

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

In the Matter of Kansas City)	
Power & Light Company’s Request for)	Case No. ER-2012-0174
Authority to Implement a General Rate)	
Increase for Electric Service.)	
)	
In the Matter of KCP&L Greater)	
Missouri Operations Company’s Request for)	Case No. ER-2012-0175
Authority to Implement a General Rate)	
Increase for Electric Service.)	

**UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI’S RESPONSE TO
APPLICATION FOR REHEARING AND/OR MOTION FOR CLARIFICATION OF
KANSAS CITY POWER & LIGHT COMPANY AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”), by and through counsel and, pursuant to 4 CSR 240-20.080(13), respectfully files its response to the above-referenced Application and/or Motion. In this regard, Ameren Missouri states as follows:

1. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, “KCP&L”) have moved for clarification of that portion of the Report and Order in these consolidated cases concerning KCP&L’s request for a transmission tracker. Alternatively, KCP&L has requested rehearing of that portion of the Report and Order. Ameren Missouri files this response because like KCP&L, Ameren Missouri believes the Report and Order reflects certain incorrect conclusions regarding the proper application of the Uniform System of Accounts (“USoA”) and other applicable accounting principles. Although Ameren Missouri has not taken an active role in this case thus far, we believe that the Report and Order’s discussion of the applicable accounting principles, if applied universally, could seriously hamper the Commission’s ability to utilize trackers where it determines that it is appropriate to do so.

While the Report and Order does not and cannot set any precedent (given that the Commission is not bound by *stare decisis*), Ameren Missouri nonetheless believes it is important that the Commission properly apply the accounting and regulatory principles that govern trackers.¹

2. A “tracker” (be it the transmission cost tracker requested by KCP&L or other trackers) is a short-hand way of describing a regulatory order that allows a utility to defer on its books an increase or decrease in a cost typically compared to the base level of that cost that was used to set the revenue requirement in the rate case where the tracker was authorized. If the cost increases versus the base, rather than recognizing the increased cost on its income statement (which would reduce the utility’s earnings dollar-for-dollar) the utility is allowed to defer recognition and records a “regulatory asset” on its balance sheet. If the cost decreases the same deferral occurs, but a “regulatory liability” is created. The Commission then has the ability to include the regulatory asset or regulatory liability balance in the utility’s revenue requirement in a subsequent rate case. The accounting authority for the creation of regulatory assets or liabilities is found in USoA 182.3 (regulatory assets) and USoA 254 (regulatory liabilities).²

With respect to those accounts the USoA provides as follows:

¹ The Commission has approved a number of trackers for Ameren Missouri, all of which operate in *both* directions; that is, they provide the Commission with the ability in future rate cases to either reflect certain cost increases or decreases in future rates. These include a pensions and OPEBs tracker, a “FIN 48” (uncertain tax positions) tracker, a vegetation management/infrastructure inspections tracker, and a storm restoration cost tracker.

² As KCP&L pointed out, the Commission has adopted the USoA and requires utilities under its jurisdiction to adhere to it. Aside from the USoA, the Commission has statutory authority to approve trackers under Section 393.140, RSMo (2000). *Missouri Gas Energy v. Pub. Serv. Comm’n*, 978 S.W.2d 434 (Mo. App. W.D. 1998) (In this case an Accounting Authority Order (“AAO”) was at issue, but logically if Section 393.140 provides statutory authority to grant an AAO (allowing deferred accounting and the creation of a regulatory liability or asset) regarding the impact of a completed event, there is no reason that the same statutory provision would not provide statutory authority to allow deferred accounting and the creation of a regulatory asset or liability for future cost changes as and when they occur). In fact, to the extent the Report and Order suggests that the Commission’s authority to authorize a tracker comes only from the USoA, the Report and Order is incorrect. The Commission has only those powers given to it by statute. *City of West Plains v. Pub. Serv. Comm’n*, 310 S.W.2d 925, 928 (Mo. banc. 1958). Consequently, the Commission’s power to approve a tracker is statutory. The USoA’s relevance is that the Commission has adopted it, and the utilities it regulates must therefore follow it as a matter of state law as reflected in the Commission’s rules.

182.3 Other regulatory assets. A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, *resulting from the ratemaking actions of regulatory agencies* (See Definition No. 30. [sic]³) (emphasis added).

254 Other regulatory liabilities. This account shall include the amounts of regulatory liabilities, not includable in other accounts, imposed on the utility *by the ratemaking actions of regulatory agencies* (See Definition No. 30. [sic]) (emphasis added).

3. The general definition of “regulatory assets and liabilities” is found in Definition No. 31 (see prior footnote) of the USoA, as follows: “Regulatory Assets and Liabilities are assets and liabilities *that result from rate actions of regulatory agencies. . .*” (emphasis added).

4. As can be seen from the relevant USoA provisions cited above, for a state-regulated public utility, the USoA does not allow the creation of a regulatory asset or regulatory liability unless the state regulatory commission itself creates it through a ratemaking action because the USoA expressly provides that a regulatory asset or liability must “result from” such an action. This is why utilities always seek Commission approval for trackers, and similarly, why utilities request accounting authority *orders* (which as earlier noted differ from trackers in the sense that they seek authority to create a regulatory asset *after* a cost has occurred).

5. In the KCP&L Report and Order, however, the Commission incorrectly concludes that “no practical relief is possible” and also concludes, in effect, that an order from the Commission is not necessary on the facts presented. The plain terms of the USoA, cited above, demonstrate that KCP&L cannot implement a tracker in compliance with the USoA without a Commission order; KCP&L simply cannot record a regulatory asset or liability without such an order because it would “result from” KCP&L’s unilateral action, and not from an action of this Commission, as the USoA requires.

