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March 12, 2004

HAND DELIVERED

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65102

FILED²
MAR 12 2004
Missouri Public
Service Commission

Re: ***Case No. EE-2004-0267***

Dear Mr. Roberts:

Enclosed for filing are an original and eight (8) copies of St. Catherine Retirement Community, LLC and DeSmet Retirement Community, LLC's Amended Application for Variance.

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,

Stuart H. Zimbalist

Stuart H. Zimbalist

SHZ:dgw
Enclosures (9)

cc: All Parties

BEFORE THE PUBLIC COMMISSION
OF THE STATE OF MISSOURI

FILED²
MAR 12 2004
Missouri Public
Service Commission

In the Matter of the Application of)
Union Electric Company, doing business)
As AmerenUE, for a Variance from the)
Separate Metering Requirement of the)
Commission's Rule For the Brentmoor)
At Oaktree project located at 363)
Jungermann Road, St. Peters, Missouri)

Case No. EE-2004-0267

AMENDED APPLICATION FOR VARIANCE
OF ST. CATHERINE RETIREMENT COMMUNITY AND DESMET RETIREMENT COMMUNITY

Comes now St. Catherine Retirement Community, LLC, DeSmet Retirement Community, LLC (collectively "Owner") and, pursuant to 4 CSR 240-20.050, files this Amended Application for Variance ("Amended Application"). In support of its Amended Application, the Owner states as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

1. St. Catherine Retirement Community, LLC and DeSmet Retirement Community, LLC are both Missouri corporations and are the owners of Brentmoor Oak Tree Retirement Community located at 363 Jungerman Road in St. Peters Missouri ("Brentmoor Project"). The Brentmoor Project consists of 166 senior adult residential units.

2. On December 22, 2003, Union Electric Company, doing business as AmerenUE, filed an application for variance from the individual metering requirements of 4 CSR 240-20.050 for the Brentmoor Project ("Initial Application"). The Initial Application is incorporated herein by reference.

3. On January 29, 2004, the Electric Meter Variance Committee ("Committee") met regarding the Initial Application. On January 30, 2004, the Committee issued a recommendation for denial of the Initial Application.

4. On February 9, 2004, AmerenUE replied to the Committee's recommendation and contested the recommendation, but did not request a formal hearing.

5. On February 10, 2004, Brentmoor filed its Application to Intervene. This application was granted by order dated February 24, 2004.

6. On February 10, 2004, Owner filed its Request for Reconsideration, Granting of Variance and Request for Hearing.

7. On March 3, 2004, the Commission held a prehearing conference. On the record at the prehearing conference, Judge Roberts granted the Owner's Request for Reconsideration by the Electric Meter Variance Committee.

8. The Owner is filing this Amended Application in order to present facts not presented in the Initial Application.

II. THE BRENTMOOR PROJECT

9. The residents of the Brentmoor Project range in age from 72 to 92 years old, with an average age of 80 years old. All of the residents are seniors and these elderly residents move in to these senior communities to address their growing concerns over their frailties, impairments and disabilities. Some move in with significant impairments and frailties of age, including arthritis, Alzheimer's disease or varying levels of dementia, which puts them at risk if they continue to take care of their own affairs in an independent general occupancy housing.

10. The Owner provides a wide variety of services for seniors including: electricity, water, natural gas, congregate meals, maid service, laundry service, transportation, trash service, full maintenance, 24-hour supervision and emergency call service, internet access, pendants worn for help in activating an alarm, recreation and exercise programs, beauty and barber shop services, bath care, medication set-up and reminders, and meal and activity escorts.

11. The Brentmoor Project is not licensed as a nursing home or assisted living facility. However, it is designed as a senior living community to provide services and assistance for senior residents with the Activities of Daily Living, also known in the industry as "ADLs", for senior adults. Senior adults living in the Brentmoor Project are concerned about aging, declining health and diminished independence, and require the additional services necessary to secure a safe and supportive living environment, without the levels of care provided at licensed nursing homes or assisted living facilities. The Brentmoor Project is designed for use as a senior community with extensive common facilities not

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found in a mixed occupancy apartment development including kitchen, with central dining facilities, safety rails in restrooms and corridors, alarm units, and common areas for programs, activities and recreation that distinguish the design of a senior housing community from a general occupancy apartment development.

