BEFORE THE PUBLIC SERVICE COMMISION
OF THE STATE OF MISSOURI

In the Matter of the Union Electric Company	)	
d/b/a Ameren Missouri's Tariffs to Decrease	)	**Case No: ER-2019-0335**
Its Revenues for Electric Service.	)	

PUBLIC COUNSEL'S POSITION STATEMENT

The Office of Public Counsel (OPC) provides its Position Statement on the remaining issues for hearing as follows:

Unit Commitments

1. Should any disallowance be ordered because of Ameren Missouri's unit commitment practices?

The Sierra Club's allegations of imprudence regarding Union Electric d/b/a Ameren Missouri's (Ameren Missouri or Company) self-dispatch of certain coal units deserves a credible evaluation by this Public Service Commission (Commission). The OPC has not done its own independent analysis on Ameren Missouri's self-commitments, but believes that the behavior would be imprudent if Ameren Missouri is not considering Mid-Continent Independent Service Operator (MISO) market prices when starting up a plant after a planned or forced outage.[1]

Coal Plants and Long-Term Planning

2. Should the Commission refuse to allow recovery of capital costs incurred at the Rush Island, Labadie, and Sioux Energy Centers during the test year or true-up period established for this case?

[1] *Rebuttal Testimony of Lena Mantle*, ER-2019-0335 p. 15-17 (Jan. 21, 2020).

The OPC takes no position on this particular disallowance in this case. However, the OPC retains concerns given Ameren Missouri's refusal to model for environmental remediation actions related to its coal units in its 2017 integrated resource plan (IRP) and potential fallout therefrom.[2] The Commission should remain cognizant of any future investment and stranded assets, and the OPC reserves the right to contest any future ratemaking treatment.[3]

3. Should a rigorous economic assessment as outlined in Sierra Club witness Avi Allison's surrebuttal testimony (page 3, lines 14-19) be required apart from the analyses to be submitted by Ameren Missouri in its 2020 triennial integrated resource planning case?

The economic assessment as outlined by Avi Allison should be required of Ameren Missouri as a matter of the proper and prudent actions of a regulated utility. Whether this analysis is part of Ameren Missouri's next IRP case is another matter. The OPC takes no position as to whether this assessment should be part of the IRP or a separate docket. Since IRPs have historically been informational as opposed to prescriptive of utility behavior, OPC does not know if an added IRP analysis alone can prevent future losses.[4] Therefore, any future economic assessment this Commission requires should lead to clear direction from this Commission on what customers should expect to be liable for after "not consider[ing] Ameren Missouri's separate cost requests in a vacuum."[5]

<u>Fuel Adjustment Clause (FAC)</u>

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[2] *Surrebuttal Testimony of Geoff Marke*, ER-2019-0335 p. 5 (Feb. 14, 2020).
[3] *See Surrebuttal Testimony of Geoff Marke*, p. 8-11 (discussing the scope of Ameren Missouri's potential stranded assets and the financial impact therefrom).
[4] *Rebuttal Testimony of Geoff Marke*, ER-2019-0335 p. 13 (Jan. 21, 2020).
[5] *Surrebuttal Testimony of Geoff Marke*, p. 11.

4. **What is the appropriate sharing mechanism between the company and customers from costs recovered through the FAC?**

The appropriate sharing mechanism between the company and customers for costs recovered through the FAC is a sharing of 85% for Ameren Missouri and 15% for customers. The FAC's sharing mechanism should be changed from 95/5% to 85/15% to better incentivize efficient fuel operations. The 85/15 sharing ratio is also supported by outside evidence, whereas the 95/5 sharing is unsupported.

The FAC is a surcharge on customer bills that covers the increase and decrease in fuel and purchased power revenues in between rate cases.[6] The FAC's enabling statute reads that the Commission may include "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities" when approving an FAC.[7] This Commission has recognized the need for an incentive mechanism for the FAC, and has historically employed a 95/5 sharing. Accordingly, when fuel and purchased-power costs are higher than expected, then customers pay for 95% of the increased costs while the utility bears the remaining 5%. Conversely, when fuel and purchased-power activity costs are lower than what was calculated in the previous rate case, customers receive 95% of their excess-payments, and the company retains 5% of the savings.

