

**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	)	<b><u>Case No. ER-2007-0002</u></b>
Rates for Electric Service Provided to Customers	)	Tariff No. YE-2007-0007
In the Company's Missouri Service Area.	)	

**Application for Rehearing**

COMES NOW the Consumers Council of Missouri (CCM), by and through counsel, and pursuant to Section 386.500 RSMo. 2000 and 4 CSR 240-2.160, respectfully applies for a rehearing of the Missouri Public Service Commission's ("Commission's") Report and Order issued in the above-styled matter on May 22, 2007 and bearing an effective date of June 1, 2007 ("Report and Order"). .

This Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, and unsupported by competent and substantial evidence on the whole record, in the following respects:

1. **Return on Equity.** The Commission states that, of all of the witnesses testifying on the issue of return on equity, MIEC witness Michael Gorman "does the best job of presenting the balanced analysis that the Commission seeks." Report and Order, p. 42. However, contrary to that endorsement, and without adequate findings of fact or conclusions of law, the Commission arbitrarily "pushed up" Mr. Gorman's overall

recommendation of 9.8% to 10.2%, claiming that it was done in recognition of the rejection of AmerenUE's Fuel Adjustment Clause (FAC) proposal. *Id.*, pp. 42-43. Mr. Gorman's testimony clearly does not support such an upward adjustment. In fact, AmerenUE will not be taking on a new risk profile; there will be no change in risk on this point because AmerenUE does not have an FAC at the current time.

Moreover, this adjustment is clearly inconsistent and unfair to ratepayers when compared to the Commission's recent decision issued in the Aquila electric rate case, Case No. ER-2007-0004, where the Commission refused to make any downward adjustment to recognize the fact that Aquila is less risky as a result of being granted an FAC. Apparently, its "heads, the utility wins; tails, the consumer loses" on this matter. It is unreasonable and patently unfair to approve only *upward* adjustments relating to whether a utility has been granted a rate adjustment mechanism.

The Commission's return on equity decision is also unlawful and unreasonable in that it refuses to make any downward adjustment in recognition of the overwhelming evidence of substandard service provided to consumers during the past few years. It is arbitrary for the Commission to make no performance adjustment based on AmerenUE's poor customer service, ignoring the overwhelming weight of the *sworn public testimony* received at the many local public hearings in this rate case, and then to claim that the Commission is ordering a rate of return that "is based on the evidence presented in this case". *Id.*, p. 44. Local public hearing testimony *is* evidence, and it is an insult to the public to refuse to even acknowledge the many consumers that took hours out of their day to swear an oath and to provide the Commission with their

testimony about AmerenUE's lack of electric reliability and poor customer service in the hopes that it might make a difference.

2. **Customer Credits for Outages** The Commission's rejection of any customer credit tariff that would acknowledge the inconvenience to consumers experiencing electric service outages lasting beyond 48 hours (labeled the "Safety Net Proposal" on pages 107-108 of the Report and Order) is unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contrary to the competent and substantial evidence on whole record in that the Commission wholly ignores the overwhelming weight of evidence taken at the many local public hearings held in this rate case.

As mentioned above, the sworn testimony of witnesses appearing at those hearings *is evidence*, and this case produced a considerable amount of such evidence, including some by members of the CCM regarding the details of how a customer credit program should be designed. The weight of the testimony at those numerous hearings shows that AmerenUE's electric service reliability has been substandard and that a modest consumer credit tariff, as proposed by CCM, is needed to recognize the inconvenience that consumers experience and to provide a positive incentive going forward. No more details are needed for the Commission to order customer credits for extended outages than the fact that crediting consumers with \$25 per day for outages beyond a 48 hour period is a reasonable approach used by other utilities.

However, the Commission ignores all of the testimony given at the local public hearings, stating that CCM "did not present any testimony at *the* hearing." *Id.*, p. 107 (emphasis added). In fact, the transcripts of the testimony given at the many local

public hearings in this case were not even referenced in the Commission's entire 120-page Report and Order. This treatment by the Commission's Report and Order suggests that customers themselves are not qualified to know when the customer service that they receive is poor, and further suggests that customer testimony about whether customer credits for extended outages is a good idea will not be taken seriously unless it is sponsored by a highly paid "expert" witness testifying in Jefferson City. Not only is a program of customer credits for extended outages a common sense good idea that any business operating in the competitive world would voluntarily adopt, it is clearly supported by the overwhelming weight of competent and substantial testimony in this case.

WHEREFORE, CCM respectfully requests that the Commission grant a rehearing of the Report and Order in this case, and issue a new order consistent with the suggestions contained herein.

Respectfully submitted,

/s/ John B. Coffman

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## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to counsel for each of the parties on the service list for this matter on this 31<sup>st</sup> day of May 2007.

/s/ John B. Coffman

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