

**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 )

**RESPONSE TO ORDER DIRECTING FILING**

**COMES NOW** the Missouri Industrial Energy Consumers (“MIEC”) and responds to the Commission’s June 11, 2013, *Order Directing Filing* as follows:

1. In its *Order Directing Filing* the Commission ordered the parties to “state how the Commission should proceed in light of [the Missouri Court of Appeals May 14, 2013, opinion in Case No. WD75403].”
2. The parties in this case jointly listed five issues that they tried, briefed and submitted to the Commission for decision.
3. The opinion of the Western District Court of Appeals in Case No. WD75403 controls the outcome of all five issues listed in the joint list of issues in this case.
4. Following is the joint list of issues, along with the outcomes that result from the opinion of the Western District Court of Appeals in Case No. WD75403:

**ISSUES**

1. Are the revenues derived from the power sales agreements between Ameren Missouri and counter-parties Wabash Valley Power Association, Inc. ("Wabash") and American Electric Power Service Corporation as agent for the AEP Operating Companies ("AEP") excluded from the definition of “OSSR” found in the Original Tariff Sheets Nos. 98.2 and 98.3 of Ameren Missouri’s Fuel and Purchase Power Adjustment Clause, which took effect March 1, 2009?

**Outcome:** No.

2. Was it imprudent, improper and/or unlawful for Ameren Missouri to exclude the Company's power sale agreements with AEP and Wabash from off-system sales and not include the revenues collected under the Company's power sale agreements with AEP and Wabash in OSSR and, therefore, not include those revenues in its calculation of the Fuel and Purchased Power Adjustment rates for the time period of October 1, 2009, to June 20, 2010?

**Outcome:** Yes.

3. Did Ameren Missouri's conduct described in Paragraph 2, above, result in harm to its ratepayers?

**Outcome:** Yes.

4. Should Ameren Missouri refund to its ratepayers through its FAC the amount improperly collected from them by virtue of the conduct described in Paragraph 2, above?

**Outcome:** Yes.

5. What is the amount that should be refunded, if any?

**Outcome:** While the Western District Court of Appeals opinion does not specify the amount to be refunded, it requires Ameren Missouri to refund the total amount of revenues that Ameren Missouri wrongfully excluded from the calculation of its fuel and purchased power adjustment clause. The evidence in this case demonstrates that the amount Ameren Missouri wrongfully excluded totals \$26,342,791, plus interest.

**WHEREFORE,** the Missouri Industrial Energy Consumers state that the Commission should proceed by ordering Ameren Missouri to refund \$26,342,791 plus interest to Missouri ratepayers.

Respectfully submitted,

BRYAN CAVE LLP

/s/ Brent Roam

Diana M. Vuylsteke, #42419  
Brent Roam, #60666  
211 North Broadway, Suite 3600  
St. Louis, MO 63102  
Phone: (314) 259-2543  
Fax: (314) 259-2020  
E-mail: brent.roam@bryancave.com

Attorneys for the Missouri Industrial Energy  
Consumers

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 21<sup>st</sup> day of June 2013.

/s/ Brent Roam