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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Union )  
Union Electric Company d/b/a )  
Ameren Missouri for Approval of )  
Its Surge Protection Program )

**Case No. ET-2021-0082**  
Tracking No. YE-2021-0081

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**INITIAL BRIEF**

Respectfully Submitted,

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Missouri Public Service Commission

May 14, 2021

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**INITIAL BRIEF**

The Commission should find that Ameren Missouri’s proposed surge protection program does not fall within the Commission’s regulatory jurisdiction. Neither the surge protection collar devices<sup>1</sup> proposed for inclusion in Ameren Missouri’s program nor the warranties covering them meet the statutory definition of “electric plant” under Section 386.020(14), RSMo.<sup>2</sup> For the reasons laid out below, gleaned over the course of Staff’s investigation and three collective rounds of testimony among the parties along with an evidentiary hearing, Staff has recommended that this program should not be found to be a regulated offering. Beyond the question of the program falling outside of the Commission’s jurisdiction lurks the fact that the benefits resulting from the program as designed are murky at best. Customers may see some benefits but there are many shortcomings in the program that could prevent those benefits from occurring or cause unnecessary confusion to customers.

**I. May Ameren Missouri lawfully offer its proposed surge protection program as a regulated program?**

Ameren Missouri has provided insufficient evidence that this program is under the lawful jurisdiction of the Commission, pursuant to Section 386.250, RSMo, despite filing

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<sup>1</sup> The description for USOA account 370 does include a broad category of “protective devices,” in the description of the meter account.

<sup>2</sup> The definition of “electric plant” under Section 386.020(14), RSMo (Supp. 2020) is not identical to the use of that term in the FERC USOA.

two rounds of testimony and having additional opportunities at the evidentiary hearing. The program is not based on the manufacture and sale of electricity,<sup>3</sup> which would place it within the bounds of statutory jurisdiction. The program is primarily grounded in a manufacturer's warranty offered with the surge protection device.<sup>4</sup> However, the Commission has no administrative or enforcement authority over warranties, which are governed by the Missouri Uniform Commercial Code.<sup>5</sup> Ameren Missouri markets the program as protecting customers from the risk of electrical surges, however, the program should not be required to ensure customer safety; as Ameren Missouri is already required by Commission Rule 20 CSR 4240-10.030(23), to operate its system to maintain voltages within a practicable tolerance.<sup>6</sup> The rule does not hold the utility responsible for causes beyond its control, but does expect a reasonable amount of precaution.<sup>7</sup> The Commission could investigate Ameren Missouri if it had reason to suspect that voltages were not being maintained at safe levels pursuant to the rule, but it has not pursued any such investigations recently.<sup>8</sup> Ameren Missouri itself references that its system is designed to minimize surges and describes itself as doing "a good job".<sup>9</sup> Ameren Missouri has not provided an idea of the cost to customers presently resulting from electrical surge damage, so as Commissioner Holsman pointed out, it is impossible to know what potential for savings, if any, the program would provide.<sup>10</sup> Ameren Missouri has paid customers for 1,003 surges over the preceding 20 years according to the Company.<sup>11</sup>

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<sup>3</sup> Ex. 9, Ferguson Rebuttal, P. 3.

<sup>4</sup> Ex. 12.

<sup>5</sup> UCC Section 400.2-312 et. seq., RSMo (2016).

<sup>6</sup> 20 CSR 4240-10.030(23).

<sup>7</sup> Ex. 14, Staff Recommendation, P. 2.

<sup>8</sup> Section 386.330, RSMo.

<sup>9</sup> Ex. 3, Schneider Direct, P. 6:5-7.

<sup>10</sup> Tr. 77:4-10.

<sup>11</sup> Tr. 81:1-4 (discussing response to Staff's Data Request 13).

