BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed	)	
Denial of Service Rule.	)	Case No. AX-2003-0574

COMMENTS OF
UNION ELECTRIC COMPANY d/b/a AMERENUE

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE"), and pursuant to the Notice published in the December 1, 2003 Missouri Register, Vol. 28, No. 23 respectfully submits the following comments in response to the Missouri Public Service Commission's ("Commission") proposed Denial of Service Rule.

A. Introduction.

The Commission's proposed Denial of Service Rule would establish standards governing when a utility may deny service to an applicant. Although AmerenUE has no objection to the concept of such a rule, and the enactment of such a rule is clearly within the purview of the Commission's jurisdiction, there are several problems with the rule that has been proposed. These problems fall into two categories: first, the rule is poorly drafted in several respects. Most significantly, the rule illogically and inappropriately conflicts with the Commission's long-standing rules governing the discontinuance of service to customers. If these inconsistencies are permitted to stand, a customer who has been properly disconnected under the Commission's rules governing the discontinuance of service will be able to restore service simply by re-applying under these rules - an unreasonable result by any measure. Also, the proposed rule imposes burdens on utilities that will significantly limit their ability to deny service to anyone at all, even those applicants to whom service clearly should be denied based on the Commission's existing standards. These deficiencies are discussed at greater length below.

Second, the proposed rule is problematic because it makes no provision for the recovery of the increased costs utilities will necessarily have to incur in order to comply. These costs include the direct, incremental costs of compliance, such as administrative costs and computer programming costs, as well as the indirect cost of increased uncollectibles that would follow from the enactment of this rule. The Commission's failure to provide for the recovery of such increased costs is both unfair to utilities and contrary to precedent before the Commission and Missouri courts, as explained below.

B. <u>The Language of the Proposed Rule Should be Revised.</u>

The language of the proposed Denial of Service Rule is troubling in several respects. Most significantly, the grounds permitted by the proposed rule for a utility to deny service to an applicant are materially different than the grounds permitted by 4 CSR 240-13.050 for a utility to discontinue service to an existing customer. For example, the rules in Section 13.050 permit a utility to discontinue service to a customer due to "unauthorized interference, diversion or use of the utility service situated or delivered on or about the customer's premises." 4 CSR 240-13.050 (1)(C). However, the proposed rule does not include this as a reason for denying service to an applicant. As a consequence, a customer whose service has been discontinued due to diversion of service or interference with a utility's facilities could simply apply for service under the new rule, and have his service promptly restored.

Similarly, although Section 13.050 permits discontinuance of service due to a customer's "failure to comply with terms of a settlement agreement" (4 CSR 240-13.050 (1)(D)) there is no similar provision in the Denial of Service Rule. Again, a customer who has been properly disconnected for this reason could simply re-apply and have service promptly restored as a result of this loophole.

Other inconsistencies between the two rules are less obvious, but no less pernicious. Section 13.050 permits discontinuance due to "refusal after reasonable notice to permit inspection, maintenance, replacement or meter reading of utility equipment. If the utility has a reasonable belief that health or safety is at risk, notice at the time inspection is attempted is reasonable." 4 CSR 240-13.050 (1)(E). Section 1(C) of the proposed rule, on the other hand, permits a utility to deny service only due to "refusal to permit inspection, maintenance, replacement or meter reading of utility equipment <u>if the utility believes that health or safety is at risk</u>." (emphasis added). The proposed rule does not permit the utility to deny service where the customer simply refuses to permit utility inspection and the utility does not know if the occupant's health or safety is at risk. Consequently, a customer who is properly disconnected due to his refusal to permit the utility to inspect its facilities or read its meter (where the utility does not know if health or safety is at risk) could simply re-apply for service under the proposed rule. If indeed the customer becomes injured due to faulty equipment that would likely have been discovered during an inspection, the proposed rule does not protect the occupants' health and safety nor the utility from impending liability claims. The bottom line is that utilities should not have to provide service to customers who will not allow them to have reasonable access to their facilities.

The proposed rule also provides for much narrower circumstances in which the utility can deny service based on applicant's receipt of the "benefit of service" from a previous unpaid account. The existing Discontinuance of Service Rule addresses this issue simply and directly. Specifically, 13.050 provides that a utility may not discontinue service due to: "the failure to pay the bill of another customer, <u>unless the customer whose</u> <u>service is sought to be discontinued received substantial benefit and use of the service</u>;" and "the failure of a previous owner or

occupant of the premises to pay an unpaid or delinquent bill except where the previous occupant remains an occupant or user." 4 CSR 240-13.050 (2)(D) and (E) (emphasis added). The proposed rule, in contrast, is much more complicated, and it includes a number of provisions that will make it virtually impossible for utilities to enforce the "benefit of service" rule under most circumstances. First, the proposed rule assigns a heavy burden to the utility to provide reliable evidence as to where any customer against whom it seeks to apply the benefit of service rule lived at all times when the previous bill was incurred. As a practical matter, utilities do not have reliable evidence showing where each person in their service territory lives at any given moment. If utilities are required to meet this standard, they will seldom if ever be able to apply the benefit of service rule to collect outstanding debts, and these costs will have to be borne by the utility's other customers.

In contrast to the utility, an applicant should have perfect knowledge of where he or she has lived in the past. The applicant can easily provide evidence, in the form of leases, other documents or even sworn statements that show exactly where he or she lived during the period of time in question. The proposed rule should require the utility only to have a reasonable basis to believe that an applicant received the benefit of unpaid-for service before requiring the applicant to provide evidence of his or her residence during the period in question.

