

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

In the Matter of Union Electric Company,)
d/b/a/ AmerenUE's Tariffs to Increase)
Its Annual Revenues for Electric Service) **Case No. ER-2010-0036**

APPLICATION FOR REHEARING

COMES NOW the Midwest Energy Users' Association ("MEUA"), pursuant to Section 386.500 RSMO., and applies for rehearing of the Commission's May 28, 2010 Report and Order ("Order") on the following grounds:

1. MEUA represents several large retail entities. These entities operate 217 facilities in the State of Missouri and employ approximately **52,000** Missourians. As large users of electricity within both the Small General Service ("SGS") and Large General Service / Small Primary ("LGS / SP") classes the MEUA entities are vitally interested in the rates that result from this rate case and how those rates are imposed on the various customer classes. In this regard, MEUA members are able to grow their businesses and employ more Missourians only if they are expected to pay their actual cost of electricity. To the extent that these and other commercial and industrial entities are expected to pay electric rates that are above the cost of providing electric service, they are hindered in their ability to continue to provide low prices for goods to their customers as electricity costs are among the highest operating expenses in their businesses.

2. As an initial matter, MEUA believes that the Commission, after adopting the appropriate class cost of service study, may have confused the LGS / SP class with the LTS class when it went to assign rate relief resulting from its study. As written, the Report and Order serves to give rate relief to the LTS class that is, pursuant to the

adopted study, more appropriately assigned to the LGS / SP. With this in mind, MEUA asks the Commission to revisit its decision and simply issue a new order that corrects this oversight. Such a simple correction, as demonstrated in paragraph 10, would largely correct all the deficiencies identified in this pleading.

3. As written, however, the Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record, is contrary to the competent and substantial evidence that is on record, is arbitrary and capricious, is an abuse of discretion and is discriminatory in that the Commission moves the LTS class (a single customer) to its actual cost of service while leaving other classes significantly above their cost of service. Worse still, in some instances, the Commission has actually moved classes **further** from their cost of service.

4. In its decision, the Commission finds “that AmerenUE’s class cost of service study, modified to allocate revenues from off-system sales on the basis of class energy requirements, is the most reliable of the submitted [class cost of service] studies.”¹

As the Commission finds,² the results of this modified study are as follows:

Results of Adopted Class Cost of Service Study

	<i>Base Revenues</i>	<i>Modified CCOS Results</i>	<i>% Change Necessary</i>
Residential	\$977,137	\$107,990	+11.05%
SGS	\$251,620	\$(13,768)	-5.47%
LGS / SP	\$664,928	\$(75,904)	-11.42%
LP	\$172,754	\$(6,650)	-3.85%
LTS	\$139,156	\$(11,668)	-8.38%

¹ Report and Order, at page 87, ¶20.

² *Id.* at page 87, ¶19.

5. MEUA finds no fault with the Commission's findings up to this point in the decision (paragraphs 1-20). That said, MEUA maintains that the Commission's order is unlawful, unreasonable and discriminatory in the method by which it then implements the results of the adopted class cost of service study. Based upon vague notions of public acceptance, rate stability and revenue stability, the Commission imposes rate increases that have no rational tie to the adopted class cost of service study and, in fact, are opposite and contrary to the findings in paragraphs 1-20. The Commission fails to provide legal citation for its use of public acceptance, rate stability and revenue stability. Further, the Commission fails to provide any definition to these nebulous terms or provide any findings as to why these concepts have led to rate relief for certain classes while others are subjected to rates that are much greater than the cost that Ameren requires to actually serve these customers. As will be shown, the ordered rate increases are not justified by the adopted class cost of service study.

6. While the Commission recognizes that it may not simply "approve the stipulation and agreement or the addendum,"³ it nonetheless departs radically from the results of the adopted class cost of service study in order to preserve the benefits provided to the LTS class by the Stipulation. In this regard, the Commission's decision to adopt the stipulated rate increases for the Small General Service and Large Power classes are completely contrary to the results of the Commission's adopted class cost of service study. Specifically, while finding that both the SGS and the Large Power classes are already paying rates that are 3.85% to 5.47% above cost of service, the Commission further exacerbates this problem by imposing additional increases of 1.25 to 1.5% on customers already paying rates that are above what it actually costs to serve them. In

³ *Id.* at page 81, ¶3.

increasingly difficult economic times, it is important that companies pay only their fair share of what it costs Ameren to actually serve them. Again, the Commission has failed to provide any explanation why it imposes a rate increase on classes that the adopted class cost of service study indicates should receive rate reductions. In fact, the best proof that the outcome for these two classes are not tied to the results in the Commission's adopted cost study is the fact that the Commission imposes the greater increase (1.5%) on the class (SGS) that is currently further above its actual cost of service. In this regard, if the Commission was giving any credence to its adopted study, it would have imposed the 1.25% increase on the SGS class and the 1.5% increase on the LP class. Clearly, there is no rhyme or reason between the adopted class rate increases and the results of the Commission's adopted class cost of service study.

7. The problems underlying these unsupported rate shifts to the SGS and LP class are "inherently inequitable."⁴ Indeed, the Commission claims that equity is an important aspect of ratemaking. "In general, it is important that each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another." While paying some attention to the notion of equity, the Commission nonetheless accepts the rate shifts imposed by the stipulation without any consideration of equity or explanation of their rationale. As demonstrated, the acceptance of these shifts serves to impose rate increases on the SGS and LP class that are otherwise not justified by the adopted class cost of service study. Clearly, the rationale underlying this

⁴ As MIEC witness Brubaker points out, "[i]f rates are based on anything other than cost factors, then some customers will pay the costs attributable to providing service to other customers – which is inherently inequitable." Ex. 429, page 33.

aspect of the Commissions' order is based on something other than the adopted class cost of service study and is not explained in the decision.

8. The inequitable nature of the Commission's order extends to other rate classes as well. As shown, the Commission found that the LGS / SP class is currently paying rates that are \$76 million (11.42%) above Ameren's actual cost of providing electricity to the class. Less egregious, the LTS class is currently paying rates that are \$11.7 million (8.38%) above its actual cost of service. Again largely accepting recommendations contained in the stipulation, the Commission grants rate shifts away from these classes that are not consistent with the adopted class cost of service study. Specifically, the Commission moves the LTS class 100% to its cost of service while simultaneously moving the LGS / SP class only 6% to its actual cost of service. Such disparate treatment of these two classes is not only inequitable, it is also discriminatory.

In its order, the Commission criticized the AmerenUE and Public Counsel recommendations that "any rate increase should be allotted equally to each customer class." The Commission found that such a recommendation "would leave the existing disparities revealed in the class cost of service studies unchanged."⁵ Despite leveling such a criticism, the methodology employed by the Commission clearly suffers from the same issue. Specifically, for the LGS / SP class, the Commission's methodology "leaves the existing disparities" largely unchanged. Worse still, for the SGS and LP classes, the Commission's adopted rate increases have actually exacerbated existing disparities.

9. The concern with "existing disparities" in the LGS / SP rates has gone unaddressed by the Commission for several years. Under any of the studies submitted, the subsidies built into the LGS / SP rates have grown rapidly as a result of the

⁵ Report and Order, at page 88, ¶22.

Commission's recent failure to set rates based upon actual cost of service. Under the AmerenUE cost methodology, the disparity in LGS / SP rates has grown by 25.6% in the last 3 years. Similarly, under the MIEC cost model, this disparity has grown by 17.5% in recent years.

LGS / SP Cost Differential in Last 3 Cases

	<i>AmerenUE</i> ⁶	<i>Staff</i> ⁷	<i>MIEC</i>	<i>OPC (TOU)</i> ⁸	<i>OPC (4CP)</i> ⁹
ER-2007-0002 ¹⁰	(\$51,589)	(\$25,607)	(\$71,989) ¹¹	(\$22,878)	(\$41,475)
ER-2008-0318	(\$47,863)	(\$31,665)	(\$83,041) ¹²	(\$12,638)	(\$15,177)
ER-2010-0036	(\$64,785)	(\$73,664)	(\$84,603) ¹³	(\$24,388)	(\$30,320)

While the disparity in LGS / SP rates has not been addressed, the Commission has granted rate relief to the LTS class in both of the last two cases. Clearly then, the Commission's oversight or failure to again address the problem with LGS / SP rates will only serve to perpetuate the "existing disparities" in the LGS / SP rates.

