

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

In the Matter of Union Electric Company, d/b/a	)	<b>File No. ER-2012-0166</b>
Ameren Missouri's Tariff to Increase Its Annual	)	Tariff No. YE-2012-0370
Revenues for Electric Service.	)	

**AARP'S INITIAL BRIEF**

COMES NOW AARP, on behalf of residential electric consumers 50 years of age and over, and hereby offers arguments on certain critical issues that remain contested in this general rate increase case.

**1. Regulatory Policy and Economic Considerations**

The 14.6% revenue requirement increase requested by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") comes on the heels of electric rates increases of over 30% that have already approved by the Missouri Public Service Commission ("Commission") for its residential customers in rate cases for Company over the previous four years (excluding the Fuel Adjustment Clause rate increases that have pushed overall electric bills even higher). By comparison, over that same time period, Ameren Missouri customers have experienced an average increase in income of significantly less than one-half of that amount (11.09%).<sup>1</sup>

The Commission should set electric rates in this case in a manner that fairly balances the interests of Ameren Missouri's shareholders and the interests of its captive consumers, keeping in mind that the Commission's *principal interest* is to serve and

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<sup>1</sup> Exhibit 201, pp. 2-3.

protect ratepayers. State ex rel. Crown Coach v. Public Service Commission, 179 S.W.2d 123, 126 (Mo. App. 1944). The Commission is charged with approving rate schedules that are as “just and reasonable” to consumers as it is to the utility. Valley Sewage Co. v. Public Service Commission, 515 S.W.2d 845, 851 (Mo. App. 1974).

Electricity is an essential service. In determining what electric rates are reasonable, the Commission should carefully weigh the testimony of customers who will be forced to pay any approved electric rate increase, by reviewing the transcripts of the twelve local public hearings held in this matter.<sup>2</sup> Some of these hearings were attended by hundreds of citizens, and altogether 235 individuals provided sworn testimony regarding the potential impact of the proposed rate increase. The testimony taken at these public hearings confirm the fact that attempts to recover from the recent economic recession have been immensely easier for Ameren Missouri, than it has been for many of its customers. While many public witnesses testified as to their recently stagnant wages, meager benefit checks and low investment returns, Ameren Missouri has been experiencing actual earned returns on equity above 8% since the completion of its previous general rate case in early 2011, and had an actual earned return on equity above 10% in the most recently reported fiscal quarter.<sup>3</sup>

Escalating electric company revenues and double-digit earnings are seriously out of sync with the overall macroeconomic picture, as most economists are currently projecting domestic economic growth to be lower in the long-term as compared to the growth rates achieved during the post-World War II era before the recent recession.<sup>4</sup>

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<sup>2</sup> Transcript Volumes 4 through 15.

<sup>3</sup> Ex. 508, Gorman Direct, Schedule MPG-21; and Ameren Missouri’s own Ex. 68.

<sup>4</sup> Exhibit 201, p. 17.

Economists are now generally expecting the long-term nominal Gross Domestic Product ("GDP") growth rate to be in the range of 4% to 5%.<sup>5</sup>

In 2009, the Ameren Missouri service area experienced a *decrease* of 4.82% in personal income, which was more than the decrease experienced by the state (3.72%) and the nation (4.3%).<sup>6</sup> In 2011, Missouri reported per capita personal income at \$38,248, which fell below the national per capita personal income level of \$41,663.<sup>7</sup> After receiving no increases in Social Security and SSI benefits for many years, older individuals and individuals with disabilities received an only 3.6% cost of living increase in 2012.<sup>8</sup>

The statistics for Ameren Missouri's poorest customers are even more sobering: the current unemployment rate is currently near 9% in the St. Louis metropolitan area, 34% of St. Louis City residents live below the poverty rate, and the energy burden for the region's poorest families exceeds 26% of income.<sup>9</sup> Low-Income Home energy Assistance Program (LIHEAP) funds for Missouri were cut from \$104 million in 2011 to \$95 million in 2012.<sup>10</sup> Access to affordable electricity service for air conditioning in the summer and heat during the winter is vital to health and safety, especially for older consumers. The transcripts of the local public hearing testimony taken in this case contain several accounts of the safety risks faced by many lower income seniors who were fearful of incurring high electric bills for air conditioner usage during this past summer's heat wave.<sup>11</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id., p. 11.

<sup>7</sup> Id.

