

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

**MOTION TO STRIKE  
THE DIRECT TESTIMONY  
OF UNION WITNESS MICHAEL WALTER  
OR, IN THE ALTERNATIVE, PORTIONS THEREOF**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or the "Company"), pursuant to 4 CSR 240-2.080 and 4 CSR 240-2.130, and for its Motion to Strike the Direct Testimony of Union Witness Michael Walter or, In the Alternative, Portions Thereof, respectfully states as follows:

1. On February 11, 2010, International Brotherhood of Electrical Workers Local 1439 (the "Union") filed the Direct Testimony of Michael Walter.<sup>1</sup>
2. In the Commission's Order Adopting Procedural Schedule and Establishing Test Year ("Order") issued in this matter on September 14, 2009, a procedural schedule was established which included, *inter alia*:

Non-AmerenUE parties to file Direct Testimony on revenue requirement	-	December 18, 2009
Non-AmerenUE parties to file Direct Testimony on rate design	-	January 6, 2010

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All parties to file Rebuttal Testimony	-	February 11, 2010
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<sup>1</sup> While the Title at the top of Page 1 of the Direct Testimony reflects that the testimony is "Submitted on Behalf of IBEW Local 1439 and All Ameren Unions," Mr. Walter states "I am testifying on behalf of IBEW Local 1439." Mr. Walter proceeds to identify other unions at Ameren. (Page 1, Line 11).

3. Commission Rule 4 CSR 240-2.130(7)(A) and (B) provides as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

4. In accordance with the Commission's Order, other "Non-AmerenUE parties" filed their Direct Testimony on the prescribed dates of December 18, 2009, and January 6, 2010. However, the Union did not timely file its Direct Testimony on either of those dates; it filed its Direct Testimony on February 11, 2010, when all other parties filed Rebuttal Testimony in this matter. Such filing was not simply a matter of mislabeling "rebuttal" testimony. The Union Direct Testimony is not responsive to the testimony and exhibits contained in any other party's direct case; rather, it asserts its criticisms of "Ameren's reliance on an outside contractor workforce" and makes recommendations which, as discussed below, are wholly irrelevant and immaterial to the issues in this rate case proceeding, and are beyond the statutory authority and jurisdiction of the Commission to adopt. Accordingly, the Commission should strike such testimony for not being timely filed.

Alternative Motion to Strike Portions of Testimony

5. As noted above, the Union witness makes recommendations which are wholly irrelevant and immaterial to the issues in this rate case proceeding, and are beyond the statutory authority and jurisdiction of the Commission to adopt. As a result, the following testimony should be stricken from the record: **Direct Testimony of Michael Walter, p. 7, lines 12-23; p. 8, lines 1-19.**

6. While the Commission certainly has the regulatory powers to examine and be kept informed of the methods and practices employed by AmerenUE in the transaction of its business, as provided in Section 393.140(5), RSMo 2000, the Missouri Supreme Court has stated that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. *State ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W.2d 8 (Mo. banc 1930). *See also State of Missouri ex rel. Southwestern Bell Co. v. Public Service Commission*, 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981 (1923). As the Missouri Court of Appeals succinctly stated in *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177, 181-82 (Mo. App. 1960):

The powers of regulation delegated to the Commission are comprehensive. . . . Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.

5. The Commission has repeatedly followed this principle. In a complaint case involving Laclede Gas Company and its union, the Commission struck from the Complaint a union request that Laclede be required to utilize "non-managerial" personnel to install Automatic Meter Reading (AMR) devices. In that case, the Commission held that: "Laclede correctly argues that the Commission cannot dictate how Laclede manages its business." As a result, the Commission found that it would strike the request for relief that would require Laclede to use "non-managerial" personnel to install AMR devices. Order Denying Motion To Dismiss, Granting Motion For More Definite Statement, Granting Motion To Strike, In Part, Setting Procedural Teleconference, And

Directing Filing, *USW Local 11-6 v. Laclede Gas Company*, Case No. GC-2006-0390 (August 10, 2006).

6. The Commission previously found limited authority to dictate a company's management policies regarding business meal expenses, stating: "It is not the function of the Commission to tell SWB how to run its business; rather its duty is to set just and reasonable rates." *PSC Staff v. Southwestern Bell Telephone Co.*, 2 Mo.P.S.C. 3d 479, 549, Case No. TC-93-224 (1993). In addition, Missouri statutes make it clear that the Commission's authority does not extend to management-labor issues that are the subject of a collective bargaining agreement between the utility and a labor organization. *See* Section 386.315(1), RSMo 2000.

7. Applying these principles to the instant case, the Commission may not dictate, as the Union Witness has requested, requirements that (i) would require AmerenUE to expend a substantial portion of the rate increase on investing and re-investing in its regular employee base/internal workforce; (ii) would reward decisions to repair and rebuild components and equipment internally; (iii) would set expectations and firm guidelines as to the allocation of money to train in specific areas; and (iv) would demand that all jobs, internal and outsourced, be filled first within the AmerenUE service territory, second in the State of Missouri, and third, never offshore. To AmerenUE's knowledge, the Commission has never attempted to assert jurisdiction over how funds would be used for employee hiring or training, or dictating the source of a workforce applicant pool. The Commission has refrained from doing so for good reason—because the Commission has no jurisdiction to do so, and because such intrusions would strike at

the heart of a public utility's recognized right to manage its business. Yet the Union Witness presumes that the Commission may exercise such authority, and solely that incorrect presumption underlies the Union's testimony in this rate case proceeding. Consistent with decades of regulatory law and practice, the Commission should reject such an approach, and strike the above-cited portions of the Union Witness' testimony.

WHEREFORE, for the foregoing reasons, Union Electric Company d/b/a AmerenUE respectfully moves that the Commission strike the Direct Testimony of Michael Walter filed in this matter, or, in the alternative, strike the following portions of said testimony: p. 7, lines 12-23; p. 8, lines 1-19, as more fully described herein.

Respectfully submitted,

**/s/ James M. Fischer**

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**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 4th day of March, 2010, to all counsel of record.

/s/ James M. Fischer  
James M. Fischer