

**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    )        Case No. ER-2014-0258  
Revenues for Electric Service                                )

**REQUEST FOR ORDER**

COMES NOW the Missouri Office of the Public Counsel (“Public Counsel” or “OPC”) and requests the Commission to strike for lack of foundation and failure to comply with the Commission’s rules those portions of Union Electric Company’s d/b/a Ameren Missouri (“Ameren Missouri” or “Ameren”) tariff sheets requesting continuation of its Fuel Adjustment Rider as well as the pre-filed testimony purporting to support the Rider. Alternatively, Public Counsel requests that the Commission order Ameren Missouri to cure the deficiencies in its filing within ten business days of entry of any order that ensues from this request. In further support, Public Counsel states as follows:

**Background**

On March 21, 2014, Ameren Missouri filed notice with the Commission of its intent to file a new general rate proceeding (Doc. No. 1). Thereafter, on July 3, 2014, Ameren Missouri filed new tariff sheets seeking to raise base gross annual revenue according to Ameren’s own calculations by approximately \$264 million, or an increase of 9.65% (Doc. No. 9). Within its request, Ameren Missouri proposes continuation of a Fuel Adjustment Rider (Doc. No. 9). In addition to filing tariff sheets with proposed new rates, Ameren Missouri submitted the direct testimony of a number of witnesses purporting to substantiate Ameren’s tariff filings (Doc. Nos. 10-25). Relevant for purposes of this motion is the direct testimony of Lynn Barnes (Doc. No. 12).

## **Argument**

Rate adjustment mechanisms afford utilities a limited exception to the cardinal principle guiding regulated utility rate-making, which is that all relevant factors, and not just a single issue, should be considered holistically when a regulator sets rates. *See State ex. rel. Util. Consumers' Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 48 (Mo. 1979). The General Assembly has seen fit to afford electric utilities with the opportunity to apply for a rate adjustment mechanism for fuel and purchased power costs between general rate cases. Mo. Rev. Stat. § 386.266 (2000 & Cum. Supp.). Consistent with the legislature's provision of that mechanism, the Commission has adopted specific rules, which include filing requirements, governing how an electric utility may seek a rate adjustment mechanism for fuel and purchased power. *See* 4 CSR 240-3.161. Presumably, the Commission's filing requirements are intended to ensure the Commission ultimately has an adequate record upon which it can assess the utility's request, and further to ensure that the due process rights of parties and interveners contesting the utility's request are protected by prohibiting the utility from restricting or delaying access to necessary information.

Here, the Commission approved a Fuel Adjustment Rider for Ameren Missouri in a previous rate case. Report and Order, Case No. ER-2008-0318, Doc. No. 589 (Jan. 27, 2009). Accordingly, the question Public Counsel presents for the Commission to answer here is whether Ameren Missouri's request for continuation of its Fuel Adjustment Rider comports with the requirements of 4 CSR 240-3.161. Public Counsel respectfully suggests that it does not.

The Commission's rule 4 CSR 240-3.161(3) offers in pertinent part:

When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties...the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

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(H) A complete explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records;

4 CSR 240-3.161(3). Dissecting the above-quoted three subparts and applying their provisions to the submission provided by Ameren Missouri to support its rider continuation request, we see Ameren has wholly failed to comply with the rule.

4 CSR 240-3.161(3)(H) & (I)

Subsection (3)(H) of the Commission's filing requirements for continued Fuel Adjustment Riders requires "a complete explanation of all costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records." 4 CSR 240-3.161(3)(H). Subsection (3)(I) parallels (3)(H)'s language and applies to revenues instead of costs. 4 CSR 240-3.161(3)(I). But Barnes' testimony fails to provide a "complete explanation" of either costs or revenues. Instead, Barnes offers nothing more than vague statements, such as: "These costs are *generally* described as follows..." and "The following table *summarizes* this information by account." Direct Testimony of Lynn Barnes, Schedules LMB-1-4 & 1-5 (emphasis added).

The Commission was given the authority by the General Assembly to grant (and take away) fuel adjustment riders. Mo. Rev. Stat. § 386.266. The requirement that there be a “complete explanation” of all costs and revenues included in a filing which requests continuation of a fuel and purchased power rate adjustment mechanism facilitates the Commission’s determination of which costs and revenues should be included in the Rider, as required by 4 CSR 240-20.090(2)(C). A “complete explanation” of costs and revenues intended for inclusion in the Rider also facilitates the orderly progression of the contested case. It is clear that other parties in the rate case are allowed to support, support with modification or oppose the Fuel Adjustment Rider requested. 4 CSR 240-20.090(2)(E). Accordingly, without a clear identification *ab initio* what Ameren Missouri is proposing to be included in its Rider, the parties cannot appropriately determine their positions and the Commission cannot determine the appropriate costs and revenues that it approves.

