

**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 |) | File No. EU-2012-0027 |
| Of an Accounting Authority Order Relating to its |) | |
| Electrical Operations. |) | |

**AMEREN MISSOURI'S SUPPLEMENTAL RESPONSE
TO ORDER DIRECTING FILING**

COME NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company"), and for its supplemental response to the Missouri Public Service Commission's ("Commission") June 26, 2013 *Order Directing Filing*, states as follows:

Background

1. The *Order Directing Filing* required the parties to file "any suggested procedural schedule" by July 8, 2013.
2. On July 8, 2013, Ameren Missouri filed its initial response to the *Order Directing Filing*.
3. There have since been further developments in the case, most notably the Commission's August 28, 2013 Agenda discussion during which Regulatory Law Judge Jordan suggested to the Commissioners that the Company did not need for the Commission to issue an accounting authority order ("AAO") to record a regulatory asset that could then be considered for recovery in a later general rate proceeding. Respectfully, the Company disagrees with Judge Jordan, a disagreement we explain in detail below.
4. Indeed, without an AAO from the Commission the Company is completely precluded from recording a regulatory asset and consequently will have no ability to later request that the Commission consider the lost fixed costs for recovery in a subsequent general rate proceeding. At bottom, the Company will have permanently suffered the substantial financial

consequences of an ice storm that it could not control due to the loss of a large quantity of Noranda's load for an unprecedented and extended period of time occasioned by ice damage to lines of another provider with whom Noranda contracted to wheel power to its smelter.

Argument - Legal and Accounting Analysis

5. The basis for the Judge's opinion that the Commission need not issue an AAO in this case is found in Uniform System of Accounts ("USoA") General Instruction 7, which provides as follows:

7. Extraordinary Items.

It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future. (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate. To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. (See accounts 434 and 435.)

6. Based on this definition, the Judge concluded that since the amount at issue in this case is more than approximately 5 percent of Ameren Missouri's net income the item is deemed to be "extraordinary" and thus the Company can unilaterally record a regulatory asset for it.

7. Despite the Judge's conclusion, USoA General Instruction 7 has nothing to do with the USoA Accounts that govern the ability to record regulatory assets (Account 182.3) or regulatory liabilities (Account 254). Rather, General Instruction 7 deals with an extraordinary

item on the income statement that would “distort the current year’s income” *See* USoA Account Nos. 434 and 435. Indeed, USoA Accounts 434 and 435 (titled “Extraordinary income” and “Extraordinary deductions,” respectively) specifically refer to General Instruction 7. However, the Accounts governing regulatory assets and liabilities (182.3 and 254) do not reference General Instruction 7 at all, further cementing the fact that General Instruction 7 has nothing to do with regulatory assets or liabilities and thus has nothing to do with an AAO request. Stated another way, Account Nos. 182.3 and 254 can prevent some charges and credits from entering into the current period determination of net income (like those recorded to Account Nos. 434 and 435). However, since General Instruction 7 only applies to items which *are* included in the determination of net income (be it ordinary or extraordinary net income), it has nothing to do with whether an item can be deferred to Account 182.3 (regulatory assets) or Account 254 (regulatory liabilities) and, as a result of that deferral, *not* included in the determination of net income.

8. Not only do the specific terms of General Instruction 7 and Accounts 434 and 435 demonstrate that they have nothing to do with regulatory assets or liabilities (and that therefore the need for a Commission order is not eliminated), but the specific terms of Accounts 182.3 and 254 and other USoA definitions demonstrate that the Commission must act on these facts.

9. With respect to these accounts the USoA provides as follows:

182.3 Other regulatory assets. A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, *resulting from the ratemaking actions of regulatory agencies* (See Definition No. 30. [sic]¹) (emphasis added).

¹ The USoA contains a typographical error and erroneously points back to Definition No. 30, with is the definition of “regional market.” When the regional market definition was added the next definition (“regulatory assets and liabilities”, which was formerly Definition No. 30), was not re-numbered.

254 Other regulatory liabilities. This account shall include the amounts of regulatory liabilities, not includable in other accounts, imposed on the utility *by the ratemaking actions of regulatory agencies* (See Definition No. 30. [sic]) (emphasis added).

10. The general definition of “regulatory assets and liabilities” is found in Definition No. 31 (see prior footnote) of the USoA, as follows: “Regulatory Assets and Liabilities are assets and liabilities *that result from rate actions of regulatory agencies. . .*” (emphasis added).

11. As can be seen from the relevant USoA provisions, cited above, for a state-regulated public utility, the USoA does not allow the creation of a regulatory asset or regulatory liability unless the state regulatory commission has acted through a ratemaking action because the USoA expressly provides that a regulatory asset or liability must “result from” such an action. This is why utilities always seek Commission approval for AAOs regardless of the amount at issue.

12. Moreover, it is fundamentally illogical to conclude that General Instruction 7 eliminates the need for a Commission order when the amount in question is relatively large (here, approximately \$36 million, or approximately 9 percent of Ameren Missouri’s 2012 net income), but would require Commission action when the amount is small (e.g., \$1 million, or just 0.2 percent of net income). Put another way, why would the USoA give utilities the unilateral ability to record a regulatory asset when the item is large but require the involvement of the Commission when it is small? Logically, one would expect that the Commission would need to be affirmatively act when the item is larger and would not need to concern itself with acting when the item is small.

13. In short, neither the Commission nor the utility must “comply” with General Instruction 7 when an accounting authority order is at issue because all that the USoA requires before a regulatory asset or liability can be created is an action by the Commission.²

14. That this is true is evidenced by the Affidavit of Lynn M. Barnes, who is Ameren Missouri’s Vice President Business Planning and Controller and who is a Certified Public Accountant with approximately 16 years of experience in accounting for regulated public utilities. *See also* the Affidavit of James K. Guest, the former Chief Accountant for the Federal Energy Regulatory Commission who spent 32 years working for the FERC, and who agrees with Ms. Barnes’ conclusions about General Instruction 7 and the operation of Accounts 182.3 and 254.³ As Ms. Barnes explains, a condition precedent to the ability of a regulated entity such as the Company to record a regulatory asset is action by the rate regulator that indicates that recordation of the regulatory asset is appropriate. The actions can include an established policy of the regulator applicable to the facts at issue, a formal rule of the regulator applicable to the facts at issue, a decision of the regulator in a case involving another similar firm on similar facts, or a regulator’s established practice applicable to the facts at issue. In the case of a request for accounting authority to record an AAO for an item for which none of the foregoing exist, there is only one way that a regulatory asset could be recorded: a specific Commission order involving the utility at issue and the facts at issue.⁴ Here, there is no rule, past order, practice, or policy that addresses facts that are the same or even similar to the facts underlying Ameren Missouri’s

² This does not mean that the Commission cannot consider how extraordinary the event leading to the AAO request may have been, or even consider the amount requested for deferral. The point is that General Instruction 7 does not dictate this to the Commission, nor does it obviate the need for a Commission order.

³ Ms. Barnes’ and Mr. Guest’s Affidavits are attached hereto and incorporated herein by this reference as Exhibits A and B, respectively.

⁴ Or, the Commission could adopt a rule of general applicability through a rulemaking order that provides the equivalent of a utility-specific order.

AAO request in this case, meaning that in the absence of an AAO Ameren Missouri simply could not record a regulatory asset.

15. That this is so is also borne out by the requirements of Generally Accepted Accounting Principles (“GAAP”), as Ms. Barnes also explains. As the Commission is likely aware, the U.S. Securities and Exchange Commission (“SEC”) requires all publicly traded companies (like Ameren Corporation) and their subsidiaries (including Ameren Missouri) to comply with GAAP to insure the comparability and consistency of financial information that is relied on by investors and creditors. Accounting Standards Codifications (“ASC”) are the highest form of guidance in the GAAP hierarchy that must be followed. ASC-980-340-25-1⁵ governs whether a utility can create a regulatory asset (ASC 980-405-25.1 governs regulatory liabilities). Under ASC-980-340-25-1, only if there is a “[r]ate action of a regulator” can a utility record a regulatory asset. If there is such a rate action⁶ then and only then can a cost that would otherwise be charged to expense on the income statement instead be capitalized on the balance sheet as a regulatory asset. This is consistent with the USoA, which does not speak in terms of “rate action” but does require, as noted earlier, that regulatory assets or regulatory liabilities “result from” the ratemaking actions of regulators. The GAAP requirements have, in effect, been applied consistently with the USoA requirements, meaning, as noted, that there must have been a policy, practice, order involving similar utility on similar facts or a utility-specific order on the facts at issue. *See Barnes Affidavit, attached.* Indeed, the very act of the Commission refusing to issue an AAO here undermines the existence of the requisite ratemaking action because of the Commission’s decades-long practice of issuing AAOs before regulatory assets are recorded, as discussed below.

