Ameren Services

One Ameren Plaza
1901 Chouteau Avenue
PO Box 66149
St. Louis, MO 63166-6149
314.621.3222

314.554.2237
314.554.4014 (fax)
JJCOOK@AMEREN.COM

June 24, 2002

VIA HAND DELIVERY

Ameren

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

Re: MPSC Case No. EC-2002-1

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company, d/b/a AmerenUE, in the above matter, please find an original and eight (8) copies of its **Motion To Exclude The Testimony Of Staff Witness Greg R. Meyer**.

Very truly yours,

James J. Cook
Managing Associate General Counsel

JJC/vww

Enclosures

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	Case No. EC-2002-1
Union Electric Company, d/b/a AmerenUE, Respondent.	)	

MOTION TO EXCLUDE
<u>THE TESTIMONY OF STAFF WITNESS GREG R. MEYER</u>

AmerenUE ("UE" or the "Company") respectfully moves pursuant to the Missouri Public Service Commission's "Notice Regarding Hearing Schedule, and Objections to Depositions and Testimony" dated June 18, 2002, to exclude the portions of the testimony of Greg R. Meyer concerning the amount of pension and other post-retirement employee benefits ("OPEBs") to be included in UE's cost of service, to be offered by the Staff of the Missouri Public Service Commission (the "Staff"). The basis for this Motion, explained in more detail below, is that Mr. Meyer is not qualified as an expert on these particular topics, under § 490.065(1) RSMo. Mr. Meyer was assigned these topics by Staff ***not*** because he has "knowledge, skill experience, training, or education" in this area, but because a supervisor thought he "needed to get the exposure to this area."[1]

[1] *See* Transcript of November 29, 2001 Deposition of Gregory R. Meyer ("Nov. 2001 Dep.") at page 89, lines 1 through 7 (henceforth all citations to deposition transcripts will follow the format of page number, colon, and lines, so that this passage is at 89:1-7).

BACKGROUND

In order to best evaluate the witness's qualifications as an expert on the topics of pension and OPEBs expense, it is necessary first to review the basic concepts relevant to pension and OPEB expense. Under the accrual method of accounting, a company's future liability to pay its employees a pension and other retirement benefits is matched up with the time periods in which each employee works and thus earns these benefits. A company's external pension or OPEB fund can be evaluated at any time to determine if it has sufficient assets to cover projected liabilities.

Because of the technical knowledge required to determine liabilities owed in the future and to estimate the amount of assets needed today to be reasonably confident that through appreciation (capital gains and interest) a current fund will grow enough to meet these liabilities, companies hire actuaries to design their pension and OPEB plans. These actuaries develop assumptions—such as the expected annual return on fund assets, and the discount or interest rate used to represent the time value of money—which are used in the managing of the plans and are periodically adjusted to reflect the information acquired through experience.

The accrual method of accounting requires a systematic approach to calculating expenses. For the areas of pension and OPEBs, the Financial Accounting Standards Board ("FASB") has issued Statement of Financial Accounting Standards ("FAS") Nos. 87 and 106, respectively, to govern accounting by U.S. corporations. Under these statements, the costs of pensions and OPEBs that accrue each year are determined in the following manner: add the current value of the additional benefits earned by employees that year (service cost) to interest on the liability already owed to them (interest cost), subtract the amount the company expected to earn on the assets in the relevant fund (return on assets), and then add or subtract an amortization amount. The last factor, the amortization amount, is used to spread out over several years certain costs or benefits of the fund—costs or gains resulting from changes in future liability due to plan changes, assumption changes affecting the calculation of how much is needed today to meet future needs, and the net amount of actual returns on assets relative to the expected return (the gain/loss account).

Some of these components of the annual accrued cost of pension and OPEBs are correlated with such varying and unpredictable events as swings in stock market performance, and FAS 87 and 106 give corporations the tools to reduce the volatility in expense that would result from such random factors as the value of the stock market on a given day. For instance, to determine the expected return on assets in a pension or OPEB fund, one must start with the value of the assets and then apply the expected percentage increase in value—but the starting value of fund assets could vary widely from day to day, greatly affecting the expected return calculation. To eliminate this problem, FASB allows an "asset smoothing" approach, which means that a company can use as the starting point of its fund's value what is essentially an average of the assets' value over a multi-year period. Thus, a large swing in asset values on the last day of the previous accounting year will not have a great effect on the return on fund assets, or on the gain or loss relative to the expected return that is added to the amortizing account. Another FASB sanctioned method is the "corridor" approach to amortization, under which a company need only amortize the gain/loss account to the extent the account is more than 10% of the greater of fund assets or liabilities. And, finally, the amortization of the gain/loss account over a period of years is itself a method of reducing volatility, and the longer the period of amortization the less the volatility (companies are allowed to use periods as long as the average remaining years of service of active employees, which for UE would be 15 years).

