

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

In the Matter of the Application of	)	
Union Electric Company d/b/a	)	
Ameren Missouri for the Issuance	)	Case No. EU-2012-0027
Of an Accounting Authority Order	)	
Relating to its Electrical Operations.	)	

**RESPONSE OF UNION ELECTRIC COMPANY d/b/a/ UNION ELECTRIC COMPANY  
TO STAFF'S NOTICE OF ERRORS**

On June 21, 2012, the Commission Staff ("Staff") made a filing entitled "Staff's Notice of Errors in Ameren Missouri's Reply Brief," which purports to advise the Commission of three "material items" in the reply brief filed by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") that Staff characterizes as "blatantly incorrect." Because it believes Staff's characterization of the alleged "errors" in the Company's brief is either incorrect, hyperbole, or a bit of both, Ameren Missouri offers this response to the three points raised in Staff's filing.

1. Staff first notes that at two places in its reply brief the Company erroneously states that the amount at issue in this case is "approximately" or "almost" \$65 million in fixed costs. Staff is correct: the amount the Company seeks authority to defer in this case is approximately \$36 million – not \$65 million – of unrecovered fixed costs. Ameren Missouri regrets and apologizes for its error, but the error was merely typographical and Staff should have recognized it as such. After all, if it had intended to mislead the Commission, Ameren Missouri would not have correctly stated the amount at issue in this case – approximately \$36 million – twice in its reply brief and at least seven times in initial brief, and also would not have referred to and cited the stipulation that fixes the exact amount at issue in this case at \$35,561,503.

2. Staff's next allegation of error concerns Ameren Missouri's response to Staff's argument that the Company "misused" evidence regarding its "N" factor tariff when its witness Lynn M. Barnes briefly referred to that tariff in a footnote in her surrebuttal testimony. In making its response, Ameren

Missouri stated that the First Nonunanimous Stipulation and Agreement in Case No. ER-2010-0036 was not offered into evidence in this case. That statement is incorrect: after reviewing Staff's June 21<sup>st</sup> pleading, the Company recognizes that the stipulation that Staff referred to in its initial brief was part of Staff Exhibit 6, which was entered into evidence in the current case. Ameren Missouri apologizes for that error, as well. But, again, the error was neither intentional nor material.

3. Staff's final allegation concerns a paragraph that appears at page 19 of Ameren Missouri's reply brief, where the Company addresses the following argument found at page 26 of Staff's initial brief:

Contrary to being punished, as Ms. Barnes asserts in her Surrebuttal Testimony, at page 10, line 23, Ameren Ex. 3, Ameren Missouri wants to be rewarded with an AAO for conduct for which the Commission held in its *Report and Order* in Case No. EO-2010-0255 that "Ameren Missouri acted imprudently, improperly and unlawfully with it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenues when calculating the rates charged under its fuel adjustment clause."

In its reply brief, Ameren Missouri argued, in part, that in Case No. EO-2010-0255 the Commission did not find that it was imprudent, improper, or unlawful for the Company to attempt to mitigate the financial effects of the fixed costs the Company was unable to collect from Noranda through off-system sales to AEP and Wabash. It appears Staff misinterpreted that argument. That is unfortunate, but Staff's misunderstanding of – or disagreement with – Ameren Missouri's argument does not make that argument blatantly incorrect, as Staff alleged in its June 21<sup>st</sup> filing.

4. Ameren Missouri regrets the errors noted in paragraphs 1 and 2 of this response, but both of those minor errors could have – and would have – been corrected had Staff merely brought them to the attention of the Company's counsel. That Staff chose not to do so is unfortunate. Ameren Missouri continues to believe that the arguments contained in its reply brief are reasonable and are well within the bounds of appropriate advocacy regarding the issues that remain in contention among the parties to this case. The Company made each of its arguments in good faith, and based those arguments on its interpretation of the evidence on the record in this case. There never was any intention to mislead or

confuse either the Staff or the Commission, and any errors that appear in the brief were completely inadvertent.

Respectfully submitted,

/s/ L. Russell Mitten  
L. Russell Mitten, #27881  
BRYDON, SWEARENGEN & ENGLAND, P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166 (telephone)  
(573) 634-7431 (facsimile)  
[rmitten@brydonlaw.com](mailto:rmitten@brydonlaw.com)

ATTORNEY FOR  
UNION ELECTRIC COMPANY, d/b/a  
AMEREN MISSOURI

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via e-mail, on counsel for each of parties of record on the 28<sup>th</sup> day of June, 2012:

/s/ L. Russell Mitten