Second, the proposed rule creates a huge loophole by providing that the unpaid bill must not be "in dispute." This provision would also make it virtually impossible for any utility to collect unpaid bills using the benefit of service rule. Customers could avoid paying bills by simply continuing to dispute them indefinitely. To mitigate this problem, the rule should provide that in order to be "disputed" the unpaid bill must be the subject of an open formal or informal

complaint at the Commission. Consequently, if and when the complaint is resolved in favor of the utility, the utility would be permitted to deny service based on the unpaid bill.

Finally, the proposed rule provides that applicants are only responsible for unpaid bills incurred within the last five years. This arbitrary limitation on an applicant's responsibility for an unpaid bill is again inconsistent with the rules concerning discontinuance of service, which contain no such limitation. Customer responsibility for unpaid bills should be limited only by the applicable statutes of limitation, not shorter periods included in a Commission rule. Otherwise these costs will ultimately have to be borne by the other ratepayers, who bear no responsibility for the arrearage at all.

AmerenUE believes that the above-listed inconsistencies between the existing Discontinuance of Service Rule and the proposed Denial of Service Rule are critical considerations for the Commission to take into account. The Discontinuance of Service Rule has been in effect for many years and has, along with relevant utility tariff provisions, struck a fair balance between providing utilities with the necessary means to collect unpaid bills and providing customers with access to utility service to the maximum extent practical. No party has suggested amending or repealing the Discontinuance of Service Rule in this proceeding. AmerenUE believes it would be unreasonable for the Commission to enact a rule, such as the proposed rule, which would undermine the ability of utilities to apply the Discontinuance of Service Rule, and which would afford greater rights to applicants for new service than existing customers have to continued service. Consequently, the proposed rule should be amended to make it consistent with the Discontinuance of Service Rule, as set forth above.

In addition, the proposed rule should be amended in some respects unrelated to the Discontinuance of Service Rule. Paragraph 3 of the proposed rule provides as follows:

> The utility shall commence service in accordance with this rule as soon as possible on the day specified by the customer for service to commence, but no later than, three (3) business days following the day specified by the customer for service to commence.

There are several problems with this paragraph. First, the paragraph should not require utilities to commence service "as soon as possible" on the day specified by the customer. Although it would be possible for a utility to drop all of its other work, including safety related work, in order to initiate service to new customers at the earliest moment, that is not a reasonable standard. Instead, utilities should be required to initiate service as soon as reasonably possible, given their other obligations. Also, the utility's deadline for commencing service should be measured from the date that all necessary facility construction has been completed, all required permits or other government authorizations have been received by the customer, and all other conditions of application have been met. The proposed rule improperly ignores these important considerations and simply obligates the utility to commence service based on the date that the customer requests service. In addition, utilities should be permitted up to five business days (not three) to commence service. Although in most cases utilities should be able to commence service in a day or two, utilities should be permitted a maximum of five business days to account for unusual circumstances (i.e. storms, outages, etc.) when limited resources must be committed to higher priority projects.

Finally, paragraph 4 of the proposed rule provides:

> Notwithstanding any other provision of this rule, a utility may refuse to commence service temporarily for reasons of maintenance, health, safety or a state of emergency.

AmerenUE recommends that the word "temporarily" be removed from this paragraph. It is possible that for health or safety reasons service might be permanently denied at a particular location, such as where a house continues to be out of compliance with safety codes and the owner takes no actions to correct the problems. One could construe the term "temporarily" as limiting the amount of time the utility can deny service in such situations. The utility should be permitted to deny service whenever a health or safety problem exists, whether it be temporary or permanent at a given location.

C. <u>The Proposed Rule Should Provide for the Recovery of Costs of Compliance.</u>

Utilities will undoubtedly incur costs to comply with the proposed rule, particularly if it is enacted in its current form. Although the costs of compliance will vary from utility to utility, they will fall into two categories: the direct costs of compliance, including such items as administrative expenses, computer programming expenses and the cost of providing the required notices, and the cost of increased uncollectibles, which will result from the limitations imposed on utilities under the proposed rule. The Commission can and should amend the proposed rule to provide a mechanism for utilities to collect these costs.

Missouri courts have endorsed the idea that the Commission should maintain revenue neutrality for utilities when it takes an action that will affect utility revenues outside the context of a rate case. *See* ***State ex rel. Alma Telephone Company et al. v. Public Service Commission,*** 40 S.W.3d 381 (Mo.App. 2001). In addition, the Commission itself has acknowledged this principle in rejecting proposed changes that would affect a utility's revenue outside the context of a rate case where "all relevant factors" can be examined. *See, for example,* ***Re: UtiliCorp United,*** Case No. GT-2001-484, *Order Rejecting Tariff* (April 3, 2001). This is only fair to utilities, particularly those such as AmerenUE, whose rates are frozen for several years.

Consequently, the Commission should amend the proposed rule to provide for the recovery of the costs that will be incurred by utilities to comply with the rule.

WHEREFORE, AmerenUE respectfully requests that the Commission amend the proposed rule as recommended herein.

Respectfully submitted,
UNION ELECTRIC COMPANY
d/b/a AmerenUE

By /s/Thomas M. Byrne

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Dated at St. Louis, Missouri this 31st day of December, 2003.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by electronic mail to all counsel of record as shown on the official service list on the Missouri Public Service Commission website (EFIS) this 31st day of December 2003.

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