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-2010-0036**

UNION ELECTRIC COMPANY d/b/a AMERENUE'S REPLY TO RESPONSES AND SUGGESTIONS IN OPPOSITION TO AMERENUE'S IMPLEMENTATION OF INTERIM RATES

COMES NOW Union Electric Company d/b/a AmerenUE (the "Company" or "AmerenUE"), by and through counsel, and hereby replies to the filings made by the Staff, the Office of the Public Counsel ("OPC"), the Missouri Industrial Energy Consumers ("MIEC"), the Midwest Energy Users Association ("MEUA"), and the Missouri Energy Group ("MEG") (collectively, the "Opposing Parties") in opposition to AmerenUE's implementation of interim rates.[1] In this regard, AmerenUE states as follows:

BACKGROUND

1. The vast majority of the more than 60 pages filed by the Opposing Parties in opposition to AmerenUE's interim rate filing consist of an historical recitation of what past Commissions have or have not previously done when a utility seeks to implement interim rates. Taken as a whole, the principal arguments of the Opposing Parties are as follows: (a) that past Commissions have usually required an "emergency" before allowing interim rates, and this Commission should continue to do so simply because that

[1] AmerenUE's interim rate filing seeks to implement less than 10% of AmerenUE's permanent rate request ($37.3 million of the approximately $402 million permanent request) on an interim, subject to refund (with interest) basis.

is what has most often been done in the past;[2] and (b) that regulatory lag is in their view at all times a good thing, even as Missouri's utilities must continue to file rate case after rate case, including AmerenUE's filing of three rate cases within a period of just over 36 months, and even though AmerenUE finds itself in the position of chronically being unable to earn its authorized return on equity ("ROE") despite having received two rate increases in the last approximately two years.[3]

2. What the Opposing Parties have *not* done is rebut or seriously challenge the following basic principles that underlie AmerenUE's request to implement interim rates:

- There is no emergency "standard" as a matter of law.[4] Rather, allowing or not allowing the implementation of interim rates is a matter committed to the discretion of the Commission;

- The Commission can allow the interim rate tariff to take effect without taking any action whatsoever, pursuant to the file and suspend provisions of Section 393.140(11), RSMo, or could, but is not required to, have a hearing if it so chooses;[5]

[2] As AmerenUE's Suggestions in support of its interim rate filing make clear, the Company is asking the Commission to exercise its discretion to allow interim rates without requiring an emergency.

[3] In the past five years, Missouri's electric utilities have filed 10 rate cases (now eleven, with this case) with the Commission finding in all 10 cases that a rate increase was necessary, as follows: The Empire District Electric Company – ER-2004-0570 ($30 million/11.6% increase); ER-2008-0093 ($22 million/6.7% increase); Aquila, Inc./ Kansas City Power & Light - GMO – ER-2005-0436 (MPS Division -- $38.5 million/11.27% increase; L&P Division -- $6.3 million/6.3% increase); ER-2007-0004 (MPS Division -- $45.1 million/12.2% increase; L&P Division -- $13.6 million/10.5% increase); ER-2009-0090 (MPS Division -- $48 million/10.4% increase; L&P Division -- $15 million/11.9% increase); Kansas City Power & Light Co. – ER-2006-0314 ($50.6 million/10.2% increase); ER-2007-0291 ($35.3 million/6.5% increase); ER-2009-0089 ($95 million/16.3%); AmerenUE – ER-2007-0002 ($43 million/2.1% increase); ER-2008-0318 ($163 million/7.8% increase).

[4] The Staff has previously conceded this point: "While not disputing that the Commission has the authority . . . to grant interim relief for reasons *other than the existence of an emergency situation*, the Staff continues to believe that the Commission should apply the traditional interim emergency or near-emergency standard . . ." (emphasis added). *Staff's Response to Interim Filing*, Case No. ER-2002-425 (Empire), Mar. 18, 2002.

[5] Staff makes a vague "suggestion" that this might be unlawful, a point we will address, and dispose of, below.

- The Company has consistently earned below, and at times far below, its allowed ROE, despite two recent rate increases (in June 2007 and in March of this year);

- A majority of the rate base investments upon which the amount of the interim rate increase was calculated relate to improving the reliability of the Company's system;

- Those rate base investments are presumed prudent as a matter of law;[6]

- The Company has substantial negative free cash flows, and is investing capital in its system at a rate that is substantially in excess of its depreciation expense, necessitating borrowings at the ultimate expense of customers to fund those investments; and

- Every dollar collected through the interim rate tariff would be collected on an interim, subject to refund basis, with interest, meaning that ratepayers would be made whole even if the interim rate increase were later found to have been unnecessary.

