

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

In the Matter of Union Electric Company d/b/a)	
AmerenUE for Authority to File Tariffs Increasing)	
Rates for Electric Service Provided to Customers)	Case No. ER-2007-0002
In the Company's Missouri Service Area.)	

**STAFF RESPONSE TO AMERENUE'S MOTION TO ADOPT PROCEDURES FOR
IMPLEMENTING AMERENUE'S REQUESTED FUEL ADJUSTMENT CLAUSE**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to AmerenUE's Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause (Motion To Adopt FAC Procedures) filed on July 7, 2006 concurrent with its electric rate increase case. In paragraph 2 of its Motion To Adopt FAC Procedures, Union Electric Company, d/b/a AmerenUE (AmerenUE) states that its July 7, 2006 filing includes a request to establish a fuel adjustment clause (FAC) and an environmental cost recovery rider (ECR). In paragraph 6 of its Motion To Adopt FAC Procedures, AmerenUE requests that the Commission enter an Order adopting and applying, for purposes of the instant case, the provisions which appear as subsection (16) of proposed rule 4 CSR 240-20.090.¹ In the "Wherefore" clause of the Motion, AmerenUE requests that the Commission issue an Order which: (a) adopts and applies, for the purpose of the instant case, the provisions of subsection (16) of proposed rule 4 CSR 240-20.090; (b) grants AmerenUE a waiver from the final transition provisions of the FAC rules that are finally promulgated by the Commission to the extent, if any, they vary from the terms of subsection (16) of proposed rule 4 CSR 240-20.090; and (c) directs that the parties comply with the provisions of subsection (16) of proposed rule 4 CSR 240-20-

¹ Proposed rules, 4 CSR 240-3.161 and 4 CSR 240-20.090, issued by the Commission on June 15, 2006 in Case No. EX-2006-0472 were published in the Missouri Register, Volume 31, Number 14, July 17, 2006 issue at pages 1063-1082, 1079-80.

20.090, as adopted by the Commission's Order as requested by AmerenUE in its Motion To Adopt FAC Procedures.

In response, the Staff states it is opposed to AmerenUE's Motion To Adopt FAC Procedures as follows and requests that the Commission provide the Office of the Public Counsel (Public Counsel) and the entities granted party status the opportunity to respond to AmerenUE's Motion To Adopt FAC Procedures:

1. In paragraph 2 of its July 7, 2006 Motion To Adopt FAC Procedures, AmerenUE notes that "[a]s outlined in the direct testimony of AmerenUE witness Warner L. Baxter, the Company's filing includes a request to establish a fuel adjustment clause ('FAC') and an environmental cost recovery rider ('ECR'), pursuant to the provisions of Senate Bill 179." (Footnote omitted). Mr. Baxter's direct testimony at pages 21-22 contains the following "bullet point":

In anticipation of the finalization of administrative rules relating to fuel adjustment clauses ("FAC") enabled by Senate Bill 179 ("S.B. 179"), the Company requests the ability to implement an appropriate FAC, subject to the promulgation of satisfactory rules and a satisfactory FAC mechanism. The Company's proposal also includes evidence allowing fuel and purchased power costs to remain in base rates, if a satisfactory FAC mechanism cannot be obtained. Similarly, the Company requests to establish an environmental cost recovery rider ("ECR") which can be used to address environmental costs, again subject to timely promulgation of necessary rules as required by S.B. 179 and satisfactory terms for any ECR. Again, our proposal is consistent with the need to establish forward-thinking regulatory policies that address significant changes and risks in the industry.

There is no further or more detailed description or discussion of AmerenUE's proposals in any of AmerenUE's testimony and there are no proposed FAC or ECR tariff sheets in AmerenUE's filing. Also, AmerenUE does not indicate, either in its testimony filed on July 7, 2006 or its Motion To Adopt FAC Procedures, the scope of what it will file, when it does file its FAC proposal. AmerenUE indicates that it reads subsection (16) of proposed rule 4 CSR 240-20.090

as permitting an electric utility that files a general rate proceeding, as AmerenUE did, less than thirty (30) days after the Commission issues a notice of proposed rulemaking respecting initial rate adjustment mechanism rules to not file its actual FAC proposal until fifteen (15) days after the Commission issues its Final Order of Rulemaking and no later than one hundred sixty-five (165) days after the electric utility filed its rate case.

2. Based on the language of subsection (16) of proposed rule 4 CSR 240-20.090, AmerenUE believes that in order to request that the Commission authorize it to utilize Section 386.266 for an FAC, it need not have filed tariff sheets proposing an FAC or testimony or other information other than what it did file on July 7, 2006, which is the “bullet point” statement above, devoid of any substantive content, that AmerenUE may utilize Section 386.266. AmerenUE will preclude the Staff and other parties from knowing its FAC proposal and conducting discovery respecting said proposal until it files that proposal. Thus, if timeframes permitted by subsection (16) of proposed rule 4 CSR 240-20.090 remain unchanged and AmerenUE adhered to those timeframes, the Staff and the other parties would not see any of AmerenUE’s FAC case until, in the Staff’s calculation, as late as November 27, 2006, which is fifteen (15) days after one hundred fifty (150) days after the initiation of the present Senate Bill No. 179 (Section 386.266) rulemaking proceeding.² Even if the Commission were to shorten any timeframes relating to subsection (16) of proposed rule 4 CSR 240-20.090 in the Final Order of Rulemaking, AmerenUE would avoid any change to the transition provisions of the FAC rule if the Commission granted its request in the “Wherefore” clause of its Motion To Adopt FAC Procedures that the Commission enter an Order granting a waiver to AmerenUE from the final terms of 4 CSR 240-20.090(16), i.e., a waiver from the transition provisions of the

² Pursuant to Section 386.266.9, the FAC rules must be promulgated no later than one hundred fifty (150) days after the initiation of the FAC rulemaking proceeding.

Commission's Final Order of Rulemaking. But Counsel for AmerenUE has advised counsel for Staff that AmerenUE does not seek to adhere to those timeframes.

3. At the same time AmerenUE sets out its own reading of proposed rule 4 CSR 240-20.090(16), AmerenUE states in paragraph 4 of its Motion To Adopt FAC Procedures: "These transition provisions do not at this point have the force and effect of law in that they appear only in proposed rules." This lack of the proposed rule having the force and effect of law is the reason why AmerenUE filed its Motion To Adopt FAC Procedures. Thus, the Commission, by Order in the instant electric rate increase case, may set a time for AmerenUE to file its proposed tariff sheets and supporting direct testimony and may otherwise set the scope of AmerenUE's FAC filing.

4. The Staff notes the provisions within subsection (16) of proposed rule 4 CSR 240-20.090 whereby the Commission is to determine after the issuance of the Final Order of Rulemaking whether the particular situation presented by an electric utility seeking an FAC will provide the parties sufficient time for the opportunity for a fair hearing respecting the issues presented so that the rates and charges resulting may be based on a consideration of all relevant factors and also may be just, reasonable and not unduly discriminatory or preferential. The Staff believes that Public Counsel and those entities for which the Commission grants party status in this proceeding should be provided the opportunity to address, and the Commission may need to determine, whether the schedule that AmerenUE proposes will provide the parties sufficient time for the opportunity for a fair hearing respecting the issues presented so that the rates and charges resulting may be based on a consideration of all relevant factors and also may be just, reasonable and not unduly discriminatory or preferential.

5. The intervention period set by the Commission closes this date, July 31, 2006, and the Staff anticipates that the Commission will soon rule on the pending applications for intervention. No entity that has filed for intervention has addressed AmerenUE's Motion To Adopt FAC Procedures, nor has Public Counsel filed a response. The Staff assumes that the Commission wants to hear from these entities on the matter of AmerenUE's Motion To Adopt FAC Procedures. If the Commission has been expecting the Staff to respond to AmerenUE's Motion To Adopt FAC Procedures within the ten (10) day period provided by Commission rule for responses to motions, 4 CSR 240-2.080(15), the undersigned counsel apologizes for not having done so and requests that the instant pleading be treated as a request for leave to late file a Staff response.

6. The Commission, in an Order dated July 11, 2006, set August 17, 2006 as the date for an early prehearing conference and has directed the parties to file a proposed procedural schedule on or before August 25, 2006. How AmerenUE has proposed to proceed, as set out in its Motion To Adopt FAC Procedures, will very seriously affect the procedural schedule the Staff will propose for processing AmerenUE's electric rate increase case.

7. Undersigned counsel for the Staff notes that he has broached these matters with Counsel for AmerenUE, and AmerenUE has indicated a desire to address the matters set out above. The Staff is interested in addressing these matters on a timely basis with AmerenUE, Public Counsel and the entities granted party status in this proceeding. AmerenUE has indicated to Staff counsel a proposed AmerenUE FAC filing date and a proposed scope of the AmerenUE FAC filing. Staff counsel has been authorized by Counsel for AmerenUE to make note of these matters, but Staff counsel will leave it to AmerenUE to provide parties and the Commission with details.

Wherefore the Staff states that it is opposed to AmerenUE's Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause and requests that the Commission issue an Order providing Public Counsel and those entities to which the Commission grants party status in this proceeding the opportunity to respond to AmerenUE's Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause. Finally, undersigned counsel requests leave to late-file the instant response should the Commission deem this response to be beyond the ten (10) days provided by 4 CSR 240-2.080(15).

Respectfully submitted,

/s/Steven Dottheim

Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)
e-mail: steve.dottheim@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 31st day of July 2006.

/s/ Steven Dottheim