

**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

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY
AND REQUEST FOR EXPEDITED TREATMENT**

COMES NOW Union Electric Company d/b/a AmerenUE and, pursuant to 4 CSR 240-2.130(8), hereby requests leave to file the Supplemental Testimony of Mr. Mark C. Birk, which is attached hereto as Exhibit A, and requests expedited treatment of this motion pursuant to 4 CSR 240-2.080(16) and, as reasons therefor, states as follows:

1. Missouri Industrial Energy Consumers (MIEC) witness Greg Meyer changed his position, and his entire analytical approach in developing his position relating to power plant maintenance expense, in his surrebuttal testimony.¹ His change in position is described in the proposed Supplemental Testimony of March C. Birk, attached hereto as Exhibit A. Nothing precluded Mr. Meyer from accessing the information that he would have needed to follow the analytical approach reflected for the first time in his surrebuttal testimony in either his direct testimony (filed on December 18, 2009) or in rebuttal testimony, which was due on February 11, 2009. Had he done so, the Company would have had a fair opportunity to respond in surrebuttal. By waiting until surrebuttal to change his approach and position, Mr. Meyer has deprived the Company of an opportunity to respond, except through this Supplemental Testimony.

2. AmerenUE deposed Mr. Meyer three days ago (on March 9), and during his deposition he confirmed that the approach he took in his surrebuttal is different than the approach he took when he first recommended "normalization" of power plant maintenance expense on December 18, 2009. Indeed, Mr. Meyer used different information (plant-by-plant maintenance

¹ His surrebuttal testimony, containing his new position and approach, was filed on Friday evening, March 5, 2010, just before 8:00 p.m., and served on the undersigned counsel just before 8:30 p.m.

expense versus an aggregate across the fleet; unit-by-unit scheduled outage data not used before), and arrived at a different position in a different way. Mr. Meyer had no schedules or workpapers (and didn't need any) for his former recommendation, but presented four very detailed schedules plus workpapers covering two different spreadsheets, one with seven different tabs and one with eight different tabs. Mr. Birk's proposed Supplemental Testimony discusses the changed approach in more detail.

3. Mr. Birk's proposed Supplemental Testimony addresses Mr. Meyer's changed methodology and position. AmerenUE had no other opportunity to address this methodology or position since it is brand new, having been taken for the first time in surrebuttal testimony.

4. Commission rule 4 CSR 240-2.130(8) contemplates that the presiding officer or the Commission may allow the supplementation of prefiled testimony. The Commission's rule on supplementation does not contain an explicit standard for deciding when supplementation is proper, although Commission rule 4 CSR 240-2.015 authorizes the Commission to waive any of its rules for "good cause." Good cause has been defined as referring to "a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one." *In re Missouri Gas Energy*, 2005 WL 1131060 (citing **Bennett v. Bennett**, 938 S.W.2d 952, 957 (Mo. App. S.D. 1997)). It has also been defined as a "[l]egally sufficient ground or reason" which "must be real and not imaginary, substantial and not trifling, and reasonable not whimsical." *In Re: Aquila Network*, 2007 WL 1425480 (citing *Black's Law Dictionary* and *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977); *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947)).

5. Good cause exists to allow supplementation here because it is necessary to allow the Company to respond to Mr. Meyer's changed approach and position, taken for the first time in surrebuttal testimony, in order to prevent the injustice (and to preserve the Company's Due Process rights) of this witness being allowed to present new evidence in support of new positions in

surrebuttal without the Company being able to respond with relevant information that rebuts that evidence.

6. The Company requests expedited treatment of this Motion pursuant to 4 CSR 240-2.080(16) and requests the Commission to take up this Motion at the commencement of the evidentiary hearings in this case on Monday, March 15. Expedited treatment will benefit the parties by allowing this Supplemental Testimony to be the subject of examination at the evidentiary hearings when the power plant maintenance issue (scheduled for Monday, March 15) is heard. This Motion has been prepared and filed as soon as it could have been under the circumstances.

7. Workpapers underlying the proposed Supplemental Testimony were provided to all parties concurrently with the service of this Motion. Mr. Birk can be cross-examined on this Supplemental Testimony when he appears for the power plant maintenance issue on March 15, 2010. Mr. Birk was out of town at the time this testimony was completed and was thus unable to provide a signed affidavit at this time. His signed affidavit will be provided upon his return, and before he takes the witness stand.

WHEREFORE, AmerenUE requests leave to file the Supplemental Testimony of Mr. Mark C. Birk, the form of which is attached hereto as Exhibit A, and requests expedited treatment of this Motion.

Steven R. Sullivan, #33102
Sr. Vice President, General
Counsel and Secretary
Thomas M. Byrne, # 33340
Managing Assoc. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-2098
(314) 554-2514 (phone)
(314) 554-4014 (fax)
ssullivan@ameren.com
tbyrne@ameren.com

SMITH LEWIS, LLP

/s/James B. Lowery

James B. Lowery, #40503
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
Attorneys for Union Electric Company
d/b/a AmerenUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, on the following parties on the 12th day of March, 2010:

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

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
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
rzucker@laclede.com

Diana M. Vuylsteke
Bryan Cave, LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Thomas G. Glick
7701 Forsyth Blvd., Ste. 800
St. Louis, MO 63105
tglick@dmfirm.com

Sherrie A. Schroder
Michael A. Evans
7730 Carondelet, Suite 200
St. Louis, MO 63105
saschroder@hstly.com
mevans@hstly.com

Lisa C. Langeneckert
Sandberg Phoenix & Von Gontard, P.C.
One City Centre, 15th Floor
515 North Sixth Street
St. Louis, MO 63101-1880
llangeneckert@sandbergphoenix.com

John C. Dodge
Davis, Wright and Tremaine, LLP
1919 Pennsylvania Ave. NW, Ste 200
Washington, DC 20006
johndodge@dwtd.com

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

John B. Coffman
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
john@johncoffman.net

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

Douglas Healy
939 Boonville, Suite A
Springfield, MO 65802
dhealy@mpua.org

David Woodsmall
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65101
dwoodsmall@fcplaw.com

James B. Deutsch
Thomas R. Schwarz
308 E. High St., Suite 301
Jefferson City, MO 65101
jdeutsch@blitzbardgett.com
tschwarz@blitzbardgett.com

Karl Zobrist
Roger W. Steiner
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
kzobrist@sonnenschein.com
rsteiner@sonnenschein.com

Sam Overfelt
Missouri Retailers Association
618 E. Capitol Avenue
P.O. Box 1336
Jefferson City, MO 65102
moretailers@aol.com

Henry B. Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
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
314-725-8788
314-725-8789
lcurtis@lawfirmmail.com
clumley@lawfirmmail.com
kokeefe@lawfirmmail.com

/s/ James B. Lowery _____
James B. Lowery