3. AmerenUE's interim rate filing presents this Commission with a clear choice:

- the Commission can take *a* step toward mitigating the Company's chronic inability to earn a fair return during a time when the Company is making large investments in its system to meet the heightened expectations of its customers and other stakeholders, all without putting customers at risk of paying one dime more than they should pay given that the interim rates would be subject to refund; *or*

- the Commission can cling to a past practice it was not and is not required to follow as a matter of law, apparently simply because the Opposing Parties would rather impose a financial penalty on shareholders who are funding those system investments rather than have customers who will benefit from them pay a greater portion of their full cost.[7]

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[6] ***State ex rel. Public Counsel v. Pub. Serv. Comm'n***, 274 S.W.3d 569, 578 (Mo. App. W.D. 2009), *citing* ***State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n***, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997).

[7] It appears that MEUA believes that the Company's desire to improve its "profits" to a level more in line with what the Commission has found to be a fair ROE is callous. MUEA's Response, p. 1. What MEUA ignores is that while the Company does have a monopoly service territory (to the extent customers use electricity versus gas or some other fuel), the Company also has an obligation to provide safe and adequate service to all in that territory – today, during an economic downturn, and tomorrow, when hopefully the economy is in better shape. The Company also has a Constitutional right to have a fair opportunity to earn a fair ROE. In response to new Commission rulemakings and the demands of its customers in the 21st Century, the Company is making investments (at a time when its profits are way down) designed not to just

SPECIFIC RESPONSE TO THE OPPOSING PARTIES

Response to the Staff's Opposition

4. The Staff admits that whether to allow implementation of interim rates rests in the Commission's sound discretion.[8] The Staff does not state that the Commission lacks this discretion here; rather, the Staff simply states its "view" that this is not a proper case for interim rates.[9] The Staff goes on to "suggest" that it would be arbitrary and capricious and an abuse of the Commission's discretion to "abandon" the so-called emergency "standard."[10] Lacking in Staff's "views" and "suggestions" is any citation to any authority whatsoever.[11]

5. Moreover, as noted earlier, apparently the Staff's views have somehow evolved:

> While not disputing that the Commission has the authority, under section 393.140(11), to grant relief for reasons other than the existence of an emergency

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provide safe and adequate service today, but to also be in a position to do so tomorrow and in the years to come. Moreover, those investments are designed to provide service with a level of reliability above and beyond that which its basic service duty would require, as its customers and arguably this Commission desire. The pursuit of profits for those who provide the investment capital to make that possible is not, as MEUA suggests, improper. In fact, the opportunity to earn a profit – a fair and reasonable profit – is a central component of rate of return regulation.

[8] Staff's Suggestions in Opposition, pp. 2-3 (*citing* ***State ex rel. Laclede Gas. Co. v. Pub. Serv. Comm'n***, 535 S.W.2d 561, 566 (Mo. App. W.D. 1976)). *See also* footnote 4, *supra*.

[9] Staff's Suggestions in Opposition, p. 2.

[10] Staff's Suggestions in Opposition, p. 36.

[11] In fact, the authority is squarely against the Staff on this point. An abuse of discretion would only occur if the Commission's decision is clearly against the logic of the circumstances then before it and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. ***Bowman v. McDonald's Corp***, 916 S.W.2d 270, 276 (Mo. App. W.D. 1995), *citing* ***Egelhoff v. Holt***, 875 S.W.2d 543, 549-50 (Mo. banc 1994) and ***Richardson v. State Highway and Transportation Comm'n,*** 863 S.W.2d 876, 881 (Mo. banc 1994). If reasonable people can differ about the propriety of the Commission's action, then it cannot be said that Commission abused its discretion. ***Id.***, *citing* ***Richardson,*** 863 S.W.2d at 881***; Anglin v. Missouri Pacific Railroad Co.,*** 506 U.S. 104 (1992). Exercising the discretion the courts recognize the Commission has to allow interim rates would clearly not shock a court's conscience. In addition, a decision would only be arbitrary and capricious if it was the result of willful and unreasoning action, '"without consideration of and in disregard of the facts and circumstances . . .."' ***Psychiatric Healthcare Corporation of Missouri v. Dep't of Social Services***, 100 S.W.3d 891, 900 (Mo. App. W.D. 2003), *quoting* ***Jones v. City of Jennings***, 595 S.W.2d 1, 3 (Mo. App. E.D.1979). Likewise, given that any interim rates would be subject to refund, with interest, and given the chronic under-earnings experienced by the Company, allowing interim rates would be anything but "unreasoned."

