

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

In the Matter of the Application of Union)
Electric Company, doing business as)
AmerenUE, For Variances From)
Commission Rule 4 CSR 240-20.050 and)
Subparts II.K and V.L. of Union Electric)
Company's Tariff Schedule 5 for the)
Crestview Senior Living project located at)
8800 Watson Road, Crestwood, Missouri.)

Case No. EE-2006-0524

ELECTRIC METER VARIANCE COMMITTEE RECOMMENDATION

COMES NOW the Electric Meter Variance Committee of the Missouri Public Service Commission (Committee) and for its recommendation states:

1. The Electric Meter Variance Committee of the Missouri Public Service Commission, which consists of two members of the Commission's utility division staff, a member of the Commission's General Counsel Office and, *ex officio*, Public Counsel, met on July 17, 2006, regarding the original application filed in this case and again on August 25 and 28, 2006, regarding the amended application filed in this case.

2. In its original application filed June 27, 2006, Union Electric Company d/b/a AmerenUE (AmerenUE) sought variances from Commission Rule 4 CSR 240-20.050 and from "*Section II.K. Non-Standard Service of the Company's Schedule 5--Schedule of Rates for Electric Service*" of AmerenUE's tariff (Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144) for "Crestview Senior Living" to be located at 8800 Watson Road, Crestwood, Missouri.

3. The Commission determined the application was deficient for failing to comply with subparts (K) and (L) of Commission Rule 4 CSR 240-2.060(1). Those subparts require an applicant to state whether the applicant has any pending actions or final unsatisfied judgments or

decisions against it involving customer service or rates and that no annual report or assessment fees are overdue.

4. On July 28, 2006, AmerenUE requested, and was granted, leave to file an amended application. In that amended application AmerenUE cured the deficiencies noted by the Commission and added a request for a variance from “*Section V.L. of the Company’s Schedule 5–Schedule of Rates for Electric Service*” of AmerenUE’s tariff (Subpart V.L. of Union Electric Company’s Tariff Schedule 5, 3rd Revised Sheet No. 174).

5. The Committee’s recommendation is made to the three variances requested in the amended application—(1) from Commission Rule 4 CSR 240-20.050, (2) from Subpart II.K of Union Electric Company’s Tariff Schedule 5, 6th Revised Sheet No. 144 and (3) from Subpart V.L. of Union Electric Company’s Tariff Schedule 5, 3rd Revised Sheet No. 174.

Electric Meter Variance Committee Recommendations

6. In the attached Memorandum, which is labeled Appendix A, the Electric Meter Variance Committee recommends the Commission deny each of the requested variances. The Committee does not foreclose the possibility that AmerenUE or the developer may be able to adduce additional facts that would establish good cause shown for granting variances from Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company’s Tariff Schedule 5, 3rd Revised Sheet No. 174 or that the building may be an exempt “transient multiple-occupancy building”; however, the Committee finds the facts here do not establish good cause shown.

7. Additional facts that may establish “good cause shown” or exemption are:

- a. The average time residents of Crestview Senior Living will reside at Crestview Senior Living together with how that average length of residency

was determined and how it compares to the examples of transient multiple-occupancy buildings set forth in 4 CSR 240-20-050(4)(A)—hotels, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities.

- b. The residency requirements to live at Crestview Senior Living—age, disability, infirmity, etc.
- c. Nature of the 24 hour staffing provided—medical personnel, etc.
- d. A detailed definition of what Incidental Activities associated with Daily Living are.
- e. Savings to the residents of Crestview Senior Living, and how those savings were determined.
- f. A breakdown of how the developer arrived at additional building construction and design costs of \$355,000 if required to separately meter the units in Crestview Senior Living.

Standard of Review

8. The standard for obtaining a variance from Commission Rule 4 CSR 240-20.050 is “good cause shown.” 4 CSR 240-20.050(5).

9. Likewise, the standard stated in AmerenUE’s tariff for obtaining a variance¹ from Subpart V.L. of Union Electric Company’s Tariff Schedule 5, 3rd Revised Sheet No. 174 is “good cause shown”:

**** Any person or entity *affected* by the provisions of this Section V. L. Rent Inclusion may file an application with the Commission seeking a variance from all or parts of such provisions for good cause shown, pursuant to the Commission's rules applicable thereto.**

¹ In light of *State ex rel. Saint Louis County Gas Company v. Public Service Commission of Missouri*, 286 S.W. 84, 315 Mo. 312 (1926), at least one member of the Committee has reservations as to whether the Commission may grant a variance from a tariff, regardless of apparent authority in the tariff to do so.

