

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

In the Matter of Union Electric Company d/b/a )	
Ameren Missouri's LED Street Lighting Update )	<b>File No. ET-2016-0152</b>
and Tariff Filing )	Tariff No. YE-2016-0159

**PUBLIC COUNSEL'S APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel ("Public Counsel"), by and through undersigned counsel and pursuant to Mo. Rev. Stat. §386.500 (2015), and 4 CSR 240-2.160, and respectfully applies for rehearing of the Commission's *Order Regarding Tariff* in the above-captioned proceeding which was issued January 6, 2016. For its Application for Rehearing, Public Counsel states as follows:

1. Missouri law permits the Commission only to set "just and reasonable rates."<sup>1</sup> The general rule is that a just and reasonable rate is determined through the consideration of "all relevant factors."<sup>2</sup> Further, a failure to consider *all* relevant factors when setting rates is referred to as "single-issue ratemaking," and generally is prohibited.<sup>3</sup> Without evaluating all relevant factors in a general rate case, the Commission exceeds its authority.

2. When the Commission has authority to act, all Commission decisions must be reasonable.<sup>4</sup> A Commission order is reasonable when it is supported by substantial, competent evidence on the whole record.<sup>5</sup> When entered, the Commission's order in this case was not supported by any substantial, competent evidence in the record.

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<sup>1</sup> See Mo. Rev. Stat. §§ 393.130 (Cum. Supp. 2013), 393.140 (2000).  
<sup>2</sup> State ex rel. *Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 51-58 (Mo. 1979) ("UCCM"); Mo. Rev. Stat. § 393.270.4 (2000).  
<sup>3</sup> State ex rel. *Pub. Counsel v. Pub. Serv. Comm'n*, 397 S.W.3d 441, 448 (Mo. App. W.D. 2013).  
<sup>4</sup> State ex rel. *Mo. Gas Pipeline LLC v. Mo. Pub. Serv. Comm'n*, 366 S.W.3d 493, 495-496 (Mo. 2012).  
<sup>5</sup> *Id.*

3. In its Order, the Commission erroneously approved Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri") proposed tariff sheets and erred by denying Public Counsel's *Motion to Reject Tariff Sheets*.

**A FULL RATE CASE IS REQUIRED BY LAW**

4. A general rate case is the process by which all relevant factors are presented to the Commission in order to evaluate a proposed change in rates.<sup>6</sup> Failure to evaluate *all* relevant factors when changing rates for an existing service makes the Commission's Order unlawful.

5. The Western District in *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n* concluded previously that there may be certain circumstances when a tariff filing does not require a full rate case.<sup>7</sup> The Commission's order here changes the amount the utility charges, distinguishing it from *Mo. Gas Energy*. Changing the amount Ameren Missouri charges without considering all relevant factors is unlawful and unreasonable.

**NO EVIDENTIARY SUPPORT FOR THE ORDER**

6. In order to withstand scrutiny the Commission's order must be founded on evidence and facts. Reviewing courts must generally be able to discern the facts on which the Commission's order was based from the order itself.<sup>8</sup>

7. For an order of the Commission to be found reasonable, it must be supported by substantial and competent evidence.<sup>9</sup> Evidence is deemed "substantial" when it is probative of

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<sup>6</sup> See *State ex rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 331 S.W.3d 677, 690 (Mo. App. W.D. 2011) (stating "[t]he General Assembly understood that the role of full rate case proceedings is to set base rates upon a consideration of all relevant factors.").

<sup>7</sup> See *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 334 (Mo. App. W.D. 2006) (reasoning that because the Cold Weather Rule "does not affect how much the utility may charge for its services," including that change to the companies' tariffs outside of a general rate case is permissible).

<sup>8</sup> *State ex rel. Assoc. Natural Gas Co. v. Pub. Serv. Comm'n*, 37 S.W.3d 287, 295 (Mo.App. 2000); *State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Comm'n*, 976 S.W.2d 485, 496 (Mo.App. 1998).

