

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

In the matter of Union Electric Company)	
d/b/a AmerenUE for Authority to File)	
Tariffs Increasing Rates for Electric)	Case No. ER-2007-0002
Service Provided to Customers in the)	
Company's Missouri Service Area.)	

**Union Electric Company d/b/a AmerenUE's Combined
Motion to Strike Portions of Prefiled Testimony of Stephen M. Rackers and
Motion for Expedited Treatment of Same and
Suggestions in Opposition to State of Missouri's
Motion to file Supplemental Surrebuttal Testimony of Michael Brosch**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company") and moves the Commission to strike that portion of the prefiled Surrebuttal Testimony of Stephen M. Rackers (filed February 27, 2007) beginning on page 4, line 7, and extending through page 7, line 11, and also with this filing opposes the motion submitted on March 3, 2007, seeking leave to file Supplemental Surrebuttal Testimony of Michael Brosch, and as reasons therefor states as follows. Because this issue has arisen just a few days before the scheduled three-week hearing for this case is set to start, AmerenUE also asks for expedited treatment under 4 CSR 240-2.080(16) of its motion regarding Mr. Rackers' testimony in conjunction with the State's motion regarding Mr. Brosch's proposed testimony, as to which expedited treatment already has been granted. AmerenUE requests that these two motions be ruled by March 9, 2007, so that all parties and the Commission may properly prepare for the actual issues to be litigated in this complex case. This pleading responding to the State motion regarding Mr. Brosch's proposed testimony is filed within the expedited time period set by the Commission's order entered March 5, 2007, and the motion contained herein is filed within five working days of the filing of Mr. Rackers' Surrebuttal Testimony, a portion of which it seeks to have stricken, and this pleading is filed as soon as it could have been filed.

1. The cited portion of Mr. Rackers' Surrebuttal Testimony and all of the proposed "Supplemental Surrebuttal Testimony" of Michael Brosch both violate the Commission's rules regarding prefiled testimony, in particular paragraph D of 4 C.S.R. 240-2.130, which

provides: “Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party’s rebuttal testimony and schedules.”

2. No rebuttal testimony, indeed no testimony at all, has been filed prior to this filing by Mr. Rackers and this proposed filing by Mr. Brosch addressing or discussing or making any assertions regarding whether certain tax timing differences related to “net salvage” (Mr. Rackers’ terminology) or “cost of removal” (Mr. Brosch’s terminology) should be addressed by an accounting method other than the “flow through” method. For the first time in this Surrebuttal Testimony and proposed “Supplemental Surrebuttal Testimony,” Mr. Rackers and Mr. Brosch attempt to present the position that instead of “flow-through” methodology, a different methodology, “normalization,” should be used.

3. Mr. Rackers admits (Surrebuttal Testimony, page 4, lines 10-14), that in Staff’s original calculation of income tax expense, the “flow through” methodology was used. (“In its original calculation of income tax expense, the **Staff** added back the amount of accrued net salvage (salvage received less cost of removal) included in its annual amount of depreciation expense and deducted the amount of net salvage experienced as a result of actual plant retirements. **This resulted in “flow through” treatment for the timing difference associated with net salvage.**”) Mr. Brosch, in his proposed testimony, admits the same thing. (Brosch Proposed “Supplemental Surrebuttal Testimony” page 2, lines 19-23)

4. In Surrebuttal testimony filed on February 27, 2007, AmerenUE witness Mannix also indicated that the Company had used “flow through” methodology in calculating income tax treatment of net salvage (“Q. Why is the flow through method being used? A. This has been the traditional method used by both the Staff and the Company for preparing the Income Tax Expense Calculation.” Surrebuttal Testimony of Charles A. Mannix, page 4, lines 15-17).

5. Staff witness Rackers attempts to characterize this switch of methodologies being presented for the first time in Surrebuttal Testimony as a “correction” (see Rackers Surrebuttal Testimony page 4, line 8)¹, and State witness Brosch, in a transparently

¹ AmerenUE is not in this motion seeking to strike other portions of Mr. Rackers’ Surrebuttal Testimony which are fairly characterized as making corrections. For example, AmerenUE is not making such a motion as to Mr. Rackers

erroneous assertion, claims that he had no opportunity to present these arguments for a new methodology earlier (see Brosch proposed “Supplemental Surrebuttal Testimony,” page 2, lines 1-3)², but in fact this testimony advocates a last-minute fundamental change in methodology. The debate over whether to use “flow through” or “normalization” methodology on cost of removal or net salvage matters to accommodate the timing differences related to the income tax expense calculation has swirled and waxed and waned in Missouri Public Service Commission and Federal Energy Regulatory Commission ratemaking proceedings for years. *See, e.g., Central Telephone Co.*, Case No. 18,698, **1977** Mo. P.S.C. 335, 342-45; *Southwestern Bell Telephone Co.*, Case No. TR-77-214, **1980** Mo. P.S.C. LEXIS 48, 20-21; *St. Joseph Light and Power Co.*, Case No. ER-81-43, **1981** Mo. P.S.C. LEXIS 31, 58-63 (entire section of Order, covering 6 pages, is entitled “Flow Through Versus Normalization”); *Southwestern Bell Telephone Co.*, Case No. TR-81-208, **1981** Mo. P.S.C. LEXIS 4, 65-73 (entire section of Order, covering 9 pages, is entitled “Normalization vs. Flow Through of Income Taxes”); *Southern California Edison Co.*, Docket No. ER-79-150-003, **1981** FERC LEXIS 3276, 31-35; *United Telephone Company*, Case No. TR-80-235, **1981** Mo. P.S.C. 152, 160-61; *Kansas City Power and Light Co.*, Docket No. ER80-315-000, **1982** FERC LEXIS 1127, 108-117 (entire section of FERC order is entitled “Normalization Versus Flow-through of Taxes Associated With Removal Costs”); *Southwestern Bell Telephone Co.*, Case No. TR-82-199, **1982** Mo. P.S.C. LEXIS 3, 77-82; *Missouri Public Service Company*, Case No. ER-82-39, **1982** Mo. P.S.C. LEXIS 36, 41-43; *Southwestern Bell Telephone Co.*, Case No. TR-83-253, Mo. P.S.C. LEXIS 4, 27-29 (**1983**); *Southwestern Bell Telephone Co.*, Case No. TC-89-14, Mo. P.S.C. LEXIS 13, 32-33 (**1989**); *Utilicorp United, Inc.*, Case No. ER-90-101, Mo. P.S.C. LEXIS 34, 58-61 (**1990**); *Southwestern Bell Telephone Co.*, Case No. TC-93-224, **1993** Mo. P.S.C. LEXIS 62, 47-49. No prior Missouri Public Service Commission Order in a case involving AmerenUE exists

advocating an increase in another number by some \$63 million (Rackers Surrebuttal Testimony page 4, line 3). AmerenUE is seeking to strike only that testimony which depends upon a last-minute change of **methodology** being advocated by Mr. Rackers.

² Mr. Brosch characterizes AmerenUE’s position on this matter as if it is something new to the case in Mr. Mannix’s testimony by referring to it as what is “now being proposed by AmerenUE” (Brosch Proposed Supplemental Surrebuttal Testimony page 5, lines 4-5), but as explained in paragraphs 3 and 4 of the body of this filing, containing quotations, both Mr. Rackers and Mr. Mannix acknowledge that “flow through” treatment has been used on this item throughout the case until now.

which compels either “Flow Through” or “Normalization” treatment of net salvage on the income tax expense calculation. As the above Missouri Public Service Commission cases reflect, for many years there was a presumption that the proper methodology to use was “Flow Through,” which is the methodology used here by the Company and acknowledged by Staff to be part of their earlier calculations in this case.

6. In light of the history recited in the preceding paragraph, neither the Staff nor the State can plausibly claim either lack of knowledge of this issue or that the attempt by Mr. Rackers and Mr. Brosch to switch to “normalization” methodology by way of Surrebuttal and even Supplemental Surrebuttal Testimony filed mere days before the hearing in this case is simply correction of a “mistake.” It should be noted that this attempt to switch for the first time to a “normalization” methodology on this issue would reduce the Company’s revenue requirement, according to Mr. Rackers, by an enormous \$35 million (Rackers Surrebuttal Testimony page 4, lines 22-23).