³ The USoA contains a typographical error and erroneously points back to Definition No. 30, with is the definition of “regional market.” When the regional market definition was added the next definition (“regulatory assets and liabilities,” which was formerly Definition No. 30), was not re-numbered.

6. As KCP&L points out, the fundamental mistake the Commission made in reaching this conclusion is its application of USoA General Instruction 7 to the tracker sought by KCP&L. Contrary to the Commission's conclusion, under the USoA General Instruction 7 has nothing to do with Accounts 182.3 and 254. Rather, General Instruction 7 deals with an extraordinary item on the *income statement* that would "distort the current year's income." See USoA Account Nos. 434 and 435. Indeed, USoA Accounts 434 and 435 (titled "Extraordinary income" and "Extraordinary deductions," respectively) specifically refer to General Instruction 7. As KCP&L also noted, the accounts governing regulatory assets and liabilities (182.3 and 254) do not reference General Instruction 7 at all, further cementing the fact that General Instruction 7 has nothing to do with regulatory assets or liabilities and thus has nothing to do with a tracker request.

7. In short, neither the Commission nor the utility must "comply" with General Instruction 7 when a tracker is at issue because all that the USoA requires before a regulatory asset or liability can be created is an action by the Commission.

8. That this is true is also borne out by the requirements of Generally Accepted Accounting Principles ("GAAP"). As the Commission is likely aware, the U.S. Securities and Exchange Commission ("SEC") requires all publicly traded companies (like Ameren Corporation or Great Plains Energy, Inc.) and their subsidiaries (including Ameren Missouri and KCP&L) to comply with GAAP to insure the comparability and consistency of financial information that is relied on by investors and creditors. Accounting Standards Codifications ("ASC") are the highest form of guidance in the GAAP hierarchy that must be followed. ASC-980-340-25-1⁴ governs whether a utility can create a regulatory asset (ASC 980-405-25.1 governs regulatory liabilities). Under ASC-980-340-25-1, only if there is a "[r]ate action of a regulator" can a utility

⁴ ASC-980 was formerly known as "FAS 71."

record a regulatory asset. If there is such a rate action⁵ then and only then can a cost (for KCP&L in this case -- increased transmission costs) that would otherwise be charged to expense on the income statement instead be capitalized on the balance sheet as a regulatory asset. This is consistent with the USoA, which does not speak in terms of “rate action” but does require, as noted earlier, that regulatory assets or regulatory liabilities “result from” the ratemaking actions of regulators.⁶

9. In summary, one cannot reconcile the application of General Instruction 7 with the requirements of USOA Accounts 182.3 and 254 and ASC-980-340-25-1, nor can one reconcile the Report and Order with those requirements. The Commission reads General Instruction 7 as applicable to KCP&L’s tracker request, which we’ve demonstrated is incorrect, and also reads General Instruction 7 as allowing a utility to record a regulatory asset or liability absent a Commission order (i.e., if, among other things, the cost is greater than approximately five percent of net income). But none of Accounts 182.3, 254, or ASC 980-340-25.1 and ASC-980-405-25.1, allow the recordation of a regulatory asset or liability without a Commission order. That fact, along with the other facts outlined earlier, demonstrates the General Instruction 7 has nothing to do with trackers. A utility can categorize certain items as extraordinary on its income statement when the criteria of General Instruction 7 is met, but that has nothing to do with the utility’s ability to *defer* the item to a regulatory asset or liability on the balance sheet, which in turn allows that deferred item to be considered in a later rate case. And without the

⁵ Accountants and independent outside auditors have interpreted the phrase “rate order” to include an order in a rate case, or a separate order (such as an Accounting Authority Order).

⁶ Even if the USoA were more “lenient” than ASC-980-340-25.1 and did not require an order from the regulatory commission this would not allow KCP&L here to establish the tracker (i.e., record regulatory assets or liabilities), nor would it allow other utilities, including Ameren Missouri, to create regulatory assets or liabilities for other trackers. This is because the utility must follow GAAP, and GAAP simply will not allow the creation of the regulatory asset or liability on those facts.

ability to defer that item the utility will be unable to have it considered in a later rate case, unless by chance it happens to fall in a test year.

10. The foregoing demonstrates that KCP&L is right when it indicates (in **bold/underline** at page 13 of its application/motion) that it needs a Commission order to defer the transmission cost increases it is facing. Without such an order its income will be reduced by increases in those expenses, just as Ameren Missouri's income would have been reduced by increases in similar MISO transmission charges but for their inclusion in Ameren Missouri's FAC.

11. In summary, if the Commission desires to approve a tracker (either a one-way or two-way tracker – most trackers have been two-way) it must make an affirmative decision and provide an order authorizing the tracker's creation, as provided for by USOA 182.3, 254 and GAAP principles ASC-980-340-25.1 and ASC-980-405-25.1. It cannot take the path it has taken thus far in the Report and Order and leave the decision of whether to record a regulatory asset or liability up to the utility.

WHEREFORE, Ameren Missouri hereby joins in KCP&L's request that the Commission clarify its Report and Order in the KCP&L case to (a) recognize that it must specifically authorize trackers in order to comply with the USoA and in order to allow utilities to comply with ASC-980-340-25-1 and ASC-980-405-25.1; and (b) recognize that USoA General Instruction 7 does not determine whether the Commission can approve a tracker or whether a utility can create a regulatory asset or liability.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via electronic mail (e-mail) or via regular mail on this 28th day of January, 2013, on counsel for all parties to this case.

/s/ James B. Lowery
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