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December 11, 2001

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²
DEC 11 2001
Missouri Public
Service Commission

**RE: Union Electric Company,
Case No. EC-2002-1**


Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Public Counsel's Motion for Reconsideration or Clarification of Order Establishing Test Year and Procedural Schedule**. Please "file" stamp the extra-enclosed copy and return it to this office.

A copy of this pleading has also been hand delivered to each Public Service Commissioner.

Thank you for your attention to this matter.

Sincerely,


John B. Coffman
Deputy Public Counsel

JBC:jb

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

STAFF OF THE MISSOURI)
PUBLIC SERVICE COMMISSION,)
Complainant,)
vs.)
UNION ELECTRIC COMPANY,)
d/b/a AmerenUE,)
Respondent.)

Case No. EC-2002-1

FILED²
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**PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION OR CLARIFICATION OF
ORDER ESTABLISHING TEST YEAR AND PROCEDURAL SCHEDULE**

COMES NOW the Office of the Public Counsel (Public Counsel), and for its Motion for or Reconsideration or Clarification states as follows:

1. On December 7, 2001 the Public Service Commission (Commission) issued its Order Establishing Test year and Procedural Schedule Order ("Order"), ordering all parties to use a test year reflecting "the twelve months ending July 30, 2001." This Order is internally inconsistent, unreasonable, misstates the facts and is based upon several erroneous assumptions.

Public Counsel urges the Commission to avoid further detriment to the public by immediately reconsidering its Order, and approve the test year recommended by the Staff of the Commission (Staff) -- the twelve months ending June 30, 2000, updated for known and measurable changes. If the Commission is unwilling to reconsider its test year decision, it should clarify its expectations regarding the Company's "offer" to make its rates interim subject to refund effective April 1, 2001 in a manner that provides some assurance that consumers are protected.

2. **Union Electric Company d/b/a AmerenUE (Company) is an electrical corporation subject to traditional rate of return regulation in Missouri.** In discussing Staff's proposed test year, the Commission states, "During the times of traditional rate of return regulation, at a time when there was little or no competition in the marketplace, this might have been a safe and appropriate test year." November 7, 2001, Order, p. 2. Public Counsel is confused by the Commission's use of the words "might have been" in this sentence. There should be no dispute that **no** competition exists in Missouri for retail electric service. The Missouri General Assembly has consistently refused to replace rate of return regulation in our state despite the fact that electric companies have lobbied for various forms of electric deregulation over the past few years. It is now even less likely that Missouri will steer away from this prudent course, given the colossal failure of electric competition in the state of California and the pending bankruptcy of Enron Corporation.

Company continues to be a monopoly subject to rate of return regulation and its captive customers have only the Commission and the courts to protect them from unreasonable rates. The Commission's press release, issued on the same day as its test year Order, acknowledges that "AmerenUE is under traditional rate of return regulation." See Attachment 1. For that matter, even the Experimental Alternative Regulation Plan (EARP), which ended on June 30, 2000, was also based on rate of return regulation. All customer credits and Company options for changing rates were based on rate of return.

We are all currently living in "times of traditional rate of return regulation" for regulated electric corporations in Missouri, and therefore, as the Commission acknowledges, the Staff proposed test year is "a safe and appropriate test year."

3. **The Commission Order apparently adopts a thirteen-month test year.** The first Ordered paragraph of the test year Order states:

That the test year shall be the period from July 1, 2000 to the period ending upon July 30, 2001.

Ibid., p. 4.

Surely, this is error. It would unjust and unreasonable to allow Company a test year containing an extra month (less one day).

4. **The Commission's Order misstates and places undue reliance upon Company's "offer" to allow retroactive rate changes in this case.** The Commission's test year Order states as follows:

Lastly, in order to address Staff's concerns that the use of UE's proposed test year might delay the case, UE has affirmed, both on the record at the pre-hearing and in writing, that it would agree that the rates which result from this case shall be retro-active to April 1, 2002. This ensures that if there were any delay necessitated by the choice of this test year, it would not delay the implementation date for new rates.

Id. pps. 3-4.

This statement is inaccurate and the legal effect of Company's "offer" to allow unlawful retroactive ratemaking in this case is uncertain.

The Commission's test year Order does not even accurately restate the "offer" made by Company in its December 3, 2001 responsive pleading:

In order to assure this Commission that this additional time to respond to the Commission's test year decision will not adversely affect customers, the Company agrees that the rates resulting from the proceeding may be made retro-active to April 1, 2002, if: (i) the test year is set at the twelve months ending June 30, 2001; and (ii) the filing date for the Rebuttal Testimony be extended to January 25, 2002.

