

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 16th day
of June, 2010.

In the Matter of Union Electric Company, d/b/a)
AmerenUE's Tariffs to Increase Its Annual)
Revenues for Electric Service)

File No. ER-2010-0036

ORDER DENYING APPLICATIONS FOR REHEARING

Issue Date: June 16, 2010

Effective Date: June 16, 2010

On May 28, 2010, the Commission issued a Report and Order regarding Union Electric Company d/b/a AmerenUE's tariffs to increase its rates for electric service. That Report and Order became effective on Monday, June 7. On Friday, June 4, AmerenUE, the Midwest Energy Users' Association (MEUA), and the Office of the Public Counsel filed ~~timely~~ applications for rehearing.

The Missouri Industrial Energy Consumers (MIEC) submitted an Application for Rehearing to the Commission electronic filing system at 11:25 p.m. on Sunday, June 6. Because the filing was submitted on Sunday night, it was shown as filed at 8:00 a.m. on June 7, when the Commission's data center opened for business. On June 7, AmerenUE filed a motion asking the Commission to strike MIEC's application for rehearing as filed out of time. MIEC and Public Counsel filed pleadings opposing AmerenUE's motion to strike on June 14.

MOTION TO STRIKE MIEC'S APPLICATION FOR REHEARING

The time when MIEC's application for rehearing was filed is important because Section 386.500.2 RSMo (2000) provides:

[n]o cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, **before the effective date of such order or decision**, application to the commission for a rehearing. (emphasis added)

Commission orders take effect at the very beginning of their effective date.¹ That means the Commission's report and order became effective at 12:01 a.m. on June 7. For MIEC's application for rehearing to be timely filed, it must have been filed before that time.

MIEC submitted its application for rehearing at 11:25 p.m. on June 6, which is before the Report and Order became effective, but Commission rule 4 CSR 240-2.045(2) provides:

Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next business day.

The Commission's records room closes for the week at 5:00 p.m. on Friday, so by operation of the rule, a pleading filed on Sunday evening is considered filed as of the start of the next business day. In this case, that means MIEC's application for rehearing was filed at 8:00 a.m. on Monday, June 7, after the Report and Order became effective, and thus was late.

However, for purposes of this case, in its Order Adopting Procedural Schedule and Establishing Test Year issued September 14, 2009, the Commission waived its filing rules so that filings made in the Commission's electronic filing system would be timely if filed before midnight on the date the filing was due. Since applications for rehearing were due on June 6, before the report and order became effective on June 7, MIEC's filing on the evening of June 6 was timely. Therefore, the Commission will deny AmerenUE's motion to

¹ *State ex rel. Alton R. Co. v. Pub. Serv. Com'n*, 348 Mo 780, 155 S.W. 2d. 149 (Mo 1941); 4 CSR 240-2.050(2).

strike MIEC's application for rehearing and will consider the merits of that application along with the other applications.²

B. THE MERITS OF ALL APPLICATIONS FOR REHEARING

Section 386.500.1, RSMo (2000), indicates the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." The applications for rehearing merely restate positions the Commission has previously rejected in its Report and Order. In the judgment of the Commission, AmerenUE, MEUA, Public Counsel, and MIEC have not shown sufficient reason to rehear the Report and Order. The Commission will deny their applications for rehearing.

THE COMMISSION ORDERS THAT:

1. AmerenUE's Motion to Strike Missouri Industrial Energy Consumers' Application for Rehearing Filed Out-of-Time is denied.
2. Union Electric Company d/b/a AmerenUE's Application for Rehearing is denied.
3. Midwest Energy Users' Association's Application for Rehearing is denied.
4. The Office of the Public Counsel's Application for Rehearing is denied.
5. Missouri Industrial Energy Consumers' Application for Rehearing is denied.

²The Commission's determination that MIEC's application for rehearing was timely filed actually has little meaning for the purposes of this order. The ultimate determination of whether MIEC's application for rehearing was timely filed will be made by the circuit court if MIEC seeks judicial review of the Report and Order. By addressing the merits of the application, the Commission does not change MIEC's ability, or inability, to seek judicial review of the Report and Order. The Missouri Supreme Court, in the previously cited *Alton* case, indicated:

If the motion for rehearing was not timely filed, the order and decision of the commission became final and conclusive and was not reviewable by the circuit court. It was immaterial that the secretary of the commission may have received and filed the motion for rehearing out of time, or that the commission may have ruled the motion upon its merits. (155 S.W.2d at 154)

6. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)

A handwritten signature in black ink, appearing to read 'S. C. Reed', is positioned above the printed name and title.

Steven C. Reed
Secretary

Jarrett, Gunn, Kenney, CC., concur.
Clayton, Chm., dissents, and Davis, C., dissenting with
separate dissenting opinion to follow.

Woodruff, Chief Regulatory Law Judge