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Witness: Richard J. Mark
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MISSOURI PUBLIC SERVICE COMMISSION

Case No. ER-2011-0028

REBUTTAL TESTIMONY

OF

RICHARD J. MARK

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
March, 2011**

1 **REBUTTAL TESTIMONY**

2 **OF**

3 **RICHARD J. MARK**

4 **CASE NO. ER-2011-0028**

5
6 **Q. Please state your name and business address.**

7 A. My name is Richard J. Mark. My business address is One Ameren Plaza,
8 1901 Chouteau Avenue, St. Louis, Missouri 63103.

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

10 A. I am employed by Union Electric Company d/b/a Ameren Missouri (“Ameren
11 Missouri” or the “Company”) as Senior Vice President Customer Operations.

12 **Q. Please describe your employment history with Ameren Missouri.**

13 A. I joined Ameren Services as Vice President of Customer Relations in January
14 of 2002 and then became Vice President of Governmental Policy and Consumer Affairs. In
15 December of 2004, I was promoted to Senior Vice President of Missouri Energy Delivery.
16 In 2009, I was named to my current position at Ameren Missouri. Prior to my current
17 employment, I spent seven years as President and Chief Executive of St. Mary’s Hospital of
18 East St. Louis and five years as the hospital’s Chief Operating Officer.

19 **Q. Please describe your duties and responsibilities as Senior Vice President**
20 **Customer Operations.**

21 A. I am responsible for Ameren Missouri’s electric and natural gas distribution
22 systems and operations, as well as the Company’s customer service operations, consisting of
23 the customer contact center, customer accounts, and customer credit assistance, including

1 Ameren Missouri's Dollar More Program and community relations. I am also responsible for
2 managing Ameren Missouri's Energy Efficiency programs.

3 **Q. What is the purpose of your rebuttal testimony?**

4 A. The purpose of my rebuttal testimony is to respond to the direct testimony of
5 Missouri Industrial Energy Consumers ("MIEC") witness Maurice Brubaker and Missouri
6 Public Service Commission Staff ("Staff") witness John Rogers regarding demand-side
7 management ("DSM") cost recovery, specifically on the importance of the Missouri Public
8 Service Commission ("Commission") approving regulatory mechanisms in this case that
9 provide for timely cost recovery and align utility interests with helping customers use energy
10 more efficiently. If those objectives are not achieved, it will constitute a continuation of
11 Missouri regulatory barriers to more aggressive and sustained utility investment in energy
12 efficiency. Ameren Missouri witnesses Daniel Laurent and William Davis will also provide
13 rebuttal testimony on DSM issues.

14 **Q. Is it your understanding that the Commission has an obligation to**
15 **provide the relief you are requesting?**

16 A. According to counsel, they do. On August 28, 2010, the Missouri Energy
17 Efficiency Investment Act ("MEEIA") became law and set state policy regarding energy
18 efficiency:¹

19 It shall be the policy of the state to value demand-side investments equal to
20 traditional investments in supply and delivery infrastructure and allow
21 recovery of all reasonable and prudent costs of delivering cost-effective
22 demand-side programs. In support of this policy, the commission shall:
23 (1) Provide timely cost recovery for utilities;
24 (2) Ensure that utility financial incentives are aligned with helping customers
25 use energy more efficiently and in a manner that sustains or enhances utility
26 customers' incentives to use energy more efficiently; and

¹ I will use the term energy efficiency and demand-side management interchangeably, even though technically demand side management consists of energy efficiency and demand response programs.

1 (3) Provide timely earnings opportunities associated with cost-effective
2 measurable and verifiable efficiency savings.²
3

4 This language was adopted by the Missouri legislature because it recognized that all
5 three actions (timely cost recovery, interest alignment and timely earnings opportunities)
6 were necessary in order for utilities to pursue all cost-effective energy efficiency measures.

7 **Q. Hasn't the Commission addressed these issues in the rulemaking they**
8 **recently completed?**

9 A. It is true that the Commission has recently completed a rulemaking in which it
10 adopted regulations implementing MEEIA.³ Unfortunately, it is the Company's view that the
11 Commission's rules do not fulfill the three criteria prescribed by the legislation.

