

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
March, 2007.

In the Matter of Union Electric Company d/b/a)	
AmerenUE's Tariffs Increasing Rates for Electric)	<u>Case No. ER-2007-0002</u>
Service Provided to Customers in the Company's)	Tariff No. YE-2007-0007
Missouri Service Area)	

**ORDER REGARDING MOTION TO STRIKE TESTIMONY AND MOTION
TO FILE SUPPLEMENTAL SURREBUTTAL TESTIMONY**

Issue Date: March 8, 2007

Effective Date: March 8, 2007

On March 2, 2007, the State of Missouri filed a motion requesting leave to file the supplemental surrebuttal testimony of Michael Brosch to respond to income tax issues that were raised for the first time in the surrebuttal testimony of Charles Mannix for AmerenUE and Stephen Rackers for the Staff of the Commission. On March 5, the Commission ordered that any party wishing to respond to the State of Missouri's motion do so no later than March 6.

On March 6, AmerenUE filed a response opposing the State of Missouri's motion to file supplemental surrebuttal testimony. In the same pleading, AmerenUE asked the Commission to strike the portion of Stephen Rackers' surrebuttal testimony in which he purports to correct Staff's calculation of income tax expense to utilize a "normalized" net salvage method of calculating income taxes rather than the "flow-through" method that Staff had used previously. On March 6, the Commission ordered that any party wishing to respond to AmerenUE's motion do so no later than Noon on March 7. The State of

Missouri and the Commission's Staff filed responses opposing AmerenUE's motion. AmerenUE filed a reply to those responses later on March 7.

The issue about which the State of Missouri seeks to file supplemental surrebuttal testimony was identified as an issue only when surrebuttal testimony was filed on February 27. In his surrebuttal testimony for AmerenUE, Charles Mannix identified an error in the amount of the accrued cost of removal, resulting in an understatement of AmerenUE's income tax expense calculation. According to the State of Missouri, at the same time, AmerenUE changed from a "normalization" method for calculating income tax treatment of net salvage to a "flow-through" method. AmerenUE denies that it changed its method of calculation. In any event, the result of AmerenUE's correction was a \$24.1 million increase in the company's revenue requirement. Similarly, in his surrebuttal testimony for Staff, Stephen Racker purported to correct an error in Staff's treatment of income tax expense by switching from the "flow-through" method for calculating income tax treatment of net salvage to a "normalization" method. The result of Staff's correction was a \$35 million decrease in the company's revenue requirement. Neither Mannix, nor Rackers, included any substantial explanation for the revisions in their testimony.

As a result of the purported corrections of errors made in the surrebuttal testimony submitted by Mannix and Rackers, the Commission is faced with an issue over which the parties differ by nearly \$60 million, but without any substantial testimony to explain the dispute. AmerenUE is correct in pointing out that the Commission's rules require that surrebuttal testimony may only respond to matters raised in another party's rebuttal testimony.¹ However, Commission Rule 4 CSR 240-2.015 allows the Commission to

¹ 4 CSR 240-2.130(7)(D).

waive any of its rule for good cause shown. By attempting to substantively change their previous positions by offering corrections in their surrebuttal testimony, AmerenUE and Staff have inserted a new issue into this case. The Commission is not willing to try to resolve that \$60 million issue on the record currently before it. Neither is the Commission willing to resolve such a substantial issue by ruling on a technical procedural motion. The only alternative is to invite further information from the parties to allow the Commission an opportunity to make a reasoned decision on this issue.

The supplemental surrebuttal testimony offered by the State of Missouri is a good start on providing further information to the Commission and the Commission will grant the State of Missouri leave to file that testimony. Of course, all parties need to be given an opportunity to be heard on this issue. To that end, the Commission will allow any party that wishes to offer further testimony on this issue to offer live direct and rebuttal testimony when this issue is addressed at the hearing.

IT IS ORDERED THAT:

1. The State of Missouri's Motion to File the Supplemental Surrebuttal Testimony of Michael Brosch is granted.
2. Union Electric Company d/b/a AmerenUE's motion to Strike Portions of Prefiled Testimony of Stephen M. Rackers is denied.

3. This order shall become effective on March 8, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge