

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

In the Matter of the Union Electric Company’s)
Change to its 2011 Utility Resource Filing)
Pursuant to 4 CSR 240 – Chapter 22) **Case No. EO-2012-0127**

PUBLIC COUNSEL’S RESPONSE TO STAFF'S NOTICE OF NONCOMPLIANCE

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Response to Staff's Notice of Noncompliance states as follows:

1. The Staff’s November 9, 2011 motion explains why the Notice of Change in Preferred Plan filed by Ameren Missouri is deficient with respect to the fundamental policy objective of the Commission’s resource planning rules set forth in 4 CSR 240-22.010(2) and recommends that the Commission order the Company to “cure this deficiency.” As the Staff describes in its motion and attached Memorandum from John Rogers, the Notice of Change in Preferred Plan is deficient because Ameren Missouri has selected a plan that: (1) does not minimize PVRR relative to other alternative resource plans; and (2) does not assure customers of reliable service because it relies upon purchased power to cover capacity deficits in ten years out of the twenty-year planning horizon. In addition to the reliability concerns associated with increased reliance on purchased power, there are also questions about whether any surplus power supplies would be available in the regional wholesale market for Ameren Missouri to purchase, and questions about the increased costs that would appear in the revenue requirement if the decrease in demand-side resources led to advancing the timing of supply side additions. Public Counsel agrees with the reasons identified by the Staff about why the Notice of Change in

Preferred Plan is deficient and OPC also recommends that the Commission order Ameren Missouri to address the causes of the deficiency identified by Staff in order to cure this deficiency.

2. In order to cure this deficiency, Ameren Missouri will need to either withdraw its Notice of Change in Preferred Plan or file a revised Notice of Change in Preferred Plan that is consistent with the fundamental policy objective of the Commission's resource planning rules set forth in 4 CSR 240-22.010(2). The issues associated with the deficiency in Ameren Missouri's Notice of Change in Preferred Plan are intertwined with the issues in File No. ET-2012-0011 where the Company filed tariffs that included very low levels of energy efficiency services which are harmful to customers and contrary to the public interest. The very low levels of energy efficiency services contained in the new preferred resource plan described in the Notice of Change in Preferred Plan are consistent with the tariffs filed in File No. ET-2012-0011. Public Counsel believes that the Commission is empowered to protect the public interest from the adverse consequences of the harmful utility decisions that prompted the utility to file: (1) the tariffs for very low levels of energy efficiency services in the tariffs filed in File No. ET-2012-0011; and (2) the revised Preferred Plan filed in this case.

3. The Commission appeared to recognize the harm that may come from the greatly reduced and minimal amounts of energy efficiency services that Ameren Missouri plans to offer when it stated in the Notice Regarding Tariff filing in File No. EO-2012-0011 that:

The Commission is not, however, powerless in these matters. While it cannot assume management control of the company by ordering Ameren Missouri to spend additional money on energy efficiency programs, Ameren Missouri at some point in the future will once again come before the Commission in a rate case. At that time the Commission will look closely at the company's willingness to reduce the long-run cost of providing service to its ratepayers by pursuing energy

efficiency, as well as the prudence of any decisions Ameren Missouri may make to obtain additional energy supplies that might not be needed if energy efficiency programs were appropriately implemented.

As Public Counsel has explained in its pleadings in File No. EO-2012-0011, the Commission has the power to order Ameren Missouri to provide service to its customers in a manner consistent with the public interest. If the Commission chooses to rely solely on attempting to protect customers in future rate making proceedings where the ratemaking consequences of poor utility decisions are addressed, then it is essentially abdicating its responsibility to a future Commission in the hope that the ratemaking consequences of poor utility decisions will be addressed. However, the ratemaking consequences of a poor utility decision are often only a portion of the adverse consequences to the public and consumers that will result from that decision. For poor decisions related to the level and quality of energy efficiency services provided, consumers and the public will experience the adverse impacts from such decisions beginning at the time the poor decisions are implemented and possibly continuing well beyond the time when a Commission may act to mitigate the ratemaking consequences of the poor utility decisions.

4. When a utility offers inadequate levels of energy efficiency services to its customers, the harmful impacts on its customers and the public are not limited to potential adverse ratemaking consequences and include: (1) increased average customer bills during the time period when inadequate levels of energy efficiency are offered and prior to the first cost recovery proceeding where adverse ratemaking consequences might be addressed; (2) decreased flexibility with respect to future additions and retirements of coal-fired generation due to time lost in acquiring demand-side resources; (3) increased exposure to risk of higher utility costs from future regulation of greenhouse gas emissions due to increased reliance on fossil fuel

generation; (4) increased risk of higher utility costs from current and future EPA regulation of SO₂, NO_X, mercury, and particulate emissions due to increased reliance on fossil fuel generation; (5) forgone economic development benefits from increases in local energy efficiency-related jobs and decreased average bills that would be associated with higher levels of energy efficiency services; (6) risks from increased reliance on fossil fuels largely imported from outside Missouri related to availability, price level, and price volatility of coal and natural gas supplies and associated transportation; and (7) increased harmful emissions associated with the generation of electricity from fossil fuel generation required to serve native load customers and the adverse public health impacts (increased health care cost, disease, and premature death) associated with higher levels of those emissions.

5. All of these examples of harmful impacts can only be avoided through Commission actions that are contemporaneous with the poor utility decisions that will ultimately lead to adverse consequences through future rate impacts and other harmful impacts on customers and the public. Commission actions in a future ratemaking proceeding, in addition to being uncertain, can only address a very limited range of the entire actual and potential harm caused by a utility's decision to offer an inadequate level of energy efficiency services to its customers. In other words, the Commission will not be fully utilizing its powers to protect the public interest if it relies solely on the possibility of prudence disallowances in future cost recovery proceedings since such disallowances would only address one of the many harmful consequences of improper utility decisions rather than the decision itself, from which all of the harmful consequences flow.

WHEREFORE, Public Counsel respectfully submits its Response to Staff's Notice of Noncompliance and requests that the Commission order Ameren Missouri to address the causes of the deficiency identified by Staff in order to cure this deficiency.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 2nd day of December 2011.

/s/ Lewis R. Mills, Jr.
