

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

In the Matter of Union Electric)	
Company d/b/a Ameren Missouri's)	<u>Case No. EO-2013-0307</u>
Voluntary Green Program/Pure Power)	Tariff No. JE-2013-0197
Program Tariff Filing.)	

AMEREN MISSOURI'S REPLY BRIEF

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or the Company) and for its *Reply Brief*, states as follows:

OVERVIEW

1. The Staff's *Proposed Findings of Fact and Conclusions of Law* (brief) continues much the same pathway as Staff testimony filed in previous cases. The Staff does not support this type of voluntary green program being offered by a regulated electric utility. Despite that being Staff's consistent position on this tariff, the Commission has yet to adopt Staff's recommendation and has allowed this program to be offered to Ameren Missouri customers continuously since 2008. Ameren Missouri believes the Commission should once again reject Staff's concerns and allow the continuation of a program that thousands of Ameren Missouri customers voluntarily support.

2. Ameren Missouri has, since the beginning of this program, made changes to the administration of the program in order to attempt to alleviate Staff concerns, whether or not the Company believed Staff's concerns to be legitimate. Staff was concerned that customers weren't getting green energy. The federal government says that purchasing Renewable Energy Credits (RECs) and pairing them with energy from the

grid is sufficient to identify the energy as green.¹ Staff does not deny that fact and offers no evidence contrary to that fact. Nonetheless, in order to address this concern, in the first rate case where this issue was raised by Staff, Ameren Missouri agreed to have its contractor, 3Degrees, revise the marketing materials. When Staff again raised the issue in another rate case, Ameren Missouri went even further and agreed to have 3Degrees include specific language, *language approved by Staff*, on all marketing materials and to place that same language on its Pure Power website.² In addition, Ameren Missouri voluntarily provides a copy of all of the marketing materials to Staff for comment before those materials are used in marketing the program to customers.³ The Company has attempted, many times, to alleviate Staff's concerns, but at this point it is obvious that the Staff witness has his mind made up about this program and no amount of compromise by Ameren Missouri is going to change that belief.

3. Along the same lines, Ameren Missouri initially requested that 3Degrees provide a pie chart breakdown of the cost of RECs, administrative costs and marketing costs.⁴ The Company was not required to make that request, but gathered the information in an attempt to resolve a Staff concern. A concern that was based off of a news article Staff read about one program (out of hundreds) that was cancelled because of the level of administrative costs. Of course, a reading of the actual order which cancelled the program did not support the Staff's explanation of why the program was cancelled.⁵ But the lack of an evidentiary basis has not stopped Staff from asserting it as fact. The reality is that there was a lot wrong with the Florida program - it failed to enroll the required

¹ Exhibit Ameren Missouri 4 (U.S. Department of Energy's Guide to Purchasing Green Power), p. 10.

² File No. ER-2010-0036, March 10, 2010, First Nonunanimous Stipulation and Agreement, p. 5, para. 11.

³ Exhibit Ameren Missouri 2 (Barbieri surrebuttal), p. 13, l. 10-13.

⁴ Tr. Vol. 2, p. 42, l. 15 through p. 44, l. 4.

⁵ Tr. Vol. 1, p. 144, l. 10 through p. 145, l. 3.

number of customers, it failed to invest the required amount in solar generation, etc. - issues that are in no way applicable to Ameren Missouri's Pure Power program.⁶

4. This case presents the Commission with an opportunity to approve Ameren Missouri's underlying contract with 3Degrees, to find in its order that the cost is reasonable, that customers receive exactly what they pay for and to stop Staff's repeated, unsupported attacks on a program appreciated by thousands of Ameren Missouri customers.

COST OF THE REC

5. The first in the line of repeated arguments in Staff's brief is the refrain that it must see the underlying financial information of 3Degrees, this time framing it in an argument that Ameren Missouri has not made its prima facie case because the Company did not provide this financial information.

