

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

In the Matter of Union Electric)
Company d/b/a Ameren Missouri's)
Voluntary Green Program/Pure Power)
Program Tariff Filing.)

Case No. EO-2013-0307
Tariff No. JE-2013-0197

STAFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through the undersigned counsel, and states as follows:

1. At the conclusion of the hearing in this matter, the presiding Regulatory Law Judge directed the parties to submit proposed findings of fact and conclusions of law for the Commission’s consideration, to be filed April 8, 2013.

2. Staff’s proposed findings of fact and conclusions of law, with related discussion and ordered paragraphs, are as follows:

Discussion

The Commission rejects Ameren Missouri’s proposed tariff sheets, and declines to issue conditions for the filing of compliance tariff sheets. The availability of the Pure Power Program pursuant to the terms of Ameren Missouri’s tariff ends April 30, 2013.

Findings of Fact Related to Ameren Missouri’s Prima Facie Case

1. Union Electric Company d/b/a/ Ameren Missouri (“Ameren Missouri”) is an Electrical Corporation. Ameren is a regulated public utility corporation subject to the jurisdiction of the Commission as provided by law.¹

¹ Ameren Missouri Exhibit #1.

2. Ameren Missouri's tariff sheet implementing its Voluntary Green Program ("Pure Power")² was approved in Case No. ER-2007-0002, by the Commission's *Order Granted Expedited Treatment and Approving Compliance Tariff*, effective July 23, 2007. This cancelled tariff sheet did not bear a date limiting its applicability.³

3. In its *Report and Order* in Case No. ER-2007-0002, the Commission found as follows:

The sale of RECs is not a substitute for the actual generation of power from renewable resources. But building renewable-powered generation takes time and the implementation of the plan to sell RECs can be implemented almost immediately. There is some risk of confusion among customers who are not familiar with the concept of a REC, but the program is voluntary and AmerenUE has engaged the services of an experienced company to perform customer education and marketing for the program. The Commission finds that the plan to facilitate the sale of RECs is reasonable and is unlikely to cause undue confusion among AmerenUE's customers. [Internal citations omitted.]

4. As part of their *Non-unanimous Stipulation and Agreement Regarding Ameren Missouri's Voluntary Green Program*, filed and approved in Case No. ER-2012-0166, the Staff of the Missouri Public Service Commission ("Staff") and Ameren Missouri agreed that Ameren Missouri would file, as part of its compliance tariff sheets filed at the end of that general rate case, a revised Pure Power tariff sheet. The only revision to that tariff sheet was the addition of an end date for the program of

² "Pure Power" is the name of the program Ameren Missouri has created through 3 Degrees Group, Inc ("3 Degrees"). "Voluntary Green Program" is the program authorized by the Commission-approved tariff sheets. Pure Power is Ameren Missouri's chosen method of implementing the Voluntary Green Program tariff sheets. Our discussion throughout this document is with reference to Ameren Missouri's implementation of the Voluntary Green Program tariff sheets through the Pure Power program. For ease of reference, we generally uses the term, "Pure Power."

³ Ameren Missouri's tariff sheet, P.S.C. MO. No. 5, Original Sheet No. 216.

April 30, 2013. The parties further agreed upon terms for the filing of the tariff sheet that is the subject of this case, Case No. EO-2013-0307.⁴

5. Ameren Missouri's Pure Power tariff sheet, P.S.C. MO. No. 5, 4th Revised Sheet No. 217, Cancelling 3rd Revised Sheet No. 217 provides that "[s]ervices offered under this program shall end on April 30, 2013."

6. On October 19, 2012 Ameren Missouri filed the tariff sheets that are the subject of this case, ER-2013-0307. These tariff sheets bear three material changes from the current tariff sheet regarding the operation of the Pure Power program. Those changes are:

- a. Remove the \$1 per Renewable Energy Credit (REC) administrative fee currently retained by Ameren Missouri;
- b. Reduce the per-REC price to \$10; and
- c. Modify the "Purpose" language to include "education," in addition to the procurement and retirement of RECs.^{5, 6}

7. Ameren Missouri's direct testimony contains no reference to the cost basis of the program.⁷

8. Ameren Missouri's direct testimony contains no reference to the amount of the customer dollars that will "support renewable energy technologies."⁸

⁴ *Nonunanimous Stipulation and Agreement Regarding Ameren Missouri's Voluntary Green Program* in Case No. ER-2012-0166; Ameren Exhibit 6.

