BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE's Tariff Establishing an Industrial Demand Response Program.	)))	Case No. ET-2007-0459

RESPONSE OF UNION ELECTRIC COMPANY d/b/a AMERENUE TO COMMISSION ORDER RESPECTING AMERENUE'S REVISED INDUSTRIAL DEMAND RESPONSE PROGRAM TARIFF

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or Company), and hereby responds to the Missouri Public Service Commission's (Commission) *Report and Order* in Case No. ER-2007-0002 (AmerenUE's recent rate case) and *Order Establishing Case to Consider Industrial Demand Response Program Tariff* in Case No. ET-2007-0459. In this regard, AmerenUE states as follows:

1. The Commission's *Report and Order* in Case No. ER-2007-0002, issued on May 22, 2007, directed AmerenUE to "…submit a revised [Industrial Demand Response (IDR)] tariff including an evaluation plan within 30 days from the effective date of this order." Case No. ER-2007-0002, *Report and Order*, May 22, 2007, p. 104.

2. On May 31, 2007, the Commission opened a new docket, Case No. ET-2007-0459 and ordered that the revised IDR tariff be filed in the new docket.

3. Filed with this pleading, AmerenUE is submitting a revised IDR tariff as directed by the Commission.[1] In order to better understand the context in which the revised tariff is being filed, AmerenUE offers below relevant background and discussion.

[1] Given the Commission's rejection of the IDR tariff originally filed in Case No. ER-2007-0002, AmerenUE's preference would have been to develop an IDR program as part of its Integrated Resource Plan (IRP) filing that will be made in just over seven months from now, on February 8, 2008. That would allow the collaborative process with stakeholders, ordered in resolution of the Company's previous IRP case, to reach a completion point allowing the Company to choose the best options and features for demand-side management for the Company based upon the best available information. However, and despite that preference, the Company is mindful of the Commission's desire to implement an IDR program

Explanation of Revised IDR tariff

4. The *Report and Order* in Case No. ER-2007-0002 stated that AmerenUE was to "consult with the other parties and to give due consideration to the revisions urged by the M[issouri] E[nergy] G[roup]." Case No. ER-2007-0002, *Report and Order*, May 22, 2007, p. 104. The revisions at issue were urged by MEG as part of the testimony of MEG witness Billie S. LaConte in AmerenUE's rate case. The *Report and Order* further noted, "[i]f AmerenUE does not file a tariff that is acceptable to all other parties, the Commission may impose the revisions urged by MEG [i.e., by Ms. LaConte in her rate case testimony]." Id.

5. AmerenUE had several meetings with MEG and consulted with all parties to the rate case prior to filing the revised IDR tariff. No agreement has been reached, but as outlined below, the revised IDR tariff filed concurrently with this Response reflects a substantial number of the revisions that MEG had urged AmerenUE to make during the rate case.

6. The "revisions urged by MEG" were summarized by MEG in its post-hearing brief, as follows:

> This Commission should approve AmerenUE's proposed IDR with the following changes:
>
> (a) increase the demand credit to $3.33/kW per month
>
> (b) modify the start date to enable customers to sign up immediately upon Commission approval of the tariff
>
> (c) extend the length of the pilot to at least 3 years
>
> (d) require than [sic] any interruption less than an hour be counted as an hour

---

at an earlier date, and consequently the Company is proposing to implement this specific pilot tariff several months earlier.

(e) notice period for the impending interruption should be no less than 60 minutes

(f) a full evaluation of the IDR pilot at the end of the pilot period

Post-Hearing Brief of the Missouri Energy Group, Case No. ER-2007-0002, p. 3.

7. In developing its revised IDR tariff, AmerenUE believes it has designed a tariff which incorporates MEG's revisions as fully as possible. Indeed, the revised IDR tariff filed concurrently with this Response meets all but MEG revisions (a) and (e) in their entirety, and also addresses revisions (a) and (e) appropriately. The start date (MEG revision (b)) has been modified to be October 1, 2007. Since the tariff is being filed with a request for a 90 day effective date (explained below), the October 1, 2007 start date allows immediate implementation after Commission approval of the tariff. The length of the pilot has been extended to be three years (MEG revision (c)); the minimum interruption is an hour (MEG revision d); with one exception, the notice period is an hour (MEG revision e); and the Company will do a full evaluation at the end of the pilot period (MEG revision (f)).