⁵ ASC-980 was formerly known as “FAS 71.”

⁶ Accountants and independent outside auditors have interpreted the phrase “rate order” to include an order in a rate case, or a separate order (such as an accounting authority order).

16. In summary, one cannot reconcile the argument that General Instruction 7 eliminates the need for an AAO in this case with the requirements of USoA Accounts 182.3 and 254 and ASC-980-340-25-1. General Instruction 7 simply has nothing to do with regulatory assets or liabilities.

Eliminating AAOs Is Directly Contrary to Decades of Commission Practice

17. Missouri courts have recognized that

[t]The Commission has the regulatory authority to *grant* a form of relief to the utility in the form of an accounting technique, an Accounting Authority Order, (hereinafter called an "AAO") which allows the utility to defer and capitalize certain expenses until the time it files its next rate case.

State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n, 978 S.W.2d 434, 436 (Mo. App. W.D. 1998) (emphasis added). The verb “grant” connotes an affirmative action by the Commission; *not* issuing an order cannot constitute “granting” relief. The Commission’s authority to grant AAOs has been expressly or impliedly sanctioned by the courts since at least as far back as 1993. *See, e.g., State ex rel. Office of the Public Counsel v. Pub. Serv. Comm’n*, 858 S.W.2d 806 (Mo. App. W.D. 1993). A LEXIS search of electronically available Commission decisions reflects the issuance of orders granting accounting authority to defer items on a utility’s books as far back as 1981. The Commission itself maintains a compendium of past decisions on various topics on its website (Compendium Order Reference by Topic.xls) containing references to dozens of AAO cases, none of which, to the knowledge of the undersigned counsel, ever involved a conclusion by the Commission that a utility can defer an item from one period to a future period absent some kind of Commission order or rule.

18. The bottom line is that the Commission has issued and must issue AAOs in many circumstances (again, absent prior orders or rules that establish a policy or practice sufficient to allow recording of a regulatory asset as to specific items on specific or similar facts) in order for a utility to defer the item on its books to a regulatory asset and thus have the opportunity to ask for recovery in a future general rate proceeding. Reversing course now (under the mistaken belief that a general instruction dealing with the income statement renders AAOs unnecessary) will, effectively, preclude recordation of regulatory assets in a number of circumstances (a) even if the Commission believes that deferral for later rate consideration is appropriate on a given set of facts or (b) even if, when a later rate case comes up, the Commission might have wanted to be able to consider the item for which the deferral request was made. Without the necessary Commission order, an item arising prior to the test year in that later rate case very likely cannot be considered for it would be attacked as an out-of-test year item no longer carried on the utility's books.

Conclusion

19. For the reasons outlined above, the Company respectfully suggests to the Commission that it must adhere to its longstanding practice of affirmatively deciding AAO requests that are put before it, regardless of the dollar amount at issue or its relationship to total net income. For the reasons urged in the Company's briefs filed in this case, the Company urges the Commission to grant it the AAO it seeks so that the sum can be considered in a future general rate proceeding. There is a strong reason, as outlined above, why the Commission has for decades considered and, when it determined it appropriate to do so, granted AAOs. The incorrect theory that General Instruction 7 allows the Commission to avoid issuing AAOs turns

that longstanding practice on its head and if followed in this case, effectively means that Ameren Missouri can never have an opportunity to seek recovery of its losses from the ice storm at issue.

