BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2011-0028

MISSOURI INDUSTRIAL ENERGY CONSUMERS'
APPLICATION FOR REHEARING

COMES NOW the Missouri Industrial Energy Consumers ("MIEC") and for its Application for Rehearing states as follows:

1. On July 13, 2011, the Commission issued its Report and Order with an effective date dated July 23, 2011. The Report and Order is unlawful, unjust and unreasonable, is not based on competent and substantial evidence of record and is contrary to the weight of the evidence. The Report and Order is unjust and unreasonable and not based on competent and substantial evidence in that it fails to make findings of the basic facts that support its conclusions. The Report and Order is unjust, unreasonable, arbitrary and capricious and unlawful for the following reasons:

2. The Commission erred in finding that 10.2 percent is a fair and reasonable return on equity for Ameren Missouri. The Commission's conclusion that a return on equity of 10.2 percent should be used to determine Ameren Missouri's revenue requirement in this case is unlawful, unjust, unreasonable, arbitrary and capricious, is not based on competent and substantial evidence, and is not supported by adequate findings of fact for the following reasons:

a. The Commission explained in detail its reasons for rejecting the testimony and recommendations of witnesses Robert B. Hevert, Billie Sue LaConte and David Murray. In contrast, it rejected the recommendation of MIEC's witness, Michael Gorman, based on the unsupported conclusion that his Sustainable Growth DCF analysis produced a result that is "unreasonably low." The Commission made no

findings of fact to support this conclusion. In addition, in the Commission's decision is inconsistent with its recent Report and Order, *In the Matter of the Application of Kansas City Power & Light* ("*KCP&L*"), File No. ER-2010-0355 (April 12, 2011), in which the Commission accepted Mr. Gorman's Sustainable Growth DCF analysis.

b. The Commission's determination that a return on equity of 10.2 percent is appropriate for Ameren Missouri is inconsistent with its recent Report and Order in *KCP&L*, in which it concluded that 10.0 percent was the appropriate return on equity for the company at issue. *KCP&L* involved an electric utility company: (1) with bond ratings that are identical to those of Ameren Missouri in this case; (2) without a fuel adjustment mechanism to lower its operating risk; (3) with a capital structure that included less common equity than Ameren Missouri's capital structure. The Commission erred by not recognizing that Ameren Missouri's lower operating risk and lower financial risk justified a lower return on equity for Ameren Missouri than it found to be reasonable for *KCP&L*. The Report and Order in *KCP&L* demonstrates that the Commission's decision establishing a return on equity of 10.2 percent for Ameren Missouri is results-driven, arbitrary, capricious, and unreasonable.

c. In Ameren Missouri's last rate case, the Commission determined that 10.1 percent was a reasonable return on equity for Ameren Missouri. The record of evidence in this case shows that Ameren Missouri's cost of capital has not increased since its last rate case. The evidence in this case shows that all measures of cost of capital have declined since Ameren Missouri's last rate case. For this reason, the Commission's decision to increase Ameren Missouri's cost of equity to 10.2 percent is not

supported by competent and substantial evidence, and is unlawful, unjust, unreasonable, arbitrary and capricious.

3. The Commission erred in allowing Ameren Missouri to recover $7,096,592 in its rates for non-labor storm costs. The methodology used by Ameren Missouri to calculate this amount is based on a flawed methodology that exaggerates the amount Ameren Missouri is likely to incur in storm costs in the future. The "normalization periods" used by Ameren Missouri fail to provide an actual normalization because they include outlier events that are unlikely to recur. Moreover, the vegetation management rules implemented in 2008 are likely to decrease the amount Ameren Missouri will incur in storm costs going forward. Indeed, the Commission's Order in this case expressly states that "Ameren Missouri's system reliability has improved since the new rules went into effect and the Commission believes that vegetation management and infrastructure inspection is very important to that improved reliability."[1] In other words, as vegetation management improves under the 2008 rules (trees are trimmed back further from power lines), reliability improves because less damage is wrought on Ameren Missouri's service territory during storms. Thus, storm recovery costs are likely to continue decreasing as a result of Ameren Missouri' compliance with the Commission's 2008 Rules. The Commission erred when it found that MIEC's argument regarding the effects of the 2008 vegetation management on storm costs was "little more than speculation," because the Commission's Report and Order reaches precisely the same conclusion.[2] Additionally, the Commission's reasoning is internally inconsistent on this issue. On page 99 of the Commission's Report and Order in this case, the Commission finds that a shorter more recent period should be used to normalize solar rebate costs, because the more recent information demonstrates that costs are increasing. However, when presented with the evidence

