

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

In the Matter of the Suspension of Union)	
Electric Company d/b/a Ameren Missouri's)	Case No. ET-2012-0016
Rider SR - Solar Rebate Tariff.)	

**AMEREN MISSOURI'S RESPONSE TO STAFF'S
RECOMMENDATION TO REJECT TARIFF SHEETS**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or the Company) and, in response to Staff's Recommendation to Reject Tariff Sheets filed in this proceeding on July 20, 2011 (Staff Recommendation), the Company states as follows:

1. On July 15, 2011, Ameren Missouri initiated this docket by filing tariffs designed to suspend its Rider SR (found at Schedule 5, Sheet Nos. 122.14 and 122.15 of the Company's electric tariff) and asking for expedited treatment of its request. Rider SR was designed to implement Section 393.1030.3 RSMo. Supp. 2010, which was enacted in in 2008 as part of the "Renewable Energy Standard Act." Specifically, Section 393.1030.3 required electric utilities to provide a \$2.00 per installed watt standard offer rebate to certain customers who installed solar electric systems on their premises after 2009. Rider SR is also required by the Commission's rules (4 CSR 240-20.100(4)), which provides that utilities "shall include in their tariffs a provision regarding retail account holder rebates." Rider SR entitles customers who meet its requirements to receive a solar rebate.

2. As the Commission is aware, on June 29, 2011, in Case Nos. 10AC-CC00512, 10AC-CC00511, 10AC-CC00513, 10AC-CC00528 and 10AC-CC00536 the Cole County Circuit Court declared Section 393.1030.3 (and the Commission's rule

implementing it) unconstitutional, and that is the reason that Ameren Missouri has asked that its tariff implementing Section 393.1030.3 and the Commission's rule be suspended.

3. Staff argues that suspension of the tariff is unnecessary—the Staff Recommendation states that “if the Cole County Circuit Court’s judgment becomes final and non-appealable, regardless of Rider SR, Ameren Missouri will have no obligation to provide solar rebates to its customers.” However, Staff’s Recommendation does not address what will happen if the tariff itself remains a part of the Company’s effective rate schedules,¹ nor does it address what will happen if the Cole County Circuit Court’s judgment is appealed, as Ameren Missouri expects it will be. During the months and potentially years that it will take to sort these issues out, if Ameren Missouri continues to pay rebates it will face significant risk that other parties may argue that it is unable to recover its costs (which are likely to amount to millions of dollars) in the event that the Circuit Court’s decision is ultimately upheld.

4. Ameren Missouri is faced with a Cole County Circuit Court decision that addresses not only the Commission rulemaking order, but also the underlying statute, and declares both unconstitutional. Under these circumstances, which to Ameren Missouri’s knowledge have not previously occurred in this state, it is unclear what the impact of the Company’s continued payment of rebates would be. Although Ameren Missouri would expect to be allowed to recover its costs, the risk that other parties may take a contrary position creates a great deal of uncertainty, regardless of this Commission’s present intention with respect to cost recovery of the solar rebate expenditures made by the Company.

¹ Without suspension this may be an issue because in general, it is settled law that utility tariffs have the force and effect of law. *See, e.g., Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 114 (1937), *aff’g* 93 S.W.2d 954 (Mo. 1936).

5. Under these circumstances, it makes sense to suspend the tariff until the issue of the constitutionality of the Commission rule and the underlying statute can be finally resolved by the Missouri courts. It makes no sense to require Ameren Missouri to continue to pay millions of dollars in solar rebates where there is a significant risk that other parties will argue these costs are not recoverable in the future.

WHEREFORE, Ameren Missouri respectfully requests that the Commission approve the tariffs it filed to suspend Rider SR.

Respectfully submitted,

/s/Thomas M. Byrne

Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC-1310
St. Louis, MO 63103
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
AmerenMOService@ameren.com

James B. Lowery, #40503
Smith Lewis, LLP
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

**Attorneys for Union Electric
Company d/b/a Ameren Missouri**

Dated: July 26, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been served via e-mail this 26th day of July, 2011, to:

General Counsel's Office
Missouri Public Service Commission
P.O. Box 360
200 Madison Street, Suite 800
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov

Office of Public Counsel
Lewis R. Mills, Jr.
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102-2230
opcservice@ded.mo.gov

/s/ Thomas M. Byrne
Thomas M. Byrne