

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

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

PUBLIC COUNSEL'S SUR-SUR-REPLY

COMES NOW the Missouri Office of the Public Counsel ("Public Counsel") and for its Sur-Sur-Reply to the Sur-Reply filed by Union Electric Company d/b/a Ameren Missouri's ("Ameren") on October 13, 2014, states:

Background

1. On September 24, 2014, Public Counsel filed a Request for Order that asked the Commission to strike for lack of foundation and for failure to comply with the Commission's rules, those portions of Union Electric Company d/b/a Ameren Missouri's ("Ameren") tariff sheets requesting a continuation of its Fuel Adjustment Clause ("FAC"), as well as the pre-filed testimony purporting to support the FAC.¹ The Request for Order explains that Ameren did not provide a complete explanation of costs or revenues to be considered under the FAC as required by 4 CSR 240-3.161(3)(H) and (I), and Ameren did not provide sufficient customer notice as required by 4 CSR 240-3.161(3)(A) and 4 CSR 240-20.090(2)(D).²

2. On October 1, 2014, Ameren responded and argued that its filings are consistent with Ameren's past filing practices, and that the rules requiring a "complete explanation" of costs and revenues only require a "narrative explanation of the costs and

¹ See Request for Order, Case No. ER-2014-0258, Doc. No. 65 (September 24, 2014).

revenues” that are to be included in the FAC.³ According to Ameren’s response, the burden of compiling the details of Ameren’s fuel cost and revenue calculations should be upon Public Counsel and all other parties, not Ameren.

3. Public Counsel replied on October 9, 2014, with its Reply Suggestions in Support of the Office of the Public Counsel’s Request for Order (“Reply Suggestions”).⁴ The Reply Suggestions explained that Ameren seeks to improperly shift the burden in discovery away from Ameren and onto the other parties in the case.⁵ Public Counsel also noted that this shift in burden from what the rule envisions incentivizes Ameren to delay and dissemble its responses to discovery requests.⁶

Sur-Sur-Reply to Ameren’s Sur-Reply

4. On October 13, 2014, Ameren filed a sur-reply to Public Counsel’s Reply Suggestions.⁷ Once again Ameren’s primary argument is that its past practice in FAC filings should dictate the Commission’s application of the rule in the instant case.⁸ However, no prior decisions address the specific issue raised here. Merely because an FAC filing has not been challenged previously under the Commission’s filing requirements, does not mean that the filing was sufficient then or now under the rules, nor does it mean that the present filing is sufficient.

² *Id.*

³ *See* Ameren Missouri's Response to Office of the Public Counsel's Request for Order, Case No. ER-2014-0258, Doc. No. 67 (October 1, 2014).

⁴ *See* Reply Suggestions in Support of the Office of the Public Counsel's Request for Order, Case No. ER-2014-0258, Doc. No. 68 (October 9, 2014).

⁵ *Id.*

⁶ *Id.*

⁷ *See* Ameren Missouri's Reply to the Office of the Public Counsel's Reply Suggestions in Support of the Public Counsel's Request for Order, Case No. ER-2014-0258, Doc. No. 73 (October 13, 2014)(“Sur-Reply”).

⁸ *Id.* at pp. 2-3.

5. Ameren's arguments suggest that the FAC is an established practice that has been in place for a long time. However, Ameren's first FAC was issued *just five years ago* in 2009.⁹ The Commission's FAC practices and processes are new, and it is highly misleading for Ameren to suggest that Public Counsel is proposing an approach that is inconsistent with an established practice. Over the last five years, Ameren's FAC tariff has changed considerably. The original tariff approved in 2009, in Case No. ER-2008-0318, consisted only of Sheet Nos. 98 to 98.7. In 2010, Case No. ER-2010-0036, Original Sheet Nos. 98.8 to 98.14 were added. In 2011, Case No. ER-2011-0028, Original Sheet Nos. 98.15 to 98.21 were added. The last and largest addition to Ameren's FAC tariff occurred in the last rate case, Case No. ER-2012-0166, when an additional ten pages were added as Original Sheet Nos. 98.22 to 98.31, including requirements regarding the Midcontinent Independent System Operator, Inc. (MISO).

6. Ameren's response also addresses the issue of the 2012 FAC filing and whether Ameren's 2012 FAC filing properly disclosed that transmission charges were included in the FAC.¹⁰ Ameren argues that it did not act in bad faith when it failed to disclose that transmission costs were included in its FAC proposal.¹¹ This argument misses the point. Public Counsel's intention here is not to criticize Ameren's reasons for not including the transmission data in the last rate case FAC filing and Public Counsel declines Ameren's invitation to re-litigate the issue. Rather, Public Counsel raises this point because lessons learned from the last rate case should help guide this rate case. The

⁹ Report and Order, *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Case No. ER-2008-0318, Doc. No. 589 (January 27, 2009).

¹⁰ See Ameren Missouri's Sur-Reply at p. 3.

¹¹ *Id.*

primary FAC lesson learned in the last rate case is that the filing practice followed by Ameren was insufficient to provide support for including the transmission costs in the FAC and, therefore, insufficient for the parties when they looked to Ameren's evidence for transmission-related cost data. There is no question that because Ameren's 2012 filing did not provide the complete explanation of costs required by the rule, significant procedural delay occurred, including a round of testimony filed *after* the start of the evidentiary hearing. Ameren should not be permitted to repeat that process here, as they clearly intend without intervention by the Commission. The only way to ensure adequate provision of material information to the parties and to disincentivize delay in a time-sensitive case, is to require Ameren and all other utilities with an FAC to comply with the rules. 4 CSR 240-3.161(3)(H) and (I). Granting Public Counsel's Request for Order is in the public interest because it will improve an inadequate practice to which Ameren desperately clings despite the obvious flaws of that practice and the harm it causes the other parties, and ultimately, the harm it imposes on the Commission's efforts to reach a just result.

