

**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)	
in the Company's Missouri Service Area.)	

MOTION TO DISMISS

COMES NOW The Office of the Public Counsel and for its Motion to Dismiss states as follows:

1. On July 10, 2006, Union Electric Company d/b/a AmerenUE submitted to the Missouri Public Service Commission certain proposed tariff sheets to implement a general rate increase for its retail electric service to customers in its Missouri service area.

2. On November 3, 2006, the Commission issued its Order Setting Local Public Hearings and Directing Notice. In that order, among other things, the Commission set the dates, times and locations for fifteen local public hearings to be conducted in this case. On January 1, 2007, the Commission issued an order setting an additional local public hearing and directing that notice of that hearing be given.

3. At the very first hearing, held on January 2, 2007, at the Thornhill Branch Library in St. Louis County, AmerenUE was not represented by counsel.¹ At the hearing in Wentzville on January 9, AmerenUE again failed to appear. And AmerenUE failed to

¹ Although there was an AmerenUE attorney present, she was not licensed to practice law in Missouri and so could not represent the company.

appear yet again at the hearings held simultaneously in Jefferson City, Hayti and Kirksville on January 10.

4. Commission rule 4 CSR 240-2.116(3) on dismissal provides that:

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

AmerenUE has failed to appear not just once, but at least three times. One failure could perhaps be excused, but three times clearly shows a pattern of willful disregard for the Commission and its authority. Moreover, it shows AmerenUE's disregard for the public and its customers.

5. AmerenUE has a full stable of in-house lawyers – at least six, and probably closer to ten – and has used at least three outside lawyers already in this proceeding. Just this week, AmerenUE flew in a Washington, D.C. lawyer to take the deposition of Missouri Attorney General witness Brosch. If AmerenUE can get a lawyer from DC to Jefferson City when it serves its interests, why can't it get one of its in-house lawyers from St. Louis to Wentzville?

6. The Commission's dismissal rule gives the Commission the discretion to dismiss or not dismiss a party for failing to appear at a public hearing. Some of the factors the Commission should consider in deciding how to use its discretion are:

- the posture of the party in the case: is it the moving party, a defending party, or a party just interested in a few issues?
- the resources of party: is it a small state agency or a large profitable utility?
- whether the failure to appear was excusable: did the party have a conflict with another case, or did the party attempt to appear but have car trouble?

In this case, AmerenUE is the moving party and so has a much stronger responsibility than any other party to appear at public hearings. AmerenUE certainly has the resources to send one of its many lawyers to these local hearings. AmerenUE has failed to appear not once, but three times.² Such a pattern of repeated failures cannot be written off to car troubles or conflicts or any plausible reason other than willful disregard of the Commission's process. Moreover, AmerenUE has never – either before or after its failures to appear – requested leave or excuse from the Commission for these failures.

7. If the Commission dismisses AmerenUE as a party, it should then dismiss and close the case. Section 393.150 RSMo 2000 provides that, in a general rate case such as this, the burden of proof to show that the proposed increased rate is just and reasonable shall be upon the utility. If AmerenUE is dismissed as a party pursuant to 4 CSR 240-2.116(3), then there is no way for it to move forward with its burden of proof, and there is no reason to proceed with this case.

WHEREFORE Public Counsel respectfully requests that the Commission dismiss AmerenUE as a party pursuant to 4 CSR 240-2.116(3), and close this case.

² Since several of the public hearings that AmerenUE missed were held at multiple locations (connected electronically) at the same time, AmerenUE has technically failed to appear at four public hearings – so far. More importantly, the multiple locations gave AmerenUE multiple choices about where to go to make its appearance at two or three of the hearings that it missed.

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OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 12th day of January 2007.

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