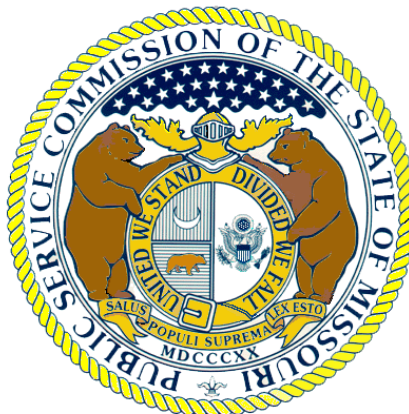


# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



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

**File No. EO-2013-0307**

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## REPORT AND ORDER

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**Issue Date:** April 24, 2013

**Effective Date:** May 1, 2013

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

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Voluntary	)	<b><u>File No. EO-2013-0307</u></b>
d/b/a Ameren Missouri's Voluntary	)	
Green Program/Pure Power Program	)	
Tariff Filing	)	

**APPEARANCES**

Appearing for **UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI:**

**Wendy K. Tatro**, PO Box 66149, 1901 Chouteau Ave., St. Louis, Missouri 63103.

Appearing for the **OFFICE OF PUBLIC COUNSEL:**

**Lewis R. Mills**, Public Counsel, PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Sarah Kliethermes**, Senior Counsel, and **Jennifer Hernandez**, Senior Counsel, PO Box 360, 200 Madison Street, Jefferson City, Missouri 65102.

**REGULATORY LAW JUDGE:** Michael Bushmann

# **REPORT AND ORDER**

## **I. Procedural History**

On October 19, 2012, Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) filed with the Missouri Public Service Commission (“Commission”) tariff sheets bearing an effective date of May 1, 2013 revising its Voluntary Green Program/Pure Power Program (“Pure Power Program”). The tariff sheets were filed in relation to a Non-Uniform Stipulation and Agreement filed in Ameren Missouri’s previous rate case, ER-2012-0166. On November 20, 2012, the Commission’s Staff filed a motion to open an investigation into the tariff sheets implementing the program. The Commission subsequently granted Staff’s motion and established a procedural schedule. On March 19, 2013, the Commission conducted an evidentiary hearing concerning the Pure Power Program.<sup>1</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence. On March 12, 2013, the parties filed a *Joint Stipulation of Non-Disputed Material Facts*, which the Commission incorporates and adopts in its entirety as its own Findings of Fact.

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<sup>1</sup> Transcript, Volumes 1-2. In total, the Commission admitted the testimony of three witnesses and received fifteen exhibits into evidence. Final post-hearing briefs were filed on April 15, 2013, and the case was deemed submitted for the Commission’s decision on that date when the Commission closed the record. “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

1. Ameren Missouri is a Missouri corporation with its principal place of business at One Ameren Plaza, 1901 Chouteau, St. Louis, MO 63103. Ameren Missouri is engaged in the business of providing electric services in Missouri to customers in its service areas.<sup>2</sup>

2. Ameren Missouri is an “electrical corporation” and a “public utility” as those terms are defined in Section 386.020, RSMo Supp. 2012, and is subject to the jurisdiction and supervision of the Commission as provided by law.<sup>3</sup>

3. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>4</sup> Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding”<sup>5</sup>, and Public Counsel participated as a party in this matter.

4. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>6</sup>

5. On October 19, 2012, Ameren Missouri filed tariff sheets revising its Pure Power Program. Those tariff sheets bear an effective date of May 1, 2013.<sup>7</sup>

6. On November 20, 2012, the Staff filed a Motion to Open Investigation relating to Ameren Missouri’s Pure Power Program and its tariff filing. The Staff’s Motion arose out

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<sup>2</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 1.

<sup>3</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 2.