12 **Q. Please explain what you mean.**

13 A. The most significant problem with the Commission's new rules is the
14 definition of lost revenues. Every time a utility invests in an energy efficiency program, it is
15 spending money to persuade its customers to use less of its product. So every megawatt-
16 hour of savings that an energy efficiency program generates is a lost sale for the utility. This
17 is often referred to as a "throughput disincentive." Mr. Davis quantifies this disincentive in
18 his rebuttal testimony. The Company has already lost approximately \$15 million because of
19 its investment in energy efficiency since 2009. If the Company spends \$25 million per year
20 on energy efficiency programs going forward, it expects to experience \$53.6 million in lost
21 revenues over the next two years. The Company's inability to recover lost revenues is a
22 significant concern and, until this issue is addressed, serves as a major disincentive for the

² 393.1075.3 RSMo.

³ The rules are not yet effective, but likely will become effective in the next 90 days.

1 Company to make large investments in energy efficiency and is inconsistent with the intent
2 of MEEIA.

3 While the Legislature recognized this in MEEIA, the rules recently approved by the
4 Commission define lost revenue in a manner that fails to resolve this problem, primarily
5 because the definition requires the utility to offset revenue lost due to energy efficiency
6 against natural customer and load growth. This fails to resolve the throughput disincentive
7 because, without energy efficiency, the utility would experience the natural load growth
8 without the decrease in MWh sales due to energy efficiency efforts. As Mr. Davis explains,
9 the Company already relies upon this natural load growth to offset the additional costs
10 associated with putting new customers on our system as well as to offset other increasing
11 costs it must absorb due to regulatory lag. Instituting energy efficiency programs puts the
12 full recovery of those costs at risk by reducing revenues collected from customers.

13 **Q. Doesn't MEEIA and the Commission rules implementing MEEIA**
14 **provide for a multitude of ways to address the throughput disincentive?**

15 A. There are several methods, but most have limitations which mean they cannot
16 be used to offset this opportunity cost at this time.

17 **Q. Please explain what you mean.**

18 A. The most obvious way to solve this problem might be for the Commission to
19 adopt a decoupling mechanism. However, because the Commission has not opened a docket
20 to study the effects of such a rate design modification, as it is required to do by the language
21 of MEEIA, this solution is not available for the Company to request at this time.

22 Second, the Company could request a lost revenue recovery mechanism, perhaps
23 similar to the one proposed in the direct testimony of Mr. Davis. However, as I explained

1 previously in this testimony, the Commission’s definition of lost revenues makes this
2 mechanism insufficient to offset the throughput disincentive because, by definition, it cannot
3 recover all lost revenues. Since the utility continues to have disincentives to invest in energy
4 efficiency programs, utility investments in energy efficiency are at a meaningful financial
5 disadvantage as compared to supply side investments, which fails to “[e]nsure that utility
6 financial incentives are aligned with helping customers use energy more efficiently...”⁴

7 Third, the Company could request some type of sharing of net benefits. This is
8 explicitly provided for under the Commission’s recently adopted rules, but this mechanism is
9 better suited as an incentive, that is, to provide a reason to prefer energy efficiency over a
10 supply side investment, rather than as a mechanism to correct the throughput disincentive.
11 Shared net savings requires the setting of a target savings amount and, after the program is
12 complete, the Company could receive a portion of the net savings from the program.
13 Consequently, the Company would not receive any revenue until after its next rate case at the
14 earliest. Additionally, no utility in Missouri has implemented a shared net savings
15 mechanism, so there remains a lot of uncertainty regarding how it would work. This timing
16 delay and uncertainty regarding how the mechanism would work renders this mechanism
17 insufficient to resolve the throughput disincentive when the Company is making program
18 funding decisions.

19 **Q. Isn’t all this talk about lost revenues and throughput disincentives just**
20 **the utility’s way of putting profits ahead of its customers?**

21 A. Absolutely not. The Company has already spent millions of dollars on energy
22 efficiency programs and has already lost revenues of approximately \$15 million because of

⁴ 393.1075.3 RSMo.

1 those programs. As a business model, that type of investment is not sustainable until the
2 throughput disincentive is resolved.

