

**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 OF
ORDER MODIFYING REPORT AND ORDER**

COMES NOW the Office of the Public Counsel and for its Application for Rehearing of the Order Modifying Report and Order issued on May 17, 2012, states as follows:

1. On March 28, 2012, the Commission issued its Report and Order. On May 17, the Commission issued its Order Modifying Report and Order ("Modifying Order"). In its Modifying Order, the Commission conceded that its Report and Order failed to address a deficiency cited by Public Counsel, and addressed **some** of the evidence provided by both Ameren Missouri and Public Counsel on this issue. The Modifying Order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons.

2. This issue was raised by Public Counsel in its June 23, 2011 Review of Union Electric Company Electric Utility Resource Planning Compliance Filing (Public Counsel Review). The deficiency (Deficiency Number 5) was identified and briefly described on pages 6 and 7 of the Public Counsel Review. The Modifying Order describes and addresses some of the information contained in Public Counsel's June 23, 2011 Technical Report (Public Counsel Technical Report) which accompanied and supported the Public Counsel Review. The Modifying Order also describes and addresses some of the information contained in Ameren Missouri's Response. The Ameren Missouri Response addressed some, but not all, of the issues pertaining to deficiency number 5 that were discussed in the Public Counsel Review and Public

Counsel Technical Report. The Modifying Order does not even mention the rebuttal testimony of Public Counsel witness Tim Woolf.

3. The rebuttal testimony of Mr. Woolf responded to information and arguments in the Ameren Missouri Response pertaining to Public Counsel deficiency number 5. This testimony begins at line 11 on page 10 of Mr. Woolf's rebuttal testimony and continues through line 12 on page 14. A quote from this portion of Mr. Woolf's testimony was included on page 2 of Public Counsel's Application for Rehearing. This portion of Mr. Woolf's rebuttal testimony demonstrates why the Commission did not rely on competent and substantial evidence when it relied on information on page 56 of Ameren Missouri's Response to find that there was "no deficiency."

4. In addition to not considering the evidence provided on pages 11 – 14 of Mr. Woolf's testimony when the Commission considered the merits of Public Counsel deficiency number 5, the Commission makes logical errors in the last paragraph on page 3 where it concludes that there is "no deficiency." In that paragraph, the Commission states:

There is no evidence to demonstrate that Ameren Missouri's study would have reached a different conclusion if it had used a probability decision tree in the manner preferred by Public Counsel. In short, this alleged deficiency appears to be a disagreement about how best to analyze the problem. Public Counsel's desire to run the analysis differently is not a deficiency in the plan. There is no deficiency.

The Commission reasons in this paragraph that "Public Counsel's desire to run the analysis differently is not a deficiency in the plan." Public Counsel deficiency number 5 identifies an important flaw in Ameren Missouri's **planning process**, not a flaw in the IRP **plan** filed in this case. Public Counsel respectfully reminds the Commission that Commission approval of an IRP plan was not at issue in this case. Instead, the Staff and intervenors in this case identified deficiencies in Ameren Missouri's compliance with the planning process set forth in the IRP

rule. The IRP rule focuses on both the planning process used by electric utilities and the plans that result from that planning process but 4 CSR 240-22.010(1) clearly states that the “policy goal” of the Chapter 22 rules is “to set minimum standards to govern the scope and objectives of the resource **planning process** that is required of electric utilities subject to its jurisdiction in order to ensure that the public interest is adequately served.” (Emphasis added.)

5. As the above quote from the rule indicates, the goal of the IRP rule is to assure the public interest is adequately served by ensuring that the resource planning process complies with a minimum set of standards. The question posed by the Commission about whether “Ameren Missouri Missouri’s study would have reached a different conclusion” without the deficiency cited by Public Counsel is the result of faulty logic. Of course there is no evidence to show that a different plan would have been chosen if Ameren Missouri’s planning process had complied with Commission rules, because the only way to produce such evidence would be for the Commission to require Ameren Missouri to re-do the planning process in accordance with the rules. If the standard that the Commission applies for determining the validity of deficiencies is whether the party citing the deficiency can adduce evidence that the “study would have reached a different conclusion,” then the Commission would rarely, if ever, find that an alleged deficiency is valid.

6. Ameren Missouri did have notice that at least two parties believed the replacement of “uncertain factors” with “decision factors” did not comply with the rules. As the Missouri Department of Natural Resources (DNR) explained on pages 13 and 14 of its June 23, 2011 report, the issue of the use of “decision factors” was raised at two stakeholder meetings in the year that preceded Ameren Missouri’s IRP filing and Ameren Missouri was notified that its replacement of critical uncertain factors by “decision factors” did not appear to comply with the

rule. If Ameren Missouri had responded to that stakeholder feedback and sought waivers to permit it to analyze possible new EPA regulations for its coal plants as a “decision factor” rather than a critical uncertain factor, then Public Counsel and DNR would have had the opportunity to express our views on the importance of complying with 4 CSR 240-22.070(5), 4 CSR 240-22.070(2), and 4 CSR 240-22.070(2)(C) before Ameren Missouri proceeded to perform its IRP analysis under a planning process that did not comply with the rules. In its order resolving the 2008 Ameren Missouri IRP filing, the Commission directed Ameren Missouri to work more closely with stakeholders in this current IRP filing. If the Commission once again fails to require Ameren Missouri to re-do its analysis, the Commission will still be unable to determine whether Ameren Missouri’s planning process provides Ameren Missouri, the Commission, and stakeholders with necessary and sufficient information about what the most appropriate resource acquisition strategy might be.

7. The Report and Order issued in this case on March 28, 2012 found that several areas of Ameren Missouri’s planning process were deficient. The order found deficiencies in the manner in which Ameren Missouri modeled wind and demand-side resources. When the Commission found Ameren Missouri’s modeling of wind to be deficient, it stated that “Wind resources may significantly reduce energy costs and thus may be able to reduce PVRR even when additional capacity is not needed for reliability purposes.” When it observed the possible harm that “may” be caused by not properly modeling wind, the Commission focused on possible PRVV reductions that might be seen if the modeling had been done properly. If the Commission had applied the same logic to the deficiency in wind modeling that it applied to Public Counsel deficiency number 5, then the Commission may not have determined that there is any deficiency with respect to wind modeling because it probably would have found that there “is no evidence

to demonstrate that Ameren Missouri Missouri's study would have reached a different conclusion" if wind was modeled properly.

WHEREFORE Public Counsel respectfully requests that the Commission rehear its Order Modifying Report and Order issued May 17, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 25th day of May 2012.

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