

Exhibit No. 404

Exhibit No.: 404
Issue(s): Staff Miscalculation of Income Tax
for Revenue Requirement/Cash Working Capital
(CWC) for Income Taxes/Disposition of the
Retired Meramec Facility
Witness/Type of Exhibit: Riley/Rebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2021-0240

REBUTTAL TESTIMONY

OF

JOHN S. RILEY

Submitted on Behalf of the Office of the Public Counsel

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

FILE NO. ER-2021-0240

October 15, 2021

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

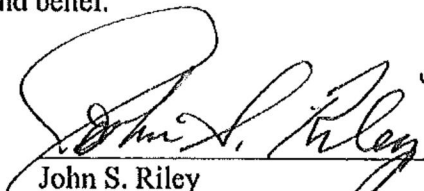
In the Matter of the Union Electric)	
Company d/b/a Ameren Missouri's)	
Tariffs to Increase its Revenues for)	<u>Case No. ER-2021-0240</u>
Electric Service)	
)	

AFFIDAVIT OF JOHN S. RILEY

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

John S. Riley, of lawful age and being first duly sworn, deposes and states:

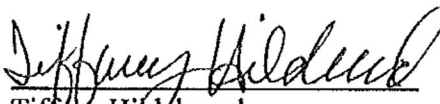
1. My name is John S. Riley. I am a Utility Regulatory Supervisor for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


John S. Riley
Utility Regulatory Supervisor

Subscribed and sworn to me this 15th day of October 2021.



TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #16637121


Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.

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**REBUTTAL TESTIMONY
OF
JOHN S. RILEY
UNION ELECTRIC COMPANY
d/b/a Ameren Missouri
CASE NO. ER-2021-0240**

1 **Q. What is your name and what is your business address?**

2 A. John S. Riley, P.O. Box 2230, Jefferson City, Missouri 65102

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Utility Regulatory
5 Supervisor.

6 **Q. What is your educational background?**

7 A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State
8 University.

9 **Q. What is your professional work experience?**

10 A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this capacity
11 I participated in rate cases and other regulatory proceedings before the Public Service
12 Commission (“Commission”). From 1994 to 2000 I was employed as an auditor with the
13 Missouri Department of Revenue. I was employed as an Accounting Specialist with the
14 Office of the State Court Administrator until 2013. In 2013, I accepted a position as the Court
15 Administrator for the 19th Judicial Circuit until April, 2016 when I joined the OPC as a Public
16 Utility Accountant III. I also prepared income tax returns, at a local accounting firm, for
17 individuals and small business from 2014 through 2017

18 **Q. Are you a Certified Public Accountant (“CPA”) licensed in the State of Missouri?**

19 A. Yes. As a CPA, I am required to continue my professional training by attending Missouri
20 State Board of Accountancy qualified educational seminars and classes. The State Board of

1 Accountancy requires that I spend a minimum of 40 hours a year in training that continues
2 my education in the field of accountancy. I am also a member of the Institute of Internal
3 Auditors (“IIA”) which provides its members with seminars and literature that assist CPAs
4 with their annual educational requirements.

5 **Q. Have you previously filed testimony before the Missouri Public Service Commission?**

6 A. Yes I have. A listing of my Case filings is attached as JSR-R-1

7 **Q. What has compelled you to file Rebuttal Testimony in this case?**

8 A. I will be making adjustments to the Commission Staff’s (“Staff”) revenue requirement
9 calculations as well as adjusting the Cash Working Capital (“CWC”) calculations for the
10 income tax offset. I will also propose a disposition formula for the soon to be retired Meramec
11 facility.

12 **MISAPPLICATION OF INCOME TAX TO REVENUE REQUIREMENT**

13 **Q. What changes are you proposing to the revenue requirement calculations?**

14 A. In Staff accounting schedule 1, line 8, the current income tax available has been misapplied
15 when formulating the “Additional Current Tax Required” on line 9.

16 **Q. What is the “Current Income Tax Available” on line 8?**

17 A. Staff has calculated a negative \$7,370,643.

18 **Q. Was this amount calculated in error?**

19 A. I don’t believe so but Staff’s end product goes beyond what can be applied to the calculations.
20 A negative income tax number cannot be inserted into the revenue requirement calculations.
21 The calculated amount on the current income tax line will need to be adjusted to “0”.

1 **Q. Please explain.**

2 A. Staff performs the income tax calculations for the test year in Accounting Schedule 11. It
3 isn't necessary for me to walk through line by line of Schedule 11. The main point here is
4 that in the center section of Schedule 11 is the actual calculation of the federal income tax that
5 applies to the test year taxable income. Due to the application of some substantial federal tax
6 credits, which reduce income tax liability dollar for dollar, the actual net federal income tax
7 due is a negative \$17 million. This is combined with the state income tax calculations to
8 produce the above mentioned negative \$7,370,643. This amount shows up on line 53 of
9 Schedule 11. It is then inserted in line 8 of Schedule 01, Revenue Requirement. This is all
10 accomplished by way of a cell formula¹.

