

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a)	
AmerenUE for Authority to File Tariffs)	
Increasing Rates for Electric Service Provided to)	Case No. ER-2010-0036
Customers In the Company's Missouri Service)	
Area)	

POSITION STATEMENT OF MISSOURI ENERGY GROUP
ON AMERENUE'S REQUEST FOR INTERIM RATE RELIEF

COMES NOW, the Missouri Energy Group ("MEG"), by and through undersigned counsel and for its Position Statement on interim rate relief respectfully states as follows:

- I. *Do the circumstances presently encountered by AmerenUE warrant the Commission's authorizing AmerenUE interim rate relief as generally proposed by AmerenUE?*

MEG POSITION: Not according to the emergency/near emergency high standard that the Commission has traditionally used in prior cases with similar facts. Neither Mr. Baxter nor Mr. Weiss--AmerenUE's two witnesses who filed direct testimony on this issue—has claimed that an emergency or a near emergency exists to warrant the Commission's authorization of interim rate relief. In fact, during oral argument on September 14, 2009, Thomas M. Byrne, counsel for AmerenUE, admitted that the Company does not meet the Commission's emergency standard (Vol. 2, Tr. 33, Line 20 – Tr. 34, Line 4; Tr. 67, Lines 22-23). Furthermore, AmerenUE Witness Baxter indicates in his Direct Testimony at p. 19, lines 14-15 that the interim request was made with the hope "that the Commission will use this tool to help reduce the regulatory lag AmerenUE is facing in this case." However, as Missouri Public Service Commission Staff ("Staff") Witness Rackers states in his Interim Rebuttal at p. 5, lines 2-4, the full effect of the \$162 million rate increase granted to AmerenUE that commenced on March 1, 2009 will not be fully reflected in the earnings calculations until February 1, 2010. Therefore, the regulatory lag

of which Mr. Baxter speaks does not take into account the full effect of the increase that was granted mere months before the instant rate increase case (and companion interim rate increase request) was filed.

- a. Should there be criteria for the Commission to use to decide whether interim rate relief is warranted? If so, what should that criteria be?*

MEG POSITION: Yes. The criteria should be the 3-prong test used in *Missouri Public Service Company*, Case No. 18,502,20 Mo. P.S.C. (N.S.) 244 (1975), referred to as the “emergency standard,” or the “near emergency standard” that has been used in several subsequent cases (See MEUA Response to Request for Interim Rate Relief, fn 13).

- II. If the circumstances presently encountered by AmerenUE warrant the Commission’s authorizing AmerenUE interim rate relief as generally proposed by AmerenUE, has AmerenUE provided adequate justification for the proposed level of interim rate relief?*

MEG POSITION: No. AmerenUE has not properly calculated the financial effect and, therefore, the amount of interim rate relief, as shown by Staff Witness Steve Rackers (Interim Rebuttal Testimony, Pages 2-3).

- a. Should there be criteria for the Commission to use to determine the appropriate level of interim rate relief? If so, what should the criteria be?*

MEG POSITION: Yes. The criteria should be that no interim rate relief can be granted beyond that which is required to enable the utility to provide safe and adequate service or to maintain its financial integrity—neither of which applies to the instant case.

III. If the Commission finds that the circumstances presently encountered by AmerenUE warrant the Commission's authorizing AmerenUE's interim rate relief as proposed by AmerenUE, may and should the Commission adopt criteria for interim rate relief with greater applicability than the instant case?

MEG POSITION: Yes. If the Commission chooses to use a different standard than it has traditionally over the past sixty years, it should set out such criteria in advance of its granting interim rate relief to any utility to enable all stakeholders to be sufficiently aware of the Commission's requirements and expectations. Furthermore, "rate relief" is a term that should apply symmetrically to the utility and to its ratepayers. If an interim increase is appropriate whenever a utility requests one with a rate increase case, then the same criteria should apply to grant an interim rate decrease whenever a complaint case alleging over earning is filed.

IV. Is any interim rate relief criteria other than the emergency/near emergency criteria lawful?

MEG POSITION: In *Empire District Electric Company*, 6 Mo.P.S.C. 3d 17 (1997), ("Empire") the Commission contended that it could grant interim rate relief on "good cause shown," but specifically stated that reduced profits was not considered sufficient "good cause" to grant interim rate relief. In addition in the *Citizens Electric Corporation Rate Increase Case No. ER-2002-217* ("Citizens"), the Commission approved an agreement between Staff, the Office of Public Counsel, and Citizens that allowed an interim rate increase for Citizens but distinguished the utility as differently situated than other electrical corporations regulated by the Commission because its corporate structure was more akin to that of a rural electric cooperative. The Commission also noted that financial problems by Citizens could result in the elimination of

services to its members and that not granting the interim increase would affect Citizens' ability to provide safe, adequate and reliable service to its members.

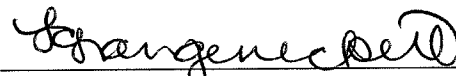
V. *If the emergency/near emergency criterion is not the sole lawful criterion for interim rate relief, what other criteria are lawful?*

MEG POSITION: The Missouri Court of Appeals, in *Laclede Gas Co. v. Pub. Serv. Comm'n of Mo.*, 535 S.W.2d 561 (Mo. Ct. App. 1976), stated that an interim increase may be granted "where a showing has been made that the rate of return being earned is so unreasonably low as to show such a deteriorating financial condition that would impair a utility's ability to render adequate service or render it unable to maintain its financial integrity." *Id.* at 568-69. Also, as noted above, the Commission stated in *Empire* that it believes the "good cause" standard is one that it considers lawful. The Commission also approved an agreement in *Citizens* that allowed an interim increase under a discrete set of circumstances specific to that company's unique characteristics. .

Respectfully submitted,

SANDBERG PHOENIX & von GONTARD P.C.

By:



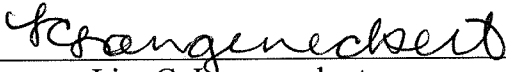
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CERTIFICATE OF SERVICE

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in Case No. ER-2010-0036.

Dated at St. Louis, Missouri this 3rd day of December, 2009



Lisa C. Langeneckert