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November 13, 2001

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FILED

NOV 13 2001

Missouri Public
Service Commission

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

**RE: Case No. EC-2002-1 – Staff of the Missouri Public Service Commission,
Complainant, vs. Union Electric Company, d/b/a/ AmerenUE, Respondent.**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF RESPONSE TO DIRECTION FROM CHIEF REGULATORY LAW JUDGE TO SUBMIT PLEADING REGARDING TEST YEAR AND PROCEDURAL SCHEDULE.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
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Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
NOV 13 2001
Missouri Public
Service Commission

Staff of the Missouri Public Service Commission)
)
Complainant,)
)
v.)
)
Union Electric Company, d/b/a AmerenUE,)
)
Respondent.)

Case No. EC-2002-1

**STAFF RESPONSE TO DIRECTION FROM CHIEF REGULATORY LAW JUDGE TO
SUBMIT PLEADING REGARDING TEST YEAR AND PROCEDURAL SCHEDULE**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the direction from Chief Regulatory Law Judge Dale Hardy Roberts at the prehearing conference on Thursday morning, November 8, 2001 that the parties file with the Commission by 4:00 p.m. Tuesday, November 13, 2001 their proposals respecting (1) test year and (2) procedural schedule. In response thereto, the Staff states as follows:

Introduction And Overview

1. As the Commission is aware, test year is an item that is addressed early in a rate increase case. The necessity for doing so is no less important in an excess earnings (excess revenues) complaint case. It is not possible to process an excess earnings/revenues complaint case or a rate increase case in the traditional manner to which the Commission and the parties are accustomed, if the utility and the Staff use different test years. The Commission adopting the Staff's proposed test year would not prevent UE from presenting to the Commission any adjustments to the Staff's test year that UE deems to be appropriate. UE can adjust Staff's test

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year for every cost of service item that UE alleges is not appropriately reflected in the Staff's test year. UE would have to identify in testimony and workpapers all changes to the Staff's cost of service case, i.e., revenues, expenses and rate base, that it deemed appropriate and was part of its case. With a filing date of December 20, 2001, UE will have had approximately six months to do so. The Staff submitted to UE, even before the Staff filed its complaint and direct testimony, a data request that asks UE to advise the Staff of errors or miscalculations in, or omissions from, the Staff's workpapers supporting its July 2, 2001 filing. UE has not yet advised the Staff of such matters in or missing from the Staff's case.

2. A common test year is necessary in order to identify and quantify issues. Conflicting test years would result in the parties basing their cases on a different set of underlying events, transactions, and measurements that are embedded in different periods. Without a common test year, it may not be known whether a difference in methodologies results in a material level of dollars being attributable to the different methodologies. Even if it is expected that the different methodologies used by the utility and the Staff result in a material difference in the quantification of the item, without a common test year, there is not a common quantification of the dollar difference. Thus, if the item goes to hearing, there is not a common quantification to use for the determination of the utility's revenue excess or revenue deficiency when the Commission decides which methodology should be used for the quantification of the utility's revenue excess or deficiency.

3. Items that go to hearing in a typical case may do so for different reasons. For example, the utility and the Staff may use different methodologies respecting an item, but the dollar difference between the two different methodologies may be immaterial and, as a consequence, neither the utility nor the Staff may view the use of different methodologies as

requiring that the item go to hearing. Thus, the utility may "concede" the dollars associated with the quantification of the item, the Staff may "concede" the dollars associated with the utility's quantification of the item, or the utility and the Staff may decide to take the dollar difference and combine it with the dollar difference at issue for an item that is going to hearing because the dollars at issue for this other item are material, and whichever party prevails on the item that goes to hearing, also prevails respecting the dollars for the item that is not material enough for the utility and the Staff to take it to hearing.

4. It is possible to go to hearing without a common test year, but what results is an all or nothing case. That is, after all the issues are heard by the Commission, the Commission can only award the utility the utility's quantification of its total revenue excess or deficiency, or the Staff's quantification of the utility's excess or deficiency. Respecting the quantification of an issue raised by a party other than the Staff for purposes of determining a utility's revenue requirement, the quantification for revenue requirement purposes would be based on either utility's test year or the Staff's test year, since the only parties that determine the utility's total revenue requirement are the utility and the Staff.

5. Test year – update is frequently an issue in ratemaking proceedings and regardless of the fact that it is frequently an issue, a common test year is agreed upon and parties are then free to make whatever arguments they deem appropriate about the test year – update chosen. Since UE has frequently sought to distinguish its situation due to the fact that it had an experimental alternative regulation plan, the Staff believes that a review of the Staff's second excess earnings/revenues case against Southwestern Bell Telephone Company (SWBT), Case No. TC-93-224, is instructive in that SWBT was at the end of a four-year alternative regulation plan that would conclude upon the effective date of the Commission's Report And Order. The

Commission issued its Report And Order on December 17, 1993 and the effective date of the Report And Order was January 1, 1994.

6. The Commission adopted the Staff's test year of calendar year 1991, updated through September 30, 1992. SWBT had argued for a test year utilizing the 12-months ended September 30, 1992, which would be updated to year-end 1992 and pro forma adjustments made for known and measurable changes. The Commission addressed the test year issue stated in its Report And Order as follows:

The Commission rejected SWB's proposed test year, recognizing that adopting SWB's test year would require Staff to update its entire audit, and thus delay the case. . . .

