

**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)	Case No. EU-2012-0027
Of an Accounting Authority Order Relating to its)	
Electrical Operations.)	

AMEREN MISSOURI’S RESPONSE TO MIEC’S MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and in response to MIEC’s Motion to Dismiss filed in this proceeding on August 29, 2011 respectfully states as follows:

1. On account of an extraordinary, unanticipated, and unusually severe ice storm that struck southeast Missouri in January 2009 and resulted in the loss of load at the Noranda Aluminum, Inc. (“Noranda”) plant in New Madrid, Missouri, the Company experienced a corresponding extraordinary, unanticipated, and non-recurring loss of sales related specifically and directly to the loss of that load. That loss of sales occurred, however, without a concomitant reduction in the fixed costs allocated to the Large Transmission Service class (of which Noranda is the only member) in the Company’s rates. Ameren Missouri did not recover those fixed costs during the period Noranda’s load was reduced because of the storm because those fixed costs were not offset by income from any other source. As a result, Ameren Missouri is seeking an Accounting Authority Order (“AAO”) authorizing it to defer and record to the Uniform System of Accounts, Account 182.3, Other Regulatory Assets, the fixed costs allocated to Noranda that the Company was unable to recover due to the loss of the Noranda load because of the January 2009 ice storm.

2. MIEC asserts that Ameren Missouri's Application for an Accounting Authority Order ("AAO Application") is barred by res judicata, or claim preclusion. Res judicata only bars a claim if each of the following four elements is satisfied: "(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons or parties to the action; and (4) identity of the quality or status of the person for or against whom the claim is made." *Phelps v. Dir. of Revenue*, 47 S.W.3d 395 (Mo. App. E.D. 2001).

3. Ameren Missouri's request for an AAO is clearly not identical to any cause of action or "thing sued for" before. Although the general topic of the ice storm has come up in previous cases, the Commission has never been presented with or considered the issue of whether there were lost fixed costs or whether an AAO should be issued to address any lost fixed costs. In Case No. ER-2008-0318 the Commission addressed whether the Company's fuel adjustment clause ("FAC") tariff should be changed to address the loss of the Noranda load. In Case No. EO-2010-0255 the Commission addressed whether the contracts that Ameren Missouri had entered into with AEP Operating Companies, Inc. ("AEP") and Wabash Valley Power Association, Inc. ("Wabash") to sell the power Noranda was no longer taking constituted long-term partial requirements sales which were excluded from the Company's FAC tariff. The two rate cases cited by MIEC, Case Nos. ER-2010-0036 and ER-2011-0028, did not address the fixed costs that the Company failed to recover from Noranda because, at the time, Ameren Missouri believed that the revenues from the AEP and Wabash contracts were excluded from the FAC (and there had been no determination by the Commission otherwise). Had the Commission agreed Ameren Missouri would have those revenues and could not legitimately then also seek deferral of lost fixed costs.

4. The bottom line is that none of the cases cited by MIEC involved any consideration of whether Ameren Missouri should be granted an AAO to allow it to defer the costs it has been unable to recover due to the ice storm. The granting of an AAO in this case would be fully consistent with the decisions that the Commission has made in all of the cited cases. The “thing sued for” here is deferral of lost fixed costs that have never been “sued for” before.

5. Moreover, Ameren Missouri had no basis to request an AAO prior to the Commission’s decision in Case No. EO-2010-0255. Until that decision was rendered, the Company fully expected to recover its lost fixed costs through revenues derived from the replacement contracts with AEP and Wabash. Put another way, Ameren Missouri’s cause of action did not arise until after the Commission ruled against Ameren Missouri in Case No. EO-2010-0255.

WHEREFORE, Ameren Missouri respectfully requests that the Commission deny MIEC’s Motion to Dismiss this proceeding.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

/s/ Thomas M. Byrne

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Dated: September 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 8th day of September, 2011.

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