

FILED³

MAY 21 2012

**Missouri Public
Service Commission**

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

Exhibit No.:

Issue:

Witness:

Type of Exhibit:

Sponsoring Party:

Case No.:

Date Testimony Prepared: March 14, 2012

Maurice Brubaker

Rebuttal Testimony

Missouri Industrial Energy Consumers

EU-2012-0027

FILED³

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**Missouri Public
Service Commission**

In the Matter of the Application of Union
Electric Company d/b/a Ameren Missouri
for the Issuance Of an Accounting Authority
Order Relating to its Electrical Operations.

File No. EU-2012-0027

Rebuttal Testimony of

Maurice Brubaker

On behalf of

Missouri Industrial Energy Consumers

March 14, 2012



BRUBAKER & ASSOCIATES, INC.
CHESTERFIELD, MO 63017

Project 9505

OTIEC Exhibit No. 1

Date 5-03-12 Reporter KF

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STATE OF MISSOURI)

) SS

COUNTY OF ST. LOUIS)

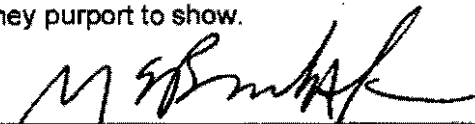
Affidavit of Maurice Brubaker

Maurice Brubaker, being first duly sworn, on his oath states:

1. My name is Maurice Brubaker. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.

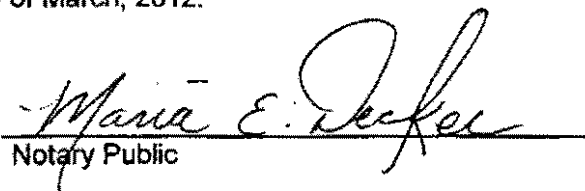
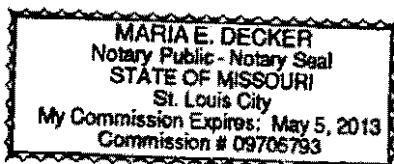
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony which was prepared in written form for introduction into evidence in Missouri Public Service Commission File No. EU-2012-0027.

3. I hereby swear and affirm that the testimony and schedules are true and correct and that they show the matters and things that they purport to show.



Maurice Brubaker

Subscribed and sworn to before me this 14th day of March, 2012.


Notary Public

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

**In the Matter of the Application of Union
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**In the Matter of the Application of Union
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File No. EU-2012-0027

Rebuttal Testimony of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,**
3 **Chesterfield, MO 63017.**

4 **Q WHAT IS YOUR OCCUPATION?**

5 **A I am a consultant in the field of public utility regulation and President of Brubaker &**
6 **Associates, Inc., energy , economic and regulatory consultants.**

7 **Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

8 **A This information is included in Appendix A to my testimony.**

9 **Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

10 **A I am appearing on behalf of the Missouri Industrial Energy Consumers ("MIEC").**

**Maurice Brubaker
Page 1**

1 **Introduction**

2 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A I will address Ameren Missouri's request for an Accounting Authority Order ("AAO") to
4 recover revenues not collected because of a reduction in sales that resulted from an
5 ice storm.

6 **Q WHAT IS YOUR RECOMMENDATION?**

7 A I recommend that the request for an AAO be denied.

8 **Q CAN YOU BRIEFLY DESCRIBE THE FACTS THAT PRECIPITATED AMEREN**
9 **MISSOURI'S CURRENT REQUEST?**

10 A Sure. Ameren Missouri first sought a fuel adjustment clause ("FAC") in 2007, but its
11 request was denied. On January 27, 2009, the Commission issued a Report and
12 Order in Case No. ER-2008-0318 approving Ameren Missouri's request to implement
13 the FAC it had asked for. The following day, an ice storm caused substantial damage
14 to the transmission facilities of Associated Electric Cooperative, Inc. in Southeastern
15 Missouri, resulting in a loss of service to Noranda Aluminum ("Noranda").

16 Ameren Missouri filed an Application for Rehearing in Case No.
17 ER-2008-0318, asking the Commission to modify the approved FAC provisions
18 concerning revenue from off-system sales. The request was to allow it to retain,
19 rather than flow through to customers, certain revenues from off-system sales that it
20 would make because of decreased sales of electricity to Noranda. The Commission
21 denied Ameren Missouri's Application for Rehearing on February 19, 2009.