UE uses the following tools to control pension and OPEB volatility: asset smoothing (to determine the value of the funds' assets) over four years, and amortization of the gain/loss account over 10 years (it has chosen not to employ the "corridor" and to use a shorter amortization period than the maximum allowed). Mr. Meyer initially filed testimony on July 2, 2001, recommending that UE stop using the smoothing (or market-related value) approach to calculating gains and losses, and use instead a 5-year average of gains and losses calculated based on the actual value of the funds on one day every 5 years. He also recommended a five year amortization period instead of 10 years.

Mr. Meyer gave three reasons for shortening the amortization period: Staff considers five years to be "a reasonable time period," some other pension-related items are amortized over 5 years, and the Commission has amortized "abnormal, significant" losses over 5 years in the past. July, 2001 Direct Testimony of Greg R. Meyer ("2001 Meyer Direct") at 10:12-25. Mr. Meyer gave two reasons supporting the abandonment of asset smoothing: Staff believed that "large annual gains are the rule" and thus smoothing overstates fund costs, and gains and losses under UE's approach "are not fully subject to amortization (recognized in pension cost under FAS 87) for four years." 2001 Meyer Direct at 13:10-25. He rationalized the calculation of pension and OPEB cost using a five-year average balance of the gain/loss account, rather than the current balance of that account, based on his belief that this "mitigates the effect on rates of any significant volatility experienced." 2001 Meyer Direct at 7:20-8:12.

Mr. Meyer was deposed on these topics on November 29, 2001. On March 1, 2002, he filed new testimony, which reiterated the previous recommendations concerning pension and OPEBs expenses. The same justifications were repeated for shortening the amortization period from 10 to 5 years, *see* March 1, 2002 Direct Testimony of Greg R. Meyer ("2002 Meyer Direct") at 18:16-19:3, and for using the five-year average balance of the gain/loss account, *see id.* at 16:1-16. But Mr. Meyer dropped his first reason for abandoning the asset smoothing approach, and split the second reason into two: UE's smoothing takes 4 years for gains and losses to be "fully subject to amortization," and "gains and losses need to be reflected on timely basis" for the sake of accuracy. 2002 Meyer Direct at 21:1-6.

Thus, Mr. Meyer's recommendations rest on his opinion that his approach more timely recognizes gains and losses and mitigates volatility. As the remainder of this Motion will show, Mr. Meyer does not have the "knowledge, skill, experience, training, or education" to make these judgments, by his own admission, and is not qualified to be an expert on these topics.

ARGUMENT

Under Missouri law, "a witness qualified as an expert by knowledge, skill, experience, training, or education may testify" by giving an opinion concerning "scientific, technical or other specialized knowledge" to "assist the trier of fact." Section 490.065(1) RSMo. Mr. Meyer cannot meet this standard for offering expert testimony on pension and OPEBs issues. Two separate depositions, taken on November 29, 2001 and April 24, 2002, have established this beyond question.

Meyer Did Not Draft the Testimony

Mr. Meyer acknowledges that his testimony was originally drafted by a Mr. Traxler, Nov. 2001 Dep. at 85:15-17, as Mr. Meyer "simply didn't have the time towards the end of the period to file—to draft the testimony and get it filed with the other responsibilities I had with the case." Nov. 2001 Dep. at 89:16-18. Mr. Meyer changed "[v]ery minimal amounts" from the Traxler draft. Nov. 2001 Dep. at 90:16-20.

