

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

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| In the Matter of Union Electric Company d/b/a |) | |
| Ameren Missouri's Tariff to Increase Its Annual |) | <u>Case No. ER-2011-0028</u> |
| Revenues for Electric Service. |) | Tariff No. YE-2011-0116 |

**Staff's Motion to Strike Or Otherwise Disallow Portions of the Prepared
Rebuttal and Surrebuttal Testimonies of William Davis and
Motion for Expedited Treatment**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and for Staff's Motions respectfully states the following:

Motion to Strike

1. In his verified direct testimony prefiled September 3, 2010, Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company) employee William R. Davis testified on behalf of the Company and proposed a demand-side management cost recovery mechanism and an energy efficiency fixed cost recovery mechanism. (Direct, p. 3, lines 1-4).

2. In particular, Mr. Davis testified that:

In this case, AmerenUE proposes that rates be set with zero prospective fixed cost recovery related to energy efficiency impacts. Ideally, we would request a starting amount that is representative of the expected energy efficiency impacts, then true-up that estimate in subsequent rate cases. However, because this would be the first implementation in Missouri of such a mechanism, we are proposing to start with no initial impact to rates.

(Direct, p. 8, lines 14-19.) (emphasis added).

3. However, Mr. Davis' rebuttal testimony proposed to change Ameren Missouri's position as verified within his direct testimony:

Q. *Are you proposing an alternate approach?*

A. *Yes. An alternative approach to address the throughput incentive is to decrease the billing units used to set rates...*

(See Rebuttal, p. 6 line 4, through p. 7 line 21.) (emphasis added).

4. Mr. Davis raises Ameren Missouri's proposal to reduce the billing units in his surrebuttal. (Surrebuttal, p. 1, lines 18-20; p. 4, lines 11-23).

5. The first time Mr. Davis prepared and addressed the schedule WRD-ES7 and discussed how the Company would apply the proposed adjustment was in his surrebuttal. (Surrebuttal, p. 5, line 1 through p. 6, line13).

6. Commission Rule 4 CSR 240-2.130 (7) provides:

For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

Commission Rule 4 CSR 240-2.130 (8) provides:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

7. Ameren Missouri is obligated to put on its case-in-chief within its direct testimony. The Company has, in violation of the rules, changed its position on several occasions to a more advantageous throughput incentive recovery mechanism than that proposed in its September 3, 2010, case-in-chief. The Staff and the interveners base the development of their respective case on the issues and testimony presented as part of the direct case filing. Ameren

Missouri provided the schedule WRD-ES7 and an explanation as to the proposal's application in detail for the first time in surrebuttal. If the Commission allows the Company to change its position at this late juncture, no party will have the opportunity to review or provide testimony on the Company's position. Allowing the Company to change its position within surrebuttal testimony would not only violate due process, but it would also violate Commission Rule 4 CSR 240-2.130.

8. Ameren Missouri's actions demonstrate a complete and utter disregard for fairness, due process and good faith. Had Ameren Missouri filed testimony in accordance with the Commission's rules, then the Staff would have had a full and fair opportunity to file rebutting testimony on the issue. Instead, the Company raises such new positions just **six (6) days** before the evidentiary hearing in this case is scheduled to begin.

9. If, despite these facts, the Commission determines not to strike the testimony of Mr. Davis as requested herein, the Staff requests in the alternative that the Commission allow the Staff to file supplemental testimony on this issue on April 27, 2011.

Motion for Expedited Treatment

10. The Staff respectfully requests that the Commission act on its *Motion to Strike and Or Otherwise Disallow Portions of the Prepared Rebuttal and Surrebuttal Testimonies of William Davis and Motion for Expedited Treatment* in an expedited manner. The Commission's granting of these motions will prevent due process violations and the undue burden placed upon the Staff and the interveners to prepare for evidentiary hearing.

11. The undersigned has filed this Motion to Strike along with the Motion for Expedited Treatment as soon as it could have after the filing of the surrebuttal testimony.

WHEREFORE, the Staff requests that the Commission issue an order that (1) finds Mr. Davis' rebuttal and surrebuttal testimonies irrelevant and inadmissible as evidence in this case, and strikes or otherwise disallows the rebuttal testimony of Mr. Davis starting on page 6, line 4, through page 7, line 21; and surrebuttal testimony of Mr. Davis at page 1, lines 18-20, page 4, lines 11-23, and page 5, line 1 through page 6, line 13; and (2) that prevents Mr. Davis 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 cited rebuttal and surrebuttal positions. In the alternative, the Staff requests that the Commission allow the Staff to file supplemental testimony on this issue on April 27, 2011.

Respectfully submitted,

/s/ Jennifer Hernandez

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel/parties of record as identified on the Commission's EFIS service list for this case on this 21st day of April 2011.

/s/ Jennifer Hernandez