

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 2nd day of  
November, 2006.

In the Matter of Union Electric Company d/b/a	)	
AmerenUE for Authority to File Tariffs Increasing	)	<b><u>Case No. ER-2007-0002</u></b>
Rates for Electric Service Provided to Customers	)	Tariff No. YE-2007-0007
in the Company's Missouri Service Area.	)	

**ORDER GRANTING MOTION FOR NECESSARY WAIVERS,  
DENYING PENDING MOTIONS, AND DIRECTING FILING**

Issue Date: November 2, 2006

Effective Date: November 12, 2006

**Syllabus**

This order grants Union Electric Company, d/b/a AmerenUE's Motion for any Necessary Leave to File Additional Testimony, for any Necessary Waivers, and to Deny Pending Motions.

**Procedural History**

On July 7, concurrent with its electric rate increase case, Union Electric Company, d/b/a AmerenUE filed a motion asking the Commission to issue an order establishing transitional procedures for the handling of AmerenUE's request for a fuel adjustment clause (FAC), citing a proposed rule – 4 CSR 240-20.090(16). On September 21, 2006, the Commission issued its final order of rulemaking regarding 4 CSR 240-20.090 (Final Draft Rule). The Final Draft Rule did not include the transitional procedures that AmerenUE sought to adopt, and the Commission denied AmerenUE's motion to adopt them on September 28, 2006.

On September 29, 2006, AmerenUE filed new tariff pages designed to implement an FAC, testimony supporting those tariff pages, and a Motion for any Necessary Leave to File Additional Testimony, for any Necessary Waivers, and to Deny Pending Motions. In that motion, AmerenUE seeks three things. First, AmerenUE requests leave to file limited Supplemental Direct Testimony updating its forecasted data for April to June 2006, to actual data. Second, AmerenUE requests leave to file its FAC tariff and supporting testimony, and to the extent required, requests a waiver of Commission Rules 4 CSR 240-2.056(1), 4 CSR 240-2.130(7)(A), or any other necessary waivers related to that filing. Finally, AmerenUE asks the Commission to deny any and all motions and requests to reject its FAC tariff and strike supporting testimony.

Several parties filed responses objecting to AmerenUE's September 29, 2006 filings on a variety of grounds. These objections will be addressed in detail below.

## **Discussion**

### **Request for Leave to Update to Actual Data**

First, regarding AmerenUE's request for leave to file limited Supplemental Direct Testimony updating its forecasted data for April to June 2006, to actual data. AmerenUE does not require leave to file this testimony as the procedural schedule, jointly filed by the parties and adopted by the Commission in its order dated September 12, 2006, provides for it to be filed.

## **Request for Leave to File FAC Tariff and Supporting Testimony and for any Necessary Waivers**

AmerenUE is clearly authorized by 386.266.9 RSMo (Cum. Supp. 2005)<sup>1</sup> to apply for an adjustment mechanism prior to a rule being promulgated by the Commission. That section states, in pertinent part: “Any electrical, gas, or water corporation may apply for any adjustment mechanism under this section whether or not the commission has promulgated any such rules.” Section 386.266.12 RSMo merely requires that a rule be in effect “prior to the commission issuing an order for any rate adjustment.” Accordingly, the only question before the Commission is whether it is appropriate to allow AmerenUE to file an FAC tariff and testimony in support thereof three months into a pending rate case.

While AmerenUE contends that the revision to its initial tariff filing and the testimony in support thereof are authorized by Section 386.266 RSMo, the Missouri Industrial Energy Consumers (MIEC) and the AARP argue the filing violates that very section. Specifically, MIEC and AARP argue that Section 386.266 RSMo sets out a statutory process and timeline under which the Commission can only consider an FAC tariff filing in a case if parties have a full eleven month suspension period to evaluate, and possibly object to, that FAC. This argument presented by the MIEC and AARP is not supported by the language of Section 386.266.4 RSMo which reads in pertinent part:

The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint.

