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

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| In the Matter of Proposed Rules | ) | |
| 4 CSR 240-3.162 and | ) | Case No. EX-2008-0105 |
| 4 CSR 240-20.091, Environmental | ) | |
| Cost Recovery Mechanisms. | ) | |

**APPLICATION FOR RECONSIDERATION AND**
**MOTION FOR EXPEDITED TREATMENT**

COMES NOW Union Electric Company d/b/a AmerenUE ("Company" or "AmerenUE") and, pursuant to 4 CSR 240-2.160 and 2.080(16), hereby seeks reconsideration of the Orders of Rulemaking respecting 4 CSR 240-3.162 and 4 CR 240-20.091 (the "Orders"), seeks Expedited Treatment, and requests that revised Orders of Rulemaking be issued by March 14, 2008 in order to allow sufficient time to provide revised Orders to the Joint Committee on Administrative Rules ("JCAR") and to timely file revised Orders with the Secretary of State. AmerenUE states as follows in support of this Application and Motion:

1. On January 17, 2008, and pursuant to Section 536.021.2(6), RSMo.,[1] the Commission held a hearing respecting proposed rules which are the subject of the Orders.

2. On March 3, 2008, pursuant to Section 536.024.3, RSMo., the Commission submitted the Orders to the Joint Committee on Administrative Rules. The Commission filed the Orders in this docket on March 5, 2008. Section 536.024, RSMo. prohibits the Commission from filing the Orders with the Secretary of State until April 3, 2008.[2] Pursuant to Section 536.021.8, RSMo, the rules reflected in the Orders shall not take effect until the thirtieth day after the rules are published in the *Code of State Regulations.* Consequently, the rules reflected in the Orders are not yet effective as a matter of law.

[1] Statutory references are to the Revised Statutes of Missouri (Cum. Supp. 2007), unless otherwise noted.
[2] Because the hearing occurred on January 17, 2008, the rules must be submitted to the Secretary of State by April 16, 2008, which is 90 days after the hearing date. *See* Section 536.021.5, RSMo.

3. A key subject addressed by the Commission's rule is the segregation of the utility's pre-existing rate base into "environmental" and "non-environmental" components. AmerenUE believes that the Commission intended to substantively adopt an alternative proposal submitted by AmerenUE in comments by Mark Birk, which provided that the cost of existing *capital* projects should be included in the "environmental" component of existing rate base only if the capital projects are major projects whose primary purpose is environmental compliance.[3] Under this proposal, all other environmental expenses (i.e. those not related to capital projects) would also be included in the "environmental" rate base.

4. Unfortunately, the language in the final rule does not reflect this distinction properly. Section (1)(F)(1) and (2) of the Chapter 3 rules and (1)(D)(1) of the Chapter 20 rules state that the "environmental revenue requirement" shall be comprised of the following:

> 1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and
> 2. The required return on costs of any major capital projects whose primary purpose is to permit the electric utility to comply with any federal, state or local environmental law, regulation or rule. Representative examples….

5. The problem with the above-quoted language is that since depreciation and taxes are expensed under applicable financial and regulatory accounting rules and practices, under the language in the rule these items would have to be included in the "environmental revenue requirement" for *all* capital projects that arguably have some relationship to environmental compliance, not just those that are *major* projects whose *primary purpose* is to comply with environmental laws or regulations. This means that depreciation and taxes associated with every capital item that arguably has some relationship to environmental compliance, no matter how

[3] AmerenUE still has concerns with the real potential for disputes relating to the process of segregating the rate base into "environmental" and "nonenvironmental" categories at all. However, the alternative proposal is materially better than the virtually impossible task of conducting a *total* segregation of the rate base into "environmental" and "nonenvironmental" components.

minor— pipes, smokestacks, control panels, fans, drains, etc. —will have to be calculated and included in the environmental revenue requirement. Surely this is not what the Commission intended. Rather, it seems apparent that the Commission intended the costs associated with capital items to be limited to major items whose primary purpose is environmental compliance. This is evidenced by the fact that the Commission adopted the major project/primary purpose concept with respect to the cost of capital – the return – associated with environmental capital projects. There are three costs associated with environmental capital projects – the cost of capital (return), and depreciation and taxes. It makes no sense to treat one cost (return) in one way, while treating the other two costs differently.

6. The rule may be fixed easily and simply to reflect what the Commission intended. All the Commission has to do is add the italicized language to the above-referenced sections that list the items that comprise the environmental revenue requirement:

> 1. All expensed environmental costs that are included in the electric utility's revenue requirement *(other than taxes and depreciation associated with capital projects)* in the general rate proceeding in which the ECRM is established; and
> 2. The [delete "required return on"] costs of any major capital projects *(i.e. the return, taxes and depreciation)* associated with projects whose primary purpose is to permit the electric utility to comply with any federal, state or local environmental law, regulation or rule. Representative examples….

7. Because the rules are not effective, and indeed cannot be effective for several weeks as outlined above, reconsideration of the Orders is proper under 4 CSR 240-2.160(2). Consequently, the Commission should reconsider the intent of its Orders and issue revised final Orders of Rulemaking reflecting the fact that the Commission did not intend to require a total segregation of all rate base into "environmental" and "non-environmental" categories. That intent would be made clear by adoption of the language provided for in paragraph 6 of this Application.

8. The Commission may be concerned with the timing of reconsidering the Orders and of complying with Sections 536.024.3 and 536.021.5, RSMo. So long as the Commission makes this correction and submits revised final orders of rulemaking to JCAR no later than this Friday, March 14, JCAR's 30-day review period will expire in time to file the revised Orders with the Secretary of State by April 16.

9. ECRM rules that at least provide some reasonable opportunity to be useful and workable in practice are important to the state and critical to ensuring that utilities can cost-effectively make the huge environmental investments mandated by law, principally federal law, which also generate other operating costs. Such rules are important to ensure that customers understand the costs that mandated expenditures to produce a cleaner environment create. To provide a set of ECRM rules that provide a reasonable opportunity to be useful and workable, it is critical that the Commission reconsider its Orders and revise them as outlined in this Application.

10. This Application and Motion were filed as soon as possible under the circumstances. The Orders were filed in the Data Center and posted on EFIS on March 5, just 4 business days ago. Moreover, there was no service of the Orders on the Company.[4] By acting by March 14, the Commission avoids the harm of adopting rules that fail to reflect its intent and allows itself time to provide revised Orders to JCAR and, upon the expiration of the 30-day JCAR review period, to file the final Orders with the Secretary of State by April 16.

WHEREFORE, the Company prays that the Commission correct its Orders of Rulemaking as outlined hearing, that it do so by March 14, that it submit the corrected Orders to JCAR by March 14, and that it then submit the final corrected Orders to the Secretary of State by April 16, 2008.

[4] Service was not required by Chapter 536, RSMo., and is mentioned here simply to point out that the Company filed this Application and Motion quickly after the Orders were actually filed in EFIS.

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