

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

In the Matter of Union Electric)	
Company d/b/a Ameren Missouri's)	Case No. ER-2014-0258
Tariff to Increase Its Revenues for)	
Electric Service.)	

**PUBLIC COUNSEL'S REPLY AND
OBJECTION TO AMEREN MISSOURI'S RESPONSE**

COMES NOW the Missouri Office of the Public Counsel ("Public Counsel" or "OPC") and for its reply and objection to Union Electric Company d/b/a Ameren Missouri's Response to Office of the Public Counsel's Request for Order on Rate Case Expense, respectfully states:

1. On April 28, 2015, Public Counsel filed its Request for an Order on Rate Case Expense and Motion for Expedited Treatment. The motion explained that the parties entered into a non-unanimous stipulation and agreement regarding, among other things, rate case expense and how the expense is to be treated in this case. Public Counsel's motion requested that the Commission order the parties to comply with the terms of the stipulation by filing the evidentiary support necessary to determine whether the final rate case expense amounts sought to be included in rates were prudently incurred by Union Electric Company d/b/a Ameren Missouri.

2. The Commission's Staff and Ameren Missouri both filed responses to Public Counsel's motion. Public Counsel previously replied to the Staff's response, and to some extent Public Counsel's reply to the Staff applies equally as a reply to Ameren

Missouri's response. For that reason, Public Counsel will not repeat the argument made in Public Counsel's reply to the Staff.

3. In Ameren Missouri's response, Ameren first argues that "the evidentiary record in this case already includes all of the substantial and competent evidence necessary" for the Commission to include rate case expense amounts in rates. However, Ameren also states that a rate case determination "lacked only one piece of data that the Stipulation contemplated would be provided to the Staff: actual expenditures through April 10." These two statements contradict each other because Ameren says that the record evidence already supports a rate case amount, yet Ameren also states that the record evidence lacks data on expenditures through April 10. Ameren cannot have it both ways – either the current evidentiary record supports the additional expenditures through April 10, or it does not support the additional expenditures. And the record clearly does not include evidence on rate case expense through April 10.

4. The second point Ameren raises in its response is that by agreeing to the Amended Non-Unanimous Stipulation and Agreement Regarding Certain Revenue Requirement Issues ("Stipulation"), Public Counsel "agreed that the \$1.1 million figure would be updated and agreed that at least 2/3 of it would be included in the revenue requirement." This assertion is not supported by the language of the Stipulation or by the testimony of Ms. Sharpe. The \$1,104,706 rate case amount proposed by Ms. Sharpe was a "total" rate case expense amount, meaning it was not presented in testimony as an amount that Ameren incurred through December 5, 2014, as argued by Ameren. Ms. Sharpe clearly testified that "an appropriate total amount of rate case expense to be included with the Staff's direct filing to be \$1,104,706." (Ex.202, p. 105; emphasis

added). Ms. Sharpe concludes her testimony by including the condition that Ameren recover only “reasonable and prudent rate case expenses,” which she does not limit, meaning *all* rate case expenses, those incurred before and those incurred after the Stipulation, must be reasonable and prudent. Even if Ameren were correct, and the Stipulation should be interpreted to mean that Public Counsel concurred that \$1,104,706 of rate case expense were to be included in rates without considering whether the expenses were prudent (which it did not), this amount is less than half of the ultimate amount Ameren seeks to include in rates, not 2/3 of \$2.3 million as argued by Ameren.

