

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

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

**UNION ELECTRIC COMPANY d/b/a AMERENUE’S
RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL’S
MOTION TO MAKE TESTIMONY PUBLIC**

COMES NOW Union Electric Company d/b/a AmerenUE (the “Company” or “AmerenUE”), pursuant to 4 CSR 240-2.135(11), and for its response to the above-referenced Motion states as follows:

1. On April 4, 2008, AmerenUE filed tariffs designed to implement a general rate increase for electric service and supported its filing with direct testimony from 21 different witnesses. Testimonies for six of those 21 witnesses contain highly confidential information, which was designated as such in the “HC” versions of their testimonies.¹

2. On April 11, 2008, the Office of the Public Counsel (“OPC”) moved to make those six testimonies² public, citing 4 CSR 240-2.135(11). OPC argues that “absent a compelling explanation from AmerenUE justifying confidential treatment,” the Commission should order these testimonies be made public. 4 CSR 240-2.135(11) does not require a “compelling explanation,” but given OPC’s Motion, does require the Company to file a pleading “establishing the specific nature of the information that it

¹ Attachment A to the direct testimony of Thomas R. Voss contains executive summaries from each of the other 20 AmerenUE witnesses, including executive summaries from the six other witnesses whose testimony contains confidential information. Mr. Voss’ testimony itself contains no confidential information.

² OPC also moved to make the confidential executive summaries attached to Mr. Voss’ testimony public.

seeks to protect and establishing the harm that may occur if that information is disclosed to the public.” The Company respectfully submits this pleading in compliance with those requirements.

3. Before addressing the specific confidential information designated in these testimonies, the Company would note that it exercised great care and diligence when preparing its testimony to protect no more information than was necessary. Indeed, as noted earlier, 15 of the 21 testimonies contain no confidential information at all. An examination of the six testimonies that contain confidential information demonstrates that only a very small percentage of those testimonies were designated as confidential, and the designations that were made consist almost entirely of individual numbers that have a bearing on off-system sales pricing or marketing, or on fuel prices or costs. As the Commission knows, off-system sales are made into competitive wholesale markets, and the fuel needed for the Company’s generating units must be purchased in competitive markets. It is thus not surprising that these six testimonies contain confidential information. The Company would also note that similar information relating, for example, to off-system sales, has been treated as confidential in other cases, notably in recent rate cases involving Kansas City Power & Light Company.

4. The first testimony containing confidential information is the direct testimony of Ajay K. Arora. Mr. Arora’s testimony details into which Midwest Independent Transmission System Operator, Inc. (“MISO”) markets (the Day Ahead or Real Time markets) AmerenUE makes its off-system sales. This is market specific information relating to off-system sales made in competition with others, and is thus protected as highly confidential information under subsection (1)(B)3 of the Confidential

Information Rules.³ This information also relates to strategies employed or under consideration in contract negotiations (relating to possible forward sales of energy with counterparties), and is thus protected under subsection (1)(B)6 of the Confidentiality Rules.

Public disclosure of this information could harm AmerenUE's ability to maximize its off-system sales, which in turn would negatively impact ratepayers since off-system sales revenues are an offset to the Company's revenue requirement and since off-system sales revenues also reduce net fuel costs via the fuel adjustment clause proposed by the Company in this case.

The remaining confidential information in Mr. Arora's testimony provides specific pricing information relating to AmerenUE's off-system sales and fuel supplies (e.g., expected prices and costs, and the variability around those prices and costs). The off-system sales pricing information is protected by subsections (1)(B)3 and (1)(B)6, for the reasons discussed earlier, and public disclosure of this information could cause the harm outlined above. The fuel price and cost information is protected both under subsection (1)(B)4 (marketing analysis or information relating to goods purchased by the Company for use in service to customers— i.e., fuel for the Company's generating plants) and subsection (1)(B)6 (relating to contract strategies and negotiations with fuel and transportation suppliers).

Public disclosure of this information could harm AmerenUE's contract negotiations and raise its fuel prices. This would harm the Company's ratepayers since higher fuel costs would create a higher revenue requirement and thus higher rates.

³ 4 CSR 240-2.135.

Mr. Arora's testimony also details quantities of energy used for off-system sales from certain plants, and strategic information about forward sales of capacity and energy which, like information relating to into which markets (Day Ahead or Real Time) off-system sales are made, is protected by subsections (1)(B)3 and (1)(B)6. Public disclosure of this information could harm customers for the reasons discussed earlier.

5. The testimonies of Messrs. Glaeser, Irwin, and Neff also contain confidential fuel price and cost information protected by subsections (1)(B)4 and 6. Each of these witnesses are responsible for engaging in contract negotiations with fuel and fuel transportation suppliers in competitive national and international markets and in fact, those markets, their views on those markets, and strategies they employ are central subjects of their testimonies. For the reasons discussed in ¶ 4 of this Response, public disclosure of this information could lead to higher fuel costs for the Company and, ultimately, for customers.

6. Mr. Lyons' testimony uses and relies upon the testimonies of Messrs. Arora, Glaeser, Neff and Irwin. Consequently, portions of Mr. Lyons' testimony (dealing with fuel prices and costs and off-system sales) are also confidential for the reasons discussed earlier, to the extent those portions of Mr. Lyons' testimony would reveal confidential information in those other four pieces of testimony. Public disclosure of this information through Mr. Lyons' testimony could create the harm outlined above in connection with the discussion of confidential information in the testimonies of Messrs. Arora, Glaeser, Neff and Irwin.

7. There is only one piece of information designated as confidential in Mr. Schukar's testimony, that is, information supplied under a subscription with a third party

vendor relating to forward energy prices (Schedule SES-E3 and a reference to that information in the body of Mr. Schukar's testimony). This information was designated as confidential because of the Company's contractual confidentiality obligations with the supplier of this information. Upon further review, the Company has determined that the confidential information in Mr. Schukar's testimony falls under subsection (1)(A) of the Confidentiality Rules (relating to proprietary information) and not under subsection (1)(B) (relating to highly confidential information). Consequently, the Company is withdrawing the HC version of Mr. Schukar's testimony and refileing it as a proprietary version concurrently with the filing of this Response. Regardless, public disclosure of this information would breach the Company's contractual obligation to the supplier of the data, exposing the Company to a potential loss of access to the data and to potential damages.

WHEREFORE, the Company files this Response in compliance with Subsection (11) of the Confidentiality Rule, and requests that OPC's Motion be denied.

Respectfully Submitted:

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Dated: April 21, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 21st day of April, 2008.

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