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 of an Accounting Authority Order Relating to its Electrical Operations.	))))	**Case No. EU-2011-0027**

INITIAL POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

I. INTRODUCTION

This case involves the request of Union Electric Company d/b/a Ameren Missouri for authority to defer for possible future recovery from future customers certain revenues that it might have received from one particular customer three years ago if the weather had been different. Notably Ameren Missouri's request necessarily assumes a revenue stream that would have resulted if only one aspect of the weather[1] three years ago had been different. In the recent past, the Commission has had requests from several utilities[2] seeking to shift the risk, from shareholders to ratepayers, that weather can reduce profits. Unless and until the Commission chooses to address the weather risk – and its attendant effect on return on equity and cost of debt – in a comprehensive way, it should not give in to utility entreaties to shift

[1] Ameren Missouri does not want the Commission to consider what the revenue stream might have been if there had been record cold but no ice, or even record cold with the ice, because those scenarios might have resulted in increased profits for Ameren Missouri and Ameren Missouri would not be requesting extraordinary ratemaking treatment to refund those profits.

[2] In addition to Ameren Missouri, The Empire District Electric Company, Missouri Gas Energy, and Missouri American Water have all pursued (to a greater or lesser extent) authority to recover potential lost profits from ratepayers.

the risk for isolated events.

If the Commission allows Ameren Missouri to defer these potential revenues for possible future recovery, it would be a bailout, plain and simple. Ameren Missouri fought with virtually every non-utility party for two years and two rate cases to get authority to use a Fuel Adjustment Clause (FAC) and finally won that authority in Case Number ER-2008-0318. No sooner did it win that battle than it was faced with the downside of the FAC: its requirement that Off-System Sales (OSS) revenues be flowed back to ratepayers. Ameren Missouri sought to jettison that downside while keeping all the upside attributes of the FAC by asking the Commission to rehear its Report and Order and change the FAC. The Commission's order denying that request for rehearing is dry and focuses on the timing of changing the FAC, but in the Agenda discussions, it was clear that the Commission at that time had no inclination to take that downside risk away from Ameren Missouri's shareholders and put it on ratepayers. Neither should this Commission, and that is just one of the myriad of reasons why the Commission should deny the request for an Accounting Authority Order (AAO).

This brief will address just two of these many reasons: 1) that the Uniform System of Accounts (USOA) does not allow deferral of the potential revenues at issue here because they would have occurred (if at all) in a prior period, not the current period; and 2) the potential revenues not earned because of the ice storm were made up for by the AEP and Wabash contracts, so the ice storm did not cause any unmitigated loss of revenues.

II. THE POTENTIAL REVENUES WOULD HAVE BEEN EARNED IN A PRIOR PERIOD, AND ARE NOT ELIGIBLE FOR DEFERRAL

The critical section of the USOA – and the one cited by Ameren Missouri in its application for authority in this case – states that:

> 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 forseeable 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.)[3]

There is no controversy over when the revenues at issue would have been received, if they would have been received. For Ameren Missouri, the current period began January 1, 2012. The current period when Ameren Missouri filed its application began January 1, 2011. The potential revenues that Ameren Missouri seeks to defer would have been received in 2009 and 2010, before either of those periods began. The very authority that Ameren Missouri relies upon for deferral precludes the deferral of items that occurred before the current period. Ameren Missouri is simply too late to defer these potential revenues pursuant to the USOA.

III. THE OPERATION OF THE FAC, NOT THE ICE STORM, CAUSED THE REVENUE EROSION AT ISSUE

After it became apparent that Noranda's load would not soon return after the January

[3] USOA, Staff Exhibit 5, page 8.

2009 ice storm, Ameren Missouri entered into off-system sales contracts, which produced revenues in excess of the revenues that Ameren Missouri would have received had Noranda continued to operate normally.[4] The regulatory treatment of those revenues – pursuant to the FAC that Ameren Missouri fought to establish – is the real cause of Ameren Missouri's complaints. If Ameren Missouri had not been operating under its new FAC at the time of the ice storm, it would have actually been better off (would have achieved higher profits) from selling power to AEP and Wabash than Noranda. If the 2009 ice storm was truly the extraordinary event for which Ameren Missouri requests accounting authority, then the receipt of the Wabash and AEP revenues eliminated any need for such accounting authority.[5] The fact is that, like Missouri Gas Energy in Case Number GU-2011-0392, Ameren Missouri did not suffer a revenue loss from the extraordinary weather event and should not be rewarded by being granted an opportunity to recover from future customers the revenue it might have received from Noranda, but actually received from AEP and Wabash instead.

WHEREFORE, Public Counsel respectfully offers this Post-hearing Brief and prays that the Commission conform its decision in this case to the arguments contained herein.

[4] Transcript, page 146.

[5] Indeed, if the ice storm were truly the extraordinary event, then Ameren Missouri could have requested accounting authority soon after the ice storm.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 30th day of May 2012.