

**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 Electric)
Service Provided to Customers in the)
Company's Missouri Service Area.)

Case No. ER-2008-0318

**MOTION TO STRIKE
PORTIONS OF THE DIRECT TESTIMONY
OF UNION WITNESSES MICHAEL DATILLO,
DAVID DESMOND, MICHAEL WALTER, AND DONALD GILJUM**

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or the "Company"), pursuant to 4 CSR 240-2.080 and 4 CSR 240-2.130, and for its Motion to Strike Portions of the Direct Testimony of Union Witnesses Michael Datillo, David Desmond, Michael Walter, and Donald Giljum, respectfully states as follows:

1. On August 28, 2008, International Brotherhood of Electrical Workers Locals 2, 309, 649, 702, 1439, 1455, AFL-CIO and International Union of Operating Engineers Local 248, AFL-CIO ("Unions") filed the Direct Testimony of four witnesses, Michael Datillo, David Desmond, Michael Walter and Donald Giljum ("Union Witnesses").
2. In their various testimonies, the Union witnesses make recommendations which are wholly irrelevant and immaterial to the issues in this rate case proceeding, and are beyond the statutory authority and jurisdiction of the Commission to adopt. As a result, the following testimony should be stricken from the record:

Direct Testimony of David Desmond, p. 3, lines 12-19:

Q. Do you have any recommendations to this Commission?

A. Yes. I would like to see the Commission require Ameren to invest in its employee infrastructure and require subcontractors to meet standards of training and certification similar to those required by Ameren of its internal workforce. This will restore quality and efficiency to the work performed, as well as insure that the portion of the ratepayers' monies that is attributable to employment will largely remain in Missouri (and, for the Ameren operations in other states, in those states).

Direct Testimony of Michael Datillo, p. 3, lines 10-16:

Q. Do you have any recommendations to this Commission?

A. Yes. I recommend that, as a condition to the rate increase, the Commission require Ameren to expend a substantial portion of the rate increase on investing in its employee infrastructure. This will restore quality and efficiency to the areas of work performed by members of my union, as well as insure that the portion of the rate payers' monies that is attributable to employment will largely remain in Missouri (and, for the Ameren operations in other states, in those states).

Direct Testimony of Michael Walter, p. 6, lines 9-16:

A. . . . We believe that Ameren's preparation to address the present and future work force dilemma should be considered in this rate

case. We also feel, however, that Ameren should be required to

expend that rate increase in a manner that will insure long-term

efficiency and quality of service. To accomplish that end, we ask

the Commission to require Ameren to expend a substantial portion

of the rate increase on investing in its employee infrastructure

hiring, training, and utilizing its internal workforce to maintain its

normal and sustained workload.

Direct Testimony of Donald Giljum, p. 3:

Q. Do you have any recommendations to this Commission?

A. Yes. I would like to see the Commission require that Ameren analyze its customary work load (in IBEW parlance, its “normal and sustained work load”) giving consideration to the unique nature of generating station work, (i.e. the unexpected breakdown of equipment, which occurs so often that it is more normal than not) and order AmerenUE to set in place a process by which it will be able to accomplish that customary work load solely using its permanent, direct workforce within the next three years. This will ensure not only that there are sufficient numbers of trained employees for the safe and reliable generation of electricity for Missouri but also that this electricity will be generated largely by Missouri residents.

3. The above-referenced portions of the Union Witnesses’ Direct Testimonies should be stricken from the record since the Union’s testimony raises issues

which are wholly irrelevant and immaterial to this rate case, and requests the Commission

to order AmerenUE to (i) expend a substantial portion of the rate increase on investing in

its employee infrastructure; (ii) require subcontractors to meet standards of training and

certification similar to those required by Ameren of its internal workforce; and (iii) set in

place a process by which it will be able to accomplish the Company's work load solely

using its permanent employees within the next three years.

4. While the Commission certainly has the regulatory powers to examine and be kept informed of the methods and practices employed by AmerenUE in the transaction of its business, as provided in Section 393.140(5), RSMo 2000, the Missouri Supreme Court has stated that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. *State ex rel. City of St. Joseph v. Public Service Commission*, 325 Mo. 209, 30 S.W.2d 8 (Mo. banc 1930). *See also State of Missouri ex rel. Southwestern Bell Co. v. Public Service Commission*, 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981 (1923). As the Missouri Court of Appeals succinctly stated in *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177, 181-82 (Mo. App. 1960):

The powers of regulation delegated to the Commission are comprehensive. . . . Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.

5. The Commission has repeatedly followed this principle. In a recent complaint case involving Laclede Gas Company and its union, the Commission struck from the Complaint a union request that Laclede be required to utilize "non-managerial"

personnel to install Automatic Meter Reading (AMR) devices. In that case, the Commission held that: "Laclede correctly argues that the Commission cannot dictate how Laclede manages its business." As a result, the Commission found that it would strike the request for relief that would require Laclede to use "non-managerial" personnel to install AMR devices. Order Denying Motion To Dismiss, Granting Motion For More Definite Statement, Granting Motion To Strike, In Part, Setting Procedural Teleconference, And Directing Filing, *USW Local 11-6 v. Laclede Gas Company*, Case No. GC-2006-0390 (August 10, 2006).

6. The Commission has also found limited authority to dictate Southwestern Bell's management policies regarding business meal expenses, stating: "It is not the function of the Commission to tell SWB how to run its business; rather its duty is to set just and reasonable rates." *PSC Staff v. Southwestern Bell Telephone Co.*, 2 Mo.P.S.C. 3d 479, 549, Case No. TC-93-224 (1993). In addition, Missouri statutes make it clear that the Commission's authority does not extend to management-labor issues that are the subject of a collective bargaining agreement between the utility and a labor organization. See Section 386.315(1), RSMo 2000.

7. Applying these principles to the instant case, the Commission may not dictate, as the Union Witnesses have requested, that AmerenUE (i) expend a substantial portion of the rate increase on investing in its employee infrastructure; (ii) require subcontractors to meet specific standards of training and certification similar to those required by Ameren of its internal workforce; or (iii) set in place a requirement that the Company utilize its own employees rather than outside contractors to accomplish the

various tasks necessary to provide service to its customers. To AmerenUE's knowledge, the Commission has never attempted to assert jurisdiction over issues such as whether a utility uses its own employees to install utility facilities or perform other services versus hiring outside contractors to do such work. Nor has the Commission asserted jurisdiction over how funds would be used for employee hiring or training. The Commission has refrained from doing so for good reason—because the Commission has no jurisdiction to do so, and because such intrusions would strike at the heart of a public utility's recognized right to manage its business. Yet the Union Witnesses presume that the Commission may exercise such authority, and solely that incorrect presumption underlies the Unions' testimony in this rate case proceeding. Consistent with decades of regulatory law and practice, the Commission should reject such an approach, and strike the above-cited portions of the Union Witnesses' testimony.

WHEREFORE, for the foregoing reasons, Union Electric Company d/b/a AmerenUE respectfully moves that the Commission strike the following portions of Union Witnesses' Direct Testimony filed in this matter: David Desmond, p. 3, lines 12-19, Michael Datillo, p. 3, lines 10-16, Michael Walter, p. 6, lines 9-16, and Donald Giljum, p. 3, as more fully described herein.

Respectfully submitted,

/s/ James M. Fischer

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 25th day of November, 2008, to all counsel of record.

/s/ James M. Fischer

James M. Fischer