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Service Commission

**MISSOURI PUBLIC SERVICE COMMISSION**

**REGULATORY REVIEW DIVISION**

**SURREBUTTAL TESTIMONY**

**OF**

**MICHAEL J. ENSRUD**

**UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI**

**CASE NO. ER-2012-0166**

*Jefferson City, Missouri  
September 7, 2012*

*Staff* Exhibit No. 219  
Date 9-27-12 Reporter KF  
File No. ER-2012-0166

**\*\* Denotes Highly Confidential Information \*\***

**NP**

**EXHIBIT 219**



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OF  
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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **MICHAEL J. ENSRUD**

4 **UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI**

5 **CASE NO. ER-2012-0166**

6 Q. Please state your name and business address.

7 A. My name is Michael J. Ensrud, P.O. Box 360, Jefferson City, Missouri 65102.

8 Q. Are you the same witness who submitted information in the Staff's Rate  
9 Design and Class Cost-of-Service Report ("Staff Report") concerning Union Electric  
10 Company d/b/a Ameren Missouri's ("Ameren's" or "Company's") Voluntary Green Power  
11 Program ("VGP" or "Pure Power Program") in this case?

12 A. Yes. I am.

13 **VGP/PURE POWER- GENERAL CHARACTERISTICS**

14 Q. What is the purpose of your Surrebuttal Testimony?

15 A. The purpose of my testimony is to respond to the Rebuttal Testimony of  
16 Ameren Missouri witness William J. Barbieri.

17 **REPLY TO AMEREN MISSOURI'S WITNESS BARBIERI'S REBUTTAL TESTIMONY**

18 Q. Are there positions in Mr. Barbieri's Rebuttal testimony that you would like to  
19 rebut?

20 A. Yes. On page five (5) of his rebuttal testimony, Mr. Barbieri seems to be  
21 indicating that I am asserting (in Staff's Report) that the REC methodology is not pervasive  
22 nationwide. My position in direct testimony represents that there are a number of versions of

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1 voluntary REC plans across the nation. These plans have some similarities, but they also have  
2 differences.

3 My position reflects that Ameren Missouri's version may be somewhat unique in its  
4 application.

5 Q. Have you researched what other states are doing concerning the voluntary sale  
6 of RECs?

7 A. I have filed testimony in Ameren Missouri's last three (3) electric rate cases  
8 addressing Pure Power (ER-2012-0166, ER-2010-0036 and ER-2008-0318). During the  
9 course of my investigation in these cases, I have reviewed ten (10) to fifteen (15) various state  
10 commissions' positions concerning their respective version of voluntary REC programs.  
11 I have also read numerous articles concerning the various REC programs in various states.

12 I have mentioned how other states have addressed their REC programs. I have noted  
13 that Florida has rejected the "Sunshine Energy Program." I would characterize Florida's  
14 "Sunshine Energy Program" somewhat similar to Missouri's "Pure Power" because the  
15 Florida Commission, like my own analysis, has had concerns with the amount of monies  
16 collected by the regulated entities that were actually going to wholesale producers of RECs. I  
17 have also referenced the Florida Commission's rejection of the "Sunshine Energy Program"  
18 in the Staff Report for Case ER-2008-0318.<sup>1</sup>

19 I referenced how Ameren was unsuccessful in implementing the very same Pure  
20 Power REC program in Illinois currently tariffed in Missouri. (See MJE Schedule 1, the  
21 attached Illinois Commission fax.) I also addressed the Florida and Indiana plans in my  
22 Surrebuttal testimony for ER-2008-0318.<sup>2</sup>

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<sup>1</sup> See Pages 22 and 23.

<sup>2</sup> See Pages 13 and 14 / Lines 10 - 7.

