

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DRAFT 11/12/08 9:00 A.M.**

In the Matter of Union Electric Company)
d/b/a AmerenUE's Tariffs To Increase Its) Case No. ER-2008-0318
Annual Revenues for Electric Service)

PUBLIC COUNSEL'S POSITION STATEMENT

COMES NOW the Office of the Public Counsel and submits its Position Statement. This position statement follows the same numbering format as the list of issues filed by the Staff of the Commission on November 12, 2008. Although there are some issues on which Public Counsel does not at this time take a position, Public Counsel may take a position on those issues as evidence is adduced at the hearing.

1. **Overview and Policy:** Overview of "cost of service," and/or what policy considerations, if any, should guide the Commission in deciding this case?
This is not a contested issue, and so Public Counsel does not have a position on its resolution.

2. **Return on Equity:** What return on equity should be used in determining revenue requirement?
10.2%

Capital Structure:

50.928% common equity, 1.776% preferred stock, 46.558% long-term debt and 0.739% short-term debt

3. **Vegetation Management and Infrastructure And Repair:**
 - a. Vegetation Management
 - i. What level of vegetation management expense is appropriate for recognition in AmerenUE's revenue requirement in this case?
Public Counsel agrees with Staff's position for use of test year actual to be updated during the true-up for level of annualized expense to include in instant case cost of service.

- ii. Should AmerenUE's revenue requirement in this case include a three year amortization of vegetation management expense from January 1, 2008 to June 30, 2008 that is in excess of the \$45 million that was included in AmerenUE's revenue requirement for Case No. ER-2007-0002?

Deferral and amortization of any excess incurred during the instant case test year and true-up period should not be allowed. AmerenUE already has a tracker in place from Case No. ER-2007-0002 that describes the cost of service treatment for amounts expended that vary from the \$45 million included in base rates during this time period.

- iii. Should AmerenUE's revenue requirement in this case include a three year amortization of vegetation management expense from July 1, 2008 to September 30, 2008 that is in excess of the \$45 million that was included in AmerenUE's revenue requirement for Case No. ER-2007-0002?

Deferral and amortization of any excess incurred during the instant case test year and true-up period should not be allowed. AmerenUE already has a tracker in place from Case No. ER-2007-0002 that describes the cost of service treatment for amounts expended that vary from the \$45 million included in base rates during this time period.

- iv. Should accounting authority be granted for vegetation management expense incurred from October 1, 2008 to February 28, 2009 in excess of the \$45 million that was included in AmerenUE's revenue requirement for Case No. ER-2007-0002, with this cost being deferred for treatment in AmerenUE's next rate case?

Deferral and amortization of any excess incurred during the instant case test year and true-up period should not be allowed. AmerenUE already has a tracker in place from Case No. ER-2007-0002 that describes the cost of service treatment for amounts expended that vary from the \$45 million included in base rates during this time period.

- v. Should a tracker be implemented for vegetation management expense that exceeds the level of vegetation management expense the Commission recognizes in AmerenUE's revenue requirement in this case? Should such a tracker be implemented for the one-year period of March 1, 2009 to February 28, 2010?

1. A different tracker than that currently being utilized should not be implemented. AmerenUE already has a tracker in place from Case No. ER-2007-0002 that can effectively account for vegetation management costs while also limiting the damage that trackers cause to the surrogate competitive environment that regulation emulates.

2. The tracker authorized in AmerenUE Case No. ER-2007-0002 should remain unchanged.

b. Infrastructure Inspection And Repair:

- i. What level of infrastructure inspection and repair expense is appropriate for recognition in AmerenUE's revenue requirement in this case?

Public Counsel takes no position.

- ii. Should AmerenUE's revenue requirement in this case include a three year amortization of infrastructure inspection and repair expense from January 1, 2008 to June 30, 2008?

Public Counsel takes no position.

- iii. Should AmerenUE's revenue requirement in this case include a three year amortization of infrastructure inspection and repair expense from July 1, 2008 to September 30, 2008?

Public Counsel takes no position.

- iv. Should accounting authority be granted for infrastructure inspection and repair expense incurred from October 1, 2008 to February 28, 2009, with these costs being deferred for treatment in AmerenUE's next rate case?

Public Counsel takes no position.

- v. Should a tracker be implemented for infrastructure inspection and repair expense that exceeds the level of infrastructure inspection and repair expense the Commission recognizes in AmerenUE's revenue requirement in this case? Should such a tracker be implemented for the one-year period of March 1, 2009 to February 28, 2010?

