sided, with the ratepayer bearing the burden. If the utility's argument were taken to the extreme, ratepayers would always bear 100% of the downside risk, while the utility would always receive guaranteed returns on its investment.

**Q. Mr. Arora states that your approach is "conceptually flawed". How do you respond?**

A. As I have stated before, I have not taken a prudence stance on the issue of the Company obtaining High Prairie, nor have I taken the prudence stance on any mitigation efforts that the Company has taken so far. I have argued simply that the Company has a wind farm that has sustained significant and prolonged curtailments and outages since the Company has taken ownership. More to the fact, the wind facility operated at an even lower capacity in 2024 due to collapsing wind turbines. My approach aligns well within the used and useful principle, directly tying cost recovery to actual operational performance. If the wind farm is not operational for 25% to 45% of the year, then it is not providing its intended value to customers, and it is unjust and unreasonable to recover 100% of its costs from ratepayers.



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**Q. In 2024, how many animal deaths or "incidental takes" occurred at Ameren Missouri's High Prairie Renewable Energy Center?**

A. Putting the collapsed wind turbines on hold, the facility has continued to kill bats and endangered species, even with the nighttime curtailments. The facility operating 75% of the year in 2023 nonetheless had bats taken. As seen in my direct testimony, there were 16 total bat deaths in 2023. In 2024, bats were taken with the facility only operating 55% of the time. Bats have been taken even with the facility being underutilized. The following table shows the "incidental takes" or deaths of protected and endangered species in 2024[5]:

**2024: Table 3 from the Annual Report (High Prairie Fall Season PCM Report)**

**Table 3. Summary all bat fatalities found incidentally and during standardized fatality searches at the High Prairie Renewable Energy Center in Schuyler and Adair counties, Missouri, during the fall monitoring season (August 16 – October 31, 2024).**

| Species | Number Found During Standardized Searches | Number Found Incidentally* | Total Found (% of total) |
|---|---|---|---|
| big brown bat | 0 | 1 | 1 (10) |
| eastern red bat | 4 | 0 | 4 (40) |
| hoary bat[2] | 2 | 0 | 2 (20) |
| Indiana bat[1] | 1 | 1 | 2 (20) |
| silver-haired bat[2] | 1 | 0 | 1 (10) |
| Total | 8 | 2 | 10 (100) |

*Incidental finds include fatalities found outside search plot boundaries or during eagle scans, carcass persistence trials, or other actions other than bat-focused searches.

[1] Covered Species per ITP

[2] Species of Conservation Concern (SOCC)

**Q. Mr. Arora seems to imply that you are blaming the Company for the collapsed wind turbines. Are you saying the Company is at fault and acted imprudently?**

A. No. I am not and have not said the Company acted imprudently. It is also my understanding that the cause of the collapse is still under investigation. As I have stated, my argument is not about the Company's prudence. The basis for my argument is the used and useful principle. The standard is not based on fault but is based on whether the facility is actively providing the service that ratepayers are paying for. Even if the Company is not to blame for the turbine failures, the fact remains that 163 wind turbines are offline and not providing value to

[5] The High Prairie Fall Season PCM Report is attached as MMP-S-3.



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customers. If the ratepayer must pay 100% of the costs no matter what, then the utility has no financial incentive to ensure reliability or improve risk management.

**Q. Mr. Arora claims that your argument benefitted from hindsight and effectively that the argument of the OPC is one that has changed. Do you agree with Mr. Arora?**

A. Hindsight is the ability to understand, after something happened, what should have happened or what caused an event.[6] The OPC is in no way using hindsight to make a prudence disallowance. I have clearly stated this in my direct testimony. The OPC's witness Dr. Geoff Marke argued caution in the CCN case that Mr. Arora seems to refer to a lot. He knows that the position of the OPC during that case was that of Dr. Marke objecting to the CCN and later changing his position to granting the CCN but with caveats. This is in no way hindsight as Dr. Marke clearly used foresight in his testimony to warn the Commission, Company, and other stakeholders of the potential dangers the wind farm would have on bats and other endangered species.

