BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE's Tariff to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2011-0028

INITIAL POST-HEARING BRIEF OF THE MISSOURI ENERGY GROUP

On September 3, 2010, Union Electric Company, d/b/a Ameren Missouri ("AMMO" or "Company") submitted to the Missouri Public Service Commission ("Commission") certain proposed tariff sheets to implement a general rate increase for retail electric service to customers in its Missouri service area. The Commission suspended those tariffs on September 7, 2010. Hearings in this case started on April 26 and ended on May 20, 2011.

This initial brief will only address Return on Equity and Energy Efficiency issues—the only issues for which the Missouri Energy Group ("MEG") sponsored testimony.

Return on Equity

MEG recommends that this Commission grant the Company an RoE in the range of 9.7-10.0 percent (LaConte Surrebuttal, Ex. 452, page 8; Transcript volume 22, page 1214). This amount is within the often-cited "zone of reasonableness" and very near the Midwestern average for 2010—a deciding factor noted by this Commission in its *Report and Order* in KCPL Case No. ER-2010-0355, dated April 22, 2011. An RoE in this range meets the standards established in the Supreme Court's *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923) noting that a public utility's return should be sufficient to maintain financial integrity and to attract capital while allowing it a return equal to that of investments of comparable risks.

In fact, Ms. LaConte used similar parameters to determine the proxy group in her analyses as AMMO's witness Morin in the Company's most recent rate case: ER-2010-0036—one that is based on vertically integrated utilities traded on the S&P 500 index and of comparable risk to AMMO. In addition, Ms. LaConte's range of 9.7-10.0 RoE is nearly identical to that of MIEC Witness Gorman's of 9.8-10.0 (Transcript Vol. 22, page 1230), even though Mr. Gorman used different inputs and analyses.

As shown on Table 1 on page 7 of her surrebuttal, Ms. LaConte's analysis focuses on the DCF and Risk Premium methods, allowing for an RoE in the range of 9.7-10.6 percent. When her CAPM estimate is included, it expands Ms. LaConte's recommended range to 9.0 to 10.6 percent. While traditionally this Commission has relied on DCF methods when authorizing a utility's RoE, the Commission's decision in KCPL Case ER-2010-0355 states that it may employ a combination of methodologies depending on the circumstances. (Commission's *Report and Order* in ER-2010-0355, pages 123-124). This is in keeping with *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944), wherein the Court affirmed its standards in *Bluefield* and stated "Under the statutory standards of 'just and reasonable' it is the result reached and not the method employed which is controlling." 64 S. Ct. at 288.

Including the CAPM estimate in Ms. LaConte's analysis provides a good approximation of the return on equity based on long-term historical market conditions and provides a further balance to the DCF and Risk Premium methods and results in the MEG recommended RoE range of 9.7 to 10.0 percent.

Energy Efficiency

AMMO should continue to amortize its energy efficiency costs over a six-year period and should not be allowed to adjust its billing units to collect additional lost revenue that cannot be verified and approved.

The Missouri Energy Efficiency Investment Act ("MEEIA"), states "it shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recover of all reasonable and prudent costs of delivering cost-effective demand-side programs . . ." 393.1075.3 RSMo Amortizing the costs of AMMO's energy efficiency and DSM programs values the assets in the same way that supply side assets are valued. Supply side assets are depreciated over a time period that is similar to the expected life span of the asset.

While the Company initially requested a three-year amortization (Davis Direct, Ex. 114, page 3; Davis Rebuttal, Ex. 115, page 13), it later agreed to a six-year amortization period (Mark Surrebuttal, Ex. 111, page 6; Transcript Vol 26, page 1804). As shown by MIEC witness Maurice Brubaker, the expected life span of AMMO's energy efficiency programs averages 12 years (Brubaker Direct, Ex. 403, page 16). Given that expected life span, an amortization period of six years is quite generous.

The Company's billing unit adjustment mechanism proposed in the rebuttal testimony of AMMO Witness Davis (Ex. 115 at 6), should be rejected, as it is nothing more than a thinly veiled lost revenue recovery mechanism. The billing unit adjustment represents the expected effect of energy efficiency measures outside of the test year, as admitted by the Company's witness, William Davis in the hearing:

> Q. Aren't those additional revenues that you're seeking to obtain through the billing adjustment proposal based on Ameren

> Missouri's estimate of the future reduction of sales due to its demand-side programs, not based on historical experience?
>
> A. Well, not all of the savings that we have already experience[d] and documented are included in the test year, so there are some savings that are historical in nature that are outside the test year that are incorporated into the adjustment, but there are certainly sales that are from expected savings in the future included in that adjustment, yes.

Transcript Volume 26, pages 1875-1876.

> Q. Isn't the whole purpose of the billing unit adjustment to recover lost sales revenue?
>
> A. Associated with fixed costs, yes, and a reduction of sales associated with our energy efficiency programs

Transcript Volume 26, page 1878

Aside from including amounts prior to the test year, including **forecasted** lost revenue through the proposed "billing unit adjustment" is in direct contravention of this Commission's *Order of Rulemaking* for MEEIA:

> . . . Section 393.1075.5 states that the commission "may develop cost recovery mechanisms to further encourage investment in demand-side programs . . ." Lost revenue is a cost of delivering cost-effective demand-side programs, and the proposed rule, in conjunction with the interrelated proposed rules . . . require[s] evaluation, measurement and verification ("EM&V"). **Any request for recovery of lost revenue will have to be verified and approved by the commission prior to recovery.**

Order of Rulemaking 4 CSR 240-3.163, page 4, dated February 9, 2011 [emphasis added]

It is impossible to verify and approve an "expected savings in the future." In addition, AMMO's billing units already include an adjustment that reflects the impact of energy efficiency programs during its test year.

Furthermore, the billing unit adjustment does not explain how customers that are exempt from paying for energy efficiency programs will be exempt from the billing unit adjustment.

AMMO claims that the billing unit adjustment will collect lost fixed costs, so the exempt customers should pay for that as well. However, the exempt customers do not contribute to the "lost fixed cost" due to their exemption from energy efficiency costs and should not pay for the lost fixed costs attributed to other customers.

For the foregoing reasons, the MEG respectfully asks the Commission to grant the Company a RoE in the 9.7-10.0 range. Further MEG asks the Commission to not allow the Company to adjust its billing units to collect additional lost revenue that cannot be verified and approved, as required under MEEIA.

Respectfully submitted,

SANDBERG PHOENIX & von GONTARD P.C.

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CERTIFICATE OF SERVICE

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in Case No. ER-2011-0028.

Dated at St. Louis, Missouri this 1st day of June, 2011

L. Langeneckert

Lisa C. Langeneckert