That breaks down to approximately 50 incidents per year across Ameren Missouri's entire customer base. Ameren Missouri did not comment on whether the surge protection program had the potential to limit any specific portion of these incidences, and its witnesses did not appear to have personally reflected on the number of annual surge incidences when questioned.<sup>12</sup>

The Company admits that it could have implemented the program without seeking Commission approval.<sup>13</sup> The Commission has not, to date, exerted regulatory authority over the program offered by Evergy<sup>14</sup> or previously offered by The Empire District Electric Company.<sup>15</sup> In contrast, Ameren Missouri actually states that it "would not be willing to provide it" if the program is not regulated, and that "We don't have any nonregulated services. So I don't think we're willing to start with this one."<sup>16</sup> Ameren Missouri does not explain why it would not offer this program if the Commission does not find that it should be regulated. If the program truly has the potential to provide the projected revenues alleged in Ameren Missouri's proposal, as Chairman Silvey pointed out,<sup>17</sup> it would seem that Ameren Missouri would want to implement the program regardless of its regulated or unregulated status.

To be discussed in more detail, the program also states that it is designed to protect electrical equipment, but fails to clarify that the warranty for the program covers only motor driven household equipment.<sup>18</sup> In fact, the purported draw of the program and alleged costs and benefits to participants arising under the program are largely derived

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<sup>12</sup> Tr. 80:24-81:6; 92:17-93:1.

<sup>13</sup> Tr. 19:17-19.

<sup>14</sup> Ex. 7, Coffey Rebuttal P.3.

<sup>15</sup> Ex. 8, Bax Rebuttal Pp. 4-5.

<sup>16</sup> Tr. 64: 10-14.

<sup>17</sup> Tr. 70:1-5.

<sup>18</sup> Ex. 7, Coffey Rebuttal, P. 2:7-8; Ex. 8, Bax Rebuttal P. 4:3-10.

not from the proposed surge protection collars themselves, but from the warranty covering the devices, provided by the manufacturer, which is not under the Commission's jurisdiction.<sup>19</sup> The warranties operate just as any standard manufacturer warranty and do not appear to have any additional or special terms for the Ameren Missouri customers outside of what is generally provided by the manufacturer.<sup>20</sup> Commissioner Holsman raised concerns regarding Ameren Missouri operating as an insurance agency; Staff has similar concerns.<sup>21</sup> A warranty is not designed to promote the sale or manufacture of electricity and falls outside of the jurisdiction of the Commission. Neither the surge protection collar devices<sup>22</sup> proposed for inclusion in Ameren Missouri's program nor the warranties covering them meet the statutory definition of "electric plant" under section 386.020(14), RSMo.<sup>23</sup> Further, the risk of customer confusion is inevitable due to the fact that Ameren Missouri alleges that it will not be paying out any claims under the warranty, rather the third party holder of the warranty policy is intended to pay all claims. Traditionally, if a customer has a concern with its meter, it calls the utility and pursues that concern entirely with the utility. However, under the terms laid out in this program the customer must pursue its claim with a faulty or broken surge protection collar with the third party manufacturer, and must do so within a very strict timeline prescribed by the third party manufacturer, even though customers are paying money to Ameren Missouri, and not the third party manufacturer, as part of this program.<sup>24</sup> Additionally, the

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<sup>19</sup> Ex. 8, Bax Rebuttal, Pp. 3-4.

<sup>20</sup> Tr. 25:10-12; Ex. 12.

<sup>21</sup> Tr. 24-25.

<sup>22</sup> The description for USOA account 370 does include a broad category of "protective devices," in the description of the meter account.

<sup>23</sup> The definition of "electric plant" under Section 386.020(14), RSMo (Supp. 2020) is not identical to the use of that term in the FERC USOA.

<sup>24</sup> Tr. 26:23-27:2.

third-party manufacturer states that the claim will not be honored if the damage done by the electrical surge did not enter the home through the customer meter. Ameren Missouri witness Schneider was unable to report how many claims may be invalidated by this requirement.<sup>25</sup> Staff would propose that the Commission needs to include in any order issued in relation to this case a clear roadmap for how customer complaints are to be filed with the Commission related to this surge protection program, if the Commission finds that the program should be regulated. 20 CSR 4240-2.070 states that a customer may bring a complaint against a utility for any alleged violation of a tariff, statute, rule, order or decision within the Commission's jurisdiction.<sup>26</sup> If the Commission were to find that the surge protection device program falls within the Commission's authority, then regardless of the warranty policy included with the device, customers should still be able to file a complaint with the Commission against Ameren Missouri for issues related to the program.

