

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 23rd day
of November, 2009.

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2010-0036</u>
AmerenUE's Tariffs to Increase Its Annual)	Tariff Nos. YE-2010-0054
Revenues for Electric Service)	and YE-2010-0055

**ORDER DENYING MOTION FOR SUMMARY DETERMINATION AND
MOTION FOR DIRECTED VERDICT**

Issue Date: November 23, 2009

Effective Date: November 23, 2009

Union Electric Company, d/b/a AmerenUE has issued a tariff that would implement an interim rate increase of 1.67 percent, subject to refund, as an accompaniment to its general rate increase request. In an order issued on October 7, 2009, the Commission suspended that interim rate increase tariff until January 29, 2010, and established a procedural schedule leading to an evidentiary hearing on December 7. On October 28, the Office of the Public Counsel filed a motion asking the Commission to summarily reject AmerenUE's interim rate tariff under Commission rule 4 CSR 240-2.117. As an alternative, Public Counsel asks the Commission to direct a verdict rejecting AmerenUE's tariff. AmerenUE responded to Public Counsel's motion on November 10.

Public Counsel seeks summary determination in its favor pursuant to Commission rule 4 CSR 240-2.117. However, while that rule generally allows any party to file a motion seeking summary disposition, the first line of subsection (1) specifically excludes the use of summary disposition in "a case seeking a rate increase or which is subject to an operation of law date." AmerenUE's interim rate tariff is seeking a rate increase and is subject to an

operation of law date, so, by the plain language of the rule, Public Counsel's motion for summary determination is not allowed.

Public Counsel recognizes the restriction in the rule, but asks the Commission to waive that restriction for good cause, as the Commission is allowed to do by 4 CSR 240-2.015. As good cause, Public Counsel claims that summary determination in its favor would allow the efficient and expeditious resolution of the interim rate issue without what it contends is an unnecessary resource and time consuming procedural schedule and hearing.

Public Counsel contends the Commission's summary determination rule excludes the use of summary determination in rate cases and cases that have an operation of law date because of a concern that utilities would use that device to force other parties to respond to such a motion in a short time-frame, thereby depriving those parties of their right to a full and fair hearing. If that is the basis for the rule's restriction on the use of summary determination, then Public Counsel has not demonstrated sufficient reason why the rule should not also operate to protect a utility's right to a full and fair hearing.

Public Counsel has failed to demonstrate good cause for the Commission to waive the rule's explicit restriction on the use of the summary determination procedure. Therefore, Public Counsel's motion for summary determination is procedurally improper and on that basis will be denied.

Even if the Commission were to consider the merits of Public Counsel's motion, it would deny that motion. Public Counsel contends it is entitled to summary determination because AmerenUE has failed to produce evidence to show that the company is facing an emergency or near emergency if it is not allowed to implement an interim rate increase.

Indeed, AmerenUE has conceded that it is not facing an emergency or near emergency.¹ However, Public Counsel's motion fails because the Commission is not obligated to apply an emergency or near emergency standard to AmerenUE's interim rate request, and therefore, AmerenUE is not obligated to present evidence sufficient to meet that standard.

The Commission's authority to grant an interim rate increase was recognized by the Missouri Court of Appeals in a 1976 case involving Laclede Gas Company.² The *Laclede* decision found that the Commission has an implied power to grant interim rate adjustments under the "file and suspend" provisions of the statutes that require public utilities to change rates by filing tariffs and that allow the Commission to suspend a rate change tariff to allow time to conduct a full hearing to determine whether that tariff will result in just and reasonable rates.³ Specifically, the *Laclede* decision holds that "the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation."⁴

Thus, the Commission has "broad discretion" to determine whether an interim rate adjustment should be granted. In the *Laclede* case, the Commission applied an emergency standard to determine that Laclede was not facing an emergency and thus should not be allowed to implement an interim rate increase. The *Laclede* decision upheld the Commission's use of such an emergency standard against Laclede's contention that the existing rates were so unreasonably low as to resulting in a confiscation of Laclede's

¹ Transcript of September 14, 2009 Oral Argument, Page 34, Lines 1-4.

² *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W.2d 561 (Mo. App. K.C. Dist. 1976).

³ *Laclede*, at 565-567.

⁴ *Laclede*, at 567.

property.⁵ But the decision does not limit the Commission's "broad discretion" by requiring the Commission to use an emergency standard when considering an interim rate adjustment.

In other words, the Commission would be within its "broad discretion" to allow AmerenUE an interim rate increase only upon proof of an emergency. In cases decided after the *Laclede* decision, the Commission has utilized an emergency standard when evaluating a utility's request for an interim rate increase. Ultimately, after hearing AmerenUE's request in this case, the Commission may once again adhere to an emergency standard. However, the "broad discretion" described in the *Laclede* decision would allow the Commission to approve an interim rate increase, even without proof of an emergency. Therefore, the fact that AmerenUE has not offered proof that it is facing an emergency does not preclude the Commission from approving the company's interim rate increase if it chooses to do so. As a result, AmerenUE's failure to prove the existence of an emergency does not entitle Public Counsel to summary determination in its favor.

As an alternative to its motion for summary determination, presumably as a means of avoiding the regulation's restriction on the use of summary determination in rate cases, Public Counsel asks the Commission to direct a verdict in its favor. A procedure for granting a directed verdict is not described in the Commission's regulations, but, as Public Counsel indicates, the Commission has granted directed verdicts in the past.⁶

AmerenUE has presented its direct testimony in support of its interim rate increase and a directed verdict might be appropriate if the evidence presented is insufficient to

⁵ *Laclede*, at 573-574.

support the relief AmerenUE seeks. In this case, AmerenUE's testimony does not establish the existence of an emergency as justification for an interim rate increase. However, Public Counsel's motion for a directed verdict must fail for the same reason it is not entitled to summary determination in its favor. The Commission's broad discretion regarding requests for interim rate changes does not require proof of the existence of an emergency and therefore, AmerenUE's failure to produce evidence of an emergency does not justify a directed verdict in favor of Public Counsel. On that basis, the Commission will deny Public Counsel's motion for directed verdict.

THE COMMISSION ORDERS THAT:

1. Public Counsel's Motion for Summary Determination and Request for Leave and Waiver is denied.
2. Public Counsel's Motion for Directed Verdict is denied.
2. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, CC., concur,
with separate concurring opinions may follow;
Gunn and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge

⁶ The case cited by Public Counsel in which the Commission granted a directed verdict was a rate case brought by a small water and sewer company. *In the Matter of Sewer and Water Tariff Filings Made by Osage Water Company*, 12 Mo. P.S.C. 3d 343 (2004).