

Exhibit No.:
Issues: Jurisdictional
Allocation Factors
Witness: Gary S. Weiss
Type of Exhibit: Surrebuttal Testimony
Case No.: EO-2012-0074
Date Testimony Prepared: June 8, 2012

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-2012-0074

SURREBUTTAL TESTIMONY

OF

GARY S. WEISS

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a Ameren Missouri**

**St. Louis, Missouri
June, 2012**

1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **GARY S. WEISS**

4
5 **CASE NO. EO-2012-0074**

6
7 **I. INTRODUCTION**

8 **Q. Please state your name and business address.**

9 A: My name is Gary S. Weiss and my business address is One Ameren Plaza,
10 1901 Chouteau Avenue, St. Louis, Missouri 63103.

11 **Q. Are you the same Gary S. Weiss who filed direct testimony in this**
12 **case?**

13 A. Yes, I am.

14 **Q. What is the purpose of your surrebuttal testimony in this proceeding?**

15 A. The purpose of my surrebuttal testimony is to respond to statements in the
16 direct/rebuttal testimony of Missouri Public Service Commission Staff (“Staff”) witness
17 Dana Eaves concerning the calculation of the Company’s jurisdictional allocation factors;
18 to the testimony of Staff witness Lena Mantle concerning discussions with Ameren
19 Missouri regarding the meaning of “long-term full and partial requirements sales”; to
20 Ms. Mantle’s testimony about the Staff’s calculation of the sums at issue in this case; and
21 to respond to Missouri Industrial Energy Consumers (“MIEC”) witness Greg Meyer’s
22 testimony regarding the Staff’s calculation of the sums at issue.

23 **Q. What is the exact statement in the testimony of Staff witness Eaves**
24 **regarding jurisdictional allocation factors to which you are responding?**

1 A. Mr. Eaves states in his direct/rebuttal testimony on page 19, lines 19-21:
2 “Finally, the sales to AEP and WVPA have not been included in the determination of
3 jurisdictional allocation factors, while the sales resulting from the contracts with the
4 Public Authorities were.”

5 **Q. Is Mr. Eaves right?**

6 A. No, he is not. Just as he was wrong when he said that the AEP and
7 Wabash sales had not been included in the Company’s IRP (Mr. Wills’ surrebuttal
8 testimony demonstrates that they were), Mr. Eaves is mistaken when he claims that the
9 sales were not included in the jurisdictional allocation factors.

10 **Q. Please explain.**

11 A. I have been involved in the development of the Company’s jurisdictional
12 allocation factors for approximately thirty-one years. The AEP and Wabash contracts
13 began in March and May of 2009, and the Company filed a rate case in July of 2009. An
14 annualized level of the contract volumes, like the contract volumes for what Mr. Eaves
15 calls the “Public Authorities,” were included in determining the jurisdictional allocation
16 factors in that case.

17 **Q. Have customers similar to AEP and Wabash been included in the**
18 **Company’s jurisdictional allocation factors in the past?**

19 A. Yes. At various times during the past thirty years the Company has also
20 included customers similar to AEP and Wabash in its jurisdictional allocation factors for
21 purposes of setting rates. For example, the test year for two rate complaint cases filed by
22 the Staff in the late 1980’s (Case No. EC-87-114 and Case No. EC-87-115) was calendar
23 year 1986. The jurisdictional allocation factors in those cases reflected twenty-one full or

1 partial requirements customers. Included in this list of twenty-one customers were
2 municipal customers such as Centralia, Farmington, Hannibal, Kirkwood, Rolla, West
3 Point, Iowa etc. In addition Citizens Electric Corp., Arkansas Power & Light Co., Show-
4 Me Power Corp. and Iowa Army Ammunition were included in the list and allocated
5 costs through the jurisdictional allocation factors. Since 1987 the list of full and partial
6 requirements customers has varied. However, the Company has consistently allocated
7 costs to all full and partial requirements customers using its jurisdictional allocation
8 factors, whether they be municipal customers, cooperatives or other electric utilities.

9 **Q. Were the AEP and Wabash contracts included in all of the**
10 **Company's jurisdictional allocation factors during the period in which they were in**
11 **effect?**

12 A. Yes. In addition to the 2009 rate case referenced above, from the start of
13 electricity being delivered to AEP and Wabash they have been included in the calculation
14 of the jurisdictional allocation factors utilized to allocate the change in Net Base Fuel
15 Cost for the fuel adjustment clause ("FAC"). Both AEP and Wabash were reflected in
16 the jurisdictional allocation factors used to allocate the Net Base Fuel Cost for the second
17 accumulation period under the FAC. In fact there has been some portion of either (or
18 both) of the AEP or Wabash contracts reflected in the calculation of the jurisdictional
19 allocation factors for FAC accumulated periods one through five.

20 **Q. In her direct/rebuttal testimony, Ms. Mantle states that Ameren**
21 **Missouri provided an oral interpretation of the phrase "long-term full and partial**
22 **requirements sales" that limited application of that phrase to municipal customers.**

1 **Do you have any knowledge of such an interpretation being provided by anyone**
2 **representing Ameren Missouri?**

3 A. No. Ms. Mantle states, starting on page 6, lines 10 to 11 of her
4 direct/rebuttal testimony, that “Ameren Missouri told me it [the phrase “long-term full
5 and partial requirements sales”] was a description of the wholesale contracts that Ameren
6 Missouri had with municipal utilities to provide electricity to them.” But Ms. Mantle has
7 stated that she cannot remember who at Ameren Missouri made that statement, and has
8 no evidence to corroborate her recollection. (Case No. EO-2010-0255, Tr. p. 357, l. 15 to
9 p. 359, l. 5.). If that statement was made at all, it was not in the context Ms. Mantle is
10 indicating in her testimony. I was in attendance at almost all of the meetings between
11 Ameren Missouri and Staff concerning the FAC tariff and I do not recall the statement to
12 which Ms. Mantle refers. In addition I checked with the other Ameren Missouri
13 employees who attended many of these meetings, including Wil Cooper and Steven
14 Kidwell, who Ms. Mantle identified as likely to have been present when the statement
15 was made, and they likewise did not recall that statement being made. (Case No. EO-
16 2010-0255, Dec. 16, 2010, Deposition of Lena Mantle, p. 24, l. 18 to p. 25, l. 3).

17 Moreover, it makes no sense that anyone from Ameren Missouri would have
18 provided this type of an oral interpretation of the tariff to Ms. Mantle. If Ameren
19 Missouri had intended its FAC tariff to restrict long-term full and partial requirements
20 sales to the current Ameren Missouri municipal customers, the FAC tariff could easily
21 have been drafted that way and would have been drafted that way. It was not drafted that
22 way and cannot be “interpreted” in a way that changes the tariff’s clear meaning. It is
23 possible that during discussion of the meaning of long-term full and partial requirements

1 sales that it was pointed out to Ms. Mantle that the current Ameren Missouri municipal
2 contracts are *examples* of sales that are long-term full and partial requirements sales, but
3 Ameren Missouri would not have represented that those municipal contracts are the only
4 long-term full and partial requirements sales that could be included in the exclusion.

5 **Q. Is there other evidence that demonstrates that Ms. Mantle is either**
6 **wrong, or took a statement out of context?**

7 A. Yes, there is. First of all, her Staff colleague, Mr. Eaves, contradicts her.
8 His testimony is that a long-term full or partial requirements sale does not have to be
9 limited to a contract with a municipal counterparty. Case No. EO-2010-0255, Tr. p. 339,
10 l. 19 to p. 340, l. 1.¹ On this point, Mr. Eaves agrees with the Company.

11 Secondly, the plain language of the tariff can't be read to include such a
12 limitation. Nowhere is the type of counterparty restricted so long as sale is a long-term
13 sale and a full or partial requirements sale. That this is true is demonstrated by the fact
14 that the language at issue was actually later amended to *add the restriction* (in boldface
15 type, below) that Ms. Mantle claims was there all along, as shown below:

16 OSSR = Revenues from Off-System Sales allocated to Missouri
17 electric operations.
18

19 Off-System Sales shall include all sales transactions (including
20 MISO revenues in FERC Account Number 447), *excluding*
21 *Missouri retail sales and long-term full and partial requirements*
22 *sales to Missouri municipalities*, that are associated with (1)
23 AmerenUE Missouri jurisdictional generating units, (2) power
24 purchases made to serve Missouri retail load, and (3) any related
25 transmission (emphasis added – new language in bold).
26