22 Subsequently, Ameren Missouri attempted to offset its anticipated lost
23 revenue by entering into two off-system sales contracts with American Electric Power

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1 Service Corporation ("AEP") and Wabash Valley Power Association, Inc. ("Wabash").
2 In Case No. EO-2010-0255, the Commission found that Ameren Missouri acted
3 inappropriately when it failed to flow the costs and revenues from the AEP and
4 Wabash contracts through the FAC.

5 Since the occurrence of the 2009 ice storm, Ameren Missouri has completed
6 two rate cases, ER-2010-0036 and ER-2011-0028. While Ameren Missouri's
7 testimony in this case appears to characterize the revenue it lost due to the ice storm
8 as "costs" for purposes of AAO treatment, such a characterization is unfounded. It
9 appears that the recoupment Ameren Missouri is seeking in this case is lost revenue
10 associated with the 2009 ice storm. It is my opinion that revenue recoupment is not
11 permitted by an AAO.

12 **Use of AAOs**

13 **Q WHAT ARE A UTILITY'S OPTIONS WHEN FACED WITH AN EXTRAORDINARY**
14 **EVENT THAT REQUIRES IT TO INCUR COSTS NOT ALREADY IN ITS RATES?**

15 **A** When a utility encounters an extraordinary event that requires it to incur costs that are
16 not part of its rates, it has several choices. First, it can file a rate case to recover the
17 costs that are associated with that extraordinary event. Second, if the utility cannot
18 timely file a rate case, it can file an AAO application to seek deferral for those
19 extraordinary costs until the next rate case. Lastly, the utility can absorb the costs in
20 its current operations.

21 **Q DOES A UTILITY'S APPLICATION FOR AN AAO NEED TO BE TIMELY?**

22 **A** Yes. Historically, whenever a utility files for an AAO, it did so prior to closing its books
23 for the period in which the extraordinary event took place. This practice is reflected in

1 the language that governs AAOs under 18 CFR 201 incorporating the Uniform
2 System of Accounts ("USoA"). On page 14 of the recent Report and Order in Case
3 No. GU-2011-0392,¹ the Commission cited the USoA to define the "timeliness"
4 requirement of an AAO. The USoA defines extraordinary items as "those items
5 related to the effects of events and transactions which have occurred during the
6 current period." The Commission held in the Southern Union Company case that the
7 "timeliness" of an application rests on a determination of whether the request was
8 "during [the] current period," noting that the application in that case was filed during
9 the same period as the event (tornado) occurred.

10 **Q IS AMEREN MISSOURI'S AAO REQUEST TIMELY?**

11 **A** No. In this case, Ameren Missouri applied for an AAO nearly three years after the
12 period to which it relates. Further, according to Ameren Missouri's response to
13 MIEC Data Response 1-11, "Ameren has closed its books for financial reporting
14 purposes for fiscal years 2009 and 2010." Accordingly, even if an AAO were an
15 appropriate mechanism for recovering lost revenues (it is not), Ameren Missouri's
16 application for an AAO is untimely as the application was filed long after the
17 period of the storm and long after Ameren Missouri closed its books for the period
18 in which the storm occurred.

¹Case No. GU-2011-0392 – In The Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2).

1 Q WHAT IS THE PURPOSE OF AN AAO?

2 A An AAO is designed to allow a utility to defer (to a subsequent rate case for a
3 determination of rate recovery) unanticipated costs (costs not already included in
4 rates) it incurred as a result of an extraordinary event.

5 Q DOES AMEREN MISSOURI'S REQUEST FIT WITHIN THE SCOPE OF AN AAO?

6 A No. The "fixed costs" for which Ameren Missouri is allegedly seeking a deferral in this
7 case were not unanticipated, as they were already included in Ameren Missouri's
8 rates at the time. An AAO is not designed to defer costs that are already included in
9 rates. Ameren Missouri has provided no information to indicate that it incurred any
10 unanticipated costs as a result of the 2009 ice storm. Thus, an AAO is not
11 appropriate here.

12 Further, as I will describe more fully below, despite characterizing its request
13 as seeking deferral for "lost fixed costs," Ameren Missouri's AAO request is actually
14 seeking compensation for lost revenue resulting from the 2009 ice storm. Such a
15 request is completely outside the scope of an AAO. AAOs are simply not designed to
16 allow a utility to recover lost revenue. Thus, Ameren Missouri's AAO application is
17 improper.

