

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2012-0166</u>
Ameren Missouri's Tariff to Increase Its Annual)	Tariff No. YE-2012-0370
Revenues for Electric Service)	

ORDER DENYING MOTION TO STRIKE, BUT OFFERING OPPORTUNITY TO RESPOND

Issue Date: September 24, 2012

Effective Date: September 24, 2012

On September 21, 2012, Missouri Industrial Energy Consumers (MIEC) filed a motion asking the Commission to strike a portion of the sur-surrebuttal testimony of Ameren Missouri's witness, Jaime Haro. Later that same day, Staff concurred in MIEC's motion. The Commission ordered Ameren Missouri to respond to the motion, which it did on September 24.

This dispute has already been before the Commission once. On September 11, Ameren Missouri filed a motion asking the Commission to strike portions of the testimony of Staff witness Lena Mantle and MIEC witness James Dauphinais that concern the inclusion of certain Midwest ISO transmission charges for pass through to customers by way of the company's existing fuel adjustment clause. Ameren Missouri complained that Staff and MIEC had improperly waited to raise this issue until they filed their surrebuttal testimony, thereby preventing Ameren Missouri from adequately responding to that testimony. The Commission resolved Ameren Missouri's concern by granting the company's alternative motion to allow the company to file responsive sur-surrebuttal testimony.

Ameren Missouri filed the responsive sur-surrebuttal testimony of Jaime Haro on September 19. On September 21, MIEC filed its motion to strike a portion of Haro's sur-

surrebuttal testimony in which he raises the possibility of creating a mechanism to track the disputed transmission charges for possible later recovery if the Commission decides to exclude them from recovery under the fuel adjustment clause. MIEC, joined by Staff, complain that Ameren Missouri's proposal to create a tracking mechanism is not responsive to the surrebuttal testimony of either MIEC or Staff. For that reason, they argue the testimony is improper under the Commission's rules and should be struck.

The Commission has reviewed Haro's challenged sur-surrebuttal testimony, as well as the testimony filed earlier in the case by Staff, MIEC, and Ameren Missouri. Certainly, this has been a confused issue that was not properly joined at least until the filing of surrebuttal testimony. Indeed, it appears that even in their surrebuttal and sur-surrebuttal testimony the witnesses may be talking past each other. However, it is clear that Haro offered his suggested tracking mechanism as an alternative to Staff's and MIEC's proposal to explicitly remove the disputed transmission charges from recovery under the fuel adjustment clause. In that regard, it is appropriate responsive testimony and should not be struck.

Given the complexities of this issue, the Commission will not simply deny the motion to strike a portion of Haro's testimony. The Commission would rather hear more from the parties rather than attempt to silence the exchange of information. Instead, the Commission will adopt the suggestion offered by Ameren and will offer the other parties an opportunity to respond to Haro's suggested tracking mechanism.

THE COMMISSION ORDERS THAT:

1. MIEC's Motion to Strike Parts of Ameren Missouri Witness Jaime Haro's Sur-Surrebuttal Testimony is denied.

2. Any party may prefile additional testimony no later than September 28, 2012 in response to the suggested tracking mechanism described in Jaime Haro's sur-surrebuttal testimony.

3. Any party may depose any witness regarding the suggested tracking mechanism on less than the seven-day's notice ordinarily required and as an exception to the September 13 discovery deadline established by the procedural schedule for this case.

4. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 24th day of September, 2012.