

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 in the                    )  
Company's Missouri Service Area                    )  
Case No. ER-2010-0036

**BRIEF OF AMICUS CURIAE MISSOURI ENERGY DEVELOPMENT  
ASSOCIATION**

COMES NOW the Missouri Energy Development Association ("MEDA")  
and for its brief as *Amicus Curiae* in the captioned matter, states the following:

In paragraph 8 of its Memorandum in Support of Motion for Summary  
Determination, Public Counsel states the following:

The Commission's primary role is protecting consumers. "The  
Commission's principal purpose is to serve and protect  
ratepayers."

Public Counsel in footnote 6 cites two Court of Appeals decisions in support of  
this proposition. This is nevertheless an incorrect statement of the law.

The Commission needs to look no further than Public Service Commission  
Act itself for the principle that the Commission's primary objective is to balance  
the interests of the utility's owners (i.e., stockholders) and those of its customers.

Section 386.610, RSMo states as follows:

A substantial compliance with the requirements of this chapter  
shall be sufficient to give effect to all rules, orders, acts and  
regulations of the Commission, and they shall not be declared  
inoperative, illegal or void for any omission of a technical nature in  
respect thereto. The provisions of this chapter shall be liberally  
construed with a view to the public welfare, efficient facilities and  
substantial justice between patrons and public utilities. (emphasis  
added)

The Missouri Supreme Court elaborated on this topic in *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (banc 1934):

[§ 393.190, RSMo] must be read together with other provisions of the Public Service Commission Act, so that the whole act may be construed to effect the purpose for which it was enacted. The whole purpose of the act is to protect the public. The public served by the utility is interested in the service rendered by the utility and the price charged therefore; investing public is interested in the value and stability of the securities issued by the utility. (Citations omitted, emphasis added)

There can be no question but that the public interest is a balance of the interests of the consuming public and the investing public.

Additionally, it cannot be doubted that the Commission must provide a utility a reasonable opportunity to earn a fair return on the assets it has devoted to the public service. *Utility Consumer's Council of Missouri v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979). This is a constitutional right of the stockholders of the utility. *State ex rel. Missouri Public Service Company v. Fraas*, 627 S.W.2d 882, (Mo. App. 1981).<sup>1</sup> In this regard, the Commission must consider of the 1925 opinion of the Missouri Supreme Court wherein it stated that:

The enactment of the Public Service Act marks a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but to further insure to the investors a reasonable return upon funds invested. The police power of the state demands as much. We can never have efficient service, unless there is a reasonable guarantee of fair returns for capital invested. . . . These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of

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<sup>1</sup> "There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment." 627 S.W.2d at 886.

the act is mandatory. When we say 'fair', we mean fair to the public, and fair to the investors.

*State ex rel. Washington University v. Public Service Commission*, 272 S.W. 971, 973 (Mo. banc). The case law upon which Public Counsel relies is merely *dicta* of an inferior court.<sup>2</sup> Moreover, the *Crown Coach* case dealt with the topic of certificates of convenience and necessity for an intrastate motor carrier and which is, consequently, not on point with the matter at hand.

It is beyond question that the Commission's duty is to balance the interests of the public, both the investing and consuming public, in a manner consistent with the constitutional right of the shareholders of the utility to have a reasonable opportunity to earn a fair return on property dedicated to the public service. Where it appears that the traditional ratemaking process is depriving a utility of that reasonable opportunity, the Commission's obligation to be fair to both the public and utility investors dictates that it take such steps as are within its power to remedy that problem, including by awarding interim rates. Interim rates, that are subject to refund thus at least in part provide a greater level of fairness to utility investors, as the law requires, and are also fair to customers insofar as customers will ultimately pay rates found to be just and reasonable in the course of the final resolution of the rate case in which interim rates are sought – no more and no less.

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<sup>2</sup> To the extent Public Counsel points to the Western District Court of Appeals opinions as legal authority at odds with that provided by MEDA, *infra*, the conflict must be resolved consistent with the principles of law as enunciated by the Act and as set forth in the opinions of Missouri Supreme Court.