<sup>4</sup> Section 386.710(2), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>5</sup> Section 386.710(3), RSMo 2000; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>6</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>7</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 3.

of a Stipulation and Agreement in Ameren Missouri's recently concluded general electric rate case, Case No. ER-2012-0166.<sup>8</sup>

7. By Order dated November 26, 2012, the Commission opened an investigation.<sup>9</sup>

8. Thereafter, Staff, Ameren Missouri and Public Counsel agreed upon a procedural schedule for the processing of this case. Staff and Ameren Missouri prefiled testimony in this matter.<sup>10</sup>

9. Electricity generated from renewable resources such as solar, wind, geothermal, small and low-impact hydropower, and biomass has proved to be environmentally preferable to electricity generated from conventional sources such as coal, oil, natural gas, and nuclear, which can have detrimental effects on human health and the environment through air emissions and other problems.<sup>11</sup>

10. A renewable energy credit ("REC") represents the property rights to the environmental, social and other non-power qualities of one megawatt hour of renewable energy generation. A REC can be sold separately from the underlying electricity generated by a renewable resource.<sup>12</sup>

11. The purchase of RECs combined with plain grid electricity is functionally equivalent to green power purchases from a local utility, no matter where the REC may be sourced.<sup>13</sup>

12. Under Ameren Missouri's Pure Power Program, Ameren Missouri customers may voluntarily make payments to Ameren Missouri, who then purchases and retires RECs

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<sup>8</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 4.

<sup>9</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 5.

<sup>10</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 6.

<sup>11</sup> Ameren Ex. 4, U.S. Department of Energy, *Guide to Purchasing Green Power*, March 2010, p. 2.

<sup>12</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 7.

<sup>13</sup> Ameren Ex. 4, U.S. Department of Energy, *Guide to Purchasing Green Power*, March 2010, p. 10.

on the customer's behalf. Ameren Missouri contracted with 3Degrees Group, Inc. d/b/a 3Degrees ("3Degrees"), which is not affiliated with Ameren Missouri, for 3Degrees to procure RECs for the Pure Power Program and to market and administer the program.<sup>14</sup>

13. Ameren Missouri has offered the Pure Power program since 2007<sup>15</sup>, and has averaged approximately 5,000 participants annually since its inception.<sup>16</sup>

14. Ameren Missouri maintains a website that provides customers information on the Pure Power Program and instructions on how to sign up for the Program.<sup>17</sup> Ameren Missouri also provides information to the public concerning the Pure Power Program through the distribution of various marketing materials.<sup>18</sup>

15. Customers may also check a box on the customer's bill to sign up for the Pure Power Program.<sup>19</sup>

16. As of February 2013, the language on the customer's bill for the Pure Power Program reads: "Sign Up For *Pure Power* to support clean renewable energy in Missouri and the Midwest. By checking the box, a 1.5 cent per kilowatt hour charge will apply. You may cancel at any time."<sup>20</sup>

17. Ameren Missouri's customers who choose to participate in the Pure Power Program currently pay Ameren Missouri \$15 per REC. Ameren Missouri retains \$1 of that payment and 3Degrees receives the remaining \$14.<sup>21</sup>

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<sup>14</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 8.

<sup>15</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 10.

<sup>16</sup> Ameren Ex. 1, Barbieri Direct, p. 6.

<sup>17</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 18.

<sup>18</sup> Transcript, Vol. 1, p. 46-48; Staff Ex.3; Staff Ex. 4.

<sup>19</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 19.

<sup>20</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 20.

<sup>21</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 9.

18. Participating customers may purchase RECs in amounts equal to their electric usage in mega-watt hours (MWhs), or they may purchase a select number of RECs each month.<sup>22</sup>

19. Customers who choose to participate in the Pure Power Program sign no contracts and may enter and exit the program at will with no penalties.<sup>23</sup>

20. There are over 860 utilities offering a green pricing program option to customers across the country, and the design of Ameren Missouri's Pure Power Program is common among such utilities.<sup>24</sup>

21. As part of the initial Pure Power Program tariff, Ameren Missouri retained \$1 of every \$15 collected in order to pay for up-front administrative costs, including a start-up fee to 3Degrees, computer programming costs, and other non-recurring costs. Under the revised Pure Power Program, Ameren Missouri will no longer have any continuing program costs and any future administrative costs to Ameren Missouri will be de minimis.<sup>25</sup>

22. Ameren Missouri made a one-time, up-front payment to 3Degrees of \$300,000 when it began offering the Pure Power Program.<sup>26</sup>

23. Under the current contract, as well as under the new contract, 3Degrees is required to acquire RECs, which come from either renewable resources in Missouri or from electricity that could be wheeled into Missouri.<sup>27</sup>

24. Since 2009, 3Degrees has purchased all Pure Power RECs from renewable generators located in Missouri.<sup>28</sup> Currently, all of the RECs for the Pure Power Program are

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<sup>22</sup> Ameren Ex. 1, Barbieri Direct, p. 5.

