

**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 Customers) Case No. ER – 2010 – 0036
In the Company’s Missouri Service Area)

**CONCURRING OPINION OF
COMMISSIONER TERRY M. JARRETT**

I concur in denying the motion for summary determination and motion for directed verdict. However, I do not agree with several characterizations which were made in the Commission’s Order.¹ Beginning on page three (3) of the Order the Commission begins an analysis of *State ex rel. Laclede Gas Co. v. Public Service Commission*, 535 S.W. 2d 561 (Mo. App. K.C. Dist. 1976). To the extent that Laclede relied upon section 393.140 to support its proposed rate increase (characterized as “interim”) and the appellate court in its advisory opinion relied upon section 393.140, the language in this Commission’s Order is surplusage and was unnecessary.

Also, on page four (4) of the Order, the Commission indicates that AmerenUE has “presented its direct testimony in support of its interim rate increase and a directed verdict might be appropriate if the evidence presented is insufficient to support the relief AmerenUE seeks.” At the time the Order was issued, no evidentiary hearing had been held, and as such, there was no evidence in the record before the Commission. Commission rule 4 CSR 240 – 2.130(6) – (8) permits prepared testimony to be filed with the Commission; however, filing alone does not make the testimony evidence. As such,

¹ *Order Denying Motion for Summary Determination and Motion for Directed Verdict*, Issued and Effective November 23, 2009.

reference in the Order to evidence and the later conclusion that “AmerenUE’s testimony does not establish the existence of an emergency ...” is incorrect. Any confusion between pre-filed testimony and actual evidence is concerning because this Commission may only rely upon evidence that is in the record.

To that end, I concur in this Order as to its result, with the noted exceptions set forth here.


Terry M. Jarrett, Commissioner

Submitted this 10th day of December, 2009