

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

In the Matter of Tariff Revisions Filed by)	
Union Electric Company d/b/a AmerenUE to)	Case No. EO-2009-0437
Revise the Provisions of Rider L.)	

**STAFF’S MOTION TO SUSPEND OPERATION OF NEW TARIFF PROVISIONS
FOR UNION ELECTRIC COMPANY’S RIDER L CURTAILMENT PROGRAM,
MOTION FOR EXPEDITED TREATMENT, AND RESPONSE TO ORDER**

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”) and, for its motion to suspend the operation of Union Electric Company d/b/a AmerenUE’s (“UE”) new tariff provisions that would modify its Rider L curtailment program, motion for expedited treatment, and response to Commission order, states:

1. On May 14, 2009, UE filed tariff sheets to modify its Rider L curtailment program effective June 13, 2009. In response, on June 8, 2009, Public Counsel filed a motion to suspend the tariff sheets and requested the Commission to rule on its motion on an expedited basis.

2. Among the issues Public Counsel raises, is that the proposed modifications include “an eligibility criterion that appears to unnecessarily restrict participation, and which conflicts with the Truly Agreed and Finally Passed version of Senate Bill 376.” The Staff has a similar concern.

3. In particular, the tariff sheets include, in the Applicability section of MO.P.S.C. SCHEDULE NO. 5 Original SHEET NO. 115.1, the following:

This Rider shall not be available to customers who notify the Company of their election to not participate in energy efficiency or demand side management programs and the associated cost recovery of such programs as permitted by any current or future legislation or rule of the State of Missouri.

4. The Purpose section, which is on the same MO.P.S.C. SCHEDULE NO. 5 Original SHEET NO. 115.1, provides:

The purpose of this Rider is to provide credits to customers who, at the Company's request, voluntarily curtail (interrupt and/or displace) all or part of electrical usage normally served by the Company during Company designated periods.

5. The truly agreed to and finally passed version of Senate Bill No. 376 of the 95th General Assembly 2009 delivered to the Governor for signature has a new §393.1124—the “Missouri Energy Efficiency Investment Act”—that includes the following:

2. As used in this section, the following terms shall mean:

* * * *

(5) "Interruptible or curtailable rate", a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions;

* * * *

10. Customers electing not to participate in an electric corporation's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.

Presently Senate Bill No. 376 is not law; however, if it becomes law, then, in the Staff's opinion, the proposed tariff provision quoted in paragraph 3 above—This Rider shall not be available to customers who notify the Company of their election to not participate in energy efficiency or demand side management programs and the associated cost recovery of such programs as permitted by any current or future legislation or rule of the State of Missouri—would conflict with §393.1124.10—**Customers electing not to participate in an electric corporation's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.**

6. Because of its concern with the pending change in law, the Staff requests the Commission to suspend the operation of UE's proposed tariff sheets for a sufficient time for Senate Bill 376 to either become law or not become law. The Staff understands Senate Bill 376 was delivered to Governor Nixon on May 29, 2009 and, therefore, he has forty-five days from that date, until Monday, July 13, 2009, to sign or veto Senate Bill 376. If Governor Nixon does not veto Senate Bill 376, since it has no emergency clause it would take effect August 28, 2009. If vetoed, unless overridden during a veto session, scheduled for September 16, 2009, Senate Bill 376 would not become law.

7. In addition to its foregoing concern with the potential future illegality of the proposed limitation on the availability of UE's modified Rider L curtailment program, like Public Counsel, the Staff believes UE's proposed tariff sheets should be suspended at least until a proper cost-effectiveness analysis of the proposed modifications of UE's Rider L curtailment program is conducted. Without explanation UE used different values for capacity in its analysis of its modified Rider L curtailment program than it used in developing the similar newly presented curtailment program UE included in its last Chapter 22 Electric Utility Resource Planning compliance filing in Case No. EE-2007-0409. In addition, in the materials UE provided with this tariff filing, the total resource cost test (TRC) for the proposed Rider L curtailment program is calculated over a one year time frame, a time frame which is inconsistent with the time period over which UE calculated the avoided cost. Therefore, UE has not provided sufficient information to show whether the Rider L curtailment program as modified will be cost effective over a period greater than one year. This leads to the possibility of imprudence if UE's Rider L curtailment program as modified is in effect for a period of time greater than one year.

8. On June 9, 2009 the Commission issued its *Order Directing Response* in which, among other things, the Commission ordered the Staff to “respond to Public Counsel’s statement in paragraph 5 that the proposed Rider L curtailment program does not comply with the MISO Module E requirements for demand resources to qualify as a Load Modifying Resource” and to “respond to Public Counsel’s statements in paragraph 10 regarding MISO market energy prices.”

9. With regard to the Commission’s order directing the Staff to respond, in paragraph 5 of its motion Public Counsel stated, “Second, the proposed Rider L curtailment program does not comply with the MISO Module E requirements for demand resources to qualify as a Load Modifying Resource so the Rider L curtailment program will not create additional Demand Resources that are recognized by MISO for resource adequacy purposes.”