5. The most significant aspect of the Stipulation is that Public Counsel agreed not to seek rate case sharing, that is, Public Counsel agreed not to argue that the Commission should split the rate case expense between ratepayers and shareholders as it had in prior rate cases. This is addressed by Ms. Sharpe in the last paragraph of her direct testimony when she discussed the staff report filed in Case Number AW-2011-0330 concerning rate case expense and allocating a sharing of rate case expense between ratepayers and shareholders. Ms. Sharpe concludes that, rather than seek a sharing, she instead recommends a “traditional” approach wherein the utility “should be allowed an opportunity to recover in rates the full amount of reasonable and prudent rate case expenses through an expense normalization approach.” This is the consideration given by Public Counsel. Public Counsel did not give up its right to challenge the prudence of evidence, nor did it agree that the burden of proof should be shifted from Ameren to ratepayers. It only agreed not to seek a sharing mechanism, and it agreed to a placeholder amount of \$1.1 million that would later be analyzed for prudence when the total expenses were known on April 10.

6. Public Counsel's interpretation that Public Counsel has a right to challenge the prudence of the ultimate rate case expense amount is supported by the transcript taken during the evidentiary hearing. During the hearing the Commissioners questioned the parties regarding the Stipulation, and counsel for Ameren confirmed that the ultimate rate case amount to be included must be determined to be prudent before it is to be included in rates:

COMMISSIONER HALL: So it -- so all that the parties have agreed to and all you're -- and what you're asking us to sign off on eventually is that -- is whatever amount billed up until two weeks after the briefing in this case, assuming prudent, ratepayers cover? That's what you're saying that the parties have agreed to?

MS. TATRO: Yes.

(Tr. 623-624; emphasis added). Here both Commissioner Hall and Ameren counsel Ms. Tatro recognize that there must be a prudence determination before any rate case expense amount is included in rates. While the Stipulation states that the Staff would review the updated expense figures provided by Ameren, nowhere does the Stipulation state that Public Counsel waived its right to challenge the prudence of the expense, nor does the Stipulation state that the issue can be decided on less than competent and substantial evidence. It clearly states that all expenditures must be prudent, and nowhere does the agreement state that any party has agreed to any amount as being prudently incurred.

7. Staff's counsel also corroborated Public Counsel's interpretation of the Stipulation during the evidentiary hearing when responding to a question from Commissioner Hall:

COMMISSIONER HALL: So procedurally what would occur if Staff or OPC or any of the intervenors determined that there was a particular expense that they viewed as imprudent, what would happen?

MR. THOMPSON: We would notify Ameren's attorneys, and we would meet and discuss the issue. And if we could not come to resolution at that point, then we would file something formally with the Commission.

(Tr. 627). Here Mr. Thompson suggested a far different approach than the one offered by the Staff's April 28, 2015 response to Public Counsel's motion. Responding to Commissioner Hall's question, Mr. Thompson clearly stated that there would be a procedure for parties to challenge rate case expenses. Neither Ameren nor Staff has explained why this procedure should no longer apply.

8. Ameren argues that Public Counsel knew Ameren would be providing documentation to the Staff by April 24, which is true. What Public Counsel did not know is that neither Ameren nor the Commission's Staff would deem it necessary, once the data was available, to provide the Commission with the data necessary to allow the Commission to review exactly what was being included in rate case expense. Not only is it necessary for the Commission to review the rate case expense as a matter of reasonableness, but it is required as a matter of law because all Commission rate decisions must be based upon competent and substantial evidence. Mo. Rev. Stat. § 393.150.2. Moreover, given the interest in the issue expressed by several Commissioners during the evidentiary hearing, one would expect, at a minimum, that the Commission's own Staff would consider it important to provide the Commissioners with the details of the expense sought to be included in rates.

9. Ameren refers to Public Counsel's motion as an "11th hour" argument. However, Ameren did not provide the information to the Staff until April 24, just four days ago. And it did not provide the information to Public Counsel until yesterday, April 27, after Public Counsel had to request the data. This is far from an 11th hour argument. Furthermore, the total rate case expense amount contemplated in Ms. Sharpe's testimony was \$1.1 million, and Ameren now seeks \$2.3 million, which is a 109% increase over the amount contemplated by the Stipulation. The only 11th hour attempt regarding this issue is Ameren's attempt to more than double the Staff's recommended total rate case expense, and at the same time, argue that the data should not be reviewed by the Commission.

