

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

In the Matter of Union Electric Company, d/b/a)
Ameren Missouri’s Filing to Adjust Rates Under)
Its Approved Fuel and Purchased Power Cost) **File No. ER-2011-0317**
Recovery Mechanism Pursuant to 4 CSR) Tariff No. YE-2011-0485
240-20.090(4))

**MIEC’S MOTION FOR EXPEDITED TREATMENT REGARDING
FAC CREDITS FROM OFF-SYSTEM SALES MARGINS DURING
ACCUMULATION PERIODS THREE THROUGH FIVE**

Comes now the Missouri Industrial Energy Consumers (“MIEC”) and respectfully requests that the Commission expedite the treatment of the FAC credits to which Missouri ratepayers are entitled under the Report and Order in Case No. EO-2010-0255 for accumulation periods three through five. In support of its Motion, MIEC states as follows:

1. On March 25, 2011, Union Electric Company, d/b/a Ameren Missouri (the “Company”) filed a tariff sheet to change its Fuel and Purchased Power Adjustment rates under its Fuel and Purchased Power Adjustment Clause (“FAC”).
2. On March 28, 2011, the Commission issued an Order Directing Notice and Directing the Staff of the Missouri Public Service Commission (“Staff”) to File a Recommendation with respect to Ameren Missouri’s proposed tariff sheet.
3. On April 22, 2011, pursuant to 4 CSR 240-20.090(4), the Staff filed its Recommendation to Approve Tariff Sheet filed by Ameren Missouri. However, the Staff’s Recommendation to approve the tariff sheet was “subject to . . . prudence reviews.” See Staff Recommendation to Approve Tariff Sheet, at page 2.

4. On April 27, 2011, the Commission issued its Report and Order in the Matter of the First Prudence Review of the Costs Subject to the Commission-Approved Fuel Adjustment Clause of Ameren Missouri, Case No. EO-2010-0255. In that Order, the Commission directed the Company to refund \$17,169,838 to its ratepayers by an adjustment to its FAC charge to correct an over collection of revenues for the period of March 1, 2009 to September 30, 2009.

5. On May 6, 2011, the Staff and the Company filed a non-unanimous stipulation and agreement that the amount the Commission ordered be refunded to ratepayers includes interest at Ameren Missouri's short-term borrowing rate through September 30, 2009. The agreement further stipulates that interest has accrued and continues to accrue after September 30, 2009 at the Company's short-term borrowing rate as required by Section 386.266.4(4) R.S.Mo. Supp. 2010.

6. The Commission's Report and Order in Case No. EO-2010-0255 became effective on May 7, 2011.

7. The Commission's Order Approving Interim Rates will be effective on May 25, 2011.

8. As a result of the Company's failure to flow the revenues from the contracts into which it entered with Wabash Valley Power Association ("Wabash") and American Electric Power Operating Companies ("AEP") through the FAC, the Company over-collected \$24,866,885.00 from Missouri ratepayers for accumulation periods three through five (October, 2009 through September 2010). This amount is uncontested, as it

was admitted by the Company in the Surrebuttal Testimony of Ms. Lynn Barnes in Case No. EO-2010-0255.¹

9. All of the evidence necessary to demonstrate the Company's over-collection during accumulation periods three through five was presented before the Commission in Case No. EO-2010-0255, because the Company's over-collection for periods three through five resulted from the same facts that were at issue in Case No. EO-2010-0255. Specifically, the Company's over-collection during accumulation periods three through five resulted from its failure to flow the revenues from AEP and Wabash through the FAC, which was precisely the decided in Case No. EO-2010-0255.

10. This Commission has already heard, analyzed and rendered its opinion regarding all of the evidence and arguments of the parties regarding the Company's failure to flow the revenues from the AEP and Wabash contracts through the FAC. It would be a waste of the Commission's and the parties' time and resources to present all of the same testimony for accumulation periods three through five as it presented for accumulation periods one and two.

11. Missouri law and public policy strongly favor the prevention of "needless relitigation in a second hearing" and the promotion of "the public interest in judicial economy." 2008 Mo. PSC LEXIS 258 (Mo. PSC 2008); 2007 Mo. PSC LEXIS 1523 (Mo. PSC 2007) (seeking to avoid practices that "would not provide any benefit, and create[] the potential of there being duplicate filings and the loss of judicial economy); 2007 Mo. PSC LEXIS 349 (Mo. PSC 2007) (consolidating cases that "involve related questions of law and fact [to] promote judicial economy and avoid unnecessary costs and delay").

¹ Barnes Surrebuttal, Page 1, Line 22 through Page 2, Line 4.

12. In light of Missouri's strong public policy in favor of judicial economy, the Commission should not require the parties to relitigate in additional hearing(s) all of the same questions of law and fact that they litigated in Case No. EO-2010-0255, because doing so would not provide any benefit, and would require duplicate filings, unnecessary costs and wasteful delay.

13. Moreover, re-litigation of the issues decided in Case No. EO-2010-0255 is impermissible under the doctrines of res judicata and collateral estoppel, because the facts and law at issue have already been fully adjudicated to a final judgment on the merits.

14. As a result of the Commission's Report and Order in Case No. EO-2010-0255, effective May 7, 2011, Ameren's new FAC rates should be reduced to reflect the refund ordered by the Commission in Case No. EO 2010-0255 and the refund to which Missouri ratepayers are entitled for accumulation period three through five, namely \$24,866.885.00.

WHEREFORE, MIEC respectfully requests that the Commission revise its Report and Order in this case to reflect its Report and Order in Case No. EO-2010-0255, and order Ameren to deduct from the new FAC rates \$17,169,838.00 for the amount it over-collected in accumulation periods one and two, plus \$24,866.885.00 to reflect the Company's over-collection during accumulation periods three through five, plus applicable interest, at Ameren Missouri's short-term borrowing rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 18th day of May, 2011, to the parties on the Commission's service list in this case.

/s/ Brent Roam _____