

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

In re: Union Electric Company's	)	
2008 Utility Resource Filing pursuant to	)	Case No. EO-2007-0409
4 CSR 240 – Chapter 22.	)	

**AMERENUE'S RESPONSE TO SEPTEMBER 26, 2008, FILINGS**

**COMES NOW** Union Electric Company d/b/a AmerenUE (AmerenUE or the Company), and for its *Response to September 26, 2008, Filings and Request for the Commission to Accept Response* in response to the pleadings filed by the Office of the Public Counsel (OPC), the Missouri Department of Natural Resources (DNR), and the Sierra Club, Missouri Coalition for the Environment, Mid-Missouri Peaceworks and the Association of Community Organizations for Reform Now (collectively, Sierra Club), states as follows:

1. On September 19, 2008, the Missouri Public Service Commission (Commission) issued its *Order Directing Parties to File Additional Responses to Comments and Scheduling an On-The-Record Proceeding* (Order).

2. The Order directed “the parties that contend an evidentiary hearing is necessary to explain what, if any, factual issues remain to be resolved.” It also allowed the parties to respond to AmerenUE’s September 12, 2008 *Response to Reports*.

3. The Order does not specifically allow for AmerenUE to file a response to these pleadings, but 4 CSR 240-2.080(15) allows responses to pleadings within 10 days, unless that time is shortened by the Commission. AmerenUE provides this information to further clarify that there are no facts in dispute, and that indeed all that is left for the

Commission is to make the ultimate legal conclusion it is required to make by 4 CSR 240.22.080(13).

4. On September 26, 2008, OPC, DNR and the Sierra Club filed responses to the Commission's Order. Not one of these parties pointed to any fact in dispute. Instead, these parties reasserted their earlier unresolved deficiency allegations.<sup>1</sup>

5. Staff and the remaining parties in this case did not file in response to this Order, so it appears that they do not "contend an evidentiary hearing is necessary."

6. There is no doubt that AmerenUE, OPC, DNR and the Sierra Club (and perhaps some of the other intervening parties) disagree as to whether or not certain deficiencies exist.<sup>2</sup> This leaves only one step for the Commission -- to examine the facts (what AmerenUE did or did not do in its IRP and how AmerenUE did or did not do it) -- in view of the law (the Commission's IRP regulations (4 CSR 240-22.010 *et. seq.*)). As noted, that examination will then lead to the Commission's determination of whether or not AmerenUE's IRP is in compliance with the IRP regulations or whether the filing is deficient, a finding required to be made by the Commission under 4 CSR 240.22.080(13).

7. Despite the disagreement as to whether deficiencies exist, no party's filing on September 26th alleged any fact in dispute. For example, the Sierra Club argues that AmerenUE's IRP did not address the environmental impact of tritium and noble gases. *Reply of Intervenors Sierra Club, et al. to AmerenUE's Response to Reports*, p. 2. AmerenUE has acknowledged that it did not address these two emissions and explained why it did not do so. *Response to Reports*, p. 21. There is no fact in dispute here, only a

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<sup>1</sup> OPC asserted new deficiencies, but even these allegations do not state that a fact is in dispute. Everyone agrees about what AmerenUE did, or did not, do in its IRP.

<sup>2</sup> AmerenUE uses the word "deficiency" to mean an area where AmerenUE's IRP does not comply with the Commission's IRP rules.

disagreement about whether or not the fact that AmerenUE did not evaluate tritium and noble gases constitutes a deficiency according to the IRP rules.

8. OPC's pleading asserts that there are factual issues in dispute, but then fails to demonstrate the existence of any actual facts in dispute. *Public Counsel's Response to Order Directing Filing*, pp. 1-2. The first question set forth by OPC is whether the Commission should issue an order finding AmerenUE's IRP to contain deficiencies. OPC's argument boils down to arguing that a disagreement over whether or not deficiencies exist means there are facts in dispute. That, of course, is incorrect. Whether or not a deficiency exists is not a factual question but rather it is the legal determination the Commission is charged, by its own rules, with making.

9. OPC's second (and new) assertion is that the rather disingenuous statement that AmerenUE did not select a preferred resource plan. *Public Counsel's Response to Order Directing Filing*, p. 4-6. To be clear, in the IRP that was filed on February 5, 2008, AmerenUE's preferred plan is stated. *See AmerenUE Integrated Resource Plan, Risk Analysis and Strategy Selection*, pp. 57-58 of 109. This section lists energy efficiency, expansion of renewable generation, continued improvement of unit efficiency, unit retirement, technology to reduce carbon and the commitment to environmental stewardship as the preferred plan. *Id.* The language under the section titled "Exploring Technologies to Reduce Carbon" specifically states "Our analysis clearly shows that developing reliable electricity supplies for Missouri customers will eventually require development of baseload power plants – the estimated time frame for that is 2018 to 2020. For that reason, we are **preserving the option for additional**

**nuclear generation**, while researching clean coal and carbon sequestration technologies.” *Id.*, p. 58 of 109. Emphasis added.

10. Retention of the option for additional nuclear generation is exactly what AmerenUE has done in submitting a combined construction and operating license application (COLA) to the Nuclear Regulatory Commission (NRC). The Company has been clear at every step that it is taking the action necessary to retain the option of constructing a second nuclear plant, but that it has not made a decision as to whether it will actually construct a second nuclear plant.<sup>3</sup>

11. OPC next asserts as disputed facts the questions of whether OPC’s proposed remedies should be adopted or whether AmerenUE’s proposed remedies are sufficient to address the unresolved deficiencies. Again, these are not issues of fact and are not even related to the question of whether or not the IRP complies with the Commission’s regulations. They may be related to what the Commission can do, as a matter of law, if a finding of a deficiency were made, but they do not relate to any fact in dispute. Certainly, the parties in this case all have their view of the correct answer to OPC’s legal questions, but they are not questions of fact and do not require a Commission proceeding beyond the currently scheduled on-the-record proceeding. *See AmerenUE’s Response to Reports.*

12. AmerenUE supports the on-the-record proceeding that is currently scheduled for October 7, 2008. It will have the appropriate personnel available to answer

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<sup>3</sup> There are many factors which will change over time and must be analyzed at a time closer to when the AmerenUE baseload plant decision needs to be made. These factors include, but are not limited to, the potential and likely cost of a carbon tax, experience with DSM programs, financing options for a baseload nuclear plant, estimates of capital costs, estimates of natural gas and power prices and the retirement date for Meramec. Some of these factors have a high level of interplay, for example, the level of carbon tax, if one is imposed, is a key variable impacting several other factors as AmerenUE continues to further evaluate the decision to build a baseload plant in its next IRP.

Commission questions about the previously filed Stipulation and Agreement as well as to answer Commission questions about the remaining unresolved deficiencies.

**WHEREFORE**, AmerenUE asks the Commission to consider this filing and to proceed with the previously ordered on-the-record proceeding scheduled for October 7, 2008.

Respectfully submitted,

/s/ **Wendy Tatro**

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 29<sup>th</sup> day of September, 2008.

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