

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

In the Matter of Union Electric Company, d/b/a)	File No. ER-2012-0166
Ameren Missouri's Tariff to Increase Its Annual)	Tariff No. YE-2012-0370
Revenues for Electric Service.)	

Application for Rehearing of the Consumers Council of Missouri

COMES NOW the Consumers Council of Missouri ("Consumers Council" or "CCM"), by and through counsel, and pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, respectfully applies for a rehearing and reconsideration of the Missouri Public Service Commission's ("Commission's") Report and Order issued in the above-styled matter on December 12, 2012, and bearing an effective date of February 22, 2012 ("Report and Order").

This Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, and unsupported by competent and substantial evidence on the whole record, in the following respects:

Transmission Projects in the Fuel Adjustment Clause

The risk and harm to consumers that the current Fuel Adjustment Clause (FAC) poses for consumers is well-known and documented in the record of this case.¹ The Report and Order would expand that risk and harm beyond the bounds of the law. The Report and Order would expand the FAC beyond the expenses that are statutorily allowed to flow through under the authority of Missouri's FAC law to include

transmission facility projects that are currently under construction. Report and Order, pp. 83-91. This decision attempts to override or ignore the *two most important protections for utility consumers* that exist under Missouri law. The Commission may not act without statutory authority because its “powers are limited to those conferred by statute, either expressly, or by clear implication, as necessary to carry out the powers specifically granted.”²

Without a specific statutory exception, the Commission may not legally permit rate increases to occur outside the context of a full-blown rate case.³ In 2005, the Missouri General Assembly did pass an exception to the ban on “single-issue (piecemeal) ratemaking”, granting the Commission the limited ability to approve FAC surcharges covering only “prudently incurred fuel and purchased-power costs, including transportation.”⁴ The costs in dispute are primarily related to so-called Multi-Value Transmission Projects (MVPs) that are financed through transmission charges flowed through the Midwest Independent System Operator (MISO) organization to Ameren Missouri on behalf of owners of those transmission projects.⁵ These MISO MVP costs, which the Report and Order would allow to pass through the FAC, are clearly neither fuel expenses nor purchased power costs.⁶ Nor, as discussed below, are these costs “transportation” costs, despite the creative arguments of Ameren Missouri and the findings contained in the Report and Order. Moreover, construction costs are neither

¹ See AARP Initial Brief, pp. 6-8.

² Utilicorp United Inc. v. Platte-Clay Elec. Co-op., Inc., 799 S.W.2d 108, 109 (Mo. App. W.D. 1990)

³ Section 393.270(4) RSMo., as interpreted by the keystone consumer protection case, State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission (“UCCM”), 585 S.W.2d 41 at 56 (Mo. banc 1979), which requires that no change in electric utility rates may be ordered by the Commission without a full review of all relevant factors in a rate case, otherwise known as the “prohibition on single-issue ratemaking”.³

⁴ Subsection 386.266.1 RSMo.

⁵ Article 26 and 26A MISO charges. See Dauphinais Surrebuttal, Ex. 518, pp. 11-13.

uncontrollable nor volatile expenses, as was the original focus of the argument for the adoption of the FAC that is permitted by Section 386.266.1 RSMo.⁷

The disputed MISO MVP costs are also not “transportation” costs under Section 386.266.1 RSMo. The transmission of electricity is not considered “transportation” under any legal definition recognized in Missouri law, nor under any common use of the word. Traditionally, the word “transportation”, as contained in Section 386.266.1 RSMo, has been interpreted to include the railway costs associated with moving coal.⁸ From the perspective of actual physics, electricity is transmitted when certain particles (such as electrons or protons) are charged, or made to become “excited”; however, nothing physical is actually transported.

To the extent that the MISO MVPs are not completed and not yet providing service to consumers, allowing costs related to such construction work in progress (CWIP) also violates Missouri’s Anti-CWIP statute, Section 393.135, RSMo. which states:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited. [emphasis added.]

This state law, adopted overwhelmingly by Missouri voters, prohibits these costs from being included in electric rates, *unless* and *until* those projects are “fully operational” and are serving consumers. The record of this case contains no evidence that any of the MISO MVPs are currently completed and serving Ameren Missouri consumers.

⁶ Ex. 527, Dauphinais Sur-Surrebuttal, pp. 2-3.

⁷ See Staff Initial Brief, p. 51.

⁸ See Staff Initial Brief, p. 48.

