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Missouri Public Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: Case No. GT-2005-0069

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of MFA Incorporated's and ONEOK Energy Marketing Company's Joint Application for Rehearing.

Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By: Mark W. Comley

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MWC:ab
Enclosure
cc: Office of Public Counsel
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application to Intervene in Union Electric Company d/b/a AmerenUE Proposed Tariff filed under Tariff NO. JG-2005-0145	)))))	**Case No. GT-2005-0069** Tariff No. JG-2005-0145I-2004-0654

MFA INCORPORATED'S AND ONEOK ENERGY MARKETING COMPANY'S JOINT APPLICATION FOR REHEARING

COME NOW **MFA INCORPORATED** (MFA) and **ONEOK ENERGY MARKETING COMPANY** (OEMC) (collectively "Applicants") and pursuant to Section 386.500 RSMo. 2000 and 4 CSR 240-2.160 move and apply for a rehearing of the Commission's Order Approving Tariff entered on October 28, 2004 (the Order). This matter should be reheard for the following reasons:

Nominations on Sheet 13.1

The Commission has ignored one of the Applicants' major objections to the tariff. On Sheet 13.1 of the filing, under the sub-heading of "Nominations," the tariff requires a group manager to provide Ameren with 21.5 hours advance notice prior to the gas day of any nomination change. The tariff also limits the number of intra day nomination changes a group manager may make for a transport customer. During oral argument, Ameren contended that its system could not handle the magnitude of system swings that the Panhandle Eastern Pipeline (PEPL) was able to handle. If Ameren is truly concerned about the integrity of its system overall, it is in its best interest to allow all group managers the ability to change their respective nominations on shorter notice and more than once a day in order to avoid imbalance penalties. As Applicants contended in their motion to suspend this tariff, these are severe restrictions on

group managers and are unreasonable not only to the group managers but also Ameren's general body of ratepayers.

The proposed notice requirement is inconsistent with notice and other nomination provisions adopted by the North American Energy Standards Board (NAESB) which allows group managers to make more than one nomination change on (not before) and during the applicable gas day. The rules of the NAESB are followed nationwide by interstate pipeline companies, many local distribution companies and are inherently reasonable.

The Commission should conduct an investigation to determine why Ameren would propose a dramatic modification in the notification rules pertaining to nomination changes in its intrastate tariffs. To be reasonable, the tariff should mirror the nomination procedures set forth by NAESB, which, as mentioned above, allow for more than one nomination per gas day. This issue deserves rehearing.

Daily Negative and Positive Imbalances on Sheet 15.

Sheet 15 of Ameren's August 31, 2004 filing was a refiling of a tariff already in effect. Applicants suggested at hearing and argue here that Ameren's filing of Sheet 15 on August 31, 2004 meant that Ameren UE was required to establish the current lawfulness and reasonableness of those tariffs. It could not roll out or rest on its justifications for those provisions when they first were approved. The Commission did not ask Ameren to shoulder the burden of establishing the reasonableness of Sheet 15 in combination with the other provisions it was modifying. To the contrary, the Commission seemed to impose a burden of proof on the interveners. At page 4 of the Order the Commission states, "None of the entities seeking suspension address the fact that the tariff provisions they oppose have already been found just and reasonable and approved by this Commission." The Commission failed to insist that Ameren prove the reasonableness of

the daily negative and positive imbalances cash out provisions within the context of its currently proposed modifications to the gas transportation tariffs. Sheet 15 cannot be justified at this stage on the basis of reasons that applied when it was earlier effective, and in truth, should be inapplicable because of the burner tip balancing service still provided by PEPL (see below). The Commission has not made any finding related to the reasonableness of the Sheet 15 provisions in this current set of tariff revisions. Ameren has not met its burden in this proceeding. The Commission unlawfully shifted the burden of proof to the interveners.

Furthermore, the Sheet 15 cash out provisions are unreasonable and therefore unlawful. Up until the date they became effective, the provisions of Sheet 15 never applied to PEPL transport customers. As argued at hearing, as they apply to MFA and other OEMC customers using the PEPL facilities, the tolerance percentages in the tariff are, in effect, zero tolerance levels. (Tr.39). In operation, the tariffs will penalize each and every customer on the Ameren system no matter how ingenious each may be in nominating their respective gas deliveries to the city gate. A tariff, which inflicts a penalty on a customer despite the customer's use of state of the art technical equipment and good faith efforts to avoid that penalty, is unreasonable, unjust and unlawful.

In addition, this penalty structure is not only punitive to the transport customers of the Ameren UE system but also to every ratepayer on the Ameren system. If at any time the market price of natural gas rises above 110% of the then current PGA (currently $7.179) a transport customer could ultimately quit buying gas on the open market and choose to obtain all of its gas needs from Ameren via the tariff's cash out mechanism. In such a setting, the Ameren system will have a high potential of being short in supply which will force Ameren into the open market to purchase gas at a much higher rate than its current PGA rate. Ameren's non transport customers, its ratepayers, would ultimately pay the difference. Conversely, and assuming that the current month PEPL Eastern Index is at $7.00, then at the moment there is a drop in the market rate below $6.30 (90% of current Index which is the current cash out allowed by Sheet 15) a transport customer would have the incentive to increase nominations on the Ameren

system. Increasing nominations on the Ameren system would mean that Ameren would pay the transport customer a $6.30 rate as a cash out, while Ameren, at the same time, purchased gas on the open market at a price less than $6.30. Ameren would cash out the over nominations at prices above the market rate for gas. Again, Ameren's non transport customers would be paying the difference..

There is a way to insure that Ameren's gas storage facilities are not overburdened while encouraging responsible nomination decisions by transportation customers without assessing penalties on each and every use of the system. It will take a hearing to configure such a plan. The Commission should undertake one as it rehears this issue.

Is Burner Tip Balancing "Available?"

The question of whether burner tip balancing on PEPL's pipeline is still available was never answered. The Commission has concluded without definitive proof that PEPL's balancing service is no longer available to most of Ameren's customers. (Order p. 4). At hearing, Mr. Byrne read from a letter purportedly from PEPL[1] in which the company advised that effective October 1, 2004, "the operator allocation methodology, (referred to as burner tip balancing on the AmerenUE system) is no longer available at the UNELE city gate delivery point." (Tr. 54).

The statement in this letter is inconsistent with representations PEPL has made to OEMC and its customers. PEPL has advised Applicants that burner tip balancing on its system is available as it always has been as long as new generation information gathering devices are installed to allow for real time data exchange. (Tr. 48.) The reasonableness of Ameren's new tariffs must be judged after this difference in facts is completely and unambiguously resolved.

[1] There was no evidence, save a glossary of terms, admitted at hearing. The arguments in this application should not be construed to suggest that the letter Mr. Byrne read from was anything other than genuine, but Applicants have never seen the letter nor had an opportunity to confirm its genuineness. Therefore, Applicants will question its authenticity.

Answering this question also determines whether the tariff was necessary in the first place. To answer the question, this matter must be reheard.

The Commission's Findings of Fact and Conclusions are Insufficient as a Matter of Law

Ordinarily, an administrative agency is relieved from delivering findings of fact and conclusions of law in cases that do not require a hearing. The courts of this state however, have determined that the ordinary rules of procedure do not always apply to the Commission. Even in cases where tariffs are approved under the "file and suspend" method without a hearing, the Commission is required by law to include sufficient findings of fact to support the conclusions leading to approval.

> Whether a case is contested or uncontested, this court has held that the requirements of §§ 386.420.2 and 536.090 apply such that the Commission's decision or order is required to be in writing, including findings of fact and conclusions of law. *State ex rel. Coffman v. Pub. Serv. Comm'n,* 121 S.W.3d 534, 542 (Mo.App.2003); *AT & T Communications of the Southwest, Inc. v. Pub. Serv. Comm'n,* 62 S.W.3d 545, 546-47 (Mo.App.2001); *State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Comm'n,* 24 S.W.3d 243, 244-45 (Mo.App.2000). The Commission's findings cannot be "completely conclusory." *AT & T,* 62 S.W.3d at 546; *State ex rel. Noranda Aluminum,* 24 S.W.3d at 244-45. They "must articulate the 'basic facts from which [the Commission] reached its ultimate conclusion' regarding disposition of the case. While detailed factual summaries are not needed there, nevertheless, must be sufficient findings of fact to determine how the controlling issues were decided by the Commission." *State ex rel. Coffman,* 121 S.W.3d at 542 (citations omitted).

State ex rel. Acting Public Counsel Coffman v. Public Service Com'n 2004 WL 1773444, at page 8 (Mo.App. W.D.,2004);[2] *see also,* State ex rel. Coffman v. Public Service Com'n ,121 S.W.3d 534, 542 -543 (Mo.App. W.D.,2003).

The Order is impaired by its conclusory nature. Basically, the Commission has given a brief history of the proceedings and points out the objections and respective positions of the parties. There is no separate section in the Order identifying findings and likewise there is no

[2] This case has not yet been reported because of pending applications to the Missouri Supreme Court for rehearing.

separate section for conclusions. The Order mostly contains a general discussion of the parties' positions and a brief explanation of which position the Commission deemed correct. What findings might appear in the Order are limited to the Commission's unqualified acceptance of Ameren's unproven statements, most of which, if not all, have been contradicted by the applicants. There was no evidence taken at the hearing upon which the Commission could base any of its findings.

In order for the Commission to comply with the case authority above, it must hold an investigative hearing at which evidence is properly adduced from which the Commission can reach supportable conclusions subject to judicial review. An attempt by the Commission to render findings that are backed only by the arguments of the parties will be ineffectual given the degree to which the parties are separated in their understanding of PEPL's involvement in the question, and the punitive effects of the Ameren cash out provisions. In short, absent an investigative hearing on the reasonableness of Ameren's gas transportation tariffs, the Commission's order will always fail to provide sufficiently detailed findings and proper conclusions under law.

WHEREFORE, on the basis of the foregoing, Applicants respectfully request that the Commission grant their application for rehearing, and after rehearing of the issues above, and the other issues set forth in their Motion to Suspend, which is incorporated by reference herein as if fully set forth, reject the Ameren tariffs.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 5th day of November, 2004, to General Counsel's Office at gencounsel@psc.state.mo.us; Office of Public Counsel at opcservice@ded.state.mo.us; Steven R. Sullivan at ssullivan@ameren.com; Thomas Byrne at tbyrne@ameren.com; Victor S. Scott at vscott@aempb.com; and Paul Gardner at info@gollerlaw.com.

Mark W. Comley