

evidence in this case and that the parties would brief the remaining legal issues. The witnesses whose testimony was admitted are Richard J. Mark, Exhibits 19 (Direct) and 20 (Rebuttal) for AmerenUE; Laura Wolfe, Exhibits 550 (Direct) and 551 (Surrebuttal), for MDNR; and Henry Warren, Exhibit 225 (Surrebuttal) for Staff.

The parties stipulated to the following facts:

1. In Case No. ER-2007-0002, “the Commission directs that the low income weatherization program continue with funding provided \$600,000 by ratepayers and \$600,000 by AmerenUE shareholders.” Report and Order, Case No. ER-2007-0002, p. 113;
2. The Commission, MDNR and AmerenUE entered into a contract, a true and accurate copy of which is attached to Ms. Wolfe’s Direct Testimony (Exhibit 550) as Schedule LW-2; and
3. On or about June 24, 2008, AmerenUE submitted \$900,000 towards the funding for the low-income weatherization program.

(Tr. Vol. 17, p. 1001, l. 9-23.)

ARGUMENT

Should AmerenUE provide an additional \$300,000 for funding the current low-income weatherization program for the full amount directed by the Commission in Case No. ER-2007-0002 for the twelve months ended July 5, 2008?

As stipulated to by the parties, in its Report and Order in Case No. ER-2007-0002, the Commission ordered AmerenUE to fund a low-income weatherization program.

AmerenUE was to provide annual funding in the amount of \$1,200,000, with \$600,000 of that coming from ratepayers and \$600,000 from AmerenUE's shareholders. Following the Report and Order, AmerenUE also entered into an agreement with the MDNR's Energy Center and the Commission's Staff, which provided that AmerenUE would submit its first payment on September 1, 2007.

AmerenUE was to make the remaining annual payments of \$1.2 million on July 5 of each subsequent year. (Ex. 550, Schedule LW-2.)

On or about July 5, 2008, AmerenUE submitted \$900,000 to MDNR for the low-income weatherization program. According to AmerenUE, the source of the funding for the \$900,000 is half ratepayer funds and half shareholder funds. (Tr. Vol. 17, p. 995, l. 20-23.) AmerenUE's rationale for not paying the full \$1.2 million is based on the filing of the above-styled rate case. It knew there would be new rates in effect in March 2009. The \$900,000 represented the amount AmerenUE decided to pay (representing approximately nine months of the rates set by Case No. ER-2007-0002) in light of the fact that new rates would go into effect before July 1, 2009. AmerenUE acknowledges that if the Commission retains the \$600,000 budgeted for low income weatherization in AmerenUE's current rate case, AmerenUE will owe MDNR \$150,000 to fund the low income program. (Tr. Vol. 17, pp. 995-996.)

This Commission is aware of the size of AmerenUE's service territory. The MDNR's witness, Laura Wolfe, offered testimony explaining why low income weatherization is an important program and why it should be funded at the level of \$1.2 million. (Ex. 550, p. 5, l. 19-23, p. 6, l. 1-20.) AmerenUE itself acknowledges that a low

income program is worthwhile. (Tr. Vol. 17, p. 996, l. 20-23.) Funding a low income weatherization program at \$600,000 for the AmerenUE service territory is simply not a sufficient investment in the low income ratepayers in that area of the state.

Perhaps equally important is that the current order in Case No. ER-2007-0002 is the order under which AmerenUE should be operating. That is the order is in effect. In that order, the Commission told AmerenUE to submit \$1.2 million, annually, for a low income weatherization program. But AmerenUE decided to ignore the order in Case No. ER-2007-0002, despite the fact that it is the order currently in place. AmerenUE continues to collect the rates authorized by that order, including that portion of the rates that are to fund the low income program. Nonetheless, AmerenUE unilaterally decided to revise the amount it submitted on or about July 5, 2008 for the low income weatherization program. AmerenUE is in violation of the Commission's 2007 Report and Order, and that is something this Commission may and should address.