Mr. Meyer's involvement in the 2001 Direct Testimony was to pull numbers from UE reports and plug them into an existing template: "I was able to retrieve the numbers from the reports, set them up—the format had previously been used by another auditor, attempt to quantify the adjustments. I still relied on Mr. Rackers and Mr. Traxler to go through the calculations with me." Nov. 2001 Dep. at 89:22-90:2. The only significant changes in the pension and OPEBs portions of the 2002 Direct Testimony was the contraction of the discussion of how UE's smoothing method works and the deletion of one reason supporting the recommendation. Mr. Meyer again needed the assistance of Mr. Rackers to make the calculations of the adjustments he proposes. *See* Transcript of April 24, 2002 Deposition of Gregory Meyer ("April 2002 Dep.") at 62:15-19.

Meyer Has Not Testified on Pension and OPEBs Issues For At Least Seven Years, and Has Never Testified In Support of The Recommended Methodology

Mr. Meyer's reliance on the assistance of other Staff members would normally be unexceptional, if he were qualified as an expert and were thus able to check the work done by others. But Mr. Meyer acknowledged he had not testified on pension and

OPEBs issues in "[a]t least" seven years, and conceded "[t]his is the first time I've testified in this methodology." Nov. 2002 Dep. at 88:22-25; *id.* at 58:8-9.

Mr. Meyer explained that his expertise is not the reason these issues were assigned to him:

> Q: Is there any particular reason why you had been assigned to do the pension and OPEBs issues since you hadn't done them in so long, considering that you hadn't done them in so long?
>
> A: Ultimately it was Mr. Schallenberg's decision that I needed to get the exposure to this area, being one of the senior accountants in the department.

Nov. 2001 Dep. at 89:1-7.

Although he claims he believes he has "the accounting background to understand and file the adjustments that are presented in my testimony and that back up the policy of the Staff," *id.* at 96:4-7, Mr. Meyer explained that he could not have testified without the assistance of others:

> A: ... Being that this is the first time I've testified—or written the testimony in this area from several years, I had to rely on the expertise of co-workers—co-Staff auditors. However, I believe that if I had—if I am given the opportunity to again do this area in the future, my reliance on those individuals will decrease as my experience and expertise increases.

Nov. 2001 Dep. at 96:9-16.

As is evident from the background discussion above, the pension and OPEBs area is a complicated one that requires sound judgment on actuarial issues, and is not a simple matter of plugging data into spreadsheets. Moreover, as explained below, the Staff position in this case is a novel one that is not used anywhere else. Under these circumstances, with the burden falling on the Staff as the complainant in this case, the

Staff's testifying expert should be someone with the background and experience to understand the ramifications of the radical change proposed. Mr. Meyer does not have the requisite background and experience at this time.

Meyer Lacks Basic Knowledge About These Topics

Although Mr. Meyer is recommending a change in what he terms is a "financial/accounting assumption"[2] regarding UE's pension and OPEBs plans—a shortening of the amortization periods used for the gain/loss account—he is not familiar enough with the subject area to make an informed recommendation. He admitted he is not familiar with the body that sets actuarial standards and has never heard of its standard regarding pension fund assumptions.[3] He is not an actuary nor familiar enough with their work to provide an expert opinion in this area. *See IMR Corp. v. Hemphill*, 926 S.W.2d 542, 543-44 (Mo. App. E.D. 1996) (engineer not qualified to testify about standard of care of architects, despite 35-years experience working closely with and overseeing them).

Mr. Meyer recommends an end to UE's practice of smoothing asset values without an understanding of the large percentage of organizations that use that approach. Nov. 2001 Dep. at 110:13-16; *compare* Schedule 4 to Rebuttal Testimony of Michael D. McGilligan ("McGilligan Rebuttal") (65% of utilities in survey use smoothing). He knows of no companies other than Missouri utilities that use the Staff-recommended approach. Nov. 2001 Dep. at 110:25-111:3.

[2] *See* 2002 Meyer Direct at 12:16-13:16.

[3] Nov. 2001 Dep. at 100:11-16 (concerning the Actuarial Standards Board and Actuarial Standard of Practice No. 27).

Mr. Meyer is also either wrong or unaware of the amortization period for assumption changes under ERISA, *see* Nov. 2001 Dep. at 126:16-19 (does not know), at 131:1-5 (believes it is 5 years to extent they "flow into net gains and losses"); *see also* McGilligan Rebuttal at 18:10-19:15 (explaining amortization under ERISA/IRS). And while the time between the filing of his first testimony in July, 2001, and the second in March, 2002, may have been used by Mr. Meyer to better acquaint himself with the topic area, he failed to do so. *See* April 2002 Dep. at 34:6-15 (did not consult any treatises), 63:14-18 (performed no pension or OPEBs analysis for other cases). This failure renders Mr. Meyer incapable of offering competent and substantial evidence on these topics, *see* *GS Technology Operating Co., Inc. v. Kansas City Power & Light Co.,* Case No. EC-99-553, 2000 Mo. PSC LEXIS 1009 at *32 (July 13, 2000) (explaining competent and substantial evidence), particularly as he acknowledges that he is not aware of any other Commission that follows the approach recommended by Staff, April 2002 Dep. at 34:16-19.