[1] Case No. ER-2011-0028 Report and Order at 18.

[2] *Id.* at 22.

that storm recovery costs are decreasing, the Commission adopts a longer normalization period that includes outlier events and fails to appreciate the effect of the Commission's 2008 rules that were expressly designed to protect Ameren Missouri's service territory from the effects of storms. As such, the Commission should have adopted the more reliable and reasonable methodology proposed by MIEC that resulted in an allowance of $4.9 million in storm costs.

4. The Commission erred in allowing a six-year amortization period for recovery of demand side management (DSM) costs. As the Commission notes, "there is no objective basis for the six-year amortization period." The MIEC proposed a ten-year amortization period, which was grounded in objective analysis of the lives of Ameren Missouri's DSM programs, the weighted average life of which was twelve years. That proposal was also faithful to the principle that consumers should pay for the programs that benefit them, rather than create intergenerational inequities. Under the Commission's decision, today's customers pay more than their fair share of these DSM costs. The sole basis for the Commission's adoption of a six-year amortization period is its desire to incent Ameren Missouri to engage in more DSM programs. While true, that same argument could be made for pollution control expenses and other like expenses, none of which are recovered quicker than the expected life of the equipment warrants. That basis for decision is arbitrary and unreasonable because it skews the recovery of these costs so that today's ratepayers pay more than their fair share of these costs. It is also unlawful in that it violates section 393.1075.3 in that it does not value DSM "investments equal to traditional investments in supply and delivery infrastructure[.]"

5. The Commission erred in allowing Ameren Missouri $885,266 in its rates for ongoing solar rebate costs. The undisputed evidence established that the solar generating equipment purchased with such rebates was required to last ten years. The MIEC proposed a ten-year amortization period, which was based upon the required ten year life of the solar generating

equipment. There is no reasonable basis for recovering the cost of an asset over one year when it has a minimum life of ten years.

6. The Commission erred in authorizing Ameren Missouri to continue the current tracking mechanism for vegetation management and infrastructure inspections. The tracking mechanism at issue violates Missouri law as it constitutes single-issue and retroactive ratemaking. Moreover, the tracker violates public policy as it undermines Ameren Missouri's incentive to control costs with excessive profits or expense reductions. Further, the tracker may unfairly and unreasonably require Missouri ratepayers to cover increased tracked expense despite the decrease in Ameren Missouri's overall cost of service. The Commission did not make sufficient findings to support the continued use of the tracking mechanism. The evidence demonstrated the tracker is no longer justifiable in light of the amount of information available regarding the costs associated with vegetation management and infrastructure inspections. Moreover the evidence demonstrated that Ameren Missouri's tracked vegetation management and infrastructure inspections costs do not fluctuate sufficiently to justify the continued use of a tracker, and the amount of fluctuation in tracked costs is immaterial to Ameren Missouri. As such, none of the reasons that would justify the continued use of a tracker are present in this case. Thus, the Commission erred in allowing the continued use of the vegetation management and infrastructure inspections tracker.

7. The Commission erred in including $10 million in addition to the amount stipulated by the parties in property tax expenses associated with the Sioux scrubbers and the Taum Sauk additions in Ameren Missouri's revenue requirement. The Commission erred in finding that the estimated property taxes constituted a "known and measurable" expense, as all of the evidence in the case indicated that the estimates failed to constitute known and measurable expense under Missouri law. Specifically, the Commission failed to follow Missouri case law cited in MIEC's briefs that were directly on point to the issues in this case. Further, there was no evidence in the case to

support a $10 million allowance, as even the work papers sponsored by Ameren Missouri disclaimed the estimated amounts. Ameren Missouri witness Mr. Weiss admitted that he did not know the assessed value of the property at issue, nor the rates to be applied to that property. As such, there was no evidence that Ameren Missouri's property taxes will increase at all, and there was evidence that they are likely to decrease based on Ameren Missouri's appeal of its 2010 property tax bill. Additionally, the estimated property tax expenses will not be due (if ever) until beyond the operation of law date in this case, and thus fall outside of the purview of this case. Moreover, by the Commission's own standards, increasing cost of service by reaching forward to grab the single (and dubious) budget item of the Taum Sauk and Sioux scrubbers property tax is impermissible. The Commission's Report and Order in this case expressly prohibits such an action on page 82 where it cites its own precedent:

> [since the Commission uses historical expenses and revenues to set rates, it would be fundamentally unfair to reach forward to grab a single budget item to reduce AmerenUE's cost of service, while ignoring other anticipated costs that might increase that cost of service.

8. The Commission's allowance of the Taum Sauk and Sioux scrubbers estimated property tax violates the above precedent because it fails to use historical expenses and revenues to set the property tax allowance in this case and it reaches forward to grab a single budget item to increase Ameren Missouri's cost of service, while ignoring other factors (like Ameren Missouri's 2010 property tax appeal) that are likely to decrease Ameren Missouri's cost of service.

9. The Commission further erred in including any allowance for property taxes related to the Taum Sauk additions in light of the Commission's ruling that disallows any of the rebuild and depreciation costs associated with the Taum Sauk plant. It is unreasonable and internally inconsistent for the Commission to allow property tax recovery while simultaneously disallowing the

return on (rate of return) and of (depreciation) the capital investment associated with that same property.

10. The Commission has improperly shifted the burden of proof on property tax expense from Ameren Missouri to the other parties. The Commission's Report and Order on property taxes appears to unlawfully shift the burden of proof on the issue from Ameren Missouri to the other parties. The Ameren Missouri/Staff agreement to increase property taxes by $10.8 million more than the 2010 tax bills constitutes only a joint position; it is not evidence supporting the increase. Indeed, Staff admitted that it did not separately calculate or verify the amount. (Tr. 1,333 lines 15-24.) Ameren Missouri merely estimated its 2011 property taxes as it has typically done in years past by applying 2010 rates to January 1, 2011 plant balances. (Tr. 1323, lines 4-18). The record evidence clearly proves that this is not a typical year – Ameren Missouri appealed it assessment from the State Tax Commission; paid $28 million of 2010 property taxes under protest based upon that appeal; and it put into service two substantial plant additions. The evidence shows that Ameren Missouri's typical calculations are inadequate in this case, and Ameren Missouri did not introduce substantial evidence that it needs an additional $10.8 million in property taxes.

11. Ameren Missouri has not established the level of its 2010 property taxes. Ameren Missouri paid $119 million in property taxes for its Missouri electric operations (Tr. 1298, lines 1-12), but paid $28 million of that amount under protest. That is, Ameren Missouri contends that its 2010 tax bill will be between $91 million and $119 million. This area of uncertainty is more than twice the additional tax expense Ameren Missouri seeks in this rate case. Ameren Missouri, not the other parties, has the burden to prove its future tax bill. The Commission is entitled to rely on the $119 million property tax expense for Ameren Missouri only because the other parties stipulated that this is a reasonable amount. Ameren Missouri must prove any property tax expense above that amount, and that calculation must account for the 2010 protest.

