

**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 an         )  
Order Authorizing the Sale, Transfer and             )  
Assignment of Certain Assets, Real Estate, Leased     )  
Property, Easements and Contractual Agreements to     )  
Central Illinois Public Service Company, doing         )  
business as AmerenCIPS, and, in connection            )  
therewith, Certain Other Related Transactions.         )

Case No. EO-2004-0108

**STAFF MOTION FOR COMMISSION SPECIFICATION OF PROCEDURE**

Comes now the Staff of the Missouri Public Service Commission (Staff) and hereby requests that the Missouri Public Service Commission (Commission) specify the procedure to be followed relating to Commission Agenda Session deliberations, in light of the post-briefing September 16, 2004 letter of counsel for Union Electric Company, d/b/a AmerenUE (AmerenUE) to Regulatory Law Judge (RLJ or Judge) Kevin Thompson. In support of this motion, the Staff states as follows:

1. On the afternoon of Thursday, September 16, 2004, counsel for AmerenUE copied the undersigned counsel for the Staff an e-mail he was sending to Judge Thompson, along with an attached letter to the RLJ. A copy of that e-mail and attachment are appended hereto as Attachment 1. Counsel for AmerenUE did not previously inform counsel for the Staff that he was submitting a letter to Judge Thompson, and counsel for AmerenUE has not spoken with counsel for the Staff about his letter to the RLJ at any time subsequent to the letter being sent to the RLJ.

2. The e-mail message from counsel for AmerenUE to Judge Thompson states as follows: "Please see the attached, a copy of which is being provided to all counsel of record.

Thank you.” The letter does not indicate that the letter was requested by either the Commissioners or Judge Thompson. In fact, the content of the letter itself appears to indicate that the letter was submitted unsolicited and is intended to address a matter discussed in the Commissioners’ Agenda Session deliberations in the pending Case No. EO-2004-0108.

3. Staff counsel has reviewed Section 386.210 RSMo. Cum. Supp. 2003, 4 CSR 240-4.020 and 4 CSR 240-2.150(1) and believes that the letter of September 16, 2004 constitutes an *ex parte* communication. The fact that the e-mail message and the letter are addressed to the Regulatory Law Judge and are copied to all counsel of record, but not sent to the Commissioners or filed through the Data Center or EFIS, does not save the communication from being *ex parte*.

4. Counsel for AmerenUE states, among other things, in his letter of September 16, 2004: “I write at this time because the Commission’s recent discussion at its Agenda sessions suggests to me that *there exists confusion on that issue.*” (Emphasis supplied). The letter identifies the issue as being “Staff’s proposed conditions 7 and 10” and “access to books and records or recordkeeping provisions of the Affiliate Transaction Rules.” (Footnote omitted). Reference in the letter to the letter addressing an “issue” in Case No. EO-2004-0108 is the choice of words of counsel for AmerenUE.

5. The Staff has refrained from filing pleadings or submitting letters to the Commission concerning matters about which the Commissioners’ Agenda Session deliberations, in this case or other cases, indicate there may be some confusion or lack of clarity. The Staff previously has not submitted anything addressing the Commissioners’ Agenda Session deliberations in the belief that to do so, without being formally requested to do so or unless there is a truly extraordinary situation, would be inappropriate. Parties other than the Staff have an opportunity to address in Applications For Rehearing issues respecting which there may be some confusion

or lack of clarity in Commission Report And Orders, and the Commission, in response, has the opportunity to revisit any decision or statement that it has made. The Staff rarely files a pleading in response to a Commission Report And Order, and when it does so, it is in the nature of a request for clarification.

6. The purpose of the instant pleading is that the Staff is seeking guidance from the Commission regarding the Commissioners' Agenda Session deliberations. Regardless of whether the Commission considers the September 16, 2004 letter from counsel for AmerenUE to Judge Thompson to be *ex parte*, does the Commission want parties, including the Staff, to submit letters to the Regulatory Law Judge presiding over a contested case, or file pleadings with the Data Center or through EFIS, to address matters that arise in the Commissioners' Agenda Session deliberations, including the instant proceeding, Case No. EO-2004-0108?

Wherefore, the Staff requests that the Commission indicate how it and other parties to a pending contested case should proceed regarding: (1) in general, matters which parties would like to comment upon based on the Commissioners' Agenda Session deliberations in contested cases, such as parties desiring to provide clarity concerning an item respecting which there appears to be confusion; (2) more specifically, matters which any party to Case No. EO-2004-0108 believes is unclear based on the Commissioners' Agenda Session deliberations; and (3) the September 16, 2004 letter from counsel for AmerenUE to Judge Thompson.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ Steven Dottheim**

Steven Dottheim  
Chief Deputy General Counsel  
Missouri Bar No. 29149

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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 21st day of September 2004.

**/s/ Steven Dottheim**

**Dottheim, Steve**

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**From:** Jim Lowery [JLowery@smithlewis.com]  
**Sent:** Thursday, September 16, 2004 3:50 PM  
**To:** kevin.thompson@psc.mo.gov  
**Cc:** jraybuck@ameren.com; dmvuylsteke@bryancave.com; jcoffman@ded.state.mo.us;  
mike.rump@kcpl.com; steve.dottheim@psc.mo.gov; bjohnson@stolarlaw.com;  
llangeneckert@stolarlaw.com  
**Subject:** EO-2004-0108

Please see the attached, a copy of which is being provided to all counsel of record. Thank you.

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9/21/2004

**ATTACHMENT 1**

BRUCE H. BECKETT  
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JAMES B. LOWERY  
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PARALEGAL  
VICKI R. SCHUMACHER

September 16, 2004

Kevin A. Thompson  
Deputy Chief Regulatory Law Judge  
Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65202

RE: In re: Application of Union Electric Company – Metro East Transfer  
Case No. EO-2004-0108

Dear Judge Thompson:

I have copied counsel for all parties of record on this letter.

I write to clarify what AmerenUE has and has not asked for with regard to a waiver of the Affiliate Transaction rules. I write at this time because the Commission's recent discussion at its Agenda sessions suggests to me that there exists confusion on that issue. The confusion became apparent in the Commission's discussions relating to Staff's proposed conditions 7 and 10. By submitting this letter, it is not my intent to present any argument, to comment on the merits of AmerenUE's request, or to comment on the merits of any argument made by any party in this case.

As provided for in subparagraph (e) of the prayer for relief in AmerenUE's Application, AmerenUE requests that the Commission grant "to the extent necessary a waiver from the requirement of the electric and gas affiliate rules that a utility transfer goods and services to an affiliate at the higher of cost or market."<sup>1</sup> AmerenUE has not asked for any waiver of any kind

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<sup>1</sup> See 4 CSR 240-20.015(2) & (3), which are the pricing provisions of the Affiliate Transaction Rules (this is the cite to the Electric Affiliate Transaction Rules – the Gas rules are the same).

relating to the access to books and records or recordkeeping provisions of the Affiliate Transaction Rules.<sup>2</sup>

Thank you.

Sincerely,

**/s/ James B. Lowery**

James B. Lowery

c: Counsel of Record

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<sup>2</sup> See 4 CSR 240-20.015(4), (5), (6) & (7), which are the access to books and records/recordkeeping provisions of the Affiliate Transaction Rules (this is the cite to the Electric Affiliate Transaction Rules – the Gas rules are the same).