

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company d/b/a )  
AmerenUE's for Authority to File Tariffs )  
Increasing Rates for Electric Service Provided to )  
Customers in the Company's Missouri Service )  
Area. )

**Case No. ER-2010-0036**

**CONSUMER COUNCIL OF MISSOURI'S RESPONSE TO THE OFFICE OF THE  
PUBLIC COUNSEL'S MOTION TO CONFORM TARIFFS AND MOTION FOR  
EXPEDITED TREATMENT**

COMES NOW Consumers Council of Missouri ("CCM"), and for its Response to the Office of Public Counsel's ("OPC") Motion to Conform Tariffs with Suspension and Motion for Expedited Treatment, states as follows:

1. On May 28, 2010, the Missouri Public Service Commission ("Commission") rejected tariffs proposed by Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Ameren Missouri") to increase rates by \$402 million on an annual basis, and instead authorized AmerenUE to file new tariffs to increase rates by approximately \$228 million on an annual basis pursuant to its Report and Order in this rate case ("Report and Order"). CCM was an active intervenor in this rate case, as it was in the previous AmerenUE electric rate case.

2. On June 6, 2010, the Missouri Industrial Energy Consumers ("MIEC") filed a Writ of Review with the Cole County Circuit Court ("Court") pursuant to § 386.510 RSMo, properly appealing the \$228 million rate increase decision. Additionally, MIEC requested a stay pursuant to §386.520 RSMo.

3. On December 20, 2010, the Court issued its “Order Granting Stay Pursuant to Section 386.520” (“Stay Order”). On February 15, 2011, MIEC posted the suspending bonds ordered by the Court, and filed copies of these bonds with the Commission in this rate case on February 16, 2011.

4. On February 16, 2011, the OPC properly filed a Motion to Conform Tariffs with Suspension and Motion for Expedited Treatment with the Commission, reminding the Commission of its obligations to comply with the Court’s Stay Order. The OPC’s description of the Stay Order and of the applicable Missouri law is accurate. The Commission’s Report and Order in this case has been suspended by the MIEC’s posting of the suspending bonds, and therefore, AmerenUE may no longer lawfully collect that electric rate increase from customers (nor may it continue to collect the previous electric rate increase, pursuant to the specific terms of the Stay Order).

5. Missouri case law supports the principle that §386.520.1 applies equally to stays in cases involving rate increases and decreases, and that the Stay Order is effective at the time that suspension bonds are posted. *State Ex. Rel. Midwest Gas Users Ass’n*, 996 S.W.2d 608, 612-613 (Mo. Ct. App. 1999); *State Ex. Rel. AG Processing, Inc.*, 276 S.W.3d 303, 312-313 (Mo. Ct. App. 2008). The Stay Order was entered by a Missouri court with lawful jurisdiction over the Commission. The tariffs approved in Case No. ER-2010-0036 are now void, and the Commission has the legal duty to expeditiously suspend those tariffs to conform to the Stay Order.

AmerenUE’s residential electric customers are currently being charged unlawful electric rates, and now that the bonds have been posted, the Commission has no discretion to ignore the Stay Order which has been in effect for almost two months.

6. Importantly, this suspension applies not only to MIEC, but to all of AmerenUE's customers. CCM concurs in the legal analysis of the OPC that neither the Stay Order nor the statute regarding stays limits the application of this situation to the MIEC customers. The Stay Order itself explicitly states that the stay applies to all of AmerenUE's customers. Stay Order pp. 19, 27, 37.

7. The Stay Order requires that AmerenUE's rates be suspended to a level previously approved in a lawful manner. The Stay Order provides that pursuant to the Court's decision, and the separate stay order entered by the Pemiscot County Circuit Court in Case No. 09PE-CV00070-01, "AmerenUE's most recent rates that have not been stayed or suspended by this or any other court are the 2007 rates." Stay Order, p. 48. The difference between the rate increase authorized by the Report and Order and the former rate to which tariffs are to be stayed (based on 2007 rates) is roughly \$390 million per year in base rates, plus the additional amount by which AmerenUE's rates have been increased pursuant to AmerenUE's Fuel Adjustment Clause (FAC). The difference between the rates currently being charged and the electric rates most recently approved in a lawful manner equates to overcharging of ratepayers of nearly \$1.5 million per day.

8. Given the importance of ensuring that consumers do not continue to be charged unlawfully for essential energy services, CCM agrees with OPC that one week should be sufficient time for the Commission to consider OPC's requested relief. AmerenUE is familiar with the Stay Order and the nature of the actions required by the Stay Order, having been engaged in negotiations on this matter for months. The law leaves the Commission no discretion in complying with the Stay Order, and so there are

not multiple options to weigh regarding compliance. Furthermore, AmerenUE customers many of whom are currently suffering from the sluggish economy could be irreparably harmed by the continued collection of unlawful rates. Thus, CCM concurs in OPC's request that the Commission grant this matter expedited consideration of the appropriate relief for consumers, and to take swift action on this matter following the February 25, 2011 deadline set for responses to OPC's Motion.

WHEREFORE, for the foregoing reasons, CCM respectfully requests that this Court grant OPC's Motion to Conform Tariffs with Suspension as expeditiously as possible.

Respectfully submitted,

/s/ John B. Coffman

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Attorney for Consumers Council of Missouri

Dated: February 21, 2011

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record on this 21<sup>st</sup> day of February 2011.

/s/ John B. Coffman

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