6. Staff's argument twists the concept of cost based rates in its attempt to justify access to the books and records of a non-affiliated (non-affiliated with Ameren Missouri) and non-regulated company. Generally, the Commission sets rates based upon the costs incurred and revenues received by Ameren Missouri. Here, the Commission is approving a rate for one item, but that does not increase or change the burden of Ameren Missouri in terms of the level of scrutiny to be applied to the tariffed rate. (Surely Staff would not be arguing that it applies a lower degree of review to costs that are mixed in with other costs and revenues.)

7. The rate must be reasonable and prudent and there is plenty of evidence in the record that the rate is reasonable and prudent. First, the tariffed rate mirrors the

⁶ Exhibit Ameren Missouri 2, p. 11, l. 12-20; Tr. Vol. 1, p. 131, l. 23 through p. 133, l. 5.

contract rate.⁷ Staff does not deny that the cost of this program to Ameren Missouri is determined by contract. Staff does not deny that the contract rate is \$10 per REC. Staff does not deny that Ameren Missouri proposes to charge its participating customers \$10 for each REC retired on behalf of that customer. There is no dispute over the cost of this program. The cost to Ameren Missouri of each REC is \$10 per REC and that is exactly the cost reflected in the tariff.

8. \$10 is a reasonable and prudent cost. Staff does not deny that similar programs in Missouri typically cost more than \$10 per REC or that Ameren Missouri's cost is the second lowest among similar programs in the state of Missouri.⁸ Staff does not deny that Ameren Missouri's cost is in the range of the costs of similar programs throughout the United States.⁹ That is the comparison that provides evidence of the prudence and reasonableness of the cost of this program. Comparison of costs of similar programs to the cost of Ameren Missouri is regularly done by Staff when evaluating costs in a rate case. Staff admitted the same while at hearing:

Q. And you agree that Staff in a rate case would look at the reasonableness of the charges for that work [bringing in outside personnel to assist with service restoration after a major storm], right?

A. Correct.

Q. And you agreed that *Staff could determine the reasonableness of that cost by looking at rates of comparable entities providing a similar service, correct?*

A. Correct.¹⁰

Staff admits it can evaluate the reasonableness of costs by comparing them to costs of other entities providing similar services. Yet, for reasons not explained by Staff, there is

⁷ Exhibit Ameren Missouri 1 (Barbieri direct), Schedule WJB-1HC.

⁸ Exhibit Staff 1 (Ensrud rebuttal), p. 5, l. 14.

⁹ Exhibit Ameren Missouri 3 (Martin surrebuttal), p. 8, l. 6-8; Tr. Vol. 1, p. 83, l. 12-19.

¹⁰ Tr. Vol. 1, p. 110-, l. 19 through p. 111, l. 1. Emphasis added.

an unwillingness to evaluate the reasonableness of the Pure Power tariffed rate in the same manner. As stated above, the record in this case is replete with evidence that the cost of this program is within the range of costs (or lower than the costs) of similar programs. Ameren Missouri has satisfied its burden of proof on this topic. The cost of the program can be fairly evaluated with the information available, just as the costs of third party contractors are evaluated. There is no reason to apply a different standard and Staff's attempt to do so must be rejected.

CONTRACT RIGHT TO AUDIT 3DEGREES

9. Staff also makes the argument that the Company's contract with 3Degrees, specifically Section 12, provides the Company access to the underlying financial information of 3Degrees. In order to make this argument, Staff either did not read the actual language of the Section or has chosen to ignore the fact that it says nothing about auditing 3Degrees' financial information. ** _____

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¹¹ Exhibit Ameren Missouri 1, Schedule WJB-1HC, p. 14 of 18.

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¹² Exhibit Ameren Missouri 1, Schedule WJB-1HC, p. 4 of 18.

¹³ Exhibit Ameren Missouri 1, Schedule WJB-1HC, Exhibit A.

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12. Staff's argument is an overreaching interpretation of Section 12 of the contract and must be rejected as simply not supported by the actual language of the contract.

