

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	)	<u>Case No. EU-2012-0027</u>
Electrical Operations.	)	

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**Initial Post-Hearing Brief of Barnes-Jewish Hospital**

COMES NOW Barnes-Jewish Hospital (“BJC”), by and through undersigned counsel and submits its Initial Post-Hearing Brief pursuant to the Commission’s *Order Adopting Procedural Schedule and Terms* dated October 28, 2011 and subsequent *Order Modifying Briefing Schedule* dated May 9, 2012.

Ameren Missouri (“Ameren”) filed this Accounting Authority Order (“AAO”) case in an effort to defer for ratemaking purposes over \$35 million that it defines as “lost fixed costs” that it claims it was unable to recover from the Large Transmission Class because of the January 2009 ice storm.<sup>1</sup> BJH contends that an AAO is not appropriate in this case because the amounts Ameren is seeking to recover are actually lost anticipated revenues, not an expense that was incurred due to the ice storm.

Ameren has attempted to shift risk to customers to avoid having a lower ROE from the loss of the anticipated Noranda revenues in several different cases:

**First**, shortly after this Commission’s Final Report and Order in ER-2008-0318 was issued on January 27, 2009, and the day before it was to become effective, Ameren asked the Commission to set aside the stipulated FAC tariff to enable it to attempt to recover what it anticipated would be a loss of revenue from the effect of the ice storm (that began on January 28, 2009) due to the failure of the Associated Electric Cooperative, Inc. (AECI) transmission lines

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<sup>1</sup> Ameren Exhibit 2, p. 4, lines 18-19.

through which Noranda Aluminum, Inc.'s (Noranda) New Madrid, Missouri aluminum smelter received power from Ameren.<sup>2</sup> In this Application for Rehearing, Ameren sought approval of a modified FAC tariff to “ . . . **offset the loss of retail margins** from Noranda due the loss of the Noranda load.”<sup>3</sup> The Commission denied this Application for Rehearing on February 19, 2009.

**Second**, Ameren entered into off-system sales contracts in an attempt to recover these lost anticipated Noranda revenues. The contracts with American Electric Power Service Corp. (“AEP”) and Wabash Power Association, Inc. (“Wabash”) were dated February 27, 2009 and April 28, 2009 respectively. When Ameren filed its first prudence review case under the new FAC tariff, Case No. EO-2010-0255, it asserted that these contracts did not fall under the off-system sales revenue sharing mechanism and that it should be allowed to retain all the revenues from those contracts. At this time, Ameren did not indicate it was trying to recover lost fixed costs, it was unabashedly trying to recover lost revenues.

Ameren witness Barnes describes the reason the purpose for entering into the contracts in her testimony at the hearing in this case on January 10, 2011 under cross-examination by PSC Staff counsel Jaime Ott:

Q. Now it's your position that Ameren entered into the AEP and Wabash contracts to restore Ameren to the same place it was prior to the ice storm?

A. Yes.

Q. How did entering into these contracts get money from the fuel cost to the utility any quicker than before the ice storm?

A. We lost **revenues** from base rates because Noranda wasn't taking any load. And what we did was we entered into these two contracts that mimic the type of load that Noranda would have taken and so the **revenues** then that we received from those contracts, we treated

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<sup>2</sup> Ameren *Application for Rehearing and Motion for Expedited Treatment* dated February 5, 2009

<sup>3</sup> *Id.*, ¶4

the same way **as we would have treated Noranda revenues** had they been working.

Q. But isn't the purpose behind the fuel adjustment cost [sic] to recover fuel costs to the company?

A. Yes.

Q. And it's the fuel adjustment clause is [sic] not there to recover base rates?

A. **But we're trying to recover revenues.** So we entered into contracts that –

Q. But is – that's not my question. Is the fuel adjustment clause there for the utility to recover base rates?

A. No.<sup>4</sup>

[Emphasis added]

This testimony of Ms. Barnes clearly shows that Ameren was using the contracts with AEP and Wabash to recover lost **revenues** and the Commission denied Ameren's attempt to use the FAC in this manner in its *Report and Order* dated April 27, 2011.

**Third**, in the current case, Ameren attempts to avoid the lost anticipated Noranda revenues by applying for this AAO with a request to defer over \$35 million. Ameren concedes that its inability to succeed at its two prior attempts of recovery are what led it to file the AAO some two and a half years after the ice storm, however it now states that what it is attempting to recover is "both fixed costs and revenues"<sup>5</sup> instead of what it is truly trying to recover: the lost anticipated Noranda revenues that it described in the two cases quoted above that precluded them from earning a higher ROE.

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<sup>4</sup> Case EO-2010-0255 Tr. Vol 2 at 180, line 13

<sup>5</sup> Ameren Position Statement

This Commission recently decided an AAO case that was filed by Southern Union Company<sup>6</sup> wherein it differentiated between actual costs and ungenerated revenue:

Actual expenditures exist in the past, present, or future and represent an exchange of value that the Company must record. Ordinarily, the Company records them currently and, if they are extraordinary, the company must record them in Account 182.3.

The Company's claim is different, Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service no provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other.

The Company showed no instance when service not provided resulted in recording any revenue or cost, lost or generated, on a deferred or current basis. That is because the Company cannot have an item of profit or loss when it provides no service, whether the cause of no service is ordinary or extraordinary. Services not provided and revenues not generated are mere expectancies, are things that simply did not happen and are not items at all.<sup>7</sup>

Much like the Southern Union case, the \$36 million that Ameren requests in this case does not represent any expense or cost that Ameren incurred and Ameren witness Barnes concedes this fact in her testimony at the hearing under cross examination by MIEC counsel Roam:

Q. Did the company – so the company did not incur any additional incremental costs that were not included in rates as a result of the 2009 ice storm, correct?

A. We incurred O&M costs as a part of the storm restoration. However, they were not in excess of what storm costs that are built into base rates already were. So we recovered those through our base rates just because we automatically have a level of storm costs expected built into rates.

Q. So the storm costs from the 2009 storm did not rise past the amount that were expected?

A. For O&M that's correct. Because of the nature of the damage, it was all predominantly capital expense in nature.

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<sup>6</sup> Report and Order Issued January 25, 2012, GU-2011-0392

<sup>7</sup> *Id.* at pp. 24-25

Q. Right. And the company did not incur any additional fixed costs that were not already included in rates as a result of the 2009 ice storm, correct?

A. Correct.<sup>8</sup>

What Ameren is improperly attempting to collect here is revenue that was not received for a service not provided (and revenue that was attempted but not allowed to be recovered in two prior attempts). No cost was incurred that appropriately requires an AAO deferral.

For these reasons, Ameren's application for AAO deferral of nearly \$36 million should be denied.

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**CERTIFICATE OF SERVICE**

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in Case No. EU-2012-0027.

Dated at St. Louis, Missouri this 30th day of May, 2012.

/s/Lisa C. Langeneckert  
Lisa C. Langeneckert

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<sup>8</sup> Tr. at 93, line 7