7. Both Staff witness Rackers and State witness Brosch make feeble attempts to characterize this last-minute switch as correction of a mistake, and they attempt to characterize it as in the same category as the smaller but substantial calculation mistake uncovered by AmerenUE and described by witness Charles A. Mannix, which he corrected in his Surrebuttal Testimony.³ As is plain from Mr. Mannix’s testimony, what it reflects is a calculation error, not a switch in methodology. As noted above, Mr. Rackers himself acknowledges that in his original testimony, his calculations implemented the same “flow through” methodology used and advocated by AmerenUE. *See* Rackers Surrebuttal Testimony, page 4, lines 13-14 (referencing Staff’s own original calculation of income tax expense). In fact, the testimony of Mr. Rackers and Mr. Brosch at issue in these motions is merely an opportunistic attempt to switch methodologies to one that is less favorable to the Company after the Company discovered its own error in implementing the established and earlier accepted methodology.

³ Corrections may be made in surrebuttal testimony, and routinely are. *See, e.g., In the Matter of the Determination of Prices, Terms, and Conditions of Certain Unbundled Network Elements*, Case No. TO-2001-438, 11 Mo.P.S.C. 3d 424, 103 (2002). On the other hand, allowing the filing of Surrebuttal or Supplemental Surrebuttal Testimony such as Mr. Rackers’ and Mr. Brosch’s is improper under the Commission rules when there is no reason to believe that the witness could not have discovered the matters sought to be addressed in the testimony. *See Environmental Utilities, LLC*, Case No. WA-2002-65, 2002 Mo. P.S.C. 283 (Woodruff, RLJ).

8. The obvious purpose of the Commission's rules found in 4 C.S.R. 240-2.130 is to provide for an orderly presentation of issues, and to require each party in direct and rebuttal testimony to present their entire case. Paragraph 7.A states: "Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief." Paragraph 7.B states: "Where all parties file direct testimony, rebuttal testimony shall include all testimony and schedules which are responsive to the testimony and schedules contained in any other party's direct case." Paragraph 7.D states: "Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony and schedules."

9. The testimony of Mr. Rackers and the proposed testimony of Mr. Brosch constitute a simple attempt to, for the first time, require a whopping \$35 million reduction in AmerenUE's revenue requirement, by switching methodologies for a calculation from the one admittedly used throughout the case until now. This attempt is clearly and unequivocally barred by the language of 4 C.S.R. 240-2.130. Characterizing this as a simple mistake at this stage is completely lacking in credibility given the lengthy history of this issue in prior P.S.C. and FERC cases. Allowing other parties to advocate a \$35 million reduction in revenue requirement based upon a change in accounting methodology by way of Surrebuttal Testimony filed just days before the hearing would be fundamentally unfair to the company whose rates are at stake. Such a filing would be so fundamentally unfair to the company that any resulting rate-setting would constitute a failure by the Commission to perform its statutory duty to "determine and prescribe just and reasonable rates." §§ 393.140 (5) and 393.150.2 RSMo (2000).⁴

⁴ Mr. Brosch's Proposed Supplemental Surrebuttal Testimony includes a two-page schedule with some 50 lines and some 14 columns, and those numbers and his testimony are based upon some five assumptions he simply chose, with no showing of any relationship to this company or to this case. His proposed testimony covers some 15 pages of argument and explanation and examples involving what he calls the issue of "Cost of Removal" or "COR" which never had been raised in any prior filing in this case. Even Mr. Rackers does not use this terminology in the portion of his Surrebuttal Testimony which is the subject of this motion; he calls the issue "net salvage;" both use the "flow through" versus "normalization" terminology, but choosing between these accounting approaches with respect to the income tax calculation is an issue making its first appearance in this case in the filings of Mr. Rackers and Mr. Brosch. It's simply too late for AmerenUE to have a fair opportunity to sort out all this and respond in a meaningful way. The Commission should enforce its rule about Surrebuttal Testimony being limited to responding to issues previously raised.

WHEREFORE, AmerenUE respectfully moves the Commission to strike from the prefiled Surrebuttal Testimony of Stephen M. Rackers page 4, line 7, through page 7, line 11, and suggests to the Commission that the State of Missouri's Motion for Leave to File Supplemental Surrebuttal Testimony by Michael Brosch must be overruled.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Union Electric Company d/b/a AmerenUE's Memorandum of Law Regarding Admissibility of Opinion Testimony of Professor Robert Downs was served via e-mail, to the following parties on the 6th day of March, 2007.

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