BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY SUGGESTIONS IN SUPPORT OF THE OFFICE OF THE PUBLIC COUNSEL'S REQUEST FOR ORDER

COMES NOW the Missouri Office of the Public Counsel ("Public Counsel" or "OPC") and offers the following reply suggestions in support of its Request for Order:

Argument

Union Electric Company d/b/a Ameren Missouri's ("Ameren Missouri" or "Ameren") response to Public Counsel's request for order rests on an unstable foundation. In effect, Ameren offers that its Fuel Adjustment Clause ("FAC") filing is of the same quality as it has always been, and that since the FAC has been approved in the past, the filing should be approved now. However, merely because Ameren's FAC filing may not have been challenged for failing to meet the minimum filing requirements in the past, does not then mean that Ameren's current filing is sufficient under the rules. Ameren's filing plainly is not. Moreover, Ameren's response illuminates precisely the problem OPC seeks to avoid as the parties move forward in this rate case, which is Ameren Missouri's penchant for delay, in order to avoid meaningful inquiry, of the provision of information required to assess its rate request adequately.

Ameren points to its own recent practice in defense of the adequacy of its FAC filing. But that practice is not quite as straightforward as Ameren represents. For example, Ameren did not disclose in its 2012 initial rate case filing that it was recovering certain MISO transmission costs through the FAC. Though under a plain and ordinary reading of the rules, the information leading to the exposure of that practice should have been provided at the initial filing, instead the

parties had to extract it through painful discovery.[1] And that process had real consequences in the case. Procedurally, not only were the parties filing sur-surrebuttal testimony after the evidentiary hearing had started, but substantively - and only after much needless delay and waste of energy - the result of that discovery materially changed Ameren Missouri's tariff sheets.[2]

With respect to 4 CSR 240-3.161(H) and (I), Ameren suggests the "…complete explanation contemplated is a narrative explanation of the costs and revenues that are to be included in the FAC" (Doc. No. 67 at pg. 3). Ameren analogizes OPC's position as akin to requiring all accounting information needed to formulate the federal budget. Ameren's analogy only illustrates the fallacy of its position.

Unlike the federal budget, Ameren's request for an FAC must be reviewed by this Commission and the parties. The rules recognize that in order to perform a meaningful review, a complete explanation of all the relevant information must be provided at the start of the filing. To suggest otherwise shifts the burden in this case away from what the rule envisions. Under Ameren's interpretation of the rule, Ameren is permitted to provide only general and cursory information to the Commission, and it is then up to the parties to pry from Ameren in discovery the specific information needed to verify Ameren's FAC request. Where a case has an operation of law date as this one does, this interpretation reinforces the incentive for Ameren to dissemble

[1] A description of how Staff discovered that all transmission costs were being flowed through the fuel adjustment clause in Case No. ER-2012-0166 can be found in the surrebuttal testimony of Staff witness Lena M. Mantle (Doc. No. 463; Ex. 224).

[2] A description of the confusion that this can cause can be found in the Commission's September 24, 2014 Order Denying Motion to Strike, but Offering Opportunity to Respond in Case No. ER-2012-0166 (Doc. No. 285). In this Order, the Commission states "Certainly, this has been a confused issue that was not properly joined at least until the filing of surrebuttal testimony."

its request at the case's initiation and delay providing information as long as possible within the case, and, as in the past, Ameren Missouri is doing just that here.

Ameren defends its position by stating that OPC has requested FAC information from Ameren in data requests (Doc. No. 67 at pg. 7 & 11). Of course OPC requested this information, but OPC should not have had to take this step. This information should have been properly-supported and provided in July when Ameren filed its case. Moreover, despite Ameren's representations of diligence in discovery, Ameren has responded to only one of several FAC-related data requests – received the day prior to this filing – despite the fact that the 20-day period for response has lapsed and Ameren has filed no timely objection or request for more time.

Ameren further suggests that Staff has endorsed Ameren's approach to meeting the FAC filing requirements in past cases (*Id*. at pg. 4-5). In support, Ameren quotes from Staff witness Rogers' 2009 report in which he states that Staff "believes" Ameren complied with the filing requirements. Since 2009, Ameren's tariff sheets have become much more detailed. This is due largely to the parties' discovery of just how much information Ameren leaves out of its initial filings and what Ameren proposes to flow through the FAC, and the parties' time-consuming pursuit of the required information. The Commission's interest in ensuring the full exchange of information, proper regulatory review, and a just result suggests an application of its own rule consistent with OPC's position herein.