As stated in its March 9 order, a test year is a starting point from which all parties' cases must begin so that their cases can be reconciled when the case is submitted to the Commission for decision. This test year results in a matching of all components of SWB's revenue requirement. The Commission requires this initial matching so that it will not fall victim to a case in which the parties' cases were unreconcilable. For a party's evidence to be considered in a case, it must be based upon the test year adopted by the Commission for the case.

Proposals can be made to adjust the test year numbers. The updated period recognizes this and allows the parties to update their cases to a date closer to the hearing if significant changes have occurred affecting the levels of an item. This update is not for all accounts. Annualizations and normalizations may be performed on test year data in an attempt to find what is a reasonable level expenses, investment or revenues. Parties may also seek isolated adjustments beyond the test year as updated if they believe significant changes have occurred which are sufficiently known and measurable and which will not unreasonably distort the matching of investment, expenses and revenues developed using the test year and any update.

Re Staff of the Missouri Public Service Commission v. Southwestern Bell Telephone Co., Case Nos. TC-93-224, et al., Report And Order, 2 Mo.P.S.C.3d 479, 486-87 (1993).

7. At the prehearing conference, the Chief Regulatory Law Judge raised the possibility of moving the procedural dates up if hearing dates earlier than the weeks commencing March 4, 2002 become available. Counsel for UE indicated that UE would

need the full time to December 21, 2001 (now December 20, 2001) in order to file its rebuttal case. UE indicated that it would be filing the testimony of 25 to 30 rebuttal witnesses. Obviously, the Staff has yet to see UE's rebuttal testimony, and without seeing UE's rebuttal testimony, the Staff is unable to suggest to the Commission whether it is possible from the Staff's perspective to shorten in any manner the procedural schedule that the Staff proposed in its September 26, 2001 Staff Response To The Office Of The Public Counsel's Request For Order Setting Evidentiary Hearing.

8. There are a small number of rate cases that have been heard by the Commission in phases, but that determination has generally been made at a much earlier date than the situation confronted by the Commission and the parties in the instant case. Given the information that UE has volunteered so far regarding its rebuttal case and the fact that it would file its rebuttal testimony and schedules just days before the Christmas and New Year holidays causes the Staff to believe that it will require the full amount of time suggested by the Staff and UE for the Staff to conduct discovery and draft surrebuttal testimony.

**Staff's Test Year: 12-months ended June 30, 2000
Updated to December 31, 2000**

9. The Staff's test year, addressed in the direct testimony of James D. Schwieterman,¹ is the twelve months ended June 30, 2000 updated for certain material events (plant, depreciation reserve, customer levels, fuel expense, other operating expenses and rate of return/capital structure) through December 31, 2000. The Staff performed an analysis to determine how the data for the test year compared with actual calendar year 2000 results by

¹ Mr. Schwieterman has retired from the Staff since his testimony was filed on July 2, 2001. Greg R. Meyer will be adopting this portion of Mr. Schwieterman's testimony.

The Staff wants to be very clear in stating that it is not speaking on behalf of any party other than itself regarding the Staff's position that the Commission should adopt the Staff's test year proposal and reject UE's test year proposal.

**UE's Proposed Test Year: 12-months ended June 30, 2001
Updated through September 30, 2001**

11. UE stated at the prehearing conference on Thursday that it would be submitting to the Commission a proposed test year of the 12-months ended June 30, 2001. UE also indicated that it would propose that the test year be updated through September 30, 2001. The Staff is opposed to the test year and update proposed by UE. As in Case Nos. TC-93-224, et al. discussed above, the test year and update proposed by UE would only delay the Staff's excess earnings/revenues complaint case. Delay permits UE to continue to receive excessive earnings/revenues from its customers. UE is being provided ample time to prepare its response to the Staff's case, especially considering the fact that the Staff's case is based on UE's data and materials.

12. UE indicated at the prehearing conference on November 8, 2001 that it estimated that the Commission adopting a test year of the 12-months ended June 30, 2001 updated through September 30, 2001 would extend the start of hearings two months beyond the present projected start of hearings on March 4, 2001. The Staff anticipates that the Commission adopting UE's proposed test year would extend the procedural schedule by at least two months. Instead of dealing with discrete adjustments made by UE to the Staff's test year, the Staff would be dealing with a new test year to which the Staff would be attempting to discover the new events, transactions, and measurements in UE case without the requirement that UE specifically identify and justify the appropriateness of these items for establishing the rates its customers must pay to receive service. Depending upon how UE would present its cost of service would determine how

much of an audit of UE by the Staff would be required for the Staff to identify the new items upon which UE based its case. The Staff is aware of substantial affiliate transactions which are not in the Staff's case but which increase UE's expenses and would be a component of UE's test year and update period. These affiliate transactions will require additional Staff audit time, as the Staff will need to examine affiliate records to understand the underlying fundamentals of these transactions. Under the Staff's proposal, UE would be required to specifically adjust the Staff's test year for its affiliate transaction expense and explain the reasonableness of these increases in expenses.

13. The Staff would note that the test year and update period proposed by UE would delay the Staff's excess earnings/revenues complaint case in part due to the changes that UE has made to its system of accounts. The Staff became aware of this item in the course of its excess earnings/revenues audit of UE. The Staff has further encountered this item in the Staff's monitoring of the third and final year of UE's second experimental alternative regulation plan. The practical effect of this change made by UE is that it is even more difficult than previously it would have been to compare periods encompassing time prior to and/or after this change in UE's system of accounts.

Wherefore the Staff requests that the Commission adopt the Staff's test year of the 12-months ended June 30, 2000 updated through December 31, 2000 and the procedural schedule accepted by the parties, if the Commission adopts the Staff's proposed test year and update period.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 13th of November, 2001.



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