

The key question to be decided by the Commission under this issue is whether sales made under the AEP and Wabash contracts qualify as “long-term” and “partial requirements” as those terms are used in the tariff definition of OSSR. When the Company included the phrase “long-term full or partial requirements sales” it intended that each of the terms used in that phrase would be defined in accordance with the way they are routinely used for wholesale power transactions made the where Ameren Missouri buys and sells power. As used in those markets, “long-term” means any power supply agreement whose term is longer than one year in length. And “partial requirements” means any firm sale of electricity to an investor-owned utility, an electric cooperative, or municipal electric utility that satisfies part, but not all, of the purchasing utility’s power requirements and includes both generating capacity and associated energy. Ameren Missouri’s power supply agreements with AEP and Wabash satisfy the market-based meanings of both “long-term” and “partial requirements.” Therefore, the specific terms of the Company’s FAC tariff exclude the revenues derived from both of those contracts from the amount of off-system sales revenue used to determine net fuel and purchased power costs recoverable through the FAC.

In an effort to deny Ameren Missouri the exemption prescribed in its approved FAC tariff, the Commission Staff (“Staff”), the Office of the Public Counsel (“OPC”), and the industrial customers who are parties to this case urge the Commission to adopt definitions for “long-term” and “requirements” that are very different from the meanings routinely applied to those terms in transactions involving the sale of electricity. The arcane definitions urged by these parties are buried deep in the instructions prescribed by the FERC for preparing the annual Form 1 report. Although those definitions are useful for the limited purpose for which they were designed – providing a consistent means for electric utilities across the United States to report annual financial and operating results – they bear no relationship whatsoever to modern-day power markets and are, therefore, inapplicable to power supply agreements. Moreover, when it drafted the definition of OSSR for use in the FAC, Ameren Missouri never intended that obscure definitions from the FERC Form 1 should, or would, govern the terms and phrases used in that definition.

But there is yet another problem with the definitions proposed by Staff, OPC, and the industrial customers: if they are consistently applied, those FERC Form 1-based definitions disqualify certain power

supply contracts between Ameren Missouri and several municipal utilities that all parties to this case agree are long-term requirements contracts that are excepted from the tariff definition of OSSR.

The evidence that will be presented at hearing, as well as applicable principles of law, will establish that only the market-based meanings of the terms “long-term” and “partial requirements” urged by the Company apply to the terms used in the tariff definition of OSSR. Those market-based meanings, alone, control and the amounts of off-system sales revenue that Ameren Missouri must include in the rate calculations under the FAC. Consequently, it was proper for Ameren Missouri all revenues derived from both the AEP and Wabash power sales agreements from the rate adjustments made during the periods at issue in this case.

ISSUE 2: Was it imprudent, improper and/or unlawful for Ameren Missouri to exclude the Company’s power sale agreements with AEP and Wabash from off-system sales and not include the revenues collected under the Company’s power sale agreements with AEP and Wabash in OSSR and therefore, not include those revenues in its calculation of the Fuel and Purchased Power Adjustment rates for the time period of March 1, 2009, through September 30, 2009?

No, it was not imprudent, improper, or unlawful for Ameren Missouri to exclude from the off-system sales used to adjust rates following the two Accumulation Periods at issue in this case – from March 1, 2009, through September 30, 2009 – all revenues derived from the AEP and Wabash power purchase agreements.

As described earlier in this statement of position, the definition of OSSR included in Ameren Missouri’s approved FAC specifically excludes revenues derived from “full or partial requirements sales” from the amount of off-system sales revenue that the Company must include in the tariff-prescribed formula used to determine net fuel and purchased power costs that are recoverable from customers. Ameren Missouri’s agreements with both the AEP and Wabash are partial requirements contracts and revenues derived from those contracts are partial requirements sales. Consequently, when the Company excluded those revenues from the amount of off-system sales revenue used in the tariff formula for calculating FAC-related rates for each of the Accumulation Periods at issue. Ameren Missouri’s actions were fully consistent with the terms of its approved FAC and were thus prudent, proper, and lawful. Only if the Company had acted other than it did – in a manner that both ignored the specific language of its

FAC tariff and contravened the objective of ensuring full and timely recovery of prudently-incurred fuel and purchased power costs that was the basis for the Commission's approval of that tariff – could its actions be considered to be imprudent, improper, or unlawful.

Respectfully submitted,

/s/ L. Russell Mitten
L. Russell Mitten, #27881
Brydon, Swearingen & England, PC
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-456
(573) 635-7166 (Telephone)
(573) 635-7431 (Facsimile)
rmitten@brydonlaw.com

Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC 1310
P.O. Box 66149, MC-131
St. Louis, MO 63101-6149
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
tbyrne@ameren.com

ATTORNEYS FOR AMEREN MISSOURI

Certificate of Service

I hereby certify that a copy of the foregoing has been sent by United States mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record in Case No. EO-2010-0255 on the 7th day of January, 2011.

/s/ L. Russell Mitten