<sup>9</sup> *Friendship Village v. Public Serv. Comm'n*, 907 S.W.2d at 344. (W.D. 1995).

the issues for which it was offered to prove.<sup>10</sup> Evidence is deemed "competent" when it is relevant and admissible.<sup>11</sup>

8. At the time the Commission issued its final order, Ameren Missouri had not filed any competent evidence with the Commission that would support its proposal. It is impossible for the Commission to conclude that Ameren Missouri's proposed rate for the street lighting services is just and reasonable absent competent supporting documentation or testimony. Subsequent presentation of evidence or documentation to the commission does not cure the error. As such, the Commission's order is unreasonable.

#### **NOT A NEW SERVICE**

9. Webster's Dictionary defines 'new' as follows: "...5: different from one of the same category that has existed previously."<sup>12</sup> 'Service' is defined as: "to perform services for: as a: to repair or provide maintenance for...c: to perform any of the business functions auxiliary to production or distribution."<sup>13</sup>

10. Ameren Missouri filed its tariff as a modification of its existing Street and Outdoor Lighting service. This proposal is not a new service on its face. The Commission's order affirms this and changes rates for previously existing service.

11. Ameren Missouri was previously authorized to charge customers for lighting provided on "standard horizontal," "enclosed luminaire on existing wood" poles.<sup>14</sup>

12. The Commission's order permits Ameren Missouri to replace existing lighting fixtures and bulbs, upon failure, with an LED fixture and bulb beginning April 1, 2016. The rates

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<sup>10</sup> *Gregory v. Detroit Tool & Engineering*, 266 S.W.3d 844, 846 n.3 (Mo.App. 2008); *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 562 S.W.2d 688, 692 (Mo.App. 1978).

<sup>11</sup> *Byous v. Missouri Local Gov't Employees Ret. Sys. Bd. of Trustees*, 157 S.W.3d 740, 744 (Mo.App. 2005).

<sup>12</sup> *Webster's Ninth New Collegiate Dictionary* (9<sup>th</sup> Ed. 1991).

<sup>13</sup> *Id.*

<sup>14</sup> Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 58 (current).

for the existing bulbs remain unchanged. However, once a fixture is replaced with an LED bulb, the company is permitted to change the rate for lighting service on that “standard horizontal,” “enclosed luminaire on existing wood” pole. This is *not* a new service. The company will continue providing street and outdoor area lighting on the existing pole.<sup>15</sup>

13. Additionally, the Commission’s order changes the rates for lighting service provided on “standard side mounted,” “open bottom” fixtures “on existing wood” poles.<sup>16</sup>

14. For lighting provided on “standard side mounted,” “open bottom” fixtures “on existing wood” poles, Ameren Missouri will replace the existing lighting fixtures and bulbs, upon failure, with an LED fixture and bulb beginning April 1, 2016. Here, too, the rates for the existing bulbs will remain unchanged. Under the Commission’s order, however, once a fixture is replaced with an LED bulb, the company is permitted to change the rate for lighting service to that “standard side mounted,” “open bottom” fixture on the “existing wood” pole. Again, this is not new service.<sup>17</sup>

15. The revised tariff sheets change the rates applicable to the company’s 5(M) service classification for company-owned Street and Outdoor Area Lighting service provided on “standard horizontal,” “enclosed luminaire on existing wood” poles and for lighting provided on “standard side mounted,” “open bottom” fixtures “on existing wood” poles.

**NO LAWFUL EXCEPTION TO RATE CASE EVEN IF NEW SERVICE**

16. Whenever a utility files “any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility,” the Commission may initiate formal

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<sup>15</sup> Mo. P.S.C. Schedule No. 6, 2<sup>nd</sup> Revised Sheet No. 58 (proposed).

<sup>16</sup> Mo. P.S.C. Schedule No. 6, 1<sup>st</sup> Revised Sheet No. 58 (current).