18 **Lost Revenues**

19 Q WHAT IS THE BASIS FOR YOUR STATEMENT THAT AMEREN MISSOURI IS
20 ACTUALLY SEEKING LOST REVENUE RATHER THAN FIXED COSTS?

21 A A utility is required to pay its operating expenses (both fixed and variable) before it
22 can recognize net income. Net income is derived after a utility pays its operating
23 expenses, depreciation, taxes and interest expense. Once net income is generated,

1 and preferred dividends are paid, the utility's shareholders may earn a return. During
2 the time of the ice storm, Ameren Missouri continued to generate income for its
3 common stockholders. To the extent that Ameren Missouri was continuing to earn
4 such income, Ameren's fixed costs were recovered.

5 **Q WHAT SOURCE DID YOU RELY ON TO DETERMINE AMEREN MISSOURI WAS**
6 **GENERATING NET INCOME AND, THUS, RECOVERING ITS FIXED COSTS?**

7 A I have relied on the Direct Testimony of Warner L. Baxter in Ameren's Rate Case No.
8 ER-2012-0166. On page 13 of his direct testimony, Mr. Baxter presents a table which
9 shows Ameren Missouri's actual returns on equity from June 2007-October 2011.
10 During the entire period included in this table, Ameren Missouri reported positive
11 returns on equity. To the extent that Ameren Missouri is reporting positive returns, it
12 is recovering its fixed costs.

13 **Q IF YOU ARE CORRECT AND AMEREN MISSOURI HAS RECOVERED ITS FIXED**
14 **COSTS, THEN WHAT IS AMEREN MISSOURI PROPOSING TO RECOVER?**

15 A I believe Ameren Missouri actually is proposing to recover lost revenues from the loss
16 of Noranda's operation. These lost revenues, along with other charges that may
17 have occurred, did not allow Ameren Missouri to earn its authorized return.
18 Essentially, Ameren Missouri is requesting an AAO to recover lost profit.

19 **Q HAS THE COMMISSION RULED ON THE RECOVERY OF LOST REVENUES?**

20 A Yes, in Case No. GU-2011-0392, at page 25, the Commission denied the recovery of
21 ungenerated revenue. The Commission made the following finding:

22 "Ungenerated revenue never has existed, never does exist,
23 and never will exist. Revenue not generated, from service not

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1 provided, represents no exchange of value. There is neither
2 revenue nor cost to record, in the current period nor in any
3 other."

4 **Impact**

5 **Q ON PAGE 4 OF HER TESTIMONY, AMEREN MISSOURI WITNESS LYNN**
6 **BARNES STATES THAT THE LOSS OF NORANDA LOAD HAD AN IMMEDIATE**
7 **AND DEVASTATING FINANCIAL IMPACT ON THE COMPANY. AMEREN**
8 **MISSOURI WITNESS STEVEN M. WILLS QUANTIFIES THAT IMPACT AT**
9 **APPROXIMATELY \$59 MILLION IN TOTAL REVENUE, AND \$36 MILLION NET OF**
10 **FUEL COSTS AND OFF-SYSTEM SALES SHARING. DO YOU HAVE ANY**
11 **COMMENTS REGARDING THE \$36 MILLION?**

12 **A** Yes. The \$36 million calculated by Mr. Wills is before the related reductions in
13 income taxes. After considering the effects of income taxes, the financial loss to
14 Ameren Missouri is approximately \$22.5 million.

15 **Q DO YOU BELIEVE \$22.5 MILLION IS A DEVASTATING FINANCIAL IMPACT TO**
16 **AMEREN MISSOURI?**

17 **A** No. According to information provided in response to MIEC Data Request No. 1-6,
18 Ameren Missouri had a common equity balance at December 31, 2009 of
19 approximately \$3.9 billion. The \$22.5 million is less than 60 basis points on ROE
20 (0.6%).

21 **Q HAVE YOU MADE ANY COMPARISON ON A REVENUE BASIS?**

22 **A** Yes. In response to MIEC Data Request 1-10, Ameren Missouri provided actual and
23 weather-normalized kilowatthour sales and revenues by rate schedule.