In no way could I, or the OPC, have known that the Company would have wind turbines fall. I have not used hindsight on this matter either. I have simply looked at the operations of the facility, reviewed the pertinent information, and made a calculation based on the actual operations of the facility. Customers should not be paying 100% of a facility that is not operating as promised, due to bat mitigation and/or collapsed wind turbines.

**Response to John J. Reed**

**Q. Mr. Reed is attempting to draw a distinction between "used and useful" and "economic used and useful" just like he did in Case No. ER-2022-0337. Do you agree with his distinction?**

A. No. Just like Dr. Marke stated in his surrebuttal testimony in ER-2022-0337, Mr. Reed is arguing for a new regulatory principle, "economic used and useful." He cites to cases where commissions imposed the worst-case scenario disallowances and then walked back their disallowance as the basis for the principle. Mr. Reed accuses Dr. Marke of doing this and is now accusing me of doing the same. There is only one broad "used and useful" principle and

[6] The definition of Hindsight obtained from https://www.dictionary.com/browse/hindsight.



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it should not be construed and changed to fit a convenient narrative. My argument is not an economic used and useful argument. I am not arguing that the wind farm will never be used and useful or that it should be permanently removed from rates. I am making a current, real-time assessment of its operational status, where the facility has sustained consistent, prolonged, and significant reduced operations, and, because of that, it should not receive 100% recovery. Mr. Reed's definition for economic used and useful does not pertain to my argument.

**Q. Is the "used and useful" principle defined exclusively by the Revised Statutes of Missouri, Section 393.135, as Mr. Reed is claiming?**

A. Although I am not an attorney, and neither is Mr. Reed, the interpretation by Mr. Reed presented in his rebuttal testimony is too narrow. Section 393.135 of the Revised Statutes of Missouri is the anti-construction work in progress ("CWIP") statue and is for preventing the recovery of expenditures of plant before the plant is providing a benefit to customers. The term "used and useful" is not in the statute. Additionally, the statute only applies to electric companies that are attempting to add costs associated with plant into rate base before it is fully operational and used for service. The "used and useful" principle is not just for electric companies and has been applied to non-electric utilities, so the overall definition cannot be solely defined by the statute that Mr. Reed is quoting.

**Q. How would you define the "used and useful" principle?**

A. I would define it as, the principle that is used to determine whether captive ratepayers should pay for plant that is not actively providing a benefit to them. This is not solely for CWIP-like scenarios but should include non-operational and underutilized plant. It definitely should not be limited to Mr. Reed's randomly picked scenarios from other states that are worst case scenario disallowances where the outcome of those cases was the states' commissions walking back their decisions.



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**Q. Are there past examples where the Commission has found that constructed plant that has been partially placed into service is not being fully used, and therefore should not be completely included in rate base?**

A. Yes. As Dr. Marke pointed out in Case No. ER-2022-0337, in at least two prior cases the Commission allowed for only partial inclusion of plant in rate base:

- Case No. WR-2000-0281: The "New" St. Joseph Plant—Capacity.
- Case No: ER-85-265: Arkansas Power & Light Company Rate Increase

**Q. Did Dr. Marke give context to each case?**

A. Yes. The following excerpt is from Dr. Marke's surrebuttal testimony in Case No. ER-2022-0337.

> Case No: WR-2000-0281: The "New" St. Joseph Plant—Capacity:
>
> The Staff contends that not all of the capacity of the new plant and related facilities is presently used and useful and that the sum of $2,271,756 should consequently be excluded from rate base. Public Counsel proposes that 19.55 percent of the cost of the new St. Joseph plant and related facilities should be excluded from rate base, based on Mr. Biddy's estimate that only 80.45 percent of the new plant is used and useful. . .. It is within the province of the Commission to determine the methodology used for rate-making. . .. The Commission concludes that the method proposed by Staff is the better method, because not all items in rate base are equally susceptible to a straight-line percentage reduction for excess capacity. The amount of $2,171,756 shall be deducted from the value of the new St. Joseph plant included in rate base.[7]

In this case, the Commission said the company has a plant that is in-service, but there is a portion that is just not needed. The Commission ruled that customers should not have to pay for the excess capacity. In the present case, the Company built a wind farm that is also not being used at its full capacity. The only difference

[7] 9 Mo. P.S.C. 3d 254, 283-284.



