

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

In the Matter of Union Electric Company	)	
d/b/a AmerenUE for Authority to File Tariffs	)	
Increasing Rates for Natural Gas Service	)	Case No. GR-2010-0363
Provided to Customers in the Company's	)	
Missouri Service Area.	)	

**AMERENUE'S MOTION FOR RECONSIDERATION  
OF ORDER GRANTING APPLICATION TO INTERVENE**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE"), pursuant to 4 CSR 240-2.160(2), and for its Motion for Reconsideration of the Missouri Public Service Commission ("Commission") Order Granting Application to Intervene, respectfully states as follows:

1. On July 28, 2010, the Commission issued its Order Granting Application to Intervene ("Commission Order"), which allowed MoGas Pipeline, LLC ("MoGas") to intervene in this case.

2. The Commission's rules governing intervention, found at 4 CSR 240-2.075, are discretionary in that they state that the Commission *may* grant intervention upon a showing that (4)(A) the proposed intervenor has an interest which is different than of the general public and which may be adversely affected by a final order arising from the case; OR (4)(B) when granting the proposed intervention would serve the public interest. Consequently, all interventions in Commission cases are permissive, and no party has a right to intervene.<sup>1</sup>

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<sup>1</sup> By statute, the Staff of the Commission and the Office of the Public Counsel have a right to participate as parties in all Commission cases. The Company would also note that the Commission has denied intervention to an entity that is not a customer of AmerenUE and whose interests cannot be adversely affected by the Commission's order. *See Order Denying Application for Intervention*, Case No. EF-2006-0278 (Feb. 2, 2006) (denying a request by the Missouri Joint Municipal Electric Utility Commission to intervene in AmerenUE's case involving its purchase of the former NRG Audrain combustion turbine generating plant located in Audrain County, Missouri.)

3. In granting intervention, the Commission concluded that MoGas' intervention would serve the public interest. Specifically, the Commission found:

MoGas states that it does not know how its interests may be affected but seeks intervention to ensure that the Commission is correctly informed on all aspects of the FERC filings to which Ms. Cruthis refers and any other testimony that may refer to the FERC filings.

The Commission appreciates MoGas' concern with regard to the veracity of testimony filed in this case. And, in this regard, the company's participation will serve the public interest. For this reason, and because the Commission has liberally granted interventions, the Commission will grant intervention to MoGas.

4. Given that there was no finding that MoGas has an interest that might be adversely impacted by the Commission's order in this case, allowing MoGas to intervene unconditionally and, accordingly, giving MoGas full participation rights in all aspects of the case not only goes beyond any public interest justification, but indeed will likely result in increased rate case expense, ultimately to be borne by the Company's customers and otherwise may contravene the public interest as addressed below.

5. 4 CSR 240-2.075(6) allows for a person to petition for leave to file a brief as an *amicus curiae*. This appears to be the more appropriate solution to MoGas' stated justification for seeking intervention; that is, to ensure that the Commission has accurate information regarding FERC filings involving MoGas. Notably, MoGas' application does not allege that AmerenUE misrepresented any fact to the Commission nor did it take issue with the veracity of any statement. MoGas does not need to conduct discovery in order to determine whether or not Ms. Cruthis correctly cited a FERC order. MoGas does not need to participate in any settlement conferences in order to ensure the Commission is given correct information about FERC proceedings. MoGas can assist the Commission, and the public interest, by filing an *amicus brief*, if such a misstatement or misrepresentation is alleged to have been made. This will protect the public interest

without introducing into a rate case a participant with no interest at stake in the proceedings and, in turn, minimize rate case expense. Therefore, the Commission should vacate its order granting MoGas intervention, and instead issue an order denying MoGas' intervention request and granting MoGas leave to file an amicus brief after each round of prefiled testimony is filed and after the evidentiary hearings in the case are concluded for the sole purpose of correcting any inaccuracy in testimony alleged by MoGas to exist regarding FERC proceedings involving MoGas.

6. In the alternative, the Commission should vacate its original order granting MoGas' intervention request, and instead grant MoGas' request for intervention conditionally, with the condition being that MoGas is allowed to intervene but only for the limited purpose of correcting misstatements or inaccuracies in the record (by the filing of pleadings or affidavits) related to FERC proceedings involving MoGas. Unconditional intervention creates a significant risk of contravening the public interest because unconditional intervention would allow MoGas to participate in all aspects of this case, including all aspects of AmerenUE's revenue requirement and rate design, which the Commission has already determined cannot have any impact upon MoGas. Further, unconditional intervention grants MoGas the ability to conduct discovery of both Staff and AmerenUE (although by definition MoGas has no legitimate interest in discovery in this case since MoGas' interests cannot be adversely affected by the outcome in this case), and to potentially interfere with any settlements<sup>2</sup> as well as a variety of other issues that may arise during the course of this rate case (again, even

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<sup>2</sup> We respectfully submit that the Commission should not create a situation where an intervenor, without any interest in the case, could object to a settlement among the other parties to the case and require that the Commission hold full evidentiary hearings in the case when all interested parties would have reached a compromise and settlement of the case.

though the outcome of this rate case cannot negatively impact MoGas). These subjects necessarily go far beyond any public interest benefit cited by the Commission as its basis for granting MoGas' application and, as noted, could work to the detriment of the public interest, if for no other reason due to the increase in rate case expense.

7. It is well-settled that conditions may be placed on permissive interventions. *See, e.g., Meyer v. Meyer*, 842 S.W.2d 184 (Mo.App.E.D. 1992), where the Missouri Court of Appeals stated as follows:

A court may impose conditions on its grant of permissive intervention. Or, as Professor Moore stated, a court "can limit the intervention to certain issues, or place other conditions on it."

(citations omitted). *See also United Nuclear Corp. v. Crandford Ins. Co.*, 905 F.2d 1424 (10<sup>th</sup> Cir. 1990) [*cert. denied*, 498 U.S. 1073, 111 S.Ct. 799, (1991)] ("It is undisputed that virtually any condition may be attached to a grant of permissive intervention."). *See, e.g., United Nuclear Corp. v. Crandford Ins. Co.*, 905 F.2d 1424 (10<sup>th</sup> Cir. 1990) [*cert. denied*, 498 U.S. 1073, 111 S.Ct. 799, (1991)]. Similarly, in *Strongfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 107 S.Ct. 1177, (1987), Justice Brennan, in a concurring opinion, noted that even highly restrictive conditions may be appropriately placed on a permissive intervenor, because such a party has by definition neither a statutory right to intervene nor any interest at stake that the other parties will not adequately protect or that it could not adequately protect in another proceeding.<sup>3</sup>

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<sup>3</sup> *Accord, Columbus-America Discovery Group v. Atlantic Mut. Insur. Co.*, 974 F.2d 450 469 (4<sup>th</sup> Cir. 1992) ("When granting an application for permissive intervention, a federal district court is able to impose almost any condition."), *cert. denied*, 507 U.S. 1000, 113 S.Ct. 1625 (1993); *In re Discovery Zone Sec. Litig.*, 181 F.R.D. 582, 601 (N.D. Ill. 1998) ("It is axiomatic that courts may put limitations on a party's ability to intervene permissively under Rule 24(b)(2)."); *Lelsz v. Kavanagh*, 783 F.Supp. 286, 292 (N.D. Tex. 1991) ("[A]n application for permissive intervention, unlike intervention as of right, is addressed to the discretion of the court, and the court, accordingly, may impose various conditions or restrictions on the scope of intervention."), *aff'd*, 983 F.2d 1061 (5<sup>th</sup> Cir.), *cert. denied*, 510 U.S. 906, 114 S.Ct. 287 (1993).

8. The courts have further indicated that this Commission also has the power to limit interventions. *State ex rel. County of Jackson v. Missouri PSC*, 985 S.W.2d 400 (Mo.App.W.D. 1999) (“ . . . the declaratory judgment unlawfully enjoined the PSC from exercising its discretion to grant, deny, or limit intervention under section 386.420, RSMo.”).

9. There are important policy considerations that support limiting the intervention of an applicant without a true interest in the outcome of the case. If MoGas is allowed to intervene, there is no logic that would prevent other parties without an interest in a rate case from intervening. Other suppliers of goods and services to AmerenUE (like MoGas) could intervene in rate cases, seeking to leverage their participation in the rate case (for example, their objection to an otherwise unanimous stipulation and agreement) into more favorable contract terms. Other parties that are engaged in unrelated litigation against the AmerenUE (like MoGas) could seek intervention in order to use participation in the rate case as leverage in the litigation. If parties with no interest in the outcome of a rate case are allowed unconditional intervention, the floodgates will be opened for this type of misuse of rate case proceedings, to the ultimate detriment of the utility, its customers, and all of the other participants that have a true interest in the outcome of the rate case.

10. In this case, the Commission should vacate its order granting MoGas’ intervention request and instead issue an order providing MoGas with the opportunity to file an amicus brief or, in the alternative, the Commission should vacate its order granting MoGas’ intervention request and instead issue an order conditionally granting MoGas’ intervention request, with the condition being that MoGas is allowed to intervene but only for the limited purpose of correcting misstatements or inaccuracies in the record (by

the filing of pleadings or affidavits) related to the FERC proceedings. Any conditional order granting MoGas' intervention request should make clear that MoGas is not entitled to prefile testimony, to cross-examine witnesses, to conduct discovery, or to object to any stipulation and agreement reached by the parties to this case, and that MoGas is granted status as only a limited intervenor, with its rights being limited solely to correcting misstatements or inaccuracies in the record (by the filing of pleadings or affidavits) related to the FERC proceedings.

WHEREFORE, AmerenUE respectfully requests the Commission reconsider and vacate its Order Granting Application to Intervene and, thereafter, deny MoGas' request to intervene outright or, in the alternative, condition the intervention of MoGas as outlined herein.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to all counsel of record on this 5th day of August, 2010.

/s/ Wendy K. Tatro  
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