

**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)	Tariff No. YE-2007-0007
In the Company's Missouri Service Area.)	

AARP and CCM's Motion to Reject Fuel Adjustment Clause Tariff

COMES NOW the AARP and the Consumers Council of Missouri ("CCM"), by and through counsel, pursuant to Public Service Commission ("Commission") Rule 4 CSR 240-2.080, and moves that the Commission reject Union Electric Company d/b/a AmerenUE's ("AmerenUE's") September 29, 2006 pancake tariff filing, entitled "Rider A, Fuel and Purchased Power Adjustment Clause", MO.P.S.C. Schedule No. 5, Original Sheet No. 98.1 ("FAC tariff"), as unlawful.

AARP and CCM contend that this filing violates Sections 393.150, 393.140(11) RSMo. 2000, as well as the new statute, Section 386.266 [SB 179] itself, the Commission's own rule, 4 CSR 240-2.065.1, and other legal precedents, as more fully explained below:

1. On September 29, 2006, AmerenUE filed a single "FAC tariff", despite the fact that the electric utility has already filed its general rate case tariffs initiating this case, and those tariffs were suspended by the Commission on July 11, 2006.

As several consumer parties have already explained, AmerenUE's initial tariff filing in July (which included no tariff proposal regarding a FAC or other Rate Adjustment Mechanism) served to place the public on notice as to the scope of this proceeding, and it may not subsequently expand upon its rate request. To do so would violate the entire statutory scheme as laid out in Chapters 386 and 393 of Missouri law which govern the Commission ratemaking powers. AmerenUE may not now file an additional proposed tariff that proposes a new rate while the original tariff filing that initiated this rate case is still pending. AmerenUE chose the "file and suspend" method of requesting a rate change subject to Section 393.140(11), as opposed to the "complaint" method of requesting a rate change subject to Section 393.150. There is no other lawful method to initiate a general rate case. State ex rel. Jackson County v. Public Service Commission, 532 S.W.2d 20, 28- 29 (Mo. banc 1975). Having already initiated a general rate case with tariffs that presumably recognize fuel and purchased power costs in base rates and those tariffs have already been suspended, it is procedurally too late to now add a new tariff proposal.

2. Allowing AmerenUE to file yet another rate increase request in the middle of this rate case proceeding would thus constitute an unlawful "pancaking" of rate increase requests, one on top of another, unfairly placing other parties at a disadvantage as they are forced to chase a moving target. Pancaking has been defined as the piling up of rate increase filings such that new ones are filed before old ones become effective. Associated Gas Distributors v. FERC, 706 F.2d 344, 345 (1983). Pancaking has never been permitted in Missouri utility regulatory proceedings.

3. AmerenUE has previously requested permission to interject an FAC proposal in this case subsequent to its general rate case request, but was denied. On September 28, 2006, the Commission issued its “Order Denying Motion to Establish Transitional Procedures”.¹ The Commission’s order did not grant any of the relief requested in that AmerenUE motion. AmerenUE chose not to request a rehearing or reconsideration of that decision.

4. Allowing AmerenUE to initiate a new rate request in a separate filing after it had already initiated a “file and suspend” tariff proposal also violates the requirement of Section 386.266 RSMo 2000 [SB 179] that any FAC mechanism must be developed through a “general rate proceeding”. AmerenUE’s general rate case proceeding has already been initiated and its scope cannot be further enlarged in the middle of the suspension period, allowing parties less than a full and fair opportunity to review and respond to that rate proposal together with all relevant factors previously placed into issue in the current rate case proceeding. State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41 (Mo. banc 1979).

¹ Unlike AmerenUE, Aquila, Inc., who initiated a general rate case of its own in Case No. ER-2007-0002—at nearly the same time as AmerenUE’s general rate case tariff filing—did include a FAC tariff with its initiating general rate case tariffs, and the Commission has properly suspended that FAC tariff along Aquila’s entire bundle of tariffs on July 5, 2006. Aquila also requested transitional procedures and was denied; however, Aquila has the option to procedurally pursue the FAC issue because Aquila timely made that issue part of the scope of its initial tariff filing.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to counsel for each of the parties on the service list for this matter on this 9th day of October 2006.

/s/ John B. Coffman
