

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

In the Matter of Union Electric Company, d/b/a       )  
Ameren Missouri's Filing to Adjust Rates Under       )  
Its Approved Fuel and Purchased Power Cost       ) **File No. ER-2011-0317**  
Recovery Mechanism Pursuant to 4 CSR               ) Tariff No. YE-2011-0485  
240-20.090(4)    )

**MIEC'S MOTION FOR EXPEDITED TREATMENT AND RECONSIDERATION  
OF THE COMMISSION'S ORDER**

Comes now the Missouri Industrial Energy Consumers ("MIEC") and pursuant to 4 CSR 240-2.160, respectfully requests that the Commission reconsider its Order Approving Interim Rates in this case, effective May 25, 2011 (the "Order"). The Order is unlawful, unjust and unreasonable because it approves interim rates that fail to reflect this Commission's Report and Order in Case No. EO-2010-0255, wherein the Commission found that Ameren's over-collection of revenues from Missouri ratepayers was imprudent. As such, the Order violates RSMo 393.130 and RSMo 393.140 that prohibit the Commission from approving any unjust or unreasonable rate or charge to ratepayers. Moreover, the Order violates 4 CSR 240-20.090(4) that requires interim rates to be "in accordance with . . . the FAC mechanism established in the most recent general rate proceeding." Specifically, the Order approves rates that fail to account for Ameren Missouri's unlawful over-collection of \$42,036,723 to the detriment of Missouri ratepayers.

The MIEC respectfully seeks expedited treatment of this Motion and requests that the Commission grant this Motion by May 25, 2011, the day rates go into effect in this case. If the Commission does not grant this motion by May 25, 2011, Missouri ratepayers will unjustly, unreasonably and unlawfully continue to be deprived of

\$42,036,723 in FAC refunds to which they are lawfully entitled. The MIEC is filing this Motion at the earliest possible opportunity on the same day that its earlier motion for reconsideration (filed on May 11, 2011) was denied for failure to comport with 4 CSR 240-2.160(2).

In support of this Motion, MIEC states as follows:

1. On March 25, 2011, Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”) filed a tariff sheet to change its Fuel and Purchased Power Adjustment rates under its Fuel and Purchased Power Adjustment Clause (“FAC”).
2. On March 28, 2011, the Commission issued an Order Directing Notice and Directing the Staff of the Missouri Public Service Commission (“Staff”) to File a Recommendation with respect to Ameren Missouri’s proposed tariff sheet.
3. On April 22, 2011, pursuant to 4 CSR 240-20.090(4), the Staff filed its Recommendation to Approve Tariff Sheet filed by Ameren Missouri. However, the Staff’s Recommendation to approve the tariff sheet was “subject to . . . prudence reviews.” See Staff Recommendation to Approve Tariff Sheet, at page 2.
4. On April 27, 2011, the Commission issued its Report and Order in the Matter of the First Prudence Review of the Costs Subject to the Commission-Approved Fuel Adjustment Clause of Ameren Missouri, Case No. EO-2010-0255. In that Order, the Commission directed Ameren Missouri to refund \$17,169,838 to its customers by an adjustment to its FAC charge to correct the unlawful over-collection of revenues for the period of March 1, 2009 to September 30, 2009.
5. On May 4, 2011, the Commission issued its Report and Order in this case approving interim rates.

6. On May 6, 2011, the Staff and the Company filed a non-unanimous stipulation and agreement in Case No. EO-2010-0255 that the amount the Commission ordered be refunded to ratepayers includes interest at Ameren Missouri's short-term borrowing rate through September 30, 2009. The agreement further stipulates that interest has accrued and continues to accrue after September 30, 2009 at the Company's short-term borrowing rate as required by Section 386.266.4(4) R.S.Mo. Supp. 2010.

7. The Commission's Report and Order in Case No. EO-2010-0255 became effective on May 7, 2011.

8. On May 11, MIEC filed a Motion for Reconsideration in this Case.

9. On May 19, Ameren Missouri filed a Memorandum in Response to MIEC's Motion for Reconsideration.

10. On May 23, the Commission denied MIEC's Motion for Reconsideration on the grounds that MIEC failed to set forth the grounds on which it considers the order in this case to be unlawful, unjust or unreasonable. Notably, the Commission's May 23rd order did not accept the arguments made in the Company's Memorandum for denying MIEC's motion.

11. In addition to the amount over-collected by Ameren Missouri in accumulation periods one and two, Ameren Missouri also over-collected an additional amount during accumulation periods three through five. Specifically, as a result of Ameren Missouri's unlawful failure to flow the revenues from the contracts into which it entered with Wabash Valley Power Association ("Wabash") and American Electric Power Operating Companies ("AEP") through the FAC, Ameren Missouri over-collected \$24,866,885 from customers for accumulation periods three through five (October, 2009

through September 2010). The total amount unlawfully over-collected by Ameren Missouri for the relevant periods is **\$42,036,723** (\$24,866,885 + \$17,169,838). This amount is undisputed, as was admitted by Ameren Missouri in the Surrebuttal Testimony of Ms. Lynn Barnes in Case No. EO-2010-0255.<sup>1</sup> As such, it is undisputed that the Ameren Missouri unlawfully over-collected a total \$42,036,723 from its customers by its improper treatment of the AEP and Wabash contracts during the relevant periods.