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1           There exist many forms of REC programs across America. There are varying degrees  
2 of Commission involvement by the various state commissions. For example, the Indiana  
3 Commission reviews the wholesale price for each of the “batches” of RECs purchased by the  
4 utility and can reject those transactions.<sup>3</sup>

5           Under Ameren Missouri’s current program, the Commission is unable to even obtain  
6 purchase information for a batch of purchased RECs. Ameren Missouri asserts that “Ameren  
7 Missouri does not possess nor is it privy to the requested information”<sup>4</sup> when asked to provide  
8 “the per-REC price paid to each producer on an annual basis.”<sup>5</sup>

9           Staff is not aware of any other jurisdiction where monies are collected via a tariffed  
10 rate, but oversight is limited to rate cases, and Commission Staff is barred access to  
11 information about the specifics of wholesale-REC pricing.<sup>6</sup> In past cases, my investigation  
12 has revealed that other state Commissions who have REC wholesale prices claimed that this  
13 information was unavailable to the public. I do not recall any other state Commissions’ staffs  
14 indicating that they lacked access to wholesale REC prices, with the exception of Florida.  
15 Eventually, Florida did obtain the ratio of dollars collected to dollars spent for wholesale  
16 RECs. After that, the “Sunshine Energy Program” ceased.

17           Based on my analyses, I believe there are a wide variety of voluntary REC programs  
18 nationwide. There is also a wide spectrum of regulation imposed on these various voluntary  
19 REC programs by the different state jurisdictions.

20           Q.     Do you and Mr. Barbieri have a similar view of the degree of oversight  
21 appropriate for Pure Power – tariffed as the “Voluntary Green Program”?

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<sup>3</sup> ER-2008-0318 / Ensrud Surrebuttal / Page 14 / Lines 3 – 6.

<sup>4</sup> See Response to DR 0373.

<sup>5</sup> See Response to DR 0373

<sup>6</sup> Missouri Staff is provided calendar- year averages that are a composite of all the specific wholesale REC purchases, but is barred access to the specifics that comprise the “average”.

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1           A.     No. The service is tariffed, so Staff treats it like a tariffed service that should  
2 have all the support and justifications for the functioning of the program along with a detailed  
3 breakdown of those costs associated with that program – meaning details supporting the  
4 administrative ratio versus wholesale ratio. The support provided should also include  
5 information verifying that the wholesale monies were spent consistent with tariffed  
6 requirements. Since the Missouri voluntary REC program has no rules or other guidelines,  
7 Staff's guidance is the filed tariff. The tariff language Staff believes to be most controlling is.

8           The purpose of this Voluntary Green Program (Program) tariff is to provide  
9 customers with an option to contribute to the further development of renewable  
10 energy technologies.<sup>7</sup>

11           A tariffed program requires Staff to assure the Commission that the program  
12 is reasonable and accomplishes the stated goals. Therefore, Staff has (both in this case and  
13 past cases) expressed concern about the ratio of administrative expense to total dollars  
14 contributed. (The reciprocal ratio is dollars spent on wholesale RECs to total dollars  
15 contributed.) The most current data provided shows a ratio of \*\* \_\_\_\_ \*\* administrative  
16 expense / \*\* \_\_\_\_ \*\* wholesale RECs.<sup>8</sup>

17           More important is the tariff language that participants will “contribute to the further  
18 development of renewable energy technologies.” This tariffed requirement is not enforceable  
19 in a REC program such as Pure Power. The Commission has no authority to require the  
20 providers of green energy to reinvest REC monies given by Pure Power customers into more  
21 green power generation, even though the tariff requires it.

22           Q.     How does Ameren Missouri witness Mr. Barbieri characterize the Pure Power  
23 Program and the continuance of it?

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<sup>7</sup> Union Electric Company / MOPSC – Schedule #5 / 2<sup>nd</sup> Revised Sheet 216.

<sup>8</sup> See Staff Report Schedule MJE -1 / Page 1 of 2

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1 A. He proposes its continuance. He characterizes Pure Power as "a program  
2 which has been very successful."<sup>9</sup> The inference of his testimony is that the popularity of  
3 Pure Power and the awards that it has won is all that the Commission should consider.<sup>10</sup>  
4 Implicit in his testimony is that a ratio of \*\* \_\_\_\_ \*\* administrative expense / \*\* \_\_\_\_ \*\*  
5 wholesale REC is an acceptable ratio.

6 He also addresses the requirement of how producers should spend their monies in a  
7 prescribed way by only reciting national averages that green production and the utilization of  
8 RECs are growing.<sup>11</sup> The treatment of dollars received by producers that is prescribed in  
9 Ameren Missouri's tariff appears to be irrelevant to him.