PURE POWER MARKETING

13. Staff argues that Ameren Missouri has "not responsibly administered the program" in the past. The example cited is that there is still information which implies that customers receive renewable energy when they participate in the program. Of course, that would be a perfectly legitimate way to market the program.¹⁵ As

Mr. Barbieri testified:

But again, according to the Federal Trade Commission, as I stated earlier, according to Green-e certification, according to other certification across the country, if you show that the renewable energy credit that you are purchasing for this program comes from either a generator in your service territory or in your RTO or you NERC region, you can claim the right that not only are they getting the renewable energy credit, they have the ability to claim they are getting the energy as well. But because that was an issue that Staff had concerns with, we felt that it wasn't—it wasn't something that we needed to pursue. So we went to great lengths to change our materials at the behest of Staff to assure them that people truly understood that we were not procuring for that specific energy, even though all these other agencies that I just stipulated would have legally allowed Ameren to tell its customers who participate in the program that they are truly getting green energy.¹⁶

¹⁴ http://www.eia.gov/survey/form/eia_1605/1605text.html

¹⁵ Ameren Missouri 4, p. 10.

¹⁶ Tr. Vol. 1, p. 71, l. 20 through p. 72, l. 14.

Perhaps Ameren Missouri confused matters early in this program, when it tried to modify the program in response to Staff's concerns. The Company has put language on all of its marketing materials to state that customers are purchasing a REC – language which Staff agreed to in a previous Ameren Missouri rate case.¹⁷ Perhaps the Company would have been better served by letting the Commission hear the evidence cited by Mr. Barbieri and reach the determination that it is appropriate to claim customers are receiving green energy. Clearly, our efforts to work with Staff to reach a compromise were unsuccessful.

14. Staff next argues that the marketing materials are misleading because they don't indicate that some part of the \$10 is spent by 3Degrees on administrative and marketing costs.¹⁸ Beyond the fact that this argument is disproven simply by extending the argument to all of Ameren Missouri costs –that Ameren Missouri should somehow put a disclaimer on all of its bills that the costs include overhead (even the volumetric rate for electric usage). This argument again reflects Staff's improper focus on 3Degrees in this case. The cost in question for the Commission is not what cost 3Degrees incurs, but rather whether the \$10 per REC is a reasonable cost to Ameren Missouri for all of the services provided by 3Degrees. Of course, for all of the reasons stated above, the cost of this program to customers is reasonable and prudent, and Staff's argument should be rejected.

15. Staff's final argument related to the Pure Power marketing materials is that this marketing is institutional in nature. Staff's argument is based upon a theory set forth

¹⁷ File No. ER-2010-0036, March 10, 2010, First Nonunanimous Stipulation and Agreement, p. 5, para. 11.

¹⁸ Staff's Proposed Finding of Fact and Conclusions of Law, p. 8, para. 7. (Note, Staff's filing did not include page numbers, but the citation is the 8th page of the document.) The language of the brief only says "this testimony is inconsistent with the information Ameren Missouri distributes to its customers and the public." However, the citation for this assertion is to several schedules in Staff witness Michael Ensrud's rebuttal testimony, which dealt with the argument that customers aren't aware of the administrative costs of the program.

in Staff's counsel opening statement. Staff argues that because the Pure Power advertising might be interpreted as saying something good about Ameren Missouri, it must be institutional advertising. Which, in and of itself, is a unique argument for which there is no evidentiary support in the record. The advertising at issue is designed to encourage customers to sign up for program made available through a Commission approved tariff. Staff's own witness admits he believed the Commission would allow recovery of the costs of marketing a tariffed program.¹⁹ This is simply another unsubstantiated and erroneous argument which should be rejected by the Commission.

WHEREFORE, Ameren Missouri provides its *Reply Brief* and asks the Commission to approve the Pure Power tariff and contract.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

/s/ Wendy K. Tatro

Wendy K. Tatro, # 60261
Corporate Counsel
Ameren Services Company
P.O. Box 66149, MC 1310
St. Louis, MO 63166-6149
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenMOService@ameren.com

¹⁹ Tr. Vol. 2, p. 66, l. 23 through p. 67, l. 4.

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been
e-mailed to the service list of record this 15th day of April, 2013.

**Missouri Public Service
Commission**

Sarah Kliethermes
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
sarah.kliethermes@psc.mo.gov

**Missouri Public Service
Commission**

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel

Lewis Mills
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Wendy K. Tatro

Wendy K. Tatro