10. According to AmerenUE's tariff, the standard(s) applicable for variance requests from Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144 are those standard(s) of "good cause shown" that must be met for variances from Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174:

Any premises meeting the conditions of (a), or (b) herein shall be considered to have been constructed after June 1, 1981, for application of 4 CSR 240-20.050 of the Commission's metering requirements and related Sections V.L. Rent Inclusion and V.M. Resale of Service, which are a part of the Billing Practices Section of Company's General Rules and Regulations.

11. As set forth below, Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174 are, for the most part word-for-word the same; therefore, the Committee applied the same test for "good cause shown" for each.

12. The Commission has expressly stated in the purpose section of Commission Rule 4 CSR 240-20.050 that the "rule is aimed at compliance with Sections 113(b)(1) and 115(d) of Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA), PL 95-617, 16 USC 2601."

13. The federally mandated policies behind Commission Rule 4 CSR 240-20.050 found in PURPA are (1) to increase conservation of electric energy, (2) to increase efficiency in the use of facilities and resources by electric utilities, and (3) equitable retail rates for electric consumers. In implementing these policies Congress has directed that "[s]eparate metering shall be determined appropriate for any new building for purposes of section 623(b)(1) of this title if—

(1) There is more than one unit in such building,

- (2) the occupant of each unit has control over a portion of the electric energy used in such unit, and
- (3) with respect to such portion of electric energy used in such unit, the ***long-run benefits to the electric consumers in such building*** exceed the costs of purchasing and installing separate meters in such building.
(Emphasis added).

16 U.S.C. § 2625(d).

14. The Committee used the requirements of 16 U.S.C. § 2625(d) in determining whether the amended application meets the standard of “good cause shown.” In reviewing long-run benefits to the electric consumers, the Committee looked to the benefits to the occupants of the units.

Subpart II.K of Union Electric Company’s Tariff Schedule 5, 6th Revised Sheet No. 144

15. Because Subpart II.K of Union Electric Company’s Tariff Schedule 5, 6th Revised Sheet No. 144 is inapplicable, the Committee first addresses AmerenUE’s request for a variance from it.

16. Subpart II.K of Union Electric Company’s Tariff Schedule 5, 6th Revised Sheet No. 144 issued February 14, 2003, and made effective March 17, 2003, follows:

GENERAL RULES AND REGULATIONS
II. CHARACTERISTICS OF SERVICE SUPPLIED

K. Non-Standard Service

Changes in business practices and regulatory and legal requirements will, from time to time, result in the Company serving or billing a limited number of customers in a manner that is currently considered a non-standard form of service. Such non-standard service includes, but is not limited to, voltages, frequencies, metering equipment, metering locations, electrical distribution system supply facilities and configurations, and master and cumulated meter billing situations that are prohibited by current Commission rules and company tariffs for application to new customers. The continued provision of such non-standard service and billing is limited to the premises presently served by such facilities. These facilities may only be relocated, expanded or enhanced for Company's engineering reasons.

In order to minimize and phase out the number of non-standard service installations and billing applications on its system, company will, unless otherwise provided for above, discontinue providing any such non-standard service to a premises when a) the premises is remodeled or rehabilitated in any such manner that requires new, modified, enhanced or relocated electrical distribution supply facilities from the Company, or b) the premises become an inactive account for a consecutive period of six (6) months or more. Any premises meeting the conditions of (a), or (b) herein shall be considered to have been constructed after June 1, 1981, for application of 4 CSR 240-20.050 of the Commission's metering requirements and related Sections V.L. Rent Inclusion and V.M. Resale of Service, which are a part of the Billing Practices Section of Company's General Rules and Regulations.

17. The foregoing tariff subpart addresses, among other things, discontinuation of master metering at premises that would not fall under the Commission Rule 4 CSR 240-20.050 because they were built on or before June 1, 1981.

18. AmerenUE states in paragraph 6 of its amended verified application the project is not yet constructed; therefore, Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144 is inapplicable, and no variance from that tariff subpart is necessary.

19. Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144 expresses a bias by AmerenUE against "non-standard service and billing."

Commission Rule 4 CSR 240-20.050 and

Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174

20. Commission Rule 4 CSR 240-20.050 provides:

(1) For the purposes of this rule.