10 In summary, Staff believes the Voluntary Green Program should be detariffed because  
11 it is impossible to enforce the tariffed provisions. Mr. Barbieri seems to want the tariff  
12 provisions to remain in place even if it is impossible for Staff to monitor and enforce how  
13 green providers spend their REC money.

14 Q. What were you referring when you stated the following?

15 Contributing to the purchase of a REC is not a traditional transaction for  
16 service rendered by a utility.<sup>12</sup>

17 A. The customer purchasing a REC believes the purchase money goes towards the  
18 generation of green power electricity, and not for some entity that does not produce any green  
19 power.<sup>13</sup>

20 Q. With what other portions of your testimony does Mr. Barbieri take  
21 exception?<sup>14</sup>

---

<sup>9</sup> Barbieri Rebuttal / Page 10 / Line 4.

<sup>10</sup> Barbieri Rebuttal / Page 10 / Line 6 - 9 and Barbieri Rebuttal / Page 3 & 4 / Lines 22 - 2.

<sup>11</sup> Barbieri Rebuttal / Page 5 / Lines 6 - 12.

<sup>12</sup> Staff Report / Page 186 / Lines 1 and 2.

<sup>13</sup> The already-sited Voluntary Green Program tariff sets the goal as "to *contribute* to the further development of renewable energy technologies. (*Emphasis Added*)



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1 A, He takes exception with my following quote:

2 Even today, no other Missouri utility utilizes a similar voluntary program.<sup>15</sup>

3 My testimony referred to utilities regulated by the Missouri Commission. Ameren  
4 Missouri is the only rate-regulated utility to engage in voluntary REC purchases in Missouri.

5 Interestingly, Mr. Barbieri lists the following as other voluntary REC programs,<sup>16</sup> but  
6 not one is regulated by the Missouri Commission:

Utility	Price per kWh	Year Program Began
Ameren Missouri	1.5	2007
Boone Electric Cooperative	2	2003
Cuivre River Electric Cooperative	2.5	2004
Howell-Oregon Electric Cooperative	6	2004
Intercounty Electric Cooperative	3	2006
Laclede Electric Cooperative	3.5	2005
Lewis County Rural Electric Cooperative	2	2003
White River Valley Electric Cooperative	3.5	2004
City Utilities of Springfield	5	2001
Corn Belt Energy	0.5	2004

7  
8 Ameren Missouri's Pure Power tariff provision clearly dictates how the monies  
9 collected should be spent. It is this tariffed language that causes Staff to express concern on  
10 how the producer spends REC money.

11 Staff's detariffing recommendation is appropriate and closer to the status of the  
12 existing non-rate-regulated utilities selling voluntary RECs today.

13 Q. Does Mr. Barbieri say anything in his Rebuttal that is contradictory to what is  
14 said in Response to Data Request ("DR") No. 0373?

15 A. Yes. He states the following:

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<sup>14</sup> Barbieri Rebuttal / Page 5 / Line 3 – 6.

<sup>15</sup> Staff Report / Page 186 / Lines 4 and 5.

<sup>16</sup> Barbieri Rebuttal / Page 5 / Line 16.

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1 Q. Staff also asserts that the Pure Power Program does not fulfill the  
2 tariffed purpose, which is “to provide customers with an option to contribute to  
3 the further development of renewable energy technologies.” How do you  
4 respond to that assertion?  
5

6 A. As I stated above, there is empirical evidence that this statement is  
7 untrue. Pure Power was **instrumental** in the success of Farmers City, as the  
8 REC sales were a contributing factor allowing for the development and  
9 construction of this wind farm.<sup>17</sup> (**Emphasis Added**)

10 Ameren Missouri asserts that “Ameren Missouri does not possess nor is it privy to the  
11 requested information”<sup>18</sup> when asked to provide “the per-REC price paid to each producer on  
12 an annual basis,”<sup>19</sup> yet Ameren Missouri is certain those same monies (amount unknown to  
13 both Ameren Missouri and Staff) were “instrumental” in the development of the Farmers City  
14 facilities. Since Ameren Missouri cannot tell Staff how much money was generated by the  
15 sale of 207,492<sup>20</sup> RECs that Farmers City sold 3Degrees, Staff finds it interesting that  
16 Mr. Barbieri is certain that Pure Power monies were instrumental in the success of Farmers  
17 City.

