

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

In the Matter of the Application of Union Electric     )  
Company d/b/a Ameren Missouri for the Issuance     )  
of an Accounting Authority Order Relating to its     )  
Electrical Operations.     )

**File No. EU-2012-0027**

**MIEC’S MOTION TO DISMISS**

Comes now the Missouri Industrial Energy Consumers (“MIEC”) in response to the Staff’s Response to the Commission’s Order Directing Notice and Filings, filed on August 18, 2011 and opposes Staff’s recommendation to convene a prehearing conference to establish a procedural schedule for this case. In support thereof, MIEC states as follows:

1. The facts giving rise to Union Electric Company d/b/a Ameren Missouri’s (“Ameren Missouri”) Verified Application for Accounting Authority Order are well known to the Commission, as they have been the subject of numerous cases before the Commission over the past two and a half years.
2. On January 27, 2009, the Commission issued a Report and Order in Commission File Number ER-2008-0318 approving Ameren Missouri’s request to implement a fuel adjustment clause (“FAC”).
3. The following day, an ice storm caused substantial damage to Ameren Missouri’s service territory, resulting in loss of services to Noranda Aluminum (“Noranda”).
4. Ameren Missouri filed an Application for Rehearing in Case No. ER-2008-0318, asking the Commission to modify the approved fuel adjustment clause to exclude revenue from off-system sales, allowing Ameren Missouri to offset the lost sales to Noranda. The Commission denied Ameren Missouri’s application for rehearing on February 19, 2009. Notably, Ameren Missouri did not seek an Accounting Authority Order at that time.

5. Subsequently Ameren Missouri attempted to offset its anticipated lost revenue by entering into two off-system sales contracts with American Electric Power Service Corporation (“AEP”) and Wabash Valley Power Association, Inc. (“Wabash”).

6. In Case No. EO-2010-0255, the Commission again considered all of the operative facts surrounding the 2009 ice storm and the loss of service to Noranda, and found that Ameren Missouri acted inappropriately when it failed to flow the costs and revenues from the AEP and Wabash contracts through the FAC.

7. Since the occurrence of the 2009 ice storm, Ameren Missouri has filed two rate cases, ER-2010-0036 and ER-2011-0028. Notably, the 2009 storm cost issue and the operative facts surrounding the effects of the ice storm on Ameren Missouri were considered and adjudicated in both cases.

8. Two and a half years after the 2009 ice storm, on July 25, 2011, Ameren Missouri filed a verified application for accounting authority order seeking recovery from the effects of the ice storm.

9. Ameren Missouri’s Application for Accounting Authority Order is barred by Missouri’s long standing common law doctrine of “res judicata”, otherwise known as “claim preclusion.”

10. The doctrine of res judicata is thoroughly described in *Chesterfield Vill., Inc. v. City of Chesterfield*, 64 S.W.3d 315, 318-319 (Mo. 2002):

The common-law doctrine of res judicata precludes relitigation of a claim formerly made. . . . A claim is the aggregate of operative facts giving rise to a right enforceable by a court. . . . The doctrine precludes not only those issues on which the court in the former case was required to pronounce judgment, but to every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

See also *King General Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints*, 821 S.W.2d 495 (Mo. banc 1991), and *Norval v. Whitesell*, 605 S.W.2d 789, 790 (Mo. banc 1980); *Grue v. Hensley*, 357 Mo. 592, 210 S.W.2d 7, 10 (Mo. 1948).

11. The policies behind the doctrine of res judicata are “relieving parties of the cost and vexation of multiple lawsuits; conserving judicial resources; . . . encouraging reliance on adjudications” and bringing litigation to an end. *Doherty v. McMillen*, 805 S.W.2d 361, 362 (Mo. Ct. App. 1991); *Bendis v. Alexander & Alexander*, 916 S.W.2d 213, 218 (Mo. Ct. App. 1995).

12. In this case, the aggregate of operative facts giving rise to a right enforceable by a court have already been fully adjudicated in multiple cases before this Commission. As such, Ameren Missouri is precluded under the doctrine of res judicata from seeking an accounting authority order relating to losses it incurred as a result of the 2009 ice storm.

WHEREFORE, MIEC respectfully requests that the Commission dismiss Ameren Missouri’s Application for Accounting Authority Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 29th day of August, 2011, to the parties on the Commission's service list in this case.

/s/ Brent Roam