Ameren Missouri did not provide a single example of a regulated surge protection program in the United States.<sup>27</sup> It provided Staff with a list of programs that it utilized to develop the terms of the proposed program.<sup>28</sup> Similar programs have been offered by other Missouri regulated utilities without regulation or Commission authorization for decades, including those offered currently by the Evergy affiliates and by Liberty (Empire).<sup>29</sup> While the Commission has knowledge of these programs, it does not retain jurisdiction over them because the costs and revenues of the programs are

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<sup>25</sup> Tr. 93:6-10.

<sup>26</sup> 20 CSR 4240-2.070.

<sup>27</sup> Ex. 7, Coffey Rebuttal P. 3; Ex. 9, Ferguson Rebuttal P. 4.

<sup>28</sup> Ex. 7, Coffey Rebuttal, P. 3:1-3.

<sup>29</sup> Ex. 7, Coffey Rebuttal P. 3; Ex. 8, Bax Rebuttal P. 5.

recorded below the line, or outside of regulated accounting. That places the risk of the program outside of customer rates because the costs of the program are not included in the cost of service. The Commission has authority pursuant to Section 393.140(12) to ensure that unregulated business of a utility is separate from regulated utility services. These must be kept separate so the Commission could ensure that regulated utility customers are not harmed by an unregulated program.

Finally, the proposed design of this program would purport to deprive future Commissions of the opportunity to review the reasonableness of Ameren Missouri's rates and terms.<sup>30</sup> As Staff witness Lange describes in testimony, the proposed rate design purports to establish a rate to remain in effect and insulated from adjustment in general rate cases for 15 or more years.<sup>31</sup> If the Commission grants Ameren Missouri's proposal as laid out in its *Application* that would mean, at least in Ameren Missouri's opinion, the rates for the program are set for the future without the need for reconsideration by the Commission in Ameren Missouri's future general rate cases.<sup>32</sup> Staff argues that no truly regulated program should be outside of the Commission's purview in a general rate review. In fact, in a previous Commission proceeding that was reviewed by the Western District, the Court found that the Commission retains authority to terminate utility programs to protect the general welfare of the public.<sup>33</sup> Any provision purporting to insulate this program from further Commission review is contrary to the broad authority granted to the Commission under Chapters 386 and 393 to set just and reasonable rates

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<sup>30</sup> Ex. 13, Lange Rebuttal Pp. 9, 25.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *State ex rel. Praxair, Inc. v. Public Service Commission of the State of Missouri*, 328 S.W.3d 329, 343-344 (headnotes 16 et seq.) Where the Western District found that the Commission made extensive findings of fact and conclusions of law that it was using its police power in terminating the interim energy charge to protect the general welfare of the public.

considering all relevant factors.<sup>34</sup> Ameren Missouri cites no statute creating an exception to that general rule for surge protection device or warranty programs..

**II. If it is lawful, should the Commission approve an Ameren Missouri surge protection program and treat the revenue, expense and investment associated with it as a regulated activity?**

No, as Staff has outlined the program should not be offered on a regulated basis. Even if the Commission accepts the proposed surge protection collar devices as “electric plant” within the meaning of Section 386.250, based on the recent interpretation by the Western District,<sup>35</sup> these surge protection collar devices are not properly included in Ameren Missouri’s regulated rate base in that it is not prudent for Ameren Missouri to invest in a program for which the utility is not uniquely situated to provide the service. Ameren Missouri admits that the devices will need to be considered in rate base for their 15 year service life.<sup>36</sup> As stated in Staff’s testimony, there are several options on the market for customers to purchase their own surge protection devices.<sup>37</sup> These devices vary in price and are available at standard hardware stores or through online retailers.<sup>38</sup> While customers do not typically have a choice for their electric service provider due to the utility structure in Missouri, there are alternative surge protection devices available, similar to those included in the proposed Ameren Missouri surge protection program, which may also include a warranty from the device manufacturer, just as the device proposed in this Program.<sup>39</sup> These competitive alternatives available to customers would

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<sup>34</sup> *Id.*

<sup>35</sup> See *In the Matter of: Kansas City Power and Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service v. Missouri Public Service Commission and Midwest Energy Consumers Group*, 557 S.W.3d 340, (Mo. App. 2018).

<sup>36</sup> Tr. 120:24-121:2.