<sup>23</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 13.

<sup>24</sup> Ameren Ex. 3, Martin Surrebuttal, p. 7.

<sup>25</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 6-7.

<sup>26</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 11.

<sup>27</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 14.

<sup>28</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 15.

purchased from a single wind energy generator, Farmers City Wind Power Project (“Farmers City”).<sup>29</sup>

25. The Pure Power Program received the National New Green Power Program of the Year Award in 2008 from the U.S. Environmental Protection Agency, the U.S. Department of Energy, and the Center for Resource Solutions.<sup>30</sup>

26. The Pure Power Program is Green-e Energy certified.<sup>31</sup> This certification program has been offered since 1997 by the Center for Resource Solutions, which is a nonprofit organization whose mission is to develop policy and market solutions to advance sustainable energy.<sup>32</sup>

27. Participants in the Green-e Energy certification program, such as Ameren Missouri, must adhere to the program’s national standards, code of conduct, and customer disclosure requirements, which are approved by an independent board of environmental NGOs, renewable energy advocates, and renewable energy technology, market, and consumer protection experts.<sup>33</sup>

28. Green-e Energy program requirements include providing specific types of information to consumers prior to their enrollment in the renewable energy option, complying with certain rules regarding marketing and claims, and completing an annual verification audit. Green-e Energy verifies through the annual audit that the renewable energy product is in fact provided to the customer in the quantity and of the quality described during enrollment, that there is no double counting or double selling of renewable

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<sup>29</sup> Transcript, Vol. 1, p. 59-60.

<sup>30</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 13.

<sup>31</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 8.

<sup>32</sup> Ameren Ex. 3, Martin Surrebuttal, p. 1.

<sup>33</sup> Ameren Ex. 3, Martin Surrebuttal, p. 2.



energy, and that voluntary program sales are above and beyond any renewable energy procured by the utility to meet a law or regulation.<sup>34</sup>

29. Under the new tariff sheets Ameren Missouri filed that initiated this case, Ameren Missouri's Pure Power Program would be modified so its customers could voluntarily pay \$10 per REC. Ameren Missouri would not retain any portion of the \$10. Ameren Missouri would then pay 3Degrees \$10 per REC subscribed to by Ameren Missouri's customers.<sup>35</sup>

30. The only difference between the purpose clauses in the existing tariff and the proposed tariff is that a phrase in the first sentence has been changed from "...to provide customers with an option to contribute to the further development of renewable energy technologies", to the phrase "...to provide customers with an option to support renewable energy technologies and education through the purchase of renewable energy credits".<sup>36</sup>

31. Under its new contract with 3Degrees, Ameren Missouri would pay 3Degrees \$10.00 per REC purchased by an Ameren Missouri customer.<sup>37</sup>

32. Nine unregulated entities provide voluntary REC programs in Missouri and over 860 providers offer similar utility green pricing programs.<sup>38</sup> Of those other nine REC programs in Missouri, only one program costs less per kWh than the Pure Power Program.<sup>39</sup> The proposed \$10 charge per REC is within the range of costs of other voluntary green programs in the United States.<sup>40</sup>

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<sup>34</sup> Ameren Ex. 3, Martin Surrebuttal, p. 3-4.

<sup>35</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 13.

<sup>36</sup> Staff Ex. 1, Ensrud Rebuttal, p. 12.

<sup>37</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 12.

<sup>38</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 21.

<sup>39</sup> Staff Ex. 1, Ensrud Rebuttal, p. 5.

