
IN THE SUPREME COURT OF MISSOURI

STOPAQUILA.ORG, et al.,	)	
	)	
Appellants,	)	
v.	)	**Supreme Court No. SC87302**
	)	
CITY OF PECULIAR, MISSOURI,	)	
	)	
Respondent.	)	

Appeal from the
Circuit Court of Cass County, Missouri
17th Judicial Circuit
The Honorable Joseph P. Dandurand
Circuit Court Case No. CV104-1355CC

BRIEF OF AMICUS CURIAE UNION ELECTRIC COMPANY D/B/A AMERENUE

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TABLE OF CONTENTS

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Cases

Statutes

Constitutional Provisions

JURISDICTIONAL STATEMENT

Amicus curiae Union Electric Company d/b/a AmerenUE ("AmerenUE") hereby adopts and incorporates herein by this reference the Jurisdictional Statement appearing in the Brief of Respondent City of Peculiar, Missouri ("Peculiar").

INTRODUCTION

AmerenUE is the largest energy delivery public utility in Missouri. AmerenUE's electric and gas operations serve nearly 20% of the citizens of Missouri in 61 of Missouri's 114 counties and the City of St. Louis. AmerenUE has two combustion turbine plants within its fleet that were financed through Chapter 100[1] revenue bonds that are similar to the revenue bonds used to finance the project that is at issue in this case. The AmerenUE plants are a 188-megawatt (MW) plant located near Bowling Green, Missouri, and a 640-megawatt (MW) plant located near Vandalia, Missouri, involving a total investment by AmerenUE of approximately $240 million.

These plants are a part of AmerenUE's regulated rate base and provide necessary capacity to ensure safe, adequate, and reliable electric service to AmerenUE's more than 1 million electric customers in Missouri. These plants also provide substantial revenue to the taxing jurisdictions in the counties in which they are located in the form of grant payments made in lieu of ad valorem property taxes, while also saving ratepayers money

[1] Chapter 100, RSMo. (2000). All statutory references appearing herein are to the Missouri Revised Statutes (2000), unless otherwise noted.

due to the property tax exemption on the plants under the Chapter 100 arrangement. These plants result in economic development on unimproved land in rural areas that, without the availability of Chapter 100, would likely not have occurred at all.

Both of the aforementioned combustion turbine facilities were constructed using Chapter 100 revenue bonds after approval by a majority vote of the respective local governing bodies, as was the case with the bonds at issue in the present case. Consequently, the issues presented in this case are a matter of great importance not just with respect to this one plant operated by Aquila, but to millions of ratepayers in Missouri.

The legislature has clearly expressed its intent that voter approval be required for economic development projects where the local governing body is assuming the financial risk of the project, such as a municipal power plant. But, just as clearly, the legislature has evinced its intent that public-private economic development projects in which the local governing body incurs no financial risk need only be approved by a majority vote of said local governing body, reflecting in part the need for local governing bodies to be able to react with speed and dispatch to respond to potential economic development opportunities in an extremely competitive environment.

AmerenUE submits this Amicus Brief because overturning the trial court's judgment would have serious negative implications for existing and future economic development projects in Missouri, for a wide range of businesses and industries that have relied on revenue bonds approved by local governing bodies in making substantial and

ongoing investments in local economies, and, specifically, for utility ratepayers who benefit from the property tax exemption afforded utility power plant projects of this type.

Appellants advocate a convoluted reading of the Missouri Constitution and the Missouri Revised Statutes that upends this Court's own precedent, borne out in separate rulings in several different cases, as more fully discussed below. Moreover, appellants' construction of the relevant constitutional and statutory provisions would call into question the validity of existing economic development projects across the state of Missouri that were properly approved by local governing bodies under this Court's well-settled precedent.

STATEMENT OF FACTS

AmerenUE hereby adopts and incorporates herein by this reference the Statement of Facts appearing in Peculiar's Brief.

