

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company d/b/a            )  
Ameren Missouri's Tariffs to Increase Its                )            Case No. ER-2014-0258  
Annual Revenues for Electric Service.                    )

**OFFICE OF THE PUBLIC COUNSEL'S REQUEST FOR ORDER ON  
RATE CASE EXPENSE AND MOTION TO EXPEDITE TREATMENT**

COMES NOW the Office of the Public Counsel ("OPC" or "Public Counsel") and for its Request for Order on Rate Case Expense and Motion to Expedite Treatment states as follows:

**Background**

On March 3<sup>rd</sup>, several parties in the above-captioned matter filed an "Amended Non-Uniform Stipulation and Agreement Regarding Certain Revenue Requirement Issues" ("Amended Non-Uniform Stipulation") (Doc. No.417). Paragraph 3 of the Amended Non-Uniform Stipulation states as follows:

The parties agree that the revenue requirement in this case shall include the Company's prudently-incurred rate case expenses for this case, calculated in accordance with Staff Witness Sarah Sharpe's position, as reflected in her direct testimony.

On December 5, 2014, Staff filed its Report on Revenue Requirement and Cost of Service (Doc. No. 140), wherein Staff Witness Sarah Sharpe offered the following, in pertinent part, with respect to revenue requirement:

Staff's analysis of rate case expense include a review of actual amounts spent by Ameren Missouri in previous rate cases and a comparison to the estimated expense for the current case. As a result, Staff has determined that an appropriate total amount of rate case expense to be included with Staff's direct filing to be \$1,1104,706 normalized over 18 months, which results in an annual amount of \$796,530. Staff proposes this adjustment with the intention of updating Ameren's total rate case expense throughout the remainder of this case's proceedings through and up to two weeks after the filing of reply/true-up briefs in this case.

Report at 105. Shortly thereafter, Staff Witness Sharpe also states:

The nature of incurring rate case expense in a regulatory proceeding is different from other expenses, as the full expenses related to a rate case filing are not fully known until past the scope of Staff's discovery periods. While Staff's direct filing adjustment includes estimated numbers as supplied by Ameren Missouri, Staff will review documentation of expenses incurred through and up to two weeks after the filing of reply/true-up briefs of this case. Staff requests that Ameren Missouri provide all 2014 rate case proceeding documentation as data is available with a final cut-off date to provide such documentation of April 24, 2015, which would allow Ameren Missouri two weeks to gather the final costs incurred. Staff will require a reasonable amount of time to review all provided expenses and documentation and, as soon as practical after receiving such data, intends to update the normalized rate case expense amount to include only Ameren Missouri's actual incurred expenses.

Report at 106. Finally, Staff Witness Sharpe offers "In this case, Staff is recommending that Ameren Missouri's rate case expenses be treated in the traditional manner; that is, the Company should be allowed an opportunity to recover in rates the full amount of reasonable and prudent rate case expenses through an expense normalization approach." *Id.*

The above-quoted passages from Staff Witness Sharpe are what the parties intended when agreeing to "calculate rate case expenses in accordance with" her testimony.<sup>1</sup> Importantly, the signatory parties to the Amended Non-Unanimous Stipulation did not agree to a certain amount of rate case expense to be included in the revenue requirement in this case, nor did they agree to consider prudent anything Ameren Missouri might claim as rate case expense; those two

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<sup>1</sup> Staff also recommended exclusion of expenses related to consulting costs incurred for a cash working capital lead-lag study (Doc. No. 140 at 105). In agreeing to treat expenses in accordance with Staff Witness Sharpe's testimony, Ameren Missouri agreed to exclude these costs from rate case expense.

questions are still left for resolution by the Commission in its final order in this case consistent with the agreed-to framework articulated in Staff Witness Sharpe's testimony.

On March 19, 2015, the Commission approved the terms of the Amended Non-Unanimous Stipulation (Doc. No. 464). Per Staff Witness Sharpe's testimony, April 24<sup>th</sup>, 2015, was the final date for Ameren Missouri to submit to Staff Ameren Missouri's accounting documentation for rate case expense. As of the date and time of filing the instant document, no update on rate case expense has been filed in the record with the Commission either by Staff, Ameren Missouri or any other party. Public Counsel is mindful that the Commission is set to consider and vote on a final order adjudicating the remaining issues in this case, including final revenue requirement, at its April 29, 2015, Agenda Meeting.

### **Argument**

“However difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse or expediency can be substituted for the requirement that rates be “authorized by law” and “supported by competent and substantial evidence upon the whole record.” *State ex rel. Sprint Spectrum L.P. v. P.S.C.*, 112 S.W.3d 20, 28 (Mo. App. W.D. 2003). Commission orders that fail to consider an important aspect or factor of the issue before it may be reversed as arbitrary or capricious. *State ex rel. GTS Tech. Op. Co. v. P.S.C.*, 116 S.W.3d 680, 692 (Mo. App. W.D. 2003). Indeed, “where an agency’s findings are not based on competent and substantial evidence, the agency has acted unreasonably and arbitrarily.” *State ex rel. Public Counsel v. P.S.C.*, 289 S.W.3d 240, 251 (Mo. App. W.D. 2009).

### Insufficient Record on Rate Case Expense

At the time of filing the instant document, no final accounting has been submitted to the Commission substantiating the level of rate case expense which Staff and/or Ameren Missouri believes should be included in rates in this case. Moreover, the foundational documentation required to support any accounting is similarly absent from the record in this matter. Only incomplete information, some of it not in the form of sworn testimony, has been provided with respect to the hourly rates charged by counsel and consultants in this case. Complete information in the form of evidence is necessary in order for the Commission to determine the reasonableness of the rates charged, whether those obligations were prudently incurred, and what level of cost should be passed on to customers. There is absolutely no documentation concerning the number of hours expended by counsel and consultants in this case. Similarly, information on hours expended is necessary in order for the Commission to determine the reasonableness of the number of hours, whether those hours were prudently-authorized by Ameren Missouri, and what level of attendant cost should be passed on to customers. Finally, there is no information in the record regarding the various ancillary litigation expenses that might be presented for inclusion in rate case expense, such as deposition fees, meals, travel and entertainment expenses. Again, this information is necessary in order to determine whether the costs were prudently-incurred and able to be passed on in rates to customers.

Without this minimum amount of information – the rate charged, the hours worked and expenses incurred – information which is deemed in many analogous contexts to be central to any adjudicative body’s inquiry into fee expenses – the Commission lacks a sufficient record on which it can determine an appropriate level of rate case expense in this matter. *See generally Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223, 250 (Mo. 2013); *Quigley v. Winter*, 598

F.3d 938, 957 (8<sup>th</sup> Cir. 2010); *Hardman v. Board of Educ.*, 714 F.2d 823, 825 (8<sup>th</sup> Cir. 1983) (establishing a twelve-factor test to assess the reasonableness of fees requests); Mo. Rev. Stat. §§ 536.085 & 536.087 (2000 & Supp. 2013). And until a substantial and competent record on this issue is developed, rate case expense must be excluded. This is what the law requires and nothing in the Amended Nonunanimous Stipulation can, does, or was intended to skirt the Commission's legally-mandated evidentiary requirements; indeed, the Amended Nonunanimous Stipulation recognizes additional evidentiary support will be required from the parties to be placed in the record prior to a final order in this case.

Four calendar days have passed since the final documentation on rate case expense was due to Staff from Ameren Missouri. Public Counsel requests that the Commission order the signatory parties to comply expeditiously with the terms of the Amended Nonunanimous Stipulation and file by 1:00pm today the evidence necessary to support the inclusion of any rate case expense in the revenue requirement in this case. Public Counsel requests this action be taken by 1:00pm in order to provide Public Counsel some opportunity, however limited, prior to tomorrow's Agenda Meeting to file its position, if any, regarding the adequacy of the documentation toward meeting Ameren Missouri's evidentiary burden and whether all the claimed costs which might be substantiated as actually incurred were prudent.

### **Conclusion**

WHEREFORE, Public Counsel respectfully submits this Request for Order on Rate Case Expense and Motion for Expedited Treatment seeking compliance with the Amended Nonunanimous Stipulation by 1:00pm on the date of this filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Dustin J. Allison

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 28<sup>th</sup> day of April, 2015, a true and correct copy of the foregoing was served by US mail, postage prepaid, or by electronic delivery addressed to all parties by their attorneys of record.

/s/ Dustin J. Allison