18 Q. What is your position regarding Mr. Barbieri’s attempt to apply general,  
19 nation-wide statistics as “proof” that AmerenUE’s Voluntary REC program is successful?

20 A. The argument is flawed. Mr. Barbieri Rebuttal at pages 6 and 7, lines 16-25  
21 argues as follows:

22 According to the Department of Energy’s National Renewable Energy Lab  
23 (“NREL”), there are approximately 860 utilities in the U.S. that offer similar  
24 green programs, which are similarly priced and utilize RECs to supply the  
25 program because RECs are the industry norm. These programs result in more  
26 than 50% of U.S. electricity customers having the opportunity to support  
27 renewable energy through the purchase of RECs directly through their utility,  
28 with approximately 570,000 customers electing to participate nationally.<sup>21</sup>

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<sup>17</sup> Barbieri Rebuttal, page 7, lines 16 - 21.

<sup>18</sup> See Response to DR 0373.

<sup>19</sup> See Response to DR 0373

<sup>20</sup> See Response to DR 0373.

<sup>21</sup> Barbieri Rebuttal / Pages 5 / Lines 6 - 12.

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1 Another example is as follows:

2 As I previously mentioned, there are over 860 utilities across the country that  
3 offer similar voluntary programs, as reported by the National Renewable  
4 Energy Lab (NREL, 2010). This same source states that the demand created  
5 by these programs has contributed to 1,600 MWs of renewable energy  
6 generation capacity, which refutes Staff's assumption to the contrary.<sup>22</sup>

7 The Ameren Missouri Pure Power Program tariff requires that contributed monies be  
8 re-invested. These national statistics are of no relevance when determining whether producers  
9 receiving Pure Power dollars spent earmarked monies in a manner prescribed by tariff.

10 Ameren Missouri stated that about \*\* \_\_\_\_ \*\* of the total monies paid to 3Degrees are  
11 spent on wholesale RECs. Whether all or any of the money given to wholesale providers  
12 went for the tariffed purpose is unknown and undeterminable. Staff disagrees with Mr.  
13 Barbieri's characterization of Pure Power as a success in Missouri.

14 Q. Do you want to address another quote from Mr. Barbieri?

15 A. Yes. Mr. Barbieri's rebuttal testimony states:

16 To further address Staff's claim, I would point to the 146 MW Farmers City  
17 wind farm located in Atchison County, Missouri, which has been one of the  
18 primary sources of RECs over Pure Power's life and the only source of RECs  
19 since March, 2010. In March of 2009, 3Degrees entered into a four-year  
20 contract to purchase the RECs from Farmers City in a volume estimated to  
21 provide 100% of the demand for the Pure Power Program through 2012. **This**  
22 **contract was executed prior to the wind farm coming on line.** The purchase  
23 of RECs through Pure Power was a **contributing factor** that allowed for the  
24 development and construction of this wind farm, thus supporting the  
25 development of renewable energy.<sup>23</sup> **(Emphasis added)**

26 It appears that this quote states that 3Degrees entered into contract with Farmers City  
27 wind farm to purchase its REC from facilities still under construction. The tariff indicates  
28 that the REC revenues need to be collected prior to causing "the **further development** of

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<sup>22</sup> Barbieri Rebuttal / Pages 6 / Lines 16 - 20.

<sup>23</sup> Barbieri Rebuttal / Pages 6 and 7 / Lines 16 - 5.

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1 renewable technologies.”<sup>24</sup> The Commission said as much in the Case No. ER-2008-0318  
2 *Report and Order* when it stated: “A REC is not produced until actual renewable energy is  
3 produced.” Both the tariffed language and the Commission’s comments conflict with any  
4 contention that the REC contracts (for subsequent RECs that followed the expansion) are  
5 “proof” that the sale of RECs caused that same expansion.