Ameren suggests that the Commission's rule with respect to identification of specific accounts for treatment in the FAC does not require identification of its "minor" accounts in its initial filing (Doc. No 67 at pg. 5-6). Ameren suggests those accounts are kept for the "Company's managerial accounting purposes" only (*Id*). This argument against compliance with

the Commission's rule is as bold as it is wrong. To understand why, the Federal Energy Regulatory Commission's rule on this point is helpful:

> Each utility…may adopt for its own purposes a different system of account numbers… provided that the numbers herein prescribed shall appear in the descriptive headings of the ledger account and in the various sources of original entry;
>
> ****
>
> Moreover, each utility using different account numbers for its own purposes shall keep readily available a list of such account numbers which it uses and a reconciliation of such account numbers with the account number provided herein. **It is intended that the utility's records shall be kept so as to permit ready analysis** by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from such records….

18 CFR Pt. 101, Gen. Instr., 3.C (2014) (emphasis added). While the FERC rule recognizes a utility may adopt an accounting nomenclature for its own internal purposes, FERC ensures that the utility's records are, nonetheless, capable of "ready analysis." FERC's rule works to ensure precisely what the Commission's rule works to ensure, meaningful review the utility's accounting information.

Just like the FERC rules requiring the use of the Uniform System of Accounts, the Commission's rule at issue here recognizes the possibility of accounting obfuscation. To address that potential problem in the context of a FAC filing, and to assist in the orderly progression of a case which has an 11-month time limit, the Commission's rule requires identification of "specific" accounts up front. Under Ameren's interpretation of the rule, it is all too easy to account for costs in "minor" or "sub"-accounts which are ineligible for FAC treatment by hiding them under the umbrella of "major" or "general" accounts. It is even easier to then engage in systematic foot-dragging in discovery in an attempt to wait out the clock and avoid the

information's disclosure, or at the least, any chance the Commission or other parties can make timely use of the information disclosed. And so, if Ameren's limiting interpretation of the Commission's rule holds, Ameren will be permitted to affect an end run around the Commission's filing requirements, continue to obfuscate and delay in discovery, and needlessly harm the Commission's capacity to reach a just result in this rate case.

To be sure, Public Counsel seeks nothing more from Ameren than what the Commission's rules require. The fact that Ameren may not have met these requirements in the past has no bearing on whether Ameren has met them now. In this case, Ameren has failed to comply with the filing requirements articulated in the Commission's rules. The Commission should strike the tariff sheets and testimony associated with Ameren's request to continue its FAC.

Conclusion

For the reasons articulated above, Public Counsel respectfully requests the Commission enter an order striking that portion of Ameren's rate case which requests continuation of its FAC, including the tariff sheets and associated pre-filed testimony.

Respectfully submitted,
/s/ *Dustin J. Allison*

DUSTIN J. ALLISON
Acting Public Counsel
Missouri Bar Number 54013

Office of the Public Counsel
PO Box 2230
Jefferson City, MO 65102
(573) 751-4857
(573) 751-5562 FAX
Dustin.Allison@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 9th day of October, 2014:

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
staffcounselservice@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
Thomas R Schwarz
308 E High Street, Ste. 301
Jefferson City, MO 65101
tschwarz@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

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

Sierra Club
Thomas Cmar
5042 N. Leavitt St., Ste. 1
Chicago, IL 60625
tcmar@earthjustice.org

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

Union Electric Company
Russ Mitten
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.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
Wendy Tatro
1901 Chouteau Avenue
St. Louis, MO 63166-6149
AmerenMOService@ameren.com

Brubaker & Associates, Inc.
Maurice Brubaker
P.O. Box 412000
St. Louis, MO 63141-2000
mbrubaker@consultbai.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
Robert Jones
130 S. Bemiston, Suite 200
Clayton, MO 63105
rejones@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
Robert Jones
130 S. Bemiston, Suite 200
Clayton, MO 63105
rejones@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
St. Louis, MO 63105
eperez@hammondshinners.com

Midwest Energy Consumers Group
David Woodsmall
807 Winston Court
Jefferson City, MO 65101
david.woodsmall@woodsmalllaw.com

Missouri Division of Energy
Jeremy D Knee
301 West High Street
P.O. Box 1157
Jefferson City, MO 65102
jeremy.knee@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

/s/ *Dustin J. Allison*
Dustin J. Allison