

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

In the Matter of the Application of Kansas City)	
Power & Light Company and KCP&L Greater)	
Missouri Operations Company for the Issuance)	File No. EU-2014-0077
Of an Accounting Authority Order relating to their)	
Electrical Operations and for a Contingent Waiver)	
Of the Notice Requirement of 4 CSR 240-4.020(2))	

**MECG AND MIEC REPLY TO RESPONSES OF AMEREN AND KCPL / GMO
TO MOTION FOR RECONSIDERATION**

COMES NOW the Midwest Energy Consumer's Group, joined by the Missouri Industrial Energy Consumers, and for their Reply to the Responses filed by Ameren and KCPL / GMO to the Motion for Reconsideration filed on January 31, 2014, respectfully state as follows:

1. As an initial point, one must necessarily question why Ameren and KCPL / GMO have been so vehement in their opposition to the Commission's consideration of the Ameren brief in Case No. EU-2012-0027? After all, given the Commission's expertise in this matter, the general rule is to allow the Commission to consider all relevant information and allow it to decide which pieces of evidence are critical to its analysis of the issue. For this reason, evidence that is usually shielded from the focus of lay person juries (e.g., hearsay evidence) is allowed to be considered by the Commission. The Commission is not bound by the technical rules of evidence. (Section 386.410).

In the case at hand, however, Ameren and KCPL / GMO have been adamant against the Commission even considering Ameren's previous statements on the standard for the deferral of costs under the Uniform System of Accounts. Ameren and KCPL / GMO's opposition to the Commission seeing this document is undoubtedly based upon a desire to keep the Commission from realizing that Ameren has previously stated,

consistent with the positions taken by MECG, MIEC, Staff, and the OPC, that the deferral of costs under the USOA is permitted only for “extraordinary” events. Realizing that Ameren’s obvious contradictions will undermine KCPL and GMO’s deferral request in this case, Ameren as well as KCPL / GMO seek to prevent the Commission from considering Ameren’s previous judicial admissions. Again, given the Commission’s expertise in this matter, the general rule is to allow the Commission to consider all relevant evidence and allow it to decide which pieces of information it deems critical to its decision. Through their continued objection, Ameren and KCPL / GMO seek to carefully control the information that the Commission may consider.

2. In their responses, KCPL / GMO and Ameren argue that the statements contained in the previous Ameren brief are not judicial admissions because they consist solely of legal arguments and not statements of fact.¹ KCPL / GMO and Ameren’s assertions are misplaced, as evidenced by their own conduct. Much of KCPL / GMO’s factual evidence in this case concerns KCPL / GMO’s accountants’ testimony on the construction of the USOA. Indeed, in the previous Ameren case, Ameren offered, and the Commission considered, testimony of accountants regarding the scope of exceptions allowing for deferral treatment of costs under the USOA. If construction of the scope of the Uniform System of Accounts was solely a legal matter, then such testimony by accountants would be inappropriate and should not be considered as evidence of facts. In addition, judicial admissions involving facts associated with the Uniform System of Accounts do not suddenly fall outside the Commission’s consideration simply because

¹ See, Ameren Response at page 3 (“The legal arguments in Ameren Missouri’s brief in another action and based upon entirely different facts do not constitute admissions of fact, but instead are legal arguments inadmissible in this proceeding.”). See also, KCPL / GMO Response at page 1 (“The brief reflects legal arguments on issues that are not at issue in this case. It is not a judicial admission of *facts* as suggested by the Motion.”).

the Commission has adopted the USOA in a regulation. Ameren's judicial admissions, as contained in its previous brief, are facts. They are not solely legal arguments simply because the USOA has been adopted by the Commission.

3. The fact that the previous Ameren judicial admissions are factual and not legal in nature is also reflected in previous Commission Orders. In previous decisions involving requests for Accounting Authority Orders, the Commission has included its discussion of the appropriate USOA standard for deferral in its **Findings of Fact**, not its conclusions of law.² Clearly, if the appropriate standard for deferral is a finding of fact, then it is also a fact for purposes of a judicial admission.

4. In its responsive pleading, Ameren claims that Movants seek admission of the entire 46 page post-hearing brief filed by Ameren in Case No. EU-2012-0027. This is factually incorrect. At the hearing, counsel indicated that it was offering only pages 8-13, which address Ameren's factual assertions regarding the scope of any permissible deferrals under the Uniform System of Accounts. Counsel merely provided the remainder of the brief for purposes of providing a complete record, but has not offered the remainder.

WHEREFORE, MECG and MIEC respectfully request that the Commission reconsider the previous decision disallowing the admission of the Ameren Brief in Case No. EU-2012-0027 into evidence in this case. Certainly, given the expertise of the Commission, it is appropriate for it to consider this information. Furthermore, the Ameren brief constitutes

² See, *Application of Missouri Public Service*, Case No. EO-91-358, Report and Order, issued December 20, 1991 (at page 2); *Kansas Power and Light Company*, Case No. GR-91-291, Report and Order, at pages 3-5; *Union Electric Company*, Case No. EO-92-179, Accounting Authority Order, at pages 2, 4-5; *Laclede Gas Company*, Report and Order, issued August 22, 1994, at pages 2, 4-5; *St. Louis County Water*, Case No. WR-95-145, Report and Order, issued September 19, 1995, at pages 2, 5-8; *Laclede Gas Company*, Case No. GR-96-193, Report and Order, issued August 28, 1996, at pages 2, 12-14; *United Water Missouri*, Case No. WA-98-187, Report and Order, issued April 20, 1999, at pages 5-7; *St. Louis County Water Company*, Case No. WO-98-223, Report and Order, issued February 13, 2001, at pages 5-17; *Missouri Gas Energy*, Case No. GO-99-258, Report and Order, issued March 2, 2000, at pages 3 and 6; *Missouri Public Service and St. Joseph Light and Power*, Case No. GO-2002-175, Report and Order, issued November 14, 2002, at pages 2-5.

a judicial admission of a fact (the scope of permissible deferrals under the Uniform System of Accounts) and should be considered by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: February 4, 2014