Exhibit No.: _____
Issue(s): Possible Normalization Violations/ Discrete Adjustments
Witness/Type of Exhibit: Riley/Rebuttal
Sponsoring Party: Public Counsel
Case No.: GR-2024-0369

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. GR-2024-0369

April 4, 2025

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OF

JOHN S RILEY

CASE NO. GR-2024-0369

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

A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102.

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

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

Q. What is your educational background?

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

Q. What is your professional work experience?

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

Q. Are you a Certified Public Accountant ("CPA") licensed in the State of Missouri?

A. Yes. As a CPA, I am required to continue my professional training by attending 40 hours of Missouri State Board of Accountancy qualified educational seminars and classes per year. I

am also a member of the Institute of Internal Auditors ("IIA") which provides its members with seminars and literature that assist CPAs with their annual educational requirements.

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

A. Yes, I have. A listing of my case filings and certification is attached as JSR-R-1.

Q. What is the purpose of your rebuttal testimony?

A. I will first be responding to Ameren witness Mr. Mitchell Lansford and Staff witness Ms. Lisa Ferguson concerning possible IRS normalization violations. I will then respond to Ameren witnesses Mr. Benjamin Hasse, Ms. Pamela Harrison and Mr. Steven M. Wills testimony. Specifically, I will address the inclusion of some Northeast Territory project costs in this revenue requirement that are projected to be operational beyond the true-up period.

POSSIBLE NORMALIZATION VIOLATION

Q. Could you provide some background information concerning this issue?

A. Yes. Mr. Lansford first brought up his concerns in Ameren's recent electric case No. ER-2024-0319. In that case, Mr. Lansford attached three Private Letter Rulings ("PLRs") that he believed indicated that Ameren was in violation of the IRS normalization rules.

Q. Normalization rules have been addressed in many rate cases in the past few years, but could you provide the Commission with an explanation of the rules?

A. I've included a two-paragraph quote below from one of Mr. Lansford's three PLRs. I think it provides a clear, concise picture of the development of the normalization rules.

> The Normalization Rules were enacted in response to Congressional concerns over the growing number of public utility commissions that were mandating investor-owned regulated utilities to not retain these tax benefits from accelerated depreciation, but, instead, to immediately flow-through all of these tax incentives to ratepayers in the form of lower income tax expense

> in regulated cost of service rates. Congress' response was to enact legislation that would preclude regulated investor-owned utilities from utilizing accelerated depreciation methods of tax purposes if the related tax benefits were immediately flowed-through to ratepayers in rates or were flowed-through to ratepayers faster than permitted under the Normalization Rules.
>
> The underlying concept and purpose of the Normalization Rules is to prevent the flow-through of these accelerated depreciation-related tax benefits to ratepayers in regulated rates any faster than permitted by the Normalization Rules. Thus, the flowthrough of these tax benefits to ratepayers faster than permitted by the Normalization Rules would result in a normalization violation that would preclude the taxpayer from using any of the accelerated tax depreciation methods on public utility property and, instead, require the taxpayer to use the same depreciation method and period as those used to compute depreciation expense in its cost of service for ratemaking purposes. Conversely, a taxpayer that flows through these tax benefits to ratepayers slower than permitted by the Normalization Rules, or that never flows through any of the tax benefits from accelerated depreciation to ratepayers, would not be in violation of those rules.[1]

In short, Congress created incentives to induce utilities into investing and did not want utility commissions undermining the interest-free loans by requiring immediate refunds. I should point out here that the focus of the normalization rules are the benefits of accelerated depreciation. Repair expense and other cost allocation methods are not subject to these rules.

Q. What did these PLRs point to as the violation?

A. The PLRs explained that the subsidiary's Net Operating Losses ("NOL") were being applied to the parent company's consolidated tax returns and the subsidiaries were being compensated for the use of its NOL. In those rate cases, the commissions, commission staff, and other parties sought to apply the payments, which were collected for the NOL use, to the cost of service. The IRS determined that the flow-through of the payments violated the normalization rules and that the NOL should be applied to the subsidiary's rate base. I have attached the pertinent portions of my direct and surrebuttal testimony from the electric case. (Schedule JSR-R-02)

[1] Lansford supplemental testimony, schedule MJL-SD1, PLR-105951-22, page 12

Q. What is your contention with the IRS determinations?

A. As I pointed out in my electric case testimony,[2] the questions asked of the IRS were too narrow to get a full picture of the use of the NOLs. The question posed was basically, can the payments be applied to ratemaking? Of course, the answer is, no. Applying the payments is clearly a flow through of the tax benefits. My trouble with the rulings is that the dual use of the NOL is not addressed. The parent company has applied the NOL to its tax return so how can the IRS contend that the NOL must remain on the regulated books of the subsidiary? That question was not posed in the PLRs.

Q. Could you expand on the dual use problem?

A. As the IRS explains in the two paragraphs I quoted earlier:

> The underlying concept and purpose of the Normalization Rules is to prevent the flow-through of these accelerated depreciation-related tax benefits to ratepayers in regulated rates any faster than permitted by the Normalization Rules.

Let's understand that the parent company is the "owner" of the subsidiary. The ultimate owner of the NOL is using the tax benefit. It would be the same as the subsidiary having taxable income and it uses the NOL. The benefit isn't flowing any faster through regulated rates than is allowed. Because of these rulings, I see the IRS imposing some sort of restriction in the parent/subsidiary tax relationship which I don't believe exists. The commissions cannot apply the NOL payments to rates but also, the parent company clearly used the NOLs as it should be able to. The subsidiary should also be able to keep the payments per Normalization Rules, but the NOL is gone and should not be artificially injected into the rate base of the regulated subsidiary. The use of the NOL by the parent company doesn't violate the Normalization Rules so the IRS needs to reconcile this inconsistency in a PLR.

