

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

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| In the Matter of Union Electric Company |) | |
| d/b/a Ameren Missouri's Tariffs to |) | <u>Case No. ER-2012-0166</u> |
| Increase Its Annual Revenues for |) | |
| Electric Service |) | |

RESPONSE TO COMMISSIONER REQUEST FOR DRAFT STAFF REPORT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in response to Commissioner Jarrett's request during the evidentiary hearing in this case for a copy of the draft report on rate case expense, which Staff developed in preparation for filing in Case No. AW-2011-0330, respectfully responds as follows:

The attached highly confidential document titled, *Case No. AW-2011-0330 Review of Rate Case Expense Matters Staff Report August 31, 2012* (the Draft Report), although generally final in content, is not a final document. It was not the Staff's intention to file the Draft Report at this time or in this format, and Staff still intends to file a final, fully reviewed and formatted version as soon as practicable in Case No. AW-2011-0330.

As set out below, Staff suggests the Commission should not rely on Staff's Draft Report in a determination of rate case expense in this case, because the Draft Report was not finalized in time to file as part of Staff's direct testimony in this case and therefore, the parties have not had an opportunity to fully respond to and litigate the issues and positions raised therein.

The Staff began developing its Draft Report in response to the *Commission's Order Directing Staff to Investigate and Opening a Repository File* on April 27, 2011, in Case No. AW-2011-0330. Several members of Staff spent a great deal of time

developing a questionnaire to be sent to the other state regulatory commissions seeking information on how rate case expense is treated in their states. On June 29, 2011, Staff filed a status report in Case No. AW-2011-0330 advising the Commission that Staff had sent out a survey to other state commissions and that, as allowed by the press of other cases, members of Staff were actively: 1) collecting survey responses, 2) identifying additional information Staff may want to request from the responding commissions, 3) collecting information on recent Missouri utility rate case expense requests and Missouri Commission decisions, and 4) analyzing various legal issues.

Not all, but a significant number of state commissions responded over the following months. Staff reviewed and analyzed each response and utilized the responses in forming the draft recommendations and positions related to the treatment of rate case expense contained in the Draft Report. Staff also analyzed rate case expense requests, awards and the treatment of rate case expense by this Commission over the last several years. That information is summarized in the Draft Report and also influenced Staff's draft recommendations contained therein.

Staff hoped to be able to finalize its report in time to file it as part of direct testimony in the pending rate cases. Despite Staff's efforts, the Draft Report could not be completed in time. Knowing it could not be completed in time to file as part of Staff's direct testimony in the first pending rate case, Staff was faced with a dilemma. Should the final report be filed in the working docket, presented to the Commission at an agenda, or filed as support for a rebuttal position? Because the Draft Report directly related to a contested issue in each of the pending rate cases, including one in which direct testimony would already be filed, Staff had concerns about when and in which

case a final report should be filed. Even if the final report were only filed in the working docket, it would still contain information related to a contested issue in the rate cases currently before the Commission. It could deny one or more parties an opportunity to fully respond to and litigate the issues and positions contained therein. After much debate, Staff decided to wait until the three large pending rate cases were concluded to file a final report in the working docket to avoid the appearance of infringing upon any party's due process rights or improperly influencing or appearing to influence a Commission decision on the issue. Accordingly, the Draft Report was put on hold as the press of the three rate cases increased.

When the Empire District Electric Company filed its rate case on July 6, 2012, Staff reevaluated its decision based upon the fact that there may not be a time in the foreseeable future when one company or another would not have a pending rate case. Staff resumed work on the Draft Report with the goal of finalizing and filing the final Staff report in Case No. AW-2011-0330 and filing a notice in each pending rate case to advise all parties at the earliest opportunity that a final Staff report had been filed. Staff was unable to complete the attached Draft Report, in its current form, until August 31, 2012 due to multiple rate case testimony filing deadlines, depositions of the key Staff witnesses, and weeklong settlement negotiations in the pending rate cases and several other pending cases.

As of August 31, 2012, the Draft Report, was considered complete, pending supervisory review and final formatting. At that point, because the start of the Ameren rate case hearing was less than three weeks away and Staff was still actively engaged in settlement negotiations in that case as well as testimony filings in the other rate

cases, Staff determined it should wait to file the Draft Report even in the working docket. Staff had intended to file the Draft Report in Case No. AW-2011-0330 in late November after the close of the record in the pending rate cases, and also incorporate it into its direct filing in Empire District Electric Company's rate case, so as to afford Empire and other parties to that case the opportunity to fully litigate the issues and positions contained therein.

WHEREFORE, Staff respectfully submits the attached draft of *Case No. AW-2011-0330 Review of Rate Case Expense Matters Staff Report August 31, 2012* in compliance with Commissioner Jarrett's request.

Respectfully submitted,

/s/ Cherlyn D. Voss

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 5th day of October, 2012.

/s/ Cherlyn D. Voss