

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) Case No. ER-2007-0002
Rates for Electric Service Provided to Customers In) Tariff No. YE-2007-00007
the Company's Missouri Service Area.)

POST-HEARING BRIEF OF THE COMMERCIAL GROUP

The Commercial Group respectfully submits its Post-Hearing Brief in accordance with the Commission's Order Adopting Procedural Schedule And Test Year issued September 12, 2006. For convenience, the issues addressed below correspond to the Proposed List Of Issues, Order Of Witnesses And Order Of Cross-Examination filed in this docket. As set forth more fully below, some of the issues addressed by The Commercial Group in this docket have been resolved through stipulation while others remain outstanding.

I. SUMMARY OF TESTIMONY OF KEVIN C. HIGGINS

The Commercial Group submitted the following prefiled testimony by its expert, Kevin C. Higgins:

1. Exhibits No. 850NP and 850HC – Direct Testimony of Kevin C. Higgins on EEInc. and Off-System Sales Margins (Dec. 15, 2006).
2. Exhibit No. 851 – Direct Testimony of Kevin C. Higgins on Cost of Service and Revenue Apportionment (Dec. 29, 2006).
3. Exhibit No. 852 – Direct Testimony of Kevin C. Higgins on Fuel Adjustment Clause (Dec. 29, 2006).
4. Exhibit No. 853 – Rebuttal Testimony of Kevin C. Higgins on Cost of Service and Revenue Apportionment (Feb. 5, 2007).
5. Exhibit No. 854 – Surrebuttal Testimony of Kevin C. Higgins on EEInc. (Feb. 27, 2007).

The prefiled testimony of Mr. Higgins was admitted into evidence without objection (Tr. 27:2663) and without cross-examination (Tr. 27:2659). The references that follow are both to the prefiled testimony of Mr. Higgins and to the transcript in this proceeding.

II. STATEMENT OF POSITIONS

- 8. Electric Energy, Inc.: How should the expiration of the affiliate power supply agreement with EEInc. be treated for ratemaking purposes? Would it be lawful and proper for the Commission to impute to AmerenUE's revenue requirement the net effect on AmerenUE's variable production costs of power from EEInc.? Was the action taken by AmerenUE respecting the expiration of the affiliate power supply agreement with EEInc. prudent?**
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As a regulated utility responsible for providing its customers with electricity at just and reasonable rates, AmerenUE's failure to extend or renew the power supply agreement with EEInc. on cost-based terms was imprudent.¹ The ability to extend or renew the power supply agreement was entirely within the control of AmerenUE and its corporate affiliates.² Instead, AmerenUE made a corporate decision to forego the opportunity to extend the agreement.³

While AmerenUE is free to make such a decision, it should not be allowed to pass the resulting incremental costs on to its customers.⁴ For ratemaking purposes the incremental costs of serving AmerenUE's retail load – absent the output of EEInc's Joppa facility – should be absorbed by the Company and not its customers.⁵

¹ Higgins Direct Testimony on EEInc. and Off-System Sales Margins (Dec. 15, 2006) at pp. 14-15.

² *Id.* at p. 14.

³ *Id.*

⁴ *Id.* at pp. 14-15.

⁵ *Id.* at p. 15.

From a ratepayer perspective these incremental costs include an increase in AmerenUE's fuel expense and/or a reduction in its off-system sales margins, since less AmerenUE capacity will be available for such sales.⁶ The most accurate measure of these incremental costs would be determined by requiring AmerenUE to use its PROSYM dispatch model to calculate the difference between the test year fuel and purchased power costs incurred by the Company and what would have been incurred had the power sales agreement been extended under terms similar to what had been in place up to December 31, 2005.⁷ AmerenUE was asked to make these PROSYM runs in the discovery process but refused to do so.⁸

Alternatively, the incremental costs associated with AmerenUE's decision to forego cost-based power from EEInc.'s Joppa plant can be estimated using various assumptions. These estimates are shown on Schedule KCH-1 Scenarios 1, 2 and 3, and range from a low of \$21.7 million to a high of \$62.6 million.⁹

Efforts to portray the decision to forego cost-based power from the Joppa facility as solely that of EEInc.'s Board of Directors are a "form-over-substance" argument and ignore the affiliate relationships within the Ameren Corporation, particularly as they apply to EEInc. and its Joppa facility. Although the formal decision not to renew the power sales agreement may have been an action of EEInc., that action could only have occurred with the full support of Ameren Corporation and, more importantly for ratemaking purposes, the acquiescence of AmerenUE.¹⁰

⁶ *Id.* at p. 6.