6 There is nothing that would prevent the above-referenced business relationship from  
7 continuing in a de-tariffed environment.

8 Q What is Staff’s response to all the statements made by Mr. Barbieri in his  
9 rebuttal testimony that the Commission has issued final decisions rejecting Staff’s position in  
10 past cases concerning various Staff positions that you raised in this case?

11 A. The Commission’s orders do not state that the Pure Power Program issue is  
12 resolved. I still believe it is appropriate for Staff to comment on a wide array of issues.  
13 Mr. Barbieri makes the following statements:

14 Staff’s concern has been reviewed in several previous rate cases throughout the  
15 term of the program.<sup>25</sup>

16  
17 In addition, Staff’s argument has already been considered and rejected by the  
18 Commission.<sup>26</sup>

19  
20 The Pure Power Program has met and continues to meet its stated purpose, and  
21 Staff’s concerns, which were rejected by the Commission in the past, should be  
22 rejected once more.<sup>27</sup>

23  
24 While the Company understands that some Staff members have concerns  
25 about this program, the concerns addressed in the Staff Report only repeat  
26 concerns voiced in earlier rate cases, which the Commission considered and  
27 rejected.<sup>28</sup>

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<sup>24</sup> Union Electric Company / MOPSC – Schedule #5 / 2<sup>nd</sup> Revised Sheet 216.

<sup>25</sup> Barbieri Rebuttal / Page 6 / Lines 8 and 9.

<sup>26</sup> Barbieri Rebuttal / Page 7 / Lines 22 and 23.

<sup>27</sup> Barbieri Rebuttal / Pages 8 / Lines 8 – 10.

<sup>28</sup> Barbieri Rebuttal / Page 10 / Lines 1 – 3.

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1 In fact, the Commission's past decisions encourage Staff to remain vigilant in its  
2 review of the program, including the issues Staff is addressing in this case. What the  
3 Commission actually stated about Pure Power issues is as follows:

4 Most importantly, the program has only been in operation for one year. It is  
5 too soon to properly assess the program and it is too soon to kill the program.<sup>29</sup>  
6

7 In approving this stipulation and agreement, the Commission is accepting the  
8 agreement of the parties to resolve these particular issues **in this particular**  
9 **case. The Commission is not endorsing any particular position regarding**  
10 **these issues and its approval of this stipulation and agreement should not**  
11 **be interpreted as such an endorsement in any future case.**<sup>30</sup> (Emphasis  
12 Added)

13 CONCLUSION

14 Pure Power should be detariffed. The tariff says the monies collected should  
15 "contribute to the further development of renewable energy technologies."<sup>31</sup> For whatever  
16 portion of the monies that reach the producers, it is impossible for Staff to audit how that  
17 money was spent. Even if the money was misspent, there is no remedy because the producers  
18 are beyond the Commission's jurisdiction. The tariff requires that the monies collected from  
19 customers must be invested in the manner prescribed in the tariff, and should be invested in  
20 the manner advertised on the Pure Power website. Both<sup>32</sup> indicate the customer's money is to  
21 be reinvested. But Ameren Missouri has provided no evidence that it is invested in the  
22 prescribed manner and states that it does not have the information to make that determination.

23 Q. Does this conclude your surrebuttal testimony?

24 A. Yes, it does.

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<sup>29</sup> Report & Order ER-2008-0318.

<sup>30</sup> Order Approving First Stipulation and Agreement.

<sup>31</sup> Union Electric Company / MOPSC – Schedule #5 / 2<sup>nd</sup> Revised Sheet 216.

<sup>32</sup> Some Pure Power website ads still imply that the customer is acquiring "renewable energy" – See Staff Report / Schedule MJE -2 / Pages 1-3

## Ensrud, Michael

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**From:** Zuraski, Richard [rzuraski@icc.illinois.gov]  
**Sent:** Tuesday, June 05, 2012 11:32 AM  
**To:** Ensrud, Michael  
**Cc:** Schlaf, Eric; Howard, Joan; Kennedy, Tom  
**Subject:** RE: Ameren Pure Power Program

Michael,

As you can see, below, your inquiry was redirected to me.