POINT RELIED ON

I. THE TRIAL COURT DID NOT ERR IN RULING THAT ARTICLE VI, SECTION 27(b) OF THE MISSOURI CONSTITUTION AND SECTIONS 100.010 TO 100.200, RSMO., AUTHORIZED THE CITY TO ISSUE REVENUE BONDS FOR THE AQUILA PROJECT UPON A VOTE OF A MAJORITY OF THE CITY'S BOARD OF ALDERMEN BECAUSE SECTION 27(b) AUTHORIZES THE ISSUANCE OF REVENUE BONDS FOR COMMERCIAL DISTRIBUTION AND INDUSTRIAL FACILITIES IN THAT AN ELECTRIC GENERATING PLANT OPERATED SOLELY AT THE RISK OF THE OPERATING PUBLIC UTILITY AND NOT AT THE RISK OF THE MUNICIPALITY THAT HOLDS BARE LEGAL TITLE TO THE PLANT AND THAT ISSUED THE REVENUE BONDS IS A COMMERCIAL DISTRIBUTION FACILITY AND INDUSTRIAL PLANT FOR WHICH BONDS MAY BE ISSUED UNDER SECTION 27(b) UPON A VOTE OF A MAJORITY OF THE BOARD OF ALDERMEN.

Southwestern Bell Tel. Co. v. Dir. of Revenue, 182 S.W.3d 226 (Mo. banc 2005)

Southwestern Bell Tel. Co. v. Dir. of Revenue, 78 S.W.3d 763 (Mo. banc 2002)

Ryder v. Ward, 933 S.W.2d 428 (Mo. App. 1996)

Reed v. City of Union, 913 S.W.2d 62 (Mo. App. 1995)

Dodson v. City of Wentzville, 133 S.W.3d 528 (Mo. App. 2004)

Carr v. Grimes, 852 S.W.2d 345 (Mo. Ct. App. 1993)

State ex rel. Matthewson v. Board of Election Comm'rs, 841 S.W.2d 633 (Mo. banc 1992)

FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990)

King v. Laclede Gas Co., 648 S.W.2d 113 (Mo. banc 1983)

State ex rel. Ashcroft v. City of Fulton, 642 S.W.2d 617 (Mo. banc 1982)

State ex rel. Keystone Laundry & Dry Cleaners, Inc. v. McDonnell, 426 S.W.2d 11 (Mo. banc 1968)

Wring v. City of Jefferson, 413 S.W.2d 292 (Mo. banc 1967)

Monroe City v. Southern, 359 S.W.2d 706 (Mo. banc 1962)

State ex rel. City of Fulton v. Smith, 194 S.W.2d 302 (Mo. banc 1946)

Chapter 100, RSMo. (2000)

Sections 100.010 to 100.200, RSMo.

Missouri Constitution, Article VI, Section 27

Missouri Constitution, Article VI, Section 27(a)

Missouri Constitution, Article VI, Section 27(b)

ARGUMENT

Standard of Review

A. Court-Tried Cases

AmerenUE hereby adopts and incorporates herein by this reference the Standard of Review appearing in Peculiar's Brief.

B. Standing

As an additional preliminary matter, appellants are without standing to challenge the validity of industrial revenue bonds. Standing is jurisdictional. If a party lacks standing, the court does not have jurisdiction and may not enter judgment in the matter. *See Ryder v. Ward*, 933 S.W.2d 428, 430 (Mo. App. 1996). The question of standing may be raised at any time, even for the first time on appeal. *See State ex rel. Matthewson v. Board of Election Comm'rs*, 841 S.W.2d 633, 634 (Mo. banc 1992). Standing may not be inferred, but rather must affirmatively appear in the record before the Court. *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-36 (1990).

In the case before the Court, appellants have failed to allege that they or any one of them are voters within the City of Peculiar. The record is devoid of facts which would give rise to any reasonable inference that the appellants were electors in Peculiar whose constitutional rights were adversely affected by Peculiar's issuance of revenue bonds without a vote of the electors. While the court may make reasonable inferences from the pleaded facts in determining standing,[2] appellants' bare allegation that they reside in

[2] *See Dodson v. City of Wentzville*, 133 S.W.3d 528, 533-34 (Mo. App. 2004).

Peculiar is insufficient to establish that they are voters in Peculiar. All that can be said is that appellants may be voters in Peculiar—or they may not be.

Appellants must have "a specific and legally cognizable interest in the subject matter of the action." *Reed v. City of Union*, 913 S.W.2d 62, 64 (Mo. App. 1995). Moreover, for appellants to have standing, appellants "must be a member of the class for whose special benefit the statute was enacted." *Id*. In this case, Section 27(a) and Chapter 100 are intended to give voters within a political subdivision the benefit of voting on whether their elected representatives can issue revenue bonds in those situations where the local governing body is taking on a financial risk.