(A) A building is defined as a single structure, roofed and enclosed within exterior walls, built for permanent use, erected, framed of component structural parts and unified in its entirety both physically and in operation for residential or commercial occupancy;

(B) Commercial adjacent buildings are defined as buildings on a contiguous plot of land owned by one (1) person, which buildings are occupied and used by one (1) person for single type of commercial operation. A person for the purpose of this definition includes any type of business entity;

(C) A commercial unit is defined as that portion of a building or premises which by appearance, design or arrangement is normally used for commercial purposes, whether or not actually so used;

(D) Construction begins when the footings are poured;

(E) A mobile home park is defined as a contiguous parcel of land which is used for the accommodation of occupied mobile homes;

(F) A multiple-occupancy building is defined as a building or premises which is designed to house more than one (1) residential or commercial unit; and

(G) A residential unit is defined as one (1) or more rooms for the use of one (1) or more persons as a housekeeping unit with space for eating, living and sleeping, and permanent provisions for cooking and sanitation.

(2) Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

(3) Each mobile home unit in a mobile home park, construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each mobile home unit.

(4) For the purposes of carrying out the provisions of sections (2) and (3), the following exceptions apply and separate metering will not be required:

(A) For transient multiple-occupancy buildings and transient mobile home parks—for example, hotels, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities, campgrounds and mobile home parks which set aside, on a permanent basis, at least eighty percent (80%) of their mobile home pads or comparable space for use by travel trailers;

(B) Where commercial unit space is subject to alteration with change in tenants as evidenced by temporary versus permanent type of wall construction separating the commercial unit space, for example, space at a trade fair;

(C) For commercial adjacent buildings;

(D) For that portion of electricity used in central space heating, central hot water heating, central ventilating and central air-conditioning systems;

(E) For buildings or mobile home parks where alternative renewable energy resources are utilized in connection with central space heating, central hot water heating, central ventilating and central air-conditioning systems; or

(F) For all portions of electricity in commercial units in buildings with central space heating, ventilating and air-conditioning systems.

(5) Any person or entity affected by this rule may file an application with the commission seeking a variance from all or parts of this rule (4 CSR 240-20.050) and for good cause shown, variances may be granted as follows:

(A) The variance request shall be filed in writing and directed to the secretary of the commission;

(B) If the commission deems it in the public interest, a hearing may be held by the commission as in complaint hearings before the commission; and

(C) A variance committee consisting of two (2) members of the commission's utility division staff and a member of the commission's general counsel's office shall be established by the commission within thirty (30) days from September 28, 1981. The public counsel shall be an *ex officio* member of this committee.

1. The variance committee shall consider all variance applications filed by utilities and shall make a written recommendation of its findings to the commission for its approval.

2. Each applicant for a variance shall have ten (10) days from the date of the variance Committee's findings to either accede or request a formal hearing before the commission.

3. If applicant accedes, the commission may adopt the variance committee's findings or set the matter for formal hearing upon the application of any interested person or upon the commission's own motion.

(6) The commission, in its discretion, may approve tariffs filed by an electric corporation which are more restrictive of master metering than the provisions of this rule.

21. Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet

No. 174 provides:

L. Rent Inclusion

The furnishing of electric service by a customer to a third party as an unidentifiable rental component, without such service being segregated and billed to the third party by Company, is generally prohibited by the Commission's rules. ***Separate metering shall be required for each unit in multiple occupancy buildings constructed after June 1, 1981, except for the following electrical usage*** (Emphasis added.):

1. For transient multiple occupancy buildings and transient mobile home parks, e .g., hotel, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities, campgrounds, and mobile home parks which set aside, on a permanent basis, at least eighty percent (80%) of their mobile home pads or comparable space for use by travel trailers;
2. Where commercial unit space is subject to alteration with change in tenants as evidenced by temporary versus permanent type of wall construction separating the commercial unit space; e .g., space at a trade fair.
3. For commercial adjacent buildings;

4. For that portion of electricity used in central space heating, central hot water heating, central ventilating, and central air conditioning systems, or
5. For buildings or mobile home parks where alternative renewable energy resources are utilized in connection with central space heating, central hot water heating, central ventilating, and central air conditioning systems.
6. For all portions of electricity in commercial units in buildings with central space heating, ventilating and air conditioning systems.

****** Any person or entity *affected* by the provisions of this Section V. L. Rent Inclusion may file an application with the Commission seeking a variance from all or parts of such provisions for good cause shown, pursuant to the Commission's rules applicable thereto.

***** Nursing homes, as referenced in (1.) above, shall include all facilities licensed by the State of Missouri Department of Social Services Division of Aging. Central space heating, water heating and air conditioning systems referred to in (4.) above shall include those systems employing individual heating/cooling units interconnected with centralized heating/cooling sources by means of a central piping system containing water or other fluids suitable for such purposes.

***Indicates Change **Indicates Addition**

22. Based on the application, there will be 132 residential units in the building and the occupant(s) of each unit will have control over a portion of the electric energy used in the unit—each unit is to have a separate HVAC unit and, apparently, permanent cooking facilities. However, nothing in the application shows “the long-run benefits to the electric consumers in [the] building will exceed the costs of purchasing and installing separate meters in [the] building.”

23. In the verified application AmerenUE indicates the building will be an apartment building marketed to seniors with utilities included in the rent. Rather than the benefits to the electric consumers in the building, *i.e.*, the seniors, AmerenUE states in the application it estimates it will incur about \$90 per unit less in costs—totaling about \$12,000—if the building is

master metered. In the application AmerenUE asserts, without support for the estimate, the developer estimates saving in lowered construction and design costs of about \$355,000. AmerenUE also asserts a ten percent (10%) energy savings; however, AmerenUE states the “energy savings” is really a rate differential based on providing service at Large General Service rather than Residential Service rates. Again, nothing in the application shows any these benefits will inure to those who will actually consume electric energy in the building.

24. Where the ultimate consumers of the electric energy are individuals living independently in multi-unit rental housing the committee questions how the federally stated goal of “equitable retail rates for electric consumers” is served when the basis for obtaining a more favorable rate is how the service is metered (at a master meter not individual meters) and where the utility’s responsibilities end (with a landlord, not individual tenants). Further, assuming the benefit of lowered electric rates actually flows to consumers in the residential units, why should those living in individually metered residential units pay, in the aggregate, more for their electric energy than those similarly situated who are living in master metered residential units because the Commission has granted a variance from the requirement of separate metering? In other words, why is this result not unduly discriminatory? The Committee does not rely on this purported savings as a basis for recommending variances from Commission Rule 4 CSR 240-20.050.

25. While the Committee has determined AmerenUE has not shown good cause for the variances it requests in this application, the Committee does not foreclose the possibility that AmerenUE, or the developer—Spectrum Acquisition Partners, LLC—may be able to provide sufficient information to make such a showing, as the Commission’s Staff felt was done in Case

Nos. EE-2004-0267 and EE-2004-0268 when those cases were brought before the Commission after unfavorable recommendations by the Committee.

26. If the Commission desires the factors set out in Case Nos. EE-2004-0267 and EE-2004-0268 to be criteria by which applications for variances from Commission Rule 4 CSR 240-20.050 are to be measured in future applications, then the Commission needs to adopt them through the rulemaking process.

27. The Committee notes that 4 CSR 240-20.050(4), and Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174 provide a list of types of properties exempted from the rule and tariff. One of those categories is "transient multiple-occupancy buildings and mobile home parks" which includes a non-exhaustive list of qualifying types of properties—hotels, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities, campgrounds and mobile home parks meeting a certain criterion. AmerenUE has not purported, and the Committee does not find, that Crestview Senior Living is exempt as a "transient multiple-occupancy building."

28. Based on a review of Commission records, Union Electric Company has no outstanding assessments and is current in its filing of annual reports.

29. Commission Rule 4 CSR 240-20.050(5)(C)2 provides that Union Electric Company has ten (10) days from the date of the Variance Committee's recommendation to either accede to the recommendation or to request a formal hearing before the Commission.

WHEREFORE, the Electric Meter Variance Committee recommends the Missouri Public Service Commission issue an Order denying Union Electric Company, doing business as AmerenUE, each of the three variances it requested for purposes of allowing master metering at Crestwood Senior Living, 8800 Watson Road, Crestwood, Missouri, *i.e.*, variances

(1) from Commission Rule 4 CSR 240-20.050, (2) from Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144 and (3) from Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174.

Respectfully submitted,

/s/ Nathan Williams

Nathan Williams
Deputy General Counsel
Missouri Bar No. 35512

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8702 (Telephone)
(573) 751-9285 (Fax)
nathan.williams@psc.mo.gov (e-mail)

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 29th day of August 2006

/s/ Nathan Williams

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EE-2006-0524, Union Electric Company d/b/a
AmerenUE

FROM: Electric Meter Variance Committee

/s/ Lena Mantle 8/29/06
Lena Mantle, Utility Operations Division

/s/ Lewis Mills 8/29/06
Lewis Mills, Office of the Public Counsel

/s/ Michael Taylor 8/29/06
Michael Taylor, Utility Operations Division

/s/ Nathan Williams 8/29/06
Nathan Williams, Office of the General Counsel

SUBJECT: Recommendation for **Denial** of Variances from Individual Electric
Metering requirements for service to Crestview Senior Living, to
be located at 8800 Watson Road, Crestwood, Missouri.

