

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

In the Matter of the Tariff Filings of Union)
Electric Company, d/b/a AmerenUE, to increase)
Its Revenues for Retail Electric Service.) **Case No. ER-2011-0028**

INITIAL POSTHEARING BRIEF

OF

MIDWEST ENERGY USERS ASSOCIATION

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I. INTRODUCTION

On May 12, 2011, representatives of virtually every consumer group appearing in this case executed and filed a Non-Unanimous Stipulation (“Stipulation”). That Stipulation provides for the following ***revenue neutral*** rate shifts.¹

<i>Rate Class</i>	<i>Current Revenues</i>	<i>Revenue Increase</i>	<i>Percent Change</i>
Residential	\$1,099,447	\$21,989	+2.00%
Small G.S.	\$278,880	(\$4,957)	-1.78%
Lg. G.S./Sm. Primary	\$710,244	(\$12,624)	-1.78%
Large Primary	\$178,643	(\$3,175)	-1.78%
Large Transmission	\$139,472	(\$2,479)	-1.78%
MSD	\$64	----	0.00%
Municipal Lighting	\$31,171	\$1,247	+4.00%

On May 18, 2011, the Municipal Group filed its Response to the Non-Unanimous Stipulation. In its Response, the Municipal Group opposes the Stipulation because it “calls for the lighting customers to receive a larger share of the rate increase sought in this case than all other customers.”² As a result of the Municipal Group’s opposition, the Stipulation must be treated as Non-Unanimous.

In 1982, the Court of Appeals addressed the appropriate Commission approach to a non-unanimous stipulation. In *State ex rel. Fischer v. Public Service Commission*,³ the

¹ It is important to understand that these revenue neutral rate shifts assume no rate increase to AmerenUE. As the Stipulation provides, any overall rate increase granted by the Commission to Ameren Missouri should be implemented on an equal percent, across-the-board basis and added to the preceding revenue neutral adjustments to determine each class’ total increase relative to current rates. See, Stipulation at paragraph 2.

² *Response to the Municipal Group to Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service and Rate Design*, filed May 18, 2011, at paragraph 1.

³ 645 S.W.2d 39 (Mo.App. 1982).

Court held that, even when considering a non-unanimous stipulation, the Commission proceeding must recognize all statutory requirements.⁴ Included in these statutory requirements is the right to be heard and to introduce evidence.⁵ Furthermore, and more relevant to the immediate inquiry, the Court held that the Commission's order must be in writing and include adequate findings of fact.⁶

Shortly after the *Fischer* decision, the Commission promulgated 4 CSR 240-2.115(2)(D) addressing Non-Unanimous Stipulations.

A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulation position, except that no party shall be bound by it. All issues remain for determination after hearing.

Recognizing that the Commission's evidentiary hearing recognized all statutory due process rights, the only remaining requirement is that the Commission's Report and Order contain adequate findings of fact. In this brief, MEUA will demonstrate two things. ***First***, the revenue-neutral shifts contained in the Stipulation are just and reasonable and supported by competent and substantial evidence. ***Second***, the opposition provided by the Municipal Group is misplaced and should be rejected. Based upon the ample evidence cited in this Brief, the Commission should be able to make the findings of fact necessary to adopt the Stipulation.

⁴ *Id.* at page 42.

⁵ *Id.* citing to Section 386.420.

⁶ *Id.* citing to *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61 (Mo. banc 1949).