⁵ The "purpose" language would read as follows: The purpose of this Voluntary Green Program/Pure Power Program [sic] (Program) tariff is to provide customers with an option to support renewable energy technologies and education through the purchase of renewable energy credits. One renewable energy certificate (REC) represents the positive environmental attributes associated with 1,000 kWh of electricity generated by renewable energy sources such as: solar, wind, hydroelectric, geothermal, landfill gas, biomass, biodiesel used to generate electricity, agricultural crops or waste, all animal and organic waste, all energy crops and other renewable resources deemed to be Green-e Certified by the Center for Resource Solution's Green-e Standard. Customers participating under this Program will not directly receive any renewable energy commodity or product as a result of their participation. Rather, when a customer signs up for the Program, Company shall purchase and retire Green-e Certified RECs.

⁶ Ameren Missouri tariff sheets, P.S.C. MO. No. 5, Original Sheet No. 217.1, and Original Sheet No. 217.2; see Ameren Exhibit #1, Barbieri Direct.

⁷ See Ameren Exhibit #1, Barbieri Direct.

9. Ameren Missouri's direct testimony contains no reference to the amount of the customer dollars that will support renewable energy "education."⁹

10. While, as worded the purpose language of Ameren Missouri's proposed tariff sheets indicate that customers will support education through the purchase of RECs, that reading is nonsensical. So the Commission will assume for purposes of this order that Ameren Missouri's intended purpose is to provide customer support of "education" as a purpose of the Pure Power program. Ameren Missouri's direct testimony contains no reference to the amount of the customer dollars that will support "education."¹⁰

11. Ameren Missouri's direct testimony contains no reference to the amount of the customer dollars that will be consumed by necessary administrative and operational expenses to be incurred in purchasing and accounting for RECs or providing customer and billing support for the program.¹¹

12. Staff's rebuttal testimony states that Staff issued 15 Data Requests in this case attempting to obtain basic financial information from Ameren Missouri concerning the Pure Power rates. However, Staff states that it did not obtain from Ameren Missouri the information it would need to provide a recommendation that the proposed Pure Power rates are just and reasonable.¹²

⁸ See Ameren Exhibit #1, Barbieri Direct.

⁹ See Ameren Exhibit #1, Barbieri Direct.

¹⁰ See Ameren Exhibit #1, Barbieri Direct.

¹¹ See Ameren Exhibit #1, Barbieri Direct.

¹² Staff Exhibit # 2, Ensrud Rebuttal, page 6.

13. Staff's rebuttal testimony indicates that over the history of the program, the percentage of moneys collected pursuant to the program that are actually expended on procurement of wholesale RECs are insufficient.¹³

14. Staff's rebuttal testimony revealed that over the history of the Pure Power Program, only ** [REDACTED] ** of customer dollars were actually spent purchasing RECs in support of renewable energy technologies.¹⁴ This wholesale REC price information was possessed by Ameren Missouri, yet was noticeably absent from Ameren Missouri's direct filing.¹⁵

15. Even after Staff indicated this concern with lack of cost support, Ameren Missouri failed to provide cost support in its surrebuttal testimony.¹⁶

16. Ameren Missouri contends at page 2 of Mr. Barbieri's surrebuttal testimony that

[T]he question is whether \$10 for a Missouri generated REC is a fair price for Ameren Missouri and ultimately for its customers who choose voluntarily to participate in the program to pay. Just as the Commission does not pass judgment on the underlying cost and profit profile of a supplier of coal, poles, turbines, wire, etc., nor should the Commission be passing judgment on the appropriateness of 3Degrees' cost and profits.

