

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day of
October, 2006.

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

**ORDER APPROVING STIPULATION AND AGREEMENT
AND GRANTING EXEMPTION**

Issue Date: October 31, 2006

Effective Date: November 10, 2006

Procedural History:

On June 27, 2006,¹ Union Electric Company d/b/a AmerenUE (“AmerenUE”) filed an application seeking a variance from Commission Rule 4 CSR 240-20.050 and Section II.K of its Non-Standard Service of the Company’s Schedule 5 – Schedule of Rates for Electrical Service, 6th Revised Sheet No. 144. Compliance with the rule and company schedule requires individual metering versus master metering for all of AmerenUE’s customers. AmerenUE filed its application at the request of one of its customers, Crestview Senior Living (“Crestview”), located at 8800 Watson Road, Crestwood, Missouri.

Crestview is a planned retirement project consisting of 132 units of various sizes designed specially to accommodate the elderly, infirm or disabled. Each unit will be served by individually controlled HVAC units and by a common gas fired hot water system. The

¹ All dates throughout this order refer to the year 2006 unless otherwise noted.

facility will have significant communal living areas, as evidenced by 32% of the gross building area being dedicated to common space areas.

AmerenUE states that good cause exists for granting this variance because individual metering of each of the 132 units would result in additional expenditures for AmerenUE and for its customer. AmerenUE estimates that individual metering of this facility would cost approximately \$90.00 per unit for a total of \$12,000.00. The customer estimates cost savings of \$355,000 in construction and design if the project is master metered. AmerenUE believes an additional ten percent (10%) energy savings will be achieved as a result of the structure of the applicable service rate for a Large General Service as opposed to Residential Service Rate if the variance is approved. AmerenUE further states that the granting of this variance will not affect any other public utility.

On July 28, AmerenUE was granted leave to file an amended application to cure 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.

On August 29, the Commission's Variance Committee filed its verified Memorandum recommending a denial of the requested variance. However, the Variance Committee advised that they were not foreclosing the possibility that additional facts about the facility could establish good cause for granting the variance from Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company's Tariff Schedule 5, 3rd

Revised Sheet No. 174.² The Variance Committee also determined that no variance was required from AmerenUE's Section II.K of its Non-Standard Service of the Company's Schedule 5 – Schedule of Rates for Electrical Service, 6th Revised Sheet No. 144, because that tariff section was applicable only to facilities built on or before June 1, 1981.

On September 6, Spectrum Acquisition Partners, L.L.C. ("Spectrum"), the developer of Crestview, requested intervention and requested that the Variance Committee reconsider its recommendation and that it be allowed the opportunity to provide additional information to aid the Committee's decision. On September 8, AmerenUE filed its response to the Variance Committee's recommendation, joining Spectrum's request to provide additional information and requesting a hearing pursuant to Commission Rule 4 CSR 240-20.050(5)(C)(2).

The Commission granted Spectrum's request for intervention and held a prehearing conference on September 19. At the prehearing conference, the parties indicated that a resolution to this matter might be forthcoming, and on October 25, the parties filed a Unanimous Stipulation and Agreement.

² Specifically, the Variance Committee identified six additional criteria which could aid with the determination if the variance would be appropriate: (1) The average time residents of Crestview Senior Living would reside at the facility together with how that average length of residency was determined and how it compared 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. (2) The residency requirements to live at Crestview Senior Living -- age, disability, infirmity, etc. (3) The nature of the 24 hour staffing provided—medical personnel, etc. (4) A detailed definition of the incidental activities associated with daily living provided by the facility. (5) The cost savings to the residents of Crestview Senior Living, and how those savings were determined. (6) A breakdown of how the developer arrived at additional building construction and design costs of \$355,000 if required to separately meter the units at the facility. The Variance Committee derived these criteria from prior Commission Cases EE-2004-0267 and EE-2004-0268, where such factors were determined to satisfy the good cause standard for a variance from 4 CSR 240-20.050.

Discussion:

Relevant Commission Rules and Tariff Provisions

Commission Rule 4 CSR 240-20.050(2) provides that: “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 and commercial unit.”³ Commission Rule 4 CSR 240-20.050(5) provides that a variance from any part of this rule may be granted for good cause shown.

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:

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 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.” The federally mandated policies behind Commission Rule 4 CSR 240-20.050 found in PURPA are (1) to increase conservation of electricity supplied by electric utilities, (2) the optimization of the efficiency of use of facilities and resources by electric utilities, and (3) equitable retail rates for electric consumers. 16 U.S.C. § 2611.

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

Commission Rule 4 CSR 240-20.050(5) and AmerenUE's tariff both require a showing of good cause for the Commission to grant a variance from the separate metering requirement. However, it should be noted that 4 CSR 240-20.050(4)(A) provides an exemption from 4 CSR 240-20.050(2) and separate metering is not required: "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."