11 **Q. Why does this negative number need to then be manually altered to "0"?**

12 A. The formula is a straight calculation by the programming with no allowed deviation by the
13 system. Whatever the calculated number, whether that be positive or negative, will be
14 inserted in line 8 of the Revenue Requirement. The error is in the fact that the calculated tax
15 cannot fall below zero. Put another way, the dollar for dollar reduction in tax cannot go below
16 zero regardless of the amount of credits that are available. Federal credits can only be applied
17 to positive income tax liabilities. Once the liability dips to "0" then the credits can no longer
18 be applied. Zero is as far as you can go. The formula built into the schedule does not
19 distinguish between positive and negative so Staff needs to manually change the negative
20 number to zero.

¹ The formula instructions would be to apply the results of the Schedule 11 calculations to line 08 of Schedule 01.

1 **Q. What would be the revenue requirement adjustment to correct the negative application**
2 **of tax?**

3 A. It is straight forward. The \$7,370,643 on line 8 just needs to be reduced to zero. That lowers
4 the total revenue requirement from \$221,386,208 to \$214,015,565.

5 **CASH WORKING CAPITAL (“CWC”) STATE INCOME TAX OFFSET**

6 **Q. What adjustment are you proposing to the income tax calculations within the Staff’s**
7 **CWC?**

8 A. I am proposing that the Commission adopt a 365-day expense lag when calculating the net
9 lag for the state income tax offset.

10 **Q. In other general rate cases this year you have proposed an adjustment to both federal**
11 **and state income tax expense lags. Why are you not proposing an adjustment to the**
12 **federal income tax lag in this case?**

13 A. It appears that Ameren is not currently experiencing a federal net operating loss (“NOL”)
14 situation so the Company may expect to incur some amount of federal income tax liability².

15 **Q. What is the situation regarding the state income tax that has prompted you to propose**
16 **a yearlong expense lag to the CWC calculations?**

17 A. Staff has calculated approximately \$17 million in state income tax to be included in the
18 Company’s cost of service. Due to a state NOL and state income tax credit carryforwards³ it
19 is unlikely that Ameren will incur a Missouri state income tax liability in the near future.

² Staff has applied various income tax credits to Ameren’s taxable income and has substantially reduced the calculated federal tax liability

³ Admission of these tax advantages can be found on page 66 of the 2020 Ameren 10-K Included in this testimony as JSR-R-2

1 **Q. How should the estimated \$17 million in state income tax be treated when considering**
2 **CWC?**

3 A. The inflow of the payment through customer rates should be recognized (revenue lag) and the
4 lack of tax payment to a taxing authority should also be acknowledged through the adjusted
5 expense lag. Below is Staff's current income tax offsets with the OPC adjustment line to
6 follow.

7 **Tax Offset to Rate Base**

<u>Tax Offset</u>	<u>Amount</u>	<u>Rev Lag</u>	<u>Exp Lag</u>	<u>Net Lag</u>	<u>Factor</u>	<u>CWC Requirement</u>
Federal Tax	\$27,701,259	37.02	(38)	(0.98)	(.002685)	(74,378)
Mo State Tax	\$17,463,567	37.02	(38)	(0.98)	(.002685)	(46,890)

11 **OPC proposed Tax Offset to Rate Base**

Mo State Tax	\$17,463,567	37.02	(365)	(327.98)	(.898575)	(15,692,325)
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13 This will adjust Staff's Total Tax Offset and the Total Cash Working Capital Requirement by
14 a negative \$15,645,435⁴.

15 **Q. Companies and Staff have proposed in other general rate cases to just eliminate the line**
16 **item instead of including the large negative component. Is this a possible alternative to**
17 **your proposal?**

18 A. No. That would not encompass the entire CWC calculation and would be selectively
19 inappropriate. Prior Staff arguments would like the Commission to turn a blind eye to the fact

⁴ OPC \$15,692,325 less Staff's negative adjustment of \$46,890

1 that ratepayers are footing the bill for these taxes but the money isn't going to the taxing
2 authority. A working definition of CWC would be:

3 Cash Working Capital (CWC) is a rate base component that represents
4 a measurement of the amount of funds, on average, required for the
5 payment of a utility's day-to-day expenses, as well as an
6 identification of whether a utility's customers or its shareholders are
7 responsible for providing these funds in the aggregate.

8 CWC encompasses the collection *and* disbursement of these expenses. In this particular
9 instance there is no disbursement of the state income tax. Nonpayment is unique in the
10 ratemaking arena and this unpaid tax situation won't necessarily continue on for an extended
11 time⁵, but if we were to ignore the nonpayment, which can be viewed as an actual prepayment
12 of the tax expense, one just as well could make the opposite argument that prepayments should
13 be excluded from rate base as well. I don't think anyone is prepared to make that argument.