Public Counsel takes no position.

- 4. **January 13, 2007 Ice Storm Accounting Authority Order (AAO):** In Case No. EU-2008-0141, the Commission authorized AmerenUE an AAO for the extraordinary costs of the January 13, 2007 Ice Storm but deferred to this case the determination of the starting date of the five-year amortization of the deferred costs. What should be the start date of the five year amortization?

Public Counsel supports the Staff position.

- 5. **Deferred Income Taxes:** Three items included by AmerenUE in the deferred income tax balance offset to ratebase relating to deductions taken by AmerenUE on prior tax returns may be disallowed by the IRS, but there will not likely be a final IRS ruling before 2011. Should these uncertain tax positions be included or excluded from the determination of AmerenUE's revenue requirement in this case?

Public Counsel takes no position.

- 6. **Entergy Arkansas Equalization Costs in SO₂ or Other Tracker:** Should AmerenUE be required by the Commission to accumulate in its SO₂ or some other tracker refunds it may prospectively receive relating to the Entergy Equalization costs?

Public Counsel takes no position.

- 7. **Off-System Sales:**

- a. **Margin:** What amount of off-system sales margin is appropriate for recognition in AmerenUE's revenue requirement in this case?

\$271,081,490

- b. **Natural Gas and Purchased Power Prices:** What are the appropriate natural gas and purchased power prices to use in this case for purposes of inputs into the production cost models of AmerenUE and the Staff?
Public Counsel takes no position.
- c. **Prior Period Taum Sauk Capacity Sales:** Should there be recognition of prior period Taum Sauk capacity sales that could have been made by AmerenUE but for the catastrophic failure of the Taum Sauk pumped storage unit? OPC sought the establishment of Case No. EO-2008-015, which was consolidated with Case No. ER-2008-0318.
Yes, in the amount of \$5,016,000.
- d. **Non-Taum Sauk Capacity Sales:** What level of non-Taum Sauk capacity sales revenues should be included in AmerenUE's off-system sales?
This number is considered Highly Confidential by AmerenUE. It is the sum of the number appearing at page 7, line 10 of Ryan Kind's revenue requirement direct testimony and the number appearing at page 7 line 10 of Shawn Schukar's direct testimony.
- e. **Taum Sauk Capacity Sales:** What level of Taum Sauk capacity sales revenues should be included in AmerenUE's off-system sales?
This number is considered Highly Confidential by AmerenUE. It is cited at page 8 line 12 of Ryan Kind's revenue requirement direct testimony.
- f. **Non-Asset Based Trading Margins:** Should the margins associated with non-asset-based trading of wholesale capacity and energy products be included in the calculation of AmerenUE's Missouri jurisdictional revenue requirement?
Yes.

8. **Fuel Adjustment Clause (FAC):**

- a. **FAC -** Should the Commission approve AmerenUE's proposed fuel adjustment clause, should the Commission approve a FAC with modifications for AmerenUE, or should the Commission reject the authorization of a FAC for AmerenUE?
The Commission should reject the authorization of a FAC for AmerenUE.
- b. **FAC Structure -** If the Commission authorizes a FAC for AmerenUE, what are the proposals of the various parties for fuel and purchased power cost recovery pursuant to a FAC to be adopted for AmerenUE?
iv. OPC proposal – 50% / 50%

Public Counsel takes no position on sub-issues c - h.