Unless appellants have pleaded and proved that they are voters in the City of Peculiar, plaintiffs are without standing to challenge the City of Peculiar's bond issue and this Court is without jurisdiction to hear this matter. Consequently, AmerenUE respectfully requests that the Court dismiss the appeal.

I. THE TRIAL COURT DID NOT ERR IN RULING THAT ARTICLE VI, SECTION 27(b) OF THE MISSOURI CONSTITUTION AND SECTIONS 100.010 TO 100.200, RSMO., AUTHORIZED THE CITY TO ISSUE REVENUE BONDS FOR THE AQUILA PROJECT UPON A VOTE OF A MAJORITY OF THE CITY'S BOARD OF ALDERMEN BECAUSE SECTION 27(b) AUTHORIZES THE ISSUANCE OF REVENUE BONDS FOR COMMERCIAL DISTRIBUTION AND INDUSTRIAL FACILITIES IN THAT AN ELECTRIC GENERATING PLANT OPERATED SOLELY

AT THE RISK OF THE OPERATING PUBLIC UTILITY AND NOT AT THE RISK OF THE MUNICIPALITY THAT HOLDS BARE LEGAL TITLE TO THE PLANT AND THAT ISSUED THE REVENUE BONDS IS A COMMERCIAL DISTRIBUTION FACILITY AND INDUSTRIAL PLANT FOR WHICH BONDS MAY BE ISSUED UNDER SECTION 27(b) UPON A VOTE OF A MAJORITY OF THE BOARD OF ALDERMEN.

The specific issue in this case is whether Section 27(b) of Article VI of the Missouri Constitution governs the financing of the construction of a non-municipal commercial power plant through the issuance of revenue bonds. But the broader issue is whether Section 27(b) governs revenue bond financing for an array of manufacturing and industrial plant projects, as its language expressly provides, or whether Section 27(b) should be read out of existence in favor of Sections 27 and 27(a), as appellants would urge. When read as a whole and considered in light of the multiple amendments made over time to the language contained therein, Sections 27, 27(a) and 27(b) leave no doubt that Section 27(b) governs power plants leased and operated by regulated public utilities such as Aquila and AmerenUE.

A. Applicable Rules of Construction Require Giving Meaning to Section 27(b).

The rules of construction for constitutional provisions are generally the same as those for statutes, except that due regard must be given to the "broader scope and objects" of the constitution. *See Wring v. City of Jefferson*, 413 S.W.2d 292, 300 (Mo. banc

1967). As with statutes, where a provision of a constitution is amended "the parts retained are regarded as a continuation of the former law and are entitled to receive the same construction." *Id*.

Appellants' construction of Sections 27, 27(a) and 27(b) would have the effect of vitiating Section 27(b) in contravention of the rule of construction that requires harmonizing purportedly conflicting constitutional provisions and giving each provision meaning and effect. *See State ex rel. Ashcroft v. City of Fulton*, 642 S.W.2d 617, 620-21 (Mo. banc 1982). *See also*, *Wring*, 413 S.W.2d at 300 (statutory rules of construction also apply to constitutional provisions). Unlike Appellants, Peculiar's interpretation of Section 27, as whole, would give meaning and effect to Section 27(b).

Applying these rules of construction requires reviewing and comparing the relevant constitutional provisions, Sections 27, 27(a) and 27(b).

Section 27, titled "Political subdivision revenue bonds for utility, industrial and airport purposes—restrictions," provides as follows:

> Any city or incorporated town or village in this state, by vote of a majority of the qualified electors thereof voting thereon, and any joint board or commission, established by a joint contract between municipalities or political subdivisions in this state, by compliance with then applicable requirements of law, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of

purchasing, construction, extending or improving any of the following projects:

(1) Revenue producing water, sewer, gas or electric light works, heating or power plants;

(2) Plants to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery; or

(3) Airports. The project shall be owned by the municipality or by the cooperating municipalities or political subdivisions or the joint board or commission, either exclusively or jointly or by participation with cooperatives or municipally owned or public utilities, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the municipality or by the cooperating municipalities or political subdivisions or the joint board or commission from the operation of the utility or the lease or operation of the project. The bonds shall not constitute an indebtedness of the state, or of any political subdivision thereof, and neither the full faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of or the interest on such bonds. Nothing in this section shall affect the ability of the public service commission to regulate investor-owned utilities.