7. Data requests issued in the present case also support the relief requested by Public Counsel because they substantiate Public Counsel's concerns that by not providing the necessary detail in its initial rate case filing, Ameren is shifting the burden of discovery onto other parties and engaging in a well-worn practice of delay. In its most recent pleading, Ameren suggested its lack of compliance with the minimum filing requirements is excusable because it provided responses to Public Counsel's data

requests on October 10.¹² But the substance of Ameren's responses illustrates the difficulties that Ameren's delays and half-answers impose on this case. For example, Public Counsel's Data Request No. 8005 sent to Ameren on September 17, 2014, requested a complete explanation of all the costs that Ameren is requesting be recovered in its FAC. Ameren's late reply simply states that "a complete explanation of all costs was provided in the MFR's included in Ms. Barnes' testimony."¹³ However, the MFRs referenced in the response did not include all of the costs detailed in Ameren's exemplar tariff sheets, thus forcing Public Counsel to issue follow up Data Request No. 8005.1.¹⁴ Public Counsel issued a similar follow-up Data Request No. 8006.1 regarding unsubstantiated revenue claims. However, Public Counsel should NOT be forced to request, and request again, the cost and revenue detail necessary to support Ameren's FAC request. This information, under the rules, should have been in the initial filing. The follow-up data request shown in Attachment A explains in detail why Ameren's answers were not responsive to the inquiry. Ameren's unresponsive answers have now caused further delay and a further shift in the burden of discovery from what the rule envisions.

8. Public Counsel is not alone in dealing with a discovery burden which the rules state it should not have to bear. The Staff was forced to issue data requests on Ameren's FAC filing because Ameren failed to include all minimally-required data in its initial submission. Without the minimal data it needs, the Staff was forced to submit data

¹² Responses to that data request were due on October 7. Ameren only provided the responses after Public Counsel advised the Commission that Ameren, despite its protestations of timeliness in discovery, had not responded to Public Counsel's requests.

¹³ This is the type of circular response Ameren provides even when it knows the adequacy of its initial filing is contested.

requests and follow-up data requests when Ameren's answer to Staff was similar to Ameren's answer to Public Counsel, stating that the information requested was in the testimony of Ameren witness Lynn Barnes.¹⁵ The Staff's follow-up Data Request No. MPSC 0272.1 states:

The Company's response to data request 0272 did not provide the requested data and is therefore considered unresponsive and deficient, because it merely referenced the filed testimony of Company witness Lynn Barnes' direct testimony and did not provide the requested additional information which is needed for Staff's review. The original data request stated in part "...Please provide, in tabular format, a summary listing for every Ameren Missouri generating unit that is being requested to be included in the FAC, the latest date the heat rate and/or efficiency tests were conducted, a footnote or reference to where the documented test results can be found and a reference to any requested and/or approved variance of the Commission Rule for the heat rate testing requirements. This summary table is in addition to the actual heat rate test reports and only providing a reference to the test reports will not satisfy this request. " The Company's response did not provide any of the requested information and staff is requesting that the Company specifically address the items in this request. Staff's position is that it is the Company's responsibility to submit the information as required by 4 CSR 240-3.161 in the Company's direct testimony for this rate case. Without the requested information Staff cannot confirm that the Company has met the filing requirements to continue the FAC. [emphasis added].

Public Counsel is clearly not alone in its struggle to deal with Ameren's deficient initial filing.

9. The statute authorizing the Commission to approve FACs for electric utilities states specifically that the Commission is to consider "all relevant factors which may affect the cost or overall rates and charges" when considering an FAC.¹⁶ There should be no question that all costs and revenues are relevant to the Commission's determination because 95% of all such costs would be borne by ratepayers. Therefore,

¹⁴ Data requests 8005, 8005.1, 8006 and 8006.1 are attached hereto as Attachment A.

¹⁵ Staff's data requests 0272 and 0272.1 are attached hereto as Attachment B.

¹⁶ § 386.266.4, RSMo Supp. 2013.

the Commission's rule requiring all costs and revenues to be completely explained up front with specific account information identified, is plainly necessary to reaching a just and reasonable result on this issue, and the rule should be enforced.

10. Ameren's approach towards its FAC request, and its approach in responding to Public Counsel's Request for Order, suggests that Ameren considers the FAC to be an automatic right rather than a mechanism to be granted at the Commission's discretion. In this instance, by considering the FAC to be a right that does not require substantial support, Ameren is abusing the process established by the Commission. Such abuse should not be rewarded by allowing Ameren to pursue an FAC in the present case based on only the incomplete summary data provided with Ameren's direct case. Accordingly, an order striking Ameren's FAC tariff and testimony is wholly appropriate and in the public interest.

WHEREFORE, the Office of the Public Counsel respectfully offers this sur-sur-reply to Ameren's October 13, 2014 sur-reply, and urges the Commission to grant the Request for Order and strike the tariff and testimony regarding the FAC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 23rd day of October 2014.

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