Using the existing (deficient) submission, the only way for a party to ascertain what Ameren Missouri is proposing to be included in the Rider is for that party to go through all work papers submitted and identify those costs and revenues that the party believes Ameren Missouri appears to be requesting flow through the Rider. Then, the party would need to compare the sum of the costs and revenues it believes Ameren is trying to include in the Rider to the numbers found in the base energy factor calculation offered in the testimony of Laura Moore (Doc. No. 11). This process requires far too much guesswork and speculation on the part of the parties attempting to recreate Ameren Missouri’s calculations. If the party guesses wrong, they then must go back and decide what costs or revenues they may have included or missed. Wrong again – go back and try again. Ameren’s deficient submission leads to a potentially un-ending process of calculation and recalculation given the variables involved just to reproduce what

Ameren is suggesting should flow through the Rider. In contrast, if Ameren had provided the information required by 4 CSR 240-3.161(H) and (I), the parties would be able to find only those costs and revenues intended for treatment through the rider within Ameren's work papers – no guesswork would be required by the parties or, ultimately, by the Commission as this case progresses.

Moreover, the rule requires a complete explanation presumably to avoid the exact situation that happens here, which is the inclusion of costs in tariff sheets not completely explained in and supported by testimony and the inclusion of costs in testimony not reflected in the tariff sheets. Barnes omits from her filed testimony, for example, Ameren Missouri's inclusion of MISO costs in its tariff sheets. *Compare* Doc. No. 9 *with* LMB-3 pp. 4 & 5 of 10. Conversely, Barnes includes costs for water for use in her general description of costs to be included and in her summary of major accounts, when that cost component is not included in Ameren Missouri's proposed tariff sheets. *Compare* LMB-1-5 & 1-6 *with* Doc. No. 9. Without an adequately-substantiated factual basis to support the inclusion of a cost item in a tariff sheet, it is without foundation and must be stricken, and without the inclusion of a cost component in a tariff sheet, the testimony on that cost is immaterial.

Barnes additionally fails to identify the "specific account used for each cost item," in contravention to what the rule plainly requires. 4 CSR 240-3.161(3)(H) & (I). Instead, Barnes offers in filed testimony what she characterizes to be a "summary," providing only major accounts for the cost items she lists. Direct testimony of Lynn Barnes, Schedule LMB-1-5. However, as discovered by the parties in Ameren's past electric rate cases, Ameren Missouri's accounting practices also utilize "minor" accounts, referred to in other contexts as "subaccounts." The Commission's rule does not require the identification of only "major"

accounts. Rather, the rule requires identification of each “specific” account. 4 CSR 240-3.161(3)(H). And this, Barnes has not done.

This point is important because the result of this error of Ameren’s filing, if not recognized as such by the Commission, will be the waste of substantial time and energy by the parties, likely including the Commission’s own staff, in clarifying, identifying and characterizing these cost accounts. As a result, the remaining parties will experience prejudice in their ability to contest this case adequately due to the expenditure of time and energy needed to track down accounting entries. Of course, while this imminently predictable and avoidable issue plays out, the statutory 11-month clock runs. Ameren Missouri cannot and should not be permitted to shift the burden of discovery in this case so heavily onto the other parties.

4 CSR 240-3.161(3)(A)

The first subpart of the rule requires the utility seeking a continuation of its Fuel Adjustment Rider to provide “an example of the notice to be provided to the customers as required by 4 CSR 240-20.090(2)(D).” *Id.* The Commission’s rule regarding customer notice requires:

The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how costs passed through the proposed RAM requested *shall be applied to monthly bills.*

4 CSR 240-20.090(2)(D) (emphasis added). The example notice provided in the direct testimony of Lynn Barnes states only:

Ameren Missouri’s rate filing also includes a request to continue its fuel adjustment clause in substantially its current form which would continue to allow 95% of increases or decreases in net energy costs to be passed through to customers as a separate line item on customer’s bills.

Direct Testimony of Lynn Barnes, Schedule LMM-1-1. The example notice merely states that the charge will continue as it has been and will show up on bills as a separate line item. The example notice does not state how the fuel adjustment clause will be *applied* to monthly bills as required by the rule. Whether the fuel adjustment clause is to be applied based upon the customer's energy usage or whether the clause is to be applied based on some other factor is not disclosed to the customer in this example.

