

**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.)
File No. EU-2012-0027

STAFF’S NOTICE OF ERRORS IN AMEREN MISSOURI’S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel, and advises the Missouri Public Service Commission (“Commission”) of three material items in the Reply Brief of Union Electric Company d/b/a Ameren Missouri that are blatantly incorrect. The Staff believes that the Commission indicated in *Re Kansas City Power & Light Co.*, Case No. ER-83-49, et al., 26 Mo.P.S.C.(N.S.)2d 104, 128, 158 *Report and Order* (July 8, 1983) how such a matter is to be approached by the aggrieved party.¹ Commission Rule 4 CSR 240-2.080(13) also seems applicable.² Therefore, the Staff raises these items for the Commission’s attention as follows:

¹ The Commission stated in its Case No. ER-83-49, et al., KCPL rate case *Report and Order*, 26 Mo.P.S.C.(N.S.)2d at 128 and 158:

. . . the Commission is still of the opinion that an order to strike improper argument in a brief is not necessary or proper, and a party, to protect itself from improper arguments, be it legal or factual, need only to bring it to the attention of the Commission in a reply brief. The Commission now adds that if improper comment is contained in a reply brief it will suffice for a party to point out the improprieties by letter to assist the Commission in determining which portions of the argument should be rejected.

. . . A motion to strike may be proper when a party attempts to improperly include in the record documents or exhibits from other cases. . . . The Commission is obligated to be aware of the contents of its own records . . .

(*Id.* at 128).

On May 20, 1983, the Staff filed its Motion to Strike Certain Portions of the Reply Brief of Jackson County, Missouri, et al. . . . Although the May 20, 1983, Motion is improper the Commission will treat it as a letter or memorandum pointing out alleged improper argument in a reply brief.

(*Id.* at 158).

² Commission Rule 4 CSR 240-2.080(13) states:

Parties shall be allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

1. Ameren Missouri at page 9, in the last paragraph, the first sentence, of its Reply Brief refers to “almost \$65 million in fixed costs” and at page 14, last paragraph, first sentence, of its Reply Brief refers to “approximately \$65 million in fixed costs.” The Staff believes the calculation of “lost fixed costs” or “lost revenues / profits” is less than, although approximately \$36 million pre-tax and slightly less than, but almost \$22 million post-tax. The pre-tax and after-tax numbers, as stipulated to in Joint Ex. 1, are \$35,561,503 pre-tax and \$21,909,940 after-tax. (Vol. 2, Tr. 15, ln. 24 - Tr. 18, ln. 15).

2. Ameren Missouri at page 17, in the first full paragraph, both the second and the third sentences of its Reply Brief, claims that the First Nonunanimous Stipulation And Agreement in Case No. ER-2010-0036 is not in evidence in this case and that Staff did not ask Ameren Missouri witness Ms. Barnes any questions about the terms of that document during cross-examination. The transcript of the proceedings clearly reflects that Ameren Missouri is once again incorrect in its representations to the Commission. Undersigned counsel at the May 3, 2012 evidentiary hearing marked as Staff Ex. 6 the Commission’s March 24, 2010 Order Approving First Stipulation And Agreement and the Commission’s attachment thereto of the First Nonunanimous Stipulation And Agreement in Case No. ER-2010-0036. (Vol. 2, Tr. 95, lns. 9 - 20). Undersigned counsel asked Ms. Barnes to take a look at the document that had been marked as Staff Ex. 6. Ms. Barnes asked if undersigned counsel was interested in the fuel adjustment clause portion of the First Nonunanimous Stipulation And Agreement attachment to the Commission’s March 24, 2010 Order Approving First Stipulation And Agreement. Undersigned counsel responded “yes.” (Vol. 2, Tr. 95, ln. 22 - Tr. 96, ln. 10). The following colloquy occurred regarding the First Nonunanimous Stipulation And Agreement (which is part of Staff Ex. 6) and Footnote 2 at page 8 of Ms. Barnes’ Surrebuttal Testimony, Ameren Ex. 3. After the exchange, Staff Ex. 6 was received into evidence:

Q. [Mr. Dottheim]: Is this a document which you're making some reference to in your Footnote 2 where you make reference to the Commission approving the addition of the N factor to the FAC calculation in Case No. ER-2010-0036?

A. [Ms. Barnes]: Yes, it is.

MR. DOTTHEIM: At this time I'd like to offer Staff Exhibit No. 6.

JUDGE JORDAN: Objections?

(No response.)

JUDGE JORDAN: Hearing none, Staff Exhibit 6 will be entered into the record.

(STAFF EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

(*Id.* at Tr. 96, Ins. 6-18). The Staff's Initial Post-Hearing Brief at page 24 clearly identifies as Staff Ex. 6 the Commission's March 24, 2010 Order Approving First Stipulation And Agreement and the attached First Nonunanimous Stipulation And Agreement.

3. Finally, Ameren Missouri at page 19, first full paragraph, last sentence, of its Reply Brief states regarding the Staff's Initial Post-Hearing Brief and the Commission's *Report and Order* in Case No. ER-2010-0255, "The *Commission did not state*, as Staff contends in its brief, that Ameren Missouri acted 'imprudently, improperly, and unlawfully'. . ." (Emphasis supplied). Attached as Appendix A is a copy of page 2 of the Commission's April 27, 2011 *Report and Order* in Case No. EO-2010-0255. The section entitled "Summary" is comprised of the following one sentence statement:

This order determines that *Union Electric Company d/b/a Ameren Missouri acted imprudently, improperly and unlawfully* when it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenue when calculating the rates charged under its fuel adjustment charge.

(Emphasis supplied)(Also see redirect of Staff Witness Mark L. Oligschlaeger, Vol. 2., Tr. 193, ln.15 - Tr. 194, ln. 8).

WHEREFORE, the Staff files this notice of errors in Ameren Missouri's Reply Brief. The Staff has limited its pleading to three material items in Ameren Missouri's Reply Brief that are blatantly incorrect.

Respectfully submitted,

**Attorneys for the Staff of the
Missouri Public Service Commission**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, *Staff's Notice Of Errors In Ameren Missouri's Reply Brief*, was served via e-mail on all counsel of record this 21st day of June, 2012.

/s/ Steven Dottheim

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

This order determines that Union Electric Company d/b/a Ameren Missouri acted imprudently, improperly and unlawfully when it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenue when calculating the rates charged under its fuel adjustment clause.

Procedural History

On August 31, 2010, the Commission's Staff filed a Prudence Report and Recommendation regarding its first prudence review of Ameren Missouri's costs related to