

**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) **Case No. EO-2012-0074**
Fuel Adjustment Clause of Union Electric Company)
d/b/a Ameren Missouri.)

MIEC’S RESPONSE TO AMEREN MISSOURI’S APPLICATION FOR REHEARING

1. COMES NOW Missouri Industrial Energy Consumers (“MIEC”), and hereby files its response to Union Electric Company d/b/a Ameren Missouri’s (“Ameren Missouri”) Application for Rehearing in the above referenced case.

2. The Commission did not err in ordering Ameren Missouri to refund \$26,342, 791 plus interest, because there is *no* credible evidence that the \$3.3M referenced in the subject stipulation and agreement among the parties was to be used as a reduction to the actual margins collected from the AEP and Wabash contracts.

3. Ameren Missouri’s witness Gary Weiss testified that margins collected from the AEP and Wabash contracts during the relevant period should be reduced by \$3.3 million to reflect amounts he claims have already been reimbursed to Missouri ratepayers as a result of the Second Nonunanimous Stipulation and Agreement approved by the Commission in Case No. ER-2010-0036.

4. Mr. Weiss’ testimony is factually incorrect. Nothing in the Stipulation and Agreement suggests that the \$3.3 million should be used to reduce the actual margins collected from the AEP and Wabash contracts.

5. On the contrary, the language of the Stipulation and Agreement implicitly contemplates that the \$3.3 million is in “addition” to the amounts collected under the AEP and Wabash contracts.¹

6. Ameren Missouri seems to ground its position on the fact that the \$3.3 million in the FPA factor appears under the heading “AEP and Wabash Contracts” rather than under a heading that reads “Black Box.” This is a straw argument.

7. No one disputes that the \$3.3 million reflects an amount agreed to by the parties to settle their disagreement with respect to the handling of the AEP and Wabash contracts in Case No. ER-2010-0036. So, it makes sense that this provision would appear under the heading of AEP and Wabash Contracts.

8. However, Mr. Weiss’ adjustment does not reflect the agreement by the parties, nor does it reflect the conversations among the parties to the settlement in ER-2010-0036. Mr. Weiss’ adjustment is strictly fiction.

9. There are six paragraphs of stipulations under the AEP and Wabash Contracts heading in the Stipulation and Agreement, which in their totality make up the parties’ agreement with respect to the handling of the AEP and Wabash Contracts in Case No. ER-2010-0036.

10. None of the language in those six paragraphs imply in any way that the \$300,000 monthly reduction in the numerator of the FPA factor replaces the percentage of the margins from the AEP and Wabash contracts to which Missouri ratepayers are entitled. In fact, the paragraph at issue states, “The fuel adjustment clause tariff sheets shall also be revised to include an additional reduction in the . . . amount of \$300,000 per month”²

¹ Stipulation and Agreement, Case No. ER-2010-0036.

² *Id.* (emphasis added).

11. This language clearly implies that the reduction contemplated in the Stipulation and Agreement is in addition to the reductions already contemplated in the tariff sheets, namely the mandatory reductions from the margins associated with AEP and Wabash.

12. Furthermore, those individuals intimately involved with the Stipulation and Agreement in ER-2010-0036 unanimously agree that Mr. Weiss has misrepresented the nature of the FPA factor in Paragraph 5 of the Stipulation and Agreement.

13. For instance, MIEC witness Mr. Greg Meyer, who participated extensively in the negotiations testified that “Mr. Weiss has fundamentally misrepresented the Stipulation”³ by alleging that the proper levels of sales margins from the AEP and Wabash contracts should be reduced by the FPA factor.

14. According to Mr. Meyer, “Ameren has mischaracterized the conditions of the Stipulation. Mr. Weiss has a complete misunderstanding of the events which lead to the establishment of Paragraph 5 of the Stipulation.”⁴

15. Similarly, Staff Witness Lena Mantle testified as follows:

The parties, including Ameren Missouri, agreed that Ameren Missouri would reduce fuel cost by \$300,000 a month for twelve months in order to settle the disagreement between the parties regarding how to handle the AEP and Wabash contracts in Case No. ER-2010-0036. If the parties to the stipulation had intended for it to offset the AEP and Wabash margins that had not been passed through the FAC, then the parties would have stated so in their written agreement filed with the Commission. Instead they included language that specifically allowed them to take any position in a subsequent case regarding the AEP and Wabash contracts.⁵

16. Finally, the Stipulation itself states that “[i]n presenting this Stipulation, none of the signatories shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or

³ Meyer Direct, Ex. No. 11, Page 3, Lines 4-6.

⁴ Meyer Direct, Ex. No. 11, Page 4, Lines 1-5.

⁵ Mantle Direct, Ex. No. 9, Page 12, Lines 3-10.

revenue determination or cost allocation or revenue related methodology, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation . . . in this or any other proceeding, other than a proceeding limited to enforce the terms of this Stipulation.”⁶

17. Accordingly, Ameren Missouri’s attempt to use the language in the Stipulation and Agreement to prejudice the non-Ameren parties in this case is inappropriate and prohibited by the express language of the Stipulation itself.

18. This Commission rightly found that Ms. Mantle’s testimony with respect to the characterization of the stipulation and agreement was more credible than the testimony of Mr. Weiss.

19. Such a finding is squarely within the purview of the Commission’s responsibilities in this case. As such, the Commission did not err when it ordered Ameren Missouri to refund \$26,342, 791 plus interest to Missouri ratepayers.

WHEREFORE, Ameren Missouri’s Application for Rehearing should be denied.

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: dmvuylsteke@bryancave.com

Attorney for the Missouri Industrial Energy
Consumers

⁶ Stipulation and Agreement, Case No. ER-2010-0036.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 3rd day of September, 2013, to the parties on the Commission's service list in this case.

/s/ Brent Roam