<sup>40</sup> Ameren Ex. 3, Martin Surrebuttal, p. 8; Transcript, Vol. 1, p. 83;

33. 3Degrees is not regulated by the Commission, and the Commission has no authority over 3Degrees.<sup>41</sup>

34. 3Degrees maintains the information regarding the cost of RECs and costs of 3Degrees administering the Pure Power Program.<sup>42</sup>

35. Ameren Missouri's witness, William J. Barbieri, testified credibly that rejecting the proposed tariff would kill the Pure Power Program, as it would prevent Ameren Missouri from including the program charge on its customers' bill, thereby significantly increasing the program costs and requiring participating customers to make a separate payment for their electric service and for RECs.<sup>43</sup>

36. 3Degrees is a reputable company that has had its own REC product certified by Green-e Energy since 2002 and is involved in supporting six utility programs that are Green-e Energy certified, including the Pure Power Program.<sup>44</sup>

37. In response to Staff's request for information concerning the price 3Degrees paid for RECs to Farmers City, the costs of customer education, and 3Degrees' administration costs, Ameren Missouri stated that it does not have this information after 2011.<sup>45</sup>

38. Ameren Missouri asserts that under the new contract, 3Degrees is not contractually obligated to provide Ameren Missouri with information concerning the price 3Degrees paid for RECs to Farmers City or the administration costs incurred as part of the Pure Power Program.<sup>46</sup>

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<sup>41</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 16.

<sup>42</sup> *Joint Stipulation of Non-Disputed Material Facts*, paragraph 17.

<sup>43</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 4-5.

<sup>44</sup> Ameren Ex. 3, Martin Surrebuttal, p. 9.

<sup>45</sup> Staff Ex. 6; Staff Ex. 7.

<sup>46</sup> Staff Ex. 7; Transcript, Vol. 1, p. 60-63.

39. Under the new contract with Ameren Missouri, 3Degrees is required to lock in the price charged to program participants for RECs at \$10 for the term of the contract, meaning that 3Degrees is taking the market risk by accepting future unknown pricing in order to provide consistent pricing to those participants.<sup>47</sup>

40. Staff has recommended that the Commission impose a condition on the approval of the proposed tariff requiring Ameren Missouri to provide Staff with the annual distribution of Pure Power funds collected and percentage retained by Ameren Missouri, the percentage of such funds spent on advertising and administration by 3Degrees, and the percentage of such funds forwarded to Farmers City.<sup>48</sup>

41. On April 19, 2013, Ameren Missouri filed a *Clarification of Reporting Offer*, which consented to Ameren Missouri annually providing the Commission with a highly confidential report showing the percentages of REC costs/fees, customer education/marketing costs, and administration costs for each \$10 charge for RECs during the previous calendar year.

### **III. Conclusions of Law**

Ameren Missouri is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo 2000. As such, the Commission has jurisdiction over Ameren Missouri pursuant to Sections 386.250(1), RSMo 2000, and 393.140, RSMo 2000. The voluntary customer charge contemplated for the Pure Power Program constitutes a “rate” as broadly defined in Section 386.020(46), RSMo

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<sup>47</sup> Ameren Ex. 2, Barbieri Surrebuttal, p. 5-6.

<sup>48</sup> Staff Ex. 1, Ensrud Rebuttal, p. 4.

Supp. 2012.<sup>49</sup> As with any rate request, the burden of proof is on Ameren Missouri to show that the proposed rate is just and reasonable.<sup>50</sup> In order to carry its burden of proof, Ameren Missouri must meet the preponderance of the evidence standard,<sup>51</sup> and must convince the Commission it is “more likely than not” that Ameren Missouri’s proposed rate adjustment is just and reasonable.<sup>52</sup> The Commission has the discretion to determine which facts are relevant to reach a conclusion on the reasonableness of a proposed rate.<sup>53</sup>

The Commission must first decide whether what is reasonable for a voluntary program can be different than what is reasonable for a mandatory rate for electric service. The facts of this case are quite different than a normal rate case fixing the price to be charged for electricity, since under the proposed tariff Ameren Missouri will receive none of the \$10 per REC charged to the customers who sign up for the program. The money collected is passed through to 3Degrees for the purchase of RECs and the payment of administrative costs. While Ameren Missouri may receive some non-monetary benefit from the program, the usual issues of operating expenses, debt service, dividends, investor compensation, capital attraction, and financial integrity are not applicable here. Staff and Public Counsel want to impose the same level of scrutiny to this tariff through the audit process as is applied in regular rate cases, but Ameren Missouri argues that less rigorous

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<sup>49</sup>“Rate’, every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof.”

<sup>50</sup> Section 393.150.2, RSMo 2000.

