

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 30<sup>th</sup> day of  
June, 2010.

In re: Union Electric Company's 2008 Utility     )  
Resource Filing pursuant to 4 CSR 240 -     )  
Chapter 22.     )     **File No. EE-2010-0243**

**ORDER REGARDING APPLICATION FOR WAIVERS**

Issue Date: June 30, 2010

Effective Date: July 10, 2010

**Syllabus:** This order grants certain waiver requests made by Union Electric Company, d/b/a AmerenUE ("AmerenUE").

**Procedural History**

On February 24, 2010<sup>1</sup>, AmerenUE asked the Commission to grant it waivers from certain requirements of the Commission's Integrated Resource Planning Rule, 4 CSR 240-22. The specific waiver requests are listed in Attachment A of AmerenUE's pleading.<sup>2</sup>

The Commission issued notice of this application on March 1, and gave interested parties until March 21 to request intervention. The Commission received timely intervention requests from: Missouri Industrial Energy Consumers, Mid-Missouri Peaceworks, The Missouri Coalition for the Environment, The Missouri Nuclear Weapons Education

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<sup>1</sup> All calendar references are to 2010 unless otherwise noted.

<sup>2</sup> The load analysis rule waiver requests listed in Attachment A are 4 CSR 240-22.030(1)(D)1, (1)(D)2, (3), (3)(B)1, (4)(A), (4)(B), (5)(B)2.B., (8)(B)2, and 8(E)1. The supply-side resource analysis waivers are: .040(2)(B)2, (3), (6). The demand-side resource analysis waivers are: .050(2), (3)(F), (6)(D), (9), (11)(D), (11)(J). The integrated resource analysis waivers are: .060(4), (4)(C), (6)(A), (6)(B), (6)(C). The risk analysis and strategy selection waivers are: .070(1), (2), (2)(E), (2)(F), (3), (4), (5), (6)(B), (7), (11)(A). The filing schedule and requirements waiver is .040(1)(K).

Fund, The Natural Resources Defense Council, The Sierra Club, and The Missouri Department of Natural Resources (“MDNR”). AmerenUE did not object to these applications, and the Commission granted them on April 5.

The Staff of the Commission (“Staff”) filed its Recommendation on March 31. Staff had no objection to AmerenUE’s requests.

The Office of the Public Counsel (“OPC”) also responded on March 31. OPC stated that it would not oppose the requested waivers so long as the proposed waiver language for calculating avoided costs for DSM screening purposes is supplemented and clarified as proposed by OPC. MDNR also responded on March 31, suggesting changes to 15 of AmerenUE’s waiver requests.

AmerenUE replied on April 12, accepting OPC’s clarification, and adopting OPC’s proposed language for the waiver of 4 CSR 240-22.050(2). That language is attached to this order as Attachment 1.

AmerenUE further accepted MDNR’s suggestion for 4 CSR 240-22.060(4), but opposes the remaining suggested changes. MDNR responded to AmerenUE on April 22. Then, on May 10, AmerenUE and MDNR filed a Joint Statement.

The Joint Statement stated that MDNR and AmerenUE have resolved all but one of their disputed issues. Their resolutions are listed on Attachment B – Resolved Issues on the Joint Statement. That Attachment is, in turn, attached to this order, as Attachment 2.

One unresolved issue remains, concerning Commission Rule 4 CSR 240-22.040(1)(K), the Commission’s rule on reporting environmental impacts. This is on the Joint Statement as Attachment A.

Commission Rule 4 CSR 240-2.080(15) permits parties ten days to respond to pleadings, unless that time is otherwise shortened by the Commission. The Commission

did not shorten the response time; thus, replies to the Joint Statement filed on May 10 were due by May 20. No such pleadings were filed.

### **Discussion**

Commission Rule 4 CSR 240-2.060(4) permits applications for waivers from Commission Rules. Such an application shall set out a “complete justification setting out the good cause for granting the waiver.”

Although the term “good cause” is frequently used in the law,<sup>3</sup> the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.<sup>4</sup> “Good cause” has been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”<sup>5</sup>

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”<sup>6</sup> And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>7</sup>

Based upon AmerenUE’s application, Staff’s Recommendation, AmerenUE’s agreement to adopt some waiver language proposed by OPC, and on the Joint Statement

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<sup>3</sup> *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

<sup>4</sup> See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

<sup>5</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

<sup>6</sup> *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>7</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F. Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F. Supp. 831, 832 (S.D.N.Y. 1947).

filed by MDNR and AmerenUE, the Commission finds good cause to grant AmerenUE its requested waivers, except for AmerenUE's request to waive 4 CSR 240-22.040(1)(K).

As for the one unresolved issue, which is on the Joint Statement and listed as Attachment A – Unresolved Issues to the Joint Statement, the Commission finds this issue in favor of MDNR. The Commission finds that there is greater than zero probability of new tritium regulation within the planning horizon, finds the scope of 4 CSR 240-22.080(9) does not extend to modification of a Commission Order, and finds that the Commission should not be asked in the context of a waiver request to overturn a decision it made regarding an alleged deficiency based on information presented by the utility and one or more parties in File No. EO-2007-0409.

**THE COMMISSION ORDERS THAT:**

1. Except as listed in paragraph 2 below, the Commission grants the waiver requests made by Union Electric Company, d/b/a AmerenUE, as listed in its February 24, 2010 motion, as modified by the agreement by Union Electric Company, d/b/a AmerenUE, to adopt the language proposed by the Office of the Public Counsel included as Attachment 1 on the Office of the Public Counsel's March 31, 2010 pleading, which is included as Attachment 1 on this order, and as modified by the resolution reached by Union Electric Company, d/b/a AmerenUE and The Missouri Department of Natural Resources, as memorialized in Attachment B of their Joint Statement of May 10, 2010, which is included as Attachment 2 on this order.

2. The Commission denies the waiver request made by Union Electric Company, d/b/a AmerenUE, concerning Commission Rule 4 CSR 240-22.040(1)(K).

3. This order shall become effective on July 10, 2010.
4. This case shall be closed on July 11, 2010.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. C. Reed', written in a cursive style.

Steven C. Reed  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett,  
Gunn, and Kenney, CC., concur.

Pridgin, Senior Regulatory Law Judge