¹ Notably Ms. Mantle also contradicts Mr. Eaves on a different point. As Ameren Missouri witness Jaime Haro discusses in his surrebuttal testimony, Mr. Eaves relies on the FERC Form 1 instructions' definition of "requirements service" to contend that the AEP and Wabash contracts do not reflect a "requirements sale." But Ms. Mantle indicated that under her own definition of a requirements sale the AEP and Wabash contracts *are* requirements sales. Case No. EO-2010-0255, Tr. p. 380, l. 13-17.

1 The subsequent addition of this language in the tariff shows that the tariff was not
2 so limited before the change.

3 Third, in the rate case where the FAC tariff (that did not contain the restriction
4 involving municipalities) was approved, the FAC that Ameren Missouri proposed in that
5 case was presented and explained in the pre-filed direct testimony of Martin J. Lyons, Jr,
6 which was admitted into evidence in that case as Exhibit 41. In that testimony Mr. Lyons
7 explained in some detail how the Company intended to define off-system sales revenues
8 (OSSR) as used in the formula for calculating net fuel costs to be recovered through the
9 FAC.² For example, in response to the question “What costs are included in the FAC?”
10 Mr. Lyons responded that “the FAC would include all fuel and purchased power costs
11 *incurred to support sales to retail customers and that portion of off-system sales*
12 *allocated to Missouri retail customers.”*³ (emphasis added) Additional information
13 regarding the types of revenues that would – and would not – be flowed-through the FAC
14 as an offset to fuel and purchased power costs is found in Mr. Lyons’ Schedule MJL-E4,
15 which contains information required by 4 CSR 240-3.161(2). Page 7 of that schedule
16 contains a section that both identifies and describes each category of revenues to be
17 considered in determining net energy costs under the proposed FAC. One such category,
18 off-system sales, is described as follows:

19 All sales transactions (excluding retail sales or long-term full or partial
20 requirements sales to non-jurisdictional customers) that are associated
21 with (1) AmerenUE Missouri jurisdictional generating units and (2) power
22 purchases made to serve Missouri retail including any associated
23 transmission.
24

² The PSC took administrative notice of the entirety of Mr. Lyons’ pre-filed direct testimony in Case No. ER-2008-0318. Tr. 468, l. 4-12.

³ Pre-filed direct testimony of Martin J. Lyons, Jr. in Case No. ER-2008-0318, p. 4, l. 21 to p. 5, l. 1.

1 These excerpts from Mr. Lyons’ testimony reveal two things about the meaning
2 Ameren Missouri intended for the definition of “OSSR” that the Company proposed and
3 the Commission ultimately adopted. First, the definition excludes sales to Missouri
4 jurisdictional customers and off-system sales that are not allocated to the Missouri retail
5 jurisdiction. Second, the definition excluded *all* long-term full or partial requirements
6 sales to non-jurisdictional customers, not just those to certain types of wholesale
7 customers such as municipalities.

8 Could Ms. Mantle have at a later point come to believe that a long-term full or
9 partial requirements sale could only occur with a municipality? That’s possible because I
10 can’t say what she subjectively understood or came to believe, but I do know that neither
11 the language of the tariff nor the evidence presented in the case in which the tariff was
12 approved by the Commission supports her understanding or belief.

13 **Q. In your direct testimony you explained why the sums calculated by**
14 **the Staff in this case (even if one assumed their underlying premise was correct) are**
15 **too high by \$3.3 million. Ms. Mantle and MIEC witness Meyer both essentially say**
16 **that the “W” factor you cited has nothing to do with the AEP and Wabash margins.**
17 **How do you respond?**

18 A. Ms. Mantle claims that she “does not see anywhere in the Stipulation
19 where it was stated that the W-factor was part of the margins from the AEP and Wabash
20 contracts.” I would submit that she didn’t look very hard. The Stipulation (attached to
21 my direct testimony as Schedule GSW-1) had three distinct sections, each with a heading
22 that is capitalized and underlined. The first heading is entitled “AEP AND WABASH
23 CONTRACTS,” and it consists of 6 numbered paragraphs (1 – 6), the 5th one of which

