

Exhibit No.:
Issue(s): Fuel Adjustment Clause,
Rate Case Expense
Witness: Lynn M. Barnes
Sponsoring Party: Union Electric Company
Type of Exhibit: Surrebuttal Testimony
Case No.: ER-2011-0028
Date Testimony Prepared: April 15, 2011

MISSOURI PUBLIC SERVICE COMMISSION

Case No. ER-2011-0028

SURREBUTTAL TESTIMONY

OF

LYNN M. BARNES

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
April, 2011**

TABLE OF CONTENTS

I. FUEL ADJUSTMENT CLAUSE..... 1

II. RATE CASE EXPENSE 3

1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **LYNN M. BARNES**

4 **CASE NO. ER-2011-0028**

5 **Q. Please state your name and business address.**

6 A. My name is Lynn M. Barnes. My business address is One Ameren Plaza,
7 1901 Chouteau Avenue, St. Louis, Missouri 63103.

8 **Q. By whom and in what capacity are you employed?**

9 A. I am employed by Union Electric Company d/b/a Ameren Missouri as Vice
10 President Business Planning and Controller.

11 **Q. Are you the same Lynn M. Barnes who filed direct and rebuttal**
12 **testimony in this case?**

13 A. Yes, I am.

14 **Q. What is the purpose of your surrebuttal testimony?**

15 A. The purpose of my surrebuttal testimony is to address the rebuttal testimony
16 of Missouri Industrial Energy Consumers (“MIEC”) witness Maurice Brubaker regarding the
17 fuel adjustment clause (“FAC”) recovery period and Office of Public Counsel (“OPC”)
18 witness Ted Robertson regarding the amount of rate case expense that should be included in
19 rates.

20 **I. FUEL ADJUSTMENT CLAUSE**

21 **Q. On page 14 of his rebuttal testimony, Mr. Brubaker comments on the**
22 **Company’s FAC and states that “[s]ince there is no way to know in advance during**
23 **what months of the calendar year over- or under-recoveries will occur, a 12-month**

1 **recovery period is neutral and avoids concentrating this reconciliation in a shortened**
2 **period where some classes could have a disproportionate share of usage.” Please**
3 **comment.**

4 A. While Mr. Brubaker’s statement is generally true, under normal conditions
5 this disproportionality would not be material. Table 1 below depicts the Company’s
6 distribution of sales at the generation level, by class for the test year (i.e., twelve months),
7 and comparable distributions utilizing three eight-month periods. This representation can be
8 used as a proxy for the evaluation of twelve-month versus eight-month recovery periods
9 because the factors used to calculate rate adjustments under the FAC (FPA factors) are based
10 on forecasted class sales at the generator.

11 ***Table 1: Distribution of Sales By Class @ Generation Level for Twelve- and Eight-Month***
12 ***Periods***

Customer Class	Twelve Months	Oct-May	Feb-Sept	Jun-Jan
Residential 1(M)	37.8%	38.2%	37.5%	37.7%
Small General Service 2(M)	9.7%	9.7%	9.7%	9.6%
Large General Service 3(M)	22.1%	21.8%	22.3%	22.3%
Small Primary Service 4(M)	9.4%	9.3%	9.5%	9.5%
Streetlighting 5(M), 6(M), and 7(M)	0.6%	0.7%	0.6%	0.6%
Large Primary Service 11(M)	9.9%	9.7%	10.1%	10.0%
Large Transmission Service 12(M)	10.5%	10.7%	10.4%	10.3%

13
14 The data within Table 1 strongly suggest that there are only minimal differences in class
15 percentages of kilowatt-hour sales (“kWhs”) regardless of whether a twelve-month recovery
16 period or any of the three eight-month recovery periods is used. Additionally, as mentioned
17 above, the existing mechanics of the FAC utilize forecasted class sales to calculate
18 prospective FPAs, and, as such, under extreme weather conditions could result in minimal

1 differences in percentages of dollars charged under an FPA rate for each respective class
2 versus those that were estimated. The reconciliation (true-up) process in the FAC will
3 subsequently address any over- or under-recovery in the aggregate; however it does not
4 accommodate over- or under-recoveries by customer class.