12. The Commission's Order Approving Interim Rates in this case will be effective on May 25, 2011.

13. All of the evidence necessary to demonstrate the Ameren Missouri's over-collection during accumulation periods three through five was presented before the Commission in Case No. EO-2010-0255, because Ameren Missouri's over-collection for periods three through five resulted from the same facts that were at issue in Case No. EO-2010-0255. Specifically, Ameren Missouri's over-collection during accumulation periods three through five resulted from its failure to flow the revenues from AEP and Wabash through the FAC, which was precisely the issue decided in Case No. EO-2010-0255.

14. Missouri law and public policy strongly favor the prevention of "needless relitigation in a second hearing" and the promotion of "the public interest in judicial economy." 2008 Mo. PSC LEXIS 258 (Mo. PSC 2008); 2007 Mo. PSC LEXIS 1523 (Mo. PSC 2007) (seeking to avoid practices that "would not provide any benefit, and create[] the potential of there being duplicate filings and the loss of judicial economy"); 2007 Mo. PSC LEXIS 349 (Mo. PSC 2007) (consolidating cases that "involve related

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<sup>1</sup> Barnes Surrebuttal, Page 1, Line 22 through Page 2, Line 4.

questions of law and fact [to] promote judicial economy and avoid unnecessary costs and delay”).

15. This Commission has already heard, analyzed and rendered its opinion regarding all of the evidence and arguments of the parties regarding Ameren Missouri’s failure to flow the revenues from the AEP and Wabash contracts through the FAC. It would be a waste of the Commission’s and the parties’ time and resources to present all of the same testimony for accumulation periods three through five as it presented for accumulation periods one and two.

16. Moreover, re-litigation of the issues decided in Case No. EO-2010-0255 is impermissible under the doctrines of res judicata and collateral estoppel, because the facts and law at issue have already been fully adjudicated to a final judgment on the merits.

17. As a result of the Commission’s Report and Order in Case No. EO-2010-0255, effective May 7, 2011, Ameren Missouri’s new FAC rates should be reduced to reflect the refund ordered by the Commission in Case No. EO 2010-0255 and the refund to which Missouri ratepayers are entitled for accumulation period three through five.

18. Missouri Revised Statutes, section 393.130 states:

All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

19. The rates approved in this case are not just and reasonable as required by RSMo section 393.130, because they fail to provide Missouri ratepayers with the refund

mandated by this Commission's Order in Case No. EO-2010-0255. Moreover, the rates in this case are unreasonable because, they fail to reflect the additional amount over-collected by the Company during accumulation periods three through five.

20. The rates in this case also unlawfully violate Rule 4 CSR 240-20.090(4), the Rule discussing the Commission's role in approving or rejecting interim rates.

Specifically, the Rule states:

If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the FAC mechanism established in the most recent general rate proceeding, **the commission shall reject the proposed rate schedules . . . and may instead order implementation of an appropriate interim rate schedule(s).**  
(emphasis added)

21. Ameren Missouri's tariff schedules and the FAC rate adjustments in this case are *not* in accordance with the FAC mechanism established in the most recent general rate proceeding, because they fail to reflect the \$42,036,723 that was over-collected by Ameren Missouri during accumulation periods one through five as was demonstrated by the evidence and determined by Commission in Case No. EO-2010-0255.<sup>2</sup>

22. Missouri Revised Statutes, section 393.140(5) provides that "[w]henver the commission shall be of the opinion . . . that the rates or charges . . . [of a corporation under its regulatory supervision] are unjust, unreasonable. . . or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges . . . to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute"

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<sup>2</sup> The most recent general rate proceeding is case No. ER-2010-0036. To be in accordance with the FAC mechanism established in the ER-2010-0036, the interim rates need to account for the Company's over-collection that resulted from its violation of the Tariff established in Case No. ER-2008-0318.

23. As such, the Commission is not only permitted to include the mandated refunds in the rate adjustments in this case, it is also prohibited by RSMo 393.140(5) and 4 CSR 240-20.090(4) from approving the current tariff schedules and FAC rate adjustments, because they are unlawful, unjust and unreasonable and not in accordance with the FAC mechanism established in Ameren Missouri's most recent general rate proceeding.

24. That the Commission's Report and Order in Case No. ER-2010-0255 was not final and in effect *before* Ameren Missouri made the FAC adjustment filing has no bearing on whether or not the proposed rates are lawful, prudent and reasonable. It is not relevant that the Report and Order in Case No. ER-2010-0255 was issued *after* the Company's filing in this case. The rates fail to reflect Ameren Missouri's unlawful over-collection of revenues, and are thus equally unlawful (whether or not that Report and Order was issued before or after Ameren Missouri's filing in this case).

25. The Order violates 4 CSR 240-20.090(4) by approving interim rates that fail to comply with the FAC mechanism established in Ameren Missouri's most recent general rate proceeding. The Order also violates RSMo sections 393.130 and 393.140 by approving interim rates that are unlawful and unreasonable in light of Ameren Missouri's over-collection from its customers. The Order deprives customers of \$42,036,723 to which they are lawfully entitled, and is therefore unlawful, unjust and unreasonable. Accordingly the Commission must apply 4 CSR 240-20.090(4), RSMo 393.130 and RSMo 393.140, and reduce Ameren's new FAC rates to reflect the refunds to which Ameren's customers are entitled.

WHEREFORE, MIEC respectfully requests that the Commission order Ameren Missouri to deduct from the new FAC rates \$17,169,838.00 for the amount it over-collected in accumulation periods one and two, plus \$24,866.885.00 to reflect the Company's over-collection during accumulation periods three through five, plus applicable interest, at Ameren Missouri's short-term borrowing rate.

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 23rd day of May, 2011, to the parties on the Commission's service list in this case.

/s/ Brent Roam