<sup>37</sup> Ex. 7, Coffey Rebuttal Pp. 5-6.

<sup>38</sup> *Id.*

<sup>39</sup> Ex. 7, Coffey Rebuttal P. 5; Ex. 9, Ferguson Rebuttal, P. 3.



provide a similar level of protection against the type of surges identified by Ameren Missouri.<sup>40</sup> In response to questions about other devices available on the market, Ameren Missouri did not dispute that other options were available.<sup>41</sup> When asked why its program was better than the existing options Company witness Byrne replied only, “they’re different.”<sup>42</sup> However, Ameren Missouri witness Schneider could not say how many electrical surges may enter a home through the meter versus how many may enter through another access point.<sup>43</sup>

The purchase of the surge protection collar is entirely separate from the electricity rate and purchase of energy by an Ameren Missouri customer and does not need to be facilitated through the utility. At the same time Ameren Missouri seeks to provide these surge protection collars as a regulated service, it purports to insulate itself from any meaningful regulation of those devices, claiming that the surge protection device manufacturer is entirely responsible for the handling of device failures and any other warranty claims.<sup>44</sup> Ameren Missouri cannot have it both ways. The devices are either a regulated service offered by Ameren Missouri, or they are not. If they are, Ameren Missouri cannot delegate responsibility for that service to a third party. Moreover, Staff is unclear why a customer would sign up for a program with Ameren Missouri for a surge protection device which will require a monthly charge and then have to work with a third-party manufacturer to bring any claims related to the device when it could purchase

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<sup>40</sup> Ex. 9, Ferguson Rebuttal, P. 3; Ex. 13, Lange Rebuttal P. 26.

<sup>41</sup> Tr. 69:7-12.

<sup>42</sup> Tr. 69:7-12.

<sup>43</sup> Tr. 92:17-93:1.

<sup>44</sup> Tr. 27:18-20.

an alternative device from the store for a one-time fee and file claims in exactly the same manner.<sup>45</sup>

The Ameren Missouri program is poorly designed based on Staff's investigation.<sup>46</sup> As outlined in more detail below, Staff believes customer education must be a priority if this program design is authorized by the Commission as proposed.<sup>47</sup> The cost/benefit analysis Ameren Missouri provides in support of the program is not reliable.<sup>48</sup> Among Staff's concerns, the design of a perpetual monthly charge for the recovery of the device and its installation shifts the risk of low participation and of short-term participation to non-participating ratepayers, while also making the design less attractive to would-be participants.<sup>49</sup> Ameren Missouri witness Byrne admitted in his response to Chairman Silvey that the program is based on the notion that all customers will pay the start-up costs of the program to get it running and then at some point in the future the program is supposed to become profitable.<sup>50</sup> The Commission is charged with setting rates that are just and reasonable while not being unduly discriminatory;<sup>51</sup> in order to protect captive customers, it would seem proper to charge the costs of this voluntary program only to participating customers based on reasonable projections of profit.

**III. If the Commission determines it is appropriate to regulate Ameren Missouri's surge protection program:**

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<sup>45</sup> Tr. 180:1-12.

<sup>46</sup> Ex. 14, Staff Recommendation, P. 7.

<sup>47</sup> Ex. 14, Staff Recommendation, Pp. 2-3; Ex. 7, Coffey Rebuttal P. 6:1-8.

<sup>48</sup> Ex. 13, Lange Rebuttal, Pp. 20-25.

<sup>49</sup> *Id.* at Pp. 12, 19; 13-14.

<sup>50</sup> Tr. 71:14-21.

<sup>51</sup> As interpreted by the statutory powers vested in the Commission by Sections 393.010 et seq.

