

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of November, 2009.

In the Matter of Tariff Sheets Filed by Union Electric Company d/b/a AmerenUE Designed to Implement Revisions to AmerenUE's Business Energy Efficiency Programs))))	<u>Case No. ET-2010-0123</u> <u>Tariff No. JE-2010-0229</u>
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ORDER REGARDING REQUEST FOR RECONSIDERATION

Issue Date: November 12, 2009

Effective Date: November 20, 2009

Background

On October 21,¹ the Commission issued an order approving Union Electric Company d/b/a AmerenUE's tariff sheets implementing revisions to its existing Standard Incentive Program and its existing New Construction Incentive Program, both found in AmerenUE's Business Energy Efficiency Portfolio ("BEEP"). The tariff sheets were assigned tracking number JE-2010-0229 and became effective on October 25.

On October 22, at approximately 4:08 p.m., AmerenUE filed a motion for clarification objecting to a sentence in footnote two of the order. That sentence read: "However, AmerenUE has not changed its position that its BEEP programs are commission-approved demand-side programs proposed pursuant to the Missouri Energy Efficiency Investment Act." AmerenUE's position was that leaving this sentence in the footnote was factually inaccurate because it had withdrawn the only tariff sheet (sheet number 225) referencing this position. AmerenUE sought removal of the sentence from the order.

¹ All dates throughout this order refer to the year 2009 unless otherwise noted.

From the outset the Commission notes that the sentence to which AmerenUE takes exception is not, nor could it be, substantive to the tariff that was approved or substantive to the order approving the tariff in any way. The footnote, even if inartfully drafted, was explaining the Staff's position regarding AmerenUE's alleged position on the tariff as articulated on page 3, paragraph 5 of its October 20, pleading entitled: "Recommendation to Approve Tariff Sheets with Express Statement of Non-Determination." AmerenUE's alleged position, regardless of what that position may be, is an irrelevant mental state that was not endorsed by the Commission. The Commission made absolutely clear in its order that it was making no determination as to whether AmerenUE's BEEP was offered under the Missouri Energy Efficiency Investment Act.

On November 2, having not yet received any response to AmerenUE's motion, and believing no party opposed AmerenUE's request, and finding the sentence of no consequence to the order, the Commission issued a notice of correction striking the non-substantive sentence from the footnote. The notice, however, was issued a few hours premature of the full ten-day response date coupled with the Commission's rule on computation of time.² Staff filed a timely response to AmerenUE's motion on November 2 at 2:57 p.m.³ There is no question that Staff's response was timely filed; however, there is also no question that the Commission may issue a notice or order at anytime, even prior to the running of response times.

² The notice was issued at 10:15 a.m. on November 2. The ten-day response period ran on November 1, a Sunday. Pursuant to the coupling of Commission Rule 4 CSR 240-2.050(1) and 4 CSR 240-2.080(15), timely responses to AmerenUE's motion could be filed until the "end of the day" on Monday, November 2, 2009.

³ "The end of the day," for purposes of Rule 4 CSR 240-2.050(1) is 5:00 p.m. if the response is filed electronically pursuant to Rule 4 CSR 240-2.045(2), and is 4:00 p.m. if a paper copy is filed with the Commission's Data Center pursuant to Rule 4 CSR 240-2.080(11).

Staff's Response to AmerenUE's Motion

In its response, Staff states it does not quibble with AmerenUE's assertion that the second sentence of footnote 2 of the Commission's Order is factually incorrect, but Staff takes exception in that AmerenUE does not, in Staff's opinion, explain in its motion what it is asserting is factually incorrect about that sentence. Staff references AmerenUE's cover letter to the tariff for its argument that it requires clarification as to AmerenUE's position. Staff also asserts that the Commission misused the *nunc pro tunc* correction in that such corrections cannot be used to alter an earlier decision. Staff requests that the Commission reconsider its notice of correction and order AmerenUE to explain why the sentence in footnote two of the order approving the tariffs is factually incorrect.⁴

Requirements for Motions for Reconsideration

Commission Rule 4 CSR 240-2.160(2) provides:

Motions for reconsideration of procedural and interlocutory **orders** may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable.

While Staff has timely filed its response to AmerenUE's motion and its request for reconsideration, Staff's request fails to set forth any grounds on which it considers an **order** of the Commission to be unlawful, unjust or unreasonable. First, no order was issued. What was issued was a notice of correction. Second, the sentence that was struck from the order, the correction, was non-substantive and striking it did not in any way affect or alter the decision of the Commission when approving AmerenUE's tariff.

⁴ On November 9, AmerenUE filed a reply to Staff's response. The reply was filed out-of-time and AmerenUE did not seek leave to late-file their reply. Regardless, the reply adds nothing to the legal analysis of this order.

Third, Staff offers no explanation as to why AmerenUE's position on the tariff filing would be relevant in any way to the Commission's decision that did not adopt any such position. Finally, ordering AmerenUE to articulate a position statement on a tariff that is not in dispute and that is operational serves no purpose. This matter never became a contested case as defined in Section 536.010(4), Cum. Supp. RSMo 2008, the tariff is in effect, and AmerenUE's post-order opinion on a non-substantive subject that does not require a decision by the Commission is totally irrelevant.

THE COMMISSION ORDERS THAT:

1. The Staff of the Missouri Public Service Commission's request that the Commission reconsider its November 2, 2009 Notice of Correction and Notice Closing Case, is denied.
2. This order shall become effective on November 20, 2009.
3. This case shall be closed on November 21, 2009.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge