

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

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2011-0028</u>
Ameren Missouri's Tariff to Increase Its Annual)	Tariff No. YE-2011-0116
Revenues for Electric Service)	

**ORDER GRANTING AMEREN MISSOURI AND STAFF'S MOTIONS TO
STRIKE A PORTION OF MICHAEL WALTER'S SURREBUTTAL
TESTIMONY**

Issue Date: May 6, 2011

Effective Date: May 6, 2011

On May 5, 2011, Union Electric Company, d/b/a Ameren Missouri and Staff of the Missouri Public Service Commission filed separate motions asking the Commission to strike a portion of the prefiled surrebuttal testimony of International Brotherhood of Electrical Workers Local 1439 ("Union") witness, Michael Walter. Staff also included a motion for expedited treatment of the motion to strike. Ameren Missouri amended its motion to strike on May 5, adding a request for expedited consideration.

The portion of Walter's surrebuttal to which Ameren Missouri and Staff object relates to the attachment and any references to the "Proposed Relief on Union Issues" and the prepared direct testimony of David Desmond from a prior case, which the Unions attached to Mr. Walter's testimony. Ameren Missouri and Staff note that the revised surrebuttal testimony was filed after the filing deadline set by the Commission and contains attachments that are either hearsay or should have been filed as part of the Union's case in chief.

On May 5, the Commission issued an order establishing time for parties to respond to the motions to strike Walter's surrebuttal testimony. Responses to the motion were due

no later than 4:00 p.m. May 6. On May 5, the Union filed its opposition to the motions to strike.

The Union claimed that in Walter's direct testimony, filed February 7, he made general recommendations and indicated additional specific recommendations would be made after reviewing additional data it had not yet received from Ameren Missouri at the time of filing. The Union points out that following the filing of Walter's direct testimony, neither the Company nor Staff objected to Walter's proposal to provide a more specific recommendation at a later time. The Union also indicated that Walter's inclusion of Desmond's testimony from the prior rate case, ER-2008-0318, was in response to David Wakeman's rebuttal. The Union stated Wakeman misled the Commission about Desmond's conclusions and claimed it included Desmond's testimony to clarify Desmond's testimony in the earlier case. In addition, the Union stated Desmond testified in Case No. ER-2008-0318 and both Ameren Missouri and Staff were able to cross-examine him at that time.

In its response to the Union's objection to the motion to strike, filed on May 6, Ameren Missouri denies that Walter was waiting on additional data from Ameren Missouri, as Ameren Missouri submitted its final response to the Union's data requests on January 12. Ameren Missouri also points out that in his rebuttal testimony, Wakeman referenced Desmond's live testimony in the earlier case rather than his prepared testimony.

Commission rule 4 CSR 240-2.130(7) requires that direct testimony include "all testimony and exhibits asserting and explaining that party's entire case-in-chief." That same rule limits surrebuttal testimony to "material which is responsive to matters raised in another party's rebuttal testimony."

Walter's inclusion of thirteen specific proposals for the first time in his surrebuttal testimony is improper under the Commission's rules. Those rules exist so that parties can have a reasonable opportunity to respond to allegations. By waiting until it filed its surrebuttal testimony to raise these new matters, the Unions have not allowed Ameren Missouri and the other parties a reasonable opportunity to respond to those allegations through the testimony of their own witnesses. Therefore, the inclusion of the Union's specific proposals in surrebuttal testimony is improper and in violation of the Commission's regulation regarding direct and surrebuttal testimony. Ameren Missouri and Staff's motions to strike those proposals from Walter's surrebuttal testimony are appropriate.

The other aspect of the motions to strike concern the inclusion of Desmond's testimony from an earlier case. The Unions assert that they have attached that testimony to rebut allegations made in the rebuttal testimony of Ameren Missouri's witness. However, the reference to that testimony in Walter's prefiled surrebuttal testimony makes it clear that the Unions are offering the testimony for the truth of the matters asserted in that testimony. Specifically, they seek to use that testimony to prove that some of the subcontractors used by Ameren Missouri do substandard work. Desmond will not be subject to cross-examination at the hearing and his testimony is hearsay. As hearsay, Desmond's testimony cannot be brought into evidence by attaching that testimony to Walter's testimony. The Commission will grant the motions to strike Desmond's testimony.

THE COMMISSION ORDERS THAT:

1. Ameren Missouri and Staff's Motions to Strike or Disallow Portions of the Prepared Surrebuttal Testimony of Michael Walter are granted.

2. The following portions of Michael Walter's Surrebuttal Testimony are stricken: the exhibit titled "Proposed Relief on Union Issues"; the testimony on page 2, lines 42-45; the exhibit of David Desmond's direct testimony from Case No. ER-2008-0318; and the testimony on page 1, lines 30-34.

3. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 6th day of May, 2011.