**A. Should it authorize Ameren Missouri to offer its program at the proposed rate and under the requested tariff provisions?**

No, because the proposed rate is not cost-based as all other cost of service tariffed rates are based.<sup>52</sup> Ameren Missouri in surrebuttal affirms what Staff witness Lange addresses in testimony; the fact that the rate is not cost based.<sup>53</sup> The Company does not currently offer any programs that are not cost-based.<sup>54</sup> Chairman Silvey states correctly that if a customer remains in the program for the 15 year projected life of a surge protection device, that customer will spend \$1,800 for what Ameren Missouri prices as an approximately \$70 device and a manufacturer's warranty.<sup>55</sup> The program in fact will cost participants at minimum approximately \$120; spread out either over two years of \$9.95 monthly charges or the remainder of that balance as a termination fee at any time in that two year period should a customer wish to discontinue participation in the program.<sup>56</sup> Ameren Missouri presents the termination fee as a protection to non-participants in the program but fails to justify why a participating customer who wishes to leave the program prior to the tolling of two years should be required to pay \$120 regardless of the length of time they participated in the program.<sup>57</sup> The surge protection device is removed from the premises upon termination so the customer no longer receives any alleged benefits of the device following voluntary exit of the program.<sup>58</sup> Ameren Missouri could not provide information as to how similar programs

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<sup>52</sup> Ex. 6, Wills Surrebuttal P.4.

<sup>53</sup> *Id.*

<sup>54</sup> Tr. 139:4-18.

<sup>55</sup> Tr. 33:1-4.

<sup>56</sup> Tr. 118: 7-13; 120:3-15.

<sup>57</sup> Tr. 118: 7-13.

<sup>58</sup> *Id.*

offered by other utilities progressed over time as far as customer participation so it is unclear whether the Company has put consideration into future participation.<sup>59</sup>

Additionally, the proposed design further shifts risk to nonparticipants by disseminating administrative costs of the program among all Ameren Missouri customers.<sup>60</sup> It may include additional job responsibilities for Ameren Missouri to take into consideration; and when asked about hiring directly related to the surge protection program Ameren Missouri witness Byrne stated that they may have to hire someone related to the program,<sup>61</sup> although Staff was of the understanding that no additional hires were necessary.<sup>62</sup> Ameren Missouri's proposal includes a pricing method for this program that holds non-participants responsible for the revenue requirement associated with providing the service, as well as makes them responsible for the risk to indemnify shareholders for the actual cost of providing the service in the event assumptions prove wrong or that participation does not continue.<sup>63</sup>

Ameren Missouri's retail rates are currently designed to cover its cost of service to provide electric service to ratepayers.<sup>64</sup> It is problematic to also include those costs in the proposed Surge Protection rate design, as it would result in short-term double recovery of those costs.<sup>65</sup> Any rate design proposal connected to the program must be carefully designed to identify costs specifically related to the program to permit potential

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<sup>59</sup> Tr. 97:25-98:9.

<sup>60</sup> Tr. 169:23-170:8.

<sup>61</sup> Tr. 79:17-21.

<sup>62</sup> Response to Staff DR 33.

<sup>63</sup> Ex. 13, Lange Rebuttal, P. 10.

<sup>64</sup> *Id.* at P. 25.

<sup>65</sup> *Id.*

removal of those costs from the cost of service calculation in future rate cases and the allocation of costs and revenues among participants and non-participants.<sup>66</sup>

Commissioner Rupp expressed concerns about the rate impact of the program in his questioning.<sup>67</sup> Ameren Missouri's witnesses did not provide any sufficient information demonstrating that it designed the program to ensure customer protection, short of its included termination fee, which says nothing of the long-term impact on customers. Staff witness Lange has created projections of how the program costs and revenues could impact customer rates under various assumptions, taking into consideration various scenarios based on the structuring of the program.<sup>68</sup> The projections show that non-participating customers may see benefits from the program by 2024 if the participation in the program follows Ameren Missouri's assumptions.<sup>69</sup> However, the analysis supporting Ameren Missouri's assertions of potential non-participant benefit relies on unrealistic assumptions, most significantly the mixing and matching of Mr. Schneider's life cycle analysis with Mr. Will's rate impact projections.<sup>70</sup> While some degree of risk is inherent in any proposed new endeavor, the benefits on which Ameren Missouri stakes its justification of this proposal are not guaranteed and amount only to projections at this time.<sup>71</sup> Each new offering from a utility needs to be considered on its own to best determine if it is cost beneficial and whether it is actually necessary, regardless of similar programs offered by the utility which the Commission previously approved.

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<sup>66</sup> Ex. 9, Ferguson Rebuttal, P. 6:6-20.

<sup>67</sup> Tr. 20-21.

<sup>68</sup> Ex. 13, Lange Rebuttal, Pp. 21-25.

