

March 23, 2006

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MAR 28 2006

Missouri Public
Service Commission

Ms. Cully Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

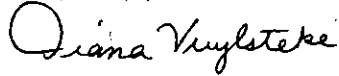
Re: Case No. EO-2006-0240

Dear Ms. Dale:

Attached for filing in the above-referenced case are an original and eight (8) copies of the *Response of the Missouri Industrial Energy Consumers to AmerenUE's Reply in Opposition to Application to Intervene Out of Time*.

Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,



Diana M. Vuylsteke
DMV:rms

cc: All Parties

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In Re: Union Electric Company's 2005)
Utility Resource Filing Pursuant to)
4 CSR 240 – Chapter 22)

Missouri Public
Service Commission
Case No. EO-2006-0240

**RESPONSE OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS TO
AMERENUE'S REPLY IN OPPOSITION TO
APPLICATION TO INTERVENE OUT OF TIME**

Comes now Anheuser-Busch, Boeing, DaimlerChrysler, Ford, General Motors, Hussmann Refrigeration, J.W. Aluminum, Monsanto, Pfizer, Precoat, Procter & Gamble, Nestlé Purina and Solutia, hereafter referred to as the Missouri Industrial Energy Consumers or "MIEC" and, pursuant to 4 C.S.R. 240-2.080, files its Response to AmerenUE's Reply in Opposition to the MIEC's Application to Intervene Out of Time. For its Response, the MIEC states as follows:

1. On March 10, the MIEC filed its Application to Intervene Out of Time. In its Application, the MIEC stated that good cause existed to grant its late intervention because it was unaware of the Commission's December 7 Order setting the December 28 intervention deadline. The MIEC stated that its intervention would serve the public interest by assisting the record for the Commission's decision in this case.

2. On March 20, Union Electric Company d/b/a AmerenUE ("AmerenUE") filed its Reply in Opposition to the MIEC's Application. AmerenUE argues that the MIEC has not demonstrated good cause for its late intervention because regardless of whether it had notice pursuant to the Commission's December 7 Order, MIEC had actual notice of this proceeding in January and did not seek intervention sooner. AmerenUE states that it did not object to the Applications to Intervene Out of Time filed by the Missouri Energy Group and Noranda in this case because they sought intervention soon after learning of the IRP filing.

3. *Contrary to AmerenUE's arguments, MIEC has shown good cause for the Commission to grant its Application to Intervene Out of Time. MIEC's intervention will serve the*

public interest by assisting the record for the Commission's decision in this case, and the Commission's ability to consider MIEC's position constitutes good cause for the Commission to exercise its discretion to permit late intervention. *See In the Matter of the Application of Environmental Utilities, LLC*, Case No. WA-2002-65, 2001 Mo. PSC Lexis 1696 at *6 (December 6, 2001) (applicants's demonstration that intervention out of time will permit the Commission's consideration of an additional viewpoint constitutes showing of good cause).

4. In addition to assisting the record, the MIEC's intervention in this case is strongly in the public interest due to the importance of the issues involved in this case. The Commission's IRP Rule at 240-22.010(2) provides that "the fundamental objective of the resource planning process at electric utilities shall be to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest" Among other things, the IRP rules require the utility to consider mitigation of cost risk and mitigation of rate increases. 4 CSR 240-22.010(C). Accordingly, AmerenUE's compliance with the IRP Rules is of critical importance to its large industrial consumers. Because the MIEC represents 13 of AmerenUE's largest customers, its interest constitutes a crucial part of the overall public interest in this case. *See Union Electric Company d/b/a AmerenUE and Ozark Border Electric Cooperative*, Case No. EO-99-599, 1999 Mo.PSC Lexis 128 at *7 (where public interest is high, good cause exists to grant application to intervene out of time).

5. To the best of its knowledge, the MIEC has participated in every meeting scheduled by AmerenUE in this matter. AmerenUE held these meetings January 11, February 17, February 27 and March 3. At AmerenUE's request MIEC executed a confidentiality agreement, and AmerenUE provided MIEC with its IRP filing, MIEC submitted discovery to AmerenUE, and AmerenUE responded to the MIEC's discovery on March 16. At no time prior to its *Reply in Opposition* did AmerenUE object to MIEC's participation.