⁷ *Id.* at pp. 17 & 21.

⁸ *Id.* at p. 17.

⁹ *Id.* at pp. 17-20.

¹⁰ *Id.* at p. 8.

This acquiescence becomes glaringly apparent when comparing the actions of AmerenUE with those of Kentucky Utilities Company, another regulated utility and one of EEInc.'s co-owners along with AmerenUE. There is no evidence that AmerenUE ever even *requested* that its contract with EEInc. be continued.¹¹ In contrast, Kentucky Utilities – a regulated utility facing the same circumstances as AmerenUE – attempted to negotiate an extension of its power sales agreement with EEInc. based on the previous cost-of-service terms.¹² Other similarly situated utilities have attempted to do the same.¹³ It was imprudent for AmerenUE not to do the same, and this imprudence should not be rewarded in the ratemaking process.

Nor is the “EEInc.-as-sole-decision-maker” theory bolstered by suggestions that it would have been “irrational” *per se* for EEInc. to sell its power at cost, or would have violated legal obligations to EEInc.'s shareholders. Such arguments ignore the affiliate relationships between EEInc., AmerenUE and the Ameren Corporation and the well-documented tendency of affiliated companies to engage in “transfer pricing” at below-market prices when profits are maximized for the affiliated group as a whole.¹⁴

Efforts to portray the Joppa plant as a “below-the-line” investment are similarly unpersuasive. The history of the plant make it clear that AmerenUE's Missouri customers effectively guaranteed EEInc.'s financial obligations, assuring the Company of a continuous source of economical power.¹⁵ In addition, under the terms of the power sales agreement with EEInc., AmerenUE - as a partial owner of EEInc. – earned a 15%

¹¹ Higgins Surrebuttal Testimony on EEInc. (Feb. 27, 2007) at p. 6.

¹² Higgins Direct Testimony on EEInc. and Off-System Sales (Dec. 15, 2006) at p. 15; Higgins Surrebuttal Testimony on EEInc. (Feb. 27, 2007) at p. 6.

¹³ Higgins Direct Testimony on EEInc. and Off-System Sales (Dec. 15, 2006) at pp. 16-17.

¹⁴ Higgins Surrebuttal Testimony on EEInc. (Feb. 27, 2007) at pp. 2-5.

¹⁵ Higgins Direct Testimony on EEInc. and Off-System Sales (Dec. 15, 2006) at pp. 10-13.

return which was recovered from AmerenUE's Missouri customers.¹⁶ In essence, AmerenUE's interest in EEInc. was no different than an "above-the-line" investment.

For all the above and foregoing reasons, The Commercial Group urges the Commission to find that the incremental costs incurred as a result of AmerenUE's failure to seek an extension of its power sales agreement with EEInc. are imprudent, and to disallow such costs from the Company's request in this docket. The Commercial Group further urges the Commission to quantify these incremental costs by requiring AmerenUE to use its PROSYM dispatch model to calculate the difference between the test year fuel and purchased power costs incurred by the Company and what would have been incurred had the power sales agreement been extended under terms similar to what had been in place up to December 31, 2005. Use of the MPSC Staff's dispatch model to quantify the incremental costs related to EEInc.

Alternatively, The Commercial Group urges the Commission to quantify the disallowed costs using one of the three alternatives set forth in Schedule KCH-1 attached to the Direct Testimony of Kevin C. Higgins filed December 15, 2006, in this cause.

9. Off-System Sales: How should off-system sales be recognized in AmerenUE's revenue requirement and what amount of off-system sales margin is appropriate for the test year? Should any tracking or sharing of changes in off-systems sales margins be implemented?

In its surrebuttal testimony AmerenUE offered a new sharing mechanism that would apply to both off-system sales margins and the requested fuel-adjustment clause. (Tr. 27:2656-2659). The mechanism for measuring off-system sales margins under the

¹⁶ *Id.* at p. 11; Higgins Surrebuttal Testimony on EEInc. (Feb. 27, 2007) at p. 6.

new proposal is an improvement over the Company's original proposal and should be adopted by the Commission. (Tr. 27:2657-2658).

AmerenUE's proposed new mechanism for sharing off-system sales margins should be rejected, however. (Tr. 27:2658-2659). The proposed mechanism is one-sided and inequitable. (Tr. 27:2658). It would be preferable to have no sharing mechanism on either side of the baseline or on either side of the changes in net fuel costs, rather than the Company's new sharing mechanism. (Tr. 27:2659). If a sharing mechanism is adopted, it should provide for symmetrical sharing on either side of the baseline net fuel cost. (Tr. 27:2659).

It is unclear whether or not the Company has abandoned its original sharing proposal for off-system sales margins. To the extent that AmerenUE still seeks approval of its original proposal, that proposal should also be rejected because it fails to strike the appropriate risks vs. rewards balance between the Company and its customers.¹⁷ The Company's original proposal would shift to its customers most of the downside risks associated with off-system sales margins, while retaining for itself most of the potential upside benefits.¹⁸

A more equitable approach would be to incorporate into base rates the pro-forma level of off-system sales margins, with deviations above and below this pro-forma amount to be shared on a 50/50 basis between the Company and its customers.¹⁹ The "correct" pro forma level of off-system sales margins remains an issue of dispute in this proceeding, with AmerenUE maintaining that the pro-forma level is \$202 million, while

¹⁷ Higgins Direct Testimony on EEInc. and Off-System Sales (Dec. 15, 2006) at p. 23.

¹⁸ *Id.* at pp. 23-25.

¹⁹ *Id.* at pp. 25-27.

Staff and other parties have proposed higher levels²⁰. The 50/50 sharing mechanism would be applied to deviations both above and below the pro-forma level of off-systems sales margins that the Commission eventually determines to be appropriate.

This 50/50 sharing mechanism would be capped at the \$360 million margin proposed by the Company and any additional amounts above the cap would flow 100% to the customers.²¹ This approach will result in a more equitable balancing of the risks and rewards of off-sales margins between AmerenUE and its customers.

For the above and foregoing reasons, The Commercial Group urges the Commission to accept AmerenUE's new proposal for calculating the amount of off-system sales margins. However, AmerenUE's proposals for sharing off-system sales margins – both the original proposal and the new proposal – should be rejected.

10. Fuel Adjustment Clause: Should AmerenUE's proposed fuel adjustment clause be approved and, if so, with what modifications or conditions?

The Commercial Group does not advocate a position either for or against AmerenUE's proposed fuel adjustment clause ("FAC"). However, implementation of the imprudence adjustment advocated by The Commercial Group in connection with the Electric Energy, Inc., issue (see Issue No. 8, above) will differ depending upon whether or not a FAC is adopted.²²

If no FAC is adopted, the EEInc. adjustment advocated by The Commercial Group should simply be applied to base rates.²³ If an FAC is adopted, however, the

²⁰ As shown in the Revised True-Up Reconciliation filed April 19, 2007, MIEC's recommendation would increase OSS margins by \$5.4 million, Staff by \$27.5 million, and OPC and State by \$72.3 million

²¹ Higgins Direct Testimony on EEInc. and Off-System Sales (Dec. 15, 2006) at p. 25.

²² *Id.* at pp. 20-21.

²³ *Id.* at p. 21.

EEInc. disallowance can be implemented in either of two ways: 1) through base rates, or 2) solely through the FAC charge.²⁴

A. Implementing Imprudence Disallowances Through Base Rates

If the Commission adopts an FAC and chooses to implement the EEInc. adjustment through base rates, a corresponding adjustment must also be made to the FAC calculation. Otherwise the base rate disallowance will be overridden in the calculation of the Fuel and Purchased Power Adjustment and costs deemed imprudent by the Commission will inadvertently be recovery through the FAC.²⁵

The adjustment to the FAC calculation can be made in either of two ways. Both will ensure that any rate base prudence disallowance (e.g., EEInc.) is not offset by the FAC. First, the Commission can simply implement the calculation using the FAC proposed by the Company.

AmerenUE is proposing to use the following formulation for the FAC:

$$\text{FPA} = [\text{CF} + \text{CPP} + \text{SMS} + \text{R} + \text{I}] / \text{S} - \text{BFC}$$

Where “FPA” = Fuel and Purchased Power Adjustment

“CF” = Allowable fuel cost

“CPP” = Cost of purchased power [as defined in the tariff]

“SMS” = Shares of off-system sales margins, if applicable

“R” = Under/Over recovery from prior Recovery Period, and modifications ordered as a result of required prudence reviews

“I” = Interest

“S” = Applicable Recovery period kwh, at the generation level

“BFC” = Base Fuel Cost

As indicated in the Company’s proposed definitions above, “R” may incorporate the effects of disallowances from required prudence reviews. This term could also be used by the Commission for incorporating imprudence disallowances (e.g., EEInc.)