<sup>69</sup> Tr. 179:1-3.

<sup>70</sup> Ex. 13, Lange Rebuttal, Pp. 20-21.

<sup>71</sup> Ex. 9, Ferguson Rebuttal, P. 5:10-17.

The proposed design does not convey adequate details about the program to customers, or include detail necessary for reasonable tariff administration and enforcement. In general, the tariff provided is vague and does not include necessary parameters. For example, the warranty for the devices requires certain steps to be taken in order to submit a qualifying warranty claim,<sup>72</sup> but that is not clearly demonstrated in the tariff sheets as proposed. Additionally, as the judge identified, the tariff fails to define what ordinary household voltage would be despite using that term to describe the applicability of the surge protection devices' protection.<sup>73</sup> Ameren Missouri witness Schneider could not say what ordinary household voltage would be although that appears to be a term necessary to the administration of the program.<sup>74</sup> Additionally, Ameren Missouri witness Schneider could not answer several questions regarding claims under the warranty for which the tariff lacks specificity.<sup>75</sup> he suggested that details absent from the tariff could be provided on the Company's website or in another manner, Ameren Missouri witness Schneider could not clarify how the Company intended to address that concern.<sup>76</sup> As stated above, customer education about the right to file a complaint with the Commission under 20 CSR 4240-2.070 would be another important detail that is presently absent from Ameren Missouri's proposed tariff or materials for the program.

Ameren Missouri stated several times that the "termination fee" was designed to safeguard non-participating ratepayers from bearing the brunt of the costs of the program.<sup>77</sup> However, when Staff reviewed the proposed design, the design does not

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<sup>72</sup> Tr. 119:10-13.

<sup>73</sup> Tr. 104:5-14.

<sup>74</sup> Tr. 104:15-17.

<sup>75</sup> Tr. 111:8-112:8.

<sup>76</sup> Tr. 106:17-107:4.

<sup>77</sup> Tr. 124:21-125:8.

offset program rate base with “termination revenues,” as received, but instead Ameren Missouri has stated its intent to retain the program revenues and any received termination fees for shareholders.<sup>78</sup> As Staff witness Ferguson suggested at the evidentiary hearing, including the termination fees, and perhaps even the cost of the surge protection devices in Contributions in Aid of Construction or CIAC, instead of revenue, would limit some of the risk to the non-participants by offsetting some of the costs in Ameren Missouri’s general cost of service calculation.<sup>79</sup> To be clear that course of action still would not eliminate all risk, but it would to a degree reduce the risk.<sup>80</sup>

**B. Should the Commission impose a condition on any approval of the program that requires Ameren Missouri to hold non-participating customers harmless from the revenue requirement associated with the surge protection program?**

Staff strongly recommends the Commission order that Ameren Missouri take certain precautions to protect non-participants from paying for this program not the least of which because Ameren Missouri has proposed the Surge Protection Program as a customer affordability initiative and a voluntary program.<sup>81</sup> The Company is clear that it intends to include the surge protection devices in rate base.<sup>82</sup> Commissioner Rupp expressed concerns about the Commission’s ability to oversee the program were it not offered as a regulated program.<sup>83</sup> Staff would point out that the program, as designed, is intended to run for at least three years before the Commission would be afforded another opportunity to review the program and consider its benefits.<sup>84</sup> While the program would

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<sup>78</sup> Ex. 13, Lange Rebuttal, P. 12.

<sup>79</sup> Tr. 169:23-170:8.

<sup>80</sup> Tr. 171:15-18.

<sup>81</sup> Tr. 73:23.

<sup>82</sup> Tr. 141:25-142:4.

<sup>83</sup> Tr. 56-57.

<sup>84</sup> Tr. 74:24-75:4.

not be reviewed in future audits if it is offered as an unregulated program, it would also not be included in rates and would not pose a risk to customers who do not participate and do not get to choose whether they want to support a program from which they are not benefitting.

As recommended by Staff witness Ferguson in her testimony, certain accounting treatment needs to be applied to the program.<sup>85</sup> If regulated, at a minimum, the Program should be revenue requirement neutral to all non-participants.<sup>86</sup> As such, Ameren Missouri should absorb any Program costs that are not offset by Program revenues during and between rate cases.<sup>87</sup> This is particularly necessary to prevent subsidization of the Program by non-participants.

**IV. Should the Company provide customer education and outreach in conjunction with any program that may be authorized?**

Yes, as outlined in Staff witness Coffey's testimony, it is important for a utility to consider customer education in implementing any new program, but Staff strongly recommends that this particular program have a developed portfolio of education and resources.<sup>88</sup> Ameren Missouri should develop and make available to its customers a robust set of frequently asked questions (FAQ) that addresses the specifics of the program, and educational resources that cover power surges and the different types of surge protection devices available outside the program.<sup>89</sup> As stated above, the program is run by Ameren Missouri, but customers will submit warranty claims to the third-party

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<sup>85</sup> Ex. 9, Ferguson Rebuttal, P. 7.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Ex. 7, Coffey Rebuttal, P. 6.

<sup>89</sup> *Id.*



device manufacturer.<sup>90</sup> To create further confusion, Ameren Missouri has stated that the devices themselves will be installed by an additional third-party administrator.<sup>91</sup> Ameren Missouri also states that the devices will be their property.<sup>92</sup> Staff has serious concerns that customers will be confused as to who is actually administering the program and who the customer should contact regarding problems with the device. Chairman Silvey also expressed concerns and asked whether there were other options in the market for a similar type of protection.<sup>93</sup> This program, in fact, would seem to only complicate what could be a much simpler process of purchasing a surge protection device outright.

Staff is also concerned that customers will not understand the level of protection the devices are manufactured to provide, including the cause of the surge. Ameren Missouri states carefully that the devices only protect against lightning strikes that enter the customer's property through Ameren Missouri's meter.<sup>94</sup> That means that lightning strikes directly to the property or that enter a customer's home through another means, such as a telephone line, will not be protected against a surge by the surge protection device.<sup>95</sup> This is specifically concerning because Missouri has a high likelihood of lightning strikes.<sup>96</sup> Staff is concerned that a customer would expect a surge protection device, by nature of its product name, to protect against all types of surges to a property's electric system, not simply those coming through the electric meter.<sup>97</sup> Without careful

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<sup>90</sup> Tr. 26:23-27:2.

<sup>91</sup> Tr. 28:18.

<sup>92</sup> Tr. 29:10-11.

<sup>93</sup> Tr. 32:3-6.

<sup>94</sup> Tr. 33:23-34:8.

<sup>95</sup> Ex. 7, Coffey Rebuttal, P. 2; Tr. 34:22-25.

<sup>96</sup> Ex. 7, Coffey Rebuttal, P. 2.

<sup>97</sup> *Id.*

education, Ameren Missouri customers could easily be misled as to the actual protection level of the surge protection devices. Staff witness Coffey provides a thorough description of the types of surge protection devices on the market that provide protection against surges that enter a home's wiring through means in addition to the electric service drop.<sup>98</sup>

Staff would recommend that any educational and/or marketing materials include:

- Explanation of the type of items protected by the surge protection device and what is not.
- Explanation of the manufacturer's warranty included with the surge protection device.
- Clarification of what entity will install the surge protection device.
- Explanation of the monthly program cost and termination fee.
- Explanation of what happens if the customer moves from the property with the surge protection device.
- Careful description of the customer's right to bring complaints pursuant to Commission rule 20 CSR 4240-2.070.

**V. Should the Commission require any specific accounting related to the program apart from accounting required by the Uniform System of Accounts?**

Yes, should the Commission determine that it is appropriate for Ameren Missouri to offer the program as a regulated program, Staff has developed certain recommendations that the Commission should incorporate into its order.<sup>99</sup> Ameren Missouri should uniquely code all revenue, expense (including any property tax and

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<sup>98</sup> *Id.* at Pp. 5-6.

<sup>99</sup> Ex. 9, Ferguson Rebuttal, Pp. 6-7, 18.

income tax) and investment (interest, return on equity, tax impact) so as to delineate these items from all other revenue, expense and investment beginning from Program inception throughout the life of the Program.<sup>100</sup> Additionally, Ameren Missouri should follow all electric affiliate transaction rules, (as necessary) regardless of whether the program is regulated or unregulated.<sup>101</sup> By incorporating these accounting treatments, Staff can more adequately identify the costs and revenues of the program for consideration in future audits and can take steps to ensure that the program is properly accounted for regardless of its regulated or unregulated status.

