

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

In the Matter of the Tariff Filing of Union)
Electric Company d/b/a AmerenUE, for)
Authority to File Tariffs Increasing Rates for)
Natural Gas Service Provided to Customers in)
its Missouri Service Area.)

Case No. GR-2007-0003

MEMORANDUM CONCERNING THE DUTY TO SERVE

Comes now the Staff and submits the following Memorandum concerning a utility company's duty to serve customers within the territory it has undertaken to serve. Missouri case law indicates that when the Commission grants a Certificate of Convenience and Necessity it is a mandate to serve the area covered and it is the utility's duty, **within reasonable limitations**, to serve all persons in an area it has undertaken to serve.

"The corporate charter is a contract which impliedly obligates the corporation to furnish the service for which it was created to render. Section 393.130 specifically requires that 'every electrical corporation . . . shall furnish and provide such service instrumentalities . . . as shall be . . . adequate [I]t is the utility's duty, **within reasonable limitations**, to serve all persons in an area it has undertaken to serve.

The certificate of convenience and necessity issued to the utility is a mandate to serve the area covered and it is the utility's duty, within reasonable limitations, to serve all persons in an area it has undertaken to serve. *State ex rel. Missouri Power and Light Co. v. Public Service Comm'n*, 669 S.W.2d 941

(Mo.App. W.D. 1984) citing *State v. Public Service Commission*, 343 S.W.2d 177, 181 (Mo.App.1960).

Utility “may not be compelled to furnish electrical service to every village and hamlet in the six counties covered by its franchises. Nor can it be required to furnish such service to Diamond, notwithstanding it is within the boundaries of relator's professed service, unless such requirement is reasonable.” The Court determined where there was no additional expense to the utility the requirement was reasonable. *State ex rel. Ozark Power & Water Co. v. Public Service Comm’n*, 229 S.W. 782 (Mo. 1921). *State ex rel. Federal Reserve Bank of Kansas City v. Public Service Comm’n*, 191 S.W.2d 307 (Mo.App. 1945)(holding that if a customer was unlikely to ever actually use electric service it was unreasonable for that company to demand service).

The Commission itself defines some of those reasonable limitations in Chapter 13, 4 CSR 240-12.035. This section provides that a utility may refuse to commence service to a residential customer if the customer has not paid an undisputed bill, fails to post a required deposit, or refuses to permit the company to inspect, maintain, replace equipment or to read a meter. Refusal of service may be based on economic as well as safety reasons.

Tariff provisions that limit which customers may choose to take service under a particular classification are very common. All Missouri regulated natural-gas utility companies have several customer classes. For example, Ameren has several classes of customers including: Residential, General Service, Interruptible Service, Transportation Service, Alternative Fuels, Special Contract

Rates and Eligible School Entities A residential customer is not eligible to take service as a transportation customer, nor are customers, other than “eligible school districts” able to take service under the tariff provisions for “Eligible School Entities.” (P.S.C. Mo. No. 2, Sheet No. 10). Conversely, many customers are not eligible to receive service under Ameren's Residential Service Rate (for example, commercial and industrial customers). Those customers are, however, eligible for other tariffed rates.

The language proposed on Sheet 42.1 applies only to new General Service sales customers with an annual load exceeding 40,000 Ccf, who want firm service. For example a large shopping center may fall into this category. This provision also only applies if very specific operational circumstances related to reliability on the Ameren system exist. Specifically, if a new customer is seeking firm service for an annual load exceeding 40,000 Ccf, *and* there is a lack of sufficient gas supply, storage availability and/or pipeline capacity, Ameren may grant service “subject to contract arrangements which address only operational and system constraints.” Rates charged will still be the applicable rates approved by the Commission and currently in effect.

Notably, these provisions do not apply to the following classes: Residential Service, Interruptible Service, Transportation Service, Alternative Fuels, Special Contract Rates and Eligible School Entities. Nor do the provisions apply to General Service customers with annual load less than 40,000 Ccfs. The customer could still be served by these other classes if application requirements in those tariffs are met.

It should also be noted that all customers are subject to the Curtailment of Service Schedule (P.S.C. Mo. No. 2, Sheets No. 69, 69.1, 69.2, 69.3) which establish the priority of service required to be provided by AmerenUE during periods of curtailments. General Service customers, like all customers, are subject to these provisions. This schedule would even allow for curtailments to residential customers and hospitals under the most extreme circumstances.

Finally, the company can still serve a General Service customer with an annual load exceeding 40,00 Ccf. First, if "sufficient gas supplies, storage availability and/or pipeline capacity exists", the customer would be served. Second, the customer can still receive General Service rates if contract arrangements specify acceptable operational and system constraints.

In summary, under the proposed tariff language, new General Service customers with loads exceeding 40,000 Ccf are eligible for firm service so long as there is adequate gas supply and adequate storage and capacity and could receive other types of service, such as interruptible service, if certain very limited reliability-related constraints apply. There is an additional provision that the customer could also be served under the General Service tariff if operational and system constraints can be addressed by contract.

Staff agrees that the Commission's grant of a certificate of convenience and necessity is mandate of a utility's duty to serve all persons in franchise area it has undertaken to serve, with reasonable limitations. It is Staff's opinion that a utility may reasonably refuse to serve a customer under limited circumstances when such refusal is based on the protecting the public safety and health and

maintaining the integrity of the system for existing customers. Staff suggests that Ameren's tariff limiting service to a new customer requesting firm service, when doing so could compromise Ameren's ability to serve other customers, is reasonable and prudent.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 15th day of March 2007.

/s/ Lera L. Shemwell