

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

In the Matter of Union Electric Company)
d/b/a Ameren Missouri’s 4th Filing to)
Implement Regulatory Changes in Furtherance) File No. EO-2023-0136
of Energy Efficiency as Allowed by MEEIA.)

**MOTION TO STRIKE PORTIONS OF THE REBUTTAL TESTIMONY OF STAFF
WITNESSES BRAD FORSTON AND MARK KIESLING,
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Company” or “Ameren Missouri”) and hereby moves for an order from the Commission striking a portion of the rebuttal testimony of Staff witnesses Brad Forston and Mark Kiesling and moves for expedited treatment of its motion. In support thereof, the Company states as follows:

MOTION TO STRIKE

1. Commission Rule 20 CSR 4240-2.130(7) establishes the definitions of and requirements for direct, rebuttal, and surrebuttal testimony. The definitions of “direct testimony” and “rebuttal testimony” are relevant to the Company’s motions:

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

(7)(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[.]

Under the definitions, parties are to fully (“shall include all testimony...”) explain that party's entire case-in-chief in direct testimony and in rebuttal testimony address criticisms or disagreements with a party’s direct case and respond to direct testimony. The rules do not allow a party to supplement its direct case or "build" upon that case through rebuttal testimony under the

pretext of “responding” to another party’s direct testimony. Staff uses rebuttal testimony to supplement its direct testimony and the Commission should strike the testimony.

Staff Witnesses Forston's and Keisling's Rebuttal Testimony

2. Staff witness Forston does not reference any Ameren Missouri direct testimony or any specific portion of the Amended Application in his rebuttal testimony. Instead, Mr. Forston restates points he made in direct testimony and adds additional points to build on his direct testimony. This is improper and prohibited by the Commission’s rules and such testimony should be stricken. In the Executive Summary of his rebuttal testimony, Staff witness Forston admits "Staff's testimony builds off its direct testimony in this case. . ." Forston Rebuttal Testimony, page 1, line 25 through page 2, line 1. Staff witness Forston devotes four pages of testimony to a discussion of the MEEIA 3 Cycle and the 3-One Year extensions. Forston Rebuttal Testimony at page 2, line 6 through page 6, line 13. Not only is the discussion regarding procedural history and Staff's perspective on the settlements irrelevant to the MEEIA 4 Cycle, but the discussion on this topic does not respond to Ameren Missouri's direct testimony or Amended Application. This entire discussion should be stricken.

3. Additionally, Staff witness Kiesling presents testimony regarding an Ameren Missouri customer's experience purchasing a heat pump. Keisling Rebuttal Testimony at page 3, line 6 through page 5, line 15. This testimony does not respond to the Company's direct testimony and Amended Application and constitutes impermissible hearsay. Mr. Kiesling is offering a customer's alleged experience as evidence to prove his point of view. However, the customer is not a party to this proceeding and the parties of record do not have the opportunity to cross examine this customer. Moreover, Ameren Missouri served discovery about the statement to Staff and Staff could not produce any documentation to support the statement. *See Ameren Missouri Attachment*

1, Staff's response to DR 0153.0. Staff's testimony does not present the best evidence in this proceeding and should be stricken.

4. If the rule on testimony is to have meaning, parties cannot be allowed to continue to "build" their direct testimony within their rebuttal testimony, under the guise of responding to another party's direct testimony. For the foregoing reasons, the Commission should strike the following provisions of Staff witness Forston's rebuttal testimony:

Page 1, line 25 starting with "Staff testimony builds off its direct" through page 2, line 1, ending with "its direct testimony in this case and" and page 2, starting at line 6 through page 6, line 13.

Additionally, the Commission should strike the following provisions of Staff witness Kiesling's rebuttal testimony:

Page 3, starting on line 6 through page 5, line 15.

Summary

5. The bottom line is that Staff failed to follow the Commission rule that requires Staff to set forth their full case in chief in direct testimony. However, in an attempt to absolve themselves of the consequences of that failure, Staff creates an end-run around that rule under the guise of filing testimony that is "responsive" in its rebuttal testimony. This tactic undermines the Commission's rules and procedures. If Staff is allowed to succeed in these efforts, it will compromise the Company's ability to respond to their positions in this case, even though it is the Company that bears the burden of proof in this case. Additionally, Staff is attempting to insert improper hearsay and is not providing the best evidence for this proceeding. Consequently, the Commission should strike this improper rebuttal testimony.

MOTION FOR EXPEDITED TREATMENT

6. The Commission should act on the motions made herein by May 29, 2024, insofar as the surrebuttal testimony in this case is due May 30, and depending on the Commission's rulings, the Company may need to modify its surrebuttal testimony within a very short timeframe (just one business days thereafter).

7. The harm that will be avoided includes the impact on the Company's (and other parties') ability to complete surrebuttal testimony and compile an issues list, witness schedule, and position statements for the case, to complete discovery, and to properly prepare for hearing. Granting the Company's motion to strike will also avoid the harm inherent in what would otherwise amount to sanctioning Staff's failure to comply with the Commission's rules if the motion to strike was not granted.

