

**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-2012-0166
Service Provided to Customers in the)	
Company's Missouri Service Area.)	

**AMEREN MISSOURI'S RESPONSE TO OPPONENTS' APPLICATIONS FOR
REHEARING**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company") and hereby responds to the Applications for Rehearing filed by the Midwest Energy Consumers Group ("MECG"), the Office of the Public Counsel ("OPC"), the Missouri Industrial Energy Consumers ("MIEC"), AARP and the Consumers Council of Missouri ("CCM"), as follows:

1. MIEC, OPC and AARP/CCM all raise points and arguments that were thoroughly briefed by the parties and thus considered (and rejected) by the Commission. Consequently, we make no substantive response to those points herein.

2. MECG raises a new and completely unsupported argument based upon a novel (and patently incorrect) reading of Section 393.270.4, RSMo.

3. Section 393.270.4 is the statutory authority for the requirement that the Commission consider "all relevant factors" in determining the just and reasonable rates to be charged by gas, electric and water utilities. *State ex rel. Missouri Water Co. v. Pub. Serv. Comm'n et al.*, 308 S.W.2d 704, 718-19 (Mo. 1957). In that case, the Missouri Supreme Court clearly explained what Section 393.270.4 means, as follows:

‘Due regard’ to one factor, ‘among other things’, simply requires consideration of that factor. It is not preclusive of other relevant factors. Indeed, the phrase ‘among other

things’ clearly denotes that ‘proper determination’ of such charges is to be based on *all* relevant factors” (emphasis in original).

4. In summary, all Section 393.270.4 says is that while the Commission *must* give due regard to those items specifically enumerated in 393.270.4 (“a reasonable average return upon capital actually expended and to the necessity of making reservation out of income for surplus and contingencies”), the Commission also must give due regard to *all other* relevant factors.

5. As the *Report and Order* issued in this case indicates, that the Company utilizes accrual accounting, meaning the Company owns the coal in transit and is obligated to pay for it the minute title passes to it at the mine, is a highly relevant factor in terms of how the coal in transit should be treated for ratemaking purposes when the Commission “determines . . . the price to be charged for . . . electricity . . .” Section 393.270.4. Not only does the Company use accrual accounting, the Company (and all other utilities using the Uniform System of Accounts) *must* use accrual accounting. See Uniform System of Account General Instruction 11,¹ which provides:

11. *Accounting to be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

5. So while we certainly concede that one of the things the Commission must give due regard to is the capital actually expended, it is most certainly not the case – as the Missouri Supreme Court stated in *Missouri Water* – that this precludes the Commission from giving due

¹ The Company is required to follow the Uniform System of Accounts by Commission Rule: 4 CSR 240-20.030.

regard to other factors, including the reality that a utility's income statement, balance sheet, and legal obligations have nothing whatsoever to do with when cash comes in or goes out the door. Indeed, utility property is placed in service all of the time for which a check has not yet been written.² The cost of service impact of the timing of cash payments is accounted for in the cash working capital adjustment. The bottom line is that the Commission has never calculated rate base on a cash basis (increasing rate base for early cash payments and decreasing rate base for later cash payments) yet in effect that is what MECG argues it should do on this issue.³ The Commission should reject MECG's argument and continue to include in rate base the prudent cost of all items, owned by the utility, that are fully operational and used for service—nothing more and nothing less.

WHEREFORE, the Company hereby respectfully requests that the Commission deny MECG's (and OPC's, MIEC's, and AARP/CCM's) applications for rehearing

Dated December 31, 2012.

Respectfully submitted:

² And, as the Commission recognized, some of the coal in the coal pile sitting on the ground at the plant from which coal is being taken every hour of the day to burn in the boiler to produce electricity for customers may not have yet been "paid for." That fact makes it no less used and useful, and certainly doesn't suggest it should not be accounted for in rate base when rates are set.

³ The facts of the *Missouri Water* case, *supra*, prove conclusively that Section 393.270.4 does not mean what MECG claims it means. This is because in that case the Missouri Supreme Court held that where a utility asked the Commission to use a fair value rate base (which bears no direct relationship to the dollars actually expended by the utility on assets that are in service) the Commission erred when it considered only an original cost rate base. Put another way, in that case a relevant factor was "what is the fair value rate base of the utility"? While the Commission in that case properly gave due regard to "capital actually expended" it failed, on those facts, to give due regard to another relevant factor having nothing to do with capital actually expended and thus erred. If the statute meant what MECG claims it means there would have been no error.

SMITH LEWIS, LLP

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

/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

Thomas M. Byrne, #33340
Managing Associate General Counsel
Wendy K. Tatro, #60261
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-131
St. Louis, Missouri 63101-6149
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
amerenmoservice@ameren.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response of Union Electric Company d/b/a Ameren Missouri was served via e-mail, to the parties of record to the above-captioned case on the 31st day of December, 2012.

/s/ James B. Lowery

James B. Lowery