Section 27(a), titled "Political subdivision revenue bonds issued for utilities and airports, restrictions," provides as follows:

> Any county, city or incorporated town or village in this state, by vote of a majority of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any of the following: (1) revenue producing water, gas or electric light works, heating or power plants; or (2) airports; to be owned exclusively by the county, city or incorporated town or village, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the county, city or incorporated town or village from the operation of the utility or airport.

Section 27(b), titled "Political subdivision revenue bonds issued for industrial development, restriction," provides as follows:

> Any county, city or incorporated town or village in this state, by a majority vote of the governing body thereof, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and

> machinery. The cost of operation and maintenance and the principal and interest of the bonds shall be payable solely from the revenues derived by the county, city, or incorporated town or village from the lease or other disposal of the facility.

This Court's own interpretation of Section 27 recognizes the historical antecedent for distinguishing between city-financed projects for the provision of traditional municipal services and those projects intended to spur private economic development:

> It is to be noted that § 27, at the time it was construed to be self-executing, was applicable to revenue bonds for only municipally owned public utilities and municipally owned airports. The ownership and operation of the former, at least, had long been regarded as a traditional function of municipal government. The latter (airports), by virtue of advances in air transportation and the consequent demands of changing times, had more recently succeeded to that status. Such practices, as functions of municipal government, had been so long well established and universally recognized that we do not pause to cite the numerous statutes then (and now) expressly authorizing municipalities so to do. The intent of the framers of the section might, paradoxically, have been to endow such constitutional provision with the qualities of an enabling act as to the subjects then within its scope. We say this in the light of the debates in the Constitutional Convention on the meaning and effect of the section (as adopted by the people in 1945)

> wherein it was asserted that previous efforts to obtain legislation authorizing municipalities to issue revenue bonds to finance municipally owned utilities had been futile, and, in the opinion of some of the members, at least, the section was self-executing.

Monroe City v. Southern, 359 S.W.2d 706, 710-11 (Mo. banc 1962).

In *Monroe City*, the Court declined to ignore the distinctions between what are now Sections 27(a) and (b) :

> Since then the constitutional and statutory changes hereinabove pointed out have been made by which a wholly new concept of municipal governmental function has been introduced into the body of our law. We are unhesitatingly of the opinion that the mere expanding of § 27 by the simple device of wedging (so to speak) words embodying such new concept into or between provisions previously interpreted as being self-executing does not compel that same interpretation as to the new matter so inserted. Nor are we willing to say that it should be so interpreted, this for the reason that this innovation by way of municipal financing of industrial projects is so new and untried, its possibilities so sweeping, and its operation and potentialities so utterly uncertain (and great) as to imperatively require statutory charting of its course.

Id. at 711 .

B. The Financial Risk to a Municipality is the Key in Distinguishing a Municipal Power Plant from a Non-Municipal Power Plant, such as the Aquila Plant.

This Court has long recognized the distinction between the types of financing governed by Sections 27(a) and 27(b). *See, e.g., State ex rel. City of Fulton v. Smith*, 194 S.W.2d 302, 304 (Mo. banc 1946); *Monroe City v. Southern*, 359 S.W.2d 706 (Mo. banc 1962); *Wring v. City of Jefferson*, 413 S.W.2d 292 (Mo. banc 1967); and *State ex inf. Ashcroft v. City of Fulton*, 642 S.W.2d 617 (Mo. banc 1982).

The only logical result of the distinction drawn by this Court is that (i) where bonds are issued under Section 27(a) to finance a public economic development project in which the local governing body is *taking on a direct financial risk through the issuance of bonds*, such as a municipal power plant, a majority of the electors must approve the bond issue; and (ii) where bonds are issued under Section 27(b) to finance a private economic development project in which the local governing body assumes no direct financial risk, only a majority of the members of the local governing body must approve the bond issue.

