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

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| 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. | ) ) ) ) ) | **Case No. EU-2012-0027** |

**PUBLIC COUNSEL'S RESPONSE TO MOTION TO DISMISS**

COMES NOW THE Office of the Public Counsel and for its Response to Motion to Dismiss states as follows:

1. Public Counsel supports the Motion to Dismiss filed by the Missouri Industrial Energy Consumers (MIEC) on August 29, 2011. Dismissal of Ameren Missouri's application without proceeding down the path of conferences, testimony and hearings is well within the Commission's discretion and would greatly advance administrative efficiency.

2. In this response, Public Counsel will briefly discuss two cases that support immediate dismissal.

3. The first case is a Western District Court of Appeals case dealing with Environmental Utilities (EU).[1] This case stands for the proposition that the Commission need not repeatedly conduct hearings on the same or related issues. In the first case before the Commission involving EU, the Commission determined that EU was unable or unwilling to provide safe and adequate service. In a subsequent case, the Commission dismissed an application by EU without a hearing, in large part on the basis of its conclusions in the prior case. In the appeal of the second case, the Court held that the Commission, pursuant to its regulations and in the interests of administrative efficiency, was not required to conduct a hearing on the

[1] Envtl. Utils., LLC. v. PSC of Mo., 219 S.W.3d 256 (Mo. Ct. App. 2007)

application but could dismiss it based upon policy considerations and facts determined in the prior case:

> The Commission has the authority to limit the issues addressed at the hearing pursuant to the regulations governing its practice. See Mo. Code Regs. Ann. tit. 4, Section 240-2.110(4). Here, the Commission chose to first address the threshold legal issues prior to taking evidence, an approach urged by MAWC. Ultimately, the threshold issues addressed at the hearing proved dispositive: the Commission was unwilling to consider any Application that did not fully dispose of Osage Water's assets, and MAWC would not amend its Application to include the Cedar Glen assets. No further evidentiary hearing was required once this impasse was reached.
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> Moreover, EU did not object to the January 20 order canceling the evidentiary hearing set for January 24. Indeed, EU did not claim that the Commission had failed to hold an evidentiary hearing until the Commission dismissed the application in accordance with the Commission's staff motion. EU now claims that the Commission should hold an evidentiary hearing that would "show that the approval of the proposed sale would be that sewer customers in the Cedar Glen Service Area would continue to receive the same service from Osage Water Company that they currently receive." However, as discussed above, Osage Water had been conclusively found to be a distressed utility, unable to provide safe and adequate service to its customers, in a prior proceeding before the Commission. **The ability of Osage Water to serve its customers was not a factual issue in dispute. The Commission, having conclusively determined the issue in a prior proceeding, was not required to hold an evidentiary hearing on matters irrelevant and repetitious. Section 536.070(7)-(8).**
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> The Commission held a fully noticed on-the-record hearing on EU's Application on January 13, 2006. The Commission was not required to hold a second hearing on the Application once the legal issues proved dispositive and the only cure for the defect in the Application, namely the inclusion of the Cedar Glen assets, was categorically rejected by MAWC. Therefore, the actions of Commission were lawful.[2]

In this case, just as in the Environmental Utilities case, there is no need to continue with a new proceeding. The Commission is well aware of all the relevant facts, and it is well within the Commission's discretion to dismiss Ameren Missouri's application upon a policy determination that the extraordinary treatment offered by an Accounting Authority Order is not appropriate for the costs at issue.

[2] *Ibid*., at 264-265; emphasis added.

4. The second case that Public Counsel will discuss herein bears directly on the question of appropriate policy considerations to be taken into account in AAO applications. In its recent decision on remand in Case No. EO-2008-0216, the Commission declined to grant Kansas City Power & Light - Greater Missouri Operations Company (GMO) the authority to defer costs related to fuel costs incurred at (or before) the outset of its Fuel Adjustment Clause. In its Report and Order on Remand, the Commission noted that "GMO asks the Commission to issue an accounting authority order (AAO) to record the adjustment that the Commission is ordering, so that GMO can eventually recover those amounts again, presumably after further appeal." In denying that request, the Commission dismissed GMO's claim that the over-collected amount constitutes an extraordinary item, and instead determined that the "event giving rise to the adjustment is the Opinion's reversal of accumulation period 1's start date." The Commission concluded that "An adverse ruling is not an unusual, infrequent, abnormal, or extraordinary event." The situation presented here is exactly analogous. Ameren Missouri seeks to have the Commission treat the adverse ruling against Ameren Missouri in Case No. EO-2010-0255 as an extraordinary event. Just as it did in with GMO's argument in Case No. EO-2008-0216, the Commission should reject Ameren Missouri's argument here.

WHEREFORE, Public Counsel respectfully submits its Response to Motion to Dismiss, and requests that the Commission dismiss Ameren Missouri's application for an Accounting Authority Order.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed this 8th day of September 2011 to the parties of record:

**/s/ Lewis R. Mills, Jr.**