

**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)	Case No. ER-2010-0036
Annual Revenues for Electric Service)	

**MISSOURI INDUSTRIAL ENERGY CONSUMERS'
RESPONSE AND AFFIDAVIT OF MICHAEL GORMAN
IN OPPOSITION TO
AMERENUE'S REQUEST FOR INTERIM RATE INCREASE**

Comes now the Missouri Industrial Energy Consumers ("MIEC") and, pursuant to the Commission's July 30, 2009 *Order Establishing Date to Respond to Request for Interim Rate Increase* in this case, files its Response and attached Affidavit of Michael Gorman. For its Response, the MIEC states as follows:

1. On July 24, 2009, Union Electric Company, d/b/a AmerenUE ("AmerenUE") submitted a tariff designed to implement a general rate increase and a separate tariff proposing an interim rate adjustment to increase its rates by 1.67 percent effective October 1, 2009.

2. On July 30, 2009, the Commission ordered the Staff, the Office of Public Counsel and any persons or entities requesting intervention to file initial responses indicating support or opposition to AmerenUE's interim rate increase request.

3. AmerenUE's proposed interim rate adjustment is presented in its July 24 rate increase filing by its interim rate tariff, several pages in the pre-filed testimony of its witnesses Warner L. Baxter and Gary S. Weiss, and its *Suggestions in Support of Interim Rate Tariff*. According to Warner L. Baxter, AmerenUE is proposing to implement interim rates to "help reduce regulatory lag in this case." Direct Testimony of Warner L. Baxter, p. 19, lines 14-15. He justifies the measure as follows:

Although the Commission has typically permitted interim rate increases only when a utility is facing extremely dire financial difficulties, counsel advises me that the Commission is not required to adhere to a so-called 'emergency' standard, and we are hopeful that the Commission will use this tool to help reduce the regulatory lag

AmerenUE is facing in this case. Other jurisdictions use interim rates for such a purpose, and there is nothing that would prevent this Commission from doing so as well.

Id. at p. 19, lines 18 – 22; p. 20, lines 1-2. According to Mr. Weiss, “[a]n interim rate increased based upon the cost of these capital additions (which are already serving customers) on an interim basis will help mitigate regulatory lag and reduce the Company’s need to access external capital in the long run, to the ultimate benefit of customers.” *See* Direct Testimony of Gary S. Weiss, p. 47, lines 16-19.

4. AmerenUE’s testimony and pleadings do not support the interim rate tariff under any standard set forth by the Commission or the Missouri Courts, whether on an emergency or non-emergency basis. AmerenUE has strong financial integrity. *Affidavit of Michael Gorman, paragraph 2 (c)*. As of March 13, 2009, AmerenUE has bond ratings from Moody’s, Standard & Poor’s and Fitch of “Baa1”, “BBB” and “A” respectively. *Id.* AmerenUE’s bond rating from each of these credit rating agencies is rated “stable”, and this stable bond rating supported a \$350 million bond issuance in March, 2009. *Id.* AmerenUE’s rate filing proves that it has the liquidity to fund operations and support capital improvements, and that the bank market is generally open and available to investment grade utilities like AmerenUE. *Id. at paragraph 2 (b)*. This indicates a strong credit rating and has allowed AmerenUE to access capital markets even in distressed market environment. *Id. at paragraph 2 (c)*.

5. In 1976, the Missouri Court of Appeals held that the Commission has the authority to grant interim rate increases implied from the “file and suspend” statutes and from the practical requirements of utility regulation. *See Laclede Gas Co. v. Pub. Serv. Comm’n of Mo.*, 535 S.W.2d 561, 567 (Mo. Ct. App. 1976); *see also* RSMo §§393.140 and 393.150. The Commission’s authority to grant an interim rate increase is implied from its statutory authority to provide immediate rate relief as necessary to maintain the economic life of the utility in order to serve the public. *See Fischer v. Pub. Serv. Comm’n of Mo.*, 670 S.W.2d 24, 26 (Mo. Ct. App. 1984).

6. The Missouri Court of Appeals acknowledged that the Commission has consistently held that interim rate increases are granted under emergency conditions. *See Laclede*, 535 S.W.2d at 568. Specifically, the Court stated how a majority of the Commission follows the principle that the purpose of a special hearing concerning interim rates is to “ascertain whether emergency conditions exist which call for especially speedy relief.” *Id.* The Report and Order in the *Laclede Gas Co.* case expressed the view that an interim increase should be granted only “where a showing has been made that the rate of return being earned is so unreasonably low as to show such a deteriorating financial condition that would impair a utility’s ability to render adequate service or render it unable to maintain its financial integrity.” *Id.* at 568-69. Therefore, a utility must show that the rate of return is so “unreasonably low” as to demonstrate an inability of a utility to render adequate service or to maintain its financial integrity. Laclede did not reach this level of financial instability in this case. Laclede’s president admitted in his testimony that if the interim relief was not granted, Laclede would not become insolvent and would not reduce salaries or terminate personnel. The denial of interim relief would not affect the credit rating of Laclede’s bonds. Significantly, Laclede would still be able to provide service to its customers and to pay dividends to its stockholders. *Id.* at 564.