<sup>51</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>52</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc 1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>53</sup> Section 393.270.4, RSMo 2000, states, in part, that “[i]n determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question ...” Arguably, the Commission need not even consider all relevant factors, as the voluntary charge at issue is not the price to be charged to customers for their electricity.

regulation is required because of the nature of this voluntary program. The fact that the parties removed this issue from the consideration of all issues in Ameren Missouri's most recent general rate case and agreed to resolve the dispute separately suggests that they recognized the charge under the Pure Power Program was a different type of rate.<sup>54</sup>

The Commission concludes that there is a difference between a charge for a voluntary program, such as the Pure Power Program, and a mandatory rate charged to customers for their electricity, and they should be treated differently. What is reasonable for a voluntary program is not necessarily the same as what is reasonable for a mandatory rate. Staff argues that it has not yet received sufficiently detailed information to perform an audit. Staff believes that without that information it cannot adequately evaluate the program, and the Commission cannot determine the reasonableness of the proposed tariff. The Commission concludes that a full audit is not necessary under these particular circumstances. The record in this case has provided adequate evidence regarding the voluntariness of the program, the amount of money required to participate, the requirement of an administration fee, any safeguards to protect consumers, how the program is priced relative to other comparable jurisdictions and public utilities, the costs and benefits of the program, and whether the program furthers the policy goal of encouraging renewable energy. The Commission determines that these are important facts to consider in relation to the reasonableness of the proposed Pure Power Program tariff. While the additional audit information that Staff seeks would be beneficial, Ameren Missouri's failure to produce that detailed information under the particular circumstances of this voluntary program is not fatally defective. The Commission concludes that it has sufficiently considered all relevant factors in rendering a decision on whether to approve the proposed tariff.

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<sup>54</sup> Ameren Ex. 6, *Nonunanimous Stipulation and Agreement Regarding Ameren Missouri's Voluntary Green Program*, ER-2012-0166.

In determining whether a rate is just and reasonable, the U.S. Supreme Court has stated that “[w]hat annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.”<sup>55</sup> The Court has also stated that public utility commissions are “not bound to the use of any single formula or combination of formulae in determining rates,” and that ratemaking “involves the making of ‘pragmatic adjustments’.”<sup>56</sup>

Staff has opposed the Pure Power Program in the past and attempted to convince the Commission to discontinue that program.<sup>57</sup> However, the Commission has consistently disagreed with Staff’s position and concluded that the purchase of RECs effectively stimulates demand for renewable energy; that previous disputes about program marketing materials did not justify terminating the program; that the amount of collected money used to purchase RECs was reasonable, considering that 3Degrees carried the market risk during the contract term; that Ameren Missouri’s non-participating customers were not subsidizing Ameren Missouri’s administrative program costs; and that the program was nationally respected and popular with some of Ameren Missouri’s customers.<sup>58</sup> Despite the Commission’s previous statements of approval concerning the Pure Power Program, Staff has now objected to the revised program and made substantially the same arguments to reject that proposed tariff.

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<sup>55</sup> *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93, 43 S.Ct. 675, 67 L.Ed. 1176 (1923).

<sup>56</sup> *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 64 S. Ct. 281, 88 L. Ed. 333 (1944).

<sup>57</sup> Report and Order, *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs Increasing Rates for Electric Service Provided to Customers in the Company’s Missouri Service Area*, issued May 22, 2007, 257 P.U.R.4th 259, 312-313, 2007 WL 1597782 (Mo.P.S.C.); Ameren Ex. 5, Report and Order, *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs to Increase Its Annual Revenues for Electric Service*, issued January 27, 2009, 271 P.U.R.4th 475, 526-527, 2009 WL 248216 (Mo.P.S.C.).

<sup>58</sup> Ameren Ex. 5, Report and Order, *In the Matter of Union Electric Company d/b/a AmerenUE’s Tariffs to Increase Its Annual Revenues for Electric Service*, issued January 27, 2009, 271 P.U.R.4th 475, 526-527, 2009 WL 248216 (Mo.P.S.C.).

