

**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.)	

**AMERENUE'S REPLY TO THE ANSWER OF MO-ACORN TO RESPONSE OF
AMERENUE TO APPLICATION TO INTERVENE OF MO-ACORN**

COMES NOW Union Electric Company d/b/a AmerenUE (the "Company" or "AmerenUE"), and hereby replies the above-captioned Answer of MO-ACORN, as follows:

1. MO-ACORN apparently acknowledges that its attorneys are bound by both Missouri Supreme Court Rule 4 and 4 CSR 240-4.020(1). However, MO-ACORN fails to acknowledge the restrictions that would apply to it and its members under 4 CSR 240-4.020(4), if MO-ACORN is allowed to intervene in this case.

2. To the extent that MO-ACORN's failure to acknowledge subsection (4) suggests that MO-ACORN believes it and its members are free to ignore subsection (4), MO-ACORN is mistaken.

3. While it may be true that a non-party and its members are free to protest or otherwise engage in efforts to sway an adjudicatory body's judgment outside the record of the case at issue, if MO-ACORN becomes a party to this case it and its members are bound by the rules that govern participation in a case before the Commission.

4. Nor does the First Amendment relieve them from compliance with this Commission's rules. Subsection (4) is a content-neutral restriction on speech. A content-neutral restriction on speech is valid under the First Amendment if "it furthers an important or

substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *See, e.g., Day v. Holahan*, 34 F.3d 1356, 1362 (8th Cir. 1994) (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968)).

5. Subsection (4) meets this standard. This is demonstrated by cases like *Burson v. Freeman*, 504 U.S. 191 (1992), which upheld a Tennessee statute prohibiting solicitation of votes and display or distribution of campaign materials within 100 feet of entrance to polling place as narrowly tailored to serve compelling state interest in preventing voter intimidation and election fraud. Like the statute in *Burson*, the state of Missouri and this Commission have a compelling interest in providing a fair and impartial hearing before the Missouri Public Service Commission and to prevent undue influence and pressure outside the record of this case. This state interest only incidentally restricts the speech of rate case parties (who will have a full and fair opportunity to make their points as part of the record in this case) and is no greater than is essential to the furtherance of this state interest. Consequently, 4 CSR 240-4.020(4), as written and as applied, is valid under the First Amendment.

WHEREFORE, the Company renews its requests that if MO-ACORN is allowed to intervene, that MO-ACORN and its members be specifically ordered to comply with the Commission’s Conduct During Proceedings Rules, including subsection (4).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, on counsel for the following parties of record in this case, on the 2nd day of September, 2009:

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