8. With respect to MEG revisions (a) and (e) (which are not fully met by the revised IDR tariff), the IDR tariff proposed in Case No. ER-2007-0002 included a monthly credit of $2.00 and a minimum notice period of 30 minutes. MEG urged a monthly demand credit of $3.33 and a minimum notice period of 60 minutes (MEG revisions (a) and (e)). The monthly demand credit portion of AmerenUE's revised IDR

tariff is designed as a tiered system (developed through recent discussions with MEG) as set forth below.

Curtailment Hours	Minimum Notification	Monthly Demand Credit
200	10 minutes	$3.33
200	1 hour	$2.70
150	1 hour	$2.35
100	1 hour	$2.00

The most significant difference from MEG's proposed revisions in Case No. ER-2007-0002 is the pricing. MEG did not contemplate more than one tier and proposed only one option, a one hour notification with a monthly demand credit of $3.33. The discussion below demonstrates why the tiered structure reflected in the Company's revised IDR tariff is more appropriate.

9. To understand why the proposed tiered structure is more appropriate requires a consideration of the requirements of the Commission's IRP rules and the role of demand-side resources utilized by the utility. One of the primary requirements of the IRP rules is to consider demand-side resources on an equivalent basis with supply-side alternatives. Consequently, in designing or valuing demand-side resources AmerenUE strives to achieve equal treatment. Since interruptible (or demand response) resources are typically peak shaving resources, they are compared to peaking generation (typically provided by natural gas combustion turbine generators (CTG's)) in order to test their equivalence. The actual value – in dollars -- of the interruptible resource depends upon the degree to which the demand-side resource approximates the supply-side resource to

which it is being compared (i.e., CTGs). The charts below list the intended uses of interruptible demand-side resources (like the resources provided by the IDR program) and characteristics that drive the ability of an interruptible resource to achieve those uses – i.e., that make an interruptible resource equivalent to a supply-side resource. Accordingly, these are the appropriate considerations for any decision by the Company to call a curtailment for customers who participate in the IDR program pursuant to the revised IDR tariff.

Intended Use of Interruptible Resource

- Reliability
- Operating reserves
- Economic dispatch of resources

Characteristics That Drive Ability to Achieve the Intended Use

- Frequency of interruptions
- Duration of interruptions
- Total number of interruptions
- Notice period
- Assurances of interruption (or potential for buy-through)
- Treated equal to supply-side resources

10. The two usual components for which compensation is offered in any demand response programs are capacity and energy. If demand response programs do not operate in a manner equivalent to a supply-side resource option, the demand-side program compensation should be discounted to re-establish (from an economic perspective) the equivalence. AmerenUE's proposed IDR tariff is designed to achieve this equivalence. Applying these equivalency principles accounts for the difference in

the single bill credit amount urged by MEG in its revision (a) and the tiered amounts set forth in the revised IDR tariff.

11. The IDR tariff must also reflect the realities of the operating environment faced by AmerenUE, including its participation in the Midwest Independent Transmission System Operator, Inc. (MISO). According to MISO requirements, a resource will only count toward operating reserves if it is dispatchable within 10 minutes and if it is electronically controlled by the utility. Demand-side resources that effectively meet those requirements should be eligible for an "equivalent" payment under the IDR tariff; i.e., if the customer participating in the IDR program can be interrupted within 10 minutes and if the interruption is controlled by the Company, in those respects the demand-side resource is equivalent to a CTG operated by AmerenUE and should be treated accordingly in terms of the compensation paid the customer in the IDR program. Said another way, curtailment on ten minutes notice is much closer to the functioning of a CTG than curtailment based upon an hour's notice. Thus, both the 10 minute curtailment and one hour curtailment options should be priced to reflect this difference, which accounts for the difference in the demand credits between MEG's proposed revision (a) and the demand credits in AmerenUE's revised IDR tariff.

Events Allowing Curtailment

12. The events which allow the Company to call for curtailment are set forth in the revised IDR tariff. Those events are as follows:

- When the reliability of the Company's electric system is in jeopardy;
- When the reliability of the MISO market is in jeopardy;
- When transmission system constraints exist;
- When general capacity deficiency conditions exist;
- When there are financial benefits to the Company (and ultimately to other ratepayers); and
- When other conditions which may be eased by a reduction in system load exist.