12. The evidence irrefutably establishes that Ameren Missouri's locally assessed property tax bill in St. Charles County will decrease substantially from its 2010 level. The only certainty about Ameren Missouri's 2011 property tax bill is that the property tax assessed by St. Charles County will be millions of dollars less than in 2010. St. Charles County assessed the Sioux scrubbers as construction work in progress at $85 million in 2010. That property tax assessment has been eliminated in 2011. Compare, Section 153.034.1(1) and (2) with 153.034.2(2). Ameren Missouri's calculation did not tell the Commission the amount of the reduction, or take it into account in computing the need for an additional $10.8 million in property tax expense. The amount of the reduction is significant in relation to Ameren Missouri's proposed $10.8 million increase.

13. Ameren Missouri failed to introduce any evidence that its property tax bill in Reynolds County will increase in 2011. Property tax on the Taum Sauk reservoir will be imposed only in Reynolds County. Section 153.034.2(10). The table shows the increase in assessment on the Taum Sauk reservoir in Reynolds County.

	Taum Sauk A/V	% Increase	Total Reynolds Co. A/V	Taum Sauk as % of Reynolds Co.
2008	20,945,520		149,644,314	14.0%
2009	53,585,250	155.8%	182,544,587	29.4%
2010	80,632,022	50.5%	205,779,203	39.2%

Source: Exhibits 501, 505

Ameren Missouri presented no evidence of the actual tax impact of these dramatic increases, nor evidence of the possible impact of the 2010 construction activity. This Commission is not permitted to simply assume that there will be a disproportionate increase in 2011. The levy rollback provisions of Section 137.073.4 further insulate Ameren Missouri from a major property tax increase. The Taum Sauk reservoir is real property, notwithstanding the Reynolds County Assessor's convention of treating construction work in progress as personal property. A reservoir comprised of hundreds of millions of cubic yards of concrete meets any definition of real property. The levy rollback

provisions exclude from levy rollback provisions only construction occurring after January 1, 2010. Almost all of the construction and costs of the reservoir occurred before January 1, 2010, and are thus protected by the required levy rollbacks. The levy rollback provisions are further evidence that Ameren Missouri's property tax will not increase substantially in 2011.

14. Ameren Missouri's accruals for 2011 property taxes nor the regulatory treatment of property taxes of construction work in progress are evidence of Ameren Missouri's 2011 property taxes. Ameren Missouri did not introduce evidence that the basis for its accruals for 2011 property taxes is reliable. That is, although the accruals may be based on the perfunctory and flawed "we do what we do every year to estimate property taxes" approach suggested in testimony, they certainly do not account for the substantial differences set out above. Whether property taxes in prior years were capitalized or expensed is immaterial to the Commission's decision in this case. The parties have agreed that $119 million is appropriate for property tax expense in this case. Ameren Missouri has the burden to prove that its property taxes will exceed $119 million. Ameren Missouri has not met that evidentiary burden.

15. The record evidence proves that beyond doubt Ameren Missouri's 2011 St. Charles County property taxes will be substantially lower than in 2010; that Ameren Missouri has asserted that its 2010 property tax assessment by the State Tax Commission overstates its actual 2010 property tax liability by up to $28 million; and that there is no basis to believe that Ameren Missouri's 2011 Reynolds County tax bill will be significantly higher than its 2010 tax bill. Ameren Missouri has not introduced substantial evidence to establish the fact that its property tax bill will increase by $10.8 million from 2010 to 2011. The Commission's finding on property tax expense can survive only by shifting the burden of proof on the issue from Ameren Missouri to the other parties to the case. Section 393.150.2 prohibits the Commission from doing so, and the

Commission should revise its Report and Order to find that the property tax expense for Ameren Missouri should be $119 million.

Respectfully submitted,

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By */s/ Diana Vuylsteke*

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 22nd day of July, 2011, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke