

**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.

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**Case No. ER-2008-0318**  
Tariff Nos. YE-2008-0605

**AARP's Application for Rehearing**

COMES NOW AARP, by and through counsel, and pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, respectfully applies for a rehearing and reconsideration of the Missouri Public Service Commission's ("Commission's") Report and Order issued in the above-styled matter on January 27, 2009 and bearing an effective date of February 6, 2009 ("Report and Order").

This Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, and unsupported by competent and substantial evidence on the whole record, in the following respects:

**Fuel Adjustment Clause (FAC) / Return on Equity**

Despite the fact that AmerenUE's exposure to fuel cost risk is not "volatile" on a "net fuel cost" basis<sup>1</sup> and has not materially changed since its last rate case in Case No.

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<sup>1</sup> Ex. 224, pp. 3-4.

ER-2007-0002<sup>2</sup>, a majority of the Commission nonetheless voted to approve a Fuel Adjustment Clause (FAC) in this case—the first such anti-consumer mechanism approved for this utility in nearly 30 years. Moreover, the FAC approved in the Report and Order transfers virtually all (95%) fuel cost risk from the utility which manages that risk and places that risk squarely on the backs of captive consumers who have no choice about where to buy electricity. It is disappointing that, during this time of economic turmoil, the Commission would approve a new surcharge that is not only unnecessary, but one that shifts such an unreasonable and unbalanced share of the risks to ratepayers.

Imposition of such a 95%/5% FAC is entirely unreasonable for this utility and is inconsistent with the Missouri law that authorizes such surcharges. Subsection 386.266.4(1) RSMo. requires that any fuel adjustment mechanism approved by the Commission must be designed to provide the opportunity for a “fair rate of return”. Because the Commission is tasked with balancing the interests of shareholders and consumers, such a return must be fair to both sides. However, the FAC approved in the Report and Order is likely to result in overearnings to AmerenUE in that rising fuel costs will be swiftly passed along to consumers, even when the *overall* cost of doing business is not rising by the same amount. The FAC approved for AmerenUE is also inconsistent with this law in that it would remove vital incentives for the electric utility to be efficient in its fuel and purchased power practices, thus putting consumers at risk for even higher costs.

Exacerbating the unreasonableness of the Report and Order approved by the majority is the refusal to appropriately reduce AmerenUE authorized return on equity

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<sup>2</sup> May 22, 2007 Report and Order, p. 26.

(ROE) to reflect the fact that the utility would be shielded from 95% of its fuel cost risk. Rather, the Report and Order actually *increases* the ROE from 10.2% to 10.76%. Reducing the monopoly utility's business risk with a FAC while simultaneously increasing its ROE is inconsistent with Section 386.266.7 RSMo.—which clearly anticipates that a reduction in business risk caused by a FAC will be taken into account by the Commission when setting a fair return. The award of such a high ROE ignores all of the competent and substantial testimony non-utility witnesses on the fact that a FAC would reduce AmerenUE's risk profile. AARP agrees with the minority's dissenting opinion that an ROE in the range of 10.0 to 10.2 is more consistent with the approval of a 95%/5% FAC. The combination of granting AmerenUE a low risk fuel mechanism along with a high ROE is in itself an arbitrary and capricious decision which would unfairly and unreasonably impact ordinary consumers.

### **Hot Weather Safety Program**

AARP is also extremely disappointed that Commissioners Davis, Murray and Jarrett voted against even *studying* whether the Hot Weather Safety Program could save lives by offering a \$5/day bill credit to low-income seniors for the average 9.5 days of extreme heat during the summer. The Report and Order acknowledges that seniors who are reluctant to turn on their air conditioning during the hottest days of summer puts those individuals at a greater risk of dying as a result of heat-related illness, but simply dismisses the program as something “has never been tried” and that “there is no

indication that a bill credit of \$5.00 will actually prompt an at risk elderly person to turn on their air conditioning when it is hot.”<sup>3</sup>

AARP believes that it is unreasonable for the majority to state that there is no evidence that the Hot Weather Safety Program would work and then deny the parties the ability to engage in a small scale, scientifically designed pilot program that would provide evidence about whether such a program can be effective. Sadly, until this idea is actually studied, all parties will lack important information regarding a major public health issue related to electricity use during hot weather periods and the question will continue to be unanswered.

There seems to be no dispute regarding the severity of the issue. It is important to remember that heat exposure caused at least 8,000 deaths in the United States-- *more than all other natural disasters combined*. Exh. 850, p. 6. In 2001 alone, 300 deaths in the U.S. were attributed to excessive heat exposure, and according to the US Department of Health and Human Services, Centers for Disease Control and Prevention, “air-conditioning is the number one protective factor against heat related illness and death.” Exh. 850, pp. 6-7; Att. AARP-JH-2. Specifically, with regard to Missouri, the state Department of Health reported that 92 Missourians died due to heat related causes during the previous year, and that 68 of those deaths were of individuals aged 65 or older. The Department of Health added that “during periods of high temperatures, air-conditioning is the best preventive measure.” The Department of Health further reported that among the elder heat-related deaths in 1999, 19 had an air-conditioning unit, but would not use it. Exh. 850, p. 7; Att. AARP-JH-3.

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<sup>3</sup> Report and Order, p. 114.

The Report and Order seriously misstates the actions of the collaborative that looked into the possible implementation of the Hot Weather Safety Program in AmerenUE's service territory.<sup>4</sup> Although AmerenUE employees decided to “pull the plug” on the proposed pilot proposal developed by that collaborative (Tr. 1231), a majority of the group endorsed the idea of studying the program and is endorsed by several organizations that serve low-income seniors.

AARP urges the majority to reconsider its position on whether it is worth studying this matter. AARP is simply proposing that the Commission adopt a *pilot program* that would include 2,400 participants and be administrated in a manner similar to the pilot program that had been under consideration by the AmerenUE stakeholder group. Exh. 853 and Exh. 854. In response to questions from the bench, AARP is also suggesting that the eligibility threshold for participation be set at a level consistent with Missouri Low-Income Home Energy Assistance Program (LIHEAP) eligibility (125% of the federal poverty level). Exh. 852 and Exh. 853. This change will also increase the administrative ease of determining eligible participants. The Commission should also establish a stakeholder group that will be asked to recommend any remaining details about implementation, most notably a decision about which regions of AmerenUE service territory this pilot should be implemented. AARP suggests that it include both an urban and a rural region. Exh. 853, p. 2. It will also be important which community action agencies desire to help undertake this pilot program experiment.

AARP knows that it is hard to promote new ideas, but it believes that the risk of death and injury from extreme heat for those at risk consumers being targeted is high enough that an experiment is clearly justified. If the pilot is adopted and its

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<sup>4</sup> Report and Order, p. 115.



## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record on the 5<sup>th</sup> day of February 5, 2009:

/s/ John B. Coffman

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