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<sup>1</sup> All references to the Revised Statutes of Missouri are to the 2005 Cumulative Supplement, unless otherwise noted

The language set out above clearly does not require either eleven months for consideration or that the FAC be filed when a case is initiated. In fact, an FAC would never be filed at the inception of a complaint case, but the Commission is authorized to consider an FAC in a complaint proceeding. Also, while the Commission is authorized by statute to suspend a tariff requesting a general rate increase request for any period up to and including eleven months, the Commission can and does address rate increase requests utilizing less than the maximum allowable suspension period. Further, there is nothing in the opposing parties' pleadings that supports their contention that the FAC request would not get a "full hearing."

The parties would not be unduly burdened by allowing AmerenUE to modify its filing to include an FAC request, in that they have sufficient time to analyze the FAC tariff. AmerenUE made its filing on September 29, 2006, giving the parties more than three months to analyze that information and conduct discovery before filing their direct testimony on December 30, 2006.

Rejecting AmerenUE's FAC tariff would deny it the opportunity to seek a FAC until it files a subsequent rate case, because Section 386.266 RSMo requires any FAC request to be considered with a general rate case proceeding. Further, AmerenUE's explanation as to why it did not file for an FAC with its general rate case is reasonable. Specifically, AmerenUE stated that it could not get the necessary analysis done to complete its FAC proposal in time to file on July 10, 2006, the date by which it had promised the Commission it would file its rate case. Once the Final Draft Rule is published in the Code of State Regulations as 4 CSR 240-20.090, the Commission will expect a

company seeking consideration of a FAC in conjunction with a general rate increase request to file that FAC request as part of its general rate case.

Several parties argue that AmerenUE's FAC filing is in violation of Section 4 CSR 240-2.065(1). That section states, in pertinent part:

A general rate increase request is one where the company or utility files for an overall increase in revenues through a company-wide increase in rates for the utility service it provides, . . . Any public utility which submits a general rate increase request shall simultaneously submit its direct testimony with the tariff.

The filing requirements of this section specifically relate to filings for general rate increase requests. The tariff sheets AmerenUE filed on September 29, 2006, did not constitute a general rate increase tariff, but a request to establish a mechanism for adjusting future interim rates to account for fuel cost fluctuations. Accordingly, AmerenUE's FAC filing is not in violation of 4 CSR 240-2.065(1), and AmerenUE's request for a waiver of that provision as authorized by 4 CSR 240-2.015 is not required.

The MIEC and AARP also object to AmerenUE's FAC filing as being in violation of Section 393.140(11) RSMo 2000, by making vague references to filing and notice requirements contained therein. Specifically, MIEC contends this section "mandates that in order for the Commission to make a decision, AmerenUE needs to provide notice which should 'plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect.'" MIEC further claims that because AmerenUE failed to file the FAC with its July 2006 filing, the parties are deprived of their opportunity to meaningfully respond to the FAC. However, the Commission finds nothing in Section 393.140(11) that prohibits it from allowing AmerenUE to amend its case by filing a proposed FAC.

Section 393.140(11) RSMo 2000, states in pertinent part:

Unless the commission otherwise orders, no change shall be made in any rate or charge, or in any form of contract or agreement, or any rule or regulation relating to any rate, charge or service, or, . . . , which shall have been filed and published by a gas corporation, electrical corporation, water corporation, or sewer corporation in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect. . . .

This section merely requires thirty-day notice prior to rate changes going into effect. The hearings in this case are not scheduled to begin for almost five months. Further, the Commission has not yet issued its order directing AmerenUE to file its official customer notice in this case. AmerenUE has more than enough time to comply with this section.

MIEC also argues that Section 393.150 RSMo 2000, prohibits AmerenUE from filing new tariffs “which are part of its case in chief.” However, MIEC fails to cite, and the Commission does not find, any language in this section which supports MIEC’s position. This section simply authorizes the Commission to initiate a complaint proceeding against a utility after providing that utility with reasonable notice and a written statement setting out the basis for the Commission’s suspicions.

MIEC next argues that AmerenUE has failed to meet its burden of proof under Section 393.150.2 RSMo 2000. MIEC correctly notes that this section states that any electric corporation seeking a rate increase has the burden to prove its proposed rate increase is just and reasonable. However, this argument is not relevant to the issue presently before the Commission. The Commission is not making a decision regarding the proposed FAC at this time. The Commission is only being asked to decide whether it is appropriate to consider AmerenUE’s proposed FAC in this rate case.

