

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

Comes now the Staff of the Missouri Public Service Commission (Staff) pursuant to the authorization of the Regulatory Law Judge at the August 17, 2006 Early Prehearing Conference (Tr. Vol. 1, p. 19, Ins. 3-6), which is mentioned in the Commission's August 18, 2006 Notice Regarding Question Raised And Rulings Made At Prehearing Conference, to respond to AmerenUE's August 8, 2006 Reply To Staff Response To AmerenUE's Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause. The Staff states it is still opposed to granting to AmerenUE a waiver from the final transition provisions of the fuel adjustment clause (FAC) rules that are promulgated by the Commission and it is opposed to the Commission indicating at this point that AmerenUE may file for a waiver from any of the items of proposed 4 CSR 240-3.161(2) without AmerenUE first identifying now what items it seeks waiver from providing and the Commission allowing the Staff and the other parties an opportunity to respond. As of this date, August 31, 2006, it is 77 days since the Commission issued its Notice of Proposed Rulemaking and sent its proposed FAC rules to the Secretary of State (June 15, 2006), and September 29, 2006, the date when AmerenUE proposes to make its FAC filing with the Commission, will be 106 days from the date the Commission issued its Notice of Proposed Rulemaking and sent its proposed FAC rules to the Secretary of State (June

15, 2006). AmerenUE should identify now what if any waivers it seeks from 4 CSR 240-3.161(2), thereby permitting this matter to be fully argued in advance of September 29, 2006.

The Staff further states as follows:

1. The Staff previously made a filing on July 31, 2006 and stated in response to AmerenUE's July 7, 2006 Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause that it was opposed to AmerenUE's July 7, 2006 Motion. On August 8, 2006, AmerenUE filed a Reply To Staff Response To AmerenUE's Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause. AmerenUE in its August 8, 2006 Reply requested that its July 7, 2006 Motion To Adopt Procedures For Implementing AmerenUE's Requested Fuel Adjustment Clause be considered amended and that its prayer in said Motion be deemed to read as follows:

WHEREFORE, AmerenUE requests that the Commission enter its order adopting and applying for purposes of this case the provisions which appear as subsection (16) of proposed rule 4 CSR 240-20.090 with respect to the Company's request for a FAC, granting a waiver from the final transition provisions of the FAC rules that are finally promulgated, if any, to the extent, if any, they vary from the terms of the requested order, ordering that the parties comply with the provision of proposed rule 4 CSR 240-20.090(16), as adopted by the Commission's order requested herein; provided, however, that the Company prays that the Commission's order set a deadline of September 30, 2006 by which the Company shall file FAC tariff sheets, supporting direct testimony, and the other 19 items of information contemplated by proposed rule 4 CSR 240-3.161(2) or a request for a waiver of any of those items for which the Company believes a waiver is appropriate.

The Staff does not believe that AmerenUE has provided any basis for granting the waiver from the final transition provisions of 4 CSR 240-20.090(16) that it seeks. The Staff is also opposed to the Commission indicating at this point to AmerenUE that AmerenUE may file for a waiver from any of the items of proposed 4 CSR 240-3.161(2) without AmerenUE first identifying now

what items it seeks waiver from providing and the Commission allowing the Staff and other parties an opportunity to respond.

2. On August 11, 2006, in Case No. ER-2007-0004, Aquila, Inc. filed its Motion For An Order Applying The Transitional Procedures Included In 4 CSR 240-20.090(16) To The Current Case. On August 21, 2006, AARP filed in Case No. ER-2007-0004 a Request For Order Setting Date For Responses To Aquila's Motion Regarding Transitional Procedures, in which AARP represented it had contacted Public Counsel, SIEUA, and AG Processing regarding AARP's request that the Commission authorize a response date to at least August 31, 2006 to respond to Aquila's August 11, 2006 Motion for Commission Order applying procedures in proposed Commission rule 4 CSR 240-20.090(16). On August 29, 2006, the Commission issued in Case No. ER-2007-0004 an Order Establishing Date For Responding To Motion Regarding Transitional Procedures, in which it set no later than August 31, 2006 as the date by which parties to Case No. ER-2007-0004 should respond to Aquila's August 11, 2006 Motion. The Staff notes that Aquila, by filing on July 3, 2006 (a) tariff sheets comprising its proposed FAC, (b) prepared direct testimony, and (c) not requesting a waiver from complying with the final transition provisions of the FAC rules that are finally promulgated by the Commission, i.e., subsection (16) of proposed rule 4 CSR 240-20.090, is situated significantly differently with its pending FAC request in Case No. ER-2007-0004 than AmerenUE is situated in the instant case.

3. By having filed proposed tariff sheets and substantive testimony respecting its proposed FAC, Aquila would seem to avoid the questions raised by AmerenUE's July 7, 2006 filing which contains neither proposed FAC tariff sheets nor substantive testimony addressing AmerenUE's proposed FAC. Of the proposed tariff sheets and prepared direct testimony filed

by AmerenUE on July 7, 2006, only a brief “bullet point” appears in the direct testimony of AmerenUE witness Warner L. Baxter at pages 21-22, respecting AmerenUE’s “requested” FAC:

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 tariff sheets in AmerenUE’s filing.

4. As a consequence of the above, it appears that various parties in the instant proceeding now, on September 29, 2006 when AmerenUE purportedly will make its FAC filing, or at some later time, will raise questions respecting whether AmerenUE’s July 7, 2006 filing respecting the adoption of a FAC was not in compliance with Section 393.140(11) RSMo 2000, Section 393.150, 4 CSR 240-2.065(1) and 4 CSR 240-2.130(7)(A).<sup>1</sup>

Wherefore for the reasons stated above, the Staff is (1) still opposed to granting to AmerenUE a waiver from the final transition provisions of the fuel adjustment clause (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 (2) opposed to the Commission granting a waiver to AmerenUE from any of the items of proposed 4 CSR 240-3.161(2) without

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<sup>1</sup> See generally *State ex rel. Jackson County v. Public Serv. Comm’n*, 532 S.W.2d 20 (Mo.banc 1975), *cert. denied*, 429 U.S. 882, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976); *State ex rel. Utility Consumers Council of Missouri v. Public Serv. Comm’n*, 585 S.W.2d. 41, 56 (Mo.banc 1979); *State ex rel. Laclede Gas Co. v. Public Serv. Comm’n*, 535 S.W.2d 561 (Mo.App.1976); *State ex rel. Fischer v. Public Serv. Comm’n*, 670 S.W.2d 24 (Mo.App. 1984); *Re Union Electric Co.*, Case Nos. EO-85-17 and ER-85-160, Report and Order, 27 Mo.P.S.C.(N.S.) 183, 186-89 (1985); *Re Kansas City Power & Light Co.*, 28 Mo.P.S.C.(N.S.) 228, 232-35 (1986).

AmerenUE identifying now what items it seeks waiver from providing and the Commission allowing the Staff and the other parties an opportunity to respond currently, so that this matter may be fully argued in advance of September 29, 2006.

Respectfully submitted,

**/s/Steven Dottheim**

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### **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 August 2006.

**/s/ Steven Dottheim**