BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company d/b/a Ameren Missouri	))))	**File No. EO-2012-0074**

STAFF'S RESPONSE TO AMEREN MISSOURI'S RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and, because Union Electric Company d/b/a Ameren Missouri does not explicitly address the impact of the Missouri Court of Appeals May 14, 2013 opinion in Case No. WD75403 on the first four issues in the list of issues in this case and also argues an ultimate refund amount, exclusive of interest, in its response to the Commission's June 11, 2013 *Order Directing Filing*, Staff responds to Ameren Missouri's response as follows:

1. Although the parties listed, tried and briefed five issues for the Commission to decide in this case, in its response to the Commission's *Order Directing Filing* Ameren Missouri suggests that the Commission need only address the fifth issue—the amount to be refunded, which it again argues the Commission should resolve in its favor.

2. Ameren Missouri's suggestion the Commission need not address the first four issues is in direct contradiction to its December 5, 2011, reply to MIEC's response to Ameren Missouri's early request for hearing where, in paragraphs three and four, it argued:

> 3. Regarding the substance of MIEC's Response, its premise is that it is "impermissible under Missouri law" for the Commission to examine the prudence of Ameren Missouri's net fuel cost activities for the period covered by this docket because of the application of res judicata or collateral estoppel principles. That premise is false as a matter of law. As the Commission has previously recognized, the Commission is not bound by those doctrines. See, e.g., In Re: The matter of Southwestern Bell

> Telephone Co.'s Proposed Radio Common Carrier Tariff, 1990 Mo. PSC LEXIS 52 ("The Commission is not strictly bound by the principles of stare decisis, res judicata or collateral estoppel."). MIEC's allegation that the Commission must apply those principles is also contradicted by a recent Commission order in the accounting authority order case where Ameren Missouri seeks permission to defer on its books for later ratemaking consideration the fixed costs it could not recover as a result of the ice storm. As the Commission knows, that ice storm led to the proposed prudence disallowance at issue in the first prudence review case, and the proposed prudence disallowance at issue in this case. In that recent order, the Commission expressed its view that it is free to change or abrogate its prior orders, including prior orders issued in a prudence review conducted under the Commission's FAC rules. See Order Denying Motions to Dismiss, File No. EU-2012-0027 (Oct. 26, 2011) (where the Commission cited Section 386.490.3 as authority to change its prior order issued in Case No. EO-2010-0255, which MIEC claims must be given permanent, preclusive effect).
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> 4. Not only is the premise of MIEC's Response incorrect as a matter of law, but MIEC requests that the Commission deny Ameren Missouri the process that it is due under the Commission's FAC rules simply because of MIEC's conclusory and unsupported assertion that Ameren Missouri's dispute about the amount at issue in this new prudence review is "baseless." Ameren Missouri does not believe its dispute is "baseless," but the validity of its dispute can be tested by MIEC in due course, as can any other factual contention, as part of the adjudicative process reflected in the Commission's FAC rules and that is triggered when a prudence disallowance has been proposed. The Commission should not, and cannot deny Ameren Missouri's access to that process.

3. While in its response Ameren Missouri impliedly acknowledges that the Commission's decisions on the first four issues are controlled by the Court's opinion, those issues are still before the Commission for decision, and the Commission should address each in its report and order.

4. As to the fifth issue, Ameren Missouri argues in its response that the amount, without interest, that the Commission should order be refunded is $23,042,791—the $26,342,791 it admits Staff correctly calculated[1] offset by $3.3 million. Ameren Missouri's sole support for its position that the "W" factor in its fuel adjustment

[1] Ex. 5, Ameren Missouri witness Weiss Direct, p. 3, ll. 9-19.

clause results in a $3.3 million offset to the refund amount is the testimony of its employee Gary S. Weiss, Manager of Regulatory Accounting. The *Second Nonunanimous Stipulation and Agreement* attached to Mr. Weiss's direct testimony as Schedule GSW-1 is silent as to why the "W" factor was added to the calculation of the fuel clause adjustment amounts for a period of time. What the settlement document explicitly says about the "W" factor appears only in paragraph 5, which follows:

> 5. The fuel adjustment clause tariff sheets shall also be revised to include an additional reduction in the numerator of the FPA factor in the amount of $300,000 per month during a twelve-month period commencing with the first full month for which new rates from this case are effective, which shall be accomplished in accordance with the following two highlighted changes to AmerenUE's fuel adjustment clause, which are in addition to changes agreed to in the First Nonunanimous Stipulation and Agreement:
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> FPA(RP) = [[(CF+CPP-OSSR-TS-S-W) – (NBFC x SAP)] x __% + I + R - N]/SRP
>
> W = $300,000 per month for the months, _____, 2010 through, _____, 2011. This factor "W" expires on _____, 2011.

5. That the foregoing paragraph includes but one of the many compromises reached by those who executed the stipulation and agreement as a whole, without any signatory to the agreement necessarily viewing any part of the agreement in the same way as any other signatory, is supported not only by the testimony of Staff witnesses Eaves (Ex. 8, p. 21) and Mantle (Ex. 9, Mantle Direct pp. 9-12, Tr. 148-57, 159-63, esp. 154 and 163-63), but also by MIEC witness Meyer (Ex. 11, pp. 2-4) who, with Staff Witness Mantle and others, participated in the negotiations that culminated in that settlement document. To put it simply, unless the Commission is willing to disregard the testimony of Staff witnesses Eaves and Mantle, and MIEC witness Meyer, and also accept the gloss on the settlement agreement Ameren Missouri presents through its

witness Gary Weiss, the Commission has no basis for making the $3.3 million offset Ameren Missouri is advocating. At best, Ameren Missouri is advocating how it viewed that part of the settlement agreement when it executed the agreement, but there is no evidence anyone else shares that view, now or then.

6. The amount Ameren Missouri imprudently collected through its fuel adjustment clause during the period of October 1, 2009, through May 31, 2011, is $26,342,791. Staff still asserts, as it has throughout this case, $26,342,791 is the amount which the Commission should order Ameren Missouri to refund to customers, plus interest accrued at Ameren Missouri's short-term interest rate until refunded, by means of customer refund adjustments made contemporaneously with the next available true-up adjustment of its fuel adjustment clause following a Commission order in this case. That $26,342,791 should not be offset by the $3.3 million Ameren Missouri claims it has already refunded. Staff previously briefed this refund issue at pages 13-14 of its initial brief and pages 11-12 of its reply brief.

WHEREFORE, the Staff of the Missouri Public Service Commission responds to Ameren Missouri's response to the Commission's *Order Directing Filing* as set forth above, and advises the Commission it should: (1) make findings and conclusions of law that address of each of the five listed issues, (2) find the amount Ameren Missouri imprudently collected through its fuel adjustment clause during the period of October 1, 2009, through May 31, 2011, to be $26,342,791 and (3) order Ameren Missouri to refund to its customers the full $26,342,791 plus interest accrued at Ameren Missouri's short-term interest rate until refunded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25th day of June, 2013.

/s/ Nathan Williams