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 Revenues for Electric Service.	))))	Case No. ER-2008-0318

UNION ELECTRIC COMPANY d/b/a AMERENUE'S RESPONSE TO ORDER DIRECTING NOTICE, SUSPENDING TARIFF, SETTING HEARINGS AND DIRECTING FILINGS AND MOTION FOR RECONSIDERATION

COMES NOW Union Electric Company d/b/a AmerenUE (the "Company" or "AmerenUE"), pursuant to 4 CSR 240-2.160(2), and hereby moves the Commission to reconsider the dates selected for the Early Prehearing Conference, the filing of recommendations regarding the appropriate test year and true-up, the filing of a proposed procedural schedule, and the evidentiary hearing in this case. In support of its motion, AmerenUE states as follows:

1. On April 4, 2008, AmerenUE filed tariffs and supporting testimony designed to implement a general rate increase for electric service. In the above-referenced Commission Order, which was issued on April 7, 2008 (the "Suspension Order"), the Commission[1] suspended the effective date of the tariffs for the maximum period allowed by law, until March 1, 2009.

2. In addition to suspending the effective date of the tariffs, the Suspension Order set an intervention deadline, a deadline for filings relating to the test year for the

[1] The Order was entered by the Deputy Chief Regulatory Law Judge by delegation under Section 386.240, RSMo.

case and concerning a true-up, a date for an Early Prehearing Conference, and a date by which a procedural schedule is to be filed.

3. This Response and Motion is being filed to address the timing of various dates set out in the Suspension Order. For the reasons discussed herein, the Company requests that the date of the Early Prehearing Conference be moved up to May 12, 2008, that the date by which parties must provide a recommendation regarding the appropriate test year and true-up period be extended to May 14, 2008, that the date for filing the procedural schedule and recommending dates for the local public hearings be moved to May 19, 2008, and that formal dates for the evidentiary hearing that were previously set by the Suspension Order be un-set and that evidentiary hearing dates not be re-set until after a proposed procedural schedule has been filed. With respect to the evidentiary hearing dates, the Company requests that the Commission reserve the weeks of December 1, 8 and 15, 2008, pending a further order formally setting the evidentiary hearing dates after a proposed procedural schedule is filed by the parties.

4. For many years until a few years ago, the Commission's suspension orders did not attempt to set specific dates for evidentiary hearings in rate cases. Instead, the suspension orders typically set an intervention deadline, a deadline to address test year and true-up issues, scheduled an early prehearing conference, and set a deadline by which the parties were to recommend a procedural schedule to the Commission. After a recommended procedural schedule was filed, the Commission would then set the evidentiary hearing dates. This logical, orderly and effective practice reflected the reality that each rate case is different and that the scheduling needs of the Commission

and the parties (in the case of AmerenUE, the potentially many parties[2]) vary from case-to-case. Indeed, this is the reason the Commission typically requires an Early Prehearing Conference and requires the submission of a procedural schedule recommendation from the parties at an early stage in the case.

5. Given the scope of a rate case of this type, the need for audit time for the Staff and other parties, the Company's need to conduct discovery to narrow and focus the issues following the filing of other parties' direct testimony, the benefit of encouraging the parties to settle some or all of the issues in the case, the need for all parties to properly prepare prehearing briefs, and the need to otherwise prepare for an efficient and orderly presentation of the case at the evidentiary hearings, the Company respectfully submits that the dates specified in the Suspension Order for the evidentiary hearing in this case are unworkable and occur too early in the case.

6. In most major rate cases, the non-utility parties have typically been afforded approximately five months to review, audit, and conduct discovery respecting the utility's direct case-in-chief.[3] At that point, the non-utility parties file their direct cases, which include a comprehensive revenue requirement analysis by the Commission Staff (and sometimes a revenue requirement analysis by other non-utility parties). Indeed, the non-utility parties typically file only the revenue requirement portions of their direct cases initially, and are often afforded one to two additional weeks to file their direct cases regarding class cost allocation and rate design issues.

7. Thereafter, the parties confer and attempt to work out technical differences or settle some issues, if possible, the Commission usually holds a series of local public

[2] There were 16 parties (including the Company) to the Company's last electric rate case.
[3] This period is sometimes somewhat shorter or somewhat longer, depending on factors unique to a particular case.

hearings, and all parties engage in additional discovery and prepare rebuttal testimony. Rebuttal testimony is typically filed approximately five to six weeks after the non-utility parties file their direct cases. Once rebuttal testimony is filed, the parties typically have their best opportunity to settle some or all of the issues in the case (the parties' positions and expected evidence being much clearer at this point). Finally, surrebuttal testimony is usually filed three to four weeks after rebuttal testimony is filed. Thereafter, the parties must prepare for the evidentiary hearings, prepare position statements or prehearing briefs, or both, agree upon a list of issues, agree upon an order of witnesses, and complete a myriad of other tasks which are necessary to promote an organized, efficient, and effective presentation of the case to the Commission.

