

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

In the Matter of Proposed Rule 4 CSR 240-23.010)
Establishing Reliability Standards for Investor-)
Owned Electrical Corporations.) Case No. EX-2008-0230

COMMENTS OF UNION ELECTRIC COMPANY d/b/a AMERENUE

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or Company), and for its Comments on the Missouri Public Service Commission's (Commission) proposed Rule 4 CSR 240-23.010, states as follows:

1. The Notice of Proposed Rulemaking published in the *Missouri Register* respecting this proposed rule required that comments be filed on or before March 17, 2008, and set a rulemaking hearing to occur on March 26, 2008. These Comments are filed in response to that Notice.

2. Over the past few years, the State of Missouri has experienced several unusually strong storms and a correspondingly large number of customer outages, some for extended periods of time. Certainly, Commission and public concerns about these outages provide at least a partial rationale for these rules. That is, Missouri utilities have an obligation to provide safe and adequate service to their customers and the Commission clearly has oversight of that obligation. *See* § 393.130.1, RSMo.¹ The obligation to provide safe and adequate service is accompanied by a corollary obligation to provide that service at just and reasonable rates. *Id.*

3. Consequently, this rulemaking, like any other service-related rule considered by the Commission, must strike an appropriate balance between supporting and improving, where possible, the quality of the service that is provided and the real

¹ All statutory references are to the Revised Statutes of Missouri (2000), unless otherwise noted.

costs associated the specific requirements of the rule at issue. The Company believes the Commission has appropriately achieved that balance with this rule and that it should therefore be adopted, as proposed.

4. The draft rule attached to Commissioner Clayton's dissent (Dissent's rule) fails to appropriately strike this balance. Indeed, it advocates a very different type of rule, which would not significantly advance the Commission goal of improving reliability and, indeed, any increase in reliability that the Dissent's rule might offer would come at a very high cost to Missouri ratepayers. Moreover, the Dissent's rule, at least in part, is likely unlawful. While AmerenUE will not address the Dissent's rule in its entirety, it will provide the Commission with information about the areas where the Dissent's rule raises the most concern. If the Commission were to determine that it wants to more thoroughly consider one or more aspects of the Dissent's rule, then AmerenUE would request the opportunity to provide additional feedback.

Comments on the Commission's Proposed Rule

5. Section (1) of the proposed rule requires electric utilities to document, on a monthly basis, reliability performance as measured by System Average Interruption Frequency Index (SAIFI), Customer Average Interruption Frequency Index (CAIFI), System Average Interruption Duration Index (SAIDI) and Customer Average Interruption Duration Index (CAIDI). AmerenUE believes the adoption of IEEE standard 1366 "Guide for Electric Power Distribution Reliability Indices" for definitions of terms used in the various reliability indices, as required in Section (3) will ensure that all of the utilities in Missouri classify their interruptions in a consistent manner rather than relying on each utility to define, for example, what constitutes a "service interruption".

6. Section (2) requires reliability information to be filed annually, adjusted and not adjusted for major storms, by each utility. Over time, these reports will assist the Commission in monitoring and evaluating the reliability performance of each utility in the state as well as improve the transparency of utility operations to the Commission. This should enhance Commission oversight of utility system reliability.

7. Sections (6) through (8) deal with tracking and reporting of a utility's "Worst Performing Circuits." These tracking and reporting requirements will further enhance the Commission's ability to provide appropriate oversight relating to the overall provision of safe and adequate service by the utilities. However, it is important to note that there are circuits that will not leave the Worst Performing Circuit list, because it would not be appropriate to make the enormous investment necessary to move those circuits off of the Worst Performing Circuit List. For example, portions of the AmerenUE system run through densely forested and thinly populated areas with very long distances between the substation and the last residential customer. Because some of these lines are located in a national forest, AmerenUE faces government-mandated restrictions on the type of vegetation management practices it can undertake. This means that there will be outages in these areas that have nothing to do with how well AmerenUE is maintaining these circuits. These kinds of outages are a function of the location of the lines in a rural, heavily forested area. This is not to say that the Company cannot or will not work to improve the reliability of these circuits, but it is important to note at the outset of these rules that not all circuits are equal, and not all can be improved with a simple infusion of money.

8. Section (10) requires the undergrounding of lines in new residential subdivisions. AmerenUE agrees with this requirement, although there may be a need to apply for variances under certain circumstances.

9. Section (11) allows the Commission to disseminate reliability information to the public, and provide comparisons of this data to similar information from other states. The rule indicates that the Commission will also release explanations of differences, such as calculation methodologies. AmerenUE appreciates the Commission's recognition that it is not possible to simply compare one utility's reliability numbers with another. The same result for different utilities, for example one rural and one urban, may indicate a reliability problem for one utility and not for the other. Consequently, along with differences in calculation methodologies, the Commission should acknowledge in any informational release that a straight comparison of the reliability statistics of any two utilities is likely not appropriate and that there are many factors, including the type of territory each utility serves, that will impact a particular utility's reliability statistics. A more appropriate comparison, and one that might provide useful information to the public, would be a comparison of the same utility's reliability statistics over a period of years. That is information which would be provided under this rule. Certainly that information will help reveal trends, either good or bad.

Comments on the Dissent's Rule

10. As stated above, while these Comments set forth some of the most basic concerns AmerenUE has with the Dissent's rule, they do not contain an exhaustive list and AmerenUE would request the opportunity to provide additional input should the Commission decide to consider any portion of the Dissent's rule.

11. In general, the Dissent’s rule can best be described as an over-reaction to reliability concerns. It assumes that *any* service interruption is unacceptable. In fact, it goes so far as to define “reliability” as electric service that is supplied *without interruption*. Section (4)(EE). Accordingly, a single interruption of service renders the electric service to that customer, by definition, unreliable. Using that definition, no utility in Missouri would ever be able to provide reliable service. The simple truth is that there will always be interruptions in service, whether from a storm, equipment failure or other events such as a vehicle colliding with a power pole. Certainly a reasonable and realistic standard cannot hold that any interruption renders the electric service “unreliable.”

12. The standard advocated by the Dissent’s rule would also be a drastic reversal of Commission policy and is contrary to the standard imposed by Missouri law. As noted earlier, Missouri law requires “safe and adequate” service, not absolutely perfect service provided “without interruption.” § 393.130.1, RSMo. Because the Commission is limited to the authority delegated to it by the Missouri Legislature, this is the standard to which the Commission, and utilities under its jurisdiction, must adhere – no more, and no less.

13. Even if the standard in the Dissent’s rule were permitted, it would be inappropriate because it would provide utilities with the wrong incentive. This is because a utility would be encouraged, indeed would be required if it were to meet this standard, to “gold plate” its system without subjecting the expenditures to an appropriate cost-benefit analysis to screen out those expenditures that cost ratepayers more than the value of the incremental reliability improvement the expenditures may provide. The costs of

meeting such a standard would ultimately be passed along to customers, thereby raising rates to customers without regard to the level of benefit provided, and without regard to whether that benefit justified those costs.

14. Section (9) of the Dissent's rule sets arbitrary benchmarks which the utility must exceed. Those benchmarks, established for each reliability standard, would require the utility to be within the top 25th percentile on every single standard. The ability to measure whether that level of performance is met incorrectly assumes, however, that there are clear national or state standards with which to compare any specific utility's reliability statistics. AmerenUE has not been able to find any such standards. Without clear, objective and consistently applied standards, this portion of the Dissent's rules becomes unenforceable and meaningless.

15. Additionally, as pointed out above, every utility is different and operates in a different environment. The crude comparison of one utility's reliability statistics to another's is overly simplistic and the differences among utilities and their service territories render any such comparison meaningless.

16. Finally, it should be noted that the Commission has not historically required the comparison of utility reliability statistics to any national average. To require that each utility meet every reliability measure at such a high threshold is unreasonable. It is difficult to imagine that every Missouri utility could achieve top-25th percentile performance on all six measures under any circumstances. Yet failing to meet the top-25th percentile standard for any single reliability measure would be a violation of the Dissent's rule and would subject the utility to penalties.

17. Section (13) of the Dissent's rule calls for prompt restoration of service to utility customers. One portion of the standard requires 90% of utility customers who are without power after of a major event to have their service restored within 60 hours. To be clear, AmerenUE would prefer that all of its customers always have their service restored within 60 hours, and indeed far sooner whenever possible. However, the Dissent's rule requires that 90% of the impacted customers must be restored within just two and a half days. After a major storm, 90% restoration within 60 hours simply may not be possible for reasons completely beyond any utility's control.

One does not have to postulate a very complicated or unusual scenario to see how the standard cannot be met. If AmerenUE experiences a major weather event, especially one that is also experienced by surrounding utilities (which is very often the case in Missouri²), it would likely take a couple of days to get any mutual assistance crews into AmerenUE's service territory to begin help restore service. This delay does not mean the utility failed to act in a timely manner or in any way failed to properly prepare for or respond to the outage.

In the *Staff Report on AmerenUE's Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006* (Staff Report), the Staff detailed how AmerenUE was faced with just such a scenario. Case No. EO-2007-0037, November 16, 2007, p. 34. As the Staff Report described, the first storm hit AmerenUE's service territory on July 19, 2006, at 6:20 p.m. By 6:40 p.m., all AmerenUE crews had been called in for work. By 8:30 p.m., all available Ameren Illinois crews had been called in for work. Shortly thereafter, AmerenUE requested assistance from utilities

² Consider the fact that tornadic thunderstorms or ice storms often move across the Midwest, from southwest Missouri to Illinois, Indiana, etc., and often devastate electric systems across this wide area.

which were parties to its mutual assistance agreements. Because the storm had hit in multiple nearby states, the initial requests for assistance were denied. It was not until the evening of July 21st and the morning of July 22nd that the requested crews finally arrived. At this point, more than 48 hours of the Dissent's rule's 60 hour limit had already passed. At the end of the third day (which was beyond the 60 hour limit), only 46% of the customers without power had been restored. Indeed, it took over seven days before AmerenUE had reached the 90% mark. Staff Report, p. 2. Despite this result, Staff found that "...AmerenUE's response to this outage event was well executed." Staff Report, p. 23.

As AmerenUE's July, 2006 storms illustrate, the imposition of an arbitrary 60 hour limit is not realistic in the case of a large storm.

18. Additionally, again looking at the July 19th and 20th storms, it can be difficult to know when to start the 60 hour requirement. These storms rolled into AmerenUE's service territory in waves with the second storm causing new and additional damage to areas that had been hit in the first storm. It is impossible to know if a specific customer was without service because of damage from the first storm or because of the additional damage from the second storm, which should, theoretically, restart the 60 hour requirement.

19. AmerenUE's next area of concern with the Dissent's rule centers on the credits the Dissent's rule would require utilities to provide customers upon the occurrence or non-occurrence of various events. AmerenUE believes that a large portion of sections (15) through (18) of the Dissent's rule is unlawful, for a multitude of reasons. These sections deal with the credits and penalties that a utility would be subject to if it violates

the rules. These Comments will focus, as an example, on the Dissent's proposal that, following a major event, a customer without power after five days be given an arbitrary \$25 credit on his or her next electric bill, regardless of the circumstances. If the Dissent's rule had been in place for the July 2006 storms, AmerenUE would have faced crediting to its customers almost \$5 million. (193,385 remained without power after five days. Staff Report, p. 2. $193,385 \times \$25 = \$4,834,625$.)

