

BRYAN CAVE LLP

RIVERVIEW OFFICE CENTER

221 BOLIVAR STREET, SUITE 101

JEFFERSON CITY, MISSOURI 65101-1574

(573) 556-6620

FACSIMILE: (573) 556-6630

ST. LOUIS, MISSOURI
WASHINGTON, D.C.
NEW YORK, NEW YORK
KANSAS CITY, MISSOURI
OVERLAND PARK, KANSAS
PHOENIX, ARIZONA
SANTA MONICA, CALIFORNIA
IRVINE, CALIFORNIA

RIYADH, SAUDI ARABIA
KUWAIT CITY, KUWAIT
ABU DHABI, UNITED ARAB EMIRATES
DUBAI, UNITED ARAB EMIRATES
HONG KONG
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA
IN ASSOCIATION WITH BRYAN CAVE,
A MULTINATIONAL PARTNERSHIP.
LONDON, ENGLAND

DIANA M. VUYLSTEKE

DIRECT DIAL NUMBER
(314) 259-2543

INTERNET ADDRESS
DMVUYLSTEKE@BRYANCAVE.COM

October 24th, 2001

By Federal Express

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

FILED²
OCT 25 2001
Missouri Public
Service Commission

Re: Case No. EC-2002-1

Dear Judge Roberts:

Enclosed for filing in the above-referenced case are an original and fourteen (14) copies of the *Missouri Industrial Energy Consumers' Response to Staff Excess Earnings Complaint Against Union Electric Company and Response to Answer of Union Electric Company*.

Thank you for your assistance in bringing this filing to the attention of the Commission

Very truly yours,



Diana M. Vuylsteke

DMV:dv
Enclosures
cc: All parties

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

FILED²

OCT 25 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

**MISSOURI INDUSTRIAL ENERGY CONSUMERS' RESPONSE TO
TO STAFF EXCESS EARNINGS COMPLAINT AGAINST UNION ELECTRIC
COMPANY AND RESPONSE TO ANSWER OF UNION ELECTRIC COMPANY**

Comes now Adam's Mark Hotel, Alcoa Foil Products, Anheuser-Busch Companies, Inc., The Boeing Company, Ford Motor Company, General Motors Corporation, Holnam, Hussmann Refrigeration, ISP Minerals, Mallinckrodt, Inc., MEMC Electronic Materials, Monsanto Company, Precoat Metals, Procter & Gamble Manufacturing, Ralston Purina and Solutia, hereafter referred to as the Missouri Industrial Energy Consumers ("MIEC"), and pursuant to the Commission's October 5 Order in this case, responds to the Staff Excess Earnings Complaint Against Union Electric Company ("Complaint") and also responds to the Answer of Union Electric Company ("Answer").

The MIEC has made its best effort to comply with the Commission's orders by providing the fullest possible response. However, the MIEC is unable to respond at this time to a number of important aspects of the Complaint and the Answer. This proceeding is at an early stage, and no procedural schedule has been established by the Commission. Union Electric Company has not yet presented evidence responding to the Complaint. The parties are currently engaged in discovery. The Commission should not construe either the MIEC's response or its lack of

response to compromise its right to full participation in this case. The MIEC's interests may be affected by rate design or other issues which are not presented by the Complaint or Answer but may develop later in this case. Accordingly, a lack of response to issues raised by the Complaint or Answer should not be construed to mean that the MIEC does not have an interest in this case. Moreover, neither the statutes governing the Commission nor the Commission's procedural rules require intervenors to respond to a filing initiating a proceeding before the Commission. By granting intervention to the MIEC, the Commission recognized that the MIEC met the legal requirements for intervention stated in 4 CSR 240-2.075 (3): that it had an interest different than that of the general public that may be adversely affected by a final order arising from this case, or that its intervention would serve the public interest. The MIEC's status as an intervenor with full rights of participation in this proceeding is already established, and does not depend on whether it takes a position on any particular issue.

The Commission's August 10 Order Granting Intervention requires the MIEC to admit or deny each factual assertion or legal conclusion set out in the Complaint and Answer. As discussed above, the MIEC is not in a position to admit or deny most of those factual assertions or legal conclusions. Further, the MIEC respectfully submits that it would not be appropriate for it to admit or deny legal conclusions by the Commission Staff or Union Electric Company. Accordingly, the MIEC's response will state that the MIEC agrees or disagrees with legal conclusions rather than state that the MIEC admits or denies legal conclusions.

For its response, the MIEC states as follows:

RESPONSE TO COMPLAINT

1. The MIEC agrees with the statements of law contained in Paragraphs 1 through 17 of the Complaint. The MIEC takes no position regarding the legal conclusions or factual assertions contained in Paragraphs 1 through 17 of the Complaint.
2. The MIEC agrees with the statement contained in Paragraph 18 of the Complaint that the Staff's direct case shows that UE's rates and charges are not just and reasonable but instead are excessive. Otherwise, the MIEC takes no position regarding the legal conclusions or factual assertions contained in Paragraph 18.
3. The MIEC agrees with the statements contained in Paragraph 19 of the Complaint regarding the principal issues comprising the Staff's excess earnings case and the witnesses covering those issues. The MIEC admits these statements to the extent that they are construed as factual assertions.
4. The MIEC agrees with the discussion of Commission regulations contained in Paragraph 20 of the Complaint. The MIEC responded to the Staff's proposed procedural schedule with a pleading filed on July 23, 2001. Otherwise, the MIEC takes no position regarding any conclusions of law or factual assertions contained in Paragraph 20.
5. The MIEC agrees with Paragraph 21 of the Complaint that Union Electric Company's current rates and charges are not just and reasonable, but instead are excessive and should be reduced by Order of the Commission. The MIEC takes no position with respect to any other conclusions of law or factual assertions contained in Paragraph 21 of the Complaint.

6. The MIEC reserves the right to take positions on all issues presented by the Complaint as well as any other issues presented in this case. The MIEC may assert its positions by way of arguments before the Commission, cross-examination, pleadings, briefs, testimony, exhibits and other evidence presented in this case.

RESPONSE TO ANSWER OF UNION ELECTRIC COMPANY

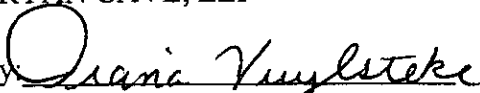
7. The MIEC disagrees with Union Electric Company's First Defense.
8. The MIEC takes no position with respect to Union Electric Company's Second and Third Defenses.
9. The MIEC disagrees with Union Electric Company's Fourth Defense.
10. The MIEC takes no position regarding Union Electric Company's Fifth and Sixth Defenses.
11. The MIEC takes no position regarding Union Electric Company's Seventh Defense.
12. The MIEC cannot take a position regarding Union Electric Company's Eighth Defense because Union Electric Company has not yet proposed a revised EARP in this case.
13. The MIEC takes no position regarding Union Electric Company's Ninth through Sixteenth Defenses.
14. The MIEC disagrees with Union Electric Company's Seventeenth Defense.
15. The MIEC takes no position regarding Union Electric Company's Eighteenth Defense.
16. The MIEC disagrees with Union Electric Company's Nineteenth through Twenty-First Defenses.

17. The MIEC takes no position regarding Union Electric Company's Twenty-Second through Twenty-Seventh Defenses.
18. The MIEC disagrees with Union Electric Company's Twenty-Eighth Defense to the extent that Union Electric Company's answers to the numbered paragraphs of the Complaint are inconsistent with the MIEC's Response to the Complaint set forth above. Otherwise, the MIEC takes no position regarding Union Electric Company's Twenty-Eighth Defense.
19. The MIEC reserves the right to take positions on all issues raised by Union Electric Company's Answer and any other issues presented in this case. The MIEC may assert its positions by way of arguments before the Commission, cross-examination, pleadings, briefs, testimony, exhibits and other evidence presented in this case.

Respectfully submitted,

BRYAN CAVE, LLP

By



Diana M. Vuylsteke, #42419

211 N. Broadway, Suite 3600

St. Louis, Missouri 63102

Telephone: (314) 259-2543

Facsimile: (314) 259-2020

E-mail: dmvuylsteke@bryancave.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed to all counsel of record as shown on the attached service list this 24th day of October, 2001.