The trial court in this case also recognized this distinction and correctly identified the proposed bond issue as falling within the parameters of Section 27(b). The 1978 amendment to Section 27 clearly and unequivocally established a dual approval framework for revenue bonds, depending on whether the project is owned and operated by, and generates revenues for, the local governing body. The Aquila plant is a private industrial development project which Peculiar neither constructed nor operates. Peculiar

does not receive revenue directly from the operation of the plant. The financial risk of the project is squarely on Aquila, with no risk to Peculiar. Thus, a vote of the qualified electors of Peculiar is not required. The same is true of other regulated public utility plants in Missouri, such as AmerenUE's Bowling Green and Vandalia plants, as noted in the Introduction.

Appellants incorrectly deduce that because Peculiar seeks to finance a power plant project and because Section 27(a) expressly mentions "power plants," therefore, the approval of electors is required. The reference in Section 27(a) to "revenue producing water, gas or electric light works, heating or power plants" (and indeed the reference to airports) is properly understood as encompassing the financing of projects that will assist the local governing body in *providing traditional municipal services to the public*. *See, e.g.*, *State ex inf. Ashcroft v. City of Fulton*, 642 S.W.2d 617, 620 (Mo. banc 1982). The history of Sections 27, 27(a), and 27(b) makes clear that as originally written the purpose of the revenue bonds that could be issued thereunder was to finance traditional municipal facilities. "Revenue producing," in the context of Section 27(a) refers to revenue produced to the local governing body from its residents who are served by the municipal facility. Any other interpretation of Section 27(a) has the effect of requiring a vote of qualified electors prior to the issuance of any revenue bonds, whether or not the municipality is providing a service and whether or not it is at any financial risk, and necessarily renders meaningless Section 27(b) and the majority vote of the local governing body that it contemplates. Indeed, appellants urge this Court to adopt

precisely such an interpretation, overturning this Court's own precedent, which is consistent with the applicable rules of construction, that Sections 27, 27(a) , and 27(b) can and should be read separately and harmoniously.

Appellants' effort to argue that a non-municipal commercial power plant is somehow not a "commercial" endeavor and not a "distribution facility" is not availing. Appellants' narrow interpretation of "commercial" is at odds with the prior broad interpretation of that term by this Court. *See King v. Laclede Gas Co.*, 648 S.W.2d 113 (Mo. banc 1983) (defining "mercantile" more narrowly as involving the buying and selling of commodities, but "commercial" more broadly as profit-seeking activity).

While the parties did not stipulate to the Aquila plant's status as an "industrial plant" under the Chapter 100 and Section 27(b), AmerenUE would respectfully suggest that the Court take judicial notice of the fact that electric power plants are "industrial plants" as defined by Chapter 100. *See Carr v. Grimes*, 852 S.W.2d 345, 351 (Mo. Ct. App. 1993) ("The term judicial notice is broadly used to denote both judicial knowledge (which courts possess) and common knowledge (which every informed individual possesses); and matters of common knowledge may be declared applicable to the case without proof.") (internal quotations and citations omitted).

In this Court's decision in *Keystone Laundry*, where it held that a commercial laundry was not an industrial plant, the Court considered several factors in identifying an "industrial plant":

> A laundry neither manufactures anything nor does it process anything by changing its characteristics or nature; it is not a plant for large-scale storage or assembly; it merely washes garments, cloths, rags, etc., and in this instance, *rents* out certain accessories. In these activities such a project would naturally compete with local business, and perhaps do so with distinct advantages in its favor. A laundry is purely a service institution.

State ex rel. Keystone Laundry & Dry Cleaners, Inc. v. McDonnell, 426 S.W.2d 11, 18 (Mo. banc 1968). Thus, a plant that engages in manufacturing or that processes raw materials by changing the composition of the raw materials is an industrial plant.

More recently, this Court has defined manufacturing as "changing something unsuitable for common use to something of such common use or changing raw materials into products with intrinsic and merchantable value." *Southwestern Bell Tel. Co. v. Dir. of Revenue*, 182 S.W.3d 226, 232 n.9 (Mo. banc 2005) (citing *Southwestern Bell Tel. Co. v. Dir. of Revenue*, 78 S.W.3d 763, 767 (Mo. banc 2002). In the two *Bell* cases, this court addressed the issue of what constitutes manufacturing and processing, in the context of the Missouri sales and use tax exemptions for certain machinery and equipment used directly in manufacturing, and held that even production of an intangible product like basic telephone services constituted the manufacturing of a product. "[T]he product that Bell manufactures is the ability to hear a reproduction of the human voice over appreciable distances." 182 S.W.3d at 232.

