BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Union Electric Company d/b/a Ameren Missouri	)	File No. EU-2012-0027
for the Issuance of an Accounting Authority	)	
Order Relating to its Electrical Operations	)	

DISSENTING OPINION OF CHAIRMAN ROBERT S. KENNEY

I dissent from the decision reached in the Report and Order, which grants Ameren Missouri's (Ameren's) request for an Accounting Authority Order (AAO), because it is wrong as a matter of law and as a matter of public policy.

As a matter of law, the decision is wrong because it is not supported by substantial and competent evidence. An AAO should not have been granted because the evidence showed that the requirements of the Uniform System of Accounts[1] for granting an AAO were not met.

[1] The Commission by rule has instructed that electric utilities in the state are to comply with the Uniform System of Accounts. The Commission rules provide:

> [E]very electric corporation subject to the commission's jurisdiction shall keep all accounts in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 101 (1992) and 1 FERC Stat. & Regs. paragraph 15,001 and following (1992) . . . . This uniform system of accounts provides instruction for recording financial information about electric utilities. It contains definitions, general instructions, electric plant instructions, operating expense instructions, and accounts that comprise the balance sheet, electric plant, income, operating revenues, and operation and maintenance expenses.

4 CSR 240-20.030(1).

As a matter of public policy the decision to grant an AAO in this case is wrong for two reasons. First, the Commission's decision in this case is inconsistent with prior Commission decisions, particularly the Commission's decision in a recent Report and Order where the Commission denied an AAO for un-generated revenue.[2] The Commission departs from the rationale in that case with virtually no explanation. Second, it is not the Commission's job to mitigate or insure against all risk, especially business risk. In granting an AAO for un-generated revenues, a previously unheard of way of employing an AAO, the Commission has done exactly that, turning itself into an insurer of last resort.

I. The Decision in the Report and Order is Wrong as a Matter of Law

The Commission has noted that an AAO is appropriate for allowing the deferral of extraordinary costs for later recovery.[3] The Uniform System of Accounts sets forth the requirements for determining whether a particular item is extraordinary and therefore appropriate for deferral. The Uniform System of Accounts provides in pertinent part:

> Extraordinary items . . . . Those items related to the effects of events and transactions which have occurred during the current

[2] *See, In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2),* File No. GU-2011-0392, January 25, 2012.
[3] *See, In the Matter of the Application of Mo. Pub. Serv. for the Issuance of an Accounting Authority Order*, 129 P.U.R.4th 381, 385 (Mo. Pub. Serv. Comm'n 1991).

> period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.[4]

In other words, in order to qualify for deferral, the events giving rise to the request should pertain to an event that is extraordinary, unusual and unique, not recurring; and the costs associated with the event should be material.[5]

Here, there is no question that the ice storm was extraordinary. But the associated un-generated revenues are not of the type intended to be included in an AAO. First, un-generated revenues are not a cost or expense to be deferred.[6] Second, the evidence in the record demonstrates that both Ameren's storm related costs and fixed costs have already been recovered.[7]

The Report and Order asserts that Ameren is being allowed to recover "unrecovered fixed costs attributable to serving Noranda . . . ."[8] This characterization reflects a misapprehension of the process of ratemaking and rate design. Alternatively, this characterization creates a fiction in order to justify the result reached. It is true that rates are set based on cost of service. And a customer class's rate should roughly approximate the cost to serve that

[4] *See*, GU-2011-0392, *supra*, footnote 2, quoting Uniform System of Accounts, General Instruction No. 7.
[5] Staff Exhibit No. 3, Rebuttal Testimony of Mark L. Oligschlaeger, page 6, lines 8-10.
[6] *See*¸ GU-2011-0392, *supra*, footnote 2.
[7] Tr. Vol.2, pages 92-94.
[8] Report and Order, page 2, paragraph 3.

class. But after rates are set, the dollars coming into the utility are not segregated into specific accounts designated or earmarked by customer class. In other words the dollars coming in are fungible.

The evidence adduced in this case shows that Ameren did, in fact, recover its fixed costs and earned a profit. Any assertion to the contrary is not supported by evidence.

In addition, Ameren's application is untimely as an AAO is intended as a mechanism to defer items during the period in which the event occurred. The event occurred in January of 2009. But Ameren did not file its application until July of 2011, approximately two and a half years after the storm occurred. The Uniform System of Accounts defines extraordinary items as "[t]hose . . . related to the effects of events . . . [that] have occurred during the current period . . . ."[9]

II. The Decision in the Report and Order is Wrong as a Matter of Public Policy

Approval of Ameren's application only gives Ameren the opportunity, but not the guarantee, to recover its un-generated revenue. But the fact is that the recording of the un-generated revenues has the effect of distorting the utility's balance sheet. Additionally, it is contrary to sound ratemaking

[9] *See*, GU-2011-0392, *supra*, footnote 2, quoting Uniform System of Accounts, General Instruction No. 7.

principles. Furthermore, it is rarely, if ever, the case that the Commission has allowed deferral of a cost and then disallowed that deferral in a future rate case. As Mark Oligschlager testified, a regulatory asset is a "cost booked by a utility based upon a *reasonable probability regulatory authorities will agree to allow recovery of the cost* at a later time."[10] (Emphasis added).

Additionally, the decision the Commission reaches in this case is inconsistent with the decision in GU-2011-0392.[11] In that case the Commission granted an application for an AAO as to capital costs and operating and management expenses related to the utility's restoration of service after the Joplin tornado. But the Commission denied the application as to "un-generated revenue."[12] While the Commission is not bound by its prior decisions, when it departs from them, sound regulatory policy dictates that it should explain that departure. The Report and Order in this case departs from sound regulatory policy by failing to adequately distinguish the granting of an AAO here from the Commission's denial in GU-2011-0392.

Finally, it is not the Commission's responsibility to shield utilities from all business risk. The Western District Court of Appeals instructs that

[10] Staff Exhibit No. 3, Rebuttal Testimony of Mark L. Oligschlaeger, page 6, lines 2-4.
[11] *See*, GU-2011-0392, *supra*, footnote 2.
[12] *Id.* at 2.

"Ameren . . . ignores that the risk of a dramatic loss of retail revenue is a business risk every utility faces . . . ."[13] I agree.

III. Conclusion

An AAO is reserved for rare exceptions, traditionally granted to allow a utility the opportunity to recover costs unaccounted for in its rates and associated with extraordinary events (i.e. restoration costs associated with the Joplin tornado[14]). This is so because the deferral of certain expenses, but not others, for recovery in later periods is contrary to traditional ratemaking principles whereby all items of expense and revenue from a test year are used to set rates. That is why recording discreet items from outside of the test year for later recovery is reserved only for extraordinary items; it would otherwise distort rates. Of course, the Commission wants to encourage utilities to work expeditiously to restore service to consumers after storms, and if as a result the utility faces material financial harm that could impede its provision of safe and adequate service to consumers, then granting an AAO may be appropriate.

But because Ameren's request for an AAO was not supported by substantial and competent evidence on the whole record demonstrating

[13] *Union Electric Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 490 (Mo. Ct. App. 2013)
[14] *In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, Case No. GU-2011-0392, January 25, 2012.

conformity with the Uniform System of Accounts and because granting an AAO in this case is contrary to sound regulatory policy, I respectfully dissent.

Respectfully Submitted,

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Chairman