9. **Callaway Unit II Combined Construction And Operating License Application (COLA) Costs:** Should or can the costs of the combined construction and operating license application to the Nuclear Regulatory Commission for the prospective Callaway II unit be recovered in rates by AmerenUE? Can any such recovery proceed without a determination of public convenience and necessity or does AmerenUE intend to rely on the 1975 certificate?
- The COLA costs cannot lawfully be recovered from ratepayers in this case. Public Counsel takes no position on whether a new CCN is required or whether the 1975 CCN authorizes the prospective Callaway 2 unit.
10. **MISO¹ Day 2:** Should AmerenUE recover in cost of service Revenue Sufficiency Guaranty resettlement costs for prior years’?
- Public Counsel takes no position.
11. **Incentive Compensation and Restricted Stock Compensation:**
- a. **Incentive Compensation:** AmerenUE eliminated from cost of service the Executive Incentive Plan for officers and directors that is awarded on the basis of earnings per share performance. Should AmerenUE recover the costs of all other incentive compensation programs?
- Public Counsel takes no position.
- b. **Restricted Stock Compensation / Performance Share Unit Plans:** Should AmerenUE recover the costs of the Restricted Stock Compensation / Performance Share Unit Plans?
- Public Counsel takes no position.
12. **Depreciation:** Should depreciation rates for the plant accounts for the Callaway I nuclear generating station be adjusted, based on less than a full depreciation study of all plant accounts, to use the actual book accumulated depreciation reserve amounts, which adjustment would amortize an over accrual of the nuclear depreciation reserve accounts, i.e., the difference between the actual book accumulated depreciation and the theoretical accrued depreciation, on the basis that the Callaway I plant will be relicensed for an additional 20 year term?
- Public Counsel believes the phrasing of this issue is confusing. A better description of the issues is:
- Should depreciation rates for the plant accounts for the Callaway I nuclear generating station be adjusted to use the actual book accumulated depreciation reserve amounts, which adjustment would amortize an over accrual of the nuclear depreciation reserve accounts, i.e., the difference between the actual book accumulated depreciation and the theoretical accrued depreciation?
- Public Counsel’s position is that this adjustment should be made.

¹ Midwest Independent Transmission System Operator, Inc. (MISO)

13. **Demand Side Management (DSM):** In Case No. ER-2007-0002, AmerenUE was ordered by the Commission to book the costs of acquiring demand side management resources in a regulatory asset account. Should the Commission require netting of revenues for only demand response programs, or should netting apply to all demand side management resources?
Netting should apply to all demand-side resources.
14. **Low-Income Weatherization Program:** Should AmerenUE provide an additional \$300,000 for funding the current low-income weatherization program for the full amount directed by the Commission in Case No. ER-2007-0002 for the twelve months ended July 5, 2008? Should AmerenUE continue to fund the current low-income weatherization program for the full amount directed by the Commission in Case No. ER-2007-0002 for the twelve months ending July 5, 2009? In what annual amount and from what source of funds, should AmerenUE continue to fund the current low-income weatherization program beyond the Commission's Report and Order in Case No. ER-2007-0002?
Public Counsel takes no position.
15. **Pure Power Program (Voluntary Green Power Program / Renewable Energy Credits (RECs)):** Should the Commission authorize AmerenUE to continue its Pure Power Program / Voluntary Green Power Program, and if the Commission does so, in what form should the Commission authorize the continuation of the program?
The Commission should not authorize AmerenUE to continue the Pure Power Program in its current form. If Pure Power is to be authorized, the Commission should require the changes proposed by Staff witness Michael Ensrud, mandate much clearer marketing of the program, and require AmerenUE to offer full refunds to any customer who was misled by the marketing.
16. **Union Issues:** The Unions are in support of AmerenUE's proposed rate increase but raise the following issues:
- a. Should AmerenUE be required to expend a substantial portion of the rate increase investing in its employee infrastructure, in general, including recruitment and training;
Public Counsel takes no position.
 - b. Should AmerenUE be required to fully and permanently staff itself within 3 years for its normal and sustained workload, thereby reducing the need for subcontracting and overtime;
Public Counsel takes no position.
 - c. Should AmerenUE be required to be liable for and to insure the training and certification of its subcontractors; and
Public Counsel takes no position.
 - d. Should AmerenUE be required to make good faith efforts to hire locally, both its internal and external workforces?
Public Counsel takes no position.

17. **Hot Weather Safety Program:** Should the Hot Weather Program proposed by AARP be adopted by the Commission?

The program should not be adopted as proposed, but could be adopted with certain modifications.

19. **Certain Power On and Other Advertising Expense:** Does AmerenUE's advertising meet the criteria applied by the Commission for recovery of the expense in rates?

Public Counsel takes no position.

20. **Class Cost of Service and Rate Design:**

a. **Class Cost of Service:**

How should class revenue responsibility be determined?

- i. Should there be an increase or decrease in the revenue responsibility of the various customer classes ?

Public Counsel's cost studies in this case do not support any increases or decreases in the revenue responsibility of the various customer classes.

Public Counsel recommends that the Commission not rely upon the cost studies of other parties to support revenue requirement shifts.

- ii. If the answer to "i" above is "yes," on what basis should production capacity costs and transmission costs be allocated to the classes?

No shifts should be made.

b. **Rate Design:**

- i. How should the Commission implement any revenue requirement change it orders in this case?

No shifts should be made.