When the Commission created the 95/5 sharing ratio in 2007, it noted "after-the-fact prudence reviews alone are insufficient to assure [that electric utilities] will continue to take reasonable steps to keep its fuel and purchased power costs down."[8] The Commission decided then that risk of paying for 5% of increased FAC costs could encourage those reasonable steps.

[6] *Direct Testimony of Lena Mantle*, ER-2019-0335 p. 3 (Dec. 4, 2019).
[7] Mo. Rev. Stat. § 386.266.1 (2019).
[8] *Report and Order*, EO-2007-0004, p. 54 (May 17, 2007).

However, the 95/5 ratio was not sponsored by any party to that earlier proceeding, and no party has since demonstrated that the 95/5 ratio is sufficient to induce efficient fuel operations.[9]

The prospect of paying for 5% of increased FAC costs being enough to incentivize the utility to reduce fuel costs becomes further circumspect when one looks at recent history. Ameren Missouri witness Andre Meyer admits in this case that the 95/5 ratio has insulated customers from paying $42 million in supposedly prudent fuel costs since the ratio's inception.[10] Simple algebra demonstrates that the $42 million figure that Meyer complains Ameren Missouri has not received from customers represents the 5% of an $840 million total. Restated, Ameren Missouri has been off on its fuel and purchase power cost calculations by nearly a billion dollars since it acquired its FAC. Whatever incentive the 95/5 ratio creates, it has not been enough to induce accurate cost calculations and cost-effective operations.

This $840 million figure is particularly concerning as discrepancies between the Staff of the Public Service Commission (Staff) and Ameren Missouri's estimates of off-system sales continue today.[11] If the off-system sales are over-estimated then the FAC will reflect that back to customers as an "increased cost" with a resulting increased FAC surcharge. Therefore, a utility still has a perverse incentive to over-estimate fuel sales and under-estimate costs, as customers will pay for nearly all of the increased costs regardless. This perverse incentive compounds doubts as to the sufficiency of the 95/5 sharing, and reinforces the specter raised by the Sierra Club's allegation of imprudent self-scheduling. An 85/15 sharing provides more incentive to avoid the "must-run" policies that the Sierra Club challenges.

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[9] *Surrebuttal Testimony of Lena Mantle*, ER-2019-0335 p. 3 (Feb. 14, 2020).
[10] *Rebuttal Testimony of Andrew Meyer*, ER-2019-0335, p. 16 (Jan. 21, 2020).
[11] *Rebuttal Testimony of Lena Mantle*, ER-2019-0335 p. 13-14 (Jan. 21, 2020).

When the Commission crafted the 95/5 sharing ratio, there was no specific direction from the State Legislature or citizenry as to what a proper sharing ratio should be. When the General Assembly passed the FAC statute, it empowered the Commission to create an efficiency incentive, but was silent as to the sharing ratio. However, the Legislature has not remained silent. The most recent manifestation of what sharing the body politic is willing is tolerate is the passage of Senate Bill (SB) 564 in 2018. Packaged as rate-case modernization legislation, SB 564 included a provision for plant-in-service accounting (PISA). Utilities electing PISA defer 85% of depreciation expense and return associated with qualifying infrastructure investments in between rate cases.[12] The remaining 15% is lost[13] as "a legislative compromise intended to maintain some amount of regulatory lag to protect ratepayer interests."[14] If the loss of 15% is an adequate compromise for the benefits of PISA, then it should apply just as well to the FAC. The 95/5 sharing ratio is not founded on any specific evidence that a customer protection of 5% is sufficient, and nearly one billion dollars spent over the last decade testifies to the contrary. If the Commission adopts the 85/15 ratio it will be based on the record that an efficiency incentive is necessary, and that the most recent guidance from the General Assembly is that 85/15 is an appropriate sharing ratio.

<u>Affiliate Transactions</u>

5. Should OPC's recommended disallowance of approximately $218 million in Ameren Services Company costs be adopted?

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[12] Mo. Rev. Stat. § 393.1400 (2019).
[13] The exception to this loss is when qualifying infrastructure under PISA is also being accounted for under a renewable energy standard rate adjustment mechanism per Section 393.1030, RSMo. In which case, the eighty-five percent demarcation under PISA is not seen as a limit on recovery. *In re App. of Union Elec. v. Pub. Serv. Comm'n*, 2019 Mo. App. LEXIS 1669, 16 (Mo. App. W.D. 2019).
[14] *Report and Order*, EA-2018-0202 p. 6 (Dec. 12, 2018).

