

**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 Rates for Electric)	<u>Case No. ER-2010-0036</u>
Service Provided to Customers in the)	
Company's Missouri Service Area.)	

**MOTION TO CONFORM TARIFFS WITH SUSPENSION AND MOTION FOR
EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and for its Motion to Conform Tariffs with Suspension and Motion for Expedited Treatment states as follows:

1. In Case No. ER-2010-0036, after a lengthy contested case, the Commission rejected tariffs designed to implement a general rate increase filed by Union Electric Company, d/b/a AmerenUE.¹ Although it rejected the original rate increase tariffs, the Commission authorized AmerenUE to file new tariffs that would implement a somewhat smaller rate increase.

2. Certain industrial customers of AmerenUE, who comprise an association known as the Missouri Industrial Energy Consumers or MIEC, appealed the approval of the smaller rate increase through the filing of a petition for writ of review pursuant to Section 386.510 RSMo 2000. Certain members of the MIEC² also requested a stay pursuant to Section 386.510. The Cole County Circuit Court docketed the case as Case No. 10AC-CC00411 (consolidated with Case No. 10AC-CC00474). Public Counsel sought, and was granted, intervention in the matter pursuant to Section 386.510.

¹ Since the end of Case No. ER-2010-0036, AmerenUE has begun doing business as Ameren Missouri rather than AmerenUE. Because the relevant Commission orders and court orders refer to AmerenUE, this pleading will do so as well.

3. The Cole County Circuit Court issued its “Order Granting Stay Pursuant to Section 386.520” (Stay Order) on December 20, 2010. Since that time, the parties have been in settlement discussions and have taken no action with respect to the matter. The settlement discussions were unsuccessful, and on February 15, 2011, Anheuser-Busch Companies, Inc., The Doe Run Resources Corporation, Enbridge Corporation, and Noranda Aluminum, Inc. (collectively, the “Movants”) posted the suspending bonds ordered by the court. Public Counsel understands that the Missouri Industrial Energy Consumers (of which the Movants are all members) will file evidence confirming the posting of the bonds as part of their response to this filing.

4. The operation of the Stay Order is quite straightforward, and it follows three simple principles. First, the Commission’s order authorizing and approving the rate increase will be suspended once the Movants post the suspending bonds. Second, the suspension of the rate increase applies to all customers, not just the Movants. Third, a suspension means that the utility cannot collect the increase from any customer. Public Counsel does not believe that there will be any dispute over whether the suspending bonds comply with the Stay Order³ and so will focus its discussion on the second and third principles.

5. The Court began its analysis of Section 386.520, which provides in subsection 1 that “the circuit court in its discretion may ... suspend ... the operation of the commission's order or decision,” by noting the “breadth of this simple phrase in Section 386.520.1.” (Stay Order at page 9). The Court also noted the lack of any language in Section 386.520 that suggests that any

² Anheuser-Busch Companies, Inc., The Doe Run Resources Corporation, Enbridge Corporation, and Noranda Aluminum, Inc. (collectively, the “Movants”)

³ While the Stay Order does note that Section 386.520.4 allows it to increase the amount of the bonds, there is no evidence before the Court to support a higher amount and no party has asked the Court to change the amount.

stay ordered by the court would be limited to the parties seeking the stay. (Stay Order at page 19). The Court stated that:

Accordingly, the Court holds that Section 386.520.1 only authorizes the Court to “stay or suspend” PSC orders (or parts of PSC orders) but there is nothing in this subsection (or in the rest of Section 386.520, or in the balance of Chapters 386 and 393) that limits the effect of such a stay or suspension to petitioners. If the operation of a PSC order is stayed, it is stayed for everyone to which it otherwise would have applied. **If it is suspended, it is suspended for everyone to which it otherwise would have applied.** (Stay Order at pages 22-23; emphasis added.)

6. The third principle follows naturally from the second: if an increase is suspended, no customer can be required to pay it. With respect to Section 386.520.3, the Court stated that: “this subsection demonstrates that the General Assembly understood that a circuit court order staying or suspending a PSC order setting rates **rendered those rates without effect for every customer** whether in the case or not.” (Stay Order at page 27; emphasis added.) Finally, the Court stated that:

the General Assembly understood that – when a court stays or suspends the operation of such a PSC order approving a rate increase – **the utility cannot collect that increase from any customer** and thus there can be no “disputed” payments to impound in the registry. (Stay Order at page 37; emphasis added.)

7. The Commission has no discretion in this matter. The Commission’s Report and Order in Case No. ER-2010-0036 has been suspended (insofar as it approved a rate increase) by a court of lawful jurisdiction. As of now, the tariffs of Ameren Missouri, which the Commission maintains as a public record reflecting currently effective rates and charges, are not accurate. The Circuit Court has ordered that “those rates [are] without effect for every customer,” and thus the Commission has no choice but to designate them as no longer effective. The Commission must now perform the ministerial duty of conforming the tariffs to the Stay Order by designating the tariffs currently stamped “effective” as “cancelled” or “suspended.” The Commission must also

designate the prior tariffs, which are currently stamped “cancelled,” as “effective” as of February 15, 2011 (the date that the Stay Order became effective by the posting of the suspending bonds).

8. The difference between the rates under the tariffs that the Commission has currently designated as “effective” and the rates that AmerenUE may now lawfully charge is approximately \$226.3 million on an annual basis. That means that the now-suspended tariffs, which the Commission still shows as “effective,” reflect rates that are approximately \$619,000/day higher than the rates that AmerenUE must now charge.⁴

Motion for Expedited Treatment

9. Public Counsel requests expedited treatment of this request. Pursuant to 4 CSR 240-2.080(16)(A), Public Counsel states that it desires the Commission to act no later than its next regularly-scheduled public meeting on February 23. Pursuant to 4 CSR 240-2.080(16)(B), Public Counsel states that the harm that will be avoided is the possibility of customer confusion over the amount that AmerenUE may charge, if the tariffs on file with the Commission continue to show that the rates which have been suspended pursuant to the Stay Order are “effective.” Pursuant to 4 CSR 240-2.080(16)(C), Public Counsel states it filed this motion as soon as it could have been given that the suspending bonds were posted on February 15, and this motion is being filed on February 16.

10. Although Public Counsel seeks Commission action in just one week, a week is sufficient time under the circumstances. First, the action sought is ministerial and there is no need for lengthy deliberation because the Commission has no discretion in the matter. Second, the Stay Order was issued almost two months ago, and so the Commission and AmerenUE have had ample time to analyze it and understand its effect. If the Commission wishes to hear from

⁴ \$226,300,000/365.

AmerenUE, it should order AmerenUE to reply no later than February 21, so that the Commission may consider AmerenUE's reply and still act by February 23.

WHEREFORE, Public Counsel respectfully requests that the Commission conform AmerenUE's tariffs to the "Order Granting Stay Pursuant to Section 386.520" issued by the Cole County Circuit Court on December 20, 2010, and that the Commission do so expeditiously as requested herein

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed to parties of record this 16th day of February 2011.

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