

**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 Gas Service)	Case No. GR-2007-0003
Provided to Customers in the Company's)	
Missouri Service Area.)	

**REPLY IN OPPOSITION TO MISSOURI RETAILERS ASSOCIATION'S
LATE FILED APPLICATION TO INTERVENE**

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE), and responds in opposition to the Late Filed Application to Intervene of Missouri Retailers Association (MRA), as follows:

1. On July 7, 2006, AmerenUE submitted to the Commission proposed tariff sheets to implement a general rate increase for retail gas service to customers in its Missouri service area. On July 11, 2006, the Commission issued its Order Directing Notice, Suspending Tariffs, Setting Hearings, and Directing Filings. That Order set an intervention deadline of July 31, 2006 and directed that public notice of the rate case filing and intervention be given, including to the media throughout AmerenUE's service territory, which includes Jefferson City, Missouri, where MRA is headquartered.¹

2. MRA has now filed the present untimely Application to Intervene stating that it did not meet the Commission's July 31, 2006 deadline because it "was unable to determine whether or not it should intervene in this rate case proceeding prior to the initial intervention deadline." MRA does not contend that it was unaware of the rate case filing or of the Commission's Order setting an intervention deadline that expired two and a half months ago.

¹ A nearly identical order issued in AmerenUE's electric rate increase case filed the same day as this gas rate case set the same intervention deadline, and was specifically served on MRA insofar as MRA was a party to the Company's last proceeding which addressed the Company's overall electric rates, Case No. EC-2002-1.

3. On September 8, 2006, MRA filed an untimely Application to Intervene in AmerenUE's electric rate case, Case No. ER-2007-0002, which is being conducted concurrently with the present case. As in the present Application, MRA's September 8 Application stated that it had missed the Commission's July 31, 2006 deadline because it was unable to determine whether to intervene. AmerenUE did not object to MRA's intervention in the electric rate case.

4. AmerenUE does not desire to unduly preclude proper parties from intervening in cases involving AmerenUE when it is appropriate for them to do so, and when they comply with the Commission's rules. AmerenUE's lack of opposition to the intervention by Missouri School Boards Association in the present case and lack of opposition to MRA's intervention (and other untimely intervention requests) in the concurrent electric rate case demonstrate that fact. However, AmerenUE believes it is inappropriate to ignore a clear failure to comply with the Commission's rules, as exists in this particular circumstance.

5. MRA seeks intervention more than three months after AmerenUE filed its proposed tariffs and approximately two and a half months after the intervention deadline established by the Commission. Moreover, MRA seeks intervention more than a month after it sought untimely intervention in AmerenUE's electric rate case on identical grounds.

6. The Commission may only grant untimely applications to intervene upon a showing of good cause. 4 C.S.R. § 240-2.075 (2006); *Order Denying Application to Intervene*, Case No. GR-2006-0422 (August 28, 2006). AmerenUE respectfully submits that no such showing has been made in this case. MRA's explanation for its tardiness in filing its Application to Intervene—that it was unable to determine whether to intervene prior to the intervention deadline—fails to demonstrate good cause. Cursory and generic explanations for untimely requests to intervene do not rise to the level of good cause. *Order Dismissing Wal-Mart Stores East, L.P.*, Case No. ER-2006-0314 (September 5, 2006). Further, MRA fails to explain why it took more than a month

longer to determine that it needed to intervene in AmerenUE's natural gas rate case than in AmerenUE's electric rate case, when the two intervention applications are virtually identical. Indeed, AmerenUE respectfully submits there exists no reasonable explanation for such a delay, particularly given that MRA is not an unsophisticated, inexperienced entity without experience in Commission cases.

7. Regardless of the specific circumstances surrounding MRA's late application to intervene, there should come a point where it is simply too late to intervene. Indeed, if the Commission's Rules on intervention are to mean anything, the Commission should require parties to comply with the intervention deadlines set by the Commission, or to have a very good reason for failing to do so. Recently, in several cases, a number of parties have disregarded Commission-imposed intervention deadlines and sought late intervention. This apparent pattern would appear to undermine the Commission's intervention rules, and that is particularly true with an intervention application is made substantially after the intervention deadline and it would seem without question it is true when the application is as late as the one under consideration here. As this Commission has recognized, 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)). MRA 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 MRA to intervene in the first instance. *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, MRA certainly bears a heavy burden to establish the appropriateness of allowing it to intervene two and a half months after the intervention deadline has passed. MRA has entirely failed to meet its burden.

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

Dated: October 19, 2006

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 19th day of October, 2006.

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

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

Samuel E. Overfelt, Esq.
Law Office of Samuel E. Overfelt
Missouri Bar Number
618 East Capitol Avenue
P.O. Box 1336
Jefferson City, MO 65102
moretailers@aol.com

Joseph P. Bindbeutel
Todd Iveson
Missouri Department of Natural Resources
8th Floor, Broadway Building
P.O. Box 899
Jefferson City, MO 65102
joe.bindbeutel@ago.mo.gov
todd.iveson@ago.mo.gov

Douglas Micheel
State of Missouri
P.O. Box 899
Jefferson City, MO 65102
douglas.micheel@ago.mo.gov

/s/James B. Lowery
James B. Lowery