

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

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

**Reply to filings by State of Missouri and by Staff  
Responding to Motion of Union Electric Company d/b/a AmerenUE to Strike Portions of  
Prefiled Testimony of Steve Rackers and Suggestions in Opposition to State of Missouri's  
Motion for leave to file Supplemental Surrebuttal Testimony of Michael Brosch**

Comes now Union Electric Company d/b/a AmerenUE ("AmerenUE") and files this response to the filings earlier today denominated respectively "State of Missouri's Response . . ." and "Staff Response . . ." both of which address the recently arisen issue of whether Surrebuttal Testimony by witnesses Rackers and Brosch amounting to a change of methodology should be permitted.

1. The Commission, by Order issued on March 6, 2007, ordered any parties wishing to respond to AmerenUE's filing to do so by noon on March 7, 2007. State's filing was nearly two hours late, and Staff's was more than two hours late.

2. State's filing, while appearing to accuse both Staff and AmerenUE of various improprieties in communications about this matter, includes as attachments a collection of e-mails between Mr. Rackers and Mr. Brosch to try to demonstrate something pertaining to this issue. In fact there were attached multiple copies of those e-mails, some redacted differently. Those e-mails clearly demonstrate that many of them refer not to this issue at all but to another issue that in fact was settled by the parties, the section 199 production deduction. An effort appears to have been made to obscure the actual subject as well as the content, perhaps in a

make-weight approach to presenting argument, consistent with attaching multiple copies of the same e-mails.

3. Fair conclusions that may be drawn from the collections of e-mails attached to both State's filing and to Staff's include the following.

(1) State witness Brosch was engaged in a concerted effort to try to persuade Staff witness Rackers to change his applied methodology in Staff's filings in this case, throughout February of 2007, at one point seeming to raise alarm that continuing to apply Staff's position advocating "flow through" methodology looked like it would increase AmerenUE's revenue requirement by some \$40 million (a much larger correction than the one ultimately made in Mr. Mannix's testimony). That effort to obtain a change in Staff's position evidently did not succeed until the last minute, just before Surrebuttal Testimony was filed by Mr. Rackers. Notably, the most important information revealing this effort by Mr. Brosch and the motivation for it is contained only in an e-mail which is attached not to the State's filing, but to Staff's.

(2) The position of AmerenUE on this accounting methodology matter did not change throughout the case, and the need for a correction discovered by AmerenUE and by Staff and made in Mr. Mannix's Surrebuttal Testimony to make AmerenUE's position internally consistent and consistent with the accounting methodology taken in the case by Staff was well-known to both Mr. Rackers and Mr. Brosch, being disclosed to both of them both orally and in writing as part of ongoing discussions. All of this is consistent with Mr. Mannix's Surrebuttal testimony, which demonstrates that AmerenUE in fact did apply "flow through" methodology in its original filing, but simply picked up the wrong number in applying that methodology. The assertions that AmerenUE applied

“normalization” methodology in its filing, which assertions are made in the documents filed today by State and by Staff, are simply wrong, and are wholly unsupported.

(3) Virtually all of the e-mails attached to the filings by State and Staff amount to settlement discussions, and filing them with the Commission is inappropriate.

Substantive matters on issues to be decided by the Commission are to be addressed in testimony. It is contrary to the Commission’s rules for parties to claim, as these do, that they should be given permission to change methodologies on an important issue in Surrebuttal Testimony because they thought an issue was going to be settled. The rules require stating such a position in a timely manner, in properly filed testimony.

4. The last day for permitted filings advocating changes in methodology was when the last rebuttal testimony was due on matters such as this, which was January 31, 2007, under the Commission’s Order Adopting Procedural Schedule and Test Year. The State’s filing earlier today states that “The potential problems with income tax issues first arose on January 3, 2007.” Staff’s filing, in paragraph 2, shows that Staff had identified this problem of a potential error by AmerenUE by December 29, 2006. Consistent with Mr. Mannix’s testimony, the e-mails attached to State’s and Staff’s filings demonstrate that the Company did not change its position regarding methodology and provided much information to the other parties on this issue, to help everyone sort out what had been done and determine the correct numbers to be used, including the fact that a correction was required under the “flow through” methodology being utilized. That correction turned out to be less than the numbers floated earlier by Staff. An attempt by the State and by Staff now to advocate a change in accounting methodology, just a few days before the hearing, is outrageously out of order under the Commission’s rules.

5. This remains an issue of whether a change of methodology, as opposed to corrections, is appropriate for Surrebuttal Testimony. The rules require that all substantive matters such as this be presented in direct and rebuttal testimony. The Commission should enforce its rule that such a change is not permitted in Surrebuttal Testimony. State's motion for leave to file Supplemental Surrebuttal Testimony by Mr. Brosch should be overruled. AmerenUE's motion to strike portions of Mr. Rackers' testimony should be sustained.

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Reply to filings by State of Missouri and by Staff Responding to Motion of Union Electric Company d/b/a AmerenUE to Strike Portions of Prefiled Testimony of Steve Rackers and Suggestions in Opposition to State of Missouri's Motion for leave to file Supplemental Surrebuttal Testimony of Michael Brosch** was served via e-mail, to the following parties on the 7<sup>th</sup> day of March, 2007.

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