

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

In the Matter of the Tariff Filings of Union                    )  
Electric Company, d/b/a Ameren Missouri, to                    )  
Increase Its Revenues for Retail Electric Service.            )                    Case No. ER-2014-0258

**RESPONSE TO OFFICE OF THE PUBLIC COUNSEL’S  
REQUEST FOR ORDER ON RATE CASE EXPENSE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”), and in response to the above-referenced motion, and pursuant to the Commission’s *Order Directing Response to Public Counsel’s Motion*, states as follows:

1. The Office of the Public Counsel (“OPC”) correctly indicates that the parties to the *Amended Non-Unanimous Stipulation and Agreement Regarding Certain Revenue Requirement Issues* (the “Stipulation”) filed on March 3, 2015 (approved by the Commission by order dated March 19, 2015) reflects the signatories’ agreement that the rate case expenses incurred up to two weeks after the filing of reply briefs in this case could be included in the Company’s revenue requirement in this case through a normalization over 18 months.<sup>1</sup> OPC is also correct that the signatories agreed that documentation of the actual expenditures was to be provided to the Staff by April 24, 2015. That documentation was provided on April 15 and 16, 2015, as agreed) and covered actual rate case expenses incurred through April 10, 2015, the date reply briefs were filed. As the quotation included in OPC’s motion (page 2) from Staff witness Sarah Sharpe’s testimony indicates,<sup>2</sup> the signatories contemplated that the Staff would “update

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<sup>1</sup> Utilization of an 18-month normalization means the 2/3 of the actual rate case expenses would be reflected in the revenue requirement, subject to an adjustment that the Staff proposed in its direct case, and with which the Company agreed. The adjustment consisted of amortizing the expense associated with the Company’s depreciation study over 5 years, resulting in a normalized amount of a bit less than 2/3 of the actual expenditures.

<sup>2</sup> As reflected in the Staff’s Cost of Service Report.

the normalized rate case expense amount to include only Ameren Missouri's actual incurred expenses."<sup>3</sup>

2. OPC is also correct that as of the filing of its motion the Staff had not made any kind of filing updating the rate case expenses. The Stipulation contemplated no such filing, and any suggestion that the failure to make one precludes inclusion of rate case expense in the revenue requirement in this case is incorrect. Regardless, the Company has provided the updated information it agreed to provide in the Stipulation (and that the signatories agreed Ameren Missouri would provide) to both the Staff and OPC. A spreadsheet detailing the actual rate case expenditures<sup>1</sup> is included as Exhibit A to the attached Affidavit of the Company's Director of Regulatory Accounting Gary S. Weiss.

3. The Company does not, however, agree with a number of other assertions made by OPC in its motion. In particular, the evidentiary record in this case already includes all of the substantial and competent evidence necessary for the Commission to include a normalized level of rate case expense (using the agreed-upon and ordered 18-month normalization) in the revenue requirement and lacked only one piece of data that the Stipulation contemplated would be provided to the Staff: actual expenditures through April 10, which has now also been provided to the Commission.

4. Prior to finalization of the accounting for the actual expenditures, the Staff, in its Cost of Service Report, specifically recommended that rate case expense in the amount of \$1.1 million (using an 18 month normalization, yielding a revenue requirement impact of \$796,530) be included in the revenue requirement. No party – including OPC – filed any rebuttal testimony (or for that matter, surrebuttal testimony) claiming any imprudence or making any other

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<sup>3</sup> Staff Cost of Service Report, p. 106.

challenge to that sum. Indeed, OPC did file rate case expense testimony, but its only objection was to the inclusion of expenses associated with the defense of File No. EC-2014-0224 (one of two Noranda complaints filed in early 2014). As the record in this case shows, none of the File No. EC-2014-0224 expenditures had been included in rate case expense in this case in the first place. Consequently, OPC's claim that until some kind of further proof is had there can be no rate case expense included in the revenue requirement is patently wrong. This evidence was already of record before OPC agreed to the Stipulation.

5. Second, OPC, by agreeing to the Stipulation, agreed that the \$1.1 million figure would be updated and agreed that at least  $2/3^4$  of it would be included in the revenue requirement. Given that the Staff was making a recommendation as of December 5, 2014, it is obvious that the figure would grow as some of the most significant rate case activities had not yet even occurred, including the preparation of rebuttal and surrebuttal testimony, the conduct of Company discovery on the other parties' cases, and the completion of the evidentiary hearings and briefs. This ought to also be obvious given that in the Company's last rate case, the Commission included a normalized rate case expense level of \$1.538 million in the revenue requirement, based upon a rate case expense level of \$1.903 million.<sup>5</sup> That rate case expenses in this case ended up totaling approximately \$2.3 million is completely expected, particularly when one considers that this case included a "case within a case" reflected by Noranda's proposal for a special rate for its smelter, which is an issue that went well beyond normal "rate design" issues in most rate cases. Consequently, to the extent OPC's motion suggests that some kind of additional

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<sup>4</sup> Subject to the one adjustment noted in footnote 1.