14 **Q. Could you summarize your position on the state income tax portion of the CWC?**

15 **A.** Ratepayers are contributing to the MO state income tax expense built into the cost of service
16 for this case but because of several tax advantages, Ameren is able to defer and actually
17 eliminate some of that liability. The CWC calculation should be adjusted to reflect this
18 nonpayment of the expense. The method by which to address this nonpayment is to adjust
19 the expense lag to 365 days (one year of nonpayment) and apply the negative 327.98 days to
20 the computed tax amount⁶.

⁵ It is not uncommon for the payment of current income taxes to be deferred. I believe there would be very few other cost of service items that do not have some sort of payout.

⁶ The amount of tax will fluctuate until the Commission makes a final decision on the Revenue Requirement.

1 **MERAMEC FACILITY RETIREMENT**

2 **Q. Could you provide a brief background to this issue?**

3 A. Yes. After more than 60 years of coal and natural gas power production, Ameren has
4 designated 2022 as the proper time to retire the facility. The only wrinkle in this event is that
5 retirement will take place approximately 10 months after the operational law date for the rates
6 formulated in this general rate case. This creates the dilemma of how to quantify the revenue
7 requirement for a power plant that will not be functional throughout the timeframe that the
8 rates will be in effect.

9 **Q. What is your proposal for the revenue requirement adjustment needed to address the**
10 **mid-rate period retirement of this plant?**

11 A. I am proposing a combination of Mr. Greg Meyer's suggestion from his direct testimony with
12 an avenue to amortize the remaining assets to its end by the next rate case.

13 **Q. Can you give an overview of Mr. Meyer's proposal?**

14 A. Mr. Meyer started with the Company's calculations of the rate base and costs presented by
15 Ameren and narrowed them to the 10-month period that Meramec would be operational
16 within the period that rates would be in force from the rate case. On page 17 of Mr. Meyer's
17 direct testimony, he presents in table format, the allowable return on plant and
18 supplies/inventory and the maintenance expense associated with the facility for the 10 months.
19 The total revenue requirement that he includes in rates is \$6,418,097 on an annual basis to be
20 tracked and recorded as a regulatory liability after the first year of new rates.

21 **Q. How does your proposal differ from Mr. Meyer's?**

22 A. The OPC is interested in eliminating the remaining balance of the Meramec facility before the
23 next expected rate case that Ameren will file. The quick answer is that I would accept Mr.

1 Meyer's \$6,418,097 but would combine that amount to the \$54.5 million unamortized balance
2 of the facility, at the operation of law date, and amortize that balance over five years.

3 **Q. What would the annualized revenue requirement to include in this case?**

4 A. The total would be \$60,918,097 divided by five years for an inclusive amount of \$12,183,619
5 in revenue requirement.

6 **Q. How do you propose to book this amount?**

7 A. \$60,918, 097 would be recorded as a regulatory asset exclusive of rate base calculations and
8 amortized for the five years. Ameren would be provided a return of its remaining investment.

9 **Q. Why have you proposed a five year amortization of remaining plant and costs?**

10 A. Ameren announced in 2014 its intentions to close this plant. Ameren recognized that
11 scrubbers and ash pond upgrades would not be an economical solution for a 65 year old plant.
12 This facility is at the end of its life. The plant balances are easily ascertainable and the cost
13 and rate of return for the 10 months this facility will still be operational, are also known and
14 measurable. Steps need to be taken to remove this plant from rate base and this solution
15 provides for an orderly accounting of the disposition without carrying the total cost beyond
16 this rate case's tariff duration.