> situation, the Staff continues to believe …. [that the Commission should require an emergency].

Fair enough. The Staff is entitled to advocate for adherence to a past practice (but past practice does not a "standard" make) of requiring an emergency, and the Company respects the Staff's right to do so. However, perhaps the Staff should simply say what it means; that is, the Staff does not think interim rates should be allowed except in an emergency, despite the fact that the Commission could, if it chose to do so, allow interim rates absent an emergency.[12] Indeed, not only has the Staff acknowledged before that an emergency is not required, but they also acknowledge it in their filing in this case, wherein they state that "there are now two standards under which interim rate relief may be granted . . . [emergency or other good cause]."[13]

6. The Staff has also come up with another new argument in this case; that is, that due process or perhaps some general requirement that the Commission's decisions be "reasonable" have trumped the Supreme Court's recognition that new rates can take effect without any hearing whatsoever, and that granting or not granting interim rates is a matter committed to the Commission's discretion.[14] As its name implies, the Due Process Clause guarantees that parties will receive "the process that they are due" under the particular circumstances of the case, given the law that applies to that case, and also

[12] Nor did the Staff previously suggest that the Commission was wrong when it allowed interim rates absent an emergency in dockets where an emergency did not exist. *See e.g., Order Approving Small Company Rate Increase on an Interim Basis Subject to Refund, and Approving Tariff*, In Re: Timber Creek Sewer Co., Inc., 2007 WL 3243348 (Mo. P.S.C.) (Oct. 30, 2007); *Order Approving Stipulation and Agreement*, In Re: Citizens Electric, 2001 WL 18404788 (Mo.P.S.C.) (Dec. 26, 2001); *see also* ***In Re: The Empire District Electric Co.***, 6 Mo. P.S.C. 3d 17, 21 (1997), where the Commission recognized it did not need to require an emergency, but it nevertheless elected to require an emergency in that case and thus denied the interim rate request. The Company does not cite these cases now (and never cited these cases) for the proposition that the facts of those cases are closely analogous to the facts of this case. Rather, they simply illustrate that the Commission has properly recognized that it has the discretion to allow interim rates without requiring an emergency, that it would be lawful to do so, and that the Staff has never before "suggested" otherwise.

[13] Staff's Suggestions in Opposition, p. 5.

[14] Staff's Suggestions in Opposition, pp. 19-20.

assuming they have a protectable interest (life, liberty, or property). Where, as here, the Commission could simply allow the interim rates to take effect without a hearing at all pursuant to the file and suspend provisions of Section 393.140(11), the process that is due the Staff and other parties at this time could be nothing (the Commission can simply allow the interim rates to become effective), or it could be something (a limited hearing or otherwise, in the Commission's discretion), depending on the process the Commission decides to provide.

7. That there is no due process right that would prevent the requested interim rates from taking effect without a hearing, or for any particular kind of hearing if one were to be held, is confirmed by the Missouri Supreme Court's decision in ***State ex rel. Jackson County v. Pub. Serv. Comm'n***, 532 S.W.2d 20 (Mo. banc 1975), *certiorari denied,* ***Jackson County, Missouri v. Public Service Comm'n of Missouri****,* 429 U.S. 822, 97 S.Ct. 73, 50 L.Ed.2d 84 (1976). In ***Jackson County*** the Missouri Supreme Court recognized that the file and suspend method of setting rates (permanent rates that were not subject to refund in that case) was lawful and that there would be no deprivation of due process even if the Commission were to allow a general rate increase to take effect without any suspension, or without any hearing at all. ***Id.*** at 30-31. The parties challenging the Commission's action (the City of Kansas City and Jackson County, referred to as the "Consumers" in the Court's opinion), argued that the Commission could not allow a new rate to take effect without notice and a hearing. They argued that this deprived them of due process. The Supreme Court explained that an alleged due process violation requires, as a threshold matter, that there must be a protected interest encompassing "life, liberty or property." ***Id.*** at 31. After thoroughly examining the

issue, the Supreme Court rejected the Consumer's due process argument, including on the basis of a federal court decision construing Iowa law (indeed, construing an interim rates statute in Iowa), which had held as follows:

> "`plaintiffs [the ratepayers] have no property interest in existing rates which is protected by the Fifth and Fourteenth Amendments, [and therefore] we hold that plaintiffs are not entitled to a procedural due process hearing prior to the determination of the proposed rate increase prior to a determination of the lawfulness of the propose rate increase and that the Iowa statutory provision in 490A.6, which provides for interim collection of the proposed increase under bond to be refunded if found excessive does not violate the Due Process Clauses of the Fifth and Fourteenth Amendments.'" ***Id.*** at 32-33 (*quoting* ***Sellers v. Iowa Power and Light Co***, 372 F. Supp. 1169 (S.D. Iowa 1974), among numerous other cases).

8. Not only is there no protected property interest in existing rates, but regardless, the ultimate propriety of the interim rates will be adjudicated fully in connection with the evidentiary hearings on the permanent rate request. Before customers must finally and without recourse pay the interim rates, all process that is due will have been provided.[15] Whether the rate base investments used to calculate the interim rate increase were in fact made in the amounts claimed, any issues respecting their prudence, etc. can all be the subject of discovery, testimony, cross-examination, briefing, etc. as part of litigating this rate case. In summary, this "due process" and "reasonableness" argument is a red herring, which appears designed to plant a seed of doubt in the Commission's collective mind about its authority regarding interim rates, despite the Staff's admission that the Commission has the discretion to allow interim rates without an emergency, despite the fact that interim rates can take effect without any

[15] *See* ***State ex rel. Fischer v. Pub. Serv. Comm'n***, 670 S.W.2d 24, 26-27 (Mo. App. W.D. 1984), where the Western District Court of Appeals made clear that judicial review of any interim rate order made in the permanent rate increase case would be available as part of the available judicial review of the permanent rate increase case itself. The ***Fischer*** court also made it clear that the interim rate request is "part of the same proceeding as the permanent rate request." ***Id.*** at 27. Allowing interim rates that are subject to refund to be implemented before the permanent rate request is finally determined simply presents no due process concerns, notwithstanding the Staff's newly-minted suggestion to the contrary.

suspension or hearing at all, and despite the fact that judicial review of all of the Commission's decisions in this case, including decisions made respecting the interim rate filing, will be available to any party that desires it.[16]

9. To summarize, the Staff spends about 15 of its 38 pages providing a history lesson on how past Commissions have dealt with interim rate requests (the "emergency" versus "good cause" debate); about 14 pages describing the manner in which some (but not all) interim rate requests have been filed, apparently in some vague attempt to claim some impropriety in the procedure used by the Company in this case; and a couple of pages attempting to draw some tie between an interim rate request and the gas or water utility ISRS statute, which does not even exist for electric utilities.

10. The bottom line is that it appears that the Staff wants this Commission to require AmerenUE, and all utilities, to effectively be in or near financial ruin before interim rates would be allowed. Stated another way, if the utility can provide the basic, safe and adequate service it must provide without confiscation of its property, or bankruptcy or insolvency (or something close to the same), the Staff would apparently oppose interim rates in all cases. The rest of the Staff's arguments are window dressing around that basic point. And while this Commission can go along with the Staff, it need not, and should not, do so.

[16] Staff tries to buttress its due process/reasonableness argument by suggesting that the Commission has to examine a full cost of service to test AmerenUE's assertions about ROE and regulatory lag. Staff's Suggestions in Opposition, p. 19. Staff goes on to claim that this must be done pursuant to "contested case" proceedings. A "contested case" in Missouri is one where a hearing is *required by law*. Section 536.010 (2), RSMo. The courts have been clear – new rates can take effect without any hearing at all; i.e, there is no hearing that is "required by law." Thus, there is no requirement that "contested case proceedings" occur before interim rates (that are subject to refund, with interest) take effect (just as there is no requirement that rates implemented after purchased gas adjustment filings, which themselves are essentially interim rates that are subject to refund, only be implemented after "contested case proceedings" occur.

