

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

In the Matter of Union Electric Company)	<u>Case No. ET-2008-0459</u>
d/b/a AmerenUE's Tariff Establishing an)	Tariff File No. YE-2008-0262
Industrial Demand Response Program)	

MOTION TO SUSPEND TARIFF

COMES NOW the Office of the Public Counsel and for its Motion Suspend Tariff states as follows:

1. On July 2, 2007,¹ Union Electric Company d/b/a AmerenUE filed tariffs designed to implement an Industrial Demand Response (IDR) program. Such a filing was required by the Commission's Report and Order in Case No. ER-2007-0002 and an order issued in this case on May 31. UE's July 2 tariff filing was assigned Tariff No. YE-2008-0005.

2. After a number of discussions among the parties, and filed opposition by several of the parties, UE withdrew the tariffs that had been filed as Tariff No. YE-2008-0005, and filed new tariffs (assigned Tariff No. YE-2008-0262) which bear an effective date of November 22. Although the new tariffs are in some respects better than the first, the IDR program that they would implement suffers from three infirmities: it provides a benefit to a small number of customers while causing a detriment to UE and its other customers; it does not comply with the Promotional Practices Rule; and it does not specify how the costs will flow through UE's deferral account set up for demand side resources (including demand response programs). The Commission should suspend the tariff and establish a procedural schedule to create a record on which the Commission can base a decision on how to modify the IDR program so that it is in the public interest.

¹ All dates refer to calendar year 2007.

3. While UE's IDR tariffs would implement a pilot program that is intended to determine the cost effectiveness of a demand-side resource, there should be a reasonable level of confidence that the payments to large customers for their willingness to curtail their loads will not be larger than the value that the demand response resource is expected to provide to the utility. Nothing filed in this case (nor in ER-2007-0002) would allow such a determination. In fact, it appears that the payments are too high, and that the program may be beneficial only to the few customers subscribed to it, and detrimental to UE and its other customers.

4. Demand response resources can provide value to an electric utility in two ways. First, for a utility that is short on capacity, demand response resources can be substituted for supply-side peaking resources, such as gas combustion turbines (CTs) or purchased power contracts. The capacity-short utility obtains value from the demand response resource because it has lowered the utility's need for supply-side peaking resources and the value of the demand response resource is roughly equivalent to the levelized cost of the CT or the cost of the purchased power. Second, for a utility that is long on capacity, demand response resources can have value for a utility if it is able to sell the additional capacity length created by the demand-side resource in the wholesale market as regulatory capacity or ancillary services or some other wholesale product. The demand response resource may also enable additional revenues from off-system sales. For a capacity-long utility, the demand response resource only has value if the utility is able to make such sales at prices that exceed the payments made to the program participants.

5. UE (at least for the next three years that the proposed IDR program would be in effect) has significant excess capacity, so it must find value in the second of these ways – by selling the capacity and energy which is freed-up pursuant to the IDR program. Based on what

UE expects to be able to get from such sales in the first year of the program, the amount UE could pay to participants under the proposed tariff is significantly higher than the value that UE will be able to get in return by selling additional capacity and energy into the wholesale market. Therefore, the program would not be cost effective unless wholesale capacity prices in the second and third years rise substantially above the level that is currently observed for 2008. The expected cost effectiveness of a program that may result in nearly \$10 million of payments to program participants over the three-year pilot period should not rely solely on significant future changes in the market value of capacity that may or may not occur. While it could be reasonable for a utility to make expenditures on a pilot program to test whether a demand-side resource that is not currently cost effective may turn out to be cost effective over a three year time period, the maximum level of expenditures for such a program should be capped at far less than the nearly \$10 million dollar exposure that UE's ratepayers would have if the proposed pilot is approved.

6. The pilot program proposal does not comply with subsection (3)(B) of 4 CSR 240-3.150 - Filing Requirements for Electric Utility Promotional Practices, which require that the demand-side resource pilot programs include "a description of the evaluation criteria, the evaluation plan and the schedule for completing the evaluation." UE's proposal fails to specify that it will perform a cost effectiveness evaluation of the pilot program, fails to specify the evaluation criteria, and fails to include a schedule for completing the evaluation.

8. The Commission approved a demand-side resource cost recovery mechanism for UE in Case No. ER-2007-0002 that allows UE to place costs of developing, implementing, and evaluating demand-side programs in a special regulatory asset account. Through the use of this regulatory account, UE will be able to include a return on and return of its prudently incurred expenses in its cost of service in future rate cases. Utilities should only be permitted to place the

net costs of demand response programs in this deferral account because it would be grossly unfair to force ratepayers to fund demand response programs without simultaneously giving those ratepayers credit for the offsetting revenues (from additional capacity and energy sales) that the utility receives in the same time period when the payments are made to program participants. UE has not addressed this issue in its pilot program proposal and the proposed program will be detrimental to UE's ratepayers unless the Commission clarifies that the regulatory asset account where the costs of this program are booked will also reflect the revenues that UE is able to receive from additional capacity and energy sales that were made possible by the proposed demand response program.

WHEREFORE, Public Counsel respectfully requests that the Commission suspend Tariff File No. YE-2008-0262, and establish a procedural schedule including prefiled testimony and an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to the parties of record this 15th day of November 2007.

/s/ Lewis R. Mills, Jr.
