

**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-2007-0002
Service Provided to Customers in the	)	
Company's Missouri Service Area.	)	

**UNION ELECTRIC COMPANY d/b/a AMERENUE'S RESPONSE TO PUBLIC  
COUNSEL'S MAY 18, 2007 REPLY**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company") and hereby responds to Public Counsel's May 18, 2007 Reply to the Company's Motion to Strike filed on May 17, 2007, as follows:

1. Incredibly, the Office of the Public Counsel continues to ignore the fact that it was fully aware that the Company had, as of January 26, 2007 – six weeks before the evidentiary hearings in this case even began – made sales of capacity totaling approximately 200 megawatts. The Office of the Public Counsel of course must continue to deny this fact because to admit it would be to admit that the Office of the Public Counsel engaged in patent sandbagging on this issue until three weeks after the evidentiary hearings, despite the fact that if the issue were to be raised at all it should have been raised months ago. Indeed, the Office of the Public Counsel improperly relies on prices associated with the Company's limited industrial demand response rider pilot program that were the subject of direct testimony from the Company filed on *July 10, 2006* – nearly 11 months ago.

2. The Public Counsel's office, which is led by an experienced regulatory attorney and who employs an experienced regulatory economists who is quite familiar with capacity sales, would have this Commission believe that it didn't understand the import of Public Counsel's questions to Mr. Moehn – posed on January 26, 2007. The state was not similarly

confused, and it strains credulity to believe that confusion reigned in the Public Counsel's office, as that office would now have the Commission believe. On February 1, 2007 – six days after Mr. Moehn's deposition – the state propounded state DR 319 to the Company and specifically asked about the sale of capacity from AmerenUE plants. Like all DRs, the state served Public Counsel with a copy of state DR 319. Indeed, the Office of the Public Counsel requested copies of dozens of Company responses to other parties' DRs throughout this case. State DR 319 provided as follows:

**“AG/URI 319. Ref: Deposition of Mr. Moehn, (AmerenUE Capacity Sales**

**Transactions)** According to Mr. Moehn, AmerenUE has entered into new capacity sales agreements to sell approximately 200 megawatts of existing capacity. Please provide the following information regarding these agreements:

- a. Summarize the commercial terms of each such agreement.
- b. Provide complete copies of all power supply agreements.
- c. State and describe the economic benefits expected to be realized by AmerenUE from engaging in such transactions, instead of selling energy on an hourly basis as assumed in the Company's rate case production simulation runs.
- d. Provide complete copies of all studies, reports, analyses, workpapers, projections and other documents prepared by or for AmerenUE to evaluate the power sales opportunities.
- e. Provide copies of all e-mails sent or received by Mr. Moehn or by Mr. Schukar that were associated with the agreements.
- f. State the impact upon Mr. Schukar's proposed level of off-system sales margins for the test period if the new agreements are fully considered.
- g. Provide complete copies of ProSym output reports indicating the NS and WS scenarios supportive of your response to part (f), using updated relevant coal prices and other revised input values consistent with the Company's updated test year evidence.”

Thirteen days later, on February 13, 2006, the Company responded to state DR 319 and specifically reported the capacity sales it had made.

3. It is not difficult to see what the Office of the Public Counsel seeks to accomplish with its tardy Taum Sauk adjustment. The Office of the Public Counsel decided it wanted to add some more dollars toward its already outlying negative revenue requirement position, and it opportunistically thought it could grab a figure from Mr. Mill's direct testimony, filed nearly 11 months ago, and couple it with a discussion of capacity sales at the hearings, all in an effort to

support its improper adjustment. Confronted with the fact that Public Counsel could, and should, have raised this issue months ago, the Office of the Public Counsel now tries to parse words by drawing an artificial distinction between “regulatory” capacity sales and “capacity” sales. At bottom, even if no one had never mentioned capacity, if Public Counsel wanted to make an adjustment to the Company’s revenue requirement it was incumbent on Public Counsel to properly propose that adjustment in its direct case, not to sit on it until its post-hearing brief. The Office of the Public Counsel should not be rewarded for disregarding this Commission’s rules and processes, and the Due Process rights of the Company, with its out-of-time adjustment at this exceedingly late stage of these proceedings.

Dated: May 18, 2007

**Steven R. Sullivan, # 33102**

Sr. Vice President, General Counsel and  
Secretary

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### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Union Electric Company d/b/a AmerenUE Motion to Strike Public Counsel's May 18, 2007 Response was served via e-mail, to the following parties on the 18th day of May, 2007.

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