17. This comparison is not well-founded. Ameren Missouri's cost of coal, poles, turbines, wire, etc, are elements of Ameren Missouri's cost of service, which are evaluated in the determination of the final tariffed rates. The reasonableness of Ameren Missouri's expenditures on each of those items is audited in a general rate case, with the resulting rates being found to be just and reasonable as a whole. In the instance of Pure Power, Ameren Missouri cannot create a sort of junior varsity utility to directly

¹³ Staff Exhibit # 2, Ensrud Rebuttal, page 13 - 15.

¹⁴ Staff Exhibit # 2, Ensrud Rebuttal, page 14.

¹⁵ See Ameren Exhibit #1, Barbieri Direct.

¹⁶ See Ameren Exhibit #2, Barbieri Surrebuttal; See Ameren Exhibit #3, Martin Surrebuttal.

provide service to its customers under the auspices of a Commission-promulgated tariff, with no review of the cost-causation of the tariffed rate for reasonableness.

18. Ameren Missouri failed to produce evidence that the rate contained on the proposed tariff sheets is just and reasonable.¹⁷

Conclusions of Law Related to Ameren Missouri's Prima Facia Case

1. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Section 386.020(43) and (15), RSMo (Supp. 2011). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

2. Section 393.140(11), RSMo 2000, requires the Commission to regulate the rates Ameren Missouri may charge its customers for electricity, as well as the terms of such service as comprised in Ameren Missouri's tariff.

3. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.¹⁸

4. Ameren Missouri has the burden of proving its proposed rates and rate schedules are just and reasonable.¹⁹

5. Staff is not obligated to present a prima facia case for a utility where the utility has failed to do so.²⁰

6. Ameren Missouri has failed to make a prima facia case that its proposed tariff sheets, P.S.C. MO. No. 5, Original Sheet No. 217.1, and Original Sheet No. 217.2 contain just and reasonable rates. These tariff sheets are accordingly rejected.

¹⁷ See Ameren Exhibit #1, Barbieri Direct; See Ameren Exhibit #2, Barbieri Surrebuttal; See Ameren Exhibit #3, Martin Surrebuttal; See Transcript Volume 1; See Transcript Volume 2.

¹⁸ Section 393.130.1, RSMo 2000.

¹⁹ Section 393.150.2, RSMo 2000.

²⁰ Section 393.150.2, RSMo 2000.

Findings of Fact Concerning Program Continuation Under Any Tariff Sheet

1. In Case No. ER-2008-0318, Ameren Missouri argued as follows:

Because of concern at least partially sparked by a discontinued REC program in Florida, Staff alleges that not enough of a customer's payment ends up with the green power producer. AmerenUE agrees to monitor this aspect of the program, but believes it is premature to judge the Pure Power program at this point. Pure Power has been around for approximately one year and the contract AmerenUE has with 3 Degrees is for five years. The Company believes the appropriate time to review this issue is at or towards the end of the five year contract.

2. The Commission agrees that it is appropriate to review the Pure Power program at this time.^{21, 22}

3. Staff presented evidence that Ameren Missouri has not responsibly administered the program in the past. For example, Ameren Missouri continues to distribute information stating or implying that customers receive renewable energy as a consequence of participation in the Pure Power program.²³

4. Customers do not receive renewable energy as a consequence of participation in the Pure Power program.²⁴

5. In its proposed tariff language Ameren Missouri acknowledges that Pure Power participation does not cause participants to be supplied with renewable energy as follows:

²¹ Ameren Missouri Post Hearing Brief in Case No. ER-2008-0318.

²² The Commission also finds that Ameren Missouri has failed to live up to this agreement to monitor the amount of a customer's payment that ends up with a green power producer, however, as discussed below, it will take no action on this failure at this time.

²³ Staff Exhibit # 2, Ensrud Rebuttal, Schedule 2; Staff Exhibit # 2, Ensrud Rebuttal, Schedule 3; Staff Exhibit # 3; Staff Exhibit # 4.

²⁴ Transcript Volume 1, pages 43 and 46.

