



Martha S. Hogerty
Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: <http://www.mo-opc.org>
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

July 19, 2001

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

FILED³

JUL 19 2001

Missouri Public
Service Commission

RE: Union Electric
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 in Support of the Commission Staff's Proposed Procedural Schedule**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Coffman", with a long horizontal flourish extending to the right.

John B. Coffman
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

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

FILED³

JUL 19 2001

**Missouri Public
Service Commission**

STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION,
Complainant,

vs.

Case No. EC-2002-01

UNION ELECTRIC COMPANY,
d/b/a AmerenUE,
Respondent.

**PUBLIC COUNSEL'S MOTION IN SUPPORT OF THE COMMISSION STAFF'S
PROPOSED PROCEDURAL SCHEDULE**

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

1. The excess earning Complaint filed by the Staff of the Commission (Staff) on July 2, 2001 contained a proposed procedural schedule on pages 10 and 11. On July 10, 2001, AmerenUE (Company) submitted its own Proposed procedural schedule. Public Counsel supports Staff's Proposed procedural schedule and opposes the Company's proposed procedural schedule for various reasons described herein.

2. It should be understood from the outset that a prompt and fair procedural schedule and a timely decision from the Commission in this case is extremely important. Company itself has acknowledged that "some reasonable rate reduction should be made" at this time. "Recommendations of Union Electric Company concerning the continuation of the EARP," filed on February 1, 2001, p. 10. Public Counsel expects that the issues in this case will focus on *how much* Company's rates should be reduced, not *if* they should

be reduced at this time. However, the Commission needs to also realize that the impact of its decision on the public will be significantly affected by *when* that rate reduction is ordered.

Every month that Company succeeds in delaying the procedural schedule in this case, it will be able to retain over-earnings because of the legal prohibition against retroactive ratemaking. See UCCM v. PSC, 585 S.W.2d 41, 59 (Mo. banc 1979). Assuming the Commission ultimately determines that AmerenUE is over-earning by \$250 million/year, a mere one-month's delay deprives consumers of **\$20.8 million**. Even if you assume that the Commission will ultimately order a rate reduction of only \$125 million, one month's delay of the procedural schedule equals a loss to consumers of **\$10.4 million**. Therefore, in establishing a fair procedural schedule in this case, the Commission should keep in mind that every month of delay allows Company to overcharge consumers by several million dollars.

3. Obviously, Company has an enormous incentive to seek delay in this case. Company has already taken extraordinary steps to prevent this case from ever taking place. During the recently concluded state legislative session, Company sought passage of a bill that would have frozen rates at their current levels for five years. On June 12, 2001, Company attempted to delay the filing of this case through an "emergency" motion the Commission denied from the bench on June 28, 2001 and in its written order issued on July 12, 2001. Company's proposed procedural schedule is simply another attempt at delay.

4. The procedural schedule recommended by Staff sets appropriate intervals for the filing of prepared testimony, the filing of a list of contested issues and positions

statements, along with a prehearing and evidentiary hearing timetable that appears adequate, reasonable, and consistent with past rate cases litigated before the Commission.

5. Company's proposed procedural schedule is unreasonable in the way it proposes different rebuttal deadlines. Requiring intervenors to file prepared rebuttal testimony in less than a month from now (August 17) would provide inadequate time for some parties. It is unfair to require intervenors to file rebuttal testimony more than four months prior to the date that Company would like to file its rebuttal testimony (December 21).

6. Public Counsel opposes any procedural schedule in this case setting dates for discovery activity. This is not a normal practice for the Commission and could create the impression that discovery must be cut off on a particular date. Public Counsel and the Commission Staff have the ongoing statutory right to conduct discovery whether or not a case is even pending before the Commission, and thus a procedural schedule should not imply that these ongoing investigatory rights are infringed in any manner.

All parties to this case have discovery rights and are permitted to exercise those rights when they decide to do so and in the manner they decide within the law and the Commission's Rules. The Commission Rules also anticipate that the parties will engage in discovery to the extent possible without Commission involvement. The Commission's Discovery Rule, 4 CSR240-2.090, provides for data requests as a means for discovery, which can be exercised by transmitting information directly between the parties, without the necessity of a Commission filing. Therefore, it is neither necessary nor appropriate for the Commission to address discovery timetables in any order approving a procedural schedule.

7. The most significant difference between the proposed procedural schedules is that Company's recommended filing date for its prepared rebuttal testimony is three months later than the date recommended by Staff. It is not reasonable to delay this procedural landmark until December 2001. This case is unique with regard to the degree of information that has been shared between Staff and Company prior to the filing of Staff's Complaint. At the hearing held by the Commission on June 28, 2001 in Case No. EM-96-149, Staff attorney Steve Dottheim explained in some detail the extent to which Staff has shared cost of service information that with Company since February 2001, including the sharing of various cost of service adjustments that Staff is recommending in this case. Therefore, Company should already be somewhat prepared to respond to the Complaint because it had plenty of forewarning.

8. Moreover, all of the parties that are likely to seek intervention in this case were parties to Case No. EM-96-149 and in that case have reviewed Company's cost of service information on an annual basis as they negotiated and litigated the sharing credits over the past few years pursuant to the Experimental Alternative Regulation Plan II. In fact, the test year recommended by Staff in its Complaint is concurrent with the test period analyzed by the parties with regard to the sharing credits approved by the Commission on March 27, 2001. Consequently, the Commission should recognize that the test period as well as many of the cost of service components that are likely to be the subject of litigation in this case have already been the subject of some review and analysis by Company, Staff, Public Counsel, and other intervenors for a significant time prior to the date this case was initiated.


9. Although there is no statutory deadline for when a Report and Order must be issued in an excess earnings complaint case, the Commission should be mindful of the eleven-month deadline that is required in utility rate cases requesting a *rate increase*. Public Counsel believes that notions of fairness and symmetry would suggest that a procedural schedule designed to allow the Commission enough time to issue a Report and Order in a *rate decrease* case within a similar time frame would be in the public interest.

WHEREFORE, Public Counsel respectfully requests that the Commission adopt a procedural schedule consistent with the recommendations of its Staff.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:


John B. Coffman (#36591)
Deputy Public Counsel
P. O. Box 7800
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 19th day of July 2001:

General Counsel
Missouri Public Service Commission
P O Box 360
Jefferson City, MO 65102

James B. Cook
Ameren Services Company
1901 Chouteau Avenue
P O Box 66149 (M/C 1310)
St. Louis, MO 63166-6149

Diana M. Vuylsteke, Esq.
Bryan Cave, LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

Robin E. Fulton
Schnapp, Fulton, Fall, Silvey, & Reid, LLC
135 East Main Street
P O Box 151
Fredericktown, MO 63645

A handwritten signature in black ink, appearing to read "JB Cook", is written over a horizontal line.