7. Similar to *Laclede*, AmerenUE is unable to show that its rate of return is so “unreasonably low” to demonstrate the inability of AmerenUE to render adequate service or to maintain its financial integrity. Both Mr. Baxter and Mr. Weiss argue that AmerenUE filed its proposed interim rate increase to help reduce a “regulatory lag,” or a delay between the time when expenditures are made and the time that those expenditures are recovered in the rates. *See* Direct Testimony of Gary S. Weiss, p. 47, lines 14-16. Neither Mr. Baxter nor Mr. Weiss assert that AmerenUE would become insolvent if the interim rate increase is not granted. Neither Mr. Baxter nor Mr. Weiss assert that AmerenUE would reduce salaries or terminate personnel if the interim rate increase is not granted. Most importantly, neither Mr. Baxter nor Mr. Weiss assert that AmerenUE

will be unable to provide adequate service to its customers if the interim rate increase is not granted. AmerenUE's rate of return is not so "unreasonably low" as to demonstrate that the company is in dire financial need. Accordingly, pursuant to the Laclede decision, AmerenUE's request for an interim rate increase should be denied.

8. In Laclede, the Missouri Court of Appeals stated that it is possible to grant interim rate relief on a non-emergency basis. "It may be theoretically possible even in a purposefully shortened interim rate hearing for the evidence to show beyond reasonable debate that the applicant's rate structure has become unjustly low, without any emergency as defined by the Commission having yet resulted. Although some future applicant on some extraordinary fact situation may be able to succeed in so providing, Laclede has singularly failed in this case to carry the very heavy burden of proof necessary to do so." *Id.* at 574.

9. Similar to Laclede, AmerenUE has been unable to prove an "extraordinary fact situation" to warrant interim rate relief in a non-emergency situation. AmerenUE has not asserted that its rate structure is "unjustly low," and therefore, AmerenUE will not be insolvent or in financial hardship without the interim rate increase. Rather, Mr. Weiss argues that the interim rate increase will help mitigate regulatory lag and reduce AmerenUE's need to access external capital in the future. *See* Direct Testimony of Gary S. Weiss, p. 47, lines 16-18. Mr. Weiss' justification hardly presents an "extraordinary fact situation" to warrant interim relief.

10. The Commission has held that in order to be eligible for interim rate relief, a utility must meet three criteria: (1) it needs the additional funds immediately; (2) that the need cannot be postponed; and (3) that no other alternatives exist to meet the need but rate relief. *See, e.g., In the Matter of the Empire Dist. Elec. Co. of Joplin, Missouri*, 2002 Mo. PSC LEXIS 675, at *3 (herein "Empire"); *In the Matter of the Application of Citizens Elec. Cooperation for Approval of Interim Rates*, 2001 Mo. PSC LEXIS 1817, at *8 (herein "Citizens"); and *In re Missouri Pub. Serv. Co.*, 1975

Mo. PSC LEXIS 15, at *14. AmerenUE must meet these three requirements in order to succeed in its quest for interim rate relief.

11. AmerenUE has failed to meet all three of these established criteria. AmerenUE argues that it needs the funds because it is experiencing a “regulatory lag” and it will reduce AmerenUE’s need to access external capital in the future. These arguments fail to meet AmerenUE’s burden to show that it needs the additional funds immediately, that its financial needs cannot be postponed, and that no other alternatives exist to meet the needs except for rate relief. In fact, as Mr. Baxter explains, AmerenUE is proposing “several measures” that would help reduce regulatory lag in this case, including, but not limited to, the interim rate relief. *See* Direct Testimony of Warner L. Baxter, p. 19, lines 14-15. There is no immediacy or necessity to AmerenUE’s request. Accordingly, AmerenUE has failed to meet any of the three of the criteria established by the Commission for interim rate relief.

12. Historically, the Commission has found that the utility has to demonstrate an “emergency or near emergency situation” to grant an interim rate increase. *See, e.g., Empire*, at *4, 7-8 (explaining that “Empire admits that its request does not meet the emergency standard of the Commission nor that its ‘financial integrity or ability to render safe and adequate service over the next several months will be jeopardized if the request is not granted’ ”).

13. The Commission has consistently denied interim rate increase proposals where financial circumstances do not reach an “emergency or near emergency situation”. *See, e.g., Empire*, at *3, 6-7; *In re Kansas City Power and Light Co.*, 1980 Mo. PSC LEXIS 45, at *10, 14 (holding that the company’s “inflexible financial position, interest coverage problem and low rate of return entitle it to interim relief” and that the company’s “present level of earnings impairs its continued financial integrity”); and *In re Missouri Pub. Serv. Co.*, 1975 Mo. PSC LEXIS 15, at *14-18 (holding that the company’s crisis is the result of the company’s “inadequate load and revenue forecasting techniques”

causing the company to underbudget revenues and that the company had other sources of funds available to it if the interim rate relief was denied).

