BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In Re: Union Electric Company's 2005 Utility Resource Filing pursuant to 4 CSR 240 – Chapter 22	)))	Case No. EO-2006-0240

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

In its Order, the Commission voted to set a hearing date for February 20 through 22, 2007 and to begin discovery procedures on December 1, 2006 in the Union Electric Company, d/b/a AmerenUE, Integrated Resource Plan case. The Commission chose this unnecessarily expedited hearing date despite the fact that AmerenUE is already tied up in its electric and gas rate cases and will have to split its resources to address both of these labor-intensive proceedings; and despite the fact that this Commission has no authority to enforce any Integrated Resource Plan ("IRP") filing even when it's in technical compliance with the rule. I am dissenting from the Order because this is a waste of time and resources, and will allow parties to attempt to hold AmerenUE hostage to gain concessions in the rate case.[1]

As the Order states, after several rounds of pleadings and negotiations, the parties in this case have been unable to resolve their disagreements about alleged deficiencies in AmerenUE's IRP filing. Staff and AmerenUE have filed a non-unanimous stipulation and agreement that resolves Staff's concerns and allows AmerenUE to correct the deficiencies in its 2008 IRP filing. The OPC and the other

[1] See *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*, Case No. ER-2007-0002; and *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Natural Gas Service Provided to Customers in the Company's Missouri Service Area*, Case No. GR-2007-0003.

intervenors[2] have filed responsive pleadings alleging deficiencies and demanding a hearing. The allegations of deficiencies center on the alleged dearth of demand-side management ("DSM") programs, as well as some technical objections, and the OPC and the other intervenors insist that the Commission is obligated to hold a hearing to take evidence of the deficiencies.

In June of 1992, the Commission adopted a set of complicated and technical rules that require electric utility resource planning, and the filing of a compliance document or integrated resource plan every three years by each electric utility.[3] Staff is charged with the weighty task of reviewing this IRP compliance filing **simply to determine whether it complies with the rule requirements** and subsequently file a report with the Commission if Staff finds no deficiencies.[4] Parties are allowed to intervene and if they allege deficiencies in the plan, they are charged with working with the utility to remedy those deficiencies.[5] If the parties cannot reach agreement on how to remedy any alleged deficiencies, the utility may file a response and Staff and any intervenors may file comments in response to each other.[6] The rule then allows the Commission to determine if a hearing is necessary prior to issuing findings.[7] **The only findings that the rule charges the Commission with making are the following:**

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[2] The intervenors in this case include the Department of Natural Resources and a group of parties led by the Sierra Club, namely Missouri Coalition for the Environment, Mid-Missouri Peaceworks and ACORN.

[3] *See* 4 CSR, Chapter 22. It should be noted that the Commission has suspended the requirements of Chapter 22 for over 10 years.

[4] 4 CSR 240-22.080(5).

[5] 4 CSR 240-22.080(8).

[6] 4 CSR 240-22.080(9).

[7] 4 CSR 240-22.080(9). A hearing is only necessary if there is a need for the Commission to determine if good cause exists to waive or grant a variance from the rule. 4 CSR 240-22.080(11). Contrary to the parties' assertions that a hearing is required, the plain language of the rule clearly indicates that a hearing "may" be held at the Commission's discretion. The fact that OPC and the other

1. Whether or not the utility's filing pursuant to the rule "demonstrates compliance with the requirements of Chapter 22";

2. Whether or not the utility's resource acquisition strategy meets the requirements of 4 CSR 240-22.010(2) (A)-(C); and

3. Address any utility requests for authorization or reauthorization of nontraditional accounting procedures for demand-side resource costs.[8]

Nowhere do the Commission's rules specify a penalty or consequence for failing to comply; and as ridiculous as this may seem, **nothing contained in the utility's integrated resource plan is enforceable** once approved by the Commission. The Commission has no authority to force the utility to implement and comply with the plan. The only thing the Commission has authority to do is require the filing of the plan and the imposition of a process that has no real consequence. It is unlikely that imposing additional burden and costly discovery and an evidentiary hearing upon AmerenUE will add any value to this plan. This is especially true in light of the fact that AmerenUE is in the middle of its two rate cases; AmerenUE has issued a Request for Proposals for the hiring of a consultant to immediately analyze demand-side management and energy-efficiency programs, the results of which will be included in AmerenUE's upcoming 2008 IRP filing; and AmerenUE has no plans for material additions to its generation resources prior to the filing of its 2008 IRP. Finally, given that Staff has indicated the existing resource planning rules will likely be changed as a result of upcoming rulemaking efforts,[9] and that Staff has indicated in its comments that the current resource planning rules are not reflective of the current industry environment,[10] I must agree with Staff that

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intervenors have objections and allegations of deficiencies does not establish that the Commission is required to hold a hearing.

[8] 4 CSR 240-22.080(13).

[9] *See* Public Hearing Transcript, Case No. EX-2006-0472, September 7, 2006, p. 14, as well as Staff's recommendations in Case No. EO-2006-0493.

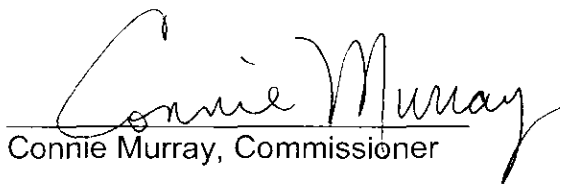
[10] *See* Staff Report, May 19, 2006, Appendix A, p. 1.

we should be reviewing AmerenUE's filing in the context of whether it complies with the "intent" of the rules and not the proscriptive technical requirements.

The Commission's insistence that an expedited hearing be held in this matter may cause prejudice to AmerenUE in its ability to adequately litigate both its rate cases and its IRP filing. The procedural schedules in these cases show that the months of January through April will be tied up in extensive litigation. An expedited hearing is certainly going to result in the splitting of resources and additional costs to the company, costs that may be allowed to flow through to AmerenUE's ratepayers in the long term. And while there are *allegations* of harm to consumers in the OPC's pleadings, they are vague at worst and mere possibilities at best – unlike the very clear and imminent nature of harm to the utility.

For the foregoing reasons, I must dissent from the Commission's Order. I do not believe that any hearing is necessary under these circumstances. And I clearly think that if a majority of the Commission wants to hold a hearing, it should wait until after the conclusion of AmerenUE's rate cases to avoid creating undue prejudice to the utility.

Respectfully submitted,



Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 9th day of November, 2006.