8. These motions are being filed as soon as possible after reviewing all the rebuttal testimony and discovery responses, which was as soon as this pleading could reasonably have been prepared.

WHEREFORE, the Company prays that the Commission make and enter its order granting the Company's motion to strike the above-cited portions of the rebuttal testimony of Staff witnesses Brad Forston and Staff witness Mark Keisling, and for such other and further relief as is just and proper under the circumstances.

Dated: May 16, 2024

Respectfully submitted,

/s/ Jennifer S. Moore

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 16th day of May, 2024.

/s/ Jennifer S. Moore
Jennifer S. Moore

Data Response Display - EO-2023-0136 - 0153.0

Request Summary ▼

Submission No.

EO-2023-0136

Request No.

0153.0

Requested Date

5/3/2024

Due Date

5/10/2024

Issue

MEEIA

General Information and Miscellaneous

Other

Requested From

MO PSC Staff (Other)

Travis Pringle (travis.pringle@psc.mo.gov)

Requested By

Ameren Missouri (Electric) (Investor)

Crystal Tassello (moregparalegals@ameren.com)

Brief Description

Mr. Kiesling Rebuttal Testimony

Description

On page 3, lines 8-11, of Mr. Kiesling rebuttal testimony, he states Staff was contacted by an Ameren Missouri customer. a) Please provide any and all documentation of the customer contact. b) Please provide any and all documentation and materials supporting the conclusion this customer is a "free-rider." c) Did Staff confirm the customer qualified for a tax-break? If so, did Staff calculate how many Ameren Missouri customers would also qualify for the same tax break? d) Please explain how those calculations were derived.

Request Security

Public (DR)

Response Date

5/10/2024

Response

a) Please see the attached b) Please see the attached c) Staff confirmed through discussions with the customer that they qualified for a tax break. Staff did not calculate how many Ameren Missouri customers would also qualify for the same tax break. d) N/A Data Request Response provided by Mark Kiesling (mark.kiesling@psc.mo.gov).

Objections**Response Security**

Public (DR)

Rationale

Attachments ▼

Name	Size	Security
DR No. 153 Response - Fortson Memo.pdf	143.55 KB	Public (DR)

Date: March 29, 2024

To: Brad Fortson

From: John Rogers

Subject: IRS Residential Energy Tax Credits from The Inflation Reduction Act 2023-2032 and Para. 25C of the IRS Code

In case you are not already aware of the subject tax credits, I am enclosing: 1) the IRS instructions for IRS Form 5695, [Instructions for Form 5695 \(2023\) | Internal Revenue Service \(irs.gov\)](#) and 2) the IRS Fact Sheet for frequently asked questions about energy efficient home improvements and residential clean energy property credits, [Frequently asked questions about energy efficient home improvements and residential clean energy property credits \(irs.gov\)](#).

The focus of this memo is the potentially large tax credits available to home owners resulting from residential energy efficient home improvement tax credits for installation of heat pumps, heat pump water heaters, biomass stoves and biomass boilers which have a separate annual tax credit limit of \$2,000 with no lifetime limits (which replaces the prior lifetime limitation of \$500). I am sending this to you because the individual tax filer's annual tax credit amount (up to \$2,000) could result in a free-rider for the Missouri investor-owned electric utility residential heat pump rebate programs during the 10-year life of the 25C Act.

Heat pump measures must achieve the highest efficiency tier established by the CEE to qualify for a nonrefundable tax credit. Manufacturers of qualifying equipment also have information on their websites to help identify which equip meets the CEE qualification requirements.

Nonrefundable tax credits are equal to 30% of the total installed cost of qualified improvements less any electric utility rebate amounts up to an annual cap of \$2,000 for each tax year from 2022 through 2032. Nonrefundable means the tax credit amount is also limited by the amount of the annual income tax due. Thus, there must first be a tax liability before there can be any tax credit, and then the amount of the tax credit is equal to the lesser of \$2,000 and the tax liability.

Following are some examples which I have created to illustrate my understanding of all the important moving parts:

	Example 1	Example 2	Example 3	Example 4	Example 5
Installed Cost	\$ 12,000	\$ 6,000	\$ 18,000	\$ 10,000	\$ 16,000
Utility Rebate	\$ 500	\$ 500	\$ 500	\$ 500	\$ -
Adjusted Cost	\$ 11,500	\$ 5,500	\$ 17,500	\$ 9,500	\$ 16,000
30% of Adjusted Cost	\$ 3,450	\$ 1,650	\$ 5,250	\$ 2,850	\$ 4,800
Tax Liability	\$ -	\$ 3,000	\$ 2,650	\$ 1,200	\$ 2,300
Nonrefundable Tax Credit	\$ -	\$ 1,650	\$ 2,000	\$ 1,200	\$ 2,000
Adjusted Tax Liability	\$ -	\$ 1,350	\$ 650	\$ -	\$ 300
Total Incentives	\$ 500	\$ 2,150	\$ 2,500	\$ 1,700	\$ 2,000
Total Inc's % of Installed Cost	4%	36%	14%	17%	13%

I hope this helps you and others on the Energy Resources Team get started in your understanding of the potential impact of the 25C Act on regulated programs' EMV. Thank you.