(Footnote omitted.) And in paragraph 10 of its motion, Public Counsel stated:

Seventh, proposed tariff sheet 116.1 provides that: “Hourly prices quoted for both day-ahead and same day curtailments will be determined by the Company based on a representative MISO day-ahead or same day risk adjusted market energy price per kWh plus a risk adjusted capacity price of at least \$0.308 per kWh.” This language sets a floor price for capacity, but there is no ceiling. The lack of any cap is especially troubling in light of Public Counsel’s concerns discussed above that there may be very little or no capacity value from the Rider L program. Furthermore, the references to “representative” or “risk adjusted” energy prices are vague and ambiguous.

The Staff agrees with Public Counsel’s statement that UE’s proposed Rider L curtailment program does not qualify as a Load Modifying Resource under MISO’s Module E. To qualify as a Load Modifying Resource, the proposed curtailment program would need to include a measure to reduce demand during an emergency curtailment called by the Transmission Provider (MISO). Load Modifying Resources in Module E of the MISO Open Access Transmission and Energy Markets Tariff (“MISO Tariff”) are defined as:

1.169a Load Modifying Resource: A Demand Resource or Behind the Meter Generation resource.

A Demand Resource within the tariff is defined as:

1.65a Demand Resource: Interruptible Load or Direct Control Load Management and other resources that can reduce Demand during Emergencies.

UE's proposed Rider L curtailment program includes no provision or requirement for program participants to "reduce Demand during Emergencies." Thus, it would not qualify as a Load Modifying Resource. It is possible for UE to include Price Responsive Demand programs, such as its proposed Rider L curtailment program, in its load forecast to MISO. If UE proposes to decrease its peak demand forecast based on price responsive demand from its proposed Rider L curtailment program, then the Commission needs to know by how much UE plans to decrease its peak demand forecast, and should have before it in evidence the analysis UE performed when the Commission makes its decision whether or not to approve the proposed Rider L curtailment program. Staff suggests the Commission suspend the tariff in order to conduct such an investigation. One way this issue could be addressed is by including an option for program participants to agree to have their load interrupted during an Emergency in exchange for an upfront payment. This would allow at least a portion of the curtailment program to qualify as a Load Modifying Resource within MISO and allow UE to gain experience with a Price Responsive Demand program to determine the extent to which this option is taken and whether or not this option is a deterrent to attracting Price Response Demand.

Regarding the "risk adjusted capacity price" adder to the MISO energy price, the Staff does not necessarily agree with Public Counsel that this is related to Rider L load qualifying as a Load Modifying Resource. Instead, it is possible that UE made this adjustment to the MISO market because with a reserve requirement the energy market will not experience the shortages

that would occur in an “energy only” designed market. Therefore, the MISO energy market prices will be suppressed and unable to reflect the full value of energy. The Commission should also receive further evidence on the prudence for the proposed adder, including the details of how that adder was calculated. If the option suggested previously of being curtailed in emergencies with an upfront payment is offered, UE then would need to determine whether or not a capacity adder to the energy price would be appropriate for customers taking this option. Moreover, by offering two distinct options - a) Price Responsive Demand Alone with a small capacity adder to the energy price vs. b) Price Responsive Demand with Emergency Curtailment and an upfront capacity related payment - UE would have a design that would allow UE, and others, to gain useful information regarding different pricing options and how customers respond to these options both in terms of attractiveness as well as with how these options actually impact customers through the implementation of the two options that occurs over time.

10. While its concern does not rise to the level where the Staff would recommend suspension of these tariff sheets, Staff agrees with Public Counsel that there is confusion between the proposed modified Rider L curtailment program and UE’s very similar Commercial and Industrial Demand Credit program that it included in its latest Chapter 22 Electric Utility Resource Plan filing. While many aspects of these two programs are the same, UE has not provided any information regarding the changes between the Industrial Demand Credit program included in UE’s latest Chapter 22 Electric Utility Resource Plan filing and the modified Rider L curtailment program UE proposes with this tariff filing, nor has UE stated that its proposed modified Rider L curtailment program is in any way related to any program included in UE’s Chapter 22 Electric Utility Resource Plan filing.

11. Similarly, while its concern does not rise to the level where the Staff would recommend suspension of these tariff sheets, the Staff agrees with Public Counsel that proceeding with this, or any other, program without presenting a plan for evaluating the impacts and cost effectiveness of the program increases the likelihood that some or all of the program cost may be later found to be imprudent. In past instances UE has hired consultants to evaluate its demand-side programs early in the implementation of the programs. The Staff believes this is a good practice.

12. Because UE's new tariff provisions that would modify UE's Rider L curtailment program will go into effect June 13, 2009 unless the Commission suspends them, or UE extends the effective date, and these tariff provisions could conflict with new law and for the other concerns the Staff has stated above, there is good cause for the Commission to act on the Staff's motion on an expedited basis.

WHEREFORE, given the Staff's opinion that UE's proposed tariff provisions to modify UE's Rider L curtailment program would conflict with Senate Bill 376 if Senate Bill 376 becomes law and the other concerns the Staff has expressed above for suspending the modifications to this program, the Staff respectfully requests the Commission to suspend UE's new tariff provisions that would modify UE's Rider L curtailment program for at least 60 days to see what action Governor Nixon takes on Senate Bill 376, and to address the Staff's concerns above, and because UE's new tariff sheets to modify its Rider L curtailment program bear the effective date of June 13, 2009, the Commission act expeditiously on the Staff's motion before June 13, 2009.

Respectfully submitted,

/s/ Nathan Williams

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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 of record this 9th day of June 2009.

/s/ Nathan Williams