

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

In the Matter of the Tariff Filings of Union)
Electric Company, d/b/a Ameren Missouri, to)
Increase Its Revenues for Retail Electric Service.)

Case No. ER-2011-0028

**AMEREN MISSOURI'S REPLY TO THE STAFF'S RESPONSE TO AMEREN
MISSOURI'S MOTION TO STRIKE, OR OTHERWISE DISALLOW, PORTIONS OF
THE PREPARED SURREBUTTAL TESTIMONY OF DAVID MURRAY**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), and for its Reply to the Staff’s above-referenced response, states as follows:

1. During Mr. Murray’s deposition, taken on Monday, April 25, 2011, the Staff advised the Company that Mr. Murray’s surrebuttal testimony does not provide an additional basis in support of the disallowance of approximately \$31 million of the Company’s investment in the Sioux scrubber project. Instead, Staff clarified, the basis for the disallowance is supported for the reasons expressed by Ms. Grissum.¹ Staff essentially repeated this in its Response to Ameren Missouri’s Motion to Strike.² Ms. Grissum also testified in her deposition as follows:

Q . So, basically, that opinion [the testimony of Mr. Murray that is at issue] is really irrelevant in your view as the person charged with auditing the project and recommending or proposing a disallowance to the commission?

A . Correct.³

2. As the Company indicated in its Motion to Strike portions of Mr. Murray’s surrebuttal testimony, the Company takes no issue with that part of Mr. Murray’s surrebuttal to Ameren Missouri witness Jerre Birdsong’s rebuttal testimony appearing starting at page 27, line

¹ April 25, 2011 David Murray Deposition, p. 124, lines 1-6 [Statement of Chief Staff Counsel Thompson].

² Staff’s Response, ¶2.

³ April 22, 2011 Roberta Grissum Deposition, p. 128, line 24 to p. 129, line 4.

6 through page 29, line 12.⁴ However, starting at page 29, line 33 through page 33, line 6, and at page 33, lines 18-21, Mr. Murray makes allegations relating to what can only properly be characterized as his theory that somehow Ameren Missouri's available credit might have been *insufficient* in the Fall of 2008 because of Ameren Missouri's ownership by Ameren Corporation and because Ameren Missouri had affiliates. Not only is Mr. Murray's theory in direct contradiction to Ms. Grissum's entire basis for proposing a disallowance (that Ameren Missouri's access to \$500 million in the credit facility was *sufficient* at the time), Mr. Murray's theory is not relevant to any matter before the Commission for resolution in this case, as demonstrated by Mr. Murray's sworn deposition testimony:

Q. You agree that the issue that the Commission will be determining [in this case] is whether or not that [sic] delay costs should be disallowed because Ameren Missouri *had sufficient access* to credit in the fall of 2008, fair?

A. Yes.⁵

3. In a rate case, the Commission must and should consider all *relevant* factors. And the Commission must decide all necessary and essential issues. *AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003) (the Commission erred when it did not "consider and decide all the necessary and essential issues"). But here, not only is the validity of Mr. Murray's theory not an essential issue; and not a necessary issue -- it is not an issue at all. As the Staff also advised the Company what Mr. Murray was doing is "giv[ing] a signal in his testimony in a rate case of how the treatment of that company might change in the future in a

⁴ The Company also takes no issue with the rest of Mr. Murray's surrebuttal testimony, which relates to cost of capital.

⁵ April 25, 2011 David Murray Deposition, p. 17, lines 9-13 (emphasis added).

future rate case.”⁶ Fair enough: the Company is now “so advised.” But that has nothing to do with this rate case or the issues in it.

4. The Company strongly disagrees with the premise of Mr. Murray’s theory, but that’s beside the point. Mr. Murray was aware of the structure of the credit facility available to Ameren Missouri at least as far back as the Fall of 2009, because he discussed it, including the \$500 million available to Ameren Missouri under it, in his rebuttal testimony relating to the Company’s interim rate request in Case No. ER-2010-0036.⁷ If the issues he raised were relevant to the basis for the Staff’s proposed disallowance in this case, then Mr. Murray should have brought them upon nearly three months ago when the Staff’s audit report regarding the Sioux scrubbers was filed. But by the Staff’s own admission, that testimony wasn’t relevant then, and it isn’t relevant now.

5. The Company renews its request that the portion of Mr. Murray’s surrebuttal testimony identified in its Motion to Strike be stricken. However, if the Commission declines to grant the Company’s Motion the Company intends to offer additional live sur-surrebuttal testimony⁸ from Mr. Birdsong when Mr. Birdsong takes the stand on the Sioux scrubber issue on April 28, 2011. Staff has already indicated it has no objection to additional live testimony from Mr. Birdsong.⁹

⁶ April 25, 2011 David Murray Deposition, p. 124, line 24 to p. 125, line 2 [Statement of Chief Staff Counsel Thompson].

⁷ Rebuttal Testimony of David Murray, November 17, 2009, Case No. ER-2010-0036, p. 8, line 22 to p. 9, line 6.

⁸ The undersigned counsel incorrectly referred to it as “additional direct” in the Company’s Motion to Strike; obviously that is incorrect, given that the testimony would be in reply to Mr. Murray’s surrebuttal testimony.

⁹ Staff’s Response, p. 3, ¶ 6.

WHEREFORE, the Company renews its request that the Commission enter an order that strikes or otherwise disallows the Surrebuttal Testimony of David Murray, page 29, line 13 through page 33, line 6, and page 33, lines 18-21, and that prevents Staff witness Murray, or any other witness, from presenting that testimony or otherwise entering it into evidence in this case; or from attempting to present evidence or argument in any other manner in this case consistent with or in support of the new justification and basis offered by Mr. Murray for the Staff's proposed \$31 million¹⁰ disallowance. If, however, the Commission denies this requested relief, the Company requests, alternatively, that it be given a full and fair opportunity to respond to Mr. Murray's testimony by allowing the Company to provide live testimony from Ameren Missouri witness Jerre Birdsong when Mr. Birdsong takes the stand on this issue during the evidentiary hearing.

¹⁰ The Company now understands that the proposed disallowance is approximately \$33 million, which apparently includes AFUDC associated with the \$31 million.

Respectfully submitted,

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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served via e-mail on counsel of record for all parties of record in this case, on this 27th day of April, 2011.

/s/James B. Lowery
Michael R. Tripp