14. On rare occasion, the Commission has granted interim relief on a non-emergency basis. *See Citizens*, at *8 (holding that, in this instance, it is appropriate to grant interim rate relief on a non-emergency standard to permit interim rates to recover additional costs from the wholesale power agreement). The Commission further explained its rationale: “All parties agree that interim rate relief is appropriate. Because Citizens’ organization is very similar to a rural electric cooperative, the Commission finds that it is differently situated than other electrical corporations regulated by the Commission.” *Id.* In 2002, the Commission distinguished *Citizens* as follows: “The *Citizens Electric Corporation* case was a departure from the Commission’s traditional emergency standard. That case is distinguishable, however, because interim relief was granted in part because of the unusual corporate structure of the company. Citizens Electric Corporation closely resembles a cooperative and has certain safeguards that other regulated companies do not have, because the company is actually owned by its customers.” *See Empire*, at *4-5. AmerenUE is neither structured nor functions as a rural electric cooperative, and therefore the non-emergency standard is inapplicable.

15. In summary, AmerenUE does not need an interim rate increase in this proceeding. Although AmerenUE complains of regulatory lag, Missouri’s use of the historic test year, Missouri’s statutory ban on rate increases for construction-work-in-progress and the lack of an “infrastructure replacement surcharge”, it has not offered the Commission evidence or a sound policy basis for its interim rate tariff under any emergency or non-emergency standard.

WHEREFORE, for the foregoing reasons, the MIEC requests that the Commission deny AmerenUE’s Request for an Interim Rate Tariff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 27th day of August, 2009, to all parties on the Commission's service list in this case.

/s/Diana Vuylsteke

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

STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

1. My name is Michael Gorman. I am employed as a managing principal with Brubaker & Associates, Inc. We have been retained by the Missouri Industrial Energy Consumers (“MIEC”) in this proceeding on its behalf.

(a) I have reviewed AmerenUE's rate filing to identify whether or not an interim rate increase is needed to ensure AmerenUE can: (1) secure the funds necessary to carry on its public utility obligations, (2) maintain its financial integrity, and (3) avoid an earned return on equity that is so dire it may threaten its ability to provide service. Based on my conclusions below, I find AmerenUE does not need an interim rate increase in this proceeding.

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needed capital investments. Mr. Nickloy also states that while capital markets have been distressed, the bank market is generally open and available to investment grade utilities like AmerenUE.

(c) AmerenUE continues to have strong financial integrity. Mr. Nickloy's work papers include Pricing Term Sheets associated with recent AmerenUE bond issuances. As of March 13, 2009, AmerenUE had bond ratings from Moody's, Standard & Poor's, and Fitch, of "Baa1," "BBB," and "A," respectively. Importantly, AmerenUE's bond rating from each of these credit rating agencies is rated "stable." AmerenUE's stable bond rating supported a \$350 million bond issuance in March 2009. AmerenUE's current investment grade bond rating is two notches above the minimum investment grade bond rating category. This indicates a strong credit rating and has allowed AmerenUE to access capital markets even in the current distressed capital market.

(d) I do not endorse a return on equity as a sufficient measure to justify an interim rate increase. Rather, I support a financial integrity standard as a balancing test to award an interim rate increase. Nevertheless, I note that AmerenUE has not, and cannot, show that its earnings over a 12-month period under its new rates will not produce a fair return on equity. AmerenUE's new rates were approved in January 2009 and implemented in March 2009. *Direct Testimony of Gary Weiss at page 17.* AmerenUE's actual earned return on common equity for the 12-month period ending March of 2009 to be 6.02% and 5.61% for the period ending May 2009. *Id. at pages 33-34* Mr. Weiss argues that these returns are lower than the 10.76% return authorized in AmerenUE's rate order in January 2009. While AmerenUE's earned return on equity is lower than its current authorized return on equity, this does not prove that new rates will produce unreasonably low earnings. Mr. Weiss's return on equity estimates are predominately based on AmerenUE's old rates, not its new

rates. AmerenUE's new rates did not go into effect until March 2009. *Weiss Direct at page 17.* Hence, AmerenUE has not shown and does not know what its earnings will be for the first 12 months under its new rates. Significantly, Mr. Weiss did estimate that the annual effect of the new rates implemented in March could increase AmerenUE's revenue by \$166 million. *Id.* This annual revenue enhancement is not reflected in his actual return estimates. AmerenUE's new rates will improve its earnings and it will help earn its authorized return on equity after the new rates are in effect for 12 months without the proposed interim rate increase. Further, Mr. Weiss' actual return on equity has not been shown to reflect only Missouri retail jurisdictional operations. The actual earned returns could have been negatively impacted by costs that could not be recovered from Missouri retail customers, or by low revenue recovered from non-Missouri retail operations. This is additional reason the actual return on equity estimates cannot be used to determine whether an interim rate increase is required.

(e) For the above reasons, AmerenUE's proposed interim rate increase should be denied.

3. I hereby swear and affirm that the foregoing is true and correct.

Michael Gorman

Subscribed and sworn to before me this 27th day of August, 2009.

Notary Public

My Commission Expires: