BEFORE THE PUBLIC SERVICE COMMISSION
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**

BRIEF OF LACLEDE GAS COMPANY

Pursuant to the procedural schedule established in this case, Laclede Gas Company ("Laclede") hereby submits its brief on the issue of whether AmerenUE's request for interim rate relief should be approved by the Commission. Laclede's brief will address the issue utilizing the list of sub-issues set forth in Staff's December 1, 2009 filing in this proceeding.

I. Do the circumstances presently encountered by AmerenUE warrant the Commission authorizing AmerenUE interim rate relief as generally proposed by AmerenUE?

a. Should there be criteria for the Commission to use to decide whether interim rate relief is warranted? If so, what should that criteria be?

Laclede believes that, under the specific circumstances of this case, AmerenUE's request for interim rate relief is justified and should be approved. In support of that conclusion, Laclede would note that the interim rate request is tied entirely to capital expenditures for utility plant that the Commission Staff has verified is currently in service and benefitting customers today. It is also exceedingly modest in amount, constituting just a small fraction – i.e. less than 10% – of AmerenUE's overall request to increase rates by approximately $400 million. In fact, the requested amount is substantially less than the lowest overall revenue requirement recommended by any of the parties to this case in their December 18, 2009 direct filings.

Laclede would also note that Ameren's request for interim rate relief is being made only after more conventional methods for establishing rates and providing the utility with a realistic

opportunity earn its authorized return have proven ineffective. Indeed, it is difficult to imagine a more telling demonstration of this deficiency than AmerenUE's persistent and chronic failure to even approach its authorized return, despite the prosecution and completion of two general rate case proceedings in the recent past that should have presumably afforded such an opportunity.

Although not a panacea, granting interim rate relief will at least help to mitigate this problem, while reducing a very real disincentive to making the discretionary investments that enhance the quality of utility service and finance the jobs required to build and maintain utility infrastructure. Given these circumstances, and AmerenUE's proposal to refund, with interest, any over-collections in the unlikely event its interim rate request is ultimately deemed to have been excessive, Laclede submits that a proper balancing of all relevant factors and interests supports approval of AmerenUE's request.

As to whether there should be criteria for the Commission to use when deciding on interim rate relief, Laclede submits that the sole criteria should be whether the Commission concludes within its properly exercised discretion that such relief is warranted based on the facts and evidence presented in a particular case. For all the reasons previously stated, Laclede believes that the evidence supports the Commission exercising such discretion in this case to approve AmerenUE's request.

II. If the circumstances presently encountered by AmerenUE warrant the Commission authorizing AmerenUE interim rate relief as generally proposed by AmerenUE, has AmerenUE provided adequate justification for the proposed level of interim rate relief?

a. Should there be criteria for the Commission to use to determine the appropriate level of interim rate relief? If so, what should that criteria be?

As stated in its discussion of issue I above, Laclede believes that AmerenUE has provided adequate justification for the proposed level of interim rate relief. As explained in the direct testimony of Laclede witness Glenn Buck, AmerenUE's request is designed to partially

mitigate a serious problem that affects the recovery of capital investments made in Missouri to serve utility customers; namely the lag which occurs between the time costs are incurred and when they are ultimately recognized in rates. (Ex. O, p. 2). This lag, often referred to as "regulatory lag," is exacerbated by several factors in Missouri, including the Commission's use of an historic (as opposed to future) test year for measuring the costs that may be reflected in base rates and the rather long period of time (up to eleven months or more) between when that measurement occurs and rate relief is provided. (Ex. O, p. 3).

The impact of regulatory lag can vary significantly depending on the nature of the cost at issue. In terms of the capital investment costs at issue in this case, however, regulatory lag practically ensures that utility shareholders will never achieve a full return of and return on their investment because of the way such costs are accounted for and included in rates. (Exh. O, p. 4). When utility plant is placed in service, there is no immediate adjustment made to rates to ensure that investors begin to earn a return on the investment in such plant. Nor are rates adjusted to provide immediate recovery of the associated depreciation expense. As a consequence, a part of this investment is never recovered by the utility.

In his testimony, Mr. Buck provided an example illustrating how this shortfall occurs. His example assumes that: (a) a utility invests a million dollars in a main, transformer or other item of plant; (b) that the plant item has a twenty year service life and a 5% depreciation rate; and (c) that there is a gap of one year between when the plant is placed in service and when rates are ultimately adjusted to start providing a return of and return on the investment. (Ex. O, pp. 4-5). Because of that one year gap, the utility will never recover the approximately $50,000 in depreciation expense that accrued during the first year the plant was in service. Nor will the utility earn a return on the plant during this period, a loss that amounts to approximately

$100,000, assuming a modest 10% return on the one million dollar investment. In short, this portion of the shareholder's return on and return of its investment simply evaporates.

Some might argue that the shareholder will recoup this foregone return if there is a lag in rate recognition at the time the plant is taken out of service. As Mr. Buck explained, however, a lag at the end of an investment's life has a radically different impact. Specifically, assume that the same million dollar utility plant investment described above ends its 20 year useful life a year before a rate change is made to reflect the fact that it is no longer in service. (Ex. O, p. 5). While it is true that the utility would be able to recover in year 21 the same $50,000 in depreciation expense that it had to forego in year 1, due to the inevitable effects of inflation, that $50,000 in year 21 will be worth only a small fraction of the $50,000 that was foregone in year 1. (*Id.*) This disparate impact is even more pronounced when it comes to the return earned on the investment. In year 1, the foregone return would be calculated based on an undepreciated investment value approaching $1 million. At a 10% authorized return, this would equate to a foregone return of roughly $100,000 if rate recognition is delayed for a year or so. (*Id.*) In year 21, however, the return would be based on the depreciated value of the asset which, by that time, would hover around $50,000 (assuming that rates were last set when the $1 million asset had been 95% depreciated). As a consequence, the same 10% authorized return would produce only about $5,000 in "extra" earnings in year 21 compared to the $100,000 in earnings that were foregone in year 1. This wide discrepancy would be further exacerbated, of course, by the lower present value of dollars in year 21 compared to year 1. (*Id.*).

Mr. Buck acknowledged that there could be some modest offsets to these shortfalls due to tax effects, new revenues and occasional declines in other costs. Given the generally inclining cost structure that Laclede has faced for decades and that nearly all utilities, including AmerenUE, confront today, there is really nothing significant enough to counterbalance the

inexorable impact of regulatory lag on capital investments. (Ex. O, p. 6). Indeed, even ratemaking mechanisms like the Infrastructure System Replacement Surcharge ("ISRS") – helpful as they are – only serve to mitigate rather than eliminate these asymmetrical effects. (*Id.*)

That is precisely why measures, like the interim rate request proposed by AmerenUE in this case, should be taken to mitigate this inherent shortfall. Indeed, as Mr. Buck testified, such action is warranted by a number of compelling considerations. First, one of the few unchallenged axioms of fair and effective utility regulation is that utilities should be given a reasonable opportunity to earn a fair return on and return of their shareholders' investments. (Ex. O, p. 6). Preserving a system that is designed to ensure that shareholders can never fully recover their investments is flatly inconsistent with this fundamental ratemaking principle. Second, the chronic and seemingly automatic under-recovery of investments in needed utility plant provides utilities with a strong disincentive to make such investments – investments that are needed to enhance the quality of utility service and finance the jobs required to build and maintain utility infrastructure. (*Id.*). Finally, such a chronic under-recovery of utility investments particularly in the aftermath of two conventional rate cases can, in the end, only increase the cost of attracting capital, an added cost that must be paid for in any event by utility customers. (*Id.*).

By approving AmerenUE's interim rate proposal the Commission could take a positive, albeit modest step, to correct this situation. As Mr. Buck testified, such action would allow AmerenUE to at least begin earning a return of and return on the hundreds of millions of dollars in investments that have already been made by the utility and that are being employed today to provide utility service to its customers. Moreover, that return of and return on would be related exclusively to investments that have already been incurred and that are unquestionably being used today to provide utility service. And even in the extremely unlikely event such rates turn

out to have been excessive, ratepayers would be completely protected by the AmerenUE's proposal to provide refunds, with interest. Given these considerations, there is simply no good reason – other than delay for the sake of delay – for extending for another 5 or 6 months the asymmetrical denial of any return of or on investments that have already been made and are already providing benefits to utility ratepayers.

Finally, Mr. Buck also identified other potential alternatives for addressing regulatory lag. Over the shorter term, he pointed to the potential use of accounting authorization to immediately book both carrying costs and depreciation expense on these investments for ultimate inclusion in any revenue requirement amount approved in a rate case. (Ex. O, pp. 7-8). On a longer-term basis, Mr. Buck also discussed making greater use of the tremendous technological advancements that have been made in accumulating, accessing and managing information to streamline the auditing process and permit more rapid recognition of both increases and decreases in the cost of providing utility service through a continuous updating of "all relevant factors." (Ex. O, p. 8).

For now, however, the Commission can and should move forward to address this problem by approving the interim rate proposal made by AmerenUE in this case. Moreover, the sole criteria for making that determination should be whether the utility has demonstrated that interim rate relief is appropriate based on the specific facts and evidence presented in a particular case – a burden that Laclede believes AmerenUE has met in this case.

III. If the Commission finds that the circumstances presently encountered by AmerenUE warrant the Commission authorizing AmerenUE interim rate relief as proposed by AmerenUE, may and should the Commission adopt criteria for interim rate relief with greater applicability than the instant case?

The Commission is certainly permitted, but not required, to adopt criteria for interim rate relief that has broader applicability than the instant rate case. Rather than attempt to adopt some

broad set of criteria (and potentially run afoul of Staff's concern that the Commission cannot establish orders of generally applicability outside a rulemaking proceeding) Laclede believes that the Commission should simply find in this case that AmerenUE has demonstrated that it s entitled to interim rate relief under the facts presented in this proceeding.

Specifically, the Commission should find that interim rate relief is warranted in this case because: (a) all of the costs underlying the interim rates relate to capital projects that Staff has verified are in service and currently benefitting customers; (b) the interim amount is very unlikely to exceed any overall level of rate relief granted by the Commission in this proceeding given its comparative magnitude to what the utility filed for and what the other parties have recommended is the minimum amount of rate relief warranted; (c) refund protections are in place to ensure ratepayers are fully protected in the unlikely event the interim rate amount proves excessive; and (d) the evidence indicates that more conventional means of setting rates have not afforded AmerenUE a reasonable opportunity to earn its authorized rate of return; a factor that presents a serious disincentive to investment in critical utility infrastructure.

IV. Is any interim rate relief criteria other than the emergency/near emergency criteria lawful?

By now, there should be no question regarding the Commission's legal authority to grant interim rate relief on some basis other than the existence of a financial "emergency." As recognized by the Commission in its November 23, 2009 Order denying Public Counsel's Motions for Summary Determination and Directed Verdict, the Commission is afforded broad discretion in deciding on interim rate increases, and is not required to demand proof that an emergency or near emergency exists. (Order at 4-5) The Commission Staff also acknowledged during the earlier oral argument in this case that the Court's ruling in ***State ex rel. Laclede Gas Co. v. Public Service Comm'n***, 535 S.W.2d 561 (Mo. App. K.C. 1976)) suggests that the

Commission may indeed grant interim rate relief on some basis other than an emergency or near emergency (Oral Argument Tr. p. 96, lines 11-18). Moreover, the Staff has recognized that power in even more explicit terms in previous cases. *See, e.g.,* ***In Re: The Empire District Electric Company,*** Case No. ER-2002-425, *Staff's Response to Interim Filing,* page 7.

In view of these considerations, Laclede believes it is abundantly clear that the Commission has the legal authority to grant Ameren's interim rate request and that it should exercise that authority in this case.

V. If the emergency/near emergency criteria is not the sole lawful criteria for interim rate relief, what other criteria is lawful?

As stated above, the Commission has broad discretion to determine the criteria for interim rate relief. Laclede believes that criteria should consist of whether, in the Commission's sound and properly exercised discretion, it believes the utility seeking such relief has demonstrated that such relief is appropriate based on the facts and evidence presented in support of a particular request. There is nothing at all unusual about granting rate relief on such a basis, as long as it is indeed supported by the facts and evidence presented. Indeed, virtually every regulatory action the Commission takes, whether it be ensuring that rates are "just and reasonable," that service is "safe and adequate" or that a merger will not be "detrimental to the public interest," is rooted in equally general statutory expressions of the public policy objectives that should underlie Commission action.

Since AmerenUE has met its burden of demonstrating the propriety of its interim rate request in this case, its request should be approved by the Commission.

Respectfully requested,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing pleading has been duly served upon all counsel of record in this case by email, facsimile, United States mail, postage prepaid, or by hand delivery, on this 21st day of December, 2009.

/s/ Gerry Lynch
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