

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

In the Matter of the Adjustment of Union Electric)	
Company d/b/a Ameren Missouri's Fuel Adjustment)	<u>File No. ER-2014-0022</u>
Clause for the 13 th Accumulation Period)	Tariff No. JE-2014-0042

THE MIEC'S AND OPC'S JOINT APPLICATION FOR REHEARING

COME NOW the Missouri Industrial Energy Consumers ("MIEC") and the Office of Public Counsel ("OPC"), collectively the Movants ("Movants"), and pursuant to 4 CSR 240-2.160(1) hereby file their Joint Application for Rehearing respecting the Commission's September 4, 2013 Report and Order issued in this case. In support of their Application, the Movants state as follows:

1. The Commission erred in approving Union Electric Company's (d/b/a Ameren Missouri) ("Ameren Missouri") tariff filing, assigned Tariff No. JE-2014-0042, which failed to reflect the \$26.3 million refund that Ameren Missouri owes to Missouri ratepayers, because the Report and Order requires, without any reason or rationale, that Missouri ratepayers wait unreasonably long for a refund to which they have been entitled for more than two years.

2. First, contrary to Ameren Missouri's assertions in its September 4, 2013 Response in this case, the Commission's Rules expressly provide for a waiver of its rules under 4 CSR 24-20.090 (15) for good cause shown after an opportunity for a hearing. As such, the Commission expressly possesses the authority to hold the hearing requested by the MIEC, and to make the refund adjustment requested by the MIEC.

3. While the courts as well as this Commission have applied a variety of formulations of "good cause," the Missouri Supreme Court states that, at its core, "good cause depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the

officer to which the decision is committed.” *Wilson v. M.E. Morris*, 369 S.W.2d 402, 407 (Mo. 1963). Similarly, the Missouri Supreme Court has held that good cause is “...a cause or reason sufficient in law; one that is based on equity or justice or that would motivate a reasonable man under all the circumstances.” *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971). *See also Matter of Seiser*, 604 S.W.2d 644, 646 (Mo.App. 1980); *Central Missouri Paving Co.*, 575 S.W.2d 889, 892 (Mo.App. 1978).

4. Indeed, in a recent filing in Case No. EO-2013-0407, Ameren Missouri seeks a “Contingent Request for Hearing,” noting the waiver for good cause available under FAC rule 4 CSR 240-20.090 (15), and seeking leave on behalf of the Staff to allow Staff to file supplements to its FAC report. Accordingly, Ameren Missouri’s own pleading in EO-2013-0407 undermines its argument in this case that a waiver or hearing is improper.

5. Second, Ameren Missouri’s July 26th FAC tariff Schedule EW-FPA attached to its submission demonstrates that a “Prudence Adjustment” could be approved by the Commission, and indeed a line-item on that Schedule already contemplates the possibility of a refund adjustment.

6. Moreover, applying the refund in this case is extremely simple. The only action that is necessary to address the FAC refund adjustment is to insert the value of the refund (\$26.3 million) on to line 4.3-Prudent Adjustment Amount. The sum of lines 4, 4.1, 4.2 and 4.3 equals the fuel and purchased power adjustment as listed on line 5 of Ameren Missouri’s Tariff Sheet No. 72.9.

7. The \$26.3 million refund ordered by this Commission is a known and measurable event that should have been reflected in the Staff’s review of the current FAC filing, and should have been included in the Staff’s recommendation. In light of the amount at issue, the harm to ratepayers, the unlawful and imprudent conduct of Ameren Missouri, the excessive delay in remedying the harm, and the relatively short period of time (5 days) between the filing of the tariff

and the issuance of the Commission's Report and Order, it is untenable that the Commission would allow Ameren Missouri to further delay its refund to Missouri ratepayers.

8. Notably, there were 25 days following the issuance of the Commission's Report and Order requiring a refund, during which the Staff could have and should have included the refund adjustment in its FAC recommendation.

9. Third, Ameren Missouri contemplated that it would be required to issue the refund at this time, as demonstrated by Ameren's Schedule referenced above and also by the fact that Ameren Missouri has already booked the refund adjustment against its earnings for the second quarter of this year.

10. Fourth, and most importantly, Ameren Missouri has caused Missouri ratepayers to wait for more than two years to receive the refund to which they are entitled due to Ameren Missouri's unlawful and unreasonable failure to flow the revenues from the Wabash and AEP contracts through the FAC.

11. Indeed, after imprudently and unlawfully failing to flow the revenues at issue to Missouri ratepayers through the FAC since 2010, Ameren Missouri has engaged in a course of redundant and unnecessary litigation and appeals that has delayed this refund far beyond reason. Missouri ratepayers have been harmed enough by Ameren Missouri's unlawful and imprudent practices in this case. Delaying the refund for an additional four months will mean that many more ratepayers will never receive their refund, as they will have left the system before receiving the refund to which they are entitled.

12. In light of the equities involved in this case, it is unreasonable and unconscionable for this Commission to allow Ameren Missouri to continue to delay and postpone the refund to

which Missouri ratepayers are entitled, merely because it filed its tariff less than a week prior to the Report and Order requiring it to issue a refund.

13. Pursuant to 4 CSR 240-20.090(15), good cause exists to adjust the FAC tariff to reflect the refund required by the Commission's Order, and there is no substantive reason to avoid adjusting the tariff in this case.

14. Due to the harm suffered by Missouri ratepayers over the course of more than two years related to Ameren Missouri's imprudent and unlawful actions, it is unreasonable that Ameren Missouri should now be allowed to prolong the injury by failing to immediately begin refunding Missouri ratepayers.

WHEREFORE, the MIEC and the OPC seek rehearing on the issue of a refund adjustment to Tariff No. JE-2014-0042, as adopted by the Commission's September 4, 2013 Report and Order issued in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was mailed, electronically, to all counsel of record on
September 10, 2013.

/s/ Brent Roam