

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

**ANSWER OF MO-ACORN TO RESPONSE OF AMERENUE
TO APPLICATION TO INTERVENE OF MO-ACORN**

COMES NOW MO-ACORN and pursuant to 4 CSR 240-2.080 (15) and hereby files this Reply to the Response to its Application to Intervene. In this regard, MO-ACORN states as follows:

DISCLOSURE OF MEMBERS

1. MO-ACORN has sought leave to amend its petition to more specifically indicate the corporate structure in order to demonstrate that it is in compliance with 4 CSR 240-2.075 and that it is not an association of persons but is an Arkansas corporation.
2. It does not appear to be the intent of the drafters of the regulation to apply this rule 4 CSR 240-2.075 of listing associations to this situation. Consistent with this interpretation in the current case AmerenUE has filed no request for listings of individuals from other proposed interveners including the IBEW or the Midwest Energy Users Association.
3. Application of this rule to MO-ACORN in this situation would violate the First Amendment of the Constitution of the United States.
4. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right

of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

5. The First Amendment is applicable to the states via the Fourteenth Amendment.
6. The Missouri Public Service Commission is a state actor.
7. AmerenUE relies upon 4 CSR 240.2.075, which states in paragraph (3) “An association filing an application to intervene shall list all of its members.”
8. This provision is unconstitutional as the Supreme Court of the United States has affirmatively held that one of the hallmarks of the First Amendment’s right to freely associate is to do so privately. The Court stated in its opinion of *NAACP v. Alabama ex rel. Patterson*, that a request for the NAACP to disclose its members “was found to be an impermissible, though indirect, infringement of the members’ associational rights.” 357 U.S. 449, 461 (1971). This was reminiscent of Justice Stewart’s statement in *Bates v. City of Little Rock*, that “freedom such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference” such as demanding membership lists. 361 U.S. 516, 523 (1960).

PUBLIC STATEMENT RULES

9. The attorney for MO-ACORN acknowledges the ethical obligations placed upon him by 4 CSR 240-4.020(1)(B) and acknowledges his affirmative duty to take steps to prevent extra-record statements of this type from being made by his client.
10. In their second claim, AmerenUE relies upon 4 CSR 240-4.020, which states that any attorney involved in a proceeding before the commission shall not “make or

participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to any of the following...”

11. The Eastern District of Missouri has stated, “Any government regulation that limits or conditions in advance the exercise of First Amendment activity constitutes a form of prior restraint and any such restraint bears a heavy presumption against its constitutional validity. *City of St. Louis v. Kiely*, S.W.2d 694, 697 (Mo.App. E.D. 1983).

WHEREFORE, MO-ACORN notes that AmerenUE has presented no objection to their original Application to Intervene and therefore prays that they be allowed to intervene in accordance with their Amended Petition and in accordance with all applicable laws.

DANNA MCKITRICK, P.C.

BY: /s/ Thomas G. Glick
Thomas G. Glick, #44769
7701 Forsyth Blvd., Suite 800
St. Louis, MO 63105-3907
(314) 726-1000/(314) 725-6592 fax
E-mail: tglick@dmfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was mailed, U. S. Mail, first class postage prepaid, this _____ day of August, 2009, to:

General Counsel's Office
Missouri Public Service Commission
P O Box 360
Jefferson City MO 65102

Office of the Public Counsel
P O Box 2230
Jefferson City MO 65102-2230

James B. Lowery
Smith lewis, LLP
111 S. Ninth Street, Suite 200
P O Box 918
Columbia, MO 65205

Steven R. Sullivan
General Counsel
Ameren Services Company
P O Box 66149 (MC 1300)
St. Louis, MO 63166-6149

Thomas M. Byrne
Managing Associate General Counsel
Ameren Services Company
P O Box 66149 (MC 1300)
St. Louis, MO 63166-6149

/s/ Thomas G. Glick