<sup>17</sup> Mo. P.S.C. Schedule No. 6, 2<sup>nd</sup> Revised Sheet No. 58 (proposed).

proceedings to evaluate the change.<sup>18</sup> Traditionally, this filing by the utility is in the form of revised tariff sheets. “A tariff is a document which lists a public utility [sic] services and the rates for those services.”<sup>19</sup> A “rate” is “every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof[.]”<sup>20</sup>

17. Utilities make tariff filings because Missouri law requires that “[a]ll charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission.”<sup>21</sup> Any rate charged in excess of that allowed by law or by order or decision of the commission is prohibited.<sup>22</sup> Thus, it is the Commission that determines the rates that a utility may charge.

18. A general rate case is the process by which all relevant factors are presented to the Commission to evaluate a proposed change in rates.<sup>23</sup> There may be certain circumstances when a tariff filing does not require a full rate case; however, this case is not one of them.<sup>24</sup> Here, Ameren Missouri seeks Commission approval to implement revised tariff sheets that *do affect*

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<sup>18</sup> Mo. Rev. Stat. § 393.150(1) (Cum. Supp. 2013).

<sup>19</sup> *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330, 337 (Mo. App. W.D. 2006) (quoting *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568, 570 (Mo. App. E.D. 1997)).

<sup>20</sup> Mo. Rev. Stat. § 386.020(46) (Cum. Supp. 2013).

<sup>21</sup> Mo. Rev. Stat. § 393.130.1 (Cum. Supp. 2013).

<sup>22</sup> *Id.*

<sup>23</sup> *See State ex rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm’n*, 331 S.W.3d 677, 690 (Mo. App. W.D. 2011) (stating “[t]he General Assembly understood that the role of full rate case proceedings is to set base rates upon a consideration of all relevant factors.”).

<sup>24</sup> *See State ex rel. Mo. Gas Energy v. Pub. Serv. Comm’n*, 210 S.W.3d 330, 334 (Mo. App. W.D. 2006) (reasoning that because the Cold Weather Rule “does not affect how much the utility may charge for its services,” including that change to the companies’ tariffs outside of a general rate case is permissible).

how much the utility may charge for its services. As such, before approving the revised tariffs, the Commission must evaluate all relevant factors in a full rate case.

19. In Staff's Response to OPC Motion to Reject Tariff Sheets, Staff Counsel argued that the Commission has entered similar orders before for the proposition that the Commission's actions in this case would be lawful. Specifically, Staff pointed to two cases: Tariff Tracking No. JE-2011-0227 and File No. ER-2014-0258.<sup>25</sup>

20. In entering the order as it has done here, the Commission appears to adopt this argument when it wrote in its discussion portion, "[t]he Commission has approved other tariff sheets in the past outside of a rate case that that set a rate for a new service."<sup>26</sup> Aside from the fact that the cases cited by Staff and the Commission's order may be distinguishable from this case, the mere fact that the commission has approved similar requests in the past, or that other states permit them, is irrelevant if they are not permitted under our statute.<sup>27</sup>

21. Exceptions to the requirement of a full rate case do exist under law. For example, there are statutory provisions for electric fuel adjustment costs, implementation of MEEIA programs, and water ISRS and gas ISRS programs.<sup>28</sup> However, there is no statutory exception to the prohibition against single-issue ratemaking for "new service". Entering an order as the Commission has does not fit into one of these or any other exception category and is therefore unlawful.

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<sup>25</sup> See *Staff Response to OPC Motion to Reject Tariff Sheets* at 3 ¶7.

<sup>26</sup> See *Order Regarding Tariff* at 3.

<sup>27</sup> *State ex rel. Philipp Transit Lines, Inc. v. Public Service Comm'n.*, 552 S.W.2d 696, 702 (Mo. banc 1977); *State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Comm'n.*, 240 Mo.App. 1147, 225 S.W.2d 792, 794 (1949).

<sup>28</sup> Mo. Rev. Stat. § 386.266.1, §393.1075, §393.1000 to §393.1006, and §393.1006 to §393.1015 (2015).

22. Because Ameren Missouri proposed a rate for an existing service without presenting all relevant factors, the Commission's Order Regarding Tariff is unlawful and unreasonable.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing on these matters pursuant to Mo. Rev. Stat. §386.500 (2015).

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 15<sup>th</sup> day of January 2016:

**/s/ Steven M. Kretzer**