²⁴ *Id.*

²⁵ Direct Testimony of Kevin C. Higgins on Fuel Adjustment Clause (Dec. 29, 2006) at pp. 2-3.

applicable to base rates that are carried forward from a previous general rate proceeding.²⁶

Alternatively, the Commission can implement the required FAC calculation by modifying AmerenUE's proposed FAC formulation so that rate base disallowances are reflected in their own variable. The formulation above could be modified to read:

$$\text{FPA} = [\text{CF} + \text{CPP} + \text{SMS} + \text{R} + \text{I} - \text{D}] / \text{S} - \text{BFC}$$

Where "D" = Any base rate disallowance ordered in the prior general rate proceeding.²⁷

If the Commission chooses this formulation, the "D" variable could also be used for any other Commission-ordered disallowances.²⁸

One final option is available if the Commission adopts an FAC and chooses to implement the EEInc. adjustment through base rates, with a corresponding adjustment the FAC calculation. The base rate disallowance that is carried forward into the FAC calculation can remain a constant amount or it can be changed over time.²⁹

If the Commission intends that base rates be reduced by a constant amount going forward, then the disallowance applied to the FAC calculation should also remain constant, at least until AmerenUE's next general rate case.³⁰ Alternatively, if the disallowed costs are subject to change and the Commission intends that these changes should be reflected going forward, then the disallowance included in the FAC calculation can also be allowed to change over time.³¹

²⁶ *Id.* at p. 4.

²⁷ *Id.*

²⁸ *Id.* at p. 5.

²⁹ *Id.* at p. 3.

³⁰ *Id.*

³¹ *Id.*

B. Implementing Imprudence Disallowances Solely Through the FAC

If the Commission adopts an FAC, the EEInc. disallowance may also be implemented solely through the FAC charge rather than through base rates. This can be accomplished by applying the disallowance directly to the variable “D” in the FPA formula above.³²

While this approach will produce a correct outcome, it has the disadvantage of delaying implementation of the disallowance until the FAC is in effect.³³ This is not the case when the imprudence disallowance is implemented through base rates as discussed in the previous section.

For all the above and foregoing reasons, The Commercial Group urges the Commission to implement any imprudence disallowances as outlined above in order to ensure that the benefits of such disallowances flow-through to AmerenUE’s customers.

18. Class Cost of Service and Rate Design:

Class Cost of Service Issues: What should be the increase or decrease in the revenue responsibility of each customer class?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

³² *Id.* at p. 5.

³³ *Id.* at p. 6.

A. To what extent, if any, are current rates for each customer class generating revenues that are greater or less than the cost of service for that customer class?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

B. How should AmerenUE's cost of service be assigned to the customer classes?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

C. Should the Commission adopt AmerenUE's proposal to cap any residential class increase at no more than ten (10%) percent?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

D. Should Staff's proposal to combine the Small Primary Service Class and the Large General Service Class in the Class Cost of Service Study be adopted?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

E. On what basis should production capacity be allocated to classes?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

F. On what basis should production energy costs be allocated to classes?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

G. On what basis should transmission costs be allocated to classes?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

H. On what basis should distribution costs be allocated to classes? Should the allocation of primary distribution costs include any customer-related component?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

I. On what basis should non-fuel generation expenses be allocated?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

J. On what basis should off-system sales revenues be allocated among the customer classes?

This issue was resolved by the Nonunanimous Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues filed March 22, 2007, and approved by the Order Approving Partial Stipulation And Agreement Concerning Class Cost Of Service And Certain Rate Design Issues Filed March 22, 2007.

K. On what basis should credit and collection expenses be allocated?

The Commercial Group did not take a position on this issue.

III. CONCLUSION

WHEREFORE, for all the above and foregoing reasons, The Commercial Group respectfully requests that the Commission adopt the positions set forth herein.

Dated this 20th day of April, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 20, 2007, a true and correct copy of the foregoing Post-Hearing Brief Of The Commercial Group was served by U.S. mail, postage prepaid, or by electronic mail addressed to all parties by their attorneys of record as provided by the Secretary of the Commission.
