

In re: Union Electric Company's Change to its 2011 Utility Resource Filing pursuant to 4 CSR 240 – Chapter 22.)) Case No. EO-2012-0127

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or Company), and for its *Reply to Public Counsel's Response to Staff's Notice of Non-Compliance*, states as follows:

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change in its Preferred Plan only shows the need for one addition to capacity during the 20 year timeframe, just as its previous Preferred Plan showed, and that as a result of the reduction in energy efficiency spending, the timeframe for the addition is moved up, but only by a few years to a point in time that is still more than a decade away. Additionally, as the Commission and OPC are well aware, the Company is currently preparing a filing under the Missouri Energy Efficiency Investment Act (MEEIA) and the Commission's extensive MEEIA regulations. Approval of the demand-side programs and the demand-side programs investment mechanism (DSIM) that will be part of that MEEIA filing will allow Ameren Missouri to pursue all cost-effective energy efficiency and would likely require the Company to file another change in the Preferred Plan to include more energy efficiency, which in turn would likely impact the need for additional capacity during the 20-year planning horizon, the timing of that need, or both. OPC may prefer the Company skip ahead to a Preferred Plan that includes all cost-effective energy efficiency measures now, but the Company's management is not required to make that change until the Commission has discharged its obligations under MEEIA by approving demand-side programs and a DSIM that, among other things, in fact ensures that the Company's financial incentives are aligned with helping customers use energy more efficiently. Section 393.1075.3(2), RSMo. (Cum. Supp. 2010). The Company has acted in compliance with the Commission rules.

5. Ameren Missouri completely disagrees with OPC's repeated accusation that it has made "poor management decisions" in choosing to change its Preferred Plan. The Company's consistent position has been that it is willing to aggressively pursue energy efficiency measures if the Company's interests can be aligned with those of its

customers, in accordance with the requirements of the MEEIA statute. We are hopeful that such alignment will occur as a result of the forthcoming MEEIA docket, but until that does happen, it would be a poor management decision *not* to change the Preferred Plan. OPC's accusation that the Company has engaged in poor decision making stems from the fact that either (a) OPC does not understand how the interests of customers and the Company are not aligned under the current framework, or (b) OPC does not care whether customer and Company interests are aligned in accordance with the MEEIA. In either event, OPC's accusation is completely without merit.

6. In addition, OPC urges the Commission to act now. Ignoring, for a moment, the invalidity of OPC's harm arguments, the request for the Commission to step into management's shoes turns the role of the Commission as regulator on its head. Neither the Commission nor OPC has the legal authority to make management decisions for the Company. That is left to the management of the Company. *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177, 181-82 (Mo. App. W.D. 1960).¹ Consistent with this fact, the Commission's IRP process is not set up for Commission approval or disapproval of the Preferred Plan chosen. It is simply designed to ensure that the utility undertakes a robust planning process, not that the planning result in a particular result. It provides a list of tasks which must be accomplished as part of the Company's long term planning. The Company has undertaken each of those steps. After its February 2011 IRP filing, the Company determined the Preferred Plan selected was no longer appropriate and made a filing to change that Preferred Plan, as required by the

¹ The Commission has repeatedly recognized that it lacks the authority to dictate to a utility what decisions it must make, including quite recently in its Report and Order (at page 44) in the Company's last rate case, Case No. ER-2011-0028 ("However, the Commission, while it has the power to regulate Ameren Missouri, does not have the power to take over the management of the utility." (*citing Harline*, 343 S.W.2d at 182)).

Commission's rules. This docket should focus solely on whether or not the Company fulfilled the planning requirements of 4 CSR 240-22.080(12). OPC's filing does not even address those requirements, choosing instead to rely upon alarmist statements about the possible future effect of the change in the *substance* of the Preferred Plan.

WHEREFORE, Ameren Missouri asks the Commission to reject OPC's motion.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to Public Counsel's Response to Staff's Notice of Non-Compliance was served on the following parties via electronic mail (e-mail) on this 12th day of December, 2011.

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