BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.	))))	**Case No. ER-2007-0002** Tariff No. YE-2007-0007

APPLICATION FOR REHEARING

COMES NOW, the Office of Administration and the Department of Economic Development (hereinafter the State of Missouri), by and through the Missouri Attorney General's Office, pursuant to Section 386.500, RSMo, and 4 CSR 240-2.160 and requests rehearing of the Commission's May 22, 2007, *Report and Order* on the following grounds:

1. **Off-System Sales**. The Report and Order is unlawful, unjust and 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 that is contained in the record, is arbitrary and capricious, and is an abuse of discretion in that the Commission failed to include in the level of off-system sales of regulatory capacity that UE has executed contractual obligations to provide. The Commission incorrectly asserts that "pulling a single item out of a future budget violates the test year and the matching principle . . ." *Report and Order* at page 32. The decision is incorrect in its conclusion that the contracted-for regulatory capacity is revenue contained in a "future" budget. The uncontroverted record evidence demonstrated that UE has entered into contractual relationships to sell certain amounts of regulatory capacity off system. The amount of capacity sales revenues for transactions were known and measurable as of January 1, 2007, the cut off date for updating items in this rate case.

In fact, the Commission itself seemed to recognize this fact when it stated as its second rationale for not including the level of regulatory capacity that "the amount of 2007 capacity sales are very small in relation to the established level of energy sales . . ." *Report and Order* at page 32. Lastly, the amount of off-system sales was already artificially low due the Taum Sauk plant being out of service. Thus, the highly confidential amount of off-system regulatory capacity sales is more than the $230 million level set by the Commission, and that amount should be recognized by the Commission because it is known and measurable.

2. **Taum Sauk capacity sales**. The Report and Order is unlawful, unjust and 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 that is contained in the record, is arbitrary and capricious, and is an abuse of discretion in that the Commission failed to make an adjustment based on lost capacity sales resulting from the Taum Sauk disaster. The Commission ruled that, "there is insufficient competent and substantial evidence in this record to support Public Counsel's proposed adjustment." But that is incorrect. UE acknowledged that it would have about 400 MW more capacity if Taum Sauk was still functional. (Tr. 1237). It then admitted that it would be able to make additional capacity sales if Taum Sauk was still in service. (Tr. 1222). Lastly, there are plenty of places in the record concerning the values for regulatory capacity sales. UE witness Schukar testified to a range of values for regulatory capacity sales. (Tr. 1322, lines 19-21; Exhibit 514HC). And OPC witness Kind testified that the value of selling regulatory capacity from the Joppa plant was $0.75

per month. Thus, there is competent and substantial evidence in the record to support the proposed adjustment.

AmerenUE committed to hold ratepayers harmless for all costs related to the Taum Sauk Project disaster. AmerenUE is not truly holding ratepayers harmless for the Taum Sauk disaster unless this Commission adjusts the rates to account for the lost generation and sales opportunities. Everyone acknowledges that ratepayers benefit from capacity sales. Further, the State and UE agreed that because such off-system sales are made utilizing jurisdictional generating facilities, it is appropriate that a reasonable estimate of the ongoing level of profit margins from such sales be credited to ratepayers. (Ex. 501, p. 8, l. 19-23; p. 9, l. 1-3; Tr. p. 1184, l. 23-25; p.1185, l. 1-13). The loss of the Taum Sauk plant decreased the amount of capacity and energy that UE can sell in off-system markets. That in turn decreased the revenue from off-system sales credited to ratepayers. UE has committed to hold ratepayers harmless for the Taum Sauk incident, thus the ratepayers must be credited for that loss of capacity sales. Otherwise, AmerenUE has not been held to its commitment to hold ratepayers harmless.