6. This proceeding is at an early stage, and no disruption or delay of proceedings would result from MIEC's continued participation. Almost all activity to date in this case has consisted of informal meetings held by AmerenUE, on its own initiative with no involvement by the Commission, so that AmerenUE could forward its interest in reducing the demands of formal discovery. *See Order Denying Motion to Postpone Meeting* (January 26, 2006). Almost all formal proceedings in this case are to be held in the future. The Commission's IRP Rule at 240-22.080 requires the following case events which have not yet occurred:

- The parties may file reports or comments regarding any deficiencies in AmerenUE's IRP within 120 days of AmerenUE's IRP filing;
- Any parties finding deficiencies must work with AmerenUE and other parties to reach, within 45 days of the date that deficiency reports or comments are submitted, a joint agreement on a plan to remedy deficiencies or in the alternative, submit a report to the Commission describing issues upon which agreement cannot be reached.
- AmerenUE and the parties must file responses to each other regarding items of disagreement within 60 days of the filing of deficiency reports or comments;
- The Commission must issue an order indicating on what items, if any, a hearing will be held and establishing a procedural schedule.

The only formal proceedings held by the Commission in this case have been an early prehearing conference on January 3, prior to intervention by the Missouri Energy Group and Noranda, and a conference held on February 22 for the purpose of facilitating the parties' discussion on how much of AmerenUE's IRP should be made publicly available. The focus of this case so far has been exclusively on review, discovery, and discussion of AmerenUE's IRP. MIEC has participated fully

and actively in this phase of the case, with the acquiescence of AmerenUE and with no objection from any party.

6. No prejudice to any party would result if the Commission grants MIEC's late intervention. AmerenUE's *Reply* makes no allegation of prejudice which would result from MIEC's late intervention and continued participation.

7. AmerenUE's *Reply in Opposition* states that "This is not the first time that MIEC has filed a tardy application to intervene in an AmerenUE case" and notes that six years ago the Commission denied the MIEC late intervention in Case No. EA-2000-37. However, the Commission's reasons for denying MIEC's application to intervene out of time in that case are not at all applicable to this case. There, the Commission found that the MIEC's interest was "not a sufficiently direct interest to create a right of intervention". The Commission described the MIEC's interest as "remote", and did not even reach the issue of whether or not good cause existed to permit intervention out of time. In the present case, the MIEC clearly has a direct interest in AmerenUE's compliance with the Commission's IRP rules. The MIEC's direct interest in this case is demonstrated by the Commission's two prior Orders granting the Applications to Intervene Out of Time of the Missouri Energy Group and Noranda. Although the interests of these two parties differ from the MIEC's due to the nature of their operations and their electricity usage, the Commission's decision to grant them intervention demonstrates AmerenUE's customers have a direct interest in this case. Also in contrast to the present case, the parties to EA-2000-37 had reached an agreement and settlement was imminent, resulting in the Commission's specific finding that permitting late intervention would prejudice the parties by delaying resolution of the case. In the present case, these circumstances do not exist. This proceeding is at an early stage, MIEC has actively participated to date, and no prejudice would result from its late intervention.

8. The MIEC has shown good cause for the Commission to grant its late intervention because it was unaware of the Commission's intervention deadline, its intervention is in the public interest, and its intervention will assist the Commission's record for decision. The MIEC has actively participate in this matter without objection from AmerenUE, and the MIEC's continued participation will not disrupt or delay these proceedings. The MIEC has a direct interest in this case, and no party will be prejudiced by its late intervention.

WHEREFORE, the MIEC respectfully requests that it be permitted to leave to intervene out of time and that it be made a party to this case for all purposes.

Respectfully submitted,

BRYAN CAVE, LLP

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Attorney for The Missouri Industrial
Energy Consumers

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 23rd day of March, 2006, to all parties on the Commission's service list in this case.

Diana Vuylsteke
