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

In the Matter of the Adjustment of Union Electric	)
Company d/b/a Ameren Missouri's Fuel Adjustment	) <u>Case No. ER-2014-0022</u>
Clause for the 13 <sup>th</sup> Accumulation Period	)

# AMEREN MISSOURI'S RESPONSE TO MIEC'S RECOMMENDATION TO MODIFY TARIFF SHEET TO REFLECT REFUND ORDERED ON JULY 31, 2013

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") and in response to MIEC's above-referenced recommendation states as follows:

- 1. MIEC's recommendation asks the Commission to disregard the Company's lawful, effective, and binding fuel adjustment clause ("FAC") tariff and the Commission's lawful, effective and binding rules that dictate the FAC rates to be set when a periodic FAC rate adjustment tariff is filed.
- 2. Ameren Missouri's FAC tariff provides for three FAC adjustment filings each year, one of which is to occur on or before August 1 of each year. The FAC tariff specifically provides that the adjustment filed no later than August 1 of each year is to take effect for a recovery period beginning with the October billing month. The October billing month begins on September 24, 2013, meaning that the FAC adjustment tariff had to be filed by July 26, 2013 in order for it to take effect 60 days later as contemplated by the Commission's FAC rules.
- 3. The Commission's FAC rules, specifically 4 CSR 240-20.090(4), provide in pertinent part as follows:

If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving

<sup>&</sup>lt;sup>1</sup> And in response to Consumers Council of Missouri's Concurrence in MIEC's Recommendation.

the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed.

- 4. MIEC does not allege that the FAC adjustment tariff is not in compliance with the FAC tariff, with Section 386.266, or with the Commission's FAC rules. Consequently, the Commission has the authority to do one of two things and one of two things alone: issue no order approving the FAC adjustment tariff, in which event it will take effect by operation of law on September 24, 2013, or approve it because it is compliance with the FAC tariff and the Commission's FAC rules.
- 5. The Commission's FAC rules intentionally establish a process that does not allow FAC adjustments to be modified during the review process because of a party's objection to the adjustment unless the objection is properly based upon a circumstance where the FAC adjustment tariff that was filed was in actual violation of the FAC tariff, statute or rules. As noted, there is no such violation. In summary, the FAC rules intentionally provide the Commission to order an appropriate adjustment, and to do so within 60 days, but again *only* if the adjustment that was filed is not in compliance with the tariff, statute and rules.<sup>2</sup>
- 6. The appropriate FAC prudence adjustment arising from Case No. ER-2012-0074 will be made in due course, with interest as required by the FAC statute and the Commission's rules. Because of the timing of the Commission's Report and Order in that case and the required timing of the FAC adjustment made on July 26, 2013, the adjustment was not included in the FAC adjustment tariff at issue here.

<sup>&</sup>lt;sup>2</sup> MIEC requests an "immediate hearing," if its recommendation is not followed, but there is no authority in any statute or rule for hearing to be held, nor is there anything to hold a hearing about. The FAC rules make clear that MIEC's recommendation is not well taken.

#### Respectfully submitted,

#### SMITH LEWIS, LLP

### /s/James B. Lowery

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#### Attorneys for Union Electric Company d/b/a Ameren Missouri

Dated: September 4, 2013

## UNION ELECTRIC COMPANY d/b/a Ameren Missouri

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was served via e-mail on all counsel of record this 4th day of September, 2013.

/s/ James B. Lowery