

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

| | | |
|---|---|-------------------------------------|
| In the Matter of Union Electric Company's |) | |
| 2011 Utility Resource Filing Pursuant to |) | <u>Case No. EO-2011-0271</u> |
| 4 CSR 240 – Chapter 22 |) | |

PUBLIC COUNSEL'S APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states as follows:

1. On March 28, 2012, the Commission issued its Report and Order with an effective date of April 27, 2012. The Report and Order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons.

2. The Commission failed to address all of the deficiencies identified by the parties. At page 6, the Commission stated that: "The Commission will examine the substance of those alleged deficiencies." But the Commission failed to examine Public Counsel's assertion of a deficiency in the analysis of probable environmental costs. This deficiency was listed in the Joint Filing made by all the parties on August 8, 2011. It was specifically discussed in Public Counsel' opening statement:

With respect to the opening statement of Ameren this morning, I do have to correct one particular point, which is the point that none of the parties have stated that UE skipped a step. In fact one of our deficiencies we pointed out is the UE did in fact skip a step and that it failed to analyze probable environmental costs as a critical uncertain factor, which is a step required by 22.070 (2)(C). And that step was not done at all. (Transcript, page 39)

It was addressed in Public Counsel's Initial Brief at pages 5 and 9, where Public Counsel described it as "[o]ne of the most significant problems with the Company's integration and risk analysis and its Preferred Resource Selection Scorecard approach." But the Commission failed to examine it at all in its Report and Order. OPC witness Tim Woolf summarized the harm

caused by UE's approach to using moderate and aggressive environmental scenarios instead of modeling probable environmental costs as required by sections (2), (2)(C), and (5) of 4 CSR 240-22.070 on page 13 of his rebuttal testimony (Exhibit 47) where he states:

Q. Is there another reason why the Company's approach to modeling the moderate and aggressive environmental scenarios is not consistent with the IRP rule?

A. Yes. The IRP rule is also clear that the utility shall "explicitly state and document the subjective probabilities that utility decision-makers assign to each of these uncertain factors." (4 CSR 240-22.070(1).) By modeling the moderate and aggressive environmental scenarios as they have, the Company has essentially acknowledged that the EPA environmental regulations are a critical uncertain factor, but they have declined to state and document the subjective probabilities associated with this uncertain factor, as they would have to do if they included this uncertain factor in their probability tree approach. As a result, the IRP does not provide an indication of the subjective probability that the Company might assign to this uncertain factor, and readers of the IRP cannot gauge the extent to which this issue is likely to affect the resource plans or their costs.

This failure to identify and document the subjective probabilities resulted in calculations of expected values for the PVRR performance measure for the final set of alternative resources plans that did not incorporate the expected amount of PVRR for probable environmental costs (including costs of coal plant retrofits for current and expected EPA regulations) so that that the results were not comparable between scenarios because they did not accurately reflect the expected amount of probable environmental costs associated with each resource plan. The Commission's failure to even address this important deficiency renders its decision incomplete, unreasonable, and arbitrary and capricious.

3. UE's use of "decision factors" " to justify its choice of an alternative resource plan that did not include the RAP level of DSM is inconsistent with 4 CSR 240-22.010(2)(C), which allows for the inclusion of other considerations, but only if the "other considerations ... are critical to meeting the fundamental objective of the resource planning process...." That fundamental objective, set forth in 4 CSR 240-22.010(2), is: "to provide the public with energy

services that are safe, reliable, and efficient, at just and reasonable rates, in compliance with all legal mandates, and in a manner that serves the public interest and is consistent with state energy and environmental policies.” Nothing in this fundamental objective even remotely allows for identifying minor decreases in corporate profit levels as one of these “other considerations.” In addition, UE’s IRP filing did not identify its “decision factors” as one of the “other considerations” that would be to used in the plan selection process that is set forth in 4 CSR 240-22.010(2)(A)-(C). On page 21 in Chapter 10 (Strategy Selection) of its IRP filing, UE provides references to page numbers where each of the requirements of the rule pertaining to plan selection is addressed. On page 21, UE refers to page 12 in Chapter 10 as the page where UE complies with the requirements of 4 CSR 240-22.010(2)(A)-(C). The term “decision factor” does not appear on page 12 despite the fact that 4 CSR 240-22.010(2)(C) requires the electric utility to:

explicitly identify and, where possible, quantitatively analyze any other considerations which are critical to meeting the fundamental objective of the resource planning process, but which may constrain or limit the minimization of the present worth of expected utility costs....[Emphasis added]

UE’s attempt to shoehorn its use of “decision factors” into the plan selection process required by the rule is a thinly disguised attempt to rationalize that the use of “decision factors” is permitted by the rule, after OPC showed that UE’s use of “decision factors” is not permitted by the rules.