3. **The Pinckneyville and Kinmundy CTGs**. The Commission's Report and Order is unlawful, unjust and unreasonable is based on inadequate findings of fact, is not supported by substantial evidence on the record, and is contrary to the competent and substantial evidence contained in the record with respect to the decision to accept UE's asset valuation for the Pinckneyville and Kinmundy CTGs. In its Report and Order the Commission fails to follow its own rules. 4 CSR 240-20.15 (2)(A)1.A.B prohibits an electric utility from compensating an affiliated entity the lesser of "fair market value" or "fully distributed cost to the regulated electrical corporation to provide goods or services

for itself." Subsection (3)(B) of the affiliate transaction rule sets out the evidentiary standards for affiliate transactions and requires the regulated utility to document both the fair market price of the asset purchased, the CTGs, and the fully distributed cost to UE to build the CTGs.

The Commission improperly shifted the burden of proof from the regulated utility to the party challenging the affiliated transaction. The Commission in its *Report and Order* at page 62 stated that UE "has the overall burden to prove that the rates it is proposing are just and reasonable, a slightly different rule applies when a party alleges the utility has been imprudent in some manner. The party alleging the imprudence has the burden of creating serious doubt as to the prudence of an expenditure." But, by rule, the Commission has established that the regulated utility, not the challenging party, has the burden to document both the fair market price of the asset purchased and the fully distributed cost to the regulated utility, without regard to a prudence showing by other parties. The record contains ample evidence that CT capacity in 2005 was widely available at prices far below the price UE paid to its affiliates. UE provided no credible evidence that the "book value" paid to its affiliate exceeded market prices at the time of purchase as required by the Commission's own rule.

The criticism of the State's presentation at page 65 of the Report and Order only further demonstrates that UE failed to establish that it had paid the lesser of fair market value or cost. The Commission apparently miscomprehends the basis of the State's proposed adjustment. The adjustment stems from the Commission's affiliate transaction rules. The information that State witness Brosch relied on for his valuation was provided by UE and allegedly formed the basis for UE's claim that it had paid the lesser of fair

market value or cost as required by 4 CSR 240-20.015 *et seq.* If that information "cannot provide a reasonable basis for establishing the market value of the Pinckneyville and Kinmundy CTGs," the State is at a loss to understand how the Commission could determine that UE complied with the rule by documenting both the fair market price of the asset purchased and the fully distributed cost to build the CTGs. Subsection (3)(C) requires the regulated electrical corporation demonstrate that it 1) considered all costs incurred to complete the transaction; 2) calculated the costs at times relevant to the transaction; 3) allocated all joint and common costs appropriately; and 4) adequately determined the fair market price of the asset. Based on its Report and Order, the Commission failed to apply the appropriate standard in deciding this issue and failed to follow its own duly promulgated rules when rendering a decision in this proceeding.

4. **SO2 Allowance Sales**. The Report and Order is unlawful, unjust and unreasonable, is based upon inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is contary to the competent and substantial evidence contained in the record, is arbitrary and capricious, and is an abuse of discretion in that the Commission implemented an amount for SO2 allowance sales that is unreasonably low and not supported by evidence in the record. In its Report and Order, this Commission determined that $5 million of sales credits should be built into base rates, rather than the State's $20.3 million, so as to help UE "carefully manage its supply of allowances" and to avoid creating "a strong incentive to continue making those sales each year or face a revenue shortfall." *Report and Order* at page 74. The Commission erred when it concluded that a larger amount of allowance sales would create incentives because regulatory liability tracking will make the Company "whole" if

future sales fall below historical levels. The Report and Order implied at page 74 that tracking is to be implemented "without including a base amount of SO2 sales in AmerenUE's revenue requirement" to protect the "long term interests of ratepayers." But at page 78 the Commission states ". . . the Commission will establish the annual base level of SO2 sales as $5 million, which is approximately one fourth of the four-year average calculated by the State's witness." This $5 million level of SO2 sales is completely arbitrary and is not supported by any competent and substantial evidence contained in the record. Finally, while the Commission's decision provides for the tracking of over/under sales of SO2 allowances, the decision fails to provide interest to protect the ratepayers for sales over the amount of $5 million and fails to provide carrying costs in the highly unlikely event that UE receives less than $5 million in SO2 revenues.