The Stipulation and Agreement

In addition to the verified pleadings filed in this case, John A. Brewer, Spectrum's Senior Vice President of Development and Acquisitions, filed a sworn affidavit to address the criteria identified by the Variance Committee as necessary to qualify for the variance from 4 CSR 240-20.050. Based upon the pleadings, discussion among the parties, and Mr. Brewer's affidavit, the parties unanimously stipulated to the following facts:

- a. Crestview offers only month-to-month rental agreements, reflecting that it is a transient multiple-occupancy building.
- b. Crestview is a "worry-free" purpose community consisting of 132 units for the frail, impaired or disabled, elderly, with a minimum age of 62 and average age of 83, for which all utilities will be paid for within the monthly rent, with the exception of telephone and cable television.
- c. Each unit, either a studio or one bedroom unit ranging in size from 400 to 975 square feet, will be served by an individually-controlled HVAC unit and a common gas fired, hot water system.
- d. The facility, referred to as being a "Senior Living Facility," will provide a 24 hour medical call alert system in each unit, walk in showers, bathroom grab bars, 24 hours staffing, multiple elevators, automated entry doors, handrails and full accessibility as required, inside and outside.
- e. Crestview will have home health services available on-site including assistance with medications, bathing, dressing and grooming, and escorts for supervision with walking. Incidental activities of daily living are provided through such services as meals at the communal dining room (meals are

included in the monthly rent), staffed activities and exercise programs, bus transportation, maintenance and housekeeping, laundry and trash services.

- f. Common areas of the facility comprise approximately 32% of the building including the communal dining room, living room, hair salon, library, theater, physical therapy, hydro-therapy tub room, massage therapy room, game room, meeting rooms, bistro/coffee shop, and computer area.
- g. Crestview's parking ratio will be 0.88 spaces per residential unit, far lower than a normal multi-family complex, which is generally 2 spaces per residential unit. The design is specific to the frail elderly population of the facility.

The stipulation and agreement indicates that the parties unanimously agree that the Crestview Senior Living project meets all the criteria set forth by the Variance Committee derived from prior cases where a variance was granted by the Commission.⁴ Additionally, the parties unanimously agree that the Crestview Senior Living project meets the additional functional criteria of facilities that are exempt from the Commission's individual metering rule. Commercial transient multiple-occupancy facilities are differentiated from simple multiple-occupancy residential facilities because: (1) they have a common dining room where most of the residents eat their meals the majority of the time,

⁴ See Case Nos. EE-2004-0267 and EE-2004-0268. These criteria included: (1) the average age of the residents being over 65, or residents with physical or mental impairment; (2) assistance with incidental activities of daily living; (3) special features to accommodate the elderly, infirm or disabled; (4) communal dining; (5) communal living areas comprising a major portion of the facility; and (6) small individual units.

(2) there is the existence of on-duty medical staff, and (3) the utility services are the responsibility of the facility operator.⁵

Based upon the verified pleadings, discussions between the parties, and the verified affidavit of John A. Brewer, the parties respectfully request the Commission to find that Crestview Senior Living be considered a “Senior Living Facility” qualifying as an exempt transient multiple-occupancy building pursuant to Commission Rule 4 CSR 240-20.050(4)(A). The parties also submit that the Commission’s use of the term “Senior Living Facility” as a recognized exempt transient multiple-occupancy building will provide necessary guidance to interested stakeholders in the future.

Alternatively, if the Commission determines that the subject property is not recognized as an exempt transient multiple-occupancy building, the parties assert that good cause has been shown for the Commission to grant a variance from the individual metering requirement of Commission Rule 4 CSR 240-20.050 and Subpart V.L. of Union Electric Company’s Tariff Schedule 5, 3rd Revised Sheet No. 174. The variance would allow master metering for the Crestview Senior Living facility in Crestwood, Missouri.

Decision:

After reviewing AmerenUE’s application, the verified affidavit of John A. Brewer, and the parties’ Unanimous Stipulation and Agreement, the Commission concludes that the Crestview Senior Living, located at 8800 Watson Road, Crestwood, Missouri is a “Senior Living Facility” qualifying as an exempt transient multiple-occupancy building pursuant to Commission rule 4 CSR 240-20.050(4)(A).

⁵ See *Tesson Heights Enterprises, Complainant v. Union Electric Company*, Respondent, 4 Mo. P.S.C.3d 145 (1995).

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed on October 25, 2006, is approved , and the parties are ordered to comply with its terms. A copy of the Stipulation and Agreement is attached to this order.
2. The Crestview Senior Living facility, located at 8800 Watson Road, Crestwood, Missouri, is a "Senior Living Facility" qualifying as an exempt transient multiple-occupancy building pursuant to Commission Rule 4 CSR 240-20.050(4)(A).
3. The Crestview Senior Living facility, located at 8800 Watson Road, Crestwood, Missouri, as a "Senior Living Facility," is granted an exemption from the individual metering requirement of Commission Rule 4 CSR 240-20.050 pursuant to Commission Rule 4 CSR 240-20.050(4)(A).
4. Nothing in this order shall be construed to constitute ratemaking treatment.
5. This order shall become effective on November 10, 2006.
6. This case may be closed on November 11, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Stearley, Regulatory Law Judge