

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

In the Matter of Union Electric                    )  
Company, d/b/a Ameren Missouri's            )  
Tariff to Increase Its Revenues            )     Case No. ER-2014-0254  
For Electric Service                            )

**OBJECTION TO MOTION TO INTERVENE OUT OF TIME**

COMES NOW the Missouri Industrial Energy Consumers, and for its *Objection to the Application to Intervene After Intervention Date of United for Missouri, Inc.* (“UFM”) states as follows:

1. On July 11, 2014, the Commission issued its Order Suspending Tariff, Scheduling Pre-Hearing Conference, Directing Notice and Setting Deadline for Intervenors. This order established a deadline of July 31, 2014 for applications to intervene.
2. On October 24, 2014, UFM filed its *Application Intervene After Intervention Date* (“Application”).
3. UFM did not file its Application until 84 days after the deadline set by the Commission -- a full twelve weeks after the intervention date established for this proceeding.
4. Commission Rule 4 CSR 240-2.075(10) allows the Commission to grant a motion to intervene after the deadline only if there is a showing of good cause.<sup>1</sup> UFM’s Application fails to show good cause for its failure to intervene on time, and for its additional delay for beyond the deadline in this case. Except in those cases where an

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<sup>1</sup> “Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause.” 4 CSR 240-2.075(10).

application to intervene out of time is unopposed, the Commission has consistently found lack of good cause for late intervention where the applicant or its counsel is aware, or should be aware, of the Commission's procedures, actions and rules. Indeed, the Commission has denied late intervention to applicants who failed to show good cause for missing the deadline, even if good cause would have otherwise existed to grant intervention, especially if the applicant or its counsel is involved in Commission cases and should be aware of Commission procedure.<sup>2</sup> The Commission has particularly emphasized in its recent orders the importance of compliance with its intervention deadlines for the reason that "consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission."<sup>3</sup>

5. UFM had the ability to apply to intervene weeks ago, but failed to do so. Instead, UFM elected to put off action for twelve more weeks.<sup>4</sup> UFM claims that its failure to meet the deadline was because of certain rate design issues raised by the

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<sup>2</sup> See *Joint Application of Southern Union Company d/b/a Missouri Gas Energy and Laclede Gas Company*, Case No. GM-2013-0254, Order Regarding Motion for Reconsideration Issued May 29, 2013 (late intervention denied where application was three months past the deadline and discovery and exploration of issues had advanced even though procedural schedule is not yet adopted; applicant "is a sophisticated party that is well aware of filings and proceedings at the Commission."). See also *Missouri Gas Energy*, Case No. GR-2006-0422, Order Denying Application to Intervene Issued August 28, 2006 ("Were the Commission to accept 'we just found out' as good cause for filing a request to intervene almost two months out of time, 'good cause' as used in the Commission's rule, would have no substance. This is particularly so when it is a proposed intervenor's business to know what is going on in its environment.") cited in *Kansas City Power & Light Company*, Case No. ER-2012-0135, Order Denying Application to Intervene (February 27, 2013) (Commission did not find good cause in applicant's assertion that it only recently became aware of proceedings' impact and additional time was needed for customer group to authorize intervention; "consistent, rather than arbitrary rulings, will serve the expectations of those practicing before the Commission."); see also *Kansas City Power & Light Company*, Case No. EU-2014-0077, Order Granting Application to Intervene Issued November 26, 2013 (applicant acknowledged overlooking order setting intervention deadline; the Commission found applicant's declaration "specious" because applicant was a sophisticated litigant cognizant of the Commission's regulations).

<sup>3</sup> See *Kansas City Power & Light Company*, Case No. ER-2012-0135, Order Denying Application to Intervene Issued February 27, 2013.

<sup>4</sup> See *Transcript of Proceedings, Procedural Conference March 28, 2014*, Case No. EC-2014-0224, p. 9.

*Nonunanimous Stipulation* filed in this case by certain consumer parties<sup>5</sup> on October 10, 2014 and the Commission’s *Order Directing Consideration of A Certain Rate Design Question* issued on October 20, 2014 (“*Order*”). UFM states the issue raised by the *Nonunanimous Stipulation* and the *Order* “were not anticipated at the time of the deadline for interventions”. UFM has experienced counsel familiar with Commission rules and procedures. UFM’s counsel was in-house counsel for Ameren for many years and has represented Ameren and others before this Commission. UFM and its counsel have participated in several recent Commission cases. UFM filed amicus briefs in two cases recently decided by the Commission, EC-2014-0223 and EC-2014-0224. In each of those case, the present case was specifically acknowledged and discussed weeks before UMF’s Application.<sup>6</sup>

6. UFM’s counsel knew or should have known that issues impacting rate design would be raised in the present case. The Commission’s intervention deadline would be rendered meaningless if parties can claim good cause for late intervention on the basis that rate design issues (whether presented by stipulations, Commission orders, testimony or other means) “were not anticipated” by experienced intervenors and counsel.

WHEREFORE, based on the foregoing, the MIEC respectfully requests that the Commission issue an order denying UFM’s Application to Intervene Out of Time.

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<sup>5</sup> See *Nonunanimous Stipulation and Agreement* filed on October 10, 2014 by the Office of Public Counsel, the Consumers Council of Missouri, the Missouri Industrial Energy Consumers and the Missouri Retailers Association.

<sup>6</sup> See *Report and Order*, Case No. EC-2014-0224, Page 27, Footnote 87 (August 20, 2014); see also *Amicus Curiae Brief of United for Missouri*, Case No. EC-2014-0223 at Page 9, filed on August 15, 2014.

Dated: November 4, 2014

Respectfully submitted,

BRYAN CAVE LLP

*/s/ Diana Vuylsteke*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic mail this 4<sup>th</sup> day of November, 2014, to all counsel of record.

/s/ Diana Vuylsteke