

**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 MISSOURI INDUSTRIAL ENERGY CONSUMERS'
APPLICATION FOR REHEARING FILED OUT-OF-TIME**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or the "Company") and hereby requests that the Commission strike the Missouri Industrial Energy Consumers' ("MIEC") Application for Rehearing ("Application") filed out-of-time. In support of its Motion, AmerenUE states as follows:

1. On May 28, 2010, the Commission's Report and Order in this rate case was issued with an effective date of Monday, June 7, 2010.
2. At approximately 11:37 p.m. on Sunday, June 6, 2010, MIEC submitted its Application in the Commission's Electronic Filing and Information System ("EFIS").¹
3. Section 386.500.2, RSMo. and *State ex rel. Alton R. Co. v. Pub. Serv. Comm'n*, 155 S.W.2d 149, 154 (Mo. 1941), require that applications for rehearing be filed **before** the effective date of a Commission Report and Order.²

¹ Although the certificate of service mistakenly certifies that the Application was served on June 6, it in fact was not served until approximately 10 hours later, at approximately 9:39 a.m. on June 7. See Exhibit A attached hereto and incorporated herein by this reference.

² Section 386.500.2, RSMo provides in pertinent part as follows: No cause or action arising out of any order or decision of the commission shall accrue in any court . . . unless **that party shall** have made, **before the effective date of such order** or decision, application to the commission for rehearing. (Emphasis added). In *Alton R. Co.*, the Missouri Supreme Court held that the filing of an application for rehearing **on** the effective date of the order at issue was untimely; i.e., that the requirement that the application be filed "before the effective date" in the statute means just what it says – before.

4. The last moment in time MIEC could have filed an Application **before** the Report and Order became effective was midnight on Friday, June 4, 2010. MIEC had until midnight, not 5:00 p.m., because the Commission modified the application of 4 CSR 240-2.045(2) and 2.080(11) “so that filings made in EFIS are timely filed if filed before midnight on the date the filing is due.” *Order Adopting Procedural Schedule and Establishing Test Year*, p. 5. Prior to that modification ordered for this case, the deadline was 5:00 p.m. (*see* 4 CSR 240-2.45(2), which provides: “[a]ny item or document filed electronically shall, if received during business hours of the commission’s records room, be considered filed as of that day, otherwise, such item or document *shall be considered filed as of the next following business day.*” (emphasis added)).

5. By not submitting its Application until almost two days after its midnight deadline – at approximately 11:37 p.m. on Sunday, June 6, 2010 – MIEC did not **file** its Application until the next business day, at 8:00 a.m., Monday, June 7, 2010.³

6. MIEC’s failure to timely file its Application is very similar to the failure of Suburban Water and Sewer Company to do so in 2007. *See Staff v. Suburban Water and Sewer Co.*, Case No. WC-2007-0452 et al., 2007 WL 2695262 (Mo. P.S.C.) (Sept. 13, 2007). In that case, Suburban Water and Sewer submitted an application for rehearing in EFIS at 5:52 p.m. on the last business day before the effective date of an order. The Commission ruled that the application was “not timely filed and must be denied” because although the application was **submitted** the last business day before the effective date or the order, it was not **filed** until the effective date of the order, rendering it untimely under Section 386.500.

³ The date and time of the filing is confirmed by Exhibit B (the EFIS printout regarding MIEC’s Application; EFIS docket sheet), which is attached hereto and incorporated herein by this reference.

7. Since the *Suburban Water* case, the Supreme Court decided *State ex rel. Office of the Pub. Counsel v. Pub. Serv. Comm'n*, 236 S.W.3d 632 (Mo. banc 2007). In that case, the Supreme Court held that the Commission had abused its discretion in giving the Office of the Public Counsel (“OPC”) just one hour and twenty minutes to seek rehearing of a Commission order approving tariffs. The reason OPC had just one hour and twenty minutes to seek rehearing was because the order at issue in that case had been issued at 3:40 p.m. on the last business day before the order would take effect, giving OPC between 3:40 p.m. and 5:00 p.m. to seek rehearing.⁴ The following discussion from the Supreme Court’s opinion succinctly describes the operation of the Commission’s rules, and demonstrates that MIEC’s Application in this case was not filed until June 7, and was thus untimely:

The electronic filing system time-stamps all filings made after regular business hours, considered any time after 5 p.m. on weekdays, with the date of the next business day. *See* 4 CSR 240-2.045.2. Paper filings that are received by the commission’s records room after 4 p.m. are stamped “filed” on the next business day. *See* 4 CSR 240-2.080(11). The PSC’s records room closes by 5 p.m. and is not open on weekends. State offices were closed for New Year’s day, and so any electronic filing made after 5 p.m. or a paper filing made after 4 p.m. on Friday, December 29, would have been stamped as filed on Tuesday . . . *Id.* at 634.

