

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
October, 2009.

In the Matter of Union Electric Company, d/b/a)	<u>File No. ER-2010-0036</u>
AmerenUE's Tariffs to Increase Its Annual)	Tariff Nos. YE-2010-0054
Revenues for Electric Service)	and YE-2010-0055

**ORDER FURTHER SUSPENDING INTERIM RATE TARIFF AND
SCHEDULING EVIDENTIARY HEARING**

Issue Date: October 7, 2009

Effective Date: October 7, 2009

On July 24, 2009, Union Electric Company, d/b/a AmerenUE, issued a tariff that would implement an interim rate increase of 1.67 percent, subject to refund, as an accompaniment to its general rate increase request. That tariff carried an October 1, 2009 effective date, but the Commission previously suspended that tariff until October 10.

In response to AmerenUE's tariff filing, Staff, Public Counsel, and several intervening parties filed suggestions opposing AmerenUE's request for an interim rate increase. One intervenor, Laclede Gas Company, supports AmerenUE's request. The Commission heard oral arguments from the parties regarding AmerenUE's request for an interim rate increase on September 14.

The key disagreement between the supporters and opponents of AmerenUE's request for an interim rate increase concerns the proper standard the Commission should apply when considering that request. The parties opposing the interim rate increase contend the Commission should apply an emergency or near emergency standard. AmerenUE concedes it is not facing an emergency or near emergency. However,

AmerenUE argues the Commission should apply a more flexible good cause shown standard. AmerenUE attempts to meet that good cause standard by showing that an interim rate increase is necessary to offset the adverse effects of regulatory lag on the company's profitability.

AmerenUE is not the first utility to ask the Commission for an interim rate increase, and previous cases have clearly established the Commission's authority to grant such requests. In a 1976 case involving Laclede Gas Company, the Missouri Court of Appeals held "the Commission has power in a proper case to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation."¹

In that case, in denying Laclede's request for an interim rate increase, the Commission indicated it would allow such requests only

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.²

That standard has come to be known as the "emergency" standard and the Commission's use of that standard was upheld by the court of appeals in the Laclede decision.

The *Laclede* decision recognizes that the Commission acted within its discretion when it applied an "emergency" standard to deny Laclede's request for an interim rate increase. That decision does not, however, establish the "emergency" standard as the only standard that the Commission may lawfully apply when exercising its discretion. In fact, the court explicitly recognized that in some future case an applicant could meet a standard

¹ *State ex rel. Laclede Gas Co. v. Pub. Serv. Commission*, 535 S.W.2d 561, 567 (Mo. App. 1976).

² *Laclede Gas*, at 568-569.

defined by the Commission without any emergency.³ Indeed, in other cases, the Commission has found that it has authority to grant interim rate increases on the basis of something other than an “emergency” standard. For example, in a 2008 order, the Commission found it had the authority to grant an interim rate increase on a nonemergency basis where particular circumstances necessitate such relief on the basis of good cause shown by the requesting utility.⁴

Although the Commission has claimed authority to grant interim rate increases on something less than an emergency basis, in practice, the “good cause shown” standard looks a lot like the “emergency” standard. A good example is found in a 1997 case. In an order rejecting an interim rate increase tariff proposed by The Empire District Electric Company, the Commission concluded that it “may authorize the implementation of interim rates upon a showing of good cause, and such good cause may be less than an emergency or near-emergency.”⁵ Despite that conclusion, the Commission rejected Empire’s request for an interim rate increase, finding:

There is no showing by the Company that its financial integrity will be threatened or that its ability to render safe and adequate service will be jeopardized if this request is not granted. Furthermore, the Company has shown no other exigent circumstances that would merit interim relief.

³ *Laclede Gas*, at 574.

⁴ *In the Matter of the Joint Application of Stoddard County Sewer Company, R.D. Sewer Co., LLC and the Staff of the Missouri Public Service Commission for an Order Authorizing Stoddard County Sewer Co., Inc. to Transfer its Assets to R.D. Sewer Co., LLC and for an Interim Rate Increase*, Report and Order, Case No. SO-2008-0289, Page 117 (October 23, 2008).

⁵ *In the Matter of The Empire District Electric Company’s Tariff Revision Designed to Increase Rates, on an Interim Basis and Subject to Refund, for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 6 Mo P.S.C. 3d 17, 21 (1997).

Thus, the Commission applied a good cause standard, but still required the company to demonstrate an emergency or near emergency before it would be allowed an interim rate increase.

Interim rate increase requests are a relatively rare occurrence. The grant of an interim rate increase is even more rare. By definition, an interim rate increase would be implemented without the full audit and review that will be available to the Commission when it establishes permanent rates for AmerenUE. The Commission has granted interim rate increases only in extraordinary circumstances.

The Commission will set an evidentiary hearing to allow AmerenUE an opportunity to present evidence to show that it is entitled to an interim rate increase. The Commission may, or may not, ultimately find that AmerenUE has presented enough evidence to justify the relief the company seeks, but the Commission needs to fully consider that evidence and any countering evidence the other parties may produce, before deciding whether AmerenUE has made its case. For that reason, the Commission will schedule an evidentiary hearing and establish a procedural schedule.

This will be an expedited proceeding, but the Commission believes the parties can best present evidence on this dispute through prefiled testimony. Therefore, the procedural schedule will require the parties to submit prefiled direct, rebuttal, and surrebuttal testimony. Staff has advised the Commission that it can promptly perform a review of the net plant additions AmerenUE is seeking to include in its interim rate increase. Staff shall include the results of that review in its direct testimony.

The Commission will not be able to conduct an evidentiary hearing before October 10, when AmerenUE's tariff becomes effective. Therefore, the Commission will further

suspend that tariff until January 29, 2010, which is 120 days after its original effective date, as permitted by Section 393.150, RSMo 2000.

THE COMMISSION ORDERS THAT:

1. The following procedural schedule is established:

AmerenUE identifies which previously filed direct testimony applies to this issue and submits additional direct testimony if it so desires	-	October 20, 2009
Non-AmerenUE parties file direct testimony	-	November 3, 2009
Rebuttal testimony filed by all parties	-	November 17, 2009
Surrebuttal testimony filed by all parties	-	November 24, 2009
Hearing	-	December 7, 2009, beginning at 8:30 a.m.
Post Hearing Briefs	-	December 21, 2009

2. The tariff submitted under Tariff File No. YE-2010-0055, on July 24, 2009, by Union Electric Company, d/b/a AmerenUE, for the purpose of implementing an interim rate increase, previously suspended from October 1, 2009, to October 10, 2009, is further suspended until January 29, 2010.

3. The specific tariff sheet suspended is:

Union Electric Company
MO P.S.C. Schedule No. 5
Original Sheet No. 98.14

4. This order shall become effective immediately upon issuance.

(S E A L)

BY THE COMMISSION



Steven C. Reed
Secretary

Clayton, Chm., Jarrett, Gunn, and Kenney, CC., concur;
Davis, C., concurs with separate concurring/dissenting
opinion to follow.

Woodruff, Chief Regulatory Law Judge