20. The Commission simply does not have the statutory authority to force Missouri electric utilities to credit a customer \$25 under these circumstances. Under the Dissent's rule, the obligation to provide such credits would apply regardless of whether the utility was at fault for the interruption and even when it was caused by factors completely beyond the utility's control. Further, the rule does not provide that the cost of these credits would be recovered by the utility. This is contrary to well established and binding principles of law. The Commission has an obligation to provide the utilities it regulates with a reasonable opportunity recover their prudently incurred costs. Indeed, "[m]ore than half century ago, the Supreme Court admonished regulatory agencies to 'give heed to all legitimate expenses that will be charges on income during the term of regulation.'" *The Mountain States Tele. and Tele. Co v. FCC*, 939 F.2d 1021, 1029 (D.C. Cir 1991) (quoting *West Ohio Gas Co. v. Pub. Utils. Comm'n*, 294 U.S. 63 (1935)). Put another way, "if [expenses are] properly incurred, they must be allowed as part of the composition of rates. Otherwise, the so-called allowance of a return upon the investment, being an amount over and above expenses, would be a farce." *Id.* (quoting *Mississippi River Fuel Corp. v. FPC*, 163 F.2d 433, 437 (1947)). See also, *State ex rel. City of St. Joseph v Pub. Serv. Comm'n*, 30 S.W.2d 8, 15 (Mo. banc 1930) (citing *Missouri ex*

rel. Southwestern Bell Tele. Co. v. Pub. Serv. Comm'n 262 U.S. 276, 43 S.Ct. 544 (1923)

(The Commission cannot ignore an operating expense incurred by the utility unless there was imprudence on the part of the utility in incurring it.)

21. These principles are at the center of sound utility regulation and good public policy because they serve to ensure that utilities will have the financial resources they need to provide services critical to the economic and social welfare of the Missouri citizens and the businesses that depend on them. Unfortunately, by subjecting utilities to potentially millions of dollars in financial penalties for events they cannot control (and by making no provision to recover such amounts in the utility's rates), the mandatory credit provisions of the Dissent's rule would directly contravene these important legal and policy principles.

22. The credit provisions of the Dissent's rule also directly contradict long-standing judicial and Commission decisions that recognize the Commission is an administrative body and not a court, and therefore has no power to determine damages or award monetary relief. *American Petroleum Exchange v. Pub. Serv. Comm'n*. 172 S.W.2d 952, 955 (Mo. 1943); *May Department Stores Co. v. Union Electric Light & Power Co.*, 107 S.W. 2nd 41, 58 (Mo. 1937); *State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n.*, 34 S.W. 2d 37, 46 (Mo. 1931). Although the Commission exercises "quasi judicial powers" that are "incidental and necessary to the proper discharge" of its administrative function, its adjudicative authority is not plenary. *State Tax Comm'n v. Administrative Hearing Comm'n*. 641 S.W.2d 69, 75 (Mo. 1982) (quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942)).

23. While AmerenUE recognizes that the Dissent's rule is motivated by a desire to improve the reliability of the electric service, it believes that the overall reliability of service to Missouri's electric utility customers will improve over the next few years because of the rules the Commission recently established in Case Nos. EX-2007-0231 (Infrastructure Inspection rules) and EX-2007-0232 (Vegetation Management rules). Missouri utilities should be given a chance to implement those rules and review the results, although the Commission must recognize that the full impact of these rules will not be felt overnight. For example, it will take a utility four years before all of its urban lines have been trimmed to the new vegetation management standards. But given the time required to fully implement the two rules cited above, Missouri customers should expect to see more reliable electric service. There is simply no need to adopt the unworkable and, in some respects, unlawful provisions reflected in the Dissent's rule or to expose customers to the massive costs that would be necessary to comply with the Dissent's rule.

24. In closing, AmerenUE reiterates its position that the reliability rule, as proposed by the majority of Commissioners in this rulemaking, is an appropriate rule that will provide the Commission as well as the public with the necessary information to properly discharge the Commission's oversight duties with respect to ensuring that Missouri's electric utilities provide safe and adequate service with an appropriate level of reliability. AmerenUE appreciates the opportunity to provide these Comments.

Respectfully submitted,

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d/b/a AmerenUE

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CERTIFICATE OF SERVICE

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