<sup>8</sup> Exhibit 3 to Transcript Vol. 5.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> See Transcript Volume 4, pp. 27, 32-35, 58-60; Volume 5, pp. 33-36, 52-53, 87-88.

Several public witnesses have urged the Commission to insist that Ameren Missouri “share the pain” of the region’s broader economic woes.<sup>12</sup> This can be accomplished by judging the “reasonableness” of the Commission’s determinations in this case in the context of the economic environment experienced by consumers who are being asked to pay higher electric rates, rather than viewing “reasonableness” from solely inside the bubble of “comparable” utility returns. In order to avoid the dangers of a feedback loop that leads to cyclical decision-making, the Commission should give appropriate weight to the evidence of economic conditions in the service territory and to consumer testimony, sworn under oath, regarding the potential economic harm that would result from further electric rate increases at this time. The Commission can promote the ratemaking goal of affordability by adopting the lower end of a zone of reasonableness for the Company’s allowed profit (return on equity, or “ROE”) in this case. Testimony regarding consumer impacts should also guide the Commission when it determines the proper rate design for residential consumers in this case, by mitigating the impact of any rate increases on the Company’s lowest energy users.

## **7. Rate Case Expense**

AARP supports the position of the Office of the Public Counsel (“OPC”) regarding the proper amount of the Company’s rate case expense that should be recognized in the revenue requirement paid by its consumers. Ameren Missouri employs several in-house attorneys and rate case experts capable of developing and supporting rate increase proposals, and therefore, it is not prudent for the cost of hiring higher-priced outside legal counsel and consultants to be borne by consumers.<sup>13</sup>

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<sup>12</sup> See Transcript Volume 6, pp. 49-50, pp. 57-58.

<sup>13</sup> Ex. 406, Robertson Direct, p. 10.

## 17. Return on Common Equity ("ROE")

The current economic environment is clearly favorable to utilities in terms of a lower cost of capital for debt and equity instruments.<sup>14</sup> These lower capital costs should be shared with ratepayers through a lower authorized return on common equity ("ROEs"). The capital market costs today are much lower than they were in 2011 when Ameren Missouri's rates were last approved.<sup>15</sup> The record suggests that the capital market environment currently supports the ability of utility commissions to authorize ROEs below 10%, and actually anticipates that authorized ROEs will be lowered further, given the current capital and economic environment.<sup>16</sup>

Staff witness David Murray estimates Ameren Missouri's actual cost of equity to be in the range of 7.82% to 8.61%, and based upon his Discounted Cash Flow ("DCF") analysis in this case, proposes a zone of reasonableness for an authorized ROE in the range of 8.00% to 9.00%.<sup>17</sup> Although Mr. Murray suggests that the Commission adopt an ROE at the higher end of his range, AARP recommends that the Commission set the allowed ROE at low end of the range recommended by Staff (8.00%). An authorized ROE of 8.00% is within the zone of reasonableness, as derived from an expert analysis of market-driven data using traditional analytical tools.<sup>18</sup> Mr. Murray acknowledged that an authorized ROE of 8.00% would allow Ameren Missouri to attract capital at reasonable terms, thereby enabling it to provide safe and reliable electric service, that it is sufficient to ensure Ameren Missouri's financial integrity, and that it is commensurate

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<sup>14</sup> Ex. 201, p. 20.

<sup>15</sup> Ex. 508, Gorman Direct, p. 4.

<sup>16</sup> Ex. 201, p. 20.

<sup>17</sup> Ex. 216, p. 30.

<sup>18</sup> Tr. 1970.

with the cost of equity for enterprises having corresponding risks.<sup>19</sup> Such a result is thus consistent with United States Supreme Court case law regarding the constitutional requirements for authorized returns.<sup>20</sup> Adopting an authorized ROE of 8.00% in this case would save consumers \$147.3 million annually, compared with the Company's proposed ROE.<sup>21</sup>

## **19. Fuel Adjustment Clause ("FAC")**

AARP continues to oppose the continuation of Fuel Adjustment Clause ("FAC") for Ameren Missouri, as it has consistently done since the Commission first established one in 2007. For over 25 years prior to that time, the Company bore 100% of the risk of fuel and purchased power cost fluctuation, and consumers benefited from the incentive that the lack of a FAC provided to encourage prudent procurement practices. It is time to stop the use of this anti-consumer piecemeal mechanism, and require the Company to once again bear all of the risks and rewards of managing this aspect of its business.