[2] *Surrebuttal Testimony of John S. Riley*, p. 6 lns 9-12, Case No. ER-2024-0319, Item No. 229.

Q. Staff contends that the cost of filing a PLR request is too expensive for customers to pay in rates. How do you see this expense?

A. I agree with Staff that the cost of a PLR request would be too much for Ameren Missouri's gas customers, however, the Company's projection of a $10 million addition to rate base would create an additional $900,000 in revenue requirement. Requesting a PLR is quite a bit less. But the cost does not need to be borne by the gas customers alone. The expense of this PLR request should be allocated through all of Ameren. This decision will have a bearing on all parts of Ameren Corporation so the cost should be spread out to all the subsidiaries.

FORWARD LOOKING DISCRETE ADJUSTMENT RATE BASE

Q. Discrete adjustments deal with companies attempting to include in the revenue requirement, items that are generated beyond even the true-up period. What asset(s) would the Company include that won't be operational until after December 31, 2024?

A. Ameren Gas is requesting rate base inclusion of a portion of a pipeline project, approximately $50 million, that will not be completed until July 2025. This is considered Phase 2 of a three-phase project known as the Northeast Territory Gas System Reliability Upgrade.

Q. Should the Commission allow this phase 2 portion in rate base for this rate case?

A. No, it should not.

Q. Why do you believe it would be inappropriate for the Commission to permit this discrete adjustment to go forward in this case?

A. I have several reasons why this project should not be included in this rate case, and I'll go through each, one by one.

1. ***This project is too substantial and too far out of the audit period to be considered in this case.*** Company has argued that the second phase should be completed by July 2025 and

would therefore be operational prior to the new rates proposed by this rate case. However, it is not uncommon for midstream pipeline companies like Energy Transfer or Enbridge, to have substantial delays and cost overruns on a pipeline project. Staff doesn't have an opportunity to adequately review this significant rate base addition. A $50 million pipeline project isn't a swimming pool in the backyard where the final portion of the construction bill is reviewed a day before you write a check. The Company should have held off its rate case filing until this addition could be included in a test year and adequately audited.

2. ***The Company has provided inconsistent arguments for including Phase 2 in this rate case.*** Ms. Harrison states that the current system is adequate through the 2024-2025 winter. She goes on to state that Phase 1 will ensure adequate service during peak loads through the winter of 2024-2025.[3] So, this massive amount of upgrade doesn't extend the reliability at all. She continues, saying, "The planned phase 2 and phase 3 projects provide additional capacity to continue to support the area's growth and ensure adequate service during peak winter loads."[4] I believe this statement is a clear admission that phase 2 is not needed at this time and should not be included in the current rate case.

3. ***Phase 2 would provide no additional functionality beyond what is already in place.*** Let's do a quick history review and look back at the company's original identification of the capacity problem and also how Storm Uri didn't seem to crash the system.

I've attached Staff data request 0251 as Schedule JSR-R-03. The data request provides a timeline of the Company's recognition and solutions to subdivision outages in the Wentzville area during the extreme cold in January of 2018. It should be noted that the answer to this data request did not identify the cause of the outages. With no additional problems listed in regard to additional extreme weather in February, conventional wisdom would tell you that these issues may not have been caused, entirely, by insufficient pipeline capacity. The

[3] Direct testimony of Pamela Harrison, Adequacy of the current system and Phase 1 reference on page 13, lines 6-9
[4] Page 13, lines 9-11

Company made several enhancements to the system, none of which included a new, additional pipeline.

Prior to the famed Storm Uri of February of 2021, Ameren contracted for additional gas supply from MO Gas Pipeline "which eliminated the need to utilize LNG[5] for pressure support on peak days."[6] The timeline does not mention any additional problems that occurred during the debilitating Storm Uri. More gas supplies, not a new pipeline or additional capacity, seemed to solve the problem. Phase 1 came online in Sept 2024, three and a half years later, with no mention of major problems between 2018 and now.

So, my point is that an increase in gas supply, combined with the extra capacity of phase 1, has eliminated a current need for phase 2 to be included in rate base.

4. ***Ameren Gas is attempting to push the Commission into prematurely including an unnecessary section of pipeline because it is nearly completed.*** Company witnesses have relied on the prudency of this project while ignoring its timing issues and that this project wasn't preapproved. I won't say this section of pipeline won't be needed in the future, but it isn't needed for current customers. This request isn't being sold to the Commission as a replacement project, yet there are no additional revenues tied to it. It is plain and simple. Phase 2 is required to meet *future* expansion in the Wentzville area. The Company has basically said: Commission, you have to put this in rates because we built it. Ameren should have waited to file its rate case or should return when phases 2 and 3 are complete and used and useful.

Q. Could you summarize your rejection of the inclusion of Phase 2 in this rate case?

A. Labelling this project as the Gas System Reliability Upgrade is misleading. This is nothing more than preemptive construction to handle future growth in the Wentzville area. The

[5] Liquified Natural Gas
[6] JSR-R-03, data request 0251, second page subpoint h.

Company's answer to Staff data request 0251 clearly explains that the current system can handle the current customer base. I'm not here to argue whether phase 1 is needed, however, it is clear that phase 2 is not used and useful at this time. Moreover, this project will not be completed by the hearing date, much less be determined to be used and useful. I applaud the Company on getting in front of the prospective growth, however, phase 2 and 3 should be considered in a future rate case.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Adjust Its Revenues for Natural Gas Service	)))	Case No. GR-2024-0369

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 2nd day of April 2025.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.