Not only has AmerenUE willfully ignored the Commission's clear direction set out in the 2007 Report and Order, it also decided to ignore a contract it entered into with MDNR and the Commission to pay the full \$1.2 million by July 5 of each year. Again, AmerenUE decided to breach the contract because it believed new rates would be in effect in the future (and before July 5, 2009). This Commission may and should address this breach of a contract AmerenUE entered into not only with the MDNR, but with this Commission.

Further, AmerenUE's failure to submit the full amount of the funding due resulted in real problems. Local Community Action Agencies rely on that funding and plan

accordingly. It was not unreasonable for those agencies to rely on receiving the full amount of the funding given that the 2007 Report and Order was and still is in effect, as well as a contract so providing. To not have the full funding caused real problems, including that approximately 100 homeowners would not receive much needed weatherization services. Ex. 550, p. 6, l. 12-20. Additionally, the failure to provide the full amount of the Commission-ordered funding impairs the ability of the program to deliver weatherization services efficiently and cost effectively. Ex. 550, p. 7, l. 3-27 and p. 8, l. 1-14. It even interferes with the local Community Action Agencies' ability to hire and train sufficient technical staff. Ex. 550, p. 8, l. 8-9.

AmerenUE should, as ordered by this Commission in Case No. ER-2007-0002 and agreed to by AmerenUE in the Cooperation and Funding Agreement, submit an additional \$300,000 to fund the low-income weatherization program for the twelve months ended July 5, 2008.

Should AmerenUE continue to fund the current low-income weatherization program for the full amount directed by the Commission in Case No. ER-2007-0002 for the twelve months ending July 5, 2009?

AmerenUE should continue to fund a low-income weatherization program for the full amount directed by the Commission in AmerenUE's last rate case and, again, as agreed to by AmerenUE in the Cooperation and Funding Agreement it signed for the twelve months ending July 5, 2009. AmerenUE should continue to fund a low-income weatherization program for its service area in the total amount of \$1,200,000. As explained above, in the direct testimony of Laura Wolfe (Ex. 550) and recognized by

AmerenUE, the low income program serves a valuable and much needed purpose. As the Commission also recognized in Case No. ER-2007-0002, the need is there. Any disruption of the program causes significant problems, both financial and practical for the agencies that provide these very important services. Ex. 550, p. 7, l. 3-27 and p. 8, l. 1-14.

In what annual amount and from what source of funds, should AmerenUE continue to fund the current low-income weatherization program beyond the Commission's Report and Order in Case No. ER-2007-0002?

AmerenUE argues that the Commission should not order the funding to remain in place absent a later order of the Commission directing that the program not be funded in the future. AmerenUE appears to base this argument on the mistaken belief that such a requirement would improperly bind later Commissions. In reality, the MDNR is not asking this Commission to bind future Commissions. MDNR recognizes (as should this Commission) that if the Commission desires at some future date or time to terminate the program (which the MDNR would not recommend), later Commissions are always free to issue such an order. Providing that the program continue until a later Commission issues such an order does not unduly or improperly bind that later Commission. It merely requires an affirmative action by the Commission and would avoid the problems that have resulted from AmerenUE's unilateral decision to modify the Commission's 2007 Report and Order.

Finally, MDNR does not take a position on the appropriate source of the low income weatherization funding. AmerenUE and the Staff will present arguments to the

Commission explaining from what source or sources the funding should come. Again, MDNR does feel strongly and believes the evidence supports funding the program at the full \$1.2 million rather than at the \$600,000 level proposed by AmerenUE.

WHEREFORE, the Missouri Department of Natural Resources respectfully submits this Post-Hearing Brief.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

/s/ Shelley A. Woods
Shelley A. Woods
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Bar No. 33525
573-751-8795
573-751-8464 (fax)

shelley.woods@ago.mo.gov

Attorneys for Missouri Department of Natural Resources

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 8th day of January, 2009.

/s/ Shelley A. Woods
Shelley A. Woods

