

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In Re: Union Electric Company's 2005 Utility)
Resource Filing Pursuant to 4 CSR Chapter 22) Case No. EO-2006-0240

**STAFF RESPONSE AS DIRECTED BY REGULATORY LAW JUDGE
AND MOTION TO LATE-FILE STAFF RESPONSE**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the direction of the Regulatory Law Judge (RLJ) Morris Woodruff and suggests that the Commission set for hearing both the Stipulation and Agreement Between AmerenUE And Staff filed on August 15, 2006 and the unresolved asserted deficiencies identified by the Office of the Public Counsel (Public Counsel), the Missouri Department of Natural Resources and Sierra Club, Missouri Coalition For The Environment, Mid-Missouri Peace Works, and ACORN. In support thereof, the Staff states as follows:

1. First, the Staff notes that the Commission's December 8, 1992 Order Of Rulemaking in Case No. EX-92-299, which was the rulemaking case at the Commission respecting 4 CSR 240-22.010-22.080, under (i) the section entitled "Commission Findings And Conclusions Respecting Merits Of Comments And Testimony" and (ii) the subsection entitled "4 CSR 240-22.080(9)" appears the following, in part:

Summary Of Comment: OPC recommended that if any party requests a hearing, then in order to develop a full record, the commission should convene a hearing. The commission declines OPC's suggested change in language. The commission believes that it should retain the discretion not to schedule a hearing when it believes a hearing is not warranted.

As explained below, the Staff believes the Commission should order a hearing in this case.

2. The Staff does not make the suggestion that the Commission schedule a hearing cavalierly. The Staff is working under the weight of many pending cases before the Commission. Although the Staff's work in other pending cases and cases yet to be filed would

benefit if an evidentiary hearing were not necessary in this case, which will require the preparation and filing of testimony and all of the other resource intensive and time consuming work that preparing and participating in an evidentiary hearing requires, the Staff believes that it should recommend that the Commission grant a hearing. Given the Commission's rules and existing law, it appears that a hearing is necessary and thus the Commission needs to adopt a procedural schedule in this case.

3. As the Commissioners are aware CSR 240-22.080(5) and (6) provide, in part, that the Staff shall make a filing and the Public Counsel and the Intervenors may make filings that identify (i) any deficiencies in the utility's compliance with the provisions of Chapter 22, (ii) any deficiencies in the methodologies or analyses required to be performed by the utility by Chapter 22, and (iii) any other deficiencies which the party determines or believes would cause the utility's resource acquisition strategy to fail to meet the requirements identified in 4 CSR 240-22.010(2)(A)-(C). Under 4 CSR 240-22.080(8), the parties are to work together to attempt to reach a joint agreement on a plan to remedy the identified deficiencies. If full agreement cannot be reached, this is to be reported to the Commission through a joint filing. Pursuant to 4 CSR 240-22.080(9), if full agreement on remedying identified deficiencies cannot be reached, the utility may file a response to the other parties filings and the Staff, Public Counsel, and the Intervenors may file responses to each other. All of these events have occurred to one degree or another and the process is now at the point where 4 CSR 240-22.080(9) provides:

. . . The commission will issue an order which indicates on what items, if any, a hearing will be held and which establishes a procedural schedule.

In addition, 4 CSR 240-22.080(13) provides for the Commission to ultimately issue an Order which contains findings:

The commission will issue an order which contains *findings* that the electric utility's filing pursuant to this rule either does or does not demonstrate compliance with the requirements of this chapter, and that the utility's resource acquisition strategy either does or does not meet the requirements stated in 4 CSR 240-22.010(2)(A)-(C), and which addresses any utility requests pursuant to section (2) for authorization or reauthorization of nontraditional accounting procedures for demand-side resource costs. [Emphasis supplied.]

The Staff further notes that 4 CSR 240-22.080(11) provides for waivers or variances from a provision of Chapter 22 upon written application, for good cause shown, after notice and an opportunity for a hearing. The Staff notes the requirement for an opportunity for a hearing.

4. The Stipulation And Agreement entered into by the Staff and AmerenUE filed on August 15, 2006 is nonunanimous. The Commission's rule on stipulation and agreements states in part regarding nonunanimous stipulation and agreements:

5 CSR 240-2.115(2) Nonunanimous Stipulations and Agreements.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. *All issues shall remain for determination after hearing.* [Emphasis added.]

As soon as one enters the realm of nonunanimous stipulation and agreements, *State ex rel. Fischer v. Public Serv. Comm'n*, 645 S.W.2d 39 (Mo.App. W.D. 1982) enters any discussion of what the law requires, in particular what due process respecting a hearing is required.

5. Other than the Staff submitting affidavits identifying which Staff person is responsible for which pages of the Staff's May 19, 2006 report on deficiencies of AmerenUE's compliance filing, the Staff does not recall, and its effort to review the record has not indicated, that the analysis of any of the other parties has been submitted other than being filed by counsel for the respective party.

6. Finally, undersigned counsel requests leave to late-file this Staff response. Other Commission business, including filing in the instant case the Nonunanimous Joint Recommendation Respecting Procedural Schedule, caused undersigned Staff counsel to not meet the filing date set by the RLJ. Undersigned Staff counsel apologizes for any inconvenience this delay may have caused or will cause.

Wherefore the Staff believes that it must suggest to the Commission that a hearing should be scheduled and a procedural schedule should be adopted.

Respectfully submitted,

/s/ Steven Dottheim

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all counsel of record this 18th day of October 2006.

/s/ Steven Dottheim