**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 Revenues for Electric Service. | ) ) ) | **Case No. ER-2011-0028** Tariff No. YE-2011-0116 |

## Staff's Reply to Ameren Missouri's Response to Staff's Motion to Strike Or Otherwise Disallow Portions of the Prepared Rebuttal and Surrebuttal Testimonies of William Davis

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff") and replies to Ameren Missouri's response to Staff's motion to strike or otherwise disallow portions of the testimony of William Davis as follows:

1. In paragraph 6 of its response to Staff's motion seeking a ruling that portions of the rebuttal and surrebuttal testimony of Ameren Missouri William Davis are inadmissible at hearing, Ameren Missouri asserts that a recent rulemaking action by the Commission caused Ameren Missouri to not rely only on its proposal in direct testimony to set a basis, initially zero, in permanent rates and track revenues it loses due to its customers engaging in energy efficiency for recovery of that revenue loss in future rate cases, but to add a second proposal—to manipulate the billing determinants in this case to allow it to recover in the rates set in this case the revenue loss it projects will occur due to future energy efficiency measures taken by its customers.

2. In its response, Ameren Missouri states, "The rules define Lost Revenue in a manner that, if applied to Ameren Missouri's FCRM, makes the mechanism proposed in direct testimony insufficient to resolve the throughput disincentive." Ameren Missouri calls the reduction in sales revenues caused by energy efficient to be a "throughput disincentive." The

Commission defines "lost revenue" in the rules, which become effective May 30, 2011, as follows:

> Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

4 CSR 240-3.163(1)(Q), 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(Y) and 4 CSR 240-20.094(1)(U).

3. Both of Ameren Missouri's proposals are based on recovery of revenue loss from foregone sales caused by its customers engaging in energy efficiency through Ameren Missouri's demand-side programs. With regard to the revenue loss, aside from how it is to be recovered, the difference between them is that the original proposal would measure that revenue loss retrospectively, while the new proposal would estimate it prospectively.

4. The Commission's Missouri Energy Efficiency Investment Act rules contemplate recovery of revenue loss from foregone sales caused by customers engaging in energy efficiency only *after* that loss is incurred. See *e.g*. 4 CSR 20.093(2)(G)5 which provides, "Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery."

5. Thus, Ameren Missouri's alternative proposal to manipulate the billing determinants in this case to allow it to recover in the rates set in this case the future revenue loss it projects will occur due to future energy efficiency measures taken by its customers through its

demand-side programs violates a core constraint of the rules—that such losses be recouped after they are incurred. Further, if that constraint did not exist, then it would also not appear in the definition of "lost revenue" in the rules, and Ameren Missouri's alternative proposal is just as susceptible to the limitation in the definition of "lost revenue" Ameren Missouri is seeking to avoid. That limitation—the core of the definition of "lost revenue," is that "only the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates [is recoverable]."

6. The definition of "lost revenue" in the final rules are only slightly changed from the definition of "lost revenue" in the proposed rules the Commission transmitted to the Secretary of State on October 4, 2010 that were published in the November 15, 2010, Missouri Register:

> Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement, that occur when utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 cause a drop in net retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V.

4 CSR 240-3.163(1)(P) (Page 1611), 4 CSR 240-3.164(1)(M), 4 CSR 240-20.093(1)(X) and 4 CSR 240-20.094(1)(T).

7. Those proposed rules were the culmination of a workshop, File No. EW-2010-0265 followed by pleadings, comments and a hearing in a rulemaking case, File No. EX-2010-

0368. Ameren Missouri was an active participant in the workshop and the rulemaking case where the definition of "lost revenue" in the rules was extensively explored.

8. Without proposing an alternative that would result in it recovering additional revenues in the rates established in this case, Ameren Missouri simply could have explicitly stated the definition of lost revenues for its fixed cost recovery mechanism was not the definition in the Missouri Energy Efficiency Investment Act rules. Instead, Ameren Missouri first proposed in rebuttal testimony its proposal to manipulate billing determinants by adjusting them to begin collecting in the rates set in this case projected estimated future sales revenues lost due to energy efficiency. This alternative proposal is directly at odds with the not yet effective requirement of 4 CSR 20.093(2)(G)5 that "[a]ny explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery."

9. As Ameren Missouri notes in its response, the Missouri Energy Efficiency Investment Act rules are not effective, but the Missouri Energy Efficiency Investment Act (Section 393.1075, RSMo. Supp. 2010) is, and, as Ameren Missouri is well aware, has been since August of 2009. Nothing prevented Ameren Missouri from availing itself of the provisions of that Act when it filed its direct case on September 3, 2010.

10. Had Ameren Missouri proposed an alternative designed to comply with the not yet effective, but published and final Missouri Energy Efficiency Investment Act rules, it might legitimately have requested an exception from the established process embodied in the procedural rules Staff cited in its motion and which follow:

Commission Rule 4 CSR 240-2.130 (7) that follows:

> 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.

However, Ameren Missouri could have as readily made its alternative proposal on September 3, 2010, as when it filed rebuttal testimony on March 25, 2011.

11. Staff withdraws its objection to lines 4-6 on page 6 of Mr. Davis' rebuttal testimony only.

**WHEREFORE**, the Staff requests that the Commission grant its motion and issue an order that finds portions of Mr. Davis' rebuttal and surrebuttal testimonies irrelevant and inadmissible as evidence in this case, and strikes or otherwise disallows his rebuttal testimony starting on page 6, line 7, through page 7, line 21; and his surrebuttal testimony at page 1, lines 18-20 (specifically the last clause of the sentence), page 4, lines 11-23 (each word on each line, except on line 11 only the last word), and page 5, line 1 through page 6, line13, and 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; this includes, but is not limited to, the rebuttal testimony of Mr. Davis on page 13 from line 13 to line 19, the surrebuttal testimony of Mr. Davis on page 2, specifically the words "in conjunction with Ameren Missouri's billing unit adjustment proposal" appearing on lines 12 -13 and the words "Ameren Missouri's billing unit adjustment and" appearing on line 21, and portions of the rebuttal and surrebuttal testimony of Richard J. Mark, specifically his rebuttal testimony from page 6, line 15 to page 7, line 10 and his surrebuttal testimony on page 5 from the last word on line 9 to the end of line 15. In the alternative, the Staff requests that the Commission allow the Staff to offer at the evidentiary hearing in this case the supplemental testimonies of Lena M. Mantle and John A. Rogers on this issue Staff prefiled on April 27, 2010.

Respectfully submitted,

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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 3rd day of May 2011.

**/s/ Nathan Williams**