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is the reason behind the underutilized capacity. In St. Joseph it was overbuilt. For High Prairie it's because bats are being taken. But that minor difference doesn't negate the underlying principle that customers shouldn't pay for what is not being used. The irony here is that the bat problem isn't going away. St. Joseph could have very well gained more customers. High Prairie's operation is dependent on the bats no longer "existing" in that locale.

Case No: ER-85-265: Arkansas Power & Light Company Rate Increase

> No matter what the origin of capacity the simple fact remains that the Company intentionally overbuilt its generating needs to improve its fuel diversification. The question for the Commission's resolution is whether the ratepayers suffer for the unfortunate results of increased capacity costs if the expansion was not originally imprudent. In the Commission's opinion a substantial portion of the Company's generating plant is not **used and useful** for public service.
>
> This is the heart of any excess capacity determination. It means, among other things, that the company's alternative definitions of "reliability" as fuel diversity or available capacity are peripheral. If there is excess capacity in the primary reliability sense, then the threshold condition for an adjustment has been satisfied. (Id. at 43) . . . Public Counsel's brief cites extensive authority for the proposition that the requirement that property must be used and useful in public service to be included in rate base has been followed in a long line of cases commencing with Smyth v. Ames, 69 U.S. 466 (1898). In the instant case, the generating capacity in question simply is incapable of being used for the necessity or convenience of the ratepaying public.

This case resulted in effectively the same scenario. Arkansas Power & Light Company overbuilt capacity and the Commission disallowed the exact megawatt capacity not being used to serve customers---1,096 MW. The Commission has made disallowances based on used and useful arguments before and it can certainly



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do so again. This is in line with my recommendation to disallow 29% to recognize the fact that they are not running more than 71% of the year.[8]

**Q. The last line of the excerpt from Dr. Marke's testimony in the prior case recommended an operational disallowance for High Prairie. Was Dr. Marke requesting a "used and useful" disallowance similar to your argument?**

A. Yes. High Prairie has not been fully operational since the Company took ownership of the facility, due in large part to the bat mitigation. My argument not only includes a disallowance for the bat curtailments, but I have also included the non-operational periods due to the collapsed wind turbines. This results in at most a 45% disallowance due to the facility not being used and useful. The facility is not operating as it was designed to do.

**Q. Mr. Reed claims that you are attempting to punish the Company for both the reduced productions due to wildlife protections and turbine collapses that are beyond the Company's control. How do you respond?**

A. I am not trying to punish the Company in any way. I am simply pointing out that it is not fair for customers to pay for a facility that is not functioning as intended, or nearly so. The fact is that the curtailments and outages at High Prairie are far from the commonly occurring outages facilities experience that Mr. Reed refers to, such as the variable output, outages, and both major and minor maintenance issues. The sustained and prolonged curtailments and outages at High Prairie to account for the taking of endangered wildlife and collapsed turbines are very uncommon. Additionally, customers do not choose which facilities the Company invests their money in, but those customers are expected to pay for it. That being said, customers are and have been paying for this facility.

**Q. Would your disallowance of 25% to 45%, if approved by the Commission, signal to investors that Missouri is too risky and erode investor confidence in Ameren Missouri?**

A. No, it would not.

First, Mr. Reed is attempting to shift the focus away from whether the wind farm is actually used and useful to a broader argument about financial stability, investor confidence, and

[8] Case No. ER-2022-0337: OPC Witness, Dr. Geoff Marke, Surrebuttal, Pages 9-11.