5. **Return on Equity**. The Report and Order is unlawful, unjust and 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 that is on the record, is arbitrary and capricious, and is an abuse of discretion in that the Commission failed to provide adequate findings of fact on the return on equity issue. Specifically, the Commission appears to accept the return on equity recommendation of witness Gorman of 9.8% and then without any evidence, the Commission claims that the return on equity "should be pushed up a bit in recognition of the Commission's denial of AmerenUE's request for a fuel adjustment clause" to arrive at its final return on equity of 10.2%. The Commission wholly fails to explain or provide any factual findings as to how it determined an upward adjustment of 40 basis points was

appropriate. Apparently, the Commission just pulled this upward adjustment out of thin air. Certainly witness Gorman, whose testimony the Commission claims to rely on, did not recommend that UE be allowed a 40 basis point upward adjustment. Simply put, the ultimate return on equity was inflated 40 basis points without any explanation, findings of fact or conclusions.

6. **Substandard Customer Service and Return on Equity**. The Report and Order is unlawful, unjust and 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 that is on the record in that the Commission wholly ignores the overwhelming weight of evidence on the record that UE is providing substandard customer service and, as a result, UE should only be entitled to a return on equity that is consistent with the low end of the reasonable range determined by the Commission. In its Report and Order, the Commission determined at page 39 that the zone of reasonableness runs from 9.36% to 11.36%. Instead of determining that UE deserves a return on equity at the lower end of that range, the Commission increases UE's return on equity 40 basis points, thus rewarding UE with an inflated return on equity despite its obvious service quality issues.

7. **EE, Inc. and the Joppa Plant.** The Report and Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is not supported by competent and substantial evidence on the whole record and is arbitrary and capricious in that the Commission miscomprehends the State of Missouri's adjustment for Electric Energy, Inc. ("EE, Inc.") and incorrectly states that it would require ratepayers to have an ownership interest in EE, Inc. The Commission described and then rejected what it called the

parties' "two theories to justify their proposed reduction of AmerenUE's revenue requirement" -- that AmerenUE's ratepayers "somehow acquired an ownership interest in the Joppa Plant" and that "AmerenUE was imprudent in not forcing EE, Inc. [to] renew the cost-based power supply agreement." *Report and Order* at page 51. The second theory, while true, is not relevant to the State's proposed adjustment because the State did not seek to have the purchase power contract renewed. Contrary to the Commission's assertion, the State's proposed adjustment does not require the acquisition of any "ownership" interest equitable or otherwise in the Joppa Plant as suggested by the Commission at pages 51 and 52 of its Report and Order. The State explained why the Joppa Plant should be treated as a "regulatory asset" and its market value imputed to benefit Missouri ratepayers. This proposed adjustment is analogous to telephone directory imputations found reasonable by regulators in most states. The Commission's Report and Order fails to address the basis for the State's proposed adjustment and incorrectly describes the State's proposed adjustment. In doing so, the Commission failed to provide an order that is supported by competent and substantial evidence upon the whole record and its decision is contrary to the competent and substantial evidence in the record.

8. **Fuel Adjustment Clause**. The *Report and Order* is unlawful because the Commission allowed Union Electric ("UE") to supplement its tariff filing with new proposed tariffs requesting a fuel adjustment clause a full eighty-four days after UE filed its proposed tariffs and those tariffs had been suspended by the Commission in violation of Section 393.150, RSMo. Such action is contrary to the regulatory scheme set up by the Legislature when it enacted the Public Service Act of 1913. Electric rate increases

may be initiated by either the "file and suspend" method or under the "complaint" method. *State ex rel. Jackson County v. Public Service Commission,* 532 S.W.2d 20, 28-29 (Mo. banc 1975), *cert. denied,* 429 U.S. 822, (1976). In this proceeding the Commission utilized the "file and suspend" method regarding UE's proposed electric rate increase. The Commission erred as a matter of law by allowing UE to file its proposed fuel adjustment clause tariffs after it had suspended UE's initial tariff filing. For brevity sake, the State of Missouri incorporates by reference its Response in Opposition to Union Electric's Motion to Adopt Procedures For Implementing UE's Requested Fuel Adjustment Clause filed in this matter on August 31, 2006.

WHEREFORE, consistent with the issues raised herein, the Commission should order rehearing of its Report and Order.

Respectfully Submitted,

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