1 Its response to the data request reveals that in two of the last three rate
2 cases, actual revenues (excluding Noranda) have been between \$120 million and
3 \$267 million less than weather-normalized revenues used in setting rates. Because
4 the revenue per kilowatthour from sales to these customers is higher than from sales
5 to Noranda, a variation of \$1 in sales to these customers has more bottom line impact
6 than a variation of \$1 in sales to Noranda. To the extent that Ameren Missouri is able
7 to absorb these variations in its operations, the loss of sales to Noranda does not
8 appear to qualify as devastating.

9 Furthermore, the loss calculated by Ameren Missouri witness Wills covers a
10 period of 16 months. Therefore, the losses claimed by Ameren on a 12 month basis
11 would be even less and the annual impact on Ameren Missouri's earnings would also
12 be less.

13 **Benefits to Ameren Missouri from the FAC**

14 **Q IF AMEREN MISSOURI DID NOT HAVE A FAC WOULD IT HAVE EXPERIENCED**
15 **THE REVENUE LOSS THAT IT COMPLAINS OF?**

16 **A No. As Ameren Missouri pointed out in its Petition for Rehearing, in Case No.**
17 **ER-2008-0318, if it had not been granted the FAC that it requested, it would have**
18 **been able to sell on the wholesale market the power no longer sold to Noranda and it**
19 **would have been able to retain the benefits of that sale. Had the Commission not**
20 **granted Ameren Missouri the FAC, there would not have been an issue.**

1 Q HAS AMEREN MISSOURI BENEFITED FROM THE PRESENCE OF THE FAC?

2 A Yes, substantially. Since the inception of the FAC, Ameren Missouri has only
3 refunded roughly \$4 million to Missouri ratepayers,² compared to the nearly
4 \$179 million it has collected as a result of the FAC. (See response to MIEC Data
5 Request 1-9.)

6 Accordingly, while the FAC can go both ways, the overwhelming effect of the
7 FAC has been to provide Ameren Missouri with substantial additional revenues.

8 **Other Issues**

9 Q DO YOU HAVE ANY FURTHER COMMENTS ON AMEREN MISSOURI'S AAO
10 REQUEST?

11 A Yes. Ameren Missouri's request for an AAO is likely to be unproductive, because if
12 granted, any subsequent rate treatment of the deferred amounts could constitute
13 impermissible retroactive ratemaking.

14 In this regard, I have reviewed *State ex rel. Utility Consumers Council, Inc. v.*
15 *Public Service Com.*, 585 S.W.2d 41 (Mo. 1979), which discusses the prohibition
16 against retroactive ratemaking. In that case, retroactive ratemaking is described as
17 follows:

18 "The utilities take the risk that rates filed by them will be inadequate, or
19 excessive, each time they seek rate approval. To permit them to
20 collect additional amounts simply because they had additional past
21 expenses not covered by either clause is retroactive rate making, i.e.,
22 the setting of rates which permit a utility to recover past losses or
23 which require it to refund past excess profits collected under a rate that
24 did not perfectly match expenses plus rate-of-return with the rate
25 actually established, *Board of Public Utility Commissioners v.*
26 *New York Telephone Co.*, 271 U.S. at 31; *Lightfoot v. Springfield*, 236
27 S.W.2d at 353.

²Excluding the \$17 million refund required as a result of the inappropriate treatment of the AEP and Wabash sales.

1 I cannot render a legal opinion, but based on my knowledge of ratemaking, it
2 appears that any recovery granted to Ameren Missouri related to this event would
3 constitute retroactive ratemaking as described above.

4 **Q ARE YOU AWARE THAT THIS COMMISSION HAS STATED THAT AN**
5 **APPLICATION FOR AN AAO DOES NOT DETERMINE THE RATEMAKING**
6 **TREATMENT FOR THE EVENT?**

7 **A** Yes. I am not suggesting that the Commission's decision in this case will determine
8 the ratemaking treatment of any amounts potentially deferred. However, if the
9 Commission approves the AAO request, I believe it could be barred by the prohibition
10 against retroactive ratemaking from incorporating the deferred amounts in a
11 subsequent rate case. Thus, for purposes of regulatory efficiency for all parties
12 involved, I am recommending that the Commission consider the issue of retroactive
13 ratemaking as it pertains to this AAO application, and deny Ameren Missouri's
14 request, as the amount potentially deferred likely never could be incorporated into
15 rates in a subsequent case.