8. Just as the Company is confident that the non-utility parties believe adequate time to audit the Company's initial filing is essential, the Company believes sufficient time to review, audit, and conduct discovery respecting all of the other parties' direct cases is also essential. Indeed, while the non-utility parties typically have approximately five months to review and conduct discovery respecting the Company's direct case, as noted, the Company typically has just five to six weeks to review and conduct discovery respecting these many other parties' direct cases. To put this in context, in the Company's last electric rate case the Company filed direct testimony from 26 witnesses, only 21 of whom were "revenue requirement" witnesses. By contrast, when the other parties filed their direct cases (relating only to the revenue requirement), they filed testimony from a total of approximately 35 witnesses, with several additional

pieces of testimony being filed two weeks later regarding class cost of service, rate design and the Company's fuel adjustment clause request.[4]

9. While some utilities have questioned (and continue to question) the justification and wisdom of a process whereby the non-utility parties are essentially given two opportunities to respond to the utility's case-in-chief (once with direct testimony and again with rebuttal testimony), the Company's purpose here is not to challenge that process and the Company assumes the Commission intends to follow that process in this case. Nor is it the Company's purpose to lodge a complaint about the typical time frames for the filing of direct, rebuttal or surrebuttal testimony – while the time allowed for rebuttal testimony is very compressed, particularly when the Company must deal with three dozen witnesses sponsored by 15 other parties--the typical time frames have been marginally adequate in the past and the Company expects that they can be marginally adequate in this case.

10. The Company has provided the background information discussed in paragraphs 6 through 8 of this pleading to demonstrate that evidentiary hearings starting November 5, 2008, as thus far selected by the Commission, simply will not allow the time necessary to properly and fairly process this case for any party.

10. The impracticality and unfairness of such a schedule is demonstrated by the following example. If a typical five-month audit period is assumed, the other parties would not file their direct cases until August 22, 2008. To allow a fair time to review the filings of what is likely to be 30 to 40 witnesses for perhaps more than a dozen other

[4] The Company also filed Supplemental Direct Testimony from two additional witnesses approximately two and one-half months into the case (relating to the Company's FAC request and vegetation management issues that had arisen) and updated the direct testimony of 6 additional witnesses due to the need to substitute actual data for the budgeted data that had been used for the last quarter of the test year, as initially filed.

parties, to handle local public hearings, to meet and confer on technical issues, to conduct discovery (data requests, depositions) and finally, to prepare rebuttal testimony, would require rebuttal testimony be filed absolutely no sooner than October 3, and more realistically, no sooner than October 10. This means surrebuttal testimony should not realistically be due before October 31.

11. The Commission has set the evidentiary hearings to begin just two business days later – on November 5. That schedule is unworkable and unfair. Two business days (or five calendar days for that matter) is far short of the time necessary to prepare a final reconciliation, review surrebuttal testimony, conduct any necessary discovery, prepare and agree upon a list of issues, prepare prehearing briefs, and prepare for an evidentiary hearing which would likely involve dozens of witnesses over a two to three week period. Such a process could even undermine the Due Process rights of the parties, and certainly will compromise the parties' ability to prepare and present and efficient and orderly case before the Commission.[5]

12 There is another critical reason the November 5, 2008 hearing date is unworkable. As the Company's direct testimony discusses in detail, this case was

[5] Such a compressed time frame is also inconsistent with the concept inherent in paragraph 10 of the Suspension Order, which indicates that the Commission would not entertain a motion for a continuance unless a unanimous stipulation is filed a full month before the hearings are to begin. This means the Commisssion would expect a unanimous settlement to be reached even before *rebuttal* testimony is filed. Respectfully, this is unrealistic and severely undermines the longstanding policy in the law that encourages settlement where possible. *See, e.g. Bogus v. Birenbaum*, 375 S.W.2d 156, 159 (Mo. 1964). It is common for parties to a rate case to attempt to settle the case after rebuttal testimony is filed, for that is the first point in the case (under the Commission's current processes) when all parties can make a reasonable assessment of each party's position and of the evidence that is likely to be adduced at the evidentiary hearing. For this and other reasons, including some of the reasons outlined in the Application by Praxair, Inc. and Explorer Pipeline, Inc. for Rehearing, Reconsideration or Modification filed in Case No. ER-2006-0315, of which the Company asks the Commission to take administrative notice, the Company also requests the Commission reconsider paragraph 10 of the Suspension Order. The Company respectfully suggests that the Commission should delete paragraph 10 from the Suspension Order and should instead make decisions regarding continuances on a case-by-case basis, depending upon the circumstances existing at the time of the request.