II. STIPULATION PROVIDES FOR JUST AND REASONABLE RATES AND IS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE

A. OVERVIEW

Class cost of service studies were prepared and filed by four parties in this case: (1) AmerenUE; (2) Staff; (3) MIEC and (4) Public Counsel. The primary difference between these various studies is the method adopted by the sponsoring party for allocating production costs. While AmerenUE and MIEC both allocated production costs based upon the Average & Excess (“A&E”) methodology, Staff utilized a Base, Intermediate, Peak (“BIP”) method and Public Counsel relied upon the Average & Peak (“A&P”) method. Based upon its findings in Case No. ER-2010-0036, it is apparent that the Commission has found the A&E method to be most reliable. Given this, the Commission would seemingly have a preference for the class cost of service study presented by either AmerenUE or MIEC. Nevertheless, this brief will demonstrate that there is a great deal of agreement between each of the class cost of service studies. Given the unanimity of certain conclusions reached in each study, the Non-Unanimous Stipulation (at least as it applies to the revenue neutral shifts provided to the residential; small general service; large general service / small primary; and lighting classes) can be supported by any of the filed class cost of service studies.

B. COMMISSION ORDER IN CASE NO. ER-2010-0036

In the last AmerenUE rate case, the Commission addressed the issue of the appropriate production allocator to be used in a class cost of service study. The Commission made a number of findings that are relevant to the immediate inquiry. ***First***, the Commission found that the Average & Peak method is “unreliable.”⁷

⁷ *Report and Order*, Case No. ER-2010-0036, page 85.

The Peak and Average method, in contrast, initially allocates average costs to each class, but then, instead of allocating just the excess of the peak usage period to the various classes to the cost causing classes, the method reallocates the entire peak usage to the classes that contribute to the peak. Thus, the classes that contribute a large amount to the average usage of the system but add little to the peak, have their average usage allocated to them a second time. **Thus, the Peak and Average method double counts the average system usage, and for that reason is unreliable.**⁸

Second, the Commission found that the Average and Excess method, unlike the Peak and Average method, properly recognizes the costs imposed by each class towards the system peak.

Some customer classes, such as large industrials, may run factories at a constant rate, 24 hours a day, 7 days a week. Therefore, their usage of electricity does not vary significantly by hour or by season. Thus, while they use a lot of electricity, that usage does not cause demand on the system to hit peaks for which the utility must build or acquire additional capacity. Another customer class, for example, the residential class, will contribute to the average amount of electricity used on the system, but it will also contribute a great deal to the peaks on system usage, as residential usage will tend to vary a great deal from season to season, day to day, and hour to hour. **To recognize that pattern of usage, the Average and Excess method separately allocates energy cost based on the average usage of the system by the various customer classes. It then allocates the excess of the system peaks to the various customer classes by a measure of that class' contribution to the peak. In other words, the average and excess costs are each allocated to the customer classes once.**⁹

Therefore, given the Commission's previous findings, it would appear that the Commission would prefer the A&E methods proposed in this case by AmerenUE and MIEC. In that case, the Commission expressly found that the methodology advanced by AmerenUE is "most reliable."

After carefully considering all the studies, the Commission finds that AmerenUE's class cost of service study, modified to allocate revenues from off-system sales on the basis of class energy requirements, **is the most reliable of the submitted studies.**¹⁰

⁸ *Id.* (emphasis added).

⁹ *Id.* at pages 84-85 (emphasis added).

¹⁰ *Id.* at page 87 (emphasis added).

C. CLASS COST OF SERVICE STUDY RESULTS

As indicated, the Commission has been presented class cost of service studies by four parties. While only the AmerenUE and MIEC studies allocate production costs consistent with the Commission’s findings in Case No. ER-2010-0036, there are at least two conclusions that are common to each of the four studies: (1) the rates for residential and lighting classes are below cost of service; (2) the rates for small general service and the large general service / small primary classes continue to be well above cost of service.

ER-2011-0028 Class Cost of Service Results

	AmerenUE ¹¹	MIEC ¹²	OPC ¹³	Staff ¹⁴
Residential	\$75,995	\$106,064	\$34,119	\$98,978
Small GS	(\$24,557)	(\$20,458)	(\$31,386)	(\$15,435)
Large GS / Small Primary	(\$63,653)	(\$74,281)	(\$40,352)	(\$76,739)
Large Primary	(\$2,578)	(\$12,151)	\$11,324	(\$12,521)
Large Transmission	\$7,810	(\$6,922)	\$26,295	\$237
Lighting	\$6,983	\$7,749	N/A	\$5,504

(in thousands)

Thus, as indicated, there are certain irrefutable conclusions that can be reached from the class cost of service studies. ***First***, while differing in magnitude each of the class cost of service studies indicate that residential rates are below cost of service. In fact, the studies

¹¹ Exhibit 551 (Data Request No. 2.7).