Response to OPC's Opposition

11. OPC expresses, more succinctly, a similar general view to that expressed by the Staff: unless there is a "threat" to providing basic, safe and adequate service, OPC opposes interim rates.[17] OPC also elevates the past practice of the Commission to "precedential" status, although OPC undoubtedly knows that there is no *stare decisis* in administrative law.[18] Regardless, OPC like Staff does not claim that this Commission lacks the power to allow interim rates absent an emergency.

12. OPC also criticizes the Company's interim rate request in this case by citing a 1987 over-earnings complaint case against AmerenUE, suggesting that the Company's interim rate filing now is inconsistent with its stance in that 1987 where the Company opposed a Staff request for an interim order (an order entered before full adjudication of the entire rate proceeding) designed to retroactively take away a portion of the dollars that were slated to be recovered by the Company through a phased-in rate plan that had previously been approved in the Company's prior rate case.[19]

13. In opposing the Staff's attempt to retroactively end the phase-in plan in that 1987 case, the Company made three arguments: (a) that to do so would constitute

[17] OPC Response, p. 1.

[18] Indeed, OPC uses the term "precedent" or forms thereof a half dozen different times to justify its opposition to interim rates, and trumpets OPC's view of the superiority of the "time-tested general rate case approach." OPC Response, p. 2. As noted in footnote 3 *supra*, that so-called "time-tested" approach has resulted in a chronic inability to earn a fair return and has required the filing of rate case after rate case after rate case. Interim rates would, in part, mitigate the obvious shortcoming that we have observed in reliance on the "general rate case approach."

[19] The 1987 case was a complaint filed by the Staff that sought a decrease in AmerenUE's rates and that, importantly, sought to end an already approved phased-in rate plan arising from putting the Company's Callaway Nuclear Plant into rate base. The Commission's rate phase-in order was consistent with the Legislature's 1984 adoption of Section 393.155.1, which specifically contemplates rate phase-in's of revenue requirement increases "due to an unusually large increase in the corporation's rate base." The result of the case was a rate *increase* for AmerenUE, but with a prospective end to the phase-in plan. ***Staff of the Mo. Pub. Serv. Comm'n v. Union Electric Co.,*** 90 P.U.R.4th 400, 1987 WL 258074 (Mo. P.S.C.) 1987).

retroactive ratemaking; (b) that Staff's proposal deviated from normal ratemaking; and (c) that it would unlawfully rescind the previously approved phase-in plan. In supporting its second argument, the Company did essentially make a "what's good for the goose should be good for the gander" argument; that is, if the Commission is going to require an emergency before it will allow an interim rate increase, then it ought to require an emergency before it allows interim relief for the Staff.

14. The Company agrees that the Commission not only has the discretion to allow interim rate increases that are subject to refund without requiring an emergency, but also would have the discretion to allow an interim rate decrease (subject to later collection) in an over-earnings complaint case without requiring an emergency. Indeed, the point of interim rates (increases or decreases) is to reduce regulatory lag by better matching the costs incurred to provide service with the rates customers pay to obtain that service. If the Commission did allow interim rate increases, it would also be appropriate to allow interim decreases in an appropriate circumstance.

Response to MIEC's Opposition

15. MIEC's opposition is essentially the same as the Staff's and OPC's, that is, MIEC argues that the Company does not meet "any standard set forth by the Commission or the Missouri courts . . ." for obtaining interim rate relief.[20] MIEC overstates the so-called "standards" that apply.

16. As the Commission has recognized, it can grant interim rate relief "on a "nonemergency basis" and can do so based upon a showing of "good cause."[21] The

[20] MIEC's Response, p. 2.
[21] *See, e.g.*, ***Re The Empire District Electric Co.***, 2002 WL 1587076 (Mo. P.S.C.) (May 9, 2002), Case No. ER-2002-425 ("The Commission has, however, granted interim rate relief on a nonemergency basis . . . [and] [t]he Western District Court of Appeals has also held that it is possible to grant interim rate relief on a

Commission has recognized that for something to constitute good cause "the reason or legal excuse [if an excuse is at issue] . . . 'must be real not imaginary, substantial not trifling, and reasonable not whimsical.'"[22] In addition, the Commission has recognized that a finding of good cause "`lies largely in the discretion of the officer or court to which the decision is committed' and 'depends upon the circumstances of the individual.'"[23] While MIEC urges the Commission to hold fast to an "emergency standard," the Commission need not do so, and we repeat the request made in our Suggestions in support of our interim rate filing: this Commission should decline to require an emergency or near-emergency and can, and should, exercise its discretion to allow the Company's interim rate request to become effective.