The law gives the Commission the option to "reject" a request to continue a FAC, if the utility fails to make a sufficient case for its continuation in a general rate case.<sup>22</sup> The FAC should be rejected because it is unfair, in that it allows a rate increase to be imposed upon ratepayers, even in the potential situation where a utility is over-earning overall. Furthermore, Company's FAC currently exposes consumers to a risk of rate volatility in-between general rate cases<sup>23</sup>, which makes this surcharge unpopular due to

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<sup>19</sup> Tr. 1970-1971.

<sup>20</sup> Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923).

<sup>21</sup> Tr. 1974.

<sup>22</sup> Section 386.266.4 RSMo.

<sup>23</sup> "Quite volatile" according to Company witness Barnes (Ex. 11, p. 8).

the manner in which it frustrates the ability of consumers to adequately budget their own expenses.

However, if the Commission continues to grant Ameren Missouri the privilege of charging a Fuel Adjustment Clause, the current sharing percentages should be modified to reflect no more than a 50%/50% sharing of fuel cost volatility risk. Staff witness Lena Mantle makes a compelling case for the fact that the current 95%/5% sharing mechanism is not providing enough incentive (“skin in the game”) to ensure that the utility is engaging in the most cost efficient fuel and purchased power practices, proposing a modest change to an incentive sharing plan of 85%/15%.<sup>24</sup> AARP believes that it is unreasonable and unfair to require consumers (who have no control over the management of Ameren Missouri’s fuel and purchased power costs) to bear any more than 50% of the risk of volatility in such costs going forward. The current FAC transfers a whopping 95% share of this risk onto consumers, even though Company witness Lynn Barnes acknowledged that while the utility has control over fuel costs through its ability to negotiate fuel contracts, and that consumers have *no control* over these costs.<sup>25</sup> How is it reasonable for the party that has no control over a particular expense to bear 95% of the risk?

The Commission should also consider the local public hearing testimony regarding the negative impact that the fuel adjustment clause (“FAC”) has had upon consumers with regard to increasing and more volatile electric rates over the past few years. The Commission should thus reject Ameren Missouri’s request for a continuation of its current FAC, or in the alternative, mitigate the impact of the FAC by requiring

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<sup>24</sup> Ex. 224, pp. 11-24.

<sup>25</sup> Tr. 1146-1147.

Ameren Missouri to share with consumers a larger portion of the risk of volatility in the fuel and purchased power expenses that it is in a position to manage.

## **25. Class Cost of Service, Revenue Allocation and Rate Design**

AARP supports the class cost of service study and rate design recommendations of OPC witness Barb Meisenheimer, who proposes that any rate design change balance the cost of service with rate impact and affordability considerations.<sup>26</sup> No revenue shifts onto the residential class are justified based upon her expert analysis in this case. In fact, her 4CP study shows that residential customers may actually be paying a higher amount than the cost of service to serve that class.<sup>27</sup>

AARP also strongly recommends that the Company's current monthly customer charge of \$8.00 should be retained. Ameren Missouri is advocating for a \$12.00 customer charge that would be imposed upon residential consumers before any energy is used; however, the OPC's own cost-based analysis shows that the customer charge should fall in the \$6 and \$7 range.<sup>28</sup> Ameren Missouri's proposed \$12.00 customer charge would shift \$48 of cost per year onto the lowest usage customers.<sup>29</sup>

An increase in this flat fee charge would also weaken the conservation incentive provided by the volumetric usage components of rates, as argued by the National Resources Defense Council ("NRDC").<sup>30</sup> Company witness Davis explains that increasing the fixed charge entails decreasing the volumetric rate in order to recover the

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<sup>26</sup> Ex. 403, 404, and 405.

<sup>27</sup> Ex. 404, p. 4.

<sup>28</sup> Ex. 403, p. 17.

<sup>29</sup> Ex. 40, p. 3.

<sup>30</sup> Ex. 650.



same revenue requirement; this undercuts the customer incentive to make efficiency improvements because efficiency improvements reduce the variable charge on the utility bill and have no effect on fixed charges.<sup>31</sup> Therefore, retaining the current customer charge would both promote energy efficiency, while protecting Company's smallest users and promote affordability.

Respectfully submitted,

A handwritten signature in blue ink, reading "John B. Coffman", written over a horizontal line.

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Attorney for AARP

Dated: November 5, 2012

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<sup>31</sup> Exhibit 39, p. 13.

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to official service list, on this 5<sup>th</sup> day of November, 2012.



A handwritten signature in blue ink, reading "J. B. Coffman", is written over a horizontal line.