Meyer Lacks The Experience to Offer An Opinion on The Unique Methodology He Recommends

As Mr. Meyer recognizes, the approach he recommends is not known to be used by any other Commission in the country. April 2002 Dep. at 34:16-19. His testimony claims that the method controls volatility of pension and OPEB expense and allows for a timely recognition of gains and losses. *See* 2002 Meyer Direct at 16:1-16, 17:17-22, 21:1-6. But Mr. Meyer is himself unable to explain the reasoning supporting the adjustment he recommends.

In support of his position, Mr. Meyer mentions that the "position has been stipulated to in prior cases," Nov. 2001 Dep. at 98:24-25, and recognizes that the only utilities that have filed using this method had "previously adopted the method in settling a prior case." *Id.* at 107:12-16; *see also* 2002 Meyer Direct at 16:17-17:7. Mr. Meyer falls back on these stipulated settlements as the support for the reasonableness of the recommended change, *see* April 2002 Dep. at 131:15-23. Mr. Meyer, however, does not know the reasoning behind the development of what he terms "the Staff position":

> Q: Okay. And the next one, amortization period for gains and losses, was that assumption determined by yourself?
> A: No.
> Q: Was that assumption determined by Mr. Traxler?
> A: I would say that that assumption is the current Staff position.
> Q: Do you know how that assumption was determined in the first instance?
> A: I am aware that it's changed. I would be speculating to tell you what the first position under the amortization on gains and losses was.

Nov. 2001 Dep. at 97:23-98:5-9.

> Q: And do you know how the method—how the assumption was determined in those cases?
> A: The current?
> Q: Yes, how it was determined that that's the assumption you should follow.
> A: The assumption regarding gains and losses, like I said previously, has evolved over years and has been refined to, you know, a couple of times at least to address concerns that parties have raised regarding that area. So I don't know—I cannot specifically recall at what point the Staff moved to the – to this present position.

Nov. 2001 Dep. at 99:2-14.

Not only can he not opine on the historical reasoning behind the recommended change in pension and OPEB accounting, he is unable to give an opinion on its suitability. When asked if he would recommend the method in his testimony if the method were not in compliance with FAS 87, he answered "I would have to consult with other members of the Staff to make that determination." Nov. 2001 Dep. at 128:3-11.

The issue of controlling volatility in pension and OPEB expense is one of the crucial issues both in UE's method and in the Staff recommendation. Yet Mr. Meyer cannot give an opinion on this crucial issue, and tries to wrap himself in the work of others:

> Q: Is there any magnitude of volatility in which—is there any magnitude of volatility increase that would be in your mind too much to accept in the proposed method and would then led you to not change from Ameren's current method?
> A: **I honestly don't have enough experience in the area** to—to be able to give you an estimate of a change in volatility.

Nov. 2001 Dep. at 114:19-115:1.

> Q: Would you still feel that way if it was shown that the percentage of gain/loss account—the percentage—I'm sorry of the gain/loss account that your method—the Staff's proposed method capitalize into expense was several times greater than the average of utilities of comparable—of a similar structure, similar regulatory requirements and similar plans as Ameren's?
> A: **Again, I don't have the—near the experience that other members of the Commission Staff has in this area.** However, I'm confident that Mr. Traxler and Mr. Rackers would have looked at those—those situations.

Nov. 2001 Dep. at 115:22-116-9.

> A: ... I think—or at least what I meant to say was that I feel confident that that type of analysis or those comparisons were looked at and the Staff still felt that this was the proper method to proceed.

Nov. 2001 Dep. at 116:16-19.

> A: ... Volatility is one of the reasons that you—or the Staff has the proposition of a 5-year amortization, of a 5-year average balance. There's been extensive amount of time

> spent on behalf of the Staff in this area in the past, **not by myself**, but other individuals in the Staff analyzing this area.

April 2002 Dep. at 48:20-25.

> Q:... But how would one trade off the volatility and the timeliness? Because obviously the longer of a period over which you amortize something, the less volatile changes in that will be, yet the less timely the recognition is. How does one compare the volatility with the timeliness as two factors?
> A: And that was part of the extensive work that—that I described earlier that we did and this is the result of that work.
> Q: But you weren't, yourself, involved in that analysis?
> A: No.

April 2002 Dep. at 50:9-20.

Clearly, on one of the most important issues in the topic area, Mr. Meyer simply lacks the knowledge and experience to provide an informed opinion, and cannot be permitted to do so vicariously.

Meyer Is Not Able to Evaluate And Compare the Company Approach To The Staff Approach

Mr. Meyer's lack of familiarity with the subject matter is disabling when he is asked to compare the Staff recommendation to the Company approach. Although the Staff has the burden of proof, he has difficulty in concluding that the Company approach should be rejected as unreasonable. *See* Nov. 2001 Dep. at 92:9-95:2. Asked about the comparison of volatility in expense under the UE method and Staff method, he was unable to provide his own opinions:

> Q: And which volatility do you think would be more important to control for these purposes: volatility of the amortization of gain/loss or volatility of total expense?

> A: … I'm not sure that I could make a determination of a rank of those in importance.

Nov. 2001 Dep. at 112:11-14, 21-22.

> Q: Okay. And do you believe that the method that is proposed in your prefiled testimony is more or less volatile than Ameren's current method when one considers the volatility of total pension expense and OPEB expense?
> A: **I think the Staff believes** that the methodology that is presented in the testimony is a better guard against the volatility and recognizes the gains and losses in a more timely manner.
> Q: Would you have proposed this methodology if you believed that it was more volatile than AmerenUE's current methodology concerning total pension expense?
> A: **I know that the Staff has looked at** the volatility issue extensively in these areas, and has through the years changed the methodology in the gain/loss to address volatility. And **at this point the Staff believes** that this is the best method to control volatility and still reflect the gains and losses—the true gains and losses of the funds in a timely manner.

Nov. 2001 Dep. at 113:1-19.

> Q: If your proposed method were determined to be 50 percent more volatile than Ameren's method with reference to total pension and OPEB expense, would that be too much increased volatility for you to accept and would you still—and would you not make the proposal?
> A: **Given my experience in this area, I—I wouldn't rely solely on my judgment** given those circumstances without—without first seeking consultation with—with other members of the Commission Staff.

Nov. 2001 Dep. at 114:9-18.

When asked whether a pension fund could be considered well-funded with deficits of certain magnitudes, he could not provide an answer. *See* Nov. 2001 Dep. at 117:9-17, 22-25. He could not answer questions concerning his assumption that plan assets would have a higher value under the Staff method of measurement than under

UE's method, *see* Nov. 2001 Dep. at 123:15-24, and could not compare the expenses reported under the two approaches given the poor stock market performance of 2001, *id.* at 134:5-13. In his most recent deposition, when asked critical questions concerning the relative volatility of the Staff and Company approaches, he could not opine and again passed the buck to other Staff members:

> A: The 5-year amortization of the 5-year—of the—of the five-year balance creates less volatility than a 10-year—then a straight 10, **in the Staff's opinion.**
> Q: Do you know how much less volatility? Has that been calculated?
> A: **I believe Mr. Traxler performed a calculation**. I don't have that with me.
> Q: Have you actually seen the calculation?
> A: I seem to recall that I have, but I don't have it.

April 2002 Dep. at 36:20-37:6.

> Q: Okay. Do you know, based on the current financial condition of the funds, whether the existing method is more or less volatile than the method you propose?
> A: I have not done a comparison between the 10-year amortization and the 5-year amortization of the average 5-year balance.

April 2002 Dep. at 37:15-20.

> Q: Now, if the 5-year amortization of the average 5-year balance were more volatile then the approach that Ameren takes, would you still recommend that that approach be adopted for purposes of the rate-making?
> A: Currently I would say yes. I've had—**or been instructed by Mr. Rackers or Mr. Traxler** that there is—if significant volatility would exist, **that the Staff would change its method** at that point.

April 2002 Dep. at 37:21-38:3.

Mr. Meyer is simply not qualified to give an opinion on the suitability of the Staff proposal compared to UE's present method of calculation pension and OPEBs expense.