Citing cases from other jurisdictions, MIEC and AARP argue that AmerenUE's FAC filing is barred as an improper "pancaking" of rate proposals. The Commission does not need to address whether or not pancaking is appropriate under Missouri law, because the instant filing does not constitute pancaking, in that it does not involve the filing of multiple rate increase requests. As set out above, the instant filing is not a rate increase request, but a request to institute a mechanism for adjusting future interim rates to account for fuel cost fluctuations.

The Public Counsel opposes AmerenUE's request on the grounds that 4 CSR 240-2.130(7) prohibits AmerenUE from amending its direct rate case, in that it says direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief. However, Section 4 CSR 240-2.130(8) provides for the Commission to authorize or require a party to supplement prepared direct, rebuttal or surrebuttal testimony by ordering it to so do. This section also says, "A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing." It is logical to also give a party a reasonable opportunity to address matters, such as provisions of promulgated rules, that will be enacted before the hearing. The Commission clearly has discretion to allow, or even order, AmerenUE to supplement its direct testimony to include or support an FAC. The Commission will authorize AmerenUE to file testimony in support of its FAC filing.

#### **Request to Deny Pending Motions and Requests to Reject FAC Tariff and Strike Supporting Testimony**

As addressed above in detail, the Commission has considered the various arguments made by the parties in opposition to AmerenUE's FAC filing and does not believe they have merit. Accordingly, they will be denied.

### **Deficiencies in AmerenUE's FAC Filing**

As provided for under Section 386.266 RSMo, the Commission will consider the appropriateness of the FAC itself after consideration of information submitted into evidence during the hearing in this case. It is important to note that Section 386.266 RSMo in no way obligates the Commission to approve any FAC request. Further, if the Commission ultimately grants AmerenUE's requested FAC, the Commission retains authority to later modify, extend, or discontinue that FAC in a subsequent general rate case or complaint proceeding. However, the tariff filing in question does not comply with Section 386.266.4(3) and (4). Specifically, it does not contain provisions requiring AmerenUE to file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism as required by 386.266.4(3). The FAC tariff likewise does not contain provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and require refunds of any imprudently incurred costs plus interest at the utility's short-term borrowing rate as required by 386.266.4(4). AmerenUE will be directed to file a revised FAC tariff correcting this defect on or before November 13, 2006.

#### **IT IS ORDERED THAT:**

1. Union Electric Company, d/b/a AmerenUE's Motion for any Necessary Leave to File Additional Testimony, for any Necessary Waivers, and to Deny Pending Motions is granted.
2. The tariff sheets denominated as Rider A–Fuel and Purchased Power Adjustment Clause submitted in this case by Union Electric Company, d/b/a AmerenUE on



September 29, 2006, will be considered in conjunction with the tariff filing that initiated this case.

3. Union Electric Company, d/b/a AmerenUE is granted leave to file the Supplemental Direct testimony of Martin J. Lyons, Jr., in support of the tariff denominated as Rider A–Fuel and Purchased Power Adjustment Clause submitted on September 29, 2006.

4. The State of Missouri’s request that the Commission deny Union Electric Company, d/b/a AmerenUE’s motion as it relates to a proposed tariff denominated as Rider A-Fuel and Purchased Power Adjustment Clause and the direct testimony of Martin J. Lyons, Jr., filed on October 10, 2006, is denied.

5. The Motion to Reject Fuel Adjustment Clause Tariff filed by the AARP and Consumers Council of Missouri filed on October 10, 2006, is denied.

6. The Office of the Public Counsel’s Motion to Reject Tariff filed on October 10, 2006, is denied.

7. The Missouri Industrial Energy Consumers’ request that the Commission reject Union Electric Company, d/b/a AmerenUE’s Motion for any Necessary Leave to File Additional Testimony, for any Necessary Waivers, and to Deny Pending Motions, is denied.

8. Union Electric Company, d/b/a Ameren will file a revised Rider A-Fuel and Purchased Power Adjustment Clause as described in the body of this order on or before November 13, 2006.

9. This order shall become effective on November 2, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
and Appling, CC., concur.  
Gaw, C., dissents, with separate  
dissenting opinion to follow.

Voss, Regulatory Law Judge