

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

Case No. ER-2010-0036

**RESPONSE OF AARP AND CONSUMERS COUNCIL OF MISSOURI TO THE
COMMISSION'S ORDER CONCERNING THE APPROPRIATENESS OF
AMERENUE'S CURRENT FUEL ADJUSTMENT CLAUSE AND REQUEST FOR
ADMINISTRATIVE NOTICE OF PREVIOUS TESTIMONIAL EXHIBITS**

COMES NOW AARP and the Consumers Council of Missouri (CCM), and hereby respond to the Public Service Commission's ("Commission's") "Order Directing Parties to Submit Testimony Concerning the Appropriateness of AmerenUE's Current Fuel Adjustment Clause", issued on February 10, 2010 ("FAC Order"), and further request, pursuant to Section 536.070(6) RSMo., that the Commission take official notice (administrative notice) of previous testimony that was submitted on behalf of AARP on this topic and that was admitted into the record of a previous AmerenUE electric rate case that was docketed as Case No. ER-2007-0002.

AARP and CCM appreciate the opportunity that has been granted by the Commission to provide testimony in this rate case regarding the appropriateness of permitting AmerenUE to utilize a Fuel Adjustment Clause ("FAC"), and if such a mechanism is permitted, under what terms it should be permitted. AARP and CCM oppose generally the imposition of any FAC because it is a single-issue surcharge that is unfair to consumers and because of the severe damage such mechanisms do to the

utility's incentive to be efficient. An FAC is particularly unnecessary for AmerenUE, and ill-suited to its operations which benefit from ample off-system sales opportunities to help it hedge against fuel cost volatility. Thereby, AARP and CCM recommend, as they have for the past two rate cases, that the Commission reject AmerenUE's proposal for a FAC in this electric rate case.

One of the questions posed to the parties by the Commission in its FAC Order is whether AmerenUE's current 95% pass-through mechanism "provides AmerenUE with sufficient financial incentive to make reasonable efforts to minimize its fuel and purchased power costs". FAC Order, page 2. Based on a review of the prefiled direct testimony of MIEC witness Maurice Brubaker, the prefiled direct testimony of Office of the Public Counsel witness Ryan Kind, and the prefiled direct testimony of Staff witness Lena Mantle, the answer to that question is clearly "No". These three witnesses suggest various alternate FAC sharing mechanisms, including an 80%/20% sharing mechanism or a 70%/30% sharing arrangement.

If the Commission does indeed determine that AmerenUE should continue to be permitted a FAC, it is the recommendation of AARP and CCM that the risk of fuel cost variation be shared *equally* between ratepayers and utility shareholders through a 50%/50% sharing mechanism. It is entirely unreasonable to require ratepayers to bear 95% of the risk of variation in fuel and purchased power cost, when it is the utility that controls the management of these costs and it is the utility that is allowed a rate of return. It has continued to be the position of AARP and CCM that, if the Commission does not invoke its right under the law to reject the FAC altogether, no more than one-half of fuel and purchased power costs be passed-through the FAC surcharge, while the

other 50% of these costs should be embedded in base rates at a reasonable level in order that the utility maintain a sufficient incentive to efficiently manage these costs.

While AARP and CCM have not been able to retain an expert witness to appear in this case on short notice to testify on these issues as solicited by the Commission, there is testimony on this very topic that was offered by AARP and accepted into the record of a previous AmerenUE electric rate, docketed as Case No. ER-2007-0002. On December 29, 2006, Ron Binz prefiled Direct Testimony on the appropriateness of a FAC for AmerenUE, and on February 27, 2007, Nancy Brockway prefiled Surrebuttal Testimony on this same topic. During the evidentiary hearing in that electric rate case, Ms. Brockway took the witness stand adopting both pieces of prefiled testimony, and after cross-examination, these were admitted into the record as Exhibits 750 and 751, respectively. (True and accurate copies of these exhibits are attached hereto).

Even though the Commission rejected the FAC altogether in Case No. ER-2007-0002, the issue of the proper amount of sharing was thoroughly litigated in that case. Exhibits 750 and 751 from that case were admitted as Ms. Brockway's testimony, along with her cross-examination, and are now contained in the Commission's official records.

Pursuant to Section 536.070(6) RSMo. of the Missouri Administrative Procedure Act, the Commission has the authority to take official notice of any matter for which a court may take judicial notice, including evidence contained in the official public record of its own previous rate cases. Such official notice (or "administrative notice"), is proper in this instance and would promote a just and reasonable result in this case because it will provide the Commission with a more complete record and a wider array of options in this case.

WHEREFORE, AARP and CCM respectfully request that the Commission take administrative notice of Exhibits 750 and 751 as contained in the record of Case No. ER-2007-0002, pursuant to Section 536.070(6) RSMo.

Respectfully submitted,

/s/ John B. Coffman

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Attachments:

1. Exhibit 750 from Case No. ER-2007-0002, the prefiled Direct Testimony of Ron Binz.
2. Exhibit 751 from Case No. ER-2007-0002, the prefiled Surrebuttal Testimony of Nancy Brockway.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record on this 26th day of February 2010:

/s/ John B. Coffman
