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 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).	)))))))	Case No. EU-2014-0077

AMEREN MISSOURI'S SUR-REPLY TO MECG AND MIEC REPLY TO RESPONSES OF AMEREN MISSOURI AND KCPL/GMO MOTION FOR RECONSIDERATION

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") and for its brief sur-reply to the above-referenced reply states as follows:

1. MECG and MIEC make no effort to address in any way the fact that the legal position taken by Ameren Missouri in this case – that there is no regulation (the USoA or otherwise) that limits the Commission's discretion in an AAO case (as the Commission itself recognizes) – is not at all inconsistent with Ameren Missouri's prior brief, as Ameren Missouri explained in its February 4 Response.

2. Moreover, that a party interposes a valid objection in an evidentiary hearing to inadmissible evidence is unremarkable. MECG and MIEC make little effort to rebut the legal principles cited in Ameren Missouri's reply. To the contrary, they essentially claim that the Commission is simply free to receive any evidence and therefore, goes their argument the Commission should do so here. In support of this novel point (that the fundamental rules of evidence are suspended in Commission proceedings) MECG and MIEC state that "evidence that is usually shielded from the focus of lay person juries (e.g., hearsay evidence) is allowed to be considered by the Commission." Just as they misstate and misapply the law governing judicial admissions, they misstate and misapply the rules of evidence.

3. As the Commission recognizes, hearsay *is* a fundamental rule of evidence. *Lee v. Missouri Am. Water Co*., 2009 Mo. PSC LEXIS 430 at *2-*3 (Case No. WC-2009-0277, May 19, 2009) ("Upon objection, we apply the rule barring hearsay because it is a fundamental rule of

evidence that applies in this action."); *see also State ex rel. Marco Sales, Inc. v. Pub. Serv. Comm'n*, 685 S.W.2d 216, 220 (Mo. App. W.D. 1984); *State ex rel. DeWeese v. Morris*, 221 S.W.2d 206, 209 (Mo. 1949) (Where an objection is interposed, hearsay evidence does not rise to the level of "competent and substantial evidence" upon which the Commission can base its decision).

4. The point is this: MECG and MIEC are advocating the admission of a document (or part thereof) that is inadmissible under the rules of evidence. KCPL/GMO and Ameren Missouri properly objected to it. Ameren Missouri's prior brief does not constitute a judicial admission just because MECG and MIEC say that it does, just as hearsay evidence is not admissible in Commission proceedings, despite MECG and MIEC's unsupported claim to the contrary.

5. Nor does the fact that accountants testify to their intepretations of the USoA turn what the USoA requires into a statement of fact. It is unnecessary to cite cases to the effect that a federal regulation – which is exactly what the USoA is[1] – has the force and effect of law, just as a statute does. The same is true of a state regulation (here, the Commission's regulation adopting the USoA).[2]

6. For the reasons discussed in Ameren Missouri's February 4 Response, MECG's and MIEC's Motion should be denied.

Respectfully submitted,

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[1] The USoA is codified at 18 C.F.R. Part 101.

[2] MECG and MIEC also fail to address, much less rebut, the fact that statements in a brief in the trial court (here, the Commission) in a different case can't be admitted as judicial admissions in any event. *See Peace v. Peace*, 31 S.W.3d 467, 471-472 (Mo. App. W.D. 2000), which we cite in our February 4 Response.

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Dated: February 5, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Ameren Missouri's Application for Intervention was served via electronic mail (e-mail) or via regular mail on this 5th day of February, 2014, on:

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