Customers participating under this Program will not directly receive any renewable energy commodity or product as a result of their participation. Rather, when a customer signs up for the Program, Company shall purchase and retire Green-e Certified RECs.²⁵

6. Further, this tariff language implies that essentially all of the tariffed rate collected will be spent to purchase and retire RECs, which is not reflected in the manner Ameren Missouri has administered the program in the past, or has indicated it will administer the program under the new contract and tariff sheets. Ameren Missouri and Staff were able to reach agreement in the past regarding the generic information as to the cost of RECs,²⁶ which was a term of the stipulation resolving Case No. ER-2010-0036,²⁷ yet Ameren Missouri was unable to produce any evidence that it distributes this information on its website.²⁸

7. On redirect at hearing, Mr. Barbieri testified that Ameren Missouri “went to great lengths to change our materials at the behest of Staff to assure them that people truly understood that we were not procuring for the specific energy but we were getting the REC associated with that energy....”²⁹ However, this testimony is inconsistent with the information Ameren Missouri distributes to its customers and the public.³⁰

8. Ameren Missouri recognizes Staff’s concerns with the transparency of the program concerning customer confusion and the percentage of the tariffed rate that is ultimately provided to green energy producers.³¹ Surprisingly, Ameren Missouri’s

²⁵ Ameren Missouri tariff sheet, P.S.C. MO. No. 5, Original Sheet No. 217.1.

²⁶ Staff Exhibit # 8.

²⁷ Ameren Missouri Exhibit # 7.

²⁸ See Transcript Volume 1, page 56.

²⁹ Transcript Volume 1, page 72.

³⁰ See Staff Exhibit # 2, Ensrud Rebuttal, Schedule 2; Staff Exhibit # 2, Ensrud Rebuttal, Schedule 3; Staff Exhibit # 3; Staff Exhibit # 4.

³¹ Ameren Exhibit # 2, Barbieri Surrebutal, page 5.

reaction to these concerns is to transform the purpose language to fit the poorly-implemented program.³²

9. Further, existing Pure Power customers signed up for the program without the inclusion of “education” as a tariffed purpose.³³ Ameren Missouri provided no indication of how it would communicate this proposed change in purpose to those existing customers.³⁴

10. Ameren Missouri does not distinguish between “customer education” and “advertising,” as regards expenditures under the Pure Power program.³⁵

11. Ameren Missouri has not presented any evidence that the advertising that occurs under this program is general, safety-related, or promotional of the use of electricity.³⁶

12. Staff presented evidence that the advertising that occurs under the Pure Power program is institutional in nature, meaning that it is used to improve the utility’s public image.³⁷

13. Ameren Missouri did not refute Staff’s assertion that advertising paid for out of the Pure Power rate is institutional in nature.³⁸

14. Some of the materials produced with funds collected under the Pure Power tariffed rate are distributed widely within St. Louis, Missouri, including community

³² Ameren Exhibit # 2, Barbieri Surrebutal, page 5.

³³ Ameren Missouri tariff sheet, P.S.C. MO. No. 5, Original Sheet No. 217.1.

³⁴ See Ameren Exhibit #1, Barbieri Direct; See Ameren Exhibit #2, Barbieri Surrebuttal; See Ameren Exhibit #3, Martin Surrebuttal; See Transcript Volume 1; See Transcript Volume 2.

³⁵ Staff Exhibit # 5.

³⁶ See Re: Kansas City Power and Light Company, 28 Mo. P.S.C. (N.S.) 228, 269-71 (1986).

³⁷ Staff Exhibit #4.

³⁸ See Transcript Volumes 1 & 2.

events and energy fairs that reach individuals who are not Ameren Missouri customers.³⁹

15. The value of the institutional advertising, which this Commission has not allowed in rates since at least the mid 1980's, could be as much as ** [REDACTED] ** of the total Pure Power tariffed rate.⁴⁰

16. Ameren Missouri provided no evidence to further refine the percentage of the total Pure Power tariffed rate that is expended on institutional advertising.⁴¹ Changing the purpose to include education is risky in this instance.

