

**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 Service Provided to Customers)	<u>Case No. ER-2010-0036</u>
In the Company's Missouri Service Area.)	

**RESPONSE TO MIEC'S SUGGESTIONS IN OPPOSITION TO AMERENUE'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY**

COMES NOW Union Electric Company d/b/a AmerenUE and in response to the above-referenced filing, states as follows:

1. The filing made by Missouri Industrial Energy Consumers (MIEC) earlier today mischaracterizes and, at times, misstates the relevant facts and circumstances relating to this issue.
2. MIEC makes the incredible claim that AmerenUE was required to file direct testimony explaining why actual test year level of maintenance expense changed since the test year in the last case. This is nonsense. The utility files its case in chief, which includes a revenue requirement based upon actual, historic test year figures and, if proposed by the Company, testimony underlying any adjustments to test year figures (for normalization; for non-recurring items; for known and measurable changes expected from the filing to the anticipated update period; for pro-forma adjustments to account for expected changes from the filing to the anticipated update period). The Company was not required to file testimony explaining changes in the test year figures from the last case's test year to this case's test year. These cases start with the test year figures. If a party has a problem with those, they take issue with them in their own direct cases, or at least in rebuttal.

3. MIEC claims that it was responding to “new information.” This claim is incorrect. Mr. Meyer used 16 data points in his brand new analysis – 15 of them were available to him before he had the full opportunity to file rebuttal testimony on February 11. One, a budgeted figure for one power plant, was provided to the Staff on January 21. Had Mr. Meyer asked, it would have been provided to him too. Mr. Meyer’s unit-by-unit outage data was available to him through Brubaker and Associates’ own subscription to the NERC GADs outage data he relied on for it, and in any event, was included in workpapers provided to MIEC in connection with the Company’s direct case. The “longer interval” information MIEC’s pleading claims was “new” was contained in the response to Staff DR No. 294, propounded to the Company in December. *MIEC is served with a copy of every DR propounded by every party in this case.* Moreover, AmerenUE responded to the DR on January 7, 2010 – more than one month before rebuttal testimony was due – and *MIEC has access 24 hours a day seven days a week to every DR response the Company issues* via the Company’s Caseworks Extranet site. In brief, Mr. Meyer, had he wanted to or had he thought of it, could have done what he waited to do in his surrebuttal testimony when he filed his direct testimony, and certainly when he filed his rebuttal testimony.¹

4. MIEC claims, wrongly, that Mr. Meyer’s surrebuttal testimony was “limited to material which was responsive to the matters raised in AmerenUE’s rebuttal testimony” and was “based solely on information provided by AmerenUE in its rebuttal testimony.” That is simply not accurate. The unit outage-by-outage information presented by Mr. Meyer was not in AmerenUE’s rebuttal testimony; as noted, it was in data that *MIEC had access to* at any time since this case was filed. The plant-by-plant maintenance expense figures were not in

¹ Mr. Meyer would have had to have substituted one actual figure for the one budgeted figure; i.e., he would have had to change one of his 16 inputs.

AmerenUE's rebuttal testimony; that data was available to MIEC for the asking, at any time. MIEC knows how to ask DRs; it has asked dozens of them in this case.

5. MIEC points to budgeted maintenance expenditures from 2010 through 2012 which it is true were presented for the first time in AmerenUE's rebuttal testimony. But Mr. Meyer's surrebuttal testimony *does not address the 2010 to 2012 figures*.² To the contrary, it simply uses one number (out of 16) from one plant, that in fact came from data the Staff used in its rebuttal testimony and which the Staff had more than three weeks before its rebuttal testimony was filed.

6. Finally, MIEC claims AmerenUE "had two opportunities to introduce all of the information it now seeks to file." This is the proverbial pot calling the kettle black. Had Mr. Meyer wanted to examine plant-by-plant maintenance expense, and unit-by-unit outages, he could have done so anytime he wanted starting as far back as July 25 of last year. He could have done that analysis, and filed it with MIEC's direct case on December 18, 2009, or he could have done that analysis and filed it with MIEC's rebuttal case on February 11. No party proposed to normalize power plant maintenance expense in the manner proposed by Mr. Meyer until the night of the 10th day prior to the commencement of the hearings in this case. The manifest injustice that would occur would be to allow MIEC to "sand bag" the Company for seven months, while then denying the Company the ability respond. The Company's Motion for Leave to file Mr. Birk's Supplemental Testimony should be granted.

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² Except to use one budgeted figure for 2010 for one plant; the other three 2010 figures for the other three plants, and the eight 2011 and 2012 figures for all of the plants, were not addressed by Mr. Meyer at all.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, on the following parties on the 15th day of March, 2010:

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