12. The Brentmoor Project is designed to maximize energy conservation, with insulation and insulated windows to reduce heating and cooling costs. Hot water is provided by a central hot water system not controlled by residents, and the Owner controls all electric usage including heating and cooling, cooking etc. in the extensive common facilities which are an integral part of a senior community.

III. LEGAL FACTORS SUPPORTING THE AMENDED APPLICATION

13. Pursuant to 4 CSR 240-20.050, a variance may be granted for good cause shown.

14. The purpose of Rule 4 CSR 240-20.050 stated by the Commission in the Code of State Regulations is as follows:

This rule prescribes individual metering for new multiple occupancy buildings and new mobile home parks for all electric corporations under the jurisdiction of the Public Service Commission. This rule is aimed at compliance with Sections 113(b)(1) and 115 (d) of Title 1 of the Public Utility Regulatory Policies Act of 1978 (PURPA), PL 95-617, 16 USC 2601.

Part of PURPA is codified at 16 U.S.C. section 2601. That section provides, in part:

The Congress finds that the protection of the public health, safety and welfare, and preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require –

- (1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers.

Other pertinent subsections of PURPA are 2623 (b)(1) and 2625(d). Subsection 2623(b)(1) provides:

(1) Master Metering

To the extent determined appropriate under section 2525(d) of this title, master metering of electric service in the case of new building shall be prohibited or restricted to the extent necessary to carry out the purposes of this chapter.

Subsection 2625(d) provides:

(d) Master metering

Separate 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.

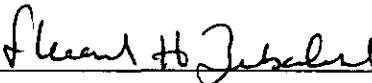
15. Good cause exists to grant the variance sought by this Amended Application. Under the balancing test of PURPA, the social policy benefits of providing master metering outweigh the conservation benefits of single metering. The benefit to the senior residents is substantial. Most of these residents are over 80 years old, have frailties, disabilities and impairments associated with aging, and require housing which addresses their needs and require assistance and services to meet their needs. In contrast, the conservation benefit of not granting the variance and requiring single-metering is minimal or nonexistent. The Owner has a strong incentive as the party responsible for utility bills to take conservation measures, and has in fact taken such measures, such as insulation of the facilities. Additionally, the Owner must pay the residents' electric bills in any event, as explained in the Initial Application and in AmerenUE's February 9 Reply. As AmerenUE points out in paragraph 5 of the Initial Application, reverting to individual metering would not relieve the Owner of the requirement to pay the residents' electric bills. The Owner could not lawfully bill the residents based on their respective use of electricity, because this would constitute "rebilling" in violation of existing law and specifically in violation of AmerenUE's Tariff Sheet No. 175. Because the Owner already has the incentive to conserve, and because it cannot "rebill" the residents to reflect actual usage, as a practical matter there is little or no conservation benefit to individual metering in this case. Moreover, even if some conservation benefit is found to exist, it is far outweighed by the benefits of master metering to these impaired elderly residents.

WHEREFORE, for the foregoing reasons, the Owner respectfully requests a variance from the individual metering requirement of 4 CSR 240-20.050 to allow master metering for the Brentmoor Project.

VERIFICATION

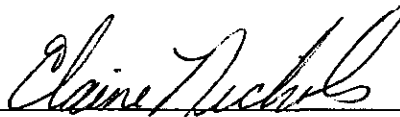
STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

I, Stuart Zimbalist, an attorney for St. Catherine Retirement Community, LLC and DeSmet Retirement Community, LLC, being duly sworn upon my oath, do hereby state that I have read the foregoing document and that the facts stated therein are true and correct to the best of my knowledge, information and belief, and that I am authorized to file such document on behalf of St. Catherine Retirement Community, LLC and DeSmet Retirement Community, LLC.



Stuart H. Zimbalist

Subscribed and sworn to before me this 11th day of March, 2004.



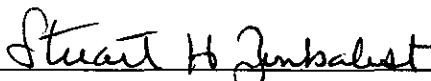
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of Public Counsel, by first class mail, postage prepaid, on this 11th day of March, 2004.



SUELTHAUS & WALSH, P.C.

By: Stuart H Zimbalist

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Attorney for St. Catherine Retirement
Community, LLC and

DeSmet Retirement Community, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the parties to this proceeding by electronic mail service on this 12th day of March, 2004.

Stuart H Zimbalist

Stuart H. Zimbalist