

**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)	<u>Case No. ER-2007-0002</u>
Rates for Electric Service Provided to Customers)	Tariff No. YE-2007-0007
in the Company's Missouri Service Area.)	

**PUBLIC COUNSEL'S MOTION TO STRIKE TESTIMONY AND REJECT TARIFF,
AND RESPONSE TO AMERENUE'S MOTION FOR ANY NECESSARY LEAVE TO
FILE ADDITIONAL TESTIMONY, FOR ANY NECESSARY WAIVERS, AND TO
DENY PENDING MOTIONS**

COMES NOW the Office of the Public Counsel ("Public Counsel") and for its Motion to Reject Tariff and Response to AmerenUE's Motion for any Necessary Leave to file Additional Testimony, for any Necessary Waivers, and to Deny Pending Motions states as follows:

1. On July 7, 2006, Union Electric Company d/b/a AmerenUE filed a motion to adopt procedures for implementing a fuel adjustment clause. Numerous parties opposed that request, and on September 28, the Commission issued an order denying AmerenUE's request.

2. Despite having explicitly asked the Commission's approval for leave to file a tariff and testimony in support of a fuel adjustment clause (FAC), and despite the Commission denying AmerenUE's motion, AmerenUE proceeded to file the FAC tariff and testimony on September 29. Public Counsel opposes this filing and requests that the Commission strike that portion of AmerenUE's September 29 filing.

3. AmerenUE, by filing only a part of its rate case on July 7, has created a problem for itself and is now continuing to perform contortions to try to wriggle out of that problem. After having sought Commission approval to add the FAC to its rate case almost three months into the case, and after having that approval denied, AmerenUE now seeks "any necessary leave" to add the FAC to its case. AmerenUE argues that it was necessary to delay that filing because

the Commission's FAC rules had not taken shape when the rate case was filed. AmerenUE conveniently ignores the fact that Aquila, Inc. filed a case at the same time AmerenUE did, and was able to file a FAC tariff at that time. AmerenUE also attempts to blame the Commission Staff for the timing of its rate case filing, and even suggests that filing the largest rate increase request in Missouri history was some sort of public service. The fact is that AmerenUE, and AmerenUE alone, was in control of when its rate case was filed and what its rate case included. Other parties should not be forced to play catch-up because AmerenUE chose to file when it did and chose not to include in that filing what it knew would be a hotly contested issue.

4. Public Counsel, in its Response to AmerenUE's Motion to Adopt Procedures for Implementing AmerenUE's Requested Fuel Adjustment Clause and Motion for Directed Verdict filed on August 31, has already addressed the reasons that AmerenUE should not be allowed to add the FAC at this late date and will not repeat those arguments here. The new issue is that AmerenUE filed the FAC tariff and testimony on September 29 despite the Commission's September 28 order. That order stated in Ordered Paragraph 1 that "Union Electric Company, d/b/a AmerenUE's Motion to Adopt Procedures for Implementing AmerenUE's Requested Fuel Adjustment Clause is denied." It did not state that part of that order was denied and part granted. It did not state that part was denied and part would be ruled on later. It stated flatly that the motion was denied. The order did not clearly state whether the Commission allowed AmerenUE's attempt to amend its July 7 motion, but it implicitly approved that amendment by noting that "AmerenUE ... modified its July 7 request." In any event, AmerenUE asked for, or attempted to ask for, Commission approval to add the FAC testimony and tariff to its rate case, and the Commission clearly refused to grant that approval. The Commission should reject the tariff filing and strike the supporting testimony.

WHEREFORE, Public Counsel respectfully requests that the Commission strike the testimony of Martin Lyons and the Fuel and Purchased Power Adjustment Clause tariff sheet filed on September 29, 2006.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

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