

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

In the Matter of Tariff Sheets Filed by Union	)	
Electric Company d/b/a AmerenUE Designed	)	<u>Case No. ET-2010-0123</u>
to Implement Revisions to AmerenUE's	)	Tariff Tracking No. JE-2010-0229
Business Energy Efficiency Programs.	)	

**STAFF'S RESPONSE TO MOTION FOR CLARIFICATION**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and, in response to Union Electric Company d/b/a AmerenUE's (AmerenUE) *Motion For Clarification*, states:

1. Commission Rules 4 CSR 240-2.080(15) allows parties not more than ten days to respond to a pleading, unless the Commission changes the response time. The Commission has given no notice changing the time of ten days for responding to AmerenUE's *Motion For Clarification*. AmerenUE filed its *Motion For Clarification* on October 22, 2009. Ten days from October 22, 2009 is Sunday, November 1, 2009. By operation of Commission Rule 4 CSR 240.20050(1), Monday, November 2, 2009 is the tenth day for responding to AmerenUE's *Motion For Clarification*. This is the Staff's response to AmerenUE's motion, timely filed.

2. On October 22, 2009 Union Electric Company d/b/a AmerenUE ("AmerenUE") filed its *Motion For Clarification* in which it stated, "The second sentence in footnote 2 of the Order is factually incorrect and the Company asks that the Commission correct the Order by removing the second sentence of that footnote."

3. As AmerenUE states in its motion "Footnote 2 of the Order states, 'AmerenUE withdrew Sheet number 225 at Staff's suggestion on October 8, 2009. However, AmerenUE has

not changed its position that its BEEP<sup>1</sup> programs are commission-approved demand-side programs proposed pursuant to the Missouri Energy Efficiency Investment Act.” (Footnote added.)

4. While the Staff does not quibble with AmerenUE’s assertion that the second sentence of footnote 2 of the Commission’s Order is factually incorrect, AmerenUE does not explain in its motion what it is asserting is factually incorrect about that sentence.

5. AmerenUE has not asserted in its motion the following clauses appearing in the Commission’s Order are factually erroneous: “Staff is recommending approval of these tariff sheets; however, because AmerenUE has asserted its existing demand-side programs including its BEEP programs are offered pursuant to the Missouri Energy Efficiency Investment Act (“Act”), (Section 393.1124.4 RSMo; 2009 SB 376), . . .”

6. The Staff reminds the Commission that AmerenUE’s September 25, 2009 filing letter for tariff sheets designed to implement revisions to AmerenUE’s BEEP contains the following sentence, among others: “On Sheet No. 225, wording was added to the Availability section to add provisions required by the Missouri Energy Efficiency Investment Act.” As previously noted, AmerenUE withdrew 3<sup>rd</sup> Revised Sheet No. 225. AmerenUE’s October 8, 2009 cover letter in withdrawing 3<sup>rd</sup> Revised Sheet No. 225 makes no reference to the Missouri Energy Efficiency Investment Act (Section 393.1124.4 RSMo, 2009 SB 376). It merely says that withdrawal of 3<sup>rd</sup> Revised Sheet No. 225 leaves 2<sup>nd</sup> Revised Sheet No. 225 in effect, and the withdrawal of 3<sup>rd</sup> Revised Sheet No. 225 has no effect on AmerenUE’s request for Commission approval of the other tariff sheets AmerenUE filed on September 25, 2009.

---

<sup>1</sup> In its 2<sup>nd</sup> Revised Sheet No. 225 and its withdrawn 3<sup>rd</sup> Revised Sheet No. 225 the umbrella of general provisions, with specific programs enumerated thereunder, is referenced as “Business Energy Efficiency program.” To minimize confusion, the Staff has consistently used the terminology “Business Energy Efficiency Portfolio” (abbreviated as “BEEP”) when referring to the umbrella provisions and entire suite of programs, and described each of the enumerated programs in the suite of programs as a “program.”

7. The Staff would like to know in what regard AmerenUE is asserting the second sentence of footnote 2 of the Commission's Order is factually incorrect, and believes the Commission may also wish to know, before issuing an Order clarifying its October 21, 2009 *Order Approving Tariff Filings with Clarification*, in what regard AmerenUE is asserting the second sentence of footnote 2 of the Commission's October 21, 2009 Order is factually incorrect.

8. On November 2, 2009 the Commission issued its *Notice of Correction and Notice Closing Case*. There, the Commission, referring to the second sentence of footnote 2 of its October 21, 2009 *Order Approving Tariff Filings with Clarification* states, among other things, "The Commission finds the sentence to be in error and the order is accordingly corrected by striking the sentence *nunc pro tunc*."

9. The Staff respectfully suggests that *nunc pro tunc* orders are only be used to conform an order to what was decided, not to alter the earlier decision. See, e.g., *Wilson v. Lilleston*, 290 S.W.3d 795 (Mo. App. 2009). It appears here, as the trial court did in *Wilson*, the Commission is attempting to change its *Order Approving Tariff Filings with Clarification* as AmerenUE requested, not to conform it to what the Commission actually found.

WHEREFORE, the Staff respectfully recommends to the Commission that the Commission reconsider its *Notice of Correction and Notice Closing Case* and issue an Order directing Union Electric Company d/b/a AmerenUE to explain how and why the second sentence of footnote 2 of the Commission's October 21, 2009 *Order Approving Tariff Filings with Clarification* is factually incorrect and, if AmerenUE is asserting its BEEP programs are under the Missouri Energy Efficiency Investment Act, to explain its basis or bases for that assertion.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams  
Deputy General Counsel  
Missouri Bar No. 35512

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8702 (Telephone)  
(573) 751-9285 (Fax)  
nathan.williams@psc.mo.gov (e-mail)

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2<sup>nd</sup> day of November 2009.

/s/ Nathan Williams