Ibid., p. 5. (emphasis added).

Company's offer to allow retroactive rates appears to be based on two conditions, the second of which was not met by the Commission. Whereas Company conditioned its offer on the Commission extending the Company's filing date for Rebuttal Testimony to January 25, 2002, the Commission's order only extended the Rebuttal Testimony filing date to January 4, 2002. To the extent that the Commission's entire November 7, 2001 test year Order is based upon a misunderstanding of Company's "offer," the Commission should reconsider its decision.

5. **The Commission's test year Order incorrectly states that Company has made an affirmation on the record regarding retroactive rates.** The Commission's Order states that Company "has affirmed, on the record at the pre-hearing and in writing" that rates can be made retroactive in this case to April 1, 2002. Public Counsel has searched the transcript created in this case in vain and cannot find any reference to such an affirmation. The only statement Public Counsel can find relating to an "offer" regarding April 1, 2002, is in the excerpted pleading quoted above. This written "commitment" provides little assurance to consumers and Public Counsel believes that the second referenced commitment never occurred on the record. If the Commission is under the impression that Company should be held to such a commitment, it should do so by requiring a tariff to be filed subjecting Company's current rate structure to an interim subject to refund status.

6. **If the Commission does not reconsider its decision and adopt Staff's proposed test year, it is inevitable that scheduling delays will occur in this case, causing further detriment to the ratepaying public as over-earnings are permitted to continue.** As explained above, the "agreement" of Company to permit a retroactive date for rate decreases in this case is not accurately stated in the Commission's Order, and as a result, inevitable

scheduling delays in this case will only serve to allow Company to charge at the level of up to \$250 million per year more than it should be allowed to charge based upon its cost of service.

A normal audit performed by the Staff takes four to five months to complete. Significant verification and analysis of test year numbers is necessary to develop a complete recommendation regarding a utility company's revenue requirement and rate design based upon a given test year. Any given test year can be updated for critical known and measurable components (such as employee and customer levels) within a reasonably short time frame; however, developing a new case upon a different test year involves significantly more work to complete (such as, employee functions, payroll expense ratios, overtime hours, customer usage, weather normalization).

It would be absolutely meaningless for Public Counsel to file Rebuttal Testimony on December 20, 2001 (nine days from now). Public Counsel has based its audit and investigation thus far upon the prepared Direct Testimony of Staff (filed on July 2, 2001) which uses a test year ending June 30, 2000. There is currently no testimony on file utilizing a test period other than one ending June 30, 2000. The Commission has effectively rejected Staff's Direct Testimony. There is no evidence currently filed regarding a new test year or whether a revenue requirement excess or deficiency exists for a period ending June 30, 2001 or July 30, 2001. Because the Commission has ordered a different test year in this case, "rebutting" Staff's prepared Direct Testimony would serve no purpose.

Assuming that it will take Staff another four months to audit a different test year and file Supplemental Direct Testimony, the additional delay that results from the Commission issuing its test year Order at such a late date is extremely detrimental to consumers. Assuming the current schedule is delayed four months further to allow the parties to analyze a test year ending

June 30, 2001, (or ending July 30, 2001) the benefit of “fresher” data relative to the date of Staff’s filing is small compared to the detriment it causes to the public. Under such an assumption, the test year data will be at least nine months old at the time of Staff’s Supplemental Direct Testimony, as opposed to test year data which was twelve months old at the time Staff filed its prepared Direct Testimony in this case. Moreover, the Commission can reconsider its test year decision, adopt Staff’s proposed test year, and still further the goal of utilizing “fresher” data by ordering updates for known and measurable changes through a more recent date. The Commission’s Order states “the use of Union Electric’s proposed test year immediately reduces the lag and similarly provides a significant reduction in the need for updating the case data late in the adjudication process.” Ibid. p. 3. However, while the lag in the difference between the test year and the date of direct testimony is reduced by approximately three months, the regulatory lag in adjusting rates to match the cost of service is increased by an even greater time period. If the Commission had only issued timely orders regarding the test year and procedural schedule, the lag could have been reduced to the same level that the Commission seeks now, without harming ratepayers.