The Commission finds Staff's arguments to be unpersuasive. The Commission concludes that its previous determinations regarding the Pure Power Program are still valid and that the revised program is a reasonable plan to encourage the use of renewable energy. The Pure Power Program is completely voluntary, and its participants can enter and leave the program at any time without penalty. The charge to participate is reduced substantially under the proposed revisions, and is inexpensive compared to similar programs in Missouri and other states. Ameren Missouri will no longer be collecting any charge for administrative costs, and any future administrative costs to it will be de minimis. 3Degrees continues to bear the market risk regarding the price of RECs. The program also contains significant safeguards to protect consumers. The Green-e Energy certification program requires adherence to national standards, a code of conduct, customer disclosure requirements, and an annual audit process. The language used in the proposed tariff and various Ameren Missouri marketing materials regarding the Pure Power Program is not inaccurate or misleading.

The Commission also concludes that the Pure Power Program furthers the policy goal of encouraging renewable energy. Renewable energy generation provides a direct benefit to the public because it can reduce the problems associated with conventional sources of electricity, such as coal, oil, natural gas, and nuclear. Staff argues that the purchase of RECs does not constitute the use of renewable energy, but Ameren Missouri presented credible evidence from the U.S. Department of Energy that the purchase of RECs combined with grid electricity is the functional equivalent to green power purchases from a local utility. Regardless of whether the purchase of RECs and the purchase of energy from a renewable energy generator are the same or different, both are beneficial in the promotion and support of renewable energy. While the Commission highly encourages

renewable energy generation, it acknowledges that programs such as the Pure Power Program can also provide a benefit to the public by supporting renewable energy.

Staff has suggested that several conditions be imposed upon Ameren Missouri should the Commission decide not to reject the proposed tariff, including the requirement to provide Staff with the annual distribution of Pure Power funds collected and percentage retained by Ameren Missouri, the percentage of such funds spent on advertising and administration by 3Degrees, and the percentage of such funds forwarded to Farmers City. Ameren Missouri has consented to annually providing the Commission with a highly confidential report showing the percentages of REC costs/fees, customer education/marketing costs, and administration costs for each \$10 charge for RECs during the previous calendar year. The Commission determines that this one condition is reasonable to provide additional safeguards that the funds from Pure Power program participants are being used appropriately. The Commission also recognizes that public disclosure of this proprietary business information could be detrimental to 3Degrees and Farmers City, so the Commission will require that any such information provided to the Commission be treated as highly confidential.

Ameren Missouri has requested that the Commission approve the contract between it and 3Degrees, but the Commission concludes that approval of the contract is not necessary in order to determine whether to approve the tariff and, therefore, declines to do so at this time. The Commission will also deny Ameren Missouri's motion to strike the amicus curiae brief of Renew Missouri.

## **V. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions,



the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Ameren Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that its proposed tariff is just and reasonable. Ameren Missouri's tariff sheets will be approved.

**THE COMMISSION ORDERS THAT:**

1. The following tariff sheets filed by Union Electric Company d/b/a Ameren Missouri on October 19, 2012, assigned tariff tracking number JE-2013-0197, are hereby approved to become effective on May 1, 2013:

**Mo. P.S.C. Schedule No. 5**

Original Sheet No. 217.1

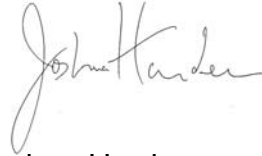
Original Sheet No. 217.2

2. No later than April 15 of each year, Union Electric Company d/b/a Ameren Missouri shall provide to the Commission a report showing the percentages of REC costs/fees, customer education/marketing costs, and administration costs for each \$10 charge for RECs during the previous calendar year. The first such report submitted shall be filed no later than April 15, 2014 for the period from May 1, 2013 through December 31, 2013. The Commission shall treat any such report provided as highly confidential.

3. Union Electric Company d/b/a Ameren Missouri's motion to strike the amicus curiae brief of Renew Missouri is denied.

4. This report and order shall become effective on May 1, 2013.
5. This file shall close on May 2, 2013.

**BY THE COMMISSION**

A handwritten signature in cursive script, appearing to read "Joshua Harden".

Joshua Harden  
Secretary

R. Kenney, Chm., Jarrett, Stoll,  
and W. Kenney, CC., concur and  
certify compliance with the provisions  
of Section 536.080, RSMo.

Bushmann, Regulatory Law Judge