8. MIEC’s Application was filed **on** the effective date -- at 8:00 a.m., Monday, June 7, 2010. The law required that it be filed **before** the effective date – which had to occur by midnight Friday, June 4, 2010. Consequently, the Application is untimely and must be stricken.

WHEREFORE, the Company hereby respectfully requests that the Commission make and enter its order striking MIEC’s Application on the basis that it was filed out-of-time, specifically, on the effective date of the Report and Order and not before as required by law.

⁴ As noted earlier, MIEC had an additional seven hours -- until midnight on June 4, 2010.

Dated: June 7, 2010.

Respectfully submitted:

SMITH LEWIS, LLP

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Strike was served via e-mail, to the following parties on the 7th day of June, 2010.

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From: Nowack, Laurie A. [Laurie.Nowack@BryanCave.com] on behalf of Vuylsteke, Diana M. [dmvuylsteke@BryanCave.com]
Sent: Monday, June 07, 2010 9:39 AM
To: ACORN - Thomas Glick; Charter - John Dodge; Charter - Mark Comley; Consumers Council, AARP - John Coffman; DNR - Sarah Mangelsdorf; DNR - Shelley Woods; IBEW 1439, 1455, 2, 309, 649, 702, IUOE 148 - Michael Evans; IBEW 1439, 1455, 2, 309, 649, 702, IUOE 148 - Sherrie Schroder; KCPL - Karl Zobrist; KCPL - Roger Steiner; KCPL - Victoria Schatz; Laclede - Mike Pendergast; Laclede - Rick Zucker ; MEG - Lisa Langeneckert; Midwest Energy Users - David Woodsmall; MJMEUC - Doug Healy; Mo Retailers - Dave Overfelt, Sam Overfelt; Mo Retailers - James Deutsch; Mo Retailers - Thomas Schwarz; Nat Resources Defense Council - Henry Robertson; OPC - Lewis Mills; PSC - Nathan Williams; PSC General Counsel; StL County Muncipal League, O'Fallon, Rock Hill, U City (Municipal Group) - Leland Curtis; StL County Municipal League, O'Fallon, Rock Hill, U City - Carl Lumley; StL County Municipal League, O'Fallon, Rock Hill, U City (Municipal Group) - Kevin O'Keefe; Cheryl Lobb; Jim Lowery; UE - Steven Sullivan, Tom Byrne, Wendy Tatro; Vuylsteke, Diana M.
Subject: ER-2010-0036 MIEC Application for Rehearing
Attachments: Application for Rehearing_v1.pdf

Attached for service is MIEC's application for rehearing. Thanks, Diana

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bcllp2010

Missouri Public Service Commission**Existing Case Filing**

Case No.	ER-2010-0036
Style of Case	In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service
Type of Filing/Submission	Other
Testimony Issue	N/A
Testimony Sub Issue1	N/A
Testimony Sub Issue2	N/A
Filing on behalf of	Missouri Industrial Energy Consumers-(All)
Related case and/or tracking numbers	
Title of Filing/Submission	Missouri Industrial Energy Consumers' Application for Rehearing
Clear and Concise Statement of Relief Requested	Grant application for rehearing
Indicate Cite for Commission Authority	386.500 RSMo
Is this Filing/Submission to meet a scheduled deadline for today?	Yes
Is this a Response to Previous Filing in this case?	No
Date Filed	6/7/2010 8:00:00 AM

Missouri Public Service Commission

Docket Sheet

Date: 6/7/2010

Case No. ER-2010-0036

Company AmerenUE-Investor(Electric)
Name(s) Union Electric Company-Investor(Electric)

Style of Case In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service

Tracking No. YE-2010-0054, YE-2010-0055

Status Open

Assigned Judge Woodruff Morris

Assigned Attorney Williams Nathan, Dearmont Eric, Dottheim Steve, Hernandez Jennifer, Kliethermes Sarah, Ott Jaime, Ritchie Samuel, Thompson Kevin

Consolidated To

Consolidated From

Appealed To

Item No.	Date Filed	Title of Filing	Filed on Behalf Of	In Response to Item No.
764	6/7/2010	Missouri Industrial Energy Consumers' Application for Rehearing	Missouri Industrial Energy Consumers-(All)	
763	6/4/2010	Public Counsel's Application for Rehearing	Office of the Public Counsel-(All)	
762	6/4/2010	Application for Rehearing	Union Electric Company-Investor(Electric) AmerenUE-Investor(Electric)	
761	6/4/2010	Application for Rehearing	Midwest Energy Users' Association-(All)	
760	6/2/2010	Dissenting Opinion of Chairman Robert M. Clayton III	Commission-(All)	
759	5/28/2010	Report and Order	Commission-(All)	
758	5/3/2010	MIEC Suggestions in Opposition to AmerenUEs Motion to Modify Order Admitting True-Up Exhibit 244	Missouri Industrial Energy Consumers-(All)	

EXHIBIT B