necessitated in large part because of the rapid, substantial and continuing increases in costs being incurred by the Company to deliver safe and adequate service to customers. See, in particular, the direct testimonies of Company witnesses Thomas R. Voss, Dr. Kenneth Gordon, and Martin J. Lyons, Jr. for a discussion of these rapidly increasing costs. Moreover, as Company witness Gary S. Weiss' direct testimony shows, the Company has failed to achieve its authorized return on equity (authorized just 11 months ago by the Commission) by an average of 111 basis points per month since rates were changed last Summer. This earnings shortfall will worsen in the coming months as costs continue to rise, including costs associated with substantial and in many cases reliability-related capital investments that are presently occurring and which will be completed and in-service between now and the end of the updated test year (June 30, 2008) requested by the Company. It is essential that these rate base items and other costs necessary to provide safe and adequate service be reflected in the Company's revenue requirement in this case. Otherwise, the Company will have no chance to earn a fair return. Indeed, in the rising cost environment we are in, earning a fair return will remain difficult even with an updated test year. As the Commission recognizes, updating the test year as far forward as practical is designed to both mitigate regulatory lag and to ensure that the historic data which is being used to set future rates is as current as possible, and is as reflective of conditions that will exist once rates take effect as is possible. *See, e.g.*, *Order Concerning Test Year and True-up and Adopting Procedural Schedule*, Case No. ER-2004-0570.

13. To update the test year to June 30, 2008, will require the Company to provide the other parties with actual financial data for the quarter ending June 30, 2008.

Properly audited data cannot be provided until July 31, 2008. The other parties will then require time after receiving that data to update their analyses so that their direct cases can be finalized. Hearings that begin in November, 2008 will likely make it impossible for the case to be updated through June 30, 2008, and therefore will substantially compromise the Company's ability to have a fair opportunity to earn its authorized return.

14. An evidentiary hearing starting approximately December 3 is practical and workable because it will allow up to three weeks of evidentiary hearings to be completed before the Christmas holidays, and will also allow the case to be concluded sufficiently in advance of the operation of law date in this case (March 1, 2009). [6]

15. Since hearings will be concluded before the Christmas holidays, the Company believes briefs could be filed by approximately January 12 (20 or more days after the hearings end versus 22 days in the Company's last rate case) and that any true-up hearing and briefing could be completed and briefed by approximately January 19.[7] This would allow sufficient time (nearly six weeks after the true-up briefing, if it is necessary at all) to issue a Report and Order, for the Company to file and the Commission to approve compliance tariffs, and leaves sufficient time to afford parties a reasonable time to seek rehearing of a Commission order approving the compliance tariffs, per *State ex rel. Office of the Public Counsel v. Pub. Serv. Comm'n*, 236 S.W.3d 632 (Mo. banc 2007). The Company would note that in its last rate case it filed

[6] While three weeks of evidentiary hearings might be required for this case, the Company believes there is a good chance the case could be completed in two weeks. This is because unlike the Company's last rate case, the Company has not filed a depreciation study and is not proposing a change to its depreciation rates, has not proposed any new tariff programs or rate design initiatives, and has not filed a concurrent natural gas rate case.

[7] A true-up hearing was not necessary in the Company's last rate case because the parties reached agreement on the true-up numbers.

compliance tariffs just three days after the Commission issued its Report and Order, and that the Commission approved the compliance tariffs just five days later.

16. Others may, as they did in Kansas City Power & Light Company's last rate case (ER-2007-0291), argue that the Commission is powerless to approve compliance tariffs based upon good cause less than thirty days after the tariffs are filed and that a hearing of some kind is required respecting compliance tariffs. From this false premise, they might then argue that the Commission needs to build-in several more weeks at the end of the rate case to allow for a drawn-out process relating to the compliance tariffs. As the Commission properly ruled in its December 21, 2007 Order Approving Tariffs in Compliance With Commission Report and Order (in Case No. ER-2007-0291), these contentions, if they are made, are incorrect as a matter of law. Consequently, the Commission's only obligation is to afford challenging parties a reasonable time after approval of compliance tariffs to seek rehearing. A reasonable time can be afforded in the time frame outlined in this Motion.

16. For the foregoing reasons, the Company requests the Commission vacate that part of the Suspension Order that sets dates for the evidentiary hearing. Moreover, the Company requests the Commission to reserve, but not set, the first three weeks of December (December 1 through 23) as possible dates for evidentiary hearings in this case, pending completion of the Early Prehearing Conference and receipt of a recommended procedural schedule from the parties. To that end, the Company also requests that the Commission reschedule the Early Prehearing Conference by moving the same from May 27, 2008 to May 12, 2008, and also reschedule the deadline for recommending a test year/update period to May 14, 2008, and reschedule the deadline for

recommending a procedural schedule and local public hearing dates from June 3, 2008 to May 19, 2008. Rescheduling these dates will allow the parties to make a recommendation regarding the procedural schedule and true-up in a more timely manner and thus allow the Commission to then formally re-set the evidentiary hearing dates for this case.

Dated: April 17, 2008.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 17th day of April, 2008.

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