5 **Q. Is there further support for the reduction of the FAC recovery period**
6 **from twelve months to eight months?**

7 A. Yes. The impact of the interest component within the Company's FPA
8 calculation is mitigated due to a shorter recovery period. This reduces interest charges to
9 customers where there are under-recoveries and interest costs to the Company when there are
10 over-recoveries. Moreover, customers will experience a more timely reflection of actual fuel
11 costs or more timely "price signals" when a shorter recovery period is used because the
12 charges or credits in the FAC will occur closer in time to the period when the costs were
13 incurred. Finally, reduction of the recovery period to eight months will help mitigate
14 regulatory lag associated with the FAC.

15 **II. RATE CASE EXPENSE**

16 **Q. What is the OPC's position regarding rate case expense?**

17 A. The OPC's position is that certain rate case expenses should be shared
18 between ratepayers and shareholders and that the amount of those expenses that are included
19 in rates should reflect only that portion that directly benefits ratepayers. The OPC is also
20 suggesting that rate case expenses for external support should be disallowed entirely.
21 Finally, the OPC proposes that rate case expense that is included in the cost of service be
22 amortized over 16 months.

1 **Q. Do you agree with the OPC’s position regarding the sharing of costs**
2 **between ratepayers and shareholders?**

3 A. No, I do not. The OPC’s position regarding rate case expense ignores the fact
4 that *all* of the costs that Ameren Missouri prudently incurs to provide electric service benefit
5 both the Company’s customers and its shareholders. So in terms of who ultimately benefits,
6 rate case expenses are no different than any other category or type of expense or investment
7 that is included in the cost of service for the purpose of setting rates. And because customers
8 and shareholders mutually benefit from all of the costs that Ameren Missouri incurs to
9 provide safe and adequate service to customers at fair and reasonable rates, there is no
10 justification for singling out rate case expense for the special treatment that the OPC is
11 proposing in this case.

12 Rate case expense is a legitimate and necessary operating expense and should be
13 treated the same as all other operating expenses as part of the cost of service. Because
14 Ameren Missouri is a regulated utility, filing rate cases is a necessary part of doing business.
15 Filing a rate case is the only mechanism available to the Company to ensure that the rates it
16 charges to customers are fair and reasonable, and appropriately reflect the cost of providing
17 service to customers. In that sense, rate case expenses are no different from any other cost of
18 complying with governmental mandates and regulations. A utility’s cost of complying with
19 government mandates and regulations routinely is allowed as part of the cost of service for
20 ratemaking purposes. Because rate case expenses are incurred solely to comply with a
21 government mandate – i.e., the statutory requirement that a tariff be filed in order to increase
22 rates and the Commission’s decision to suspend that tariff and conduct an investigation,

1 including hearings, on the reasonableness of the proposed rate increase – rate case expense
2 should not be treated any differently than other compliance costs.

3 **Q. What causes the Company to incur rate case expenses?**

4 A. Rate case expenses are incurred as a direct result of two decisions by the
5 Commission over which the Company has no control: 1) the Commission’s decision, which
6 is discretionary, to suspend a proposed tariff and hold hearings; and 2) the Commission’s
7 decision, as reflected in the Commission’s rules, that proposed changes in rates be
8 accompanied by expert testimony and exhibits supporting the proposed change. Virtually all
9 rate case expenses, and certainly all rate case expenses related to outside experts and legal
10 counsel, are attributable to one or both of those decisions. I am not suggesting that those
11 decisions are unreasonable. I am merely pointing out that the Company must incur
12 substantial costs to prepare, file, and litigate a rate case, and I am pointing out that rate cases
13 are a required part of operating as a regulated public utility.

14 **Q. Do you agree with the OPC’s assertion that rate case expenses are**
15 **increasing and are not being controlled by the Company?**

16 A. No, I do not. In my rebuttal testimony, I included the costs of the last two rate
17 cases and an estimate of the costs for this rate case. The amount for each of those cases was
18 about \$2.1 million. That shows that the OPC is wrong when it contends that rate case
19 expense is increasing, and also shows that we are doing the best we can to contain rate case
20 expenses.

