

**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 Service Provided to Customers)	<u>Case No. ER-2010-0036</u>
In the Company's Missouri Service Area.)	

**RESPONSE OF AMERENUE TO
APPLICATION TO INTERVENE OF MISSOURI-ACORN**

COMES NOW Union Electric Company d/b/a AmerenUE ("Company" or "AmerenUE"), and, pursuant to 4 CSR 240-2.080(15), hereby files this Response to the Application to Intervene filed by the Missouri Association of Community Organizations for Reform Now ("MO-ACORN"). In this regard, AmerenUE states as follows:

1. MO-ACORN's Application to Intervene does not comply with the Commission's rule on intervention (4 CSR 240-2.075) because MO-ACORN is apparently an association of persons, which makes MO-ACORN subject to the specific requirements of subsection (3) of 4 CSR 240.2075. Subsection (3) provides as follows: "(3) An association filing an application to intervene shall list all of its members." MO-ACORN has failed to comply with this requirement. Although AmerenUE does not object to MO-ACORN's intervention, MO-ACORN should be required to comply with this rule as a condition of that intervention.

2. Even if MO-ACORN's Application to Intervene complied with the Commission's intervention rule, any intervention by MO-ACORN raises an important issue about which specific direction from the Commission is warranted. That issue exists because of statements already made by MO-ACORN's members (in connection with MO-ACORN sponsored events) in light of the provisions of the Commission's Conduct During Proceedings Rule (4 CSR 240-4.020) (the "Rule"). Among other things, the Rule prohibits attorneys for any party from making any statement other than "a quotation from or reference to public records, that a

reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to [among other things]. . . “[their] opinion as to the merits . . .” or the “character, credibility or criminal record of a party....”¹ Moreover, the Rule provides that it is “improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission”²

3. On both August 4, 2009 and August 20, 2009, MO-ACORN sponsored organized protests of the rate increase request reflected in this case outside AmerenUE’s headquarters in St. Louis. MO-ACORN members stated that “it is important that the Public Service Commission knows that the proposed rate increases are too much for it’s [sic] customers to bear;”³ that “we can’t accept these increases;”⁴ and that “Ameren is not playing fair.”⁵ MO-ACORN protesters carried signs stating things like “No Increase Not Now Not Ever.”⁶

4. Those statements, and the protests themselves are clear attempts to “bring pressure to bear upon the commission” outside the hearing process. Clearly these statements could not lawfully be made by MO-ACORN’s attorneys and indeed, as noted earlier, any MO-ACORN attorney who would participate in this case would have an affirmative duty to take steps to prevent extra-record statements of this type from being made by his client and their members. Moreover, the statements clearly appear to be statements by persons interested in a case before

¹ 4 CSR 240-4.020(1)(A). Attorneys for parties are required to “exercise reasonable care to prevent employees and associates from making an extra-record statement s/he is prohibited from making.” 4 CSR 240-4.020(1)(B).

² 4 CSR 240-4.020(4). This portion of the rule applies to “any person,” not just attorneys in the case.

³ www.stlbeacon.org (reported by Joe Mannies).

⁴ www.pww.org (People’s Weekly World, reported by Tony Pecinovsky).

⁵ www.kmox.com (reported by Kevin Killeen).

⁶ See, e.g., KTVI News Broadcast, Aug. 5, 2009.

the Commission (the protesters) attempting to sway the judgment of the Commission by attempts to influence the Commission outside the hearing process.

5. AmerenUE raises this issue with the Commission in connection with MO-ACORN's intervention request because it is very important for all parties, and certainly for MO-ACORN if it is allowed to intervene in this case, to understand their duties, as parties to the case, to try this case through the development of the official record in this case, rather than through attempts to themselves bring pressure to bear on the Commission (or to encourage others, directly or indirectly, to bring pressure to bear on the Commission).⁷ Consequently, if (as requested in MO-ACORN's Application) MO-ACORN is allowed to "become a party to this case for all purposes" the Company requests that MO-ACORN be ordered to fully comply with the Rule and that MO-ACORN be advised that its failure to comply with such an order will subject it to dismissal, as provided for by 4 CSR 240-2.116(3).⁸

WHEREFORE, AmerenUE requests that MO-ACORN be required to comply with the Commission's intervention rule (4 CSR 240-2.075(3)), and also requests that if MO-ACORN is allowed to intervene, that MO-ACORN be specifically ordered to comply with the Commission's Conduct During Proceedings Rules.

⁷ Attempts to bring pressure could include making comments on whether the request is or is not "excessive" or "fair" to the press or at "Town Hall Meetings" or similar events, or via activities such as organizing protests, all of which may have the effect of causing members of the general public to bring pressure to bear on the Commission outside the hearing process. As the Rule makes clear, neither direct attempts to bring such pressure to bear, nor indirect attempts, are allowed by the Rule.

⁸ 4 CSR 240-2.116(3) provides that a party may be dismissed "for failure to comply with any order issued by the commission..."

Respectfully submitted:

SMITH LEWIS, LLP

/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

UNION ELECTRIC COMPANY,

d/b/a AmerenUE

By: /s/ **Thomas M. Byrne**

Steven R. Sullivan, #33102

Sr. Vice President, General Counsel & Secretary

Thomas M. Byrne, #33340

Managing Associate General Counsel

1901 Chouteau Avenue, MC-1310

P.O. Box 66149, MC-131

St. Louis, MO 63101-6149

(314) 554-2514 (Telephone)

(314) 554-4014 (Facsimile)

AmerenUEService@ameren.com

Attorneys for AmerenUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 24th day of August, 2009:

Nathan Williams
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360
GenCounsel@psc.mo.gov

Lewis R. Mills
Missouri Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230
Lewis.mills@ded.mo.gov
opcservice@ded.mo.gov

Lisa C. Langeneckert
Sandberg Phoenix & Von Gontard, P.C.
One City Centre, 15th Floor
515 North Sixth Street
St. Louis, MO 63101-1880
llangeneckert@sandbergphoenix.com

Thomas G. Glick
Danna McKittrick, P.C.
7701 Forsyth Blvd., Suite 800
St. Louis, MO 63105
tglick@dmfirm.com

/s/ James B. Lowery _____
James B. Lowery