4. The Commission’s Report and Order fails “to ensure that the public interest is adequately served” as required by 4 CSR 240-22.010(1). The Commission’s failure to require UE to fix any of the many flaws identified means that the Commission, the parties, and UE itself do not know what UE’s optimal plan is, or what the actual Present Value of Revenue Requirement (PVRR) is for either the chosen plan or the optimal plan. As a result, it will be

extremely difficult in a future case for parties to establish what UE's revenue requirement would have been if UE had chosen the optimal plan today. The Commission has not only kicked the can down the road for a future Commission to deal with, but has also deliberately robbed that future Commission of critical information. For example, the Commission recognized that UE failed to properly model wind. But because the Commission refused to order UE to redo its analysis and properly model wind, we know neither the appropriate amount of wind nor the difference in revenue requirement between the appropriate amount and the amount UE plans to install.

WHEREFORE Public Counsel respectfully requests that the Commission rehear its Report and Order issued March 28, 2012.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By:_____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 26th day of April 2012:

Missouri Public Service Commission

Office General Counsel
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Missouri Public Service Commission

Nathan Williams
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Nathan.Williams@psc.mo.gov

Natural Resources Defense Council

Kathleen G Henry
705 Olive Street, Suite 614
St. Louis, MO 63101
khenry@greatriverslaw.org

Natural Resources Defense Council

Shannon Fisk
2 N. Riverside Plaza, Ste. 2250
Chicago, IL 60606
sfisk@nrdc.org

Natural Resources Defense Council

Bruce A Morrison
705 Olive Street, Suite 614
St. Louis, MO 63101
bamorrison@greatriverslaw.org

Natural Resources Defense Council

Henry B Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

Sierra Club

Kathleen G Henry
705 Olive Street, Suite 614
St. Louis, MO 63101
khenry@greatriverslaw.org

Sierra Club

Bruce A Morrison
705 Olive Street, Suite 614
St. Louis, MO 63101
bamorrison@greatriverslaw.org

Sierra Club

Henry B Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

Sierra Club

Maxine Lipeles
1 Brookings Dr - CB 1120
St. Louis, MO 63130-4899
milipele@wulaw.wustl.edu

Union Electric Company

Steven R Sullivan
1901 Chouteau Avenue
P.O. Box 66149 (MC 1300)
St. Louis, MO 63166-6149
AmerenMOService@ameren.com

Union Electric Company

Thomas M Byrne
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
AmerenMOService@ameren.com

Union Electric Company

Wendy Tatro
1901 Chouteau Avenue
St. Louis, MO 63166-6149
AmerenMOService@ameren.com

Grain Belt Express Clean Line, LLC

Glenda Cafer
3321 SW 6th Ave
Topeka, KS 66606
gcafer@sbcglobal.net

Grain Belt Express Clean Line, LLC

Kathryn Patton
1001 McKinney St. Ste 700
Houston, TX 77002
kpatton@cleanlineenergy.com

Grain Belt Express Clean Line, LLC

Terri Pemberton
3321 SW 6th Ave
Topeka, KS 66606
tjpemberton@sbcglobal.net

Mid-Missouri Peaceworks

Kathleen G Henry
705 Olive Street, Suite 614
St. Louis, MO 63101
khenry@greatriverslaw.org

Mid-Missouri Peaceworks

Bruce A Morrison
705 Olive Street, Suite 614
St. Louis, MO 63101
bamorrison@greatriverslaw.org

Mid-Missouri Peaceworks

Henry B Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

Missouri Coalition for the Environment

Kathleen G Henry
705 Olive Street, Suite 614
St. Louis, MO 63101
khenry@greatriverslaw.org

Missouri Coalition for the Environment

Bruce A Morrison
705 Olive Street, Suite 614
St. Louis, MO 63101
bamorrison@greatriverslaw.org

Missouri Coalition for the Environment

Henry B Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

Missouri Department of Natural Resources

Sarah B Mangelsdorf
207 West High St.
P.O. Box 899
Jefferson City, MO 65102
sarah.mangelsdorf@ago.mo.gov

Missouri Department of Natural Resources

Jennifer S Frazier
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
jenny.frazier@ago.mo.gov

Missouri Energy Group

Lisa C Langeneckert
600 Washington Avenue, 15th Floor
St. Louis, MO 63101-1313
llangeneckert@sandbergphoenix.com

Missouri Industrial Energy Consumers

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

**Missouri Joint Municipal Electric Utility
Commission**

Douglas Healy
939 Boonville Suite A
Springfield, MO 65802
doug@healylawoffices.com

/s/ Lewis R. Mills, Jr.

By: _____