<sup>5</sup> *Report and Order*, File No. ER-2012-0166, pp. 36-43. As the *Report and Order* in that case also recognized, rate cases expenses for Ameren Missouri in the two cases prior to ER-2012-0166 had ranged from about \$1.7 million to about \$2.1 million. The Commission can, if it deems it appropriate, take notice of these facts from its *Report and Order* in File No. ER-2012-0166.

record had to be developed to address the sums incurred between \$1.1 million and \$2.3 million, OPC's motion is arguably inconsistent with the Stipulation, as the Staff in its response filed today indicates.

6. When it signed the Stipulation, OPC certainly waived the right to challenge the \$1.1 million. Moreover, OPC waived the right to object to the actual sums incurred through April 10 unless ***OPC*** comes forward with proper evidence of imprudence. The Company's expenses, including its rate case expense, are presumed to be prudently incurred and that presumption remains unless and until some other party creates a serious doubt (by itself going forward with evidence sufficient to do so) about the prudence of the expenditure. *See, e.g., State ex rel. Nixon v. PSC*, 274 S.W.3d 569, 581 (Mo. W.D. App. 2009) *Associated Natural Gas Company v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997)"). OPC can't shift the burden of going forward to the Company by claiming that all kinds of evidence about hours and ancillary expenses, etc. be adduced by someone else.

7. The bottom line is that if, and only if, a party (a) requested an opportunity to itself provide evidence in an effort to create a serious doubt about the prudence of some part of the expenditures above the \$1.1 million, (b) the Commission determined that it should afford that opportunity, (c) the party then came forward with sufficient evidence to create a serious doubt about the prudence of some of the additional sums, and (d) the Commission then actually made a finding of imprudence based upon competent and substantial evidence of record, would it be proper for the Commission to include any amount of rate case expense in the revenue requirement other than  $2/3^6$  of \$2.3 million that has actually been incurred. This is what was

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<sup>6</sup> See footnote 1.

agreed to in the Stipulation, which the Commission has treated as unanimous and approved, and it is required by the law governing the burden of proof.

8. It should also be noted that OPC has not been deprived of the opportunity to investigate the details behind the Company's rate case expense and should not have waited until the 11<sup>th</sup> hour to argue that without a further evidentiary record "rate case expense must be excluded."<sup>7</sup> OPC had access throughout this case to data request responses to Staff data requests (all of which are available to all parties in EFIS, and also on the Company's Extranet site) where rate case expense documentation was provided. The Company's direct case filing included \$1.53 million of rate case expense in the revenue requirement. The Company's true-up testimony included a \$2.1 million estimate of total rate case expense. OPC had the opportunity to three rounds of testimony before the evidentiary hearings, to file true-up rebuttal testimony, and to conduct other discovery, if it so desired. OPC also knew all along that the Company would be providing further documentation to the Staff by April 24, and itself asked for that documentation which was provided to it. OPC made no inquiry before then, nor, as noted, did it file any testimony or conduct any discovery of its own despite ample opportunity to do so.

9. The actual rate case expenses have been provided as agreed, and have now been provided to the Commission and attested to by Mr. Weiss's sworn affidavit. The Staff has confirmed the amount of the actual expenditures, and recommended a normalized and annualized amount of \$1,466,975<sup>8</sup> be included in the revenue requirement, a sum with which the Company agrees. No party has created any doubt about the prudence of those expenditures, let alone a serious doubt.

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<sup>7</sup> OPC Motion at 5.

<sup>8</sup> See footnote 1.

10. The relief sought by OPC has been granted; that is, the Commission issued its order requiring responses to be filed by 1:00 p.m. today. Both the Staff and the Company have followed the Stipulation, have now filed responses to OPC's motion, and the actual expenditures have been provided to the Commission via Mr. Weiss's affidavit. No further action or response by or from any party is required. The Company reserves its right, if some other relief is at some point requested, to be afforded an appropriate opportunity to respond to any such request.

Respectfully submitted:

**/s/ James B. Lowery**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 28th day of April, 2015.

**/s/James B. Lowery**

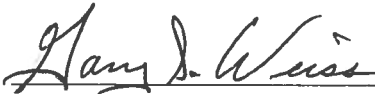
James B. Lowery



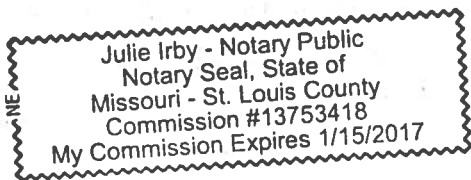



the Company's Extranet site, which is also available to all parties. Estimates of the Company's expected rate case expense were also included in the direct and true-up rebuttal testimonies of Company witness Laura M. Moore.

Affiant further sayeth not.

  
Gary S. Weiss

Subscribed and sworn to before me, Julie Irby, a notary public in and for the state of Missouri, on this 28<sup>th</sup> day of April, 2015.





**THE EXHIBIT IS HIGHLY CONFIDENTIAL**