

**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 REPLY TO AMEREN MISSOURI'S RESPONSE  
TO MIEC'S MOTION TO DISMISS**

Comes now the Staff of the Missouri Public Service Commission (Staff) in reply to *Ameren Missouri's Response To MIEC'S Motion To Dismiss*. In response, the Staff states:

1. On September 8, 2011, Ameren Missouri filed its *Response To MIEC'S Motion To Dismiss*. On August 30, 2011, the Commission issued its *Order Setting Dates* in which, among other things, it directed any party wishing to reply to responses filed on September 8, 2011 to do so by September 15, 2011.

2. Ameren Missouri on page 2, in paragraph 2 of its September 8, 2011 *Response To MIEC'S Motion To Dismiss* purportedly quotes the four elements of *res judicata* as cited in *Phelps v. Director of Rev.*, 47 S.W.3d 395 (Mo.App. E.D. 2001) (*Phelps*). Ameren Missouri evidently intended to cite the case in 47 S.W.3d preceding the *Phelps* case, *Felling v. Giles*, 47 S.W.3d 390, 393-94 (Mo.App. E.D. 2001) (*Felling*), and not the *Phelps* case. The *Phelps* opinion of the Eastern District Court of Appeals does not address *res judicata*. The *Felling* Court states as follows at pages 393-94:

The governing law is extensively discussed in *Missouri Real Estate and Ins. Agency, Inc. v. St. Louis County*, 959 S.W.2d 847, 850 (Mo.App. E.D.1997) as follows:

The doctrine of *res judicata* takes on the character of the rule against splitting a cause of action, because both *res judicata* and splitting a cause of action are designed to prevent a multiplicity of lawsuits. *Lay v. Lay*,

912 S.W.2d 466, 471 472 (Mo. banc 1995). A cause of action which is single may not be split and either filed or tried piecemeal; and the penalty for splitting a cause of action is that an adjudication on the merits in the first action is a bar to the second action. *Id.* at 472. The doctrine of res judicata bars a claim if the following elements are satisfied: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons or parties to the action; and (4) identity of the quality or status of the person for or against whom the claim is made. *Jordan v. Kansas City*, 929 S.W.2d 882, 886 (Mo.App. W.D. 1996).

3. Respecting the second element, identity of the cause of action, the Eastern District Court of Appeals in *Missouri Real Estate and Ins. Agency, Inc. v. St. Louis County*, 959 S.W.2d 847, 850-51 (Mo.App. E.D.1997) explained the element as follows:

The second element that must be present for res judicata to apply is the identity of the cause of action. In order to have identity of the cause of action, the actions do not have to be identical, but the claims must have arisen out of the “same act, contract, or transaction.” *Id.* The term “transaction” is broadly construed and includes all the facts and circumstances which constitute the foundation of a claim. *Id.* Res judicata provides that, where two actions are on the same cause of action, the earlier judgment is conclusive not only as to matters actually determined in the prior action, but also as to other matters which could properly have been raised and determined therein. *Terre Du Lac*, 737 S.W.2d at 212.

Wherefore, the Staff submits *Staff Reply To Ameren Missouri’s Response To MIEC’S Motion To Dismiss* and continues to move the Commission to dismiss Ameren Missouri’s *Verified Application For Accounting Authority Order* on the grounds that the relief requested is barred on the grounds of *res judicata*.

Respectfully submitted,

**/s/ Steven Dottheim**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing *Staff Reply To Ameren Missouri's Response To MIEC'S Motion To Dismiss* have been transmitted by electronic mail to all counsel of record this 15th day of September, 2011.

**/s/ Steven Dottheim**