

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

In the Matter of Union Electric Company d/b/a)
AmerenUE's Tariffs to Increase its Annual) Case No. ER-2010-0036
Revenues for Electric Service.) Tracking No. YE-2010-0054
) Tracking No. YE-2010-0055

**AMERENUE'S RESPONSE TO THE COMMISSION'S
OCTOBER 7, 2009 ORDER**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company"), by and through counsel, and hereby files this Response to the Commission's *Order Regarding New Case File for Consideration of AmerenUE's Tariff to Implement an Interim Rate Increase* ("Order)."

1. On October 7, 2009, the Commission issued the Order, in which the Commission stated that it "is concerned about the potential for confusion" and thus is "contemplating the establishment of a new, separate case for consideration of AmerenUE's interim rate increase tariff." However, the Commission also stated that "[n]othing substantive would change" if a new case file were established. The Commission also notes that creating a new case file would be an "unusual step."

2. It appears that the Commission may have issued the Order because of comments made by the Staff in the Staff's suggestions opposing AmerenUE's interim rate increase, which one might read as a suggestion by the Staff that an interim rate increase must be handled as a separate case, apart from the permanent rate case. In fact, the Staff points to a Commission case from the early 1980's where the Commission seemed to suggest that a "separate case" might be required. *See In Re Kansas City Power & Light Co.*, 24 Mo.P.S.C. (N.S.) 50, 52-53 (1980). For the reasons discussed below, any suggestion made by the Commission in 1980 that a separate

case is required to address an interim rate request was based upon a mistaken understanding of the nature of an interim rate request, and the law governing such requests.

3. Four years after the Commission's order in the *Kansas City Power & Light Co. case, supra*, the Missouri Court of Appeals for the Western District of Missouri decided *State ex rel. Fischer v. Pub. Serv. Comm'n*, 670 S.W.2d 24 (Mo. App. W.D. 1984).¹ *Fischer* was a writ of review proceeding filed by the Office of the Public Counsel ("OPC") seeking review of a permanent rate increase granted to Missouri Public Service Company ("MPS"). The Circuit Court dismissed OPC's writ request on the ground that OPC should have appealed the Commission's earlier order that granted interim rates to MPS. Specifically, the circuit court ruled that the writ case was a collateral attack on that earlier interim rate order, which had become final, but which had not been appealed by OPC. *Id.* at 24. The Court of Appeals disagreed, holding that "the interim rate proceeding is ancillary to the permanent rate proceeding, and review in the permanent rate case includes review of the order made in the interim proceedings. Such review does not constitute a collateral attack on those orders made in the interim proceedings." *Id.* at 27.

4. In reaching its conclusion, the Court of Appeals extensively explained the nature of an interim rate increase request. The Court's statements on this subject are instructive and dispositive of whether an interim rate increase request can or should be treated as a separate case:

It is clear that the request for an interim rate increase did not stand on its own as an entirely separate and distinct proceeding. Thus, the interim rate case in issue, although assigned a number different from that assigned the permanent case by the Commission, *has no independent status but is simply a part of the company's permanent rate request.* * * * It is subordinate to and in aid of the primary action, the permanent rate request. It follows that the interim rate request made by the

¹ It is interesting that the Staff made no mention of *Fischer* when it implied that the Company had perhaps not properly filed its interim rate request in this case. As outlined herein, controlling appellate authority demonstrates the appropriateness of the Company's filing, and the lack of any requirement that a separate case be filed or opened.

company is a part of the *same proceeding* as the permanent rate request. This is true even though the company filed a separate request^[2] for an interim rate increase and the Commission assigned different numbers to the two requests. Consequently, orders made in the interim request cannot be considered as having been made in an action separate and apart from the permanent request. (emphasis added)³

5. *Fischer* is unequivocal. The Company's interim rate request and all orders made respecting it *cannot* be considered to be a part of an action separate and apart from this rate case – Case No. ER-2010-0036. Consequently, there is no requirement, and no need, to create a separate “case file” and there was certainly no requirement or need for the Company to have filed its interim rate request as a separate case. The Commission is indeed correct – “nothing substantive would change” if the Commission creates a separate case file, and that is true because nothing substantive *could* change as a matter of law.

6. The Order directed any party “wishing to express an opinion on whether the Commission should create a new case file” to do so by October 14, 2009. Based upon the foregoing, it is the Company's opinion that there is no need to create a new case file, and that if one were created, it would have no legal effect and cannot change the substantive nature of the Company's interim rate filing. Rather, it would simply in effect be analogous to creating a “sub-file” under the case file for this rate case. All proceedings regarding the interim rate filing, and all orders respecting it, will and must be reviewed as part of the entire case. *Fischer, supra*. Consequently, the Company is of the opinion that a new case file should not be created, and in fact that creation of a new case file tends to complicate and potentially confuse the file for this

² Perhaps MPS filed a separate request because of the Commission's prior (and as *Fischer* establishes, erroneous) statements in the earlier *Kansas City Power & Light Company* case that suggested a separate case might be necessary.

³ As the opinion indicates, in the *Fischer* case the Commission did assign the interim rate request a separate case number. There was no “error” in doing so, but doing so also had no legal effect, and indeed tended to create the confusion which led the circuit court to erroneously dismiss the writ of review case.

case. Indeed, the Commission now has the opportunity to recognize the law outlined in *Fischer* by making clear that an interim rate request is part of the permanent rate case, should be filed as such as was done by the Company in this case, and will be handled as part of the permanent rate case, as required by law.

WHEREFORE, the Company suggests that a new case file not be created respecting its interim rate filing.

Respectfully submitted:
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CERTIFICATE OF SERVICE

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