Adequately informing the customer of the nature of the request before the Commission is essential for customers to exercise their rights in this process and, perhaps more vitally to the customer, for them to plan properly for their expenses. The example notice fails to meet the Commission's rules regarding notice to customers and so, in turn, fails to meet the Commission's rules regarding the continuation of a Fuel Adjustment Rider.

#### Additional Evidentiary Issues

Barnes offers several additional statements in her testimony that bear treatment here, none of which adequately support the filing of the Fuel Adjustment Rider. First, Barnes states:

- A. There are several reasons why Ameren Missouri's FAC is still appropriate. Those reasons are: 1) all of the factors the Commission has generally considered in evaluating FACs favor continuation of the FAC; 2) there is no reasonable opportunity for the Company to earn a fair return without the FAC; 3) without an FAC, significant regulatory lag would be present and would prevent the Company from timely reflecting changes in net energy costs in rates; 4) elimination or any significant modification of the FAC would reflect an inconsistent regulatory policy which would harm the Company's access to needed capital at the lowest reasonable cost; and 5) Ameren Missouri's FAC is important to maintaining the Company's credit quality, primarily because of the fact that nearly all other electric utilities with whom credit rating agencies compare Ameren Missouri operate with FACs.

Direct Testimony of Lynn Barnes, p. 5:8-18. Barnes' conclusory statements are offered without foundation and are totally unsupported by testimony from any witness in Ameren's filing. The

offering of generalized, vague testimony in Ameren’s direct case is not a new phenomenon for Ameren. Ameren has participated in prior rate cases by offering bare-bones statements in direct testimony, often without adequate substantiation, only to have those statements contested in rebuttal testimony. Ameren then uses surrebuttal, when no other party has a chance to respond, to fully flesh out what it meant in its inadequate direct testimony. The Commission should not permit this behavior to continue unchecked, and cannot permit it to continue consistent with traditional notions of due process. Ameren’s statements in direct testimony, statements which guide the entire course of discovery in this rate case, must be based on an adequate foundation, substantiated, and be non-conclusory or summary in nature.

Additional problematic examples of Barnes’ testimony exist. For instance, Barnes states, “[T]he FAC assists in addressing the relentlessly increasing, volatile and uncertain fuel costs incurred by the Company in providing service to its customers.” *Id.* at Direct Schedule LMB-1-3. But neither Barnes, nor any other Ameren Missouri witness, provide any testimony to support the conclusory statement that fuel costs are “relentlessly increasing, volatile and uncertain.”<sup>1</sup> Further, Barnes offers, “...more than 95% of [utilities operating in other states] use similar rate adjustment mechanisms.” *Id.* Again, neither Barnes, nor any other Ameren Missouri witness, provides any testimony to lay the foundation for this blanket assertion.

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<sup>1</sup> Indeed, Barnes herself controverts her own testimony and undermines her case for a Fuel Adjustment Rider when she indicates that Ameren Missouri has in place “long-term contracts for coal and coal transportation that contain pre-determined escalators.” The existence of these contracts would seem to contradict her assertion that Ameren Missouri experiences unrelenting fuel price volatility and uncertainty. *See* Direct Testimony of Lynn Barnes, p. 7:6-8.

## **Conclusion**

Barnes testimony in support of a Fuel Adjustment Rider fails to comply with the Commission's filing requirements in several material respects, and so, the Commission should enter an order striking that portion of Ameren's rate case which requests a Fuel Adjustment Rider, including the tariff sheets and associated pre-filed testimony. If the Commission is tempted to afford Ameren an opportunity to cure its deficiencies, the Commission should decline to do so. Ameren is a sophisticated, well-funded participant before the Commission. The filing requirements for a Fuel Adjustment Rider are open and obvious for all. Further, the 11-month timeline for a determination of a rate case is well-known and used by Ameren to its maximum advantage. Ameren's dilatory behavior should not be rewarded by the Commission with additional time to cure; time which will only further impair the remaining parties' respective abilities to litigate the Fuel Adjustment Rider issue so that the Commission can reach a just result on that question. In the event the Commission, nevertheless, is inclined to permit Ameren to cure its filing deficiencies, Public Counsel respectfully requests the Commission limit the time for Ameren Missouri to cure to ten (10) business days from the date of the Commission's order.

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 24<sup>th</sup> day of September, 2014:

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