21 To a large degree, however, outside factors impact the Company’s ability to manage
22 those costs. For example, the amount of rate case expense the Company incurs is affected by
23 the number of other parties (i.e., MPSC Staff, the OPC, and intervenor groups) in the case

1 and the positions those parties take with regard to the Company's proposed tariff filing. The
2 number of parties to a case also significantly impacts the Company's costs of prosecuting the
3 case; for example, the number of data requests it must respond to and the number of expert
4 witnesses that must be used to contest positions raised by the other parties.

5 But one of the biggest factors affecting rate case expense is the fact that Ameren
6 Missouri, alone, has the burden of proving that the rate changes proposed in its tariff filing
7 are just and reasonable and should be adopted by the Commission. Rate cases are critical to
8 the financial well-being of the Company – they are the only way that Ameren Missouri can
9 recover increasing operating costs and earn a return on the hundreds of millions of dollars
10 invested in plant and facilities needed to meet customer demand for safe and reliable
11 electricity. So it is imperative that the Company put forth the best case possible to ensure
12 that the many complex issues that must be addressed in a rate case are fully and adequately
13 addressed and that the rates set are truly fair and reasonable. Ameren Missouri would be
14 shirking its responsibility to its shareholders if it did not put on the best case possible.
15 Moreover, Ameren Missouri would be shirking its responsibilities to its customers if it failed
16 to take the steps it needed to obtain the revenues it needs to operate and maintain its power
17 plants and energy delivery systems, or to build new power plants, to name just a few of the
18 things the Company must do in order to meet its obligation to deliver safe and adequate
19 service.

20 **Q. Do you agree with the OPC's position regarding the disallowance of**
21 **certain external support costs?**

22 A. No. As I stated in my rebuttal testimony, our view is that utilizing external
23 resources in peak times allows us to have better control of our costs rather than embedding a

1 level of internal costs in rates that matches peak need. That is why we employ outside
2 experts and attorneys to help us prosecute our rate cases instead of hiring full-time employees
3 who might be under-employed, or even laid-off, when work levels decrease between rate
4 cases. This approach is consistent with how other operating costs are managed, such as
5 storm restoration costs and maintenance outage costs, where outside contractors are
6 employed to meet peaks in demand, but then are not utilized when the peak passes. In
7 addition, the complexity of the issues litigated in our rate cases has made it necessary to seek
8 a level of expertise that can only be obtained from external experts who have a broader
9 perspective of the issues than just Ameren Missouri or just Missouri regulation and are often
10 in the best position to rebut the positions of the other parties, who often also use expert
11 witnesses and external attorneys.

12 **Q. Why is the OPC's argument in Mr. Robertson's testimony that the**
13 **Company has enough internal personnel to handle the rate case without external**
14 **assistance faulty?**

15 A. Mr. Robertson's argument starts with the premise that Ameren Missouri has a
16 number of employees with certain technical or educational backgrounds and concludes that
17 those employees are qualified to be expert witnesses in rate cases, or have unused time on
18 their hands in view of their other responsibilities, thereby making it unnecessary for the
19 Company to use external resources to litigate a rate case. But Mr. Robertson's conclusion
20 does not follow from his premise because there are numerous factors that affect an
21 employee's qualifications and availability to serve as an expert witness in a rate case that he
22 simply ignores or chooses not to address. Those factors include, but are not limited to the
23 following:

1 • The fact that an employee has a particular degree or certification does not,
2 alone, qualify that employee to provide expert testimony in a rate case.

3 • The fact that an employee works in a particular discipline within the
4 Company, e.g. finance or law, does not automatically vest them with the
5 qualifications necessary to act as an expert witness or try a complex rate case.

6 It goes without saying that every Ameren Missouri employee who works in
7 the financial area is not qualified to perform the analysis necessary to provide
8 the type and quality of expert testimony that the Commission has come to
9 expect and rely on to determine an appropriate return on equity. And it is
10 equally clear that while many lawyers may have “regulatory experience,” not
11 all of those lawyers have the knowledge and experience necessary to try a
12 complex rate case.

