

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

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.)
File No. EU-2012-0027

**JOINT RESPONSE OF PUBLIC COUNSEL, STAFF, AND MISSOURI
INDUSTRIAL ENERGY CONSUMERS TO ORDER DIRECTING FILING**

COMES NOW the Office of the Public Counsel (“Public Counsel”), the Staff of the Missouri Public Service Commission (“Staff”), and the Missouri Industrial Energy Consumers (“MIEC”) (collectively “Joint Respondents”) and for their Joint Response to the Missouri Public Service Commission’s (“Commission’s”) June 26, 2013, Order Directing Filing state as follows:

1. The Joint Respondents do not believe that there is a need for any additional procedure other than for the Commission to decide the pending Application. This matter has been tried, briefed and submitted. Although the Commission has held this case in abeyance pending the outcome of the Commission’s challenge of the Circuit Court of Cole County’s reversal of the Commission’s Report and Order in File No. EO-2010-0255 that matter is now final and not subject to further judicial action.¹ The Western District Court of Appeals reversed the Circuit Court of Cole County on May 14, 2013.

2. The opinion of the Western District Court of Appeals handed down on May 14, 2013 in *State ex rel. Union Electric Co. v. Public Serv. Comm’n*, Case Nos. WD75403 and

¹ In the instant case, Ameren Missouri, in footnote 14, on page 6 of its Initial Brief, noted that the Circuit Court of Cole County, in a judgment issued May 21, 2012, held that the Commission erred, as a matter of law, in its Report and Order in File No. EO-2010-0255, when it concluded that the sales from the AEP Operating Companies and Wabash Valley Power Association, Inc. contracts did not reflect long-term partial requirements sales that were exempt from the fuel adjustment clause’s (“FAC’s”) definition of off-system sales.

WD75404, does not directly affect the issues presented in this Accounting Authority Order (“AAO”) case before the Commission.² Nevertheless, some of the Court’s reasoning is instructive and reinforces the arguments that the Joint Respondents separately made as to why the requested AAO should be denied. The Court, at page 27 of the Slip Opinion, refers to the monies at issue here as “lost retail revenues [Ameren Missouri] had assumed it would receive when setting its rates in the 2008 general rate case.” The Court repeatedly refers to “lost revenues,” “revenue loss,” or slight variants of either of the preceding phrases³ while repeatedly noting that Ameren Missouri refers to “fixed costs.”⁴

3. The Court, at pages 38 and 39 of the Slip Opinion, concludes that:

. . . We are not persuaded by Ameren’s emotive equitable appeal, which is built on a shaky foundation. . . .

* * * *

. . . Ameren’s attempt to shock this Court’s sense of justice ignores that the risk of a dramatic loss of retail revenue is a business risk every utility faces. . . . [T]he risk of lost revenue is simply not a risk a utility is authorized to remediate with a fuel adjustment clause.

The Court did not address an AAO, other than to note at page 38 of the Slip Opinion that Ameren Missouri’s witness Ms. Barnes testified that Ameren Missouri could have sought other remedies, including an AAO. The Court commented:

. . . . There may have been other regulatory options available to Ameren. It is neither our place nor our obligation to identify the remedy Ameren should have employed. . . .

² If the Court had ruled that the revenues from the Wabash and AEP contracts should not have flowed through the FAC, then the AAO request would have been moot.

³ See, e.g., pages 6, 26, 27, 28, 37, 38, 39.

⁴ See, e.g., pages 6, 26, 32, 36, 37, 38, 44.

4. Regardless, it is not hard to extrapolate the above statements in the Court's opinion to the question of an AAO. As the Joint Respondents have argued in the case before the Commission, the risk of lost revenue is simply not a risk a utility can remediate with an AAO.

WHEREFORE, Joint Respondents respectfully request that the Commission make its decision in this matter based upon the record and briefs already submitted and the additional case law.

Respectfully submitted,

By: /s/ Lewis R. Mills, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Joint Response Of Public Counsel, Staff, And Missouri Industrial Energy Consumers To Order Directing Filing* have been transmitted electronically to all counsel of record this 8th day of July, 2013.

/s/ Steven Dottheim