DATE: August 29, 2006

On June 27, 2006, Union Electric Company, d/b/a AmerenUE, (AmerenUE) filed an application for variances from the individual metering requirement of 4 CSR 240-20.050 and from Subpart II.K of Union Electric Company's Tariff Schedule 5 for the Crestview project. On July 28, 2006, AmerenUE amended its application to cure deficiencies and added a request for a variance from Subpart V.L. of Union Electric Company's Tariff Schedule 5.

Subpart II.K of Union Electric Company's Tariff Schedule 5

Subpart II.K of Union Electric Company's Tariff Schedule 5, 6th Revised Sheet No. 144 issued February 14, 2003, and made effective March 17, 2003, follows:

GENERAL RULES AND REGULATIONS
II. CHARACTERISTICS OF SERVICE SUPPLIED

K. Non-Standard Service

Changes in business practices and regulatory and legal requirements will, from time to time, result in the Company serving or billing a limited number of customers in a manner that is currently considered a non-standard form of service. Such non-standard service includes, but is not limited to, voltages, frequencies, metering equipment, metering locations, electrical distribution system supply facilities and configurations, and master and cumulated meter billing situations that are prohibited by current Commission rules and company tariffs for application to new customers. The continued provision of such non-standard service and billing is limited to the premises presently served by such facilities. These facilities may only be relocated, expanded or enhanced for Company's engineering reasons.

In order to minimize and phase out the number of non-standard service installations and billing applications on its system, company will, unless otherwise provided for above, discontinue providing any such non-standard service to a premises when a) the premises is remodeled or rehabilitated in any such manner that requires new, modified, enhanced or relocated electrical distribution supply facilities from the Company, or b) the premises become an inactive account for a consecutive period of six (6) months or more. Any premises meeting the conditions of (a), or (b) herein shall be considered to have been constructed after June 1, 1981, for application of 4 CSR 240-20.050 of the Commission's metering requirements and related Sections V.L. Rent Inclusion and V.M. Resale of Service, which are a part of the Billing Practices Section of Company's General Rules and Regulations.

Subpart II.K of Union Electric Company's Tariff Schedule 5 is inapplicable since AmerenUE states in paragraph 6 of its amended verified application the project is not yet constructed; therefore, no variance from that part of AmerenUE's tariff should be granted.

Subpart V.L. of Union Electric Company's Tariff Schedule 5

Subpart V.L. of Union Electric Company's Tariff Schedule 5 is essentially the same as 4 CSR 240-20.050; therefore, the Committee reviewed the application for variances using the good cause standard set forth in 4 CSR 240-20.050.

4 CSR 240-20.050

4 CSR 240-20.050(2) states:

Each residential and commercial unit in a multiple-occupancy building construction of which has begun after June 1, 1981 shall have installed a separate electric meter for each residential or commercial unit.

4 CSR 240-20.050(1)(D) states:

For the purposes of this rule—

(D) Construction begins when the footings are poured. . . .

The Commission's rule is aimed at compliance with certain sections of the Public Utility Regulatory Policies Act of 1978. Part of that Act, 16 U.S.C. section 2625(d) provides:

Master metering

Separate metering shall be determined appropriate for any new building for purposes of section 2623(b)(1) of this title if –

- (1) there is more than one unit in such building,
- (2) the occupant of each such unit has control over a portion of the electric energy used in such unit, and
- (3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

The Variance Committee considered the following factors in determining its recommendation to the Commission:

1. Is individual metering of the multiple-occupancy building required by 4 CSR 240.050;
2. Do the occupant(s) of each unit have control over a portion of the electric energy used in such unit;
3. With respect to such portion of electric energy used in such unit, do the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters;
4. Would the granting of a variance be consistent with the goals of PURPA to increase conservation of electric energy, increase efficiency in the use of facilities and resources by electric utilities, and establish equitable retail rates for electric consumers; and
5. Would the granting of a variance be in the public interest because it furthers a public policy objective in conjunction with other federal, state, or local

government programs, such as subsidizing housing costs for low-income residents or promoting economic development in certain urban areas?

On July 17, 2006; the Variance Committee met to consider the facts presented in the original application for variances for electric service by Union Electric Company d/b/a AmerenUE to Crestview Senior Living, to be located at 8800 Watson Road, Crestwood, Missouri and again on August 25 and 28, 2006, to consider the facts presented in the amended application.

With respect to each of the above factors the Variance Committee has found as follows:

1. Is individual metering of the multiple-occupancy building required by 4 CSR 240.050?

Finding: Individual metering is required by 4 CSR 240.050 because construction of this project is to begin after June 1, 1981, and no showing is made that any of the exceptions listed in 4 CSR 240.050 (4) apply.

2. Do the occupant(s) of each unit have control over a portion of the electric energy used in such unit?

Finding: The resident(s) of each residential unit control(s) the use of all electric energy used in such unit for heating and cooling, lighting, any kitchen appliances, and all other uses.

3. With respect to such portion of electric energy used in such unit, do the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters?

Finding: The applicant has not shown that the financial savings which would constitute long-run benefits to the electric consumers in the building would exceed the costs of purchasing and installing separate meters in the building.

4. Would the granting of a variance be consistent with the goals of PURPA to increase conservation of electric energy, increase efficiency in the use of facilities and resources by electric utilities, and establish equitable retail rates for electric consumers?

Finding: Granting of a variance will not increase conservation of electric energy, or increase efficiency in the use of facilities and resources by electric utilities. Granting a variance may be contrary to the goal of establishing equitable retail rates for electric consumers. Inclusion of electricity in the single monthly fee results in each electric consumer paying the same average bill; thus, electric consumers that use less than the average amount of electricity are overcharged and consumers that use more than the average amount of electricity are undercharged. Of perhaps greater concern, is that granting the requested variance

could result in unduly preferential rates, on average, for residential electric consumers living in these units, relative to residential electric consumers living in other multiple-occupancy buildings, because of their ability to aggregate load and qualify for service under the Company's Service Classification No. 3(M) Large General Service Rate, which is otherwise not available to residential consumers.

5. Would the granting of a variance be in the public interest because it furthers a public policy objective in conjunction with other federal, state, or local government programs, such as subsidizing housing costs for low-income residents or promoting economic development in certain urban areas?

Finding: The applicant has not shown that granting a variance would operate in conjunction with other federal, state, or local government programs, or what "social policy benefits" would be achieved by master metering. AmerenUE does state that some of the residents have age-related impairments. There are no governmental or private health insurance benefits that cover any portion of the monthly fee for "worry free living" and no license is required to provide any of the included services.

In addition to the factors listed above, the Commission approved a unanimous Stipulation and Agreement, granting a variance from Commission Rule 4 CSR 240-20.050, relating to metering in Case Numbers EE-2004-0267 and EE-2004-0268. These cases were filed for projects known as Brentmoor at Oaktree and River's Edge, respectively. In the Stipulation and Agreement, six (6) distinguishing characteristics were established. These characteristics are:

- (1) The average age of the residents is well over 65 years, or the residents are physically or mentally impaired or disabled;
- (2) The facility makes available assistance with Incidental Activities of Daily Living;
- (3) The facilities have special design features to accommodate the elderly, infirm or disabled;
- (4) Communal dining is provided to residents;
- (5) Communal living areas make up a major portion of the facility; and
- (6) The individual units are relatively small.

AmerenUE stated in its application that it believes that the Crestview facility meets each of the characteristics established in Cases EE-2004-0267 and EE-2004-0268.

In order to evaluate the variance requested in Case No. EE-2006-0524, a comparison was made relative to the distinguishing characteristics listed above and the information provided in Cases EE-2004-0267 and EE-2004-0268. These comparisons are listed below.

- (1) The average age of the residents is well over 65 years, or the residents are physically or mentally impaired or disabled.**

Cases EE-2004-0267 & 0268:

The residents of Brentmoor at Oaktree have an average age of 81 years, and the residents of River's Edge have an average age of 85 years.

Case EE-2006-0524:

The average age of residents at the Crestview facility will be approximately 83 years of age.

(2) The facility makes available assistance with Incidental Activities of Daily Living.

Cases EE-2004-0267 & 268:

Both Brentmoor at Oaktree and River's Edge provide, upon request, assistance with "Incidental Activities of Daily Living" or "IADLs", a standardized term used by geriatric medical professionals to identify such activities as preparing meals, shopping, driving, cooking, paying bills, making telephone calls, and housework. The residents desire such assistance in varying degrees, and their need for assistance will increase with age, leading to assistance with "Activities of Daily Living" or "ADLs", such as eating, getting in and out of bed, dressing, toileting and walking. In effect, the facilities and services provided by Brentmoor at Oaktree and River's Edge (sometimes referred to as "independent living" facilities) are part of a continuum of care that often leads to residents transferring to a licensed skilled nursing facility (sometimes referred to as an "assisted living" facility) and then to a licensed nursing home. In order to provide their residents with assistance with IADLs, Brentmoor at Oaktree and River's Edge provide communal dining, transportation, medical call alert systems, and assistance with medications, eating and grooming.

Case EE-2006-0524:

Incidental Activities of Daily Living will be provided at the Crestview facility, evidenced by the multiple programs and services provided. These include providing all meals, staffed activity programs, exercise programs, a bus for transportation, facility and unit maintenance, weekly housekeeping, laundry, and the payment of trash, water, gas and electricity bills. Additionally, home health services will be available as needed. These accommodations include a 24 hour emergency call system in each unit. Communal dining is provided for all residents. There will be a commercial kitchen and single dining room designed to accommodate all residents simultaneously. All meals are provided as part of the monthly rental rate.

(3) The facilities have special design features to accommodate the elderly, infirm or disabled.

Cases EE-2004-0267 & 268:

The physical facilities of Brentmoor at Oaktree and River's Edge are designed and constructed specifically to accommodate the needs of elderly, disabled and infirm residents. These facilities include extensive common areas for socialization and recreation, such as group activity rooms, libraries and grooming facilities; extensive handrails; wide hallways; medical call alert systems; large restrooms with elevated toilets; accessible showers with safety rails; and special lighting.

Case EE-2006-0524:

The Crestview facility has been specifically designed to accommodate the elderly, infirm or disabled. These accommodations include a 24 hour emergency call system in each unit, 24 hour staffing, multiple elevators to living floors, automated entry doors and full accessibility inside and outside of the facility. The facility will have significant communal living space... These common spaces include the communal dining room, private dining room, living room, library, theater, physical therapy, game room, meeting rooms, coffee shop, computer area, and country store.

(4) Communal dining is provided to residents.

Cases EE-2004-0267 & 268:

Brentmoor at Oaktree and River's Edge provide communal dining.

Case EE-2006-0524:

Communal dining is provided for all residents. There will be a commercial kitchen and single dining room designed to accommodate all residents simultaneously. All meals are provided as part of the monthly rental rate.

(5) Communal living areas make up a major portion of the facility.

Cases EE-2004-0267 & 268:

These facilities include extensive common areas for socialization and recreation, such as group activity rooms, libraries and grooming facilities.

Case EE-2006-0524:

This facility will have significant communal living areas as evidenced by the 32% of the gross building area which is common space. These common spaces include the communal dining room, private dining room, living room, library, theater, physical therapy, game room, meeting rooms, coffee shop, computer area, and country store.

(6) The individual units are relatively small.

Cases EE-2004-0267 & 268:

The individual units are no larger than a small efficiency apartment.

Case EE-2006-0524:

The Crestview facility will consist of 132 total units. These units are relatively small, with sizes ranging from 400 square feet studios to 975 square feet two-bedroom units, with an average size of 615 square feet.

Based on the comparison to the six distinguishing characteristics established in Cases EE-2004-0267 & 268; and the information supplied in the Cases to satisfy the distinguishing characteristics, the following conclusions were reached:

- (A) Distinguishing characteristic #1 is similar for the Cases compared. However, it was noted that there did not appear to be a minimum age requirement specified in any of the Cases.
- (B) Distinguishing characteristic #2 was addressed in greater detail in Cases EE-2004-0267 & 268; however a portion of that detail was to establish terminology such as Incidental Activities of Daily Living, independent living,

assisted living, etc. AmerenUE's application does not clarify what is meant by the term "incidental activities of daily living" as used in the application.

- (C) Distinguishing characteristic #3 is similar for all cases compared; however, AmerenUE does not state Crestview Senior Living will have extensive handrails; wide hallways; large restrooms with elevated toilets; accessible showers with safety rails; or special lighting.
- (D) Distinguishing characteristic #4 is similar for all cases compared.
- (E) Distinguishing characteristic #5 is similar for all cases compared.
- (F) Distinguishing characteristic #6 was addressed with more specific detail in Case EE-2006-0524. The actual square footage for the various types of units was provided. Cases EE-2004-0267 & 268 referred to the unit sizes as "no larger than a small efficiency apartment." Based on the information provided, it appears that at least a portion of the units in Case EE-2006-0524 would be larger (e.g., 975 square feet two-bedroom units). The distinguishing characteristic refers to "individual units are relatively small."

Some ambiguity exists regarding minimum age requirements for occupants in all the cases and the size of the units in the current case. The distinguishing characteristics imply that age of the residents or disability/impairment of the residents is a determining factor. If age/disability/impairment is not specified there may not be sufficient information to distinguish these facilities from other multi-unit residential facilities. In Cases EE-2004-0267 & 268, specific detail was provided regarding some terminology such as Incidental Activities Associated with Daily Living. This Case does not provide the same level of detail with regard to that terminology. Additionally, for this Case, the inclusion of 975 square feet two-bedroom units may not be considered as being "relatively small." It should be noted that in the previous Cases (EE-2004-0267 & 268), a specific size (square feet) was not provided, rather a relative size of "no larger than a small efficiency apartment."

In AmerenUE's First Amended Application for Variance, paragraph 14 includes the following statement. "Service taken at this new facility will be billed on AmerenUE's Large General Services tariff. Billing on this rate results in a ten percent energy savings to the Crestview facility." This statement is incorrect. There will be a going forward energy cost savings if these variances are granted, not an energy savings. There are cost savings listed in paragraph 15 related to meter installation, construction and design costs. These cost savings are estimated to be \$12,000 for meter installation and \$355,000 for building construction and design. Additionally, the Application states that Crestview will pay the utility bills whether the facility is master metered or individually metered.

On the basis of its findings the Variance Committee cannot recommend to the Commission that variances be granted.

While the Variance Committee reviewed the factors used in Case Nos. EE-2004-0267 and EE-2004-0268 here, if the Commission desires those factors to be criteria by which applications for variances from Commission Rule 4 CSR 240-20.050, are to be measured, then the Commission needs to adopt them through the rulemaking process as a rule of general applicability.

The Variance Committee recognizes that AmerenUE or the developer may be able to adduce additional facts that would establish good cause shown for granting variances from Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd Revised Sheet No. 174, or that the building may be an exempt "transient multiple-occupancy building."

Additional facts that may establish "good cause shown" or exemption are:

- a. The average time residents of Crestview Senior Living will reside at Crestview Senior Living together with how that average length of residency was determined and how it compares to the examples of transient multiple-occupancy buildings set forth in 4 CSR 240-20-050(4)(A)—hotels, motels, dormitories, rooming houses, hospitals, nursing homes, fraternities, sororities.
- b. The residency requirements to live at Crestview Senior Living—age, disability, infirmity, etc.
- c. Nature of the 24 hour staffing provided—medical personnel, etc.
- d. A detailed definition of "Incidental Activities associated with Daily Living."
- e. Savings to the residents of Crestview Senior Living, and how those savings were determined.
- f. A breakdown of how the developer arrived at additional building construction and design costs of \$355,000 if required to separately meter the units in Crestview Senior Living.

The Variance Committee recommends the Commission deny the requested variance from Subpart II.K of Union Electric Company's Tariff Schedule 5 as unnecessary, and deny the variances from 4 CSR 240.050 and Subpart V.L. of Union Electric Company's Tariff Schedule 5 for failure to show good cause.

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

In the Matter of the Application of Union)
Electric Company, d/b/a AmerenUE, for a)
Metering Variance to Serve Crestview)
Senior Living.)

Case No. EE-2006-0524

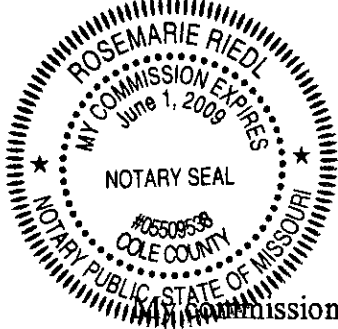
AFFIDAVIT OF LENA M. MANTLE

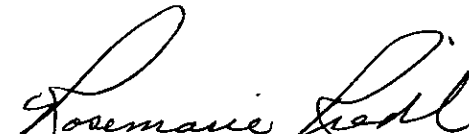
STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Lena M. Mantle, of lawful age, on oath states: that she participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was given by her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.


Lena M. Mantle

Subscribed and sworn to before me this 29th day of August, 2006.




Notary Public

My commission expires June 1, 2009