Return on Equity

The Report and Order grants Ameren Missouri the opportunity to earn a return on common equity (ROE) of 9.8%, which is considerably higher than the 8.0% recommended by consumer parties (the Office of the Public Counsel, AARP, and the Consumers Council of Missouri).⁹ This decision is unlawful and unreasonable in that it fails to fairly take into account the impact that a 9.8% ROE would have upon consumers living under the economic conditions that currently exist in the electric company's service territory, and thus fails to reasonably balance the interest of consumers versus the interests of the utility and its shareholders. Furthermore, this decision lacks adequate findings of fact and conclusions of law in that it fails to even address the testimony of witnesses taken at the local public hearings in this case, and fails to state how the Commission took that testimony into account in awarding a 9.8% ROE, if at all.

The Commission is charged with approving rate schedules that are as "just and reasonable" to consumers as it is to the utility¹⁰; however, in the ten pages of discussion of the evidence on the record regarding ROE issues, the Report and Order contains not no mention of the evidence taken from the customers at the many local public hearings held in this rate case. These hearings were attended by hundreds of citizens, and altogether 235 individuals provided sworn testimony regarding the potential impact of the proposed rate increase. The testimony taken at these public hearings confirm the fact that attempts to recover from the recent economic recession have been immensely easier for Ameren Missouri, than it has been for many of its customers (many public witnesses testified as to their recently stagnant wages, meager benefit checks and low

⁹ Report and Order, pp. 63-73.

¹⁰ Valley Sewage Co. v. Public Service Commission, 515 S.W.2d 845, 851 (Mo. App. 1974).

investment returns). Many customers who will be bearing the burden of an allowable 9.8% ROE testified that any sizable electric rate increase at this time would lead to serious economic harm. The transcripts of the local public hearing testimony taken in this case contain several accounts of the safety risks faced by many lower income seniors who were fearful of incurring high electric bills for air conditioner usage during this past summer's heat wave.¹¹ Apparently, none of this evidence was taken into account when the Commission chose to award a 9.8% ROE in this case. If so, there were no findings to that effect.

The Commission's Report and Order also fails to mention the current economic conditions as being experienced by Ameren Missouri's *consumers*, rather focusing almost exclusively on the impact of allowable ROE on the *utility*. The evidentiary record shows that economists are expecting the long-term nominal Gross Domestic Product ("GDP") growth rate to be in the range of 4% to 5%.¹² In 2009, customers in the Ameren Missouri service area experienced a *decrease* of 4.82% in personal income, which was more than the decrease experienced by the state (3.72%) and the nation (4.3%).¹³ In 2011, Missouri reported per capita personal income at \$38,248, which fell below the national per capita personal income level of \$41,663.¹⁴ After receiving no increases in Social Security and SSI benefits for many years, older individuals and individuals with disabilities received an only 3.6% cost of living increase in 2012.¹⁵ The statistics for Ameren Missouri's poorest customers are even more sobering: the current unemployment rate is currently near 9% in the St. Louis metropolitan area, 34% of St.

¹¹ See Transcript Volume 4, pp. 27, 32-35, 58-60; Volume 5, pp. 33-36, 52-53, 87-88.

¹² Ex. 201, p. 17.

¹³ *Id.*, p. 11.

¹⁴ *Id.*

Louis City residents live below the poverty rate, and the energy burden for the region's poorest families exceeds 26% of income.¹⁶ Low-Income Home energy Assistance Program (LIHEAP) funds for Missouri were cut from \$104 million in 2011 to \$95 million in 2012.¹⁷

Several public witnesses urged the Commission to insist that Ameren Missouri "share the pain" of the region's broader economic woes, wondering aloud if the Commission would respond.¹⁸ The Commission could have legally and appropriately responded to this plea by judging the "reasonableness" of the Commission's ROE determinations in this case in the context of the economy experienced by consumers who are being asked to pay higher electric rates, by adopting an ROE at the lower end of the "zone of reasonableness". Consumers Council urges the Commission to reconsider its ROE decision in order to give weight to the evidence of economic conditions in the service territory and to the testimony of consumers, sworn under oath, regarding the potential economic harm that would result from further electric rate increases at this time.

Respectfully submitted,

/s/ John B. Coffman

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¹⁵ Exhibit 3 to Transcript Vol. 5.

¹⁶ Id.

¹⁷ Id.

¹⁸ See Transcript Volume 6, pp. 49-50, pp. 57-58.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record on the 21st day of December, 2012.

/s/ John B. Coffman