Some years ago (~ 2006), Ameren approached ICC staff concerning the program that you describe below. To the best of my recollection, Staff expressed some doubt that the program could be implemented by Ameren in Illinois for the following reasons. Since a 1997 electric restructuring law went into effect in Illinois, Ameren has become an "integrated distribution company," according to one of the ICC's administrative rules ([Part 452](#)). As such, it is prohibited against offering certain services and is prohibited against advertising certain services. There was a belief by some staff members that one or both of these rule provisions would make the proposed "Pure Power Program" illegal or infeasible. Furthermore, there were other staff members (myself included) that did not think that Ameren offering the service was either necessary or desirable, for a number of reasons, including: (1) the program would offer nothing that could not already be obtained in the so-called "voluntary" retail REC market, which appeared to be competitive, (2) electricity would continue to flow with or without the program, and (3) there was a small chance that the program would slightly increase both ComEd's and Ameren's costs of satisfying Illinois' "mandatory" renewable portfolio standard (passing those costs on to ratepayers). Finally, there was nothing stopping one of Ameren's non-utility affiliates from offering it as an unregulated service. Sensing a lack of support from the Staff, I believe that Ameren suspended its attempt to implement the program in Illinois.

Ameren resurrected the proposal in a 2009 rate case ([Docket 09-0306](#)), under the name Rider VGP ("Voluntary Green Pricing"). I believe that there were critiques similar to those described above offered by the ICC staff. In addition, both ICC staff and the Illinois Attorney General and CUB argued that the proposal was not detailed enough in several regards. The Commission did not approve the Rider. If you want to see the proposal anyway (or the testimony, briefs, or order), follow the above link to the docket's documents repository, and start searching.

However, Ameren Illinois Company does purchase renewable energy credits—as directed by the Illinois Power Agency, the Illinois Commerce Commission, and Illinois statutes—in compliance with the State's mandatory renewable portfolio standard. All those costs are involuntarily passed on to retail customers who purchase their electricity from Ameren Illinois. There is a similar RPS that applies to Alternative Retail Electric Suppliers (and hence to retail customers that use Ameren only as a distribution company).

**Short answer: I don't think a program like AmerenUE's Pure Power Program was ever implemented in Illinois by Ameren Illinois Company (or its predecessor utility companies).**

Richard J. Zuraski  
Phone: 217-785-4150  
rzuraski@icc.illinois.gov

**From:** Schlaf, Eric  
**Sent:** Monday, June 04, 2012 3:49 PM  
**To:** Zuraski, Richard  
**Subject:** FW: Ameren Pure Power Program

Richard,  
Could you help Joan, please? eric

**From:** Howard, Joan  
**Sent:** Monday, June 04, 2012 3:39 PM  
**To:** Schlaf, Eric  
**Subject:** Ameren Pure Power Program

RE: call from Michael Ensrud, Missouri Public Service Commission, phone 573-751-8703,  
[Michael.ensrud@psc.mo.gov](mailto:Michael.ensrud@psc.mo.gov)

Hi Eric. This morn I received a call from Michael Ensrud with the Missouri Public Service Commission. He was inquiring about a voluntary "green energy program" offered by Ameren in Missouri and Illinois. This had to do with the purchase of green energy recs. It is my understanding of his description of the program that customers would make a voluntary contribution paying either a flat amount of \$7.50 or \$15.00 or an amount based on usage (at a rate of 1 ½ cents).

Mr. Ensrud said that the program began in 2006 and that Ameren had a contract first with an entity named Phase 3 and later with 3 Degrees (which had something to do with wind producers). He said that the 2008 contract named Ameren electric utilities in both Missouri and Illinois. The contract of 2010 does not include Illinois. Mr. Ensrud is trying to learn whether Ameren actually implemented the program in Illinois (and whether there was a tariff). This offering in Florida did not end on a happy note - something to do with the percentage of voluntary contributions that actually benefited the intended recipients - if I have this right.

I am not aware of this program in Illinois - and do not know about this appearing on the bill. In response to my question, Mr. Ensrud said this was a program of Ameren, the utility not Ameren Energy the RES.

I told him I would try to find a contact or some information. Do you know anything about this or know who might? Thanks for any assistance you can provide. Joan