10. Given the results of the adopted study, the rapidly increasing disparity in LGS / SP rates, and the Commission's recent oversight or failure to address LGS / SP rates, MEUA believes that the Commission may have simply misinterpreted the results of its adopted study and misplaced the rate relief actually intended for the LGS / SP class.

⁶ Exhibit 551

⁷ Exhibit 553

⁸ Exhibit 552

⁹ *Id.*

¹⁰ Prior to Case No. ER-2008-0318, the Large General Service and Small Primary classes were treated separately. (Tr. 3080). Beginning with Case No. ER-2008-0318, these two classes were combined in the class cost of service studies. (*Id.*). As such, the results for the Large General Service and Small Primary classes have been added together for purposes of this brief.

¹¹ Tr. 3079-3080

¹² Tr. 3082

¹³ Exhibit 429, Schedule MEB-COS-5 (column 8).

As written, the Commission's Order moves the LTS class 100% towards its actual cost of service. Meanwhile, the LGS / SP class only moves 6.0% to its cost of service. If this rate relief that was actually intended for the LGS / SP was switched back, then the LGS / SP class would move 21.5% to its cost of service and the LTS class would 39.2% to its true cost of service. Unquestionably, these results would be more equitable and would actually be consistent with the Commission's adopted cost of service study. In fact, such an approach would meet the LTS witness' expressed goal of "gradualism".¹⁴

11. Interestingly, on the same day that the Commission issued its Report and Order in this matter, the Commission also deliberated a rulemaking related to renewable energy standards. During those deliberations, several commissioners commented regarding the need to send proper price signals so that economical renewable energy decisions could be made by the utility and its ratepayers. Despite such recognition, the Commission's decision in this matter represents an opposite and contrary movement from that goal. As MIEC witness Brubaker recognizes, proper ratemaking (i.e., rates based on cost) supports the notions of equity, conservation and engineering efficiency.¹⁵ As Brubaker points out:

Conservation occurs when wasteful, inefficient use is discourage or minimized. Only when rates are based on costs do customers receive a balanced price signal upon which to make their electric consumption decisions. If rates are not based on costs, then customers who are not paying their full costs may be mislead into using electricity inefficiently in response to the distorted rate design signals they receive.¹⁶

This failure to set rates based upon the actual cost of serving the customer ultimately hampers the effectiveness of any demand-side management efforts.

¹⁴ *Id.* at page 32.

¹⁵ Ex. 429, page 32.

¹⁶ *Id.* at page 33.

The success of DSM (both energy efficiency and demand response programs) depends, to a large extent, on customer receptivity. There are many actions that can be taken by customers to reduce their electricity requirements. A major element in a customer's decision-making process is the amount of reduction that can be achieved in the electric bill as a result of DSM activities. If the bill received by a customer is subsidized by other customers; that is, the bill is determined using rates which are below cost, that customer will have less reason to engage in DSM activities than when the bill reflects the actual cost of the electric service provided.¹⁷

In addition to hampering conservation and other DSM efforts, the failure to set rates based upon cost of service could also lead to the elimination or exportation of jobs or production as well as inefficient utility decisions designed to maintain that load.

If a utility attempts to extract a disproportionate share of revenues from a class that has alternatives available (such as producing products at other locations where costs are lower), then the utility will be faced with the situation where it must discount the rates or lose the load, either in part or in total. To the extent that the load could have been served more economically by the utility, then either the other customers or the utility or the stockholders (or some combination of both) will be worse off than if the rates were properly designed on the basis of cost.¹⁸

As MIEC's witness demonstrates, therefore, the Commission's failure in this case to set rates based upon what it costs to serve a company is not only inequitable, it also hampers the Commission's previous efforts to support conservation and DSM programs.

WHEREFORE, prior to the implementation of new rates that would necessarily result in the denial of the issues detailed in this Application, the Commission should order rehearing of its Report and Order and issue a new Order consistent with the class cost of service study adopted by the Commission in this case.

¹⁷ *Id.*

¹⁸ *Id.* at page 34.

Respectfully submitted,

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ATTORNEYS FOR THE MIDWEST
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: June 4, 2010