**A. Should Ameren Missouri be required to separately designate depreciation expense and return (as defined in 393.1400) on capital investments made in the program and included in the PISA deferral mechanism?**

If the Commission finds that the program is lawful and should be regulated, then the surge protection devices are considered “qualifying electric plant” as that definition is used in the relevant plant in service accounting (PISA) statute, Section 393.1400.3, RSMo.<sup>102</sup> Ameren Missouri has stated that the program rate is based on more than the cost to provide the service.<sup>103</sup> As such, Staff assumes that Ameren Missouri has taken into consideration the depreciation expense and return components for inclusion in the monthly participant rate. Staff recommends that Ameren Missouri should separately designate the depreciation expense and return on equity costs (and any associated carrying costs) for this program that are included in the PISA deferral mechanism for future rate case adjustment so as to prevent double recovery of these items in rates.<sup>104</sup>

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<sup>100</sup> *Id.*

<sup>101</sup> Ex. 9, Ferguson Rebuttal, Pp. 6-7, 18.

<sup>102</sup> *Id.* at P. 15-16.

<sup>103</sup> Tr. 73:20.

<sup>104</sup> Ex. 9, Ferguson Rebuttal, Pp. 15-16.

**B. Should Ameren Missouri be required to maintain all program records?**

Ameren Missouri must retain all Program records in order for Staff to verify that all revenue, expense, and investment was actually incurred/received, to verify compliance with electric affiliate transaction rules (as needed), as well as to propose any possible adjustments for protection of non-participants (Issue III(B) above), possible prudence disallowances or annualization/normalization of program components.<sup>105</sup>

**Conclusion**

The bottom line is that this electrical surge device protection program should not be regulated by the Commission and thereby not included in rates. The program is not based on the manufacture and sale of electricity and no other utility appears to offer such a program that is regulated. In summary, Ameren Missouri has proposed a program that certainly could benefit customers. However, the program runs the risk of charging non-participating customers for the protection provided to customers who themselves will pay at least \$120 for the protection. That protection also provides only a quite limited protection against electric surges based on Staff's investigation of this proposed program. Customers participating in the program run the risk of facing damage that they may believe is covered by their provided device, but which actually would not be covered due to the limitations of the warranty and the single point of entry protected by the device. Participating customers also run the risk of confusion as to who is actually running the program since the participation cost is paid to Ameren Missouri, but the warranty is held by the manufacturer and it's possible that the company installing, replacing and removing the device on the customer's meter would be an additional third-party contractor.

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<sup>105</sup> *Id.* at Pp. 6-7.

Finally, customers run the risk of paying for this program for years to come as the depreciable life of the devices is still unclear based on the information Ameren Missouri provided in its application and testimony. All of these factors are concerning, but many of them are factors avoided if this program is not offered as a regulated program with the Commission's imprimatur. Certainly Staff would be willing and available to work with Ameren Missouri to improve program education for customers wanting to participate in the program on an unregulated basis, however, as Commissioner Rupp eloquently stated at the evidentiary hearing, "the devil is in the details."<sup>106</sup>

**WHEREFORE** Staff prays that the Commission will find that the proposed surge tariff protection program is outside of its jurisdiction, should not be offered as a regulated program and reject the proposed tariff sheets. Should the Commission find that the program is within the Commission's jurisdiction, that it will reject the proposed tariff sheets and order Ameren Missouri to file replacement proposed tariff sheets reflecting enhanced customer education for the program to include:

- An explanation of the type of items protected by the surge protection device and what is not.
- An explanation of the manufacturer's warranty included with the surge protection device.
- Clarification of what entity will install the surge protection device.
- An explanation of the monthly program cost and termination fee.
- An explanation of what happens if the customer moves from the property with the surge protection device.

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<sup>106</sup> Tr. 95:7.

- A careful description of the customer’s right to bring complaints pursuant to Commission rule 20 CSR 4240-2.070.

The Commission’s order should also include such other and further relief as it finds just in the circumstances.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 14th day of May, 2021, to all counsel of record.

**/s/ Whitney Payne**