

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

In the Matter of a Proposed Rulemaking	)	
Regarding Revision of the Commission's	)	Case No. EX-2010-0254
Chapter 22 Electric Utility Resource	)	
Planning Rules.	)	

**APPLICATION FOR REHEARING**

COMES NOW Union Electric Company d/b/a Ameren Missouri (Ameren Missouri or the Company), pursuant to Section 386.500 RSMo, 4 CSR 240-2.080 and 4 CSR 240-2.160, and submits its Application for Rehearing of the Missouri Public Service Commission's (Commission) Orders of Rulemaking issued March 3, 2010. The Commission adopted amendments to the following rules: 4 CSR 204-22.010, 4 CSR 240-22.020, 4 CSR 240-22.030, 4 CSR 24-040-22.040, CSR 240-22.050, 4 CSR 240-22.060, 4 CSR 240-22.070 and 4 CSR 240-22.080 and adopted one new rule, 4 CSR 240-22.045. In support of its Application for Rehearing, the Company states as follows:

**4 CSR 240-22.045**

1. While the Commission has authority to regulate electrical corporations (such as Ameren Missouri),<sup>1</sup> the Commission has no jurisdiction or authority over a business operated substantially separate and apart from the electrical corporation.
2. This is made clear by Section 393.140(12), which in pertinent part provides as follows:

In case any electrical corporation...engaged in carrying on any other business than owning, operating or managing...electric plant...which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or

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<sup>1</sup> Section 386.020(15), RSMo.

controlling of such...electric plant...,said corporation in respect to such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the consent or authorization of the commission to any action in such other business or to make any report in respect thereof. But this subdivision shall not restrict or limit the powers of the commission in respect to the owning, operating, managing or control by such corporation of such...electric plant..., and said powers shall include also the right to inquire as to, and prescribe the apportionment of, capitalization, earnings, debts and expenses fairly and justly to be awarded to or borne by the ownership, operation, management or control of such...electric plant...as distinguished from such other business.

3. 4 CSR 240-22.045(3)(B)5 apparently places upon the electrical corporation a burden to prove the benefit of any affiliate-built transmission project to the electrical corporation's customers before the electrical corporation may use a regional transmission organization (RTO) expansion plan in the electrical corporation's consideration of the factors set out in subsection (3)(A). The burden is imposed despite the fact that the electrical corporation has no right as a matter of law to control or dictate to its affiliate what transmission it can or should build. Consequently, the rule in effect presumes that the business of a separate corporation, whose only "relationship" to the electrical corporation may be that its stock happens to be owned by the same company that owns the electrical corporation's stock, is being operated as part of the electrical corporation itself. That presumption is unlawful to the extent it exceeds the limited jurisdiction and authority of the Commission,<sup>2</sup> including but not limited to under Section 393.140(12), which prohibits the Commission from in some manner requiring an affiliated business that is substantially kept separate and apart from the electrical

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<sup>2</sup> The Commission is "purely a creature of statute" and its "powers are limited to those conferred by the statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted." *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979); *City of West Plains v. Public Serv. Comm'n*, 310 S.W.2d 925, 928 (Mo. banc 1958). "It is for the legislature, not the PSC, to set the extent of the latter's jurisdiction." *Utility Consumers Council*, 585 S.W.2d at 54.

corporation to “procure the consent or authorization of the commission” or to “make . . . a report . . .” regarding its business. If and to the extent the rule purports to require the electrical corporation’s affiliate to do or refrain from doing something, it is also unlawful for the same reasons.

4. 4 CSR 240-22.045(3)(B)5 is also unlawful in that it is preempted by federal law (pursuant to the Supremacy Clause of the U.S. Constitution and cases decided thereunder) to the extent it purports to usurp or control the decision making process relating to the construction of transmission within the footprint of a FERC-approved RTO. For example, the rule ignores the fact that the decision regarding what transmission should be built is delegated to the RTO (and not to the electrical corporation) by the FERC. In making that decision, the RTO is not bound only to consider the benefits to any one utility’s retail customers, but rather, is free (and in fact must) consider other costs and benefits to the region as a whole. At best, the rule’s requirement is an unnecessary exercise because it requires the development of information that cannot be used to modify an affiliate’s transmission plans (any more than it can be used to modify the transmission plans of an unaffiliated transmission company who may build transmission in Missouri or the region generally). At worst, the rule’s requirement is an attempt by the Commission to substitute its judgment for that which the FERC has given to the regional transmission organization. Either way, this requirement is beyond the Commission’s jurisdiction to the extent it purports to regulate an affiliate, and is also unlawful as preempted by federal law. Ameren Missouri asks the Commission to reconsider and remove 4 CSR 240-22/045(B)5 in its entirety from its adopted rules.

5. 4 CSR 240-22.045(5) also exceeds the Commission's jurisdiction and authority. While an electrical corporation arguably can "describe . . . [a] relationship," the apparent requirement for the electrical corporation to provide information about a separate corporation's business, regardless of whether it is substantially kept separate and apart, is unlawful and beyond the Commission's jurisdiction and authority, as earlier discussed in connection with 4 CSR 240-22/045(3)(B)5.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

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Dated: March 31, 2011

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing was served on the following parties via electronic mail (e-mail) on this 31st day of March, 2011.

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