

**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

**REPLY IN OPPOSITION TO THE
LATE-FILED APPLICATION TO INTERVENE OF MISSOURI COALITION FOR THE
ENVIRONMENT (MCE) AND MISSOURI NUCLEAR WEAPONS EDUCATION FUND,
d/b/a MISSOURIANS FOR SAFE ENERGY (MSE)**

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE), and responds in opposition to the above-referenced Late-Filed Application to Intervene and, in this regard, states as follows:

1. More than six months ago, on July 7, 2006, AmerenUE submitted to the Commission proposed tariff sheets to implement a general rate increase for retail electric service to customers in its Missouri service area. On April 7, 2008, the Commission issued its Order Directing Notice, Suspending Tariffs, Setting Hearings, and Directing Filings. That Order set an intervention deadline of April 28, 2008, and directed that public notice of the rate case filing and intervention be given, including to the media throughout AmerenUE's service territory.

2. MCE and MSE have now filed the present untimely Application to Intervene stating that they did not meet the Commission's April 28, 2008 deadline not because they were unaware that the rate case had been filed or that they were unaware of the Commission's intervention deadline, procedures, or rules, but rather because they say they "first learned" on September 20, 2008, that costs relating to preserving the option to build a second Callaway Plant unit are part of AmerenUE's revenue requirement in this case. Indeed, they do not claim that AmerenUE failed to include these costs in its initial filing, or somehow hid them. They, in fact, admit that these costs

were specifically identified in AmerenUE's direct case, filed on April 4.¹ Specifically, AmerenUE witness Gary Weiss, in public testimony filed in EFIS, testified as follows:

Adjustment 3 adds to plant in service the expenditures for the Callaway 2 Construction and Operating License Application that will be filed in June 2008. As of June 30, 2008 the Company will have spent \$46,955,000 on the preparation and filing of this Application, and expects to spend an additional approximately \$4,400,000 through the proposed true-up period. Weiss Direct, p. 10, l. 2-6.

3. This Commission has recognized that intervention is “a process whereby a stranger becomes a full participant in a legal action.” *Order Denying Intervention*, Case No. EA-2000-37 (Oct. 21, 1999) (*citing Ballmer v. Ballmer*, 923 S.W.2d 365, 368 (Mo. App. W.D. 1996)). Even when an intervention request is timely filed, the proposed intervener bears the burden to establish that it meets this Commission's requirements for intervention, and to convince this Commission that it should exercise its discretion to allow it to intervene. *See, e.g., Augspurger v. MFA Oil Co.*, 940 S.W.2d 934, 937 (Mo. App. W.D. 1997) (discussing the corollary intervention rule contained in the Missouri Rules of Civil Procedure). Moreover, in seeking to intervene late – in this circumstance six months late – MCE and MSE bear a particularly heavy burden to establish the good cause that is necessary to justify their intervention at this late date. As the Commission has previously noted, when considering late-filed requests to intervene the Commission has two *discretionary* decisions to make: first, has the proposed intervener established good cause for its late request and second, even if such a showing is made, should the Commission exercise its discretion to let them intervene out-of-time? *Order Denying Application to Intervene, In the Matter of the Application of Alliance Gas Energy Corp.*, Case No. GA-2007-0168, 2007 WL 1189437 (April 19, 2007).

4. MCE and MSE have failed to establish good cause to allow their late intervention in this case. Their explanation boils down to “we just found out” about something they oppose, even

¹ They imply that there was something sinister about this, referring to Mr. Weiss's straightforward testimony as an “admission” that was “buried” in his testimony. It was no more “buried” than any other piece of information contained within the Company's rate case filing.

though the thing they just found out about was part of the Company's initial filing. The "We just found out" argument is not good cause, as this Commission has previously ruled. "Were the Commission to accept 'we just found out' as good cause for filing a request to intervene almost two months out of time, 'good cause,' as used in the Commission's rule, would have no substance." Order Denying Application to Intervene, Case No. GR-2006-0422, *In the Matter of Missouri Gas Energy's Tariffs*, 2006 WL 2497837 (Aug. 28, 2006). This is particularly true given that MCE and MSE are not unsophisticated parties who lack an understanding of the regulatory process. Between them, they boast approximately 1,700 members, and MSE notes that it was a leader in the adoption of Proposition 1 in 1976. Both MSE and MCE demonstrate a familiarity with laws governing electric utilities in Missouri (evidence their citation to Proposition 1 and Section 393.170, RSMo.), and are represented by counsel from the Great Rivers Environmental Law Center, which itself has substantial familiarity with the Commission's rules and procedures.²

5. MSE and MCE's application also fails to establish that it meets the standards required for intervention in any event. Specifically, they have not shown they have an interest differing from that of the general public and which may be adversely affected by a final order arising from this case and have not shown that their proposed intervention would serve the public interest. 4 CSR 240-20.075(4).

6. The costs to which MSE and MCE object are costs incurred thus far toward preparing and filing an Application for a Construction and Operating License (COLA) with the Nuclear Regulatory Commission for a possible Callaway unit 2. The revenue requirement impact of these costs is approximately \$5 million out of the total increase of \$242.3 million reflected in the

² Counsel for MSE and MCE have been involved in several Commission cases, including AmerenUE's last two IRP proceedings and Kansas City Power & Light Company's Regulatory Plan proceeding. Indeed, at least one of MCE and MSE's attorneys (Mr. Robertson) is well aware of AmerenUE's efforts to preserve the option to build a second unit at the Callaway plant site given that this option has been a central part of AmerenUE's current IRP docket, in which Mr. Robertson is quite active.

Company's Supplemental Direct Testimony filing made on June 4, 2008. The Company is on record, in the IRP docket in which counsel for MSE and MCE is participating, that no decision respecting whether to build a Callaway unit 2 has or will be made until after another IRP is filed, which filing is not due to occur until 2011. The Staff, in its August 28, 2008 Cost of Service Report filed in this rate case, has already taken the position that the Callaway unit 2 COLA costs cannot be included in rates in this rate case because of Proposition 1. The Company disagrees, but regardless, this is an issue the Commission will be called upon to decide, and it is an issue that will be more than adequately addressed by the Staff in this rate case.

7. MCE and MSE's stated bases for seeking intervention is that inclusion of these COLA-related costs would, in their view, violate Proposition 1, and they also imply that Section 393.170, RSM0 (the Commission's certificate of convenience and necessity statute) might also be implicated by these COLA costs. Even if it were assumed, *arguendo*, that either of the above-cited laws are implicated by these COLA costs in this rate case, MCE and MSE's interest in seeing to it that those laws are followed is no different than the interest of the general public in ensuring that the laws of the State are followed. MCE and MSE may feel more strongly about a second Callaway unit than some citizens, but that is not the issue. The issue is whether or not they possess some interest – ensuring that these laws are followed – that won't be adequately protected unless they intervene and that is different for the proposed intervener than it is for the general public. There is no showing that this is the case, and thus their late-filed application for intervention fails to meet the standard contained in 4 CSR 20.075(4)(A).

Moreover, the public interest does not support MCE and MSE's intervention. As noted, the Staff is already addressing the very issue MCE and MSE raise. Rebuttal testimony is due in this case just seven days from now, with surrebuttal testimony due just three weeks later. Indeed, this case is so far along that evidentiary hearings are scheduled to begin in less than just five weeks.

Parties should not be allowed to intervene – to become “a full participant” in this legal action – at this late date without a compelling reason that supports good cause for seeking intervention so late, and also a compelling justification that their presence in this case is necessary for a fair adjudication of the case. Testimony and discovery in this case are already at an advanced stage, and the test year and true-up period have already been determined. If interventions of this nature at such a very late date are allowed, the Commission’s rules on intervention and respect for the Commission’s processes are undermined and late interventions of this sort may end up being encouraged. In short, the public interest is not advanced, and is indeed undermined, by allowing late intervention on these facts. Thus, MCE and MSE’s Late-Filed Application for Intervention also fails to meet the standard contained in 4 CSR 240-20.075(4)(B).

WHEREFORE, AmerenUE respectfully requests this Commission enter its order denying MCE’s and MSE’s untimely Application to Intervene, and for such other and further relief deemed proper under the circumstances.

Dated: October 7, 2008

Respectfully Submitted:

Steven R. Sullivan, #33102
Sr. Vice President, General
Counsel and Secretary
Thomas M. Byrne, # 33340
Managing Assoc. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
(314) 554-2098
(314) 554-2514 (phone)
(314) 554-4014 (fax)
ssullivan@ameren.com
tbyrne@ameren.com

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
Attorneys for Union Electric Company
d/b/a AmerenUE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 7th day of October, 2008.

Staff of the Commission
Office of the General Counsel
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
Jefferson City, MO 65101
gencounsel@psc.mo.gov

Michael C. Pendergast
Rick Zucker
Laclede Gas Company
720 Olive Street, Suite 1520
St. Louis, MO 63101
mpendergast@lacledegas.com
rzucker@lacledegas.com

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
Jefferson City, MO 65101
opcservice@ded.mo.gov

Diana M. Vuylsteke
Missouri Industrial Energy Consumers
211 N. Broadway, Suite 3600
St. Louis, MO 65102
dmvuylsteke@bryancave.com

Todd Iveson
State of Missouri
Attorney General's Office
8th Floor, Broadway Building
P.O. Box 899
Jefferson City, MO 65102
todd.iveson@ago.mo.gov

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

Lisa C. Langeneckert
Missouri Energy Group
One City Centre, 15th Floor
515 North Sixth Street
St. Louis, MO 63101
llangeneckert@spvg.com

Shelley A. Woods
Missouri Department of Natural Resources
Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102-0899
Shelley.woods@ago.mo.gov

Stuart Conrad
Noranda Aluminum, Inc.
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Carew S. Koriambanya
The Commercial Group
2400 Pershing Road, Suite 500
Crown Center
Kansas City, MO 64108
carew@bscr-law.com

Rick D. Chamberlain
The Commercial Group
6 NE 63rd Street, Ste. 400
Oklahoma City, OK 73105
rdc_law@swbell.net

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

Kathleen G. Henry
Henry B. Robertson
Great Rivers Environmental Law Center
705 Olive Street, Suite 614
St. Louis, MO 63101
khenry@greatriverslaw.org
hrobertson@greatriverslaw.org

/s/James B. Lowery
James B. Lowery