¹² Exhibit 404, Schedule MEB-COS-5 (column 8).

¹³ Exhibit 301, Attachment A.

¹⁴ Exhibit 552.

reflect that residential rates are between 3.1% and 9.7% below cost of service.¹⁵ **Second**, all parties agree that current lighting class rates are between 17.7% and 24.9% below cost of service.¹⁶ **Third**, small general service rates are 5.5% to 11.2% above cost of service.¹⁷ **Fourth**, large general service / small primary rates are 5.7% to 10.8% above cost of service.¹⁸

Certainly, opinions appear to vary with regard to the Large Primary and the Large Transmission classes. Nevertheless, the resolutions for those classes as contained in the Stipulation appear to be consistent with the Average & Excess methodology expressly preferred by the Commission and contained within the AmerenUE and MIEC class cost of service studies. For all of these reasons, the Commission should, with adequate findings of fact, adopt the joint positions contained in the Stipulation.

D. RATE RELIEF FOR THE LARGE GENERAL SERVICE CLASS IS LONG OVERDUE

In the last AmerenUE rate case, MEUA opposed a Non-Unanimous Stipulation on the basis that it did not adequately address the continuing subsidy inherent in the rates of the Large General Service / Small Primary class. While rates for this class were well above cost of service, the non-unanimous stipulation only provided for 0.5% of revenue neutral rate relief. As the following table demonstrates, the minimal amount of rate relief from that stipulation did little to mitigate that ongoing problem.

¹⁵ Based upon current residential revenues of \$1,094,131,000. Ex. 404, Schedule MEB-COS-5, Column 1.

¹⁶ Based upon current lighting class revenues of \$31,160,000. *Id.*

¹⁷ Based upon current small general service class revenues of \$280,137,000. *Id.*

¹⁸ Based upon current large general service class revenues of \$711,918,000. *Id.*

LGS / SP Cost Differential Since 2007

	AmerenUE ¹⁹	Staff ²⁰	MIEC ²¹	OPC ²²
ER-2007-0002²³	(\$43,441)	(\$25,607)	(\$71,989)	(\$41,475)
ER-2008-0318	(\$47,863)	(\$31,665)	(\$83,041)	(\$15,177)
ER-2010-0036	(\$64,785)	(\$73,664)	(\$84,603)	(\$30,320)
ER-2011-0028	(\$63,653)	(\$76,738)	(\$74,281)	(\$40,352)

Clearly, the concerns raised by the Large General Service class in the last case went unheeded. As a result, by only adopting the 0.5% revenue neutral rate reduction set forth in the non-unanimous stipulation, the Commission did little to address this ongoing problem. While MEUA believes that the 1.78% revenue neutral reduction in this case will begin to address this problem, it is important to understand that, by any measurement, this 1.78% reduction will not completely address this problem and the need for additional future rate relief is inevitable.

III. THE 4.0% INCREASE TO THE LIGHTING CLASS PROVIDED BY THE STIPULATION IS REASONABLE AND SUPPORTED BY ALL THE CLASS COST OF SERVICE STUDIES

A. OVERVIEW

As indicated, the Stipulation in this case must be treated as non-unanimous. The non-unanimous status of the Stipulation is caused *solely* by the opposition advanced by the Municipal Group. As this brief reveals, the evidence shows that the opposition of the

¹⁹ Exhibit 551

²⁰ Exhibit 552

²¹ Exhibit 553

²² Exhibit 301

²³ Prior to Case No. ER-2008-0318, the Large General Service and Small Primary classes were treated separately. Beginning with Case No. ER-2008-0318, these two classes were combined in the class cost of service studies. As such, the results for the Large General Service and Small Primary classes in Case No. ER-2007-0002 have been added together for purposes of this brief.

municipal lighting class is without merit and not supported by any evidence. The irrefutable evidence clearly demonstrates that the rates for municipal lighting are well below cost of service. This problem is largely a result of the Commission's decision to exempt the lighting class from any of the increase in the last case. Instead, the Commission ordered the parties to prepare the first cost of service study for this class in over 30 years. This class cost of service study, urged for by the municipal group, reveals that lighting rates are 17.7% to 24.9% below cost of service. The Stipulation in this case, by imposing a 4.0% revenue neutral increase represents a small step towards bringing this class towards cost of service.

B. COMMISSION ORDER IN CASE NO. ER-2010-0036

In its Report and Order in Case No. ER-2010-0036, the Commission addressed the class cost of service for the municipal lighting class.²⁴ There, the Commission noted that no class cost of service study has been performed for the lighting class since the 1980s. Instead, the lighting class had simply been allocated the system average rate increase.²⁵

Given the lack of class cost of service study upon which to base rates for the municipal lighting class, the Commission simply exempted the lighting class from any of the 10.4% rate increase.

However, because no class cost of service study has examined the lighting class since at least the 1980s, the entire class has been given rates that may or may not bear any resemblance to the cost to serve that class. . . . Under the circumstances, the Commission will exempt the entire lighting customer class from the rate increase that will result from this report and order.²⁶

²⁴ *Report and Order*, Case No. ER-2010-0036, pages 95-100.

²⁵ *Id.* at page 96.

²⁶ *Id.* at page 99.

In order to prevent this same problem from recurring, the Commission also ordered that a cost of service study for the lighting class be performed for this case.

C. CLASS COST OF SERVICE STUDY RESULTS

As the results of the various class cost of service studies indicate, the practical effect of the Commission’s decision was to cause municipal lighting rates to be further below cost of service.

<i>STUDY²⁷</i>	<i>UNDERCHARGE</i>	<i>PERCENT</i>
AmerenUE	\$6,980,000	22.40%
MIEC	\$7,749,000	24.87%
Staff	\$5,504,000	17.66%

While exempting the lighting class from any increase may have been a reasonable response given the lack of any cost of service study for the lighting class, it appears to have heightened an already existing problem. As can be seen, rates that are now 18-25% below cost of service, would have only been 8-15% below cost of service if not exempted from the last rate increase. As such, it is necessary for the Commission to take steps to bring the lighting class rates closer to its actual cost of service.

D. STIPULATION PROVIDES FOR REASONABLE RESOLUTION

While lighting class rates are currently 18-25% below cost of service, the Stipulation provides for only a 4.0% revenue neutral increase for the class. As can be seen from each of the cost of service studies, the 4.0% increase represents a step towards, but does not completely correct lighting class rates. In fact, the increase provided in the

²⁷ Note, while Public Counsel performed a class cost of service study, it did not include the lighting class in its study.

Stipulation does not even completely correct for the 10.4% increase avoided in the last case.

In contrast, the Municipal Group claims that an “equal, across-the-board allocation of the rate increase sought in this case reflects the most appropriate rate design.” As the Commission has noted, an across-the-board increase “would leave the existing disparities revealed in the class cost of service studies unchanged.”²⁸

The evidence readily indicates that there are significant “existing disparities” in the current AmerenUE rates. The revenue neutral shifts contained in the Stipulation represent a positive step towards bringing each class closer to their actual cost of service. As such, MEUA asks that the Commission reject the Municipal Group’s opposition and make findings of fact to adopt the changes in the Stipulation.

Respectfully submitted,

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²⁸ *Report and Order*, Case No. ER-2010-0036, page 88.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive style with a large initial "D".

David L. Woodsmall

Dated: June 1, 2011