BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff Filing to Implement Changes to Its Electric Energy Efficiency Programs	))))	**Case No. ET-2012-0011**

PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION

COMES NOW the Office of the Public Counsel and for its Motion for Reconsideration states as follows:

1. On October 25, 2011, Union Electric Company, d/b/a Ameren Missouri, filed tariffs ("the proposed tariffs") designed to implement changes to its residential energy efficiency programs. The tariffs carry a November 24, 2011 effective date. In its filing, Ameren Missouri claimed that the proposed tariffs will "bridge the gap" between the expiration of its recently-defunct energy efficiency programs, which Ameren Missouri allowed to expire on September 30, 2011, and the Commission's issuance of an order regarding Ameren Missouri's upcoming Missouri Energy Efficiency Investment Act (MEEIA) filing.

2. On November 14, in response to a Commission order, Public Counsel, the Missouri Department of Natural Resources (MDNR), and the Staff of the Commission filed recommendations regarding the tariffs. Of the three parties filing, only the Staff recommended that the Commission approve the tariffs, and even the Staff did so with significant reservations. MDNR recommended neither approval nor suspension. Public Counsel asked the Commission to reject the tariffs because they are not in the public interest and to order Ameren Missouri to file other tariffs that are in the public interest.

3. Anticipating that the Commission might take the same inexplicably limited view of its authority to order a utility such as Ameren Missouri to fulfill its obligation to provide safe and adequate service at just and reasonable rates as the Commission did in Ameren Missouri's recent rate case,[1] Public Counsel in its motion to reject the tariffs explained the basis for the

[1] This limited view is confounding because it flies in the face of the very purpose of regulation, and because it is directly counter to a pair of Commission decisions issued just two months before the Ameren Missouri decision. In the recent Kansas City Power & Light Company and KCP&L Greater Missouri Operations company rate cases, the Commission ordered those companies to continue existing DSM programs. The Commission stated:

> The over-arching DSM issue is whether the Commission should order the continuance of a DSM program at all. Because of the gap between the MEEIA rules being implemented and the end of the Regulatory Plan, there is a need for the Commission to set out guidance for KCP&L and GMO with regard to the continuance or implementation of DSM programs and cost recovery for those programs. Despite the success and forward momentum created by the implementation of their existing DSM programs and the fact that the programs are currently continuing, both KCP&L and GMO have expressed a position to slow spending for the programs. This decision comes even though both companies realize that they, as well as the ratepayers, stand to benefit from continuing efforts to achieve more DSM programs and improved DSM penetration.
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> The Companies have argued that the Commission should reject Staff's and MDNR's recommendations to direct the Companies to invest in DSM programs without any assurance that the full costs and lost revenues associated with these programs will be recognized in rates. Instead, the Companies urge the Commission to implement the cost recovery issue expeditiously, including the recovery of lost revenues associated with the specific DSM programs. While the Companies express a need to have an appropriate cost recovery mechanism, they did not recommend a new recovery mechanism in this case except to propose in their briefs that the mechanism be consistent with that recently ordered for Ameren.
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> The Commission concludes that the continuance of the DSM programs is in the public interest as shown by the customer participation and clear policies of this state to encourage DSM programs. In the absence of a clear proposal for a cost recovery mechanism and during the gap between the end of the true-up for this case and the implementation of a program under MEEIA, the Commission concludes that the Companies should continue to fund and promote or implement, the DSM programs in the 2005 Agreement (KCP&L only), and in its last adopted preferred resource plan (both KCP&L and GMO). In addition, the Commission directs that those costs be placed in a regulatory asset account and be given the treatment as further described below. (ER-2010-0355 Report and Order, issued May 4, 2011, pages 116-117)

Commission's authority to reject tariffs that it finds to not be in the public interest and order the filing of new tariffs.

4. On November 21, Ameren Missouri filed a response to Public Counsel's motion to reject the tariffs. Most notably, in that response Ameren Missouri did not argue – or even suggest – that the Commission lacked statutory authority to reject the tariffs and order new tariffs to be filed as Public Counsel requested.

5. On November 22, the Commission issued a "Notice Regarding Tariffs." In that notice, the Commission acknowledged that the tariffs it was approving[2] were "inadequate" to serve the public interest. The Commission approved the tariffs not because they were **in** the public interest, but because some other course of action would have been **more detrimental** to the public interest. If the Commission's authority truly is limited to simply rubber-stamping utility actions that are not as bad as they could conceivably be, then there is little public protection in having a public service commission. But of course, the Commission's authority is not so limited. The real question here is the Commission's willingness to exercise its authority.

6. In its Notice Regarding Tariff, the Commission faulted Public Counsel for not citing "specific legal authority that would allow the Commission to order Ameren Missouri to spend additional money on energy efficiency at this time." Unfortunately, utilities promoting energy efficiency in Missouri is too new a concept for there to be any "**specific** legal authority," about energy efficiency spending but there is ample general authority.

Nowhere did the Commission mention any question about its authority to order KCP&L and KCP&L-GMO to continue DEM programs that are clearly in the public interest. Apparently the Commission has only very recently become doubtful about its authority, or fearful of exercising it. Nothing in the record in this case or in Case No. ER-2011-0028 explains this doubt or fear.

[2] Although the Commission did not use the word "approve," it made an explicit affirmative decision to allow them to become effective on November 25, and took a formal vote on that decision.

7. The primary source of the Commission's authority is, of course, statutory. With respect to electric utilities, the Commission's powers are pervasive. Section 393.190(1) RSMo 2000 provides that: "The commission shall … [h]ave general supervision of all … electrical corporations." Section 393.190(2) RSMo provides that:

> The commission shall … examine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying … electricity for light, heat or power … [and] have power to order such reasonable improvements as will best promote the public interest … and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, lines, conduits, ducts and other reasonable devices, apparatus and property of … electrical corporations….

This statutory authority has always been viewed to be extremely broad:

> State regulation takes the place of and stands for competition; that such regulation, to command respect from patron or utility owner, must be in the name of the overlord, the State, and to be effective must possess **the power of intelligent visitation and the plenary supervision of every business feature to be finally (however invisibly) reflected in rates and quality of service.**[3]

8. In light of its "principle purpose … to serve and protect ratepayers,"[4] one would expect the Commission to view its authority as broad enough to accomplish that end, rather than simply assuming that its authority is too limited. Neither Ameren Missouri nor the Commission itself has referred to any legal authority – specific or otherwise – to support the notion that it cannot require a utility to make investments necessary to "best promote the public interest."[5]

WHEREFORE Public Counsel respectfully requests that the Commission reconsider its Notice Regarding Tariff issued November 22, 2011.

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[3] May Dep't Stores Co. v. Union Electric Light & Power Co., 341 Mo. 299, 316 (Mo. 1937); emphasis added.

[4] State ex. rel. Capital City Water Co. v. PSC, 850 S.W.2d 903, 911 (Mo. App. W.D. 1993), citing State ex rel. Crown Coach Co. v. Public Service Commission, 179 S.W.2d 123 (1944).

[5] Section 393.190(2) RSMo

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 2nd day of December 2011.

By: _____