The Commission should disallow approximately $218 million in Ameren Services Company (AMS) costs for the Company's failure to demonstrate that those costs were incurred at the lower of fully distributed cost (FDC) or market cost. Commission Rule provides that electric utilities shall not provide a "financial advantage" to any affiliated entity.[15] "Financial advantage" is defined as paying more than the lesser of fair market price or the FDC; fair market price being the cost of a good or service on the open market and FDC being the cost for the electric utility to procure the goods or services itself.[16] Affiliate transactions are not to be evaluated with a presumption of prudence, contrary to other utility transactions.[17] Therefore, it is incumbent upon the utility to justify its affiliate transactions.

Ameren Missouri has accrued over $218 million in transactions for AMS. AMS and Ameren Missouri are both sister companies under the Ameren Corporation umbrella. AMS performs certain corporate support functions for Ameren Missouri, and therefore Ameren Missouri may provide AMS with "preferential treatment" per the Commission's affiliate transaction Rule.[18] However, this "preferential treatment" is distinct from the Rule's market price and FDC provision. In the latter regard, Ameren Missouri fails to demonstrate that AMS services are billed to Ameren Missouri at fair market price or FDC.

Ameren Missouri's witness John Reed claim that "AMS' services are provided at cost, without mark-up or profit"[19] This is being contravened by AMS reporting taxable income.[20] If AMS is making a profit off of its services to Ameren Missouri such that it is reports taxable

[15] 20 CSR 4240-20.015(2)(A).
[16] *Id.*
[17] *Off. of Pub. Counsel v. Pub. Serv. Comm'n*, 409 S.W.3d 371, 377 (Mo. 2013).
[18] 20 CSR 4240-20.015(2)(B).
[19] *Direct Testimony of John Reed*, ER-2019-0335 p. 9 (July 3, 2019).
[20] *Surrebuttal Testimony of Robert Schallenberg*, ER-2019-0335 p.5 (Feb. 14, 2019).

income, then customers may be subsidizing a profit for both Ameren Missouri and AMS with the ultimate result of inflated earnings for Ameren Corporation. At a minimum, if Ameren Missouri is paying a profit to AMS, then the transactions are not priced at FDC. Ameren Missouri can dispel any doubts by showing a study of fair market price and FDC. Ameren Missouri provides no such study.

Ameren Missouri does provide a benchmarking analysis of AMS' costs in John Reed's direct testimony.[21] However, benchmarking is only a replacement for a fair market price or FDC analysis "if approved by the Commission."[22] This Commission has not approved such benchmarking, and thus Ameren Missouri cannot rely on benchmarking to demonstrate either rule compliance or the prudence of these expenditures for its past and ongoing affiliate transactions. Ameren Missouri has secured a stipulation and agreement with Staff for a rule variance that would enable benchmarking to replace FDC and market price analyses, but that stipulation and agreement has yet to be approved.[23] Ameren Missouri's reliance on a variance request which has not yet been approved necessarily reveals that Ameren Missouri has and is violating the Commission's affiliate transaction Rule.

Ameren Missouri witness Tom Byrne demonstrates the logical quandary the Company has placed itself in his description that any rule violations stemming from transactions between AMS and Ameren Missouri are "technical violations."[24] The Company cannot consistently claim that its affiliate transactions are compliant, while simultaneously relying on an unapproved variance request to absolve the AMS transactions that are supposedly "technical" violations.

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[21] *Direct Testimony of John Reed*, p.11-14.
[22] 20 CSR 4240-20.015(3)(D).
[23] *Rebuttal Testimony of Tom Byrne*, ER-2019-0335 TMB-R1 p. 34 (Jan. 21, 2020).
[24] *Id.* at 12.

Bear in mind that the OPC is not arguing that service companies themselves are not allowable per affiliate transaction protections. Ameren Corporation's corporate structure is its own prerogative, and Byrne's complaint about the costs for Ameren Missouri to form its own separate department to replace AMS is a distraction.[25] Ameren Missouri need only demonstrate that its payment for AMS services are at the lower of fair market price or FDC. AMS' taxable income and Ameren Missouri's reliance on a variance request from all of the pricing standards included in the affiliate transaction Rule indicates that neither is the case.

WHEREFORE, the OPC prays that the Commission will accept this Position Statement.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 24th Day of February, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

[25] *Id.* at 5.