17. Ameren Missouri did not update its response to Staff's Data Request No. 37, which requested the price paid by 3 Degrees to renewable energy generators.⁴²

18. ** [REDACTED]

[REDACTED] **⁴³

19. Mr. Barbieri agreed that the contract with 3Degrees ** [REDACTED]

[REDACTED]

[REDACTED] — [REDACTED]

[REDACTED]

[REDACTED] ** are not in fact requirements the Commission imposes on Ameren Missouri.⁴⁴

20. Staff submitted at least thirty-seven (37) data requests in this matter.⁴⁵

³⁹ Transcript Volume 1, page 48.

⁴⁰ Staff Exhibit # 2, Ensrud Rebuttal, page 15.

⁴¹ See Transcript Volumes 1 & 2.

⁴² See Transcript Volume 2, page 43; Transcript Volume 1, page 65.

⁴³ See Transcript Volume 2, pages 39 – 40; See Transcript Volume 2, pages 61 – 63.

⁴⁴ Transcript Volume 2, page 61.

⁴⁵ See Staff Exhibit # 8.

21. Staff reasonably relied on Ameren Missouri's representations in response to data requests that Ameren Missouri did not possess the requested information.⁴⁶

22. There is a competitive market for the procurement and retirement of RECs.⁴⁷

23. Today, there are over 860 providers offering utility green pricing options across the country.⁴⁸

24. In addition, there are "dozens" of independent retail providers of RECs.⁴⁹ Ameren Missouri's expert estimated that there are sixty (60) reputable Green-E certified retailers.⁵⁰

25. Green-E certified RECs are available to Missouri customers from sources other than Ameren Missouri.⁵¹

26. There are more independent Green-E certified REC retailers now than there were in 2007, when the Pure Power program was initially tariffed.⁵²

27. Only 4,800 – 5,500 Ameren Missouri customers participate in Pure Power at any given time.⁵³ This is less than one half of one percent of Ameren Missouri's approximately 1.2 million customers.

Conclusions of Law Concerning Program Continuation Under Any Tariff Sheet

1. Ameren Missouri's implementation of the Pure Power Program is not consistent with the commitments made by Ameren Missouri, nor with the intent expressed in the Commission's Orders in Case Nos. ER-2007-0002 and ER-2008-0318.

⁴⁶ See Staff Exhibit # 5; See Staff Exhibit # 6; See Staff Exhibit # 7.

⁴⁷ Transcript Volume 1, pages 31, 33 - 34; Ameren Missouri Exhibit 3, Martin Surrebuttal pages 6-7

⁴⁸ Transcript Volume 1, pages.31; Ameren Missouri Exhibit 3, Martin Surrebuttal pages 6-7

⁴⁹ Transcript Volume 1, page 33.

⁵⁰ Transcript Volume 1, pages 33-34

⁵¹ Transcript Volume 1, pages 33-34

⁵² Transcript Volume 1, pages 33-34

⁵³ Ameren Exhibit #1, Barbieri Direct, page 6.

2. Quantification of the amount of the rate that is related to institutional advertising is necessary to exclude that amount from the tariffed rate, if any. Ameren Missouri failed to provide an adequate prima facie case in that it failed to quantify for exclusion from the proposed rates the amount of institutional advertising provided under its contract with 3Degrees.

3. This program contains the only tariffed rate for a service where the utility company contracts with a third party provider for the entire provision of that service.

4. A competitive market exists such that the procurement and retirement of RECs does not require use of Ameren Missouri's infrastructure, such that it does not represent a service offered under a natural monopoly.

Ordered Paragraphs

1. The proposed tariff sheets are rejected.

2. The Commission declines to order the implementation of Staff's recommended conditions.

3. If Ameren Missouri elects to offer Pure Power as a non-tariffed program, such charges may not appear on customer bills, and Ameren Missouri must comply with the affiliate transactions rule as applicable.

WHEREFORE, Staff files its Proposed Findings of Fact and Conclusions of Law, and recommends the Commission adopt the same for its order in this matter.

Respectfully submitted,

/s/ Sarah Kliethermes

Sarah L. Kliethermes
Senior Staff Counsel
Missouri Bar No. 60024

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 6726 (Telephone)
(573) 751-9285 (Fax)
sarah.kliethermes@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail to all counsel of record on this **8th day of April, 2013.**

/s/ Sarah Kliethermes