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borrowing costs. While these concerns may be valid from a business perspective, they should not override the fundamental principle that ratepayers should only pay for assets that are providing them value as intended.

Secondly, I would like to point out, that I am not advocating for a full cost disallowance for the High Prairie wind farm. I am simply giving the Commission a range to look at for a partial disallowance. This disallowance on a single underperforming asset does not dictate the overall creditworthiness of the Company. The investors and credit agencies would assess the Company's entire portfolio, revenue, regulatory environment, and the risk exposure. Third, regulation is meant to balance the ratepayer and investor interests. The entire rate case process is there to provide a suitable proxy for the lack of competition with investor own utilities, as they are natural monopolies.

Fourth, Mr. Reed speculates that if the disallowance is accepted, borrowing costs will increase, and lead to increased rates for customers. However, allowing for the full recovery of High Prairie that is not fully operational, also results in increased rates that are not justified. The most reasonable approach to this situation is to ensure that captive ratepayers only pay for assets that are functioning as intended or nearly so.

Fifth, investors understand the Missouri Public Service Commission has an obligation to ensure ratepayers only pay for plant that is used and useful. Allowing utilities to recover 100% of their costs for assets that are not being utilized can set a dangerous precedent where there is no incentive for operational efficiency. As can be seen from the excerpt above on pages 8 and 9, the Commission has before and can again make decisions regarding a disallowance for used and useful arguments.

**Response to Steven Wills**

**Q. Mr. Wills states that your calculation for non-operational hours for the wind facility is overly simplistic and overstates the likely impact of curtailment on total production since, from a wind resource perspective, not all hours are created equal. How do you respond?**

A. Mr. Wills' argument that total production hours, for a wind resource, are not created equal due to seasonal wind variations can be challenged in several ways. First, even if wind speeds

are stronger in the winter/spring, the facility is not consistently available to generate power due to the nighttime curtailments for bat mitigation during the summer/fall. This can diminish the value of the peak wind hours. Ratepayers are paying for a wind farm to function as intended. Because of the significant and prolonged curtailments, the costs should be adjusted downward to reflect actual usage. Second, given that 175 wind turbines of the facility were not operational for 45% of the operational hours in 2024, the overall usefulness to ratepayers is reduced. Customers are currently paying for a resource that is unavailable for nearly half the year, including the winter months, during the times in which the wind might blow harder than other times. There is also the issue that it appears that only 12 out of 175 wind turbines were online at the end of 2024 while the Company investigated the collapsed wind turbines. ***_____ _____ _____ _____ *** This issue could persist well past the expected timeframe for the turbines to restart, leaving customers continuing to pay 100% for a facility that only has 6.98% of its wind turbines operating.

**Q. Does Mr. Wills provide any testimony for the Company's curtailment of the wind facility for the collapsed wind turbines in 2024?**

A. No. Mr. Wills only focuses on the summer/fall curtailment for the bat mitigation and completely ignores the down time for the collapsed wind turbines.

**Response to Staff Witness, Claire Eubanks**

**Q.** ***_____ **the** _____ _____ _____

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_____ ***

**Q. Does this conclude your surrebuttal testimony?**

A. Yes, it does.

[9] Staff Witness, Claire Eubanks, Rebuttal Testimony, Page 11, Lines 1-15.



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**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 Revenues for Electric Service | ) ) ) | Case No. ER-2024-0319 |

**AFFIDAVIT OF MANZELL PAYNE**

**STATE OF MISSOURI** )
) **ss**
**COUNTY OF COLE** )

Manzell Payne, of lawful age and being first duly sworn, deposes and states:

1. My name is Manzell Payne. I am a Utility Regulatory Auditor for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Manzell Payne
Utility Regulatory Auditor

Subscribed and sworn to me this 11th day of February 2025.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.