17 **Q. Does this conclude your rebuttal testimony?**

18 A. Yes.

John S. Riley, CPA
Summary of Case Participation

ST LOUIS COUNTY WATER COMPANY	CASE NO. WR-88-5
SOUTHWESTERN BELL TELEPHONE COMPANY	CASE NO. TC-89-21
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2016-0023
KCP&L GREATER MISSOURI OPERATIONS COMPANY	CASE NO. ER-2016-0156
KANSAS CITY POWER & LIGHT COMPANY	CASE NO. ER-2016-0285
AMEREN MISSOURI	CASE NO. ER-2016-0179
EMPIRE DISTRICT ELECTRIC PRUDENCE REVIEW	CASE NO. EO-2017-0065
LACLEDE GAS COMPANY	CASE NO. GR-2017-0215
MISSOURI AMERICAN WATER COMPANY	CASE NO. WU-2017-0351
MISSOURI AMERICAN WATER COMPANY	CASE NO. WR-2017-0285
LIBERTY (MIDSTATE NATURAL GAS)	CASE NO. GR-2018-0013
KANSAS CITY POWER AND LIGHT	CASE NO. ER-2018-0145
KCP&L GREATER MISSOURI OPERATIONS COMPANY	CASE NO. ER-2018-0146
EMPIRE DISTRICT ELECTRIC PRUDENCE REVIEW	CASE NO. EO-2018-0244
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2018-0228
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2018-0366
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. EO-2018-0092
AMEREN GAS COMPANY	CASE NO. GR-2018-0227
MISSOURI AMERICAN WATER COMPANY	CASE NO. WO-2018-0373
LIBERTY UTILITIES EMPIRE ELECTRIC CO	CASE NO. EA-2019-0010
SUMMIT NATURAL GAS OF MISSOURI, INC	CASE NO. GR-2018-0230
SPIRE NATURAL GAS, EAST/WEST ISRS	CASE NO. GO-2019-0115
MISSOURI AMERICAN WATER COMPANY	CASE NO. WO-2019-0184

John S. Riley, CPA
Summary of Case Participation

AMEREN GAS	CASE NO. GR-2019-0077
UNION ELECTRIC COMPANY	CASE NO. ER-2019-0335
LIBERTY EMPIRE ELECTRIC CO.	CASE NO. ER-2019-0374
EVERGY MISSOURI METRO	CASE NO. EO-2020-0262
MISSOURI AMERICAN WATER CO.	CASE NO. WO-2020-0190
EMPIRE ELECTRIC COMPANY FAC	CASE NO. ER-2020-0311
MISSOURI AMERICAN WATER CO.	CASE NO. WR-2020-0344
SPIRE MISSOURI INC	CASE NO. GR-2021-0108

2022. With the recently completed Ameren Missouri and Ameren Illinois debt issuances and availability under the Credit Agreements, as well as the proceeds from the recent settlement of the forward sale agreement, Ameren, Ameren Missouri, and Ameren Illinois believe that their liquidity is adequate given their expected operating cash flows, capital expenditures, including expected wind generation additions remaining in 2021, and financing plans. The Ameren Companies continue to monitor the effect of the COVID-19 pandemic on their liquidity, including as a result of decreased sales and increased customer nonpayment. To date, the Ameren Companies have been able to access the capital markets on reasonable terms when needed. However, there can be no assurance that significant changes in economic conditions, disruptions in the capital and credit markets, or other unforeseen events will not materially affect their ability to execute their expected operating, capital, or financing plans.

- Ameren expects its cash used for currently planned capital expenditures and dividends to exceed cash provided by operating activities over the next several years. As part of its plan to fund these cash flow requirements, Ameren is using newly issued shares of common stock, rather than market-purchased shares, to satisfy requirements under the DRPlus and employee benefit plans and expects to continue to do so through at least 2025. Ameren expects these issuances to provide equity of about \$100 million annually. In addition to the issuance of common shares in connection with the 2021 settlement of the remaining portion of the forward sale agreement, Ameren plans to issue incremental equity of about \$150 million in 2021 and about \$300 million each year from 2022 to 2025. Ameren expects its equity to total capitalization to be about 45% through December 31, 2025, with the long-term intent to support solid investment-grade credit ratings. Ameren Missouri and Ameren Illinois expect to fund cash flow needs through debt issuances, adjustments of dividends to Ameren (parent), and/or capital contributions from Ameren (parent).
- As of December 31, 2020, Ameren had \$90 million in tax benefits related to federal and state income tax credit carryforwards and \$7 million in tax benefits from state net operating loss carryforwards, which will be utilized in future periods. Ameren expects federal income tax payments at the required minimum levels from 2021 to 2025 resulting from the anticipated use of production tax credits that will be generated by Ameren Missouri's High Prairie and Atchison renewable energy centers and existing tax credit carryforwards.

The above items could have a material impact on our results of operations, financial position, and liquidity. Additionally, in the ordinary course of business, we evaluate strategies to enhance our results of operations, financial position, and liquidity. These strategies may include acquisitions, divestitures, opportunities to reduce costs or increase revenues, and other strategic initiatives to increase Ameren's shareholder value. We are unable to predict which, if any, of these initiatives will be executed. The execution of these initiatives may have a material impact on our future results of operations, financial position, or liquidity.

REGULATORY MATTERS

See Note 2 – Rate and Regulatory Matters under Part II, Item 8, of this report.

ACCOUNTING MATTERS

Critical Accounting Estimates

Preparation of the financial statements and related disclosures in compliance with GAAP requires the application of appropriate technical accounting rules and guidance, as well as the use of estimates. These estimates involve judgments regarding many factors that in and of themselves could materially affect the financial statements and disclosures. We have outlined below the critical accounting estimates that we believe are the most difficult, subjective, or complex. Any change in the assumptions or judgments applied in determining the following matters, among others, could have a material impact on future financial results.