13 • Even if there are some employees within Ameren Missouri who have the
14 education and experience necessary to serve as an expert witness or an
15 attorney in a rate case, Mr. Robertson’s argument fails to consider the fact that
16 those employees are already fully employed fulfilling other duties that are
17 critical to the Company.

18 In short, Mr. Robertson’s argument is based on a very simplistic and superficial analysis and
19 the conclusion he offers – that Ameren Missouri has sufficient internal resources to put
20 together and try a rate case, and therefore has no need for outside experts or attorneys – does
21 not follow from the evidence he presents in his rebuttal testimony.

1 **Q. Mr. Robertson asserts other in-house attorneys could be utilized in**
2 **preparing and adjudicating the rate case, and the Company could avoid the expense of**
3 **outside counsel. Is that true?**

4 A. No, it is not. I can provide two prime examples relating to the internal
5 attorneys who lead the two other principal regulatory areas within Ameren Services.
6 Attorney Ed Fitzhenry and his team manage regulatory matters for Ameren Illinois, including
7 rate cases before the Illinois Commerce Commission. His group includes those employees
8 who have experience that would be most relevant to a Missouri rate case. Mr. Fitzhenry's
9 group is exclusively devoted to Ameren Illinois matters, not only for reasons of their
10 expertise, but because of the time required to fulfill those duties. Currently, this group is
11 fully committed to prosecuting an Ameren Illinois rate case. 100% of this group's services
12 are required by Ameren Illinois, and they are in fact supplemented by substantial outside
13 counsel resources routinely for rate cases and other regulatory matters. The same is true for
14 attorney Joseph Raybuck and his group, which handles regulatory matters at the FERC. He
15 and his team spend 100% of their time on FERC issues, and also routinely must rely upon
16 outside counsel.

17 **Q. Are the other in-house attorneys able to assist Ameren Missouri in rate**
18 **case preparation?**

19 A. No. The other Ameren attorneys have specialized areas of practice in
20 transactional matters, corporate governance, labor, employment and claims. Many have been
21 hired because of their special expertise. These attorneys already have demanding full-time
22 jobs addressing other areas critical to their clients' businesses, and they have little or no
23 current experience dealing with regulatory matters.

1 **Q. Do you have any other comments regarding the OPC's proposal to**
2 **disallow recovery of half of the Company's internal rate case expense and all of the**
3 **expense incurred for outside experts and attorneys?**

4 A. Yes, I do. Mr. Robertson has not presented any evidence that proves or even
5 suggests any of the expenses that Ameren Missouri has incurred to prepare and prosecute this
6 rate case are unreasonable or imprudent. Instead, his testimony is based on unfounded
7 speculation – that the Company does not need outside experts to prepare and prosecute this
8 rate case – and on a policy argument that because Ameren Missouri's shareholders derive
9 benefits from a rate case those shareholders should bear one half, or more, of the costs of
10 prosecuting the case. In response to that testimony I would say two things. First, speculation
11 about what might be possible is not competent and substantial evidence that the Company
12 acted imprudently in obtaining assistance from outside experts in preparing and prosecuting
13 this case. Second, because both ratepayers and shareholders benefit from all prudent
14 expenditures and investments that Ameren Missouri makes to provide safe and reliable
15 electric service to its Missouri customers, there is no regulatory policy justification for
16 treating rate case expenses differently from all other types and categories of expense that are
17 included in the cost of service for ratemaking purposes. For all those reasons, the OPC's
18 proposal regarding rate case expense should be rejected.

19 **Q. Has the OPC proposed an amortization of rate case expense?**

20 A. Yes. The OPC is proposing that rate case expense be amortized over
21 16 months (1 and 1/3 years). Since July 2006, the Company has filed four rate cases, with
22 the current case filed in September 2010. Four cases over that period of time result in an

Surrebuttal Testimony of
Lynn M. Barnes

1 average period of 12 ½ months between rate cases. As a result, there is no justification to
2 amortize rate case expenses and it should simply be included in the cost of service.

3 **Q. Does this conclude your surrebuttal testimony?**

4 **A. Yes, it does.**