Respectfully submitted,

/s/ Paul A. Boudreau  
Paul A. Boudreau - MO Bar # 33155  
Brydon, Swearngen & England, P.C.  
312 East Capitol Avenue  
P. O. Box 456  
Jefferson City, Missouri 65102-0456  
Telephone: (573) 635-7166  
Facsimile: (573) 636-6450  
Email: [paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

Attorneys for the Missouri Energy Development  
Association

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 13<sup>th</sup> day of November, 2009, to the following:

Nathan Williams  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102-0360  
[GenCounsel@psc.mo.gov](mailto:GenCounsel@psc.mo.gov)

Lisa C. Langeneckert  
Sandberg Phoenix & Von Gontard, P.C.  
One City Centre, 15<sup>th</sup> Floor  
515 North Sixth Street  
St. Louis, MO 63101-1880  
[llangeneckert@sandbergphoenix.com](mailto:llangeneckert@sandbergphoenix.com)

Lewis R. Mills  
Missouri Office of Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102-2230  
[Lewis.mills@ded.mo.gov](mailto:Lewis.mills@ded.mo.gov)  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Michael C. Pendergast  
Rick E. Zucker  
Laclede Gas Co.  
720 Olive Street, Ste. 1520  
St. Louis, MO 63101  
[mpendergast@laclede.com](mailto:mpendergast@laclede.com)  
[rzucker@laclede.com](mailto:rzucker@laclede.com)

Diana M. Vuylsteke  
Bryan Cave, LLP  
211 N. Broadway, Ste. 3600  
St. Louis, MO 63102  
[dmvuylsteke@bryancave.com](mailto:dmvuylsteke@bryancave.com)

Thomas G. Glick  
7701 Forsyth Blvd., Ste. 800  
St. Louis, MO 63105  
[tglick@dmfirm.com](mailto:tglick@dmfirm.com)

Sherrie A. Schroder  
Michael A. Evans  
7730 Carondelet, Suite 200  
St. Louis, MO 63105  
[saschroder@hstly.com](mailto:saschroder@hstly.com)  
[mevans@hstly.com](mailto:mevans@hstly.com)

John C. Dodge  
Davis, Wright and Tremaine, LLP  
1919 Pennsylvania Ave. NW, Ste 200  
Washington, DC 20006  
[johndodge@dwt.com](mailto:johndodge@dwt.com)

Mark W. Comley  
Newman, Comley and Ruth  
PO Box 537  
601 Monroe St., Ste. 301  
Jefferson City, MO 65102  
[comleym@ncrpc.com](mailto:comleym@ncrpc.com)

John B. Coffman  
871 Tuxedo Blvd.  
St. Louis, MO 63119-2044  
[john@johncoffman.net](mailto:john@johncoffman.net)

Shelley A. Woods  
Sarah B. Mangelsdorf  
P.O. Box 899  
Jefferson City, MO 65102-0899  
[shelley.woods@ago.mo.gov](mailto:shelley.woods@ago.mo.gov)  
[sarah.mangelsdorf@ago.mo.gov](mailto:sarah.mangelsdorf@ago.mo.gov)

Douglas Healy  
939 Boonville, Suite A  
Springfield, MO 65802  
[dhealy@mpua.org](mailto:dhealy@mpua.org)

Sam Overfelt  
Missouri Retailers Association  
618 E. Capitol Avenue  
P.O. Box 1336  
Jefferson City, MO 65102  
[moretailers@aol.com](mailto:moretailers@aol.com)

David Woodsmall  
428 E. Capitol Ave., Suite 300  
Jefferson City, MO 65101  
[dwoodsmall@fcplaw.com](mailto:dwoodsmall@fcplaw.com)

James B. Deutsch  
Thomas R. Schwarz  
308 E. High St., Suite 301  
Jefferson City, MO 65101  
[jdeutsch@blitzbardgett.com](mailto:jdeutsch@blitzbardgett.com)  
[tschwarz@blitzbardgett.com](mailto:tschwarz@blitzbardgett.com)

Henry B. Robertson  
705 Olive Street, Suite 614  
St. Louis, MO 63101  
[hrobertson@greatriverslaw.org](mailto:hrobertson@greatriverslaw.org)

Leland Curtis  
Carl Lumley  
Kevin O'Keefe  
Curtis, Heinz, Garrett & O'Keefe PC  
130 S. Bemiston, Suite 200  
St. Louis, MO 63105  
[lcurtis@lawfirmmail.com](mailto:lcurtis@lawfirmmail.com)  
[clumley@lawfirmmail.com](mailto:clumley@lawfirmmail.com)  
[kokeefe@lawfirmmail.com](mailto:kokeefe@lawfirmmail.com)

James B. Lowery,  
Suite 200, City Centre Building  
111 South Ninth Street  
P.O. Box 918  
Columbia, MO 65205-0918  
[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

Steven R. Sullivan  
Sr. Vice President, General Counsel & Secretary  
Thomas M. Byrne  
Managing Associate General Counsel  
1901 Chouteau Avenue, MC-1310  
P.O. Box 66149, MC-131  
St. Louis, MO 63101-6149  
[AmerenUEService@ameren.com](mailto:AmerenUEService@ameren.com)

/s/ Paul A. Boudreau  
Paul A. Boudreau