WHEREFORE, Ameren Missouri hereby files this supplemental response to the *Order Directing Filing* and urges the Commission to decide this case in its favor, on the merits by issuing the requested AAO.

Respectfully submitted,

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Dated: September 9, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on counsel for the parties of record on the 9th day of September, 2013.

/s/ James B. Lowery _____
James B. Lowery

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CITY OF ST. LOUIS)

)

STATE OF MISSOURI)

AFFIDAVIT OF LYNN M. BARNES

Lynn M. Barnes, being first duly sworn upon her oath, states as follows:

1. My name is Lynn M. Barnes. I am employed by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") as Vice-President, Business Planning and Controller.

2. I am a Certified Public Accountant duly licensed in the State of Missouri, and have approximately 16 years of experience in regulatory accounting for public utilities under the Uniform System of Accounts ("USoA") and Generally Accepted Accounting Principles ("GAAP").

3. A regulatory asset or regulatory liability for electric utilities is governed by Accounts 182.3 and 254, respectively, of the Uniform System of Accounts ("USoA"), and by Accounting Standard Codification ("ASC") 980-340-25-1.¹ An ASC is the highest form of guidance in the Generally Accepted Accounting Principles ("GAAP") hierarchy. Ameren Missouri is required by U.S. Securities and Exchange Commission requirements to adhere to GAAP and is required by Federal Energy Regulatory Commission rules (and by rules of the Missouri Public Service Commission) to comply with the USoA.

¹ This ASC was formerly codified as "FAS 71".

4. USoA Account Nos. 182.3 and 254 are not related to USoA General Instruction 7, the definition in which applies to two different USoA Accounts, Account Nos. 434 and 435. Account Nos. 182.3 and 254 can prevent some charges and credits from entering into the current period determination of net income (like those recorded to Account Nos. 434 and 435). However, since General Instruction 7 only applies to items which *are* included in the determination of net income (be it ordinary or extraordinary net income), it has nothing to do with whether an item can be deferred to Account 182.3 (regulatory assets) or Account 254 (regulatory liabilities) and, as a result of that deferral, *not* included in the determination of net income.

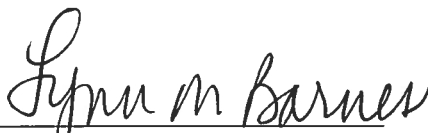
5. Because General Instruction 7 has nothing to do with whether and when a regulatory asset or liability can be recorded, the definition of “extraordinary” therein provides no authority to record the item, regardless of the percent of net income the item to be deferred.

6. Under both the USoA and GAAP, a regulated entity cannot record a regulatory asset absent ratemaking action by the applicable regulator. The necessary ratemaking action can be a specific order, such as the accounting authority order (“AAO”) sought in this case based upon a new and specific set of facts, an order in a rate case based upon specific facts, an order in another case involving another utility under sufficiently similar facts, a rule applicable to certain factual situations, or a sufficiently established policy or practice of the regulator that would apply to a given set of facts. The need for an order, rule, or sufficiently established policy or practice of the regulator in order to record a regulatory asset is borne out by the criteria contained in Ameren Missouri’s outside auditor’s (PricewaterhouseCooper, or “PwC”), Guide to Accounting for Utilities and Power Companies that addresses when an item can be recorded as a regulatory asset. According to applicable criteria in PwC’s Guide, to record a regulatory asset for an item


for later consideration for rate recovery in a rate proceeding, the cost must have been "treated by the regulated utility's regulator as an allowable cost of service item in prior regulatory filings," must have been "treated as an allowable cost by the same regulator in connection with another entity's filing," or must be in accord with "the regulator's general policy to allow recovery of the incurred cost."

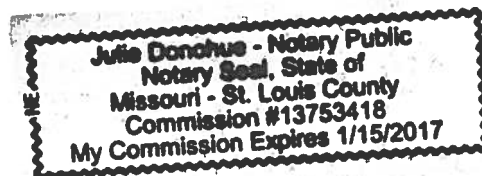
7. There has been no rate treatment (order, policy, prior treatment, rule) of this Commission to allow recovery of the cost at issue here. Consequently, without the requested AAO the Company cannot record a regulatory asset.

Further affiant sayeth not.


Lynn M. Barnes

Subscribed and sworn to before me this 9th day of September, 2013.


Notary Public



COUNTY OF ANNE ARUNDEL)
)
STATE OF MARYLAND)

James K. Guest, being first duly sworn upon his oath, states as follows:

2. In my positions at FERC, I was responsible for determining individual companies' compliance with the Commission's Uniform Systems of Accounts and related reporting

requirements, developing and directing rulemaking proposals for needed changes in those requirements, and providing counsel and advice on accounting matters to senior Commission staff, the Commissioners, and the Chairman. Since my retirement from federal service, I have provided professional consulting services to the regulated electric, natural gas and oil pipeline industries primarily through my association with BMWQ.

3. The recognition of a regulatory asset or regulatory liability for electric utilities is governed by the instructions to Accounts 182.3 and 254, respectively, contained in the Federal Energy Regulatory Commission's Uniform System of Accounts for Public utilities and licensees ("USoA"). Ameren Missouri is required under FERC rules (and by rules of the Missouri Public Service Commission) to comply with the USoA. The FERC's accounting instructions for the recognition of regulatory assets and liabilities are consistent with the accounting principles for recognition of regulatory assets and liabilities under U.S. Generally Accepted Accounting Principles (GAAP) as initially set forth in the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 71. (FAS 71).¹

4. USoA Account Nos. 182.3 and 254 are asset and liability accounts, respectively that are reported on an entity's balance sheet. These accounts and the amounts properly recorded in them are not related in any way to USoA General Instruction 7, *Extraordinary Items*.

5. General Instruction 7 governs the amounts that can properly be included in Accounts 434, Extraordinary income and 435, Extraordinary deductions. Accounts 434 and 435 are income and expense accounts respectively that are reported on an entity's income statement. General Instruction No. 7 defines when an item of income or expense can be considered "extraordinary" and therefore properly included in Accounts 434 or 435 and reported on the

¹ FAS 71 is now codified as Accounting Standards Codification 980-340-25-1.

income statement under a caption of extraordinary. It defines when an item of income or expense must be included in the net income resulting from normal operations and when it can be accounted for and shown separately in the determination of net income as something resulting from other than normal operations. General Instruction 7 has no applicability whatsoever in determining when an item of income or expense that would otherwise be included in an income or expense account but for the rate action of regulators is instead recognized as a regulatory asset or liability.

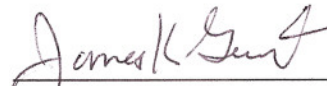
6. Because General Instruction 7 has nothing to do with whether and when a regulatory asset or liability can be recorded, the definition of “extraordinary” contained therein provides no authority to record the item as a regulatory asset or liability, regardless of what percent the item may be in relation to net income..

7. In applying the USoA during my 32 year career at FERC, the Chief Accountant’s office did not apply General Instruction 7 to requests for authority to establish regulatory assets or regulatory liabilities. As I mentioned earlier, General Instruction 7 has nothing to do with the recordation of regulatory assets or regulatory liabilities. And it certainly would be illogical to apply General Instruction 7 to regulatory assets and liabilities in such a way that a utility would need FERC approval (or state commission approval) to record a relatively small regulatory asset (i.e. one that is less than "extraordinary" in amount) but would not need approval to record a large one.

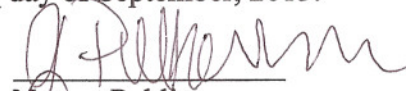
8. Under the USoA, a regulated entity cannot record a regulatory asset absent rate action by the applicable regulator. What constitutes a rate action by a regulator is construed at the FERC more broadly than just rate case orders. A rate action of a regulator can include, but is not limited to, a specific order in a rate case based upon specific facts, an order in another case involving another utility under sufficiently similar facts, a rule applicable to certain factual

situations, or a sufficiently established policy or practice of the regulator that would apply to a given set of facts.

Further affiant sayeth not.


James K. Guest

Subscribed and sworn to before me this 9 day of September, 2013.


Notary Public

