

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

In the Matter of the Second Prudence Review of)
Costs Subject to the Commission-Approved Fuel) Case No. EO-2012-0074
Adjustment Clause of Union Electric Company)
d/b/a Ameren Missouri.)

**AMEREN MISSOURI’S REPLY TO MIEC’S RESPONSE
TO AMEREN MISSOURI’S EARLY REQUEST FOR HEARING**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and, pursuant to 4 CSR 240-2.080(15),¹ hereby replies to the late-Response filed by the Missouri Industrial Energy Consumers (“MIEC”) on November 23, 2011. For its Reply, Ameren Missouri states as follows:

1. On November 7, 2011 Ameren Missouri timely filed its Early Request for Hearing pursuant to a provision of the Commission’s fuel adjustment clause (“FAC”) rules, 4 CSR 240-20.090(7)(B). Under 4 CSR 240-2.080(15), any response to Ameren Missouri’s Request was due 10 days later, no later than November 17, 2011.
2. Late in the day on November 23, 2011 (just before the Thanksgiving holiday), MIEC late-filed its Response, but failed to comply with the time limitation for doing so as provided for in 4 CSR 240-2.080(15), and did not even seek leave to make its untimely filing.²
3. Regarding the substance of MIEC’s Response, its premise is that it is “impermissible under Missouri law” for the Commission to examine the prudence of Ameren Missouri’s net fuel cost activities for the period covered by this docket because of the application of *res judicata* or collateral

¹ At the time of MIEC’s filing, the applicable rule was 4 CSR 240-2.080(15), which has now become (without change) 4 CSR 240-2.080(13).

² While, as discussed below, MIEC’s Response and the relief requested therein should be denied for substantive reasons, Ameren Missouri points out MIEC’s failure to comply with the Commission’s rules, and failure to request leave to vary from them, because all parties should be held to comply with the Commission’s rules, particularly a party such as MIEC that is well-financed, sophisticated, and familiar with the Commission’s rules. Ameren Missouri would also note that this Reply is timely filed because the 10th day of the response period provided for the Commission’s rules fell on a Saturday, making this Reply due today, Monday, December 5, 2011.

estoppel principles. That premise is false as a matter of law. As the Commission has previously recognized, the Commission is not bound by those doctrines. *See, e.g., In Re: The matter of Southwestern Bell Telephone Co.'s Proposed Radio Common Carrier Tariff*, 1990 Mo. PSC LEXIS 52 (“The Commission is not strictly bound by the principles of *stare decisis*, *res judicata* or collateral estoppel.”).³ MIEC’s *allegation* that the Commission *must* apply those principles is also contradicted by a recent Commission order in the accounting authority order case where Ameren Missouri seeks permission to defer on its books for later ratemaking consideration the fixed costs it could not recover as a result of the ice storm. As the Commission knows, that ice storm led to the proposed prudence disallowance at issue in the first prudence review case, and the proposed prudence disallowance at issue in this case. In that recent order, the Commission expressed its view that it is free to change or abrogate its prior orders, including prior orders issued in a prudence review conducted under the Commission’s FAC rules. *See Order Denying Motions to Dismiss*, File No. EU-2012-0027 (Oct. 26, 2011) (where the Commission cited Section 386.490.3 as authority to change its prior order issued in Case No. EO-2010-0255, which MIEC claims must be given permanent, preclusive effect).

4. Not only is the premise of MIEC’s Response incorrect as a matter of law, but MIEC requests that the Commission deny Ameren Missouri *the process that it is due* under the Commission’s FAC rules simply because of MIEC’s conclusory and unsupported *assertion* that Ameren Missouri’s dispute about the amount at issue in this new prudence review is “baseless.” Ameren Missouri does not believe its dispute is “baseless,” but the validity of its dispute can be tested by MIEC in due course, as can any other factual contention, as part of the adjudicative process reflected in the Commission’s FAC

³ Nor is Ameren Missouri collaterally attacking the Commission’s Order in Case No. EO-2010-0255. The issue in that case was the prudence of Ameren Missouri’s net fuel cost management for the period March 1, 2009 through September 30, 2009. That is not the issue in this case, which deals with a different period. Ameren Missouri is properly challenging the Commission’s Order in Case No. EO-2010-0255, pursuant to a proper Writ of Review proceeding pending in the Cole County Circuit Court.

rules and that is triggered when a prudence disallowance has been proposed.⁴ The Commission should not, and cannot deny Ameren Missouri's access to that process.

WHEREFORE, Ameren Missouri respectfully files its Reply to MIEC's late-filed Response.

Respectfully submitted,

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d/b/a Ameren Missouri

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⁴ As Ameren Missouri's Early Request for Hearing indicated, Ameren Missouri does not believe the Commission's FAC rules contemplate a bifurcated prudence review proceeding in which isolated adjustments are made, but regardless, Ameren Missouri is entitled to its "day before the Commission" before a prudence disallowance can be ordered.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on December 5, 2011, to all parties of record.

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