10. Public Counsel objects to the attachment to Ameren's response, which includes an affidavit signed by Mr. Gary S. Weiss and a six-page spreadsheet that purports to show actual rate case expenses incurred. While the spreadsheet provides a very broad overview of the law firms and experts retained and the overall amounts incurred by each, the spreadsheet lacks any detail to allow the Commission to determine the prudence of the expenditures. The spreadsheet does not provide the Commission with hourly rates charged by counsel and consultants, it does not provide information showing the number of hours worked, nor does it show the various ancillary litigation expenses such as deposition fees, meals, travel and entertainment expenses. Accordingly, the document provided by Ameren does not constitute substantial evidence to enable the Commission to determine that each law firm, each consultant, and each ancillary expense, was reasonably and prudently incurred.

11. The spreadsheet provided by Ameren in its response is a high level and cursory presentation of rate case expense that provides no specific information to enable the Commission to determine the prudence of the expenditures. As such, the Commission is without substantial and competent evidence to support a decision on rate case expense. Likewise, the lack of detail prohibits Public Counsel from adequately challenging prudence if an imprudent expenditure was included. Public Counsel, therefore, seeks a Commission order that direct Ameren to file the supporting documentation to enable the prudence of each expenditure to be determined.¹

12. Ultimately, all rate increases approved by the Commission must be just and reasonable and supported by competent and substantial evidence. Without substantial and competent evidence, it is impossible for the Commission to conclude that the expenses it approves are just and reasonable. If the Commission were to approve the \$2.3 million for rate case expense based upon the filings made to date, the Commission's order would not be based on competent and substantial evidence and would therefore be in violation of Mo. Rev. Stat. § 393.150.2. *Friendship Village of South County v. Public Service Commission*, 907 S.W.2d 339 (Mo. App. 1995).

WHEREFORE, the Office of the Public Counsel respectfully offers this reply to the Ameren's response and urges the Commission to order Ameren Missouri to file supporting documentation in far greater detail than the six-page spreadsheet, and to allow Public Counsel and other parties an opportunity to review and respond.

¹ For example, the very large expenditures incurred for the Brattle Group, shown on the second page of Ameren's spreadsheet, may be imprudent because the Brattle Group testified on issues that in no way involved Ameren's request to increase its revenue requirement, and instead, the

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 28th day of April 2015.

Missouri Public Service Commission

Kevin Thompson
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Kevin.Thompson@psc.mo.gov

Missouri Public Service Commission

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
staffcounsel@psc.mo.gov

Missouri Retailers Association

Stephanie S Bell
308 East High Street, Suite 301
Jefferson City, MO 65101
sbell@blitzbardgett.com

Missouri Retailers Association

Marc H Ellinger
308 E. High Street, Ste. 301
Jefferson City, MO 65101
mellinger@blitzbardgett.com

Natural Resources Defense Council

Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Renew Missouri

Andrew J Linhares
910 E Broadway, Ste 205
Columbia, MO 65201
Andrew@renewmo.org

Sam's East, Inc

Marcos Barbosa

Sam's East, Inc

Rick D Chamberlain

Brattle Group testified on issues regarding the Noranda rate proposal. Further detail regarding this and all other expenditures is therefore necessary to conduct a proper and thorough review.

2400 Pershing Road
Kansas City, MO 64108
barbosa@bscr-law.com

6 NE 63rd Street, Ste. 400
Oklahoma City, OK 73105
rchamberlain@okenergylaw.com

Sierra Club
Sunil Bector
85 Second Street, 2nd Floor
San Francisco, CA 94105-3441
sunil.bector@sierraclub.org

Sierra Club
Thomas Cmar
1101 Lake Street, Ste. 405B
Oak Park, IL 60301
tcmar@earthjustice.org

Sierra Club
Henry B Robertson
319 N. Fourth St., Suite 800
St. Louis, MO 63102
hrobertson@greatriverslaw.org

