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-2012-0027**

PUBLIC COUNSEL'S APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states that the Commission's November 26, 2013 Report and Order is unlawful, unjust and unreasonable, is arbitrary and capricious, and is an abuse of discretion for the following reasons:

1. The Commission should not have granted Union Electric Company's d/b/a Ameren Missouri (Ameren) request for an accounting authority order (AAO) because there was literally nothing to defer. During the relevant period, Ameren recovered all of its fixed costs and earned a profit. The amounts at issue in this case simply constitute additional profits that Ameren might have earned had the ice storm not occurred and nothing else changed. The most accurate description of the amounts at issue might be "unearned potential additional profits," and nothing in the Uniform System of Accounts (USOA) allows for such to be deferred.

2. The Report and Order is arbitrary and capricious because it is in direct conflict with the Commission's decision in Case No. GU-2011-0392, involving an AAO request by the Southern Union Company. In that case, Southern Union requested an AAO to defer "unearned potential additional profits" that it might have made if the May 2011 Joplin tornado had not reduced sales. Although it was the exact same request that Ameren makes here, the Commission denied Southern Union's request, holding that the USOA does not allow the Commission to create an item to be deferred. That was, and is, the correct reading of the USOA and it was arbitrary and capricious for the Commission to hold otherwise here without any explanation.

3. Even if "unearned potential additional profits" could under some circumstances be deferred pursuant to an AAO, Ameren's request must be denied because it seeks to defer an item from a past period. An AAO serves only to preserve items from a current period to be considered in a future period. It cannot "resurrect" an item from a past period for consideration in a future period. This is clear from the Commission's discussion of the USOA at pages 12-14 of the Report and Order in Case No. GU-2011-0392 (a similar discussion is markedly absent in the Report and Order in this case). It is also clear from Missouri case law: "The whole idea of AAOs is to defer a final decision on **current** extraordinary costs until a rate case is in order." (Missouri Gas Energy v. PSC, 978 S.W.2d 434, 438 (Mo. Ct. App. 1998); emphasis added.)

4. The Commission abused the discretion it has to grant AAOs because, in this case, recovery of deferred amounts in rates in a future rate case would be unlawful retroactive ratemaking. Retroactive ratemaking is the recovery in a subsequent case of revenue that a utility failed to generate in a prior period.[1] UCCM describes retroactive ratemaking as follows:

> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.[2]

While UCCM did not address the type of "unearned potential additional profits" at issue here, the prohibition against retroactive ratemaking would clearly extend to them as well. Because UCCM prohibits the recovery of such amounts from future ratepayers in a subsequent rate case,

[1] State ex rel. Utility Consumers Council, Inc. v. Public Service Com., 585 S.W.2d 41, (Mo 1979), referred to herein as UCCM.

[2] *Ibid.*

it was unlawful and an abuse of discretion for the Commission to allow the deferral of such amounts.

5. The Commission entirely failed to address the critical distinction between this case and every other AAO granted by the Commission: in this case, the Commission twice established just and reasonable rates in rate cases (considering all relevant factors) **after** the alleged extraordinary event and **before** granting the AAO.

6. The opinion of the Western District Court of Appeals handed down on May 14, 2013 is instructive and reinforces why the requested AAO is illegal and unreasonable. The Court, at page 27 of the Slip Opinion, refers to the monies at issue here as "lost retail revenues [Ameren Missouri] had assumed it would receive when setting its rates in the 2008 general rate case." The Court repeatedly refers to "lost revenues" or "revenue loss"[3] while repeatedly noting that Ameren Missouri refers to "fixed costs."[4] The Court, at page 39, concludes that:

> [T]he risk of a dramatic loss of retail revenue is a business risk every utility faces.... [T]he risk of lost revenue is simply not a risk a utility is authorized to remediate with a fuel adjustment clause.

Similarly, "the risk of lost revenue is simply not a risk a utility is authorized to remediate with" an AAO. The Court thus has already addressed one of the critical issues that the Commission got wrong in its Report and Order: what Ameren seeks to defer is lost or ungenerated retail revenue, not unrecovered fixed costs. Because it is ungenerated revenue, there is nothing to be deferred; no item that can be recorded.

[3] See, *e.g.*, pages 6, 26, 38, 39.
[4] See, *e.g.*, pages 36, 32, 37.

WHEREFORE, Public Counsel respectfully requests that the Commission rehear and reconsider its Report and Order and upon such rehearing and reconsideration, vacate the Report and Order and deny the application for an Accounting Authority Order.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed, electronically, to all counsel of record on December 24, 2013.

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