

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

|                                                  |                              |
|--------------------------------------------------|------------------------------|
| <b>In the matter of Union Electric Company )</b> |                              |
| <b>d/b/a AmerenUE for Authority to File )</b>    |                              |
| <b>Tariffs Increasing Rates for Electric )</b>   | <b>Case No. ER-2007-0002</b> |
| <b>Service Provided to Customers in the )</b>    |                              |
| <b>Company's Missouri Service Area )</b>         |                              |

**Motion to Late-File Exhibit**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE"), and hereby moves to late-file the attached Affidavit of Richard A. Voytas to address a matter arising during the evidentiary hearings in this case.

1. On March 23, 2007, during his live testimony at the evidentiary hearings in this case, Mr. Voytas testified that his recollection was that Mr. Ryan Kind had indicated, in Mr. Kind's Metro East case testimony (Case No. EO-2004-0108), that AmerenUE should have purchased the NRG Audrain combustion turbine facility for \$200 million. Mr. Voytas indicated his testimony was "subject to check."

2. Public Counsel Lewis Mills later stated on-the-record that he had checked with Mr. Kind and that Mr. Kind indicated he did not so testify, and he asked that Mr. Voytas respond as a result of the "check" Mr. Voytas indicated he needed to do. The undersigned counsel for AmerenUE indicated to the Presiding Officer, on-the-record, that he would file an appropriate response to Mr. Mills' request by the close of business Tuesday, April 3, 2007.

3. Mr. Voytas has now checked his recollection, and has determined that his recollection was partially correct. Part of that recollection was based upon Mr. Kind's Metro East testimony, but part of it was also based upon a letter from Mr. Kind to Mr. Voytas which Mr. Voytas addresses in his Affidavit.

4. The portion of Mr. Kind's Metro East testimony quoted in Mr. Voytas' Affidavit and from Mr. Kind's letter indicates that Mr. Kind has advocated for some time that the NRG Audrain plant be considered as a point of comparison to other combustion turbine plant options for AmerenUE, including Pinckneyville, which is at issue in this case. Mr. Kind's letter also indicates recognition of the distressed financial condition of NRG, which has a bearing on whether a price at which the NRG plant could possibly have been purchased is indeed a fair market price. Mr. Kind's letter also indicates Mr. Kind's recognition that the NRG plant had transmission problems, which also affects whether it was an appropriate plant for use in determining the fair market value of the Pinckneyville and Kinmundy plants, which are at issue in this case.

5. Mr. Kind alleges in this case that a part of price paid by AmerenUE for the Pickneyville and Kinmundy plants should not be included in rate base because of his contention that the price paid was not a fair market price and therefore, he argues, did not comply with the Commission's Affiliate Transaction Rules. No party contends that AmerenUE paid more than the seller's actual cost for the Pinckneyville and Kinmundy plants. Consequently, the purchase could only fail to comply with the Affiliate Transaction Rules if a fair market price for those plants was in fact less than the actual cost of the plants. In other words, Public Counsel's continued reference to the NRG plant is an attempt by Public Counsel (through Mr. Kind) to suggest that the NRG plant sets or tends to set a lower fair market price for Pinckneyville and Kinmundy. It is this contention that Mr. Voytas was addressing when questioned by Public Counsel about Mr. Kind's past contentions relating to consideration of the NRG Audrain plant as a pricing comparison to other combustion turbine options for AmerenUE.

WHEREFORE, pursuant to 4 CSR 240-2.130, AmerenUE hereby moves to late-file the attached Affidavit of Richard A. Voytas, and offers the same into evidence as a late-filed exhibit in this case.

**Steven R. Sullivan, # 33102**

Sr. Vice President, General Counsel and  
Secretary

**Thomas M. Byrne, # 33340**

Managing Assoc. General Counsel

**Wendy K. Tatro**

Asst. General Counsel

Ameren Services Company

P.O. Box 66149

St. Louis, MO 63166-6149

(314) 554-2098

Phone (314) 554-2514

Facsimile (314) 554-4014

[ssullivan@ameren.com](mailto:ssullivan@ameren.com)

[tbyrne@ameren.com](mailto:tbyrne@ameren.com)

[wtatro@ameren.com](mailto:wtatro@ameren.com)

**SMITH LEWIS, LLP**

/s/James B. Lowery

James B. Lowery, #40503

William Jay Powell, #29610

SMITH LEWIS, LLP

Suite 200, City Centre Building

111 South Ninth Street

P.O. Box 918

Columbia, MO 65205-0918

Phone (573) 443-3141

Facsimile (573) 442-6686

[lowery@smithlewis.com](mailto:lowery@smithlewis.com)

[powell@smithlewis.com](mailto:powell@smithlewis.com)

**Attorneys for Union Electric Company  
d/b/a AmerenUE**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served via e-mail on this 3<sup>rd</sup> day of April, 2006, on all counsel of record according to the Commission's service list in Case No. ER-2007-0002.

/s/ James B. Lowery