

**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) Case No. ER-2011-0028
Increase Its Revenues for Retail Electric Service.)

**RESPONSE TO STAFF’S MOTION TO STRIKE OR OTHERWISE DISALLOW
PORTIONS OF THE PREPARED REBUTTAL AND SURREBUTTAL TESTIMONIES
OF WILLIAM DAVIS**

COMES NOW, Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri or Company) and for its response to *Staff’s Motion to Strike or Otherwise Disallow Portions Of the Prepared Rebuttal and Surrebuttal Testimonies of William Davis and Motion for Expedited Treatment*, states as follows:

1. On April 21, 2011, the Staff of the Missouri Public Service Commission (Staff) filed its Motion to Strike portions of William Davis’s rebuttal and surrebuttal testimonies.
2. On April 22, 2011, the Missouri Public Service Commission (Commission) ordered Ameren Missouri to respond no later than April 27, 2011.
3. Staff’s Motion to Strike claims Mr. Davis’ rebuttal and surrebuttal testimony contain new positions and should be disallowed by the Commission.
4. Mr. Davis’ direct testimony was filed on September 3, 2010. His central message was that the Company’s expenditures on energy efficiency programs cause the Company to lose revenues at a level that cannot be sustained (called the throughput disincentive). Ameren Missouri’s position on this issue has been consistent throughout its testimony. Mr. Davis’ direct testimony also proposed a mechanism to recover those costs, the Fixed Cost Recovery Mechanism (FCRM).

5. On February 9, 2011, the Commission issued its Orders sending to the Missouri Secretary of State the final regulations implementing the Missouri Energy Efficiency Investment Act (MEEIA). The rules define Lost Revenue in a manner that, if applied to Ameren Missouri's FCRM, makes the mechanism proposed in direct testimony insufficient to resolve the throughput disincentive. The rules are expected to become effective in June of this year, but are the subject of three appeals in Cole County Circuit Court.

6. Reacting to this change in circumstances and desiring to continue its investment in energy efficiency, in rebuttal Ameren Missouri proposed an alternative mechanism to address the same, previously identified throughput disincentive problem identified in Mr. Davis' direct testimony.

7. Under normal circumstances, Ameren Missouri would agree with Staff's assertion that placing this proposal in rebuttal violates the Company's obligation to place its case-in-chief in its direct testimony. However, the environment surrounding energy efficiency in Missouri is in a state of flux and does not represent normal circumstances. The Commission should recognize the state of Missouri's investor owned utilities are in a transition period and allow some flexibility while all parties work to implement MEEIA. That effort is directly impacted by the Commission's MEEIA rules. Those rules were not approved until months after the Company had filed its direct case. The rules, as approved by the Commission, rendered Ameren Missouri's proposal in direct testimony wholly inadequate to address and remove the throughput disincentive. Rather than simply withdrawing its proposal and reducing its energy efficiency programs accordingly, the Company proposed a mechanism which it believes is consistent with the MEEIA statute, does not run afoul of the Commission's definition of Lost Revenue and which would allow Ameren Missouri to continue its investment in energy efficiency programs.

For these reasons, it is appropriate in this circumstance for the Commission to allow Ameren Missouri's rebuttal billing unit mechanism proposal.

8. Staff next alleges that Mr. Davis' surrebuttal "raises Ameren Missouri's proposal to reduce the billing units in his surrebuttal." The meaning of this sentence is not clear. Mr. Davis set out the billing unit adjustment mechanism in his rebuttal testimony, so it would be inaccurate to state that the mechanism wasn't set forth prior to surrebuttal. Ameren Missouri believes this sentence refers to the updated billing unit adjustment numbers provided in Mr. Davis' surrebuttal. Ameren Missouri does not believe this update should be considered new. Mr. Davis' rebuttal testimony stated the billing unit adjustment numbers he was proposing would be updated for the results of the Company's EM&V reports. Those reports were not available at the time Ameren Missouri filed rebuttal testimony. Those results became available prior to surrebuttal testimony and were provided to Staff and Ameren Missouri's energy efficiency stakeholders. This portion of Mr. Davis' surrebuttal did nothing more than provide the updated numbers, just as his rebuttal said he would do. This is consistent with Staff's standard practice for updating expense and revenue levels as additional information becomes available. This was not a change in position but rather an attempt to provide the Commission and all parties with the most current information available so that the billing unit adjustment can be as accurate as possible.

9. Staff also challenges Davis' surrebuttal exhibit WRD-ES7 as containing new information. Ameren Missouri disagrees. Mr. Davis' rebuttal stated in words how the billing unit mechanism would work. WRD-ES7 set forth the same concept, but this time in numbers. For example, the exhibit shows that the billing unit mechanism does not change the calculations necessary for Company's fuel adjustment clause. This was not a change in position, as the

Company did not propose a change to its FAC (based upon the billing unit mechanism) in rebuttal. The two are consistent and WRD-ES7 should not be struck.

10. The timing of this rate case and the interaction with the Commission's recently approved MEEIA rules is unique. Utility energy efficiency efforts in the state are in a period of transition. Ameren Missouri has proposed an innovative and creative way to support energy efficiency investment in the state. Given these circumstances, it is appropriate for the Commission to exercise its discretion to allow Ameren Missouri the flexibility to proceed with its billing unit mechanism proposal so that this option can be fully tried and, potentially, adopted by the Commission in this case.

11. If the Commission grants Staff's Motion to Strike, the Company will be unable to address the throughput disincentive until its next rate case, and as the testimony of Company CEO Warner Baxter and Senior Vice President Richard Mark make clear, would significantly limit the Company's ability to invest in energy efficiency, causing the Company and its customers to lose the forward momentum Ameren Missouri has created with its energy efficiency efforts since 2009. This outcome is not in anyone's interest and should be avoided by allowing Mr. Davis' rebuttal and surrebuttal testimonies.

12. The Company does not desire to disadvantage Staff. Staff has not been denied the opportunity to respond to the Company's billing unit mechanism proposal and has already filed surrebuttal testimony in response to Mr. Davis' rebuttal testimony. If the Commission believes it necessary, Ameren Missouri does not object to Staff filing supplemental written testimony in response to the previously identified portions of Mr. Davis' surrebuttal testimony (i.e., the updated billing unit numbers and WRD-ES7).

Respectfully submitted,

/s/ Wendy K. Tatro

Wendy Tatro, #60261
Associate General Counsel
Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-13-
St. Louis, MO 63101-6149
(314) 554-3484 (telephone)
(314) 554-2514 (telephone)
(314) 554-4014 (facsimile)
wtatro@ameren.com
tbyrne@ameren.com

ATTORNEYS FOR
UNION ELECTRIC COMPANY, d/b/a
AMEREN MISSOURI

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Staff's Motion To Strike Or Otherwise Disallow The Prepared Rebuttal And Surrebuttal Testimonies Of William Davis was served on all parties of record via electronic mail (e-mail) on this 27th day of April, 2011.

/s/ Wendy K. Tatro _____
Wendy K. Tatro