

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

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| In the Matter of Union Electric Company, d/b/a |) | |
| Ameren Missouri's Filing to Adjust Rates Under |) | |
| Its Approved Fuel and Purchased Power Cost |) | <u>File No. ER-2012-0028</u> |
| Recovery Mechanism Pursuant to 4 CSR |) | Tariff No. YE-2012-0038 |
| 240-20.090(4) |) | |

**MIEC MOTION FOR
FAC CREDITS FROM OFF-SYSTEM SALES MARGINS**

Comes now the Missouri Industrial Energy Consumers ("MIEC") and respectfully requests that the Commission reduce the rates in this case to reflect FAC credits to which Missouri ratepayers are entitled under the Report and Order in Case No. EO-2010-0255.

In support of its Motion, MIEC states as follows:

1. On April 27, 2011, the Commission issued its Report and Order in the Matter of the First Prudence Review of the Costs Subject to the Commission-Approved Fuel Adjustment Clause of Ameren Missouri, Case No. EO-2010-0255. In that Order, the Commission directed Ameren to refund \$17,169,838 to its ratepayers by an adjustment to its FAC charge to correct an over collection of revenues for the period of March 1, 2009 to September 30, 2009 ("accumulation periods one and two").
2. On May 6, 2011, the Staff and Ameren filed a non-unanimous stipulation and agreement that the amount the Commission ordered be refunded to ratepayers includes interest at Ameren Missouri's short-term borrowing rate through September 30, 2009. The agreement further stipulates that interest has accrued and continues to accrue after September 30, 2009 at Ameren Missouri's short-term borrowing rate as required by Section 386.266.4(4) R.S.Mo. Supp. 2010.

3. The Commission's Report and Order in Case No. EO-2010-0255 became effective on May 7, 2011.

4. In light of the Commission's Report and Order in Case No. EO-2010-0255, Ameren's new FAC rates should be reduced to reflect the refund ordered by the Commission. *See* Ameren's Response to MIEC's Motion for Reconsideration in File No. ER-2011-0317, ¶ 3 ("Had the Commission's order in Case No. ER-2010-0255 been final and in effect before the Company made the FAC adjustment filing that will be implemented starting May 25, then the Company would have included the prudence adjustment in that filing.").

5. As a result of the Company's failure to flow the revenues from the contracts into which it entered with Wabash Valley Power Association ("Wabash") and American Electric Power Operating Companies ("AEP") through the FAC, the Company over-collected not only \$17,169,838 for accumulation periods one and two, but also over-collected an additional \$24,866,885 for accumulation periods three through five (October, 2009 through September 2010). This amount (a total of **\$42,036,723**) is uncontested, as it was admitted by the Company in the Surrebuttal Testimony of Ameren Missouri's Controller, Ms. Lynn Barnes in Case No. EO-2010-0255.¹

6. On July 25, 2011, Ameren Missouri submitted an application and tariff designed to implement an adjustment to its Fuel and Purchased Power Adjustment Clause. The application and tariff reflected a \$17,169,838 credit to Missouri ratepayers for periods one and two, but did not reflect a credit of \$24,866,885 for Ameren Missouri's over-collection during periods three through five.

¹ Barnes Surrebuttal, Page 1, Line 22 through Page 2, Line 4.

7. All of the evidence necessary to demonstrate the Company's over-collection during accumulation periods three through five was presented before the Commission in Case No. EO-2010-0255, because the Company's over-collection for periods three through five resulted from the same operative facts that were at issue in Case No. EO-2010-0255. Specifically, the Company's over-collection during accumulation periods three through five resulted from its failure to flow the revenues from the AEP and Wabash contracts through the FAC.

8. This Commission has already heard, analyzed and rendered its opinion regarding the Company's failure to flow the revenues from the AEP and Wabash contracts through the FAC. It would be a waste of the Commission's and the parties' time and resources to present all of the same testimony for accumulation periods three through five as was presented for accumulation periods one and two.

9. Missouri law and public policy strongly favor the prevention of "needless relitigation in a second hearing" and the promotion of "the public interest in judicial economy." 2008 Mo. PSC LEXIS 258 (Mo. PSC 2008); 2007 Mo. PSC LEXIS 1523 (Mo. PSC 2007) (seeking to avoid practices that "would not provide any benefit, and create[] the potential of there being duplicate filings and the loss of judicial economy"); 2007 Mo. PSC LEXIS 349 (Mo. PSC 2007) (consolidating cases that "involve related questions of law and fact [to] promote judicial economy and avoid unnecessary costs and delay").

10. In light of Missouri's strong public policy in favor of judicial economy, the Commission should not require the parties to relitigate in additional hearing(s) all of the same questions of law and fact that they litigated in Case No. EO-2010-0255, because

doing so would not provide any benefit, and would require duplicate filings, unnecessary costs and wasteful delay.

11. Moreover, re-litigation of the issues decided in Case No. EO-2010-0255 is impermissible under the doctrine of collateral estoppel (issue preclusion). *Sexton v. Jenkins & Assocs.*, 152 S.W.3d 270, 273 (Mo. 2004) (“The court-made doctrine of collateral estoppel - known by its modern term, issue preclusion - precludes relitigation of an issue previously decided and incorporated into an earlier judgment. The doctrine requires that the issue was fully and fairly litigated, that the issue was essential to the earlier judgment, and that the earlier judgment be final and binding on the party against whom it is asserted.”).

12. The only issue that was not fully and fairly adjudicated in Case No. EO-2010-0255 is the amount that Ameren Missouri over-collected for accumulation periods three through five. However, the amount (\$24,866,885), is uncontested.

13. As a result of the Commission’s Report and Order in Case No. EO-2010-0255, effective May 7, 2011, Ameren’s new FAC rates should be reduced to reflect the total amount of revenues that were over-collected as a result of Ameren’s contracts with AEP and Wabash for accumulation periods one through five.

WHEREFORE, MIEC respectfully requests that the Commission order Ameren to credit its current customers, through use of the FAC adjustment applied over 8 months commencing at the beginning of the October, 2011 revenue month, \$24,866.885 (for the amount it over-collected in accumulation periods three through five); and applicable accrued interest at Ameren Missouri’s short-term borrowing rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 16th day of August, 2011, to the parties on the Commission's service list in this case.

/s/ Brent Roam