Meyer Cannot Explain His Own Recommendation

As a final demonstration of Mr. Meyer's failure to qualify as an expert in these areas, Mr. Meyer could not provide justification for the recommendations contained in his own testimony. When asked how the Staff determines if a company's expected return on pension assets is "significantly lower" than actual performance, *see* 2001 Meyer Direct at 13:11-13, he did not know:

> Q: So there really is no quantifiable definition of significantly lower as it's used in that particular sentence [expected v. actual returns]?
> A: Well, I though that the question—the line of the questioning was whether we had a standard, and I don't know that we do.

Nov. 2001 Dep. at 121:10-15.

Asked how he would determine if an investment return were "abnormal" in light of his analogy to amortized abnormal expenses or losses, he responded, "I wouldn't have—I didn't have—for significantly lower or higher, I don't have a range that would be a trigger between normal and abnormal." Nov. 2001 Dep. at 133:22-24. Despite his claim that the Staff method provided for more timely recognition of pension and OPEBs gains and losses, he was unable to work through the amortization to demonstrate this. April 2001 Dep. at 55:16-57:10. Nor could he come to a conclusion concerning the effect of recent losses due to poor stock market performance:

> Q:... We're both looking at the—we're both taking averages of the past several years in order to determine what number is going to be amortized. And when you've got a couple of years of losses, that makes it more likely that there's going to be an expense. And you wouldn't happen to know under which approach there would be –a greater expense would show up, would you—
> A: No.
> Q: --given the last two years?

A: (Witness shook head.)

April 2002 Dep. at 60:2-11.

Mr. Meyer is not capable of making the calculations necessary to provide an informed opinion to the Commission, and should not be recognized as an expert. *See Knox v. Simmons*, 838 S.W.2d 21, 24 (Mo. App. E.D. 1992) (witness not qualified as an expert to perform mathematical computations).

CONCLUSION

As UE's expert witness on these topics concluded after witnessing the two depositions of Mr. Meyer, he "clearly lacks the training, knowledge, and experience necessary to address this subject." *See* McGilligan Rebuttal at 9:10-10:11. Mr. Meyer does not qualify as an expert in the area of pensions and OPEBs and his testimony on these matters should be excluded.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By:

James J. Cook, MBE #22697
Managing Associate General Counsel

Thomas M. Byrne, MBE #33340
Associate General Counsel

Steven R. Sullivan, MBE #33102
Vice President, General Counsel
& Secretary

One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
jjcook@ameren.com
314-554-2237
tbyrne@ameren.com
314-554-2514
srsullivan@ameren.com
314-554-2098
314-554-4014(fax)

OF COUNSEL:

Robert J. Cynkar
Victor J. Wolski
Gordon D. Todd
Cooper & Kirk, PLLC
1500 K Street, N.W.
Suite 200
Washington, D.C. 20005
202-220-9600
202-220-9601 (fax)

DATED: June 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Federal Express or Hand Delivery on this 24th day of June, 2002, on the following parties of record:

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 100
Governor Office Building
Jefferson City, MO 65101

John B. Coffman
Deputy Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Steve Dottheim
Chief Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Robert C. Johnson, Esq.
Lisa C. Langeneckert, Esq.
Law Office of Robert C. Johnson
720 Olive Street, Suite 2400
St. Louis, MO 63101

Dennis Frey
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Diana M. Vuylsteke
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Ste. 3600
St. Louis, MO 63102-2750

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
Jefferson City, MO 65101

Robin E. Fulton
Schnapp, Fulton, Fall, Silver & Reid, L.L.C.
135 East Main Street
P.O. Box 151
Fredericktown, MO 63645

R. Larry Sherwin
Assistant Vice President
Regulatory Administration
Laclede Gas Company
720 Olive Street, Room 1415
St. Louis, MO 63101

Michael C. Pendergast
Assistant Vice President & Associate General Counsel
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Ronald Molteni
Assistant Attorney General
Supreme Court Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102

Tim Rush
Kansas City Power & Light Company
1201 Walnut
Kansas City, MO 64141

James M. Fischer
Fischer & Dority, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101

Samuel E. Overfelt, Esq.
Law Office of Samuel E. Overfelt
618 East Capitol Avenue
P.O. Box 1336
Jefferson City, MO 65102

James J. Cook