

Exhibit No.:  
Issue: Rate Case Expense  
Witness: Antonija Nieto  
Sponsoring Party: MoPSC Staff  
Type of Exhibit: Rebuttal Testimony  
Case No.: ER-2019-0335  
Date Testimony Prepared: January 21, 2020

**MISSOURI PUBLIC SERVICE COMMISSION**

**FINANCIAL and BUSINESS ANALYSIS DIVISION**

**AUDITING DEPARTMENT**

**REBUTTAL TESTIMONY**

**OF**

**ANTONIJA NIETO**

**UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri**

**CASE NO. ER-2019-0335**

*Jefferson City, Missouri  
January 2020*

Staff Exhibit No. 119P  
Date 3/4/20 Reporter JNB  
File No. ER-2019-0335

1 REBUTTAL TESTIMONY

2 OF

3 ANTONIJA NIETO

4 UNION ELECTRIC COMPANY,  
5 d/b/a Ameren Missouri

6 CASE NO. ER-2019-0335

7 Q. Please state your name, employment position, and business address.

8 A. Antonija Nieto, Utility Regulatory Auditor with the Missouri Public Service  
9 Commission ("Commission" or "PSC"), Fletcher Daniels State Office Building, 615 East 13<sup>th</sup>  
10 Street, Kansas City, Missouri 64106.

11 Q. Are you the same Antonija Nieto who has previously provided testimony in  
12 this case?

13 A. Yes. I contributed to Staff's Cost of Service Report ("COS Report") filed in the  
14 Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri") rate case designated as  
15 Case No. ER-2019-0335 on December 4<sup>th</sup>, 2019.

16 Q. What is the purpose of your rebuttal testimony?

17 A. The purpose of my rebuttal testimony is to respond to Ameren Missouri witness  
18 Tom Byrne's direct testimony regarding the calculation and inclusion of rate case expense as a  
19 part of revenue requirement in this rate case.

20 Q. Please summarize Ameren Missouri's position on rate case expense.

21 A. Ameren Missouri calculated rate case expense based on the average expense  
22 incurred in their last three electric rate cases and amortized that amount over three years.  
23 Additionally, Ameren Missouri used the full cost of the required depreciation study from Case  
24 No. ER-2014-0258 and amortized it over five years.

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1 Q. What is Staff's recommendation regarding rate case expense?

2 A. Staff also calculated the average rate case expense incurred in Ameren  
3 Missouri's last three electric rate cases, but normalized it over two years with no tracking of  
4 future amounts less or greater than the amount in the cost of service for future recovery.  
5 Furthermore, Staff recommends sharing that calculated amount of rate case expense between  
6 shareholders and ratepayers as a 50/50 split. Staff also recommends a full recovery of the  
7 depreciation study cost normalized over five years.

8 Q. Staff is normalizing rate case expense compared to the Company amortizing it.  
9 What is the difference?

10 A. A normalization includes a representative level of an expense in the cost of  
11 service. Payroll overtime and non-wage maintenance are expenses for which a normalization  
12 adjustment is generally applied. The cost of service is based on an ongoing level of expense for  
13 these items, and the amount of normalized expenses included in the cost of service are generally  
14 not subject to any tracking for future over or under recovery.

15 An amortization adjustment identifies a certain expense and includes recovery of that  
16 expense over a fixed period of time. An amortization adjustment with a fixed time period  
17 dictates that the expense will be amortized until it is fully recovered, if necessary through  
18 multiple rate proceedings.

19 Q. Why did Staff normalize rate case expense over two years, as opposed to the  
20 three year period that Ameren Missouri proposed?

21 A. Per Ameren Missouri witness Tom Byrne's direct testimony, page 3: "Over the  
22 last 13 years, Ameren Missouri has filed a rate case approximately every 22 months."

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1 Staff recommends normalizing the rate case expense over two years to be more representative  
2 of the frequency of rate case filings.

3 Q. On page 4 of his direct testimony, with reference to the Commission's ruling in  
4 regard to sharing the rate case expenses between ratepayers and shareholders in the latest  
5 Kansas City Power and Light <sup>1</sup> and Spire Missouri rate cases, Ameren Missouri witness Byrne  
6 states that: "Although the court decisions indicate that it was lawful for the Commission to  
7 require utilities to share the cost of the rate cases in those two particular situations, I do not  
8 think that it is good regulatory policy to require cost sharing in all cases." How do you respond?

9 A. Rate cases benefit both ratepayers who are provided safe and adequate service  
10 and shareholders who are provided an opportunity for a reasonable return. But, there is a high  
11 probability that some recommendations advocated by utilities through the rate case process will  
12 ultimately be found by the Commission to not be in the public interest. Additionally, ratepayers  
13 will continue to pay for the majority of the rate case and regulatory process expenses under any  
14 form of sharing mechanism when internal labor is taken into account; expecting shareholders  
15 to carry a sensible portion of the cost burden is fair and equitable. Ultimately, rate case expense  
16 sharing mechanisms can incentivize the utility to keep rate case expenses to reasonable levels.  
17 It is Staff's recommendation that rate case expenses be fairly allocated between both parties  
18 who benefit from rate case proceedings.

19 Q. Mr. Byrne referenced KCPL and Spire Missouri rate cases. What did the  
20 Commission order concerning rate case expenses in those cases?

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<sup>1</sup> As of October 2019, KCPL is now doing business as Evergy Missouri Metro.

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1           A.     Kansas City Power and Light is now doing business as Evergy Missouri Metro  
2 (“Evergy”). In the 2014 Evergy case,<sup>2</sup> the Commission ordered a rate case expense sharing  
3 based on the ratio of the awarded revenue requirement versus the requested revenue  
4 requirement. In the 2017 Spire Missouri rate cases,<sup>3</sup> the Commission ordered a rate case  
5 expense sharing of 50/50 ratepayer/shareholder allocation. In both cases the depreciation study  
6 costs were excluded from shared expenses.

7           Q.     On page 5 of his direct testimony, Ameren Missouri witness Byrne claims that:  
8 “... it would not be appropriate for utility shareholders to bear a portion of prudent and  
9 necessary operations and maintenance costs. Prudent rate case expenses are no different, and  
10 they ought to be fully reflected in the revenue requirement...”

11           Are rate case expenses the same as any other costs that provide benefits to customers  
12 (i.e. generation, transition, or delivery services)?

13           A.     No, rate case expenses are distinct from other costs because they are highly  
14 discretionary. Utilities typically have full freedom of choice concerning the use of outside  
15 witnesses and/or counsel and general processing of its rate filing.

16           Q.     What other expenses are usually allocated or assigned to shareholders and not  
17 included in cost of service?

18           A.     Some expenses typically removed from the cost of service or booked to non-  
19 utility accounts (“below the line”) include:

- 20           • Incentive compensation tied to earnings per share (EPS)
- 21           • Charitable donations
- 22           • Some dues such as duplicative chambers of commerce dues

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<sup>2</sup> Case No. ER-2014-0370.

<sup>3</sup> Case Nos. GR-2017-0215 and GR-2017-0216.

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- 1 • Political lobbying expenses
- 2 • Board of directors retreat expenses
- 3 • Certain executive expenses

4 There are certain costs that by their very nature, while undisputedly prudent from the  
5 Company's perspective, should nonetheless be assigned to shareholders as opposed to  
6 customers. These expenses are not necessary for the provision of safe and adequate utility  
7 service and are appropriately not recovered in rates. Staff does make the distinction of rate case  
8 expenses from the above listed costs in the proposed 50/50 sharing of these expenses because  
9 there can be a benefit to both shareholders and ratepayers.

10 While Ameren Missouri does not recover certain shareholder allocated costs in the cost  
11 of service, it certainly has not prevented Ameren Missouri from choosing to spend money on  
12 these items.

13 Q. The rate case expenses at issue are those incremental third party expenses. What  
14 other costs are incurred related to the rate case and regulatory process?

15 A. Other rate case expenses that Ameren Missouri incurs are their electric allocated  
16 share of all internal labor and benefits expenses for the witnesses who filed testimony and all  
17 other internal labor to process the rate case including data requests, testimony preparation, and  
18 tariff filings. Considering the average management salary with benefits for Ameren Missouri  
19 and Ameren Services,<sup>4</sup> the total annual cost before allocations for the witnesses who filed  
20 testimony is \*\* \_\_\_\_\_ \*\*. This estimate is highly conservative as some of the witnesses  
21 who filed direct testimony are members of senior management who receive well above the

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<sup>4</sup> Information received from Company's response to Staff Data Request No. 0275 in this case. The average salary includes all levels of management.

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1 average salary and benefits. In addition, there are other employees in legal and regulatory  
2 departments who are involved in preparation of filings, testimony, tariffs, data request  
3 responses, and all other aspects of the rate case process. These costs are incurred regardless of  
4 whether or not the employees are working on an active rate case. However, as noted above,  
5 rate cases benefit both ratepayers and shareholders, yet only ratepayers are responsible for  
6 internal labor costs. This further supports Staff's 50/50 rate case expense sharing proposal.

7 Q. On page 10, Mr. Byrne states: "As noted, the Company is placing a firm ceiling  
8 on its rate case expense request in this case". Do you agree with that statement?

9 A. No. Averaging rate case expense from the last three cases has no impact on  
10 Ameren Missouri's ability or will to spend a higher amount, nor does it place a "firm ceiling"  
11 on what they can spend. If Ameren Missouri requests an average of rate case expense in the  
12 next rate case, then any amount spent above the amount in rates from this case will receive a  
13 full recovery over time. Using Mr. Byrne's figures, the three case average rate case expense  
14 proposed to be included in the Company's revenue requirement in this case is \$1.503 million.  
15 If Ameren Missouri spends \$2 million in this rate case, then, assuming Ameren Missouri's  
16 methodology, this amount will be a factor in the calculation of future rate case expenses if this  
17 methodology continues, hence eventually entirely recovered. In summary, the "firm ceiling"  
18 claimed by Mr. Byrne is not a limit, ceiling, or a cap at all and a full recovery of rate case  
19 expense is merely a timing issue. The use of an average does not necessarily incentivize the  
20 Company to spend less in rate case expense, it simply spreads the recovery of it over time.

21 Q. Is it fair to customers to have to pay all costs associated with a rate case filing  
22 made by a utility?

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1           A.     No. Under the traditional rate case expense normalization, in most situations, all  
2 rate case expenses were passed on to customers, and under Ameren Missouri's proposal, this  
3 would continue. Assigning all of the utility's rate case expense to ratepayers makes the utility  
4 the only party involved in the rate case process that is not constrained to some extent by  
5 budgetary and other financial restrictions, and for which the rate case costs are potentially fully  
6 fundable by a third party. The costs of Staff are funded through the Commission's assessment  
7 to regulated utilities, and in turn charged to ratepayers through tariffed rates. Public Counsel's  
8 annual operating expenses are appropriated by the Missouri General Assembly, which is  
9 sourced from general revenue paid by the Missouri taxpayers. Other parties that wish to  
10 intervene must pay for all of their costs for legal representation and consultants that have  
11 expertise with complex ratemaking principles and rate design concepts. Ameren Missouri is the  
12 only party to its own rate case that ultimately does not pay its own way.

13           It is fair to charge some rate case costs to ratepayers because of the benefit received by  
14 ratepayers in the form of safe, reliable, and adequate service, and to support the financial health  
15 of the utility. However, the shareholders also enjoy benefits from the rate case in potential  
16 increases in profits, dividends, and stock price. Recognition of the different benefits potentially  
17 received by the rate case participants was one of the reasons the Commission ordered a 50/50  
18 sharing of rate case expense in the recent Spire Missouri cases,<sup>5</sup> as quoted on page 92 of Staff's  
19 Cost of Service Report filed on December 4<sup>th</sup>, 2019 in this case: "Therefore, it is just and  
20 reasonable that the shareholders and the ratepayers, who both benefited from the rate case, share  
21 in the rate case expense."

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<sup>5</sup> Case Nos. GR-2017-0215 and GR-2017-0216.



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1 Q. On page 10 of his direct testimony, Ameren Missouri's witness Byrne states:  
2 "The Staff is of course funded by utility assessments, the largest portion of which are paid by  
3 the Company..." Does that mean that Ameren Missouri and/or its shareholders are paying for  
4 Staff's costs associated with rate cases?

5 A. No. While that is implied in Mr. Byrne's statement, the fact is that Staff's costs  
6 associated with rate cases, although seemingly paid by the Company, are included in the  
7 Company's cost of service, thus passed on to the ratepayers in full. The Company, or  
8 Company's shareholders, do not pay for expenses incurred by Staff during rate case  
9 proceedings.

10 Q. Has Staff proposed any adjustments to remove rate case expenditures on the  
11 grounds of the costs being imprudent?

12 A. No. At this time, Staff has made no adjustments in the current case to disallow  
13 any rate case expenses for imprudence. Staff will continue to review rate case expenses incurred  
14 through the conclusion of this rate case.

15 Q. Does this conclude your rebuttal testimony?

16 A. Yes, it does.