7. The schedule approved by the Commission is unreasonable and is not a schedule recommended by any party. The test year approved by the Commission on December 7, 2001 has never been recommended by any party and is not logical or reasonable. Company has acknowledged that an extension of the procedural schedule would be needed if its proposed test year was approved. Union Electric Company’s Response, pp. 4-5; Transcript, p. 59. Staff has consistently stated that an extension of the agreed upon schedule of at least two months would be necessary if Company test year were approved.

Most importantly, Public Counsel will not be able to rebut the prepared Direct Testimony of Staff filed on July 2, 2001, (based on a test year ending June 30, 2000) unless the Commission quickly reconsiders its test year Order. It does not make sense to require Public Counsel to submit a rebuttal to Staff's Complaint until Staff files supplemental testimony based upon an approved test year.

8. **Consumers should not be penalized for the procedural delays already permitted in this case.** Throughout the nearly six months that this case has pended before the Commission, Public Counsel has urged the Commission to treat this matter with the same urgency that it would a rate increase case. In a typical rate increase case, a test year order is usually issued one to two months after the tariff filing that initiated the case. On July 19, 2001, Public Counsel recommended that the test year analyzed by the Staff in its prepared Direct Testimony was appropriate for this case. It is unreasonable for the Commission to wait until December (twelve days before Rebuttal Testimony is due) to order a new test year.

On September 27, 2001, Public Counsel urged the Commission to quickly set an evidentiary hearing. The Commission states that the evidentiary hearing has "for some time now, been scheduled to begin on March 4, 2002." However, it was not until December 7, 2001, that the Commission officially set that date as the initial date for an evidentiary hearing. Unfortunately, it did so at the same time it issued a test year Order which will, in all practicality, result in a delay of this evidentiary hearing date and the rest of the schedule, unless reconsidered by the Commission.

WHEREFORE, Public Counsel respectfully requests that the Commission reconsider its December 7, 2001 Order Establishing Test Year and Procedural Schedule, based upon a re-

evaluation of the inaccuracies and erroneous assumptions contained therein and adopts the test year proposed by Staff, updated for known and measurable changes.

If the Commission is unwilling to reconsider its test year decision, Public Counsel respectfully requests the Commission to:

1) clarify its expectations regarding the "offer" of Company to allow its rates to become interim subject to refund effective April 1, 2001, and assure that current customers will receive refunds of any charges ultimately determined to be over-earnings in this case by requiring Company to file a tariff that causes its current rates to become interim subject to refund effective April 1, 2001,

2) extend the current December 20, 2001 testimonial filing date until this matter is resolved, and

3) require responses to this pleading to be filed by Friday, December 14, 2001.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

John B. Coffman

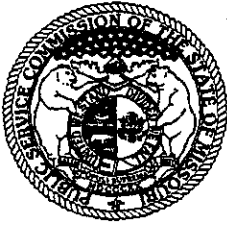
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PSC NEWS

Missouri Public Service Commission

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PSC Sets Hearing Schedule in PSC Staff Complaint Against AmerenUE

Jefferson City (December 6, 2001)---The Missouri Public Service Commission will hold hearings starting on March 4, 2002, in a complaint case filed by the PSC Staff against Union Electric Company d/b/a AmerenUE. These hearings will be held in Room 310 of the Governor Office Building (200 Madison Street) in Jefferson City. The Commission has reserved up to three weeks of hearings in this case.

Alleging AmerenUE's current electric rates are not just and reasonable, the Staff of the Missouri Public Service Commission filed a complaint case against the state's largest electric utility on July 2, 2001, seeking to reduce annual electric revenues in the range of \$213 to \$250 million a year. For a typical residential customer, the PSC Staff is seeking to reduce monthly electric rates by approximately \$7.71 or by approximately 11 percent.

It is important to note that the Staff of the Missouri Public Service Commission has filed this complaint. The Public Service Commission will ultimately decide whether any change in current rates should occur. That decision will only come after the Commission conducts extensive hearings.

Since 1995, AmerenUE has operated under two three-year experimental alternative rate regulation plans. Under the plans, customers benefited by sharing in company earnings when those earnings reached a certain level. The final year of the second experimental alternative rate regulation plan expired on June 30, 2001. As of July 1, 2001, AmerenUE is under traditional rate of return regulation.

In an order issued on March 8, 2001, the Commission authorized the PSC Staff to file a complaint case against AmerenUE on July 1, 2001, if the PSC Staff determined that an earnings complaint was warranted.

AmerenUE serves approximately 1.1 million electric customers in Missouri.

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Case No. EC-2002-1

Attachment 1

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