The Aquila plant, and AmerenUE's similar combustion turbine plants, purchase raw natural gas and convert it into electricity for distribution and sale through the electric transmission and distribution system in this state. By this process, natural gas is rendered useful, in the form of electricity, for service in a host of applications in which it would not otherwise serve any useful purpose. This is functionally no different than an equipment manufacturer taking raw materials and parts and fabricating them into goods to be sold, or than an agricultural conglomerate processing petroleum into fertilizer. The manufacture of electricity fits within the general understanding of the term "industrial" and the more specific definitions in *Keystone Laundry* and the *Bell* cases. The fact that electricity may be in some sense intangible (but certainly more tangible than telephone service) does not alter the premise that electricity is manufactured.

The court in *Keystone Laundry* also held that in determining whether a facility is an industrial plant, "Neither the size nor the cost of the building and equipment nor the number of employees is controlling." *426 S.W.2d at 18*. Thus, the number of employees anticipated at the Aquila plant is by itself not dispositive, as appellants might urge.

C. Public Policy Favors Peculiar's Construction of Section 27 (b).

In the instant case, and in the electric utility projects in which AmerenUE is involved that have been financed by revenue bonds, not only is the local governing body without financial risk, but the projects are a boon to the local community and to ratepayers of the utility.

Typically, utilities seek remote rural locations for construction of new generation capacity. The land on which such facilities are built usually consists of agricultural land which could be expected to generate only nominal tax receipts for the local governing body. In return for the revenue bond financing, the utility makes substantial grant payments in lieu of taxes (PILOTs) to local taxing authorities that would not otherwise be available.

For utility ratepayers, the avoidance of property taxes on the power plant is a cost savings which reduces utility rates paid by Missouri ratepayers. Thus, rather than incurring any financial risk, the local governing body accrues additional revenue that but for the financing vehicle of revenue bonds would not exist, and the cost savings is passed on directly to ratepayers.

CONCLUSION

The issue before the Court is whether decades of settled law upon which local governments across the state of Missouri have relied in bringing economic development to their regions and upon which business and industry have relied in making substantial long-term capital investments in local economies will be upended by a strained and unprecedented interpretation of the Missouri Constitution and Chapter 100 of the Revised Statutes of Missouri.

The trial court's reading of the relevant statutory and constitutional provisions was consistent with this Court's precedent, reflected a correct understanding of the history of

the development of those provisions, and gave proper weight to the plain meaning of the Missouri Constitution and Missouri Statutes. To hold otherwise would jeopardize existing and future economic development and business and industrial investment across Missouri.

Accordingly, AmerenUE respectfully requests that the appeal be dismissed for lack of standing or, alternatively, that the trial court's judgment be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE WITH COURT RULES

Pursuant to Missouri Supreme Court Rules 84.05 through 84.07 ("Court"), the undersigned hereby certifies that on the 10th day of April, 2006, the original and eleven copies of the Brief of Amicus Curiae Union Electric Company d/b/a AmerenUE and a floppy disk containing the Brief were filed at the Court and that on this same date two copies of the Brief were served on counsel for the Appellants and counsel for the Respondent by overnight delivery and e-mail at the addresses shown below:

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The undersigned further certifies that:

(1) Pursuant to Rule 84.06(c), the original and all copies of the Brief of Amicus Curiae Union Electric Company d/b/a AmerenUE include the information required by Rule 55.03, including the signature of an attorney of record for Union Electric Company d/b/a AmerenUE on the original Brief; that the Brief complies with the limitations contained in Rule 84.06(b); and that the Brief contains 5,343 words, as reflected in the word count of the Microsoft Word word-processing system used to prepare the Brief.

(2) Pursuant to Mo. S. Ct. R. 84.05(g), the undersigned further certifies that the floppy disks containing the Brief of Amicus Curiae Union Electric Company d/b/a AmerenUE filed with the Court and served on all counsel of record have been scanned for viruses and are virus-free.

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