3 The Company is seeking a way to align the interests of the utility with that of its
4 customers so that they can use energy efficiently, a goal which is specifically set forth in
5 MEEIA. All parties must recognize the financial impact of energy efficiency programs upon
6 the Company. The issue is the essence of utility regulation – balancing a utility’s obligation
7 to provide reliable service at a reasonable cost and providing utilities the opportunity to earn
8 reasonable returns. Ameren Missouri’s management has a legal obligation to its shareholders
9 to protect their interests. Ameren Missouri is not asking the Commission to place Company
10 shareholder interests *above* those of our customers; rather we are asking the Commission to
11 work with us to find a constructive solution that *aligns* customer and Company interests, as
12 contemplated by MEEIA. In other words, there must be a solution that provides an equitable
13 balance between, and an alignment of, the interests of the utility shareholders and utility
14 customers.

15 **Q. Given what you have told us, does the Company have a proposal that it is**
16 **asking the Commission to adopt?**

17 A. Yes. Faced with the realities described above, the Company has proposed a
18 mechanism to mitigate the throughput disincentive. As is fully explained in the rebuttal
19 testimony of Mr. Davis, the Company proposes adjusting billing units so that the impacts of
20 the Company’s energy efficiency programs are included at the time new rates in this case are
21 set so as to mitigate the throughput disincentive. We believe this mechanism is allowed by
22 the Commission’s MEEIA rules, even though it isn’t explicitly addressed by the rules.
23 Additionally, we are proposing to refund any potential over-collection in our next rate case,

1 should the MWh savings not turn out to be at the level we are projecting. This way,
2 customers are protected.

3 **Q. If the Commission were to grant the billing unit treatment Mr. Davis**
4 **requests, what level of energy efficiency funding would the Company commit to**
5 **provide?**

6 A. If the Commission were to allow the Company to amortize its energy
7 efficiency regulatory asset over three years and approve the recommended billing unit
8 adjustment, Ameren Missouri would continue spending around \$25 million per year on its
9 energy efficiency programs. This level is consistent with the average level of spending over
10 the past several years.

11 **Q. Can you comment on the regulatory framework that would incent**
12 **Ameren Missouri to consider investing more than \$25 million per year on energy**
13 **efficiency?**

14 A. At a minimum, the Company would want to have a regulatory framework that
15 addresses recovery of the direct costs of the programs, addresses the impact on utility
16 earnings of reduced sales and provides opportunities to impact shareholder value similar to
17 investments in supply-side resources. Lost revenue has the largest financial impact on the
18 Company, which is why we are proposing an approach to mitigate that impact in this case. If
19 we can find an equitable way to address lost revenues and implement and evaluate the
20 effectiveness of that approach over the next two years, we think the next logical step is to
21 adjust the regulatory framework to implement utility performance incentives which would be
22 the final step in encouraging utilities to pursue all cost effective energy efficiency measures.

1 **Q. Is it your position that an annual budget of \$25 million represents the**
2 **maximum amount that the Company would invest in energy efficiency for at least the**
3 **next two years?**

4 A. Yes, presuming we receive the cost treatment that we need.

5 **Q. What if the Commission does not grant Ameren Missouri the treatment**
6 **you are requesting?**

7 A. I certainly hope the Commission will grant us the treatment we are requesting.
8 However, if the Company is not given full and timely cost recovery, it will be unable to
9 sustain its energy efficiency funding at the level it has spent over the past few years. I do not
10 know exactly what level of energy efficiency funding Ameren Missouri will provide, but I do
11 know that the Company will have no choice but to significantly reduce its expenditures on
12 energy efficiency programs.

13 This is the reality in which Ameren Missouri's management must operate when it
14 makes decisions regarding how to allocate resources. Cost recovery is a component of any
15 major investment decision and it will impact Ameren Missouri's energy efficiency programs
16 going forward. A Commission decision that achieves the MEEIA goal of providing timely
17 cost recovery and alignment of utility incentives with helping customers use energy more
18 efficiently is necessary if Ameren Missouri is to continue making substantial investment in
19 energy efficiency.

20 **Q. Does this conclude your rebuttal testimony?**

21 A. Yes, it does.