1 provides for the “W factor.” If the W factor didn’t reflect margins related to the “AEP
2 and Wabash Contracts” it would not have been included in the “AEP and Wabash
3 Contracts” section of the Stipulation.⁴

4 **Q. Is there anything else noteworthy about Ms. Mantle’s testimony on**
5 **this issue?**

6 A. Yes. Having claimed that the W factor has nothing to do with the AEP
7 and Wabash margins, she goes on to testify that “Ameren Missouri would reduce fuel
8 costs by \$300,000 a month for twelve months in order to settle the disagreement between
9 the parties *regarding how to handle the AEP and Wabash contracts . . .*” (emphasis
10 added) (p. 12, l. 3-5). Is one to believe that the agreement was to reduce fuel costs by
11 \$300,000 per month using a W factor in order to settle the dispute *about these contracts*
12 but also believe that the \$300,000 per month had nothing to do with the margins under
13 those very same contracts? That makes no sense.

14 **Q. Ms. Mantle points to an “S” factor in a settlement in a prior case,**
15 **apparently claiming that it shows that the \$300,000 in this case was a “black-box”**
16 **settlement amount. How do you respond?**

17 A. The “S” factor arose from Case No. ER-2008-0318. It is provided for in
18 the “Stipulation and Agreement As to Off-System Sales Related Issues” filed in that case.
19 I was involved in the discussions that led to that stipulation, which was approved by the
20 Commission. That stipulation settled the following group of issues:

- 21 a. Off-system sales revenues and margins from energy;
- 22 b. Natural gas and purchased power/market energy prices used to
- 23 determine purchased power and off-system sales;
- 24 c. Prior period Taum Sauk capacity sales;

⁴ The Stipulation had two other sections, as follows: “**OTHER ISSUES**” and “**GENERAL PROVISIONS**”.

- 1 d. Non-Taum Sauk capacity sales;
- 2 e. Current period Taum Sauk capacity sales;
- 3 f. Ancillary Services revenues; and
- 4 g. Non-asset based (speculative) trading margins.
- 5

6 That stipulation contained several terms, one of which was specifically called a
7 “black box” settlement amount.” That amount ended up in the FAC tariff as “Factor S”
8 and in the tariff is described as a “Blackbox Settlement Amount.”

9 Instead of proving her point, I would submit that Ms. Mantle’s reference to this
10 previous settlement has proven mine. She is comparing a sum that by definition was
11 “blackbox;” that is, it was not tied to any one issue and in fact resulted from the
12 settlement of many issues, to a sum that settled only one issue -- “the disagreement
13 between the parties regarding how to handle the AEP and Wabash contracts . . .”

14 **Q. Mr. Meyer claims your contention that the W factor reflects margins**
15 **from the AEP and Wabash contracts is “completely unfounded.” How do you**
16 **respond?**

17 A. I have the same response I gave regarding Ms. Mantle’s claim. The
18 stipulation speaks for itself. I would also note that while I do not know exactly what
19 Mr. Meyer means by “spokesperson for the discussions and negotiations for this portion
20 of the stipulation,” I was deeply involved in those negotiations. Perhaps Mr. Meyer
21 considers one of our attorneys or another Ameren Missouri employee to be the
22 “spokesperson,” but that doesn’t diminish my first-hand knowledge of the negotiations,
23 nor does it change the terms of the stipulation itself.

24 **Q. Does this conclude your surrebuttal testimony?**

25 A. Yes, it does.

In the Matter of the Second Prudence)
Review of Costs Subject to the)
Commission-Approved Fuel) Case No. EO-2012-0074
Adjustment Clause of Union Electric)
Company d/b/a Ameren Missouri.)

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

1. My name is Gary S. Weiss. I work in the City of St. Louis, Missouri, and I am employed by Ameren Missouri as Manager of Regulatory Accounting.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

Subscribed and sworn to before me this 8th day of June, 2012.

Julie Donohue - Notary Public
Notary Seal, State of
Missouri - St. Louis City
Commission #09753418
My Commission Expires 2/17/2013