

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

In the Matter of the Petition of Union
Electric Company d/b/a Ameren Missouri)
for a Financing Order Authorizing the) File No. EF-2024-0021
Issuance of Securitized Utility Tariff Bonds)
for Energy Transition Costs related to Rush)
Island Energy Center.

MOTION TO STRIKE IMPROPER EVIDENCE

COMES NOW Ameren Missouri, and for its Motion to Strike improper evidence included in the Office of the Public Counsel’s (“OPC”) Initial Brief, states as follows:

1. The only competent and substantial evidence of record in this case¹ on the Commission’s treatment, outside securitization, of an undepreciated balance of a retired plant consists of (a) OPC witness Murray’s opinions reflected in his written and hearing testimony, (b) Company witness Lansford’s opinions reflected in his written and hearing testimony, (c) Staff witness Majors’ opinions reflected in his written and hearing testimony, and (d) Exhibit 27, the *Amended Report and Order* from File Nos. EO-2022-0040 and EO-2022-0193 (involving securitization of the undepreciated balance of Empire’s Asbury coal plant). The Commission admitted such evidence and it is thus competent and substantial and may be relied upon by the Commission.²

¹ Under the standard of review applicable to Commission decisions, a Commission decision can only be reasonable if based upon competent and substantial evidence of record. *See, e.g., State ex rel. Missouri Gas Energy v. Pub. Serv. Comm’n*, 186 S.W.3d 376, 382-83 (Mo. App. W.D. 2006). Thus, reliance on evidence that does not meet that evidentiary standard would be error.

² To the extent provisionally admitted subject to the earlier pending motions to strike, a portion of such evidence may ultimately not be admitted and in that case, it would not be competent and substantial and could not be relied upon by the Commission.

2. In its Initial Brief, OPC relies on a citation to and quotes from a Missouri-American Water Company (“MAWC”) decision from 2000³ and thereby attempts to establish the fact that “[t] Commission rejected that accounting...,” referencing evidentiary hearing testimony given by Staff witness Majors. OPC’s reliance on the MAWC decision (including the included quotes from that decision) is improper and it cannot be relied upon by the Commission in this case. Specifically, neither the existence of the decision nor any fact from it appears in any document of record in this case and it has not been admitted into the evidentiary record by any other means, including by official notice.

3. The MAWC decision was never offered nor even identified during the evidentiary hearing. Consequently, it is not a part of the case record.⁴ “Both Section 536.070 and Rule 4 CSR 2.130(2) require that matter contained in the agency’s files actually be offered during the hearing in order to become part of the record. Therefore [since they weren’t], the motion to strike must be granted.”⁵

4. Nor may the Commission take official notice of the MAWC decision. While the Commission may upon proper request take official notice of matters about which the courts take judicial notice, courts do not take judicial notice of decisions in other cases involving different parties and different facts and different claims of relief. *See, e.g. In the Interest of A.A.T.N.*, 181 S.W.3d 161, 168 (Mo. App. E.D. 2005) (“As a general rule, a trial court may take judicial notice of its own records in prior proceedings between the *same parties* where the *same basic*

³ Cited by OPC on page 22 of OPC’s Initial Brief; presented by OPC on pages 21 and 22 of OPC’s Initial Brief.

⁴ *Re: St. Louis County Water Co.*, 2001 WL 521854 (Mo.P.S.C.), Case No. WO-098-223, *Report and Order*, Feb. 13, 2001 (Sustaining Staff motion to strike citations to materials from other Commission cases not in evidence).

⁵ *Id.* Section 536.070 and the cited Commission rule are in all material respects the same today as they were at the time of this decision.

facts are at issue.” (emphasis added))⁶. Nor would official notice of the MAWC decision, which involves different parties (Ameren Missouri certainly was not a party to the case) and different facts (the case involved a Section 393.190 transfer of assets request) be proper. A court certainly would not take judicial notice of a court judgment involving MAWC in a different case involving Ameren Missouri, and neither may the Commission do so here.

5. Consequently, OPC’s inclusion in its Initial Brief of the material starting with “This Commission rejected” in the second line on page 21 through the citation to the MAWC case in the last full paragraph on page 21 is improper and should be stricken because it would be error for the Commission to rely upon it.

6. For the same reasons, OPC’s recitation of purported facts from and Evergy order⁷ on page 43 of its Initial Brief is improper and cannot be relied upon. Consequently, the first sentence of OPC’s Initial Brief on page 43 should be stricken.

WHEREFORE, Ameren Missouri hereby requests that the Commission make and enter its order striking the portions of OPC’s Initial Brief identified in Paragraphs 5 and 6 above.

Respectfully submitted,

/s/ James B. Lowery
James B. Lowery, Mo. Bar #40503
JBL LAW, LLC
9020 S. Barry Road
Columbia, MO 65201
(T) 573-476-0050
lowery@jblawllc.com

Wendy K. Tatro, #60261
Director & Assistant General Counsel
Ameren Missouri

⁶ The Commission recognizes and applies the same rule. *See, e.g., In the Matter of Lake Region Water and Sewer Co.*, 2010 WL 3378384 (Mo.P.S.C.), File No. SR-2010-0110, *Report and Order*, August 18, 2010.

⁷ OPC Initial Brief, fn. 86.

1901 Chouteau Avenue, MC 1310
St. Louis, MO 63103
(314) 554-3484 (phone)
(314) 554-4014 (fax)
AmerenMOService@ameren.com

**Attorneys for Union Electric Company
d/b/a Ameren Missouri**

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed to the attorneys of record for all parties to this case as specified on the certified service list for this case in EFIS, on this 21st day of May, 2024.

/s/ James B. Lowery

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