Response to MEUA's Opposition

17. Most of MEUA's Response is a one-sided discussion of the virtues of regulatory lag. MEUA also urges the Commission to hold fast to a requirement than an emergency be shown before interim rates can be obtained. MEUA's regulatory lag discussion ignores, however, that there are some costs that are unavoidable (e.g., compliance with vegetation management, infrastructure and reliability rules; paying pension benefits, buying fuel for power plants, to name a few) and some costs, like the large investments the Company continues to make in its system, that its customers and other stakeholders have demanded given that the level of service and reliability that is expected today goes beyond a level of service that is merely "safe and adequate."

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nonemergency basis."); ***Re: The Empire District Electric Co.***, 1997 WL 280093 (Mo.P.S.C.) (Feb. 13, 1997) ("The Commission concludes that it may authorize the implementation of interim rates upon a showing of good cause, and such good cause may be less than an emergency or a near-emergency.").

[22] ***In Re Aquila, Inc.***, 257 P.U.R.4th 424, 2007 WL 1663103 (Mo. P.S.C.) (May 21, 2007) (citing ***Belle State Bank v. Indus. Comm'n***, 547 S.W.2d 841, 846 (Mo. App. S..D 1977) and ***Barclay White Co. v. Unemployment Compensation Board***, 50 A.2d 336, 339 (Pa. 1947)).

[23] ***Id.*** (*citing* ***Wilson v. Morris***, 369 S.W.2d 402, 407 (Mo. 1963) and ***Matter of Seiser***, 604 S.W.2d 644, 646 (Mo. App. E.D. 1980)).

18. Customers can't have it both ways. The Company cannot be expected to continue to make very large investments to accomplish such things as hardening its system against severe storms and keeping the equivalent availability of its plants at the very high levels the Company has been able to achieve (which in turn benefits customers through lower net fuel costs, 95% of which are passed through to customers in the Company's fuel adjustment clause) unless the Company can both make those investments and also have a reasonable opportunity to earn a fair ROE. Presently, however, customers like MEUA's members are benefitting from the Company's investments, but at less than the full costs associated with those investments because regulatory lag is imposing those costs on the Company's shareholders as evidenced by the Company's consistent inability (which continues to deteriorate) to earn or even approach its authorized ROE.

19. MEUA seeks to deflect focus from the undisputed chronic under-earnings being experienced by the Company by pointing back to the Company's last over-earnings complaint case (concluded via a settlement in 2002). In doing so, MEUA ignores the hundreds of millions of dollars of ratepayer benefits that arose under the Company's Experimental Alternative Regulatory Plan during the six years that preceded the commencement of that over-earnings complaint case: a $30 million one-time customer credit; a $30 million *annual* rate reduction, and sharing credits totaling more than $60 million – a total of approximately $270 million. We would also note that MEUA has part of its facts wrong respecting the over-earnings complaint. While the case was not resolved until late-August 2002, the Company agreed that any rate reduction ordered by the Commission would become effective nearly five months sooner than alleged by

MEUA, which means that the entire case effectively resulted in a rate reduction just nine months after it was filed, which is a full two months less than typically taken by this Commission to process a general rate increase case. MEUA also failed to mention that in addition to the $110 million of annual rate reductions that were agreed upon, the Company also agreed to provide an additional $40 million upfront in the form of a credit to customers.

20. Without question, some regulatory lag can provide a short-term financial benefit to customers or to utilities, depending on the cost and revenue circumstances of the utility during in given period of time. However, severe regulatory lag is counterproductive. As discussed in the Company's Suggestions in support of its interim rate filing, the practice of using an historic test year, coupled with the prohibition on including construction work in progress in rate base, coupled with a long rate case process (typically 11 months from filing; even longer from when investments are made and when they can be reflected in rates since rate cases cannot be perfectly timed), and other regulatory mechanisms which are certainly helpful but not ideal (e.g., fuel adjustment clauses that use only historic costs) combine to create regulatory lag in Missouri that is particularly severe. This severe regulatory lag does a poor job of matching utility cost structures with the rates customers pay and punishes utilities who are investing in their systems, investments which provide ultimate benefits to customers. Using interim rates can provide some partial mitigation of this problem, but it will not eliminate or even come close to eliminating regulatory lag or the benefits that MEUA argues it brings to customers or to utilities.

Response to MEG's Opposition

21. MEG essentially makes two arguments. First, like the other Opposing Parties, MEG simply refers the Commission to past practice (while ignoring the discretion the Commission possesses to grant interim rates in this case if it desires to do so). We have addressed that issue in detail, above. Second, MEG argues that the mere fact that the Company was *authorized* an ROE of 10.76% in the last rate case and that the Company was allowed to implement a fuel adjustment clause in the last rate case has some bearing on the Company's interim rate request in this case.

22. MEG is correct – the Company was authorized a 10.76% ROE, which was very much in line with allowed ROEs for similar integrated utilities across the country. Stated another way, the Commission found that authorizing a 10.76% ROE was necessary to establish just and reasonable rates. Unfortunately, regulatory lag is preventing the Company from even approaching that allowed ROE, demonstrating that the current rates are not just and reasonable. With respect to the fuel adjustment clause, the Company is appreciative of the incremental mitigation of regulatory lag that is occurring because of the fuel adjustment clause (indeed, customers will see a decrease in their bills effective October 1). However, for the reasons discussed earlier, regulatory lag remains particularly severe in Missouri, a fuel adjustment clause notwithstanding.

CONCLUSION

23. The Company's request is a modest one: that is, the Company requests that this Commission exercise the discretion it clearly has to allow a 1.67% interim rate increase to occur approximately eight months before the permanent rate increase will likely be decided. Doing so will partially mitigate the chronic under-earnings being

experienced by the Company. Moreover, doing so will provide incremental cash and earnings that will provide additional support for the Company's continuing efforts to invest in its system, without risk to customers given that the interim increase would be subject to refund, with interest.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ James B. Lowery

James B. Lowery, #40503
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

Steven R. Sullivan, #33102
Sr. Vice President, General Counsel & Secretary
Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-131
St. Louis, MO 63101-6149
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
AmerenUEService@ameren.com

Attorneys for AmerenUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 8th day of September, 2009:

Nathan Williams
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360
GenCounsel@psc.mo.gov

Lewis R. Mills
Missouri Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230
Lewis.mills@ded.mo.gov
opcservice@ded.mo.gov

Michael C. Pendergast
Rick E. Zucker
Laclede Gas Co.
720 Olive Street, Ste. 1520
St. Louis, MO 63101
mpendergast@laclede.com
rzucker@laclede.com

Diana M. Vuylsteke
Bryan Cave, LLP
211 N. Broadway, Ste. 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

Thomas G. Glick
7701 Forsyth Blvd., Ste. 800
St. Louis, MO 63105
tglick@dmfirm.com

Sherrie A. Schroder
Michael A. Evans
7730 Carondelet, Suite 200
St. Louis, MO 63105
saschroder@hstly.com
mevans@hstly.com

Lisa C. Langeneckert
Sandberg Phoenix & Von Gontard, P.C.
One City Centre, 15th Floor
515 North Sixth Street
St. Louis, MO 63101-1880
llangeneckert@sandbergphoenix.com

John C. Dodge
Davis, Wright and Tremaine, LLP
1919 Pennsylvania Ave. NW, Ste 200
Washington, DC 20006
johndodge@dwt.com

Mark W. Comley
Newman, Comley and Ruth
PO Box 537
601 Monroe St., Ste. 301
Jefferson City, MO 65102
comleym@ncrpc.com

John B. Coffman
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
john@johncoffman.net

Shelley A. Woods
Sarah B. Mangelsdorf
P.O. Box 899
Jefferson City, MO 65102-0899
shelley.woods@ago.mo.gov
sarah.mangelsdorf@ago.mo.gov

Douglas Healy
939 Boonville, Suite A
Springfield, MO 65802
dhealy@mpua.org

David Woodsmall
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65101
dwoodsmall@fcplaw.com

James B. Deutsch
Thomas R. Schwarz
308 E. High St., Suite 301
Jefferson City, MO 65101
jdeutsch@blitzbardgett.com
tschwarz@blitzbardgett.com

Sam Overfelt
Missouri Retailers Association
618 E. Capitol Avenue
P.O. Box 1336
Jefferson City, MO 65102
moretailers@aol.com

Henry B. Robertson
705 Olive Street, Suite 614
St. Louis, MO 63101
hrobertson@greatriverslaw.org

/s/ James B. Lowery
James B. Lowery