16 Therefore, in addition to the timeliness issue and the fact that Ameren is
17 impermissibly requesting recovery of lost revenues (or possibly recovery of fixed
18 costs that were previously included in Ameren Missouri's rates), as well as the other
19 facts noted above, Ameren Missouri's AAO application represents a fruitless request,
20 because subsequent ratemaking treatment of any potentially deferred amounts
21 appears not to be allowed by *UCCM*.

22 **Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

23 **A** Yes, it does.

Qualifications of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q PLEASE STATE YOUR OCCUPATION.**

5 A I am a consultant in the field of public utility regulation and President of the firm of
6 Brubaker & Associates, Inc. (BAI), energy, economic and regulatory consultants.

7 **Q PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
8 **EXPERIENCE.**

9 A I was graduated from the University of Missouri in 1965, with a Bachelor's Degree in
10 Electrical Engineering. Subsequent to graduation I was employed by the Utilities
11 Section of the Engineering and Technology Division of Esso Research and
12 Engineering Corporation of Morristown, New Jersey, a subsidiary of Standard Oil of
13 New Jersey.

14 In the Fall of 1965, I enrolled in the Graduate School of Business at
15 Washington University in St. Louis, Missouri. I was graduated in June of 1967 with
16 the Degree of Master of Business Administration. My major field was finance.

17 From March of 1966 until March of 1970, I was employed by Emerson Electric
18 Company in St. Louis. During this time I pursued the Degree of Master of Science in
19 Engineering at Washington University, which I received in June, 1970.

20 In March of 1970, I joined the firm of Drazen Associates, Inc., of St. Louis,
21 Missouri. Since that time I have been engaged in the preparation of numerous

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Appendix A
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1 studies relating to electric, gas, and water utilities. These studies have included
2 analyses of the cost to serve various types of customers, the design of rates for utility
3 services, cost forecasts, cogeneration rates and determinations of rate base and
4 operating income. I have also addressed utility resource planning principles and
5 plans, reviewed capacity additions to determine whether or not they were used and
6 useful, addressed demand-side management issues independently and as part of
7 least cost planning, and have reviewed utility determinations of the need for capacity
8 additions and/or purchased power to determine the consistency of such plans with
9 least cost planning principles. I have also testified about the prudence of the actions
10 undertaken by utilities to meet the needs of their customers in the wholesale power
11 markets and have recommended disallowances of costs where such actions were
12 deemed imprudent.

13 I have testified before the Federal Energy Regulatory Commission (FERC),
14 various courts and legislatures, and the state regulatory commissions of Alabama,
15 Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia,
16 Guam, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri,
17 Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania,
18 Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia,
19 Wisconsin and Wyoming.

20 The firm of Drazen-Brubaker & Associates, Inc. was incorporated in 1972 and
21 assumed the utility rate and economic consulting activities of Drazen Associates, Inc.,
22 founded in 1937. In April, 1995 the firm of Brubaker & Associates, Inc. was formed. It
23 includes most of the former DBA principals and staff. Our staff includes consultants
24 with backgrounds in accounting, engineering, economics, mathematics, computer
25 science and business.

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1 Brubaker & Associates, Inc. and its predecessor firm has participated in over
2 700 major utility rate and other cases and statewide generic investigations before
3 utility regulatory commissions in 40 states, involving electric, gas, water, and steam
4 rates and other issues. Cases in which the firm has been involved have included
5 more than 80 of the 100 largest electric utilities and over 30 gas distribution
6 companies and pipelines.

7 An increasing portion of the firm's activities is concentrated in the areas of
8 competitive procurement. While the firm has always assisted its clients in negotiating
9 contracts for utility services in the regulated environment, increasingly there are
10 opportunities for certain customers to acquire power on a competitive basis from a
11 supplier other than its traditional electric utility. The firm assists clients in identifying
12 and evaluating purchased power options, conducts RFPs and negotiates with
13 suppliers for the acquisition and delivery of supplies. We have prepared option
14 studies and/or conducted RFPs for competitive acquisition of power supply for
15 industrial and other end-use customers throughout the United States and in Canada,
16 involving total needs in excess of 3,000 megawatts. The firm is also an associate
17 member of the Electric Reliability Council of Texas and a licensed electricity
18 aggregator in the State of Texas.

19 In addition to our main office in St. Louis, the firm has branch offices in
20 Phoenix, Arizona and Corpus Christi, Texas.

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Appendix A
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BRUBAKER & ASSOCIATES, INC.