Union Electric Company
Paul A Boudreau
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
PaulB@brydonlaw.com

Union Electric Company
Russ Mitten
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

Union Electric Company
Sarah E Giboney
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
giboney@smithlewis.com

Union Electric Company
Daniel C Nelson
7700 Forsyth Boulevard, Suite 1800
Saint Louis, MO 63105
dnelson@armstrongteasdale.com

Union Electric Company
Bradley M Seltzer
555 12th Street N.W.
Deloitte Tax, Ste 400
Washington, DC 20004-1207
bseltzer@deloitte.com

Union Electric Company
James B Lowery
111 South Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65205-0918
lowery@smithlewis.com

Union Electric Company
Matthew R Tomc
1901 Chouteau
St. Louis, MO 63166
AmerenMOService@ameren.com

Union Electric Company
Michael R Tripp
111 S. 9th Street
P.O. Box 918
Columbia, MO 65205-0918

Union Electric Company
Wendy Tatro
1901 Chouteau Avenue
St. Louis, MO 63103-6149
AmerenMOService@ameren.com

tripp@smithlewis.com

United for Missouri

David C Linton
314 Romaine Spring View
Fenton, MO 63026
jdlinton@reagan.com

United Steelworkers District 11, AFL-CIO

Legal Department
10523 Glen Oak Drive
Festus, MO 63028-3135

Wal-Mart Stores East, LP

Marcos Barbosa
2400 Pershing Road
Kansas City, MO 64108
barbosa@bscr-law.com

Wal-Mart Stores East, LP

Rick D Chamberlain
6 NE 63rd Street, Ste. 400
Oklahoma City, OK 73105
rchamberlain@okenergylaw.com

City of Ballwin, Missouri

Carl J Lumley
130 S. Bemiston, Ste 200
St. Louis, MO 63105
clumley@lawfirmemail.com

City of Ballwin, Missouri

Leland B Curtis
130 S. Bemiston, Suite 200
St. Louis, MO 63105
lcurtis@lawfirmemail.com

City of Ballwin, Missouri

Edward J Sluys
130 S. Bemiston, Suite 200
St. Louis, MO 63105
esluys@lawfirmemail.com

City of O'Fallon, Missouri

Carl J Lumley
130 S. Bemiston, Ste 200
St. Louis, MO 63105
clumley@lawfirmemail.com

City of O'Fallon, Missouri

Leland B Curtis
130 S. Bemiston, Suite 200
St. Louis, MO 63105
lcurtis@lawfirmemail.com

City of O'Fallon, Missouri

Edward J Sluys
130 S. Bemiston, Suite 200
St. Louis, MO 63105
esluys@lawfirmemail.com

Consumers Council of Missouri

John B Coffman
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
john@johncoffman.net

IBEW Local Union 1439

Sherrie Hall
7730 Carondelet Ave., Ste 200
St. Louis, MO 63105
sahall@hammondshinners.com

IBEW Local Union 1439

Emily Perez
7730 Carondelet Ave., Suite 200

Midwest Energy Consumers Group

David Woodsmall
807 Winston Court

St. Louis, MO 63105
eperez@hammondshinners.com

Jefferson City, MO 65101
david.woodsmall@woodsmalllaw.com

Missouri Division of Energy
Ollie M Green
P.O. Box 1157
Jefferson City, MO 65102
ollie.green@ded.mo.gov

Missouri Industrial Energy Consumers (MIEC)
Edward F Downey
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
efdowney@bryancave.com

Missouri Industrial Energy Consumers (MIEC)
Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Missouri Industrial Energy Consumers (MIEC)
Carole Iles
221 Bolivar St., Suite 101
Jefferson City, MO 65101
carole.iles@bryancave.com

Missouri Industrial Energy Consumers (MIEC)
Kenneth J Mallin
211 N. Broadway, Ste. 3600
St. Louis, MO 63102
kjmallin@bryancave.com

/s/ Marc Poston
