

**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)	Case No. ER-2007-0002
Rates for Electric Service Provided to Customers)	
in the Company's Missouri Service Area.)	

AMERENUE'S RESPONSE TO PUBLIC COUNSEL'S MOTION TO DISMISS

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE") and in response to the Motion to Dismiss filed by the Office of the Public Counsel ("Public Counsel") in this proceeding on January 12, 2007, states as follows:

1. On July 7, 2006 (not July 10, 2006 as Public Counsel's Motion incorrectly states) AmerenUE submitted to the Missouri Public Service Commission ("Commission") proposed tariff sheets to implement a general rate increase for its retail electric service to customers in its Missouri service territory.

2. On November 3, 2006, the Commission issued its Order Setting Local Public Hearings and Directing Notice, which scheduled fifteen local public hearings to be conducted in this case, and the companion gas rate case. On January 1, 2007, the Commission issued an order setting an additional local public hearing.

3. The Commission has held the 15 local public hearings that were originally scheduled. AmerenUE personnel attended all 15 local public hearings, actively participating in the question and answer session preceding the on-the-record portion of the hearings.

4. Public Counsel's Motion essentially argues that AmerenUE's entire electric rate case should be dismissed because AmerenUE *attorneys* only attended 12 of the 15 local public hearings that have been held to date. Public Counsel argues that there is some basis for this

request to be found in a Commission rule regarding the failure of a party to comply with a Commission order. In particular, the relevant portion of the rule cited in Public Counsel's Motion provides as follows:

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

4 CSR 240-2.116 (3).

This rule, by its terms, does not apply unless a party *fails to comply with an order issued by the Commission*, including any order that might require an attorney to appear at any of the enumerated proceedings. In this case, the Commission did not issue an order requiring attorneys representing each of the parties to appear at the scheduled local public hearings. AmerenUE did not fail to comply with any Commission order, and therefore it is not subject to dismissal under this rule.

5. The Commission's omission of any requirement for attorneys representing the parties to be present at the local public hearings in this case is consistent with its long-time practice in handling local public hearings. In fact, attorneys representing all of the parties have seldom if ever attended local public hearings scheduled in major rate cases.¹

6. Not requiring attorneys to attend is also consistent with logic. The purpose of local public hearings is to obtain the input of the general public in regulatory proceedings. Local public hearings are not designed for attorneys representing all the parties to cross-examine public witnesses, or raise other legal arguments. In fact, cross-examination of public witnesses by attorneys who do attend local public hearings has been quite properly discouraged by the

¹ Indeed, as discussed further below, an application of Public Counsel's flawed logic would subject every non-Staff, non-Public Counsel party (all fifteen of them) to dismissal, although none of them, including the Company, has violated any Commission order respecting attendance at local public hearings.

Commission. The Commission's long-standing practice of not entering orders requiring the presence of attorneys at every local public hearing recognizes that attorneys for the parties are not key participants in these proceedings, and frankly add little to the local public hearing process.

7. In this case, AmerenUE contacted Regulatory Law Judge Voss prior to the local public hearings to verify its understanding that attorneys representing AmerenUE were not required to be present at each local public hearing. During a telephone call placed to Judge Voss on January 4, 2007 by one of AmerenUE's attorneys, Jim Lowery, Judge Voss confirmed that attorneys were not required to be present at the local public hearings. In addition, on the evening prior to the Wentzville local public hearing (the first public hearing at which no AmerenUE attorney attended), the undersigned attorney for AmerenUE again discussed this issue with Judge Voss, and arranged for a procedure for one of the many other AmerenUE personnel who would be attending the local public hearing to introduce all of AmerenUE personnel who were to be present at that hearing. AmerenUE's discussions with Judge Voss make it absolutely clear that AmerenUE attorneys were not required to attend the local public hearings in this case.

8. AmerenUE does agree that it has an obligation to participate in a constructive manner at every local public hearing, and listen to the concerns expressed by its customers. AmerenUE has done so. To that end, AmerenUE has staffed the local public hearings with customer service personnel, district operations personnel and regulatory personnel. These personnel are in the best position to address the kinds of issues that arise at local public hearings. Indeed, Company personnel at the local public hearings have actively engaged with customers in the question/answer sessions, listened closely to the issues raised by customers, and responded to customer service issues where possible. For example, at the Wentzville public hearing (one of

the hearings at issue) a total of 11 Company representatives attended, including the Vice President of Gas Supply, the local district manager, and various customer service and operations personnel. Only six customers testified at that particular hearing. At the combined Hayti and Kirksville local public hearings (the other hearings at issue), five Company operations/customer service employees were present. Only seven customers testified at Hayti, and no customers testified in Kirksville. The substantial presence of AmerenUE personnel at these proceedings belies the portrait of an uncaring utility that Public Counsel attempts to paint in its Motion. The Public Counsel is simply ignoring the facts when it accuses AmerenUE of showing a disregard for the public and its customers based on its participation in the local public hearings.

9. AmerenUE also notes that if the Commission decides to change its existing practice and require an attorney for each party to attend every local public hearing, every prehearing conference, every hearing and every mediation session, it will have to dismiss a lot of parties from a lot of cases. Public Counsel lives in a particularly fragile glass house with respect to this issue. Although Mr. Mills himself tends to appear front and center at any hearing where television cameras are rolling, the record of the Office of the Public Counsel in attending more mundane prehearing conferences and hearings is, at best, quite spotty.

10. Finally, AmerenUE would point out that even if the Office of the Public Counsel's Motion had substantive merit (which it clearly does not) the remedy being sought—dismissal of a massive rate case that has involved months-long audits, exhaustive discovery, the preparation and filing of literally thousands of pages of documents, and the commitment of thousands of hours of work on the part of the Commission, AmerenUE, the Staff, and the

intervenors—would be a grossly disproportionate response to the technical violation Public Counsel has alleged.²

11. For all of the reasons stated herein, the Commission should reject the Office of the Public Counsel's motion to decide this important case on Public Counsel's incorrect interpretation of a technical rule, and decide the case on its merits.

WHEREFORE, AmerenUE respectfully requests that the Commission deny Public Counsel's Motion to Dismiss.

Respectfully Submitted,

Dated January 15, 2007

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² See, e.g., *Myers v. Moreno*, 564 S.W.2d 83, 84 (Mo. 1966) ("as a matter of policy Missouri law favors the disposition of cases on their merit when possible . . . The reason is simply that ' . . . the purpose of all courts is to do justice, . . . ' and the end of justice is best served when all litigants have had a chance to be heard").² Those principles apply with equal force here (indeed, *Myers* arose from an administrative proceeding where the administrative agency had dismissed a proceeding before it) (internal citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing AmerenUE's Response to Public Counsel's Motion to Dismiss was served via e-mail, to the following parties on the 15th day of January, 2007.

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