13. Curtailment to maintain reliability is important for obvious reasons, and accounts for the majority of the triggers set forth in the revised IDR tariff, which allow the Company to call a curtailment.

14. Economic considerations are also important because CTGs can be dispatched economically. To fulfill the goal of treating demand-side resource on an equivalent basis with supply-side alternatives, AmerenUE's proposed IDR tariff treats demand-side resources in the same fashion and allows for curtailment to be called for economic dispatch reasons. Failure to include criteria related to the economic dispatch of resources would reduce the triggering of curtailment periods to those in which only reliability concerns are present and would fail to treat demand-side resources on an equivalent basis as supply-side resources.

15. Allowing AmerenUE to call on IDR participants to curtail for economic reasons also works to mitigate price risk for all ratepayers by allowing the Company to operate its system in a more economic manner. This additional flexibility benefits other

ratepayers by lowering the Company's overall fuel and purchased power costs and ultimately the Company's overall cost of service. The tariff also allows IDR participants to "buy-through" during curtailments that are called for reasons other than reliability or system emergency, giving IDR participants the option of paying market-based prices instead of curtailing load. This effectively transfers the price risk to the customers opting to participate in the IDR tariff, which is where that price risk belongs, and away from ratepayers generally.

16. As stated above, the Commission should recognize that the benefits of an IDR program increases as the program's similarity to a CTG increases. As the similarity increases, so should capacity and energy payment amounts. This is precisely how the Company's proposed IDR tariff is designed, with participating customers becoming eligible for larger payments as the curtailments the Company can call under the IDR tariff come closer to approximating the operation of an owned supply-side resource like a CTG. The reverse is also true. As the curtailments the Company can call become more dissimilar from the operation of an owned supply-side resource like a CTG, the payments are reduced because the value of the customer's participation to the Company and its other ratepayers is likewise reduced. More restrictive conditions (for example, longer notice periods or more restrictive limits on the number or length of the curtailments) justify lowering payments to participating customers because they render the IDR program less equivalent to supply-side resources. AmerenUE has attempted to achieve a balance of these factors and believes it has proposed a tariff that appropriately values the conditions under which it can call a curtailment under the IDR program.

Comparison to Other IDR Tariffs

17. The table below compares IDR tariffs provided to the Company by MEG from other utilities, including Kansas City Power & Light Company (KCPL), Tennessee Valley Authority (TVA) and Westar Energy, Inc. (Westar), which AmerenUE reviewed as part of its development of its proposed IDR tariff. Notably, the IDR tariff proposed by the Company is well within the ranges contained in the IDR tariffs currently in use by these other utilities to which MEG directed the Company's attention.

	AmerenUE	KCPL	TVA	Westar
Reasons for Interruptions -- Reliability	Y	Y	Y	Y
--Operating reserves	Y for the 10 minute notification tier only	N	Y	N
--Economic dispatch of resource	Y	Y	Y	Y
Treated equal to supply-side	Y	Y	Y	Y
Minimum Notice Prior to Curtailment	10 mins. – 1 hr	1 hr - 4 hrs	5 min	2 hrs
Number of curtailments (per year)	Unlimited	25-30	unlimited	unlimited
Total hours (per year)	100-200 hrs	120 hrs	unlimited	360 hrs
Buy through option	Yes	Yes	No	Yes
Capacity Payment (per year)	$2-$3.33	$1.33-$3.10	$3.40	$3.00
Energy payment ($/kWh)	$0.80	$0.80	$0.00	$0.75

Cost Recovery and the Commission's Legal Authority

18. As stated above, AmerenUE has adopted many of the revisions urged by MEG in the rate case, where it made sense to do so. The amount of the credit has been increased and the length of the program has been significantly extended. The Company has developed a tiered curtailment tariff with varying flexibility so that its commercial customers may choose the option which best meets their needs. The Company has made these changes because they make sense from a resource planning perspective, and has

made these changes despite and without waiving the legal concerns expressed in the Company's *Application for Rehearing* in Case No. ER-2007-0002.[2].

19. In the *Report and Order* in Case No. ER-2007-0002, the Commission appeared to recognize that the Company's management is entitled as a matter of law to decide what programs to propose, and what funding to provide, particularly where shareholders are funding the program. "The Commission is very interested in promoting the development of demand response programs. It is concerned that this IDR pilot in its current form may not be attractive to the customers most likely to participate in it. But, since the IDR Pilot is being funded by AmerenUE's shareholders, not ratepayers, *the Commission is hesitant to impose additional costs on the company and will give it more discretion to design an IDR Pilot it believes appropriate*." (emphasis added). Case No. ER-2007-0002, *Report and Order*, May 22, 2007, p. 103.

20. The apparent recognition of the limits on the Commission's authority expressed in the quoted sentence, above, is at direct odds with the later Commission statement that if AmerenUE does not design an IDR tariff that all parties agree to, it may impose the MEG proposed revisions (Id., p. 104), even though those revisions may increase the cost of the pilot and, accordingly, could result in the unlawful and unfair imposition of costs on shareholders without assurance of recovery from ratepayers.

21. However, in another order in Case No. ER-2007-0002, the Commission took an action which avoids this legal problem in its entirety. That is, the Commission has already approved and ordered the use of a valid means by which to harmonize the desire for a change to the IDR pilot that was originally proposed without imposing

[2] The Company will not repeat those legal concerns in detail here, but as the cases cited in its *Application for Rehearing* demonstrate, the Commission is without authority to dictate to the Company's management that it file a particular IDR tariff at shareholder expense.

unlawful and unfair cost consequences on AmerenUE's shareholders. On April 11, 2007, the Commission issued its *Order Approving Tier I Partial Stipulation and Agreement Filed on March 15, 2007*. The Tier I Partial Stipulation and Agreement approved by this Order dictates the manner in which demand-side costs are to be handled. Specifically, the March 15, 2007 Stipulation, approved by the Commission in its entirety by the Commission's April 11 order, provides as follows: "Treatment of Demand-side Management Costs proposed in the Direct Testimony of Staff witness Lena Mantle shall be adopted." Case No ER-2007-0002, *Stipulation and Agreement as to Certain Issues/Items*, p. 5.

22. Ms. Mantle's treatment of demand-side costs, now ordered by the Commission, is reflected in Ms. Mantle's December 15, 2006, Direct Testimony,

> I am proposing that demand-side costs that were incurred in the test year not in the context of the collaborative process resulting from Case No. EC-2002-1, be placed in a regulatory asset account, assuming Commission approval of this methodology. AmerenUE would amortize the costs over a ten-(10-) year period. AmerenUE would be allowed to place the demand-side costs for each year *subsequent to the test year* in this case in the regulatory account. The amounts accumulated in this regulatory asset account should be allowed by the Commission to earn a return not greater than AmerenUE's AFUDC rate. (Emphasis added) Mantle Direct, December 15, 2006, pp. 2-3.

23. Ms. Mantle's treatment (and the Commission's order mandating that treatment) explains that the recovery of the amounts in the regulatory asset would be reviewed for prudence at the time of AmerenUE's next rate case. Importantly, Ms. Mantle's treatment dictates that these costs should be treated in a manner that holds demand-side and supply-side resources on an equivalent basis, a goal AmerenUE shares, as demonstrated by the revised IDR tariff filed concurrently with this Response. Id., p. 3.

24. The revised IDR tariff includes a significantly higher level of demand credits to be paid to participants on a monthly basis than was proposed in the IDR tariff filed by AmerenUE in Case No. ER-2007-0002. Without the regulatory asset account, much as foreshadowed in Ms. Mantle's testimony, AmerenUE would be hesitant to implement this tariff and indeed is under no obligation to do so. AmerenUE believes it is more appropriate, and in fact required by the Commission's April 11th order in Case No. ER-2007-0002, for the costs associated with this tariff to be placed in a regulatory asset account to be amortized over ten years. As per Ms. Mantle's testimony, "Demand-side costs which would be placed in this account would include the costs of developing, implementing and evaluating customer energy efficiency and demand response programs." Id., p. 4. The IDR pilot tariff, filed concurrently herewith, is a demand response program.

Procedure for Resolving the Case

25. The Commission's *Report and Order* contemplated that the Company would consult with the other parties in Case No. ER-2007-0002 and give due consideration to the revisions proposed by MEG to the IDR tariff originally filed in that case, in the hope that the parties would agree on a revised IDR tariff. AmerenUE has done so. Specifically, AmerenUE has considered MEG's requests, in light of the equivalency principles discussed above, and indeed had several meetings with MEG. As outlined in detail above, AmerenUE has made modifications to its originally proposed IDR tariff in response to MEG's concerns with the original tariff. Where revisions were not made, it was because they violate the equivalency principles discussed herein.

26. The Company also consulted with other parties to discuss the IDR tariff modifications it is proposing. AmerenUE provided a copy of the revised IDR tariff (that was substantively the same as the IDR tariff filed concurrently herewith) to all of the other parties prior to this filing. However, at this point, there is no general agreement on a particular IDR tariff. The Company makes the revised IDR tariff filing today to fulfill the 30-day time frame requirement reflected in the *Report and Order*, but has filed its revised IDR tariff with a 90-day effective date so that the parties will have the opportunity to continue their discussions. The use of a tariff filing with a 90-day effective date was suggested during AmerenUE's consultations with the other parties from Case No. ER-2007-0002 and no party voiced an objection to it.

WHEREFORE, the Company files this Response and the accompanying revised IDR tariff, as contemplated by the *Report and Order* in Case No. ER-2007-0002, to become effective on October 1, 2007.

Dated: July 2, 2007

SMITH LEWIS, LLP

By: **/s/ James B. Lowery**
James B. Lowery, #40503
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

Steven R. Sullivan, #33102
Sr. Vice President, General Counsel &
Secretary
Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-131
St. Louis, Missouri 63101-6149
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
tbyrne@ameren.com

ATTORNEYS FOR UNION ELECTRIC COMPANY d/b/a AMERENUE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response was served via e-mail at the e-mail addresses listed below, to the following counsel of record for all of the parties to Public Service Commission Case No. ER-2007-0002, on the 2nd day of July, 2007.

Staff of the Commission Office of the General Counsel Missouri Public Service Commission Governor Office Building 200 Madison Street, Suite 100 Jefferson City, MO 65101 gencounsel@psc.mo.gov	Paul A. Boudreau Russell Mitten Aquila Networks 312 East Capitol Ave. P.O. Box 456 Jefferson City, MO 65102 PaulB@brydonlaw.com Rmitten@brydonlaw.com
Office of the Public Counsel Governor Office Building 200 Madison Street, Suite 650 Jefferson City, MO 65101 opcservice@ded.mo.gov	John B. Coffman Consumers Council of Missouri AARP 871 Tuxedo Blvd. St. Louis, MO 63119 john@johncoffman.net
Joseph P. Bindbeutel Todd Iveson Missouri Department of Natural Resources 8th Floor, Broadway Building P.O. Box 899 Jefferson City, MO 65102 joe.bindbeutel@ago.mo.gov todd.iveson@ago.mo.gov	Michael C. Pendergast Rick Zucker Laclede Gas Company 720 Olive Street, Suite 1520 St. Louis, MO 63101 mpendergast@lacledegas.com rzucker@lacledegas.com
Lisa C. Langeneckert Missouri Energy Group 911 Washington Ave., 7th Floor St. Louis, MO 63101 llangeneckert@stolarlaw.com	Sarah Renkemeyer Missouri Association for Social Welfare 3225-A Emerald Lane P.O. Box 6670 Jefferson City, MO 65102-6670 sarah@gptlaw.net
Stuart Conrad Noranda Aluminum, Inc. 3100 Broadway, Suite 1209 Kansas City, MO 64111 stucon@fcplaw.com	Diana M. Vuylsteke Missouri Industrial Energy Consumers 211 N. Broadway, Suite 3600 St. Louis, MO 63102 dmvuylsteke@bryancave.com

Robert Carlson State of Missouri P.O. Box 899 Jefferson City, MO 65102 bob.carlson@ago.mo.gov	Rick D. Chamberlain The Commercial Group 6 NE 63rd Street, Ste. 400 Oklahoma City, OK 73105 rdc_law@swbell.net
H. Lyle Champagne MOKAN, CCAC 906 Olive, Suite 1110 St. Louis, MO 63101 lyell@champagneLaw.com	Matthew B. Uhrig U.E. Joint Bargaining Committee Lake Law Firm LLC 3401 W. Truman Jefferson City, MO 65109 muhrig_lakelaw@earthlink.net
Koriambanya S. Carew The Commercial Group 2400 Pershing Road, Suite 500 Crown Center Kansas City, MO 64108 carew@bscr-law.com	Samuel E. Overfelt Missouri Retailers Assn. Law Office of Samuel E. Overfelt PO Box 1336 Jefferson, City, MO 65102 moretailers@aol.com

/s/ James B. Lowery
James B. Lowery