

April 12, 2002

**VIA HAND DELIVERY**



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

Re: MPSC Case No. EC-2002-1

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company, d/b/a AmerenUE, in the above matter, please find an original and eight (8) copies of its **Motion For Expedited Treatment And Reply To Staff's Response To Motion To Strike Portions Of The Direct Testimony Of Staff Witness Paul R. Harrison Or, In The Alternative, Request For Clarification Of Commission Order.**

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Cook".

James J. Cook  
Managing Associate General Counsel

JJC/vww

Enclosures

**FILED<sup>2</sup>**  
**APR 12 2002**  
Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>  
APR 12 2002  
Missouri Public  
Service Commission

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

Case No. EC-2002-1

**MOTION FOR EXPEDITED TREATMENT**  
**AND**  
**REPLY TO STAFF'S RESPONSE TO MOTION TO STRIKE**  
**PORTIONS OF THE DIRECT TESTIMONY OF STAFF WITNESS**  
**PAUL R. HARRISON OR, IN THE ALTERNATIVE, REQUEST FOR**  
**CLARIFICATION OF COMMISSION ORDER**

COMES NOW Union Electric Company ("AmerenUE" or "Company"), pursuant to 4 CSR 240-2.080, and requests that its "Motion to Strike Portions of the Direct Testimony of Staff Witness Paul R. Harrison or, in the Alternative, Request for Clarification of Commission Order" ("Motion"), filed on March 27, 2002, be ruled upon expeditiously. In addition, the Company hereby submits its Reply to the Response filed by the Commission Staff on April 8, 2002.

**REQUEST FOR EXPEDITED TREATMENT**

Pursuant to 4 CSR 240-2.080 (17) the Company states the following:

1. The Company requests that the Commission rule on its Motion as soon as possible, but no later than April 26, 2002. The Company's Rebuttal Testimony is scheduled to be filed on May 10, 2002. In order to prepare testimony which either does or does not address the subject matter of this Motion, and have that testimony copied and readied for filing on

May 10, the Company requests a decision by the Commission by April 26, 2002. It is anticipated that copying and collating the Rebuttal Testimony in this case will require several days. In order to have the testimony ready for that processing, it must be completed at least a week prior to the filing deadline. If the Commission strikes the testimony as requested in the Motion, only a minimal effort will be required to remove the rebuttal testimony which addresses that direct testimony. However, if the Commission allows the direct testimony to stand, and clarifies that the Company may also file testimony of post-September 30, 2001 data to similarly update costs, revenues and related data, more extensive testimony modifications will be made and several days will be required.

2. The harm that will be avoided by the expeditious treatment of this Motion is the delay that could otherwise result if the Commission clarifies its Order to allow post-September 30, 2001 data to adjust test year data. In such case, the Company should be allowed time to modify its testimony to include other post-September 30 evidence, in addition to the Staff's post-September 30 evidence. If the ruling is not expedited, the Company will need to request additional time in which to prepare its rebuttal testimony, beyond the date currently set. Such a request would delay the case, but would be necessitated by the need to supplement the testimony, which is being prepared under the terms of the Commission's January 3, 2002 Order Approving Jointly Filed Revised Procedural Schedule.

3. The Motion to Strike was filed as soon as it became apparent to the Company that the Staff was selectively picking at least this one item to use post-September 30 evidence to adjust test year figures. The Company took the time necessary to verify the dates involved and review Staff's pleading. The Company suggests that the Motion was filed as soon as it reasonably could have been.

## REPLY TO STAFF RESPONSE<sup>1</sup>

1. Instead of addressing the question of the use of post-September 30 data to adjust test year data, the Staff's pleading argues the underlying issue. The question raised in the Company's motion was not the factual issue of whether this particular post-September 30 adjustment should be made to the test year data (that would only be appropriate during the hearing itself, after a decision that would deny the Motion). Rather, the issue is whether, after the Commission's Order clearly sets out the test year and the updated test year period, can a party submit post-updated test year evidence to adjust figures from the test year? Staff's lengthy attempt to argue the underlying factual issue should be ignored. In fact, if the Commission is willing to hear the alleged facts and argument as to why this particular post-September 30 adjustment to test year data is appropriate, the Company will certainly wish to present facts and argument for a whole range of additional post-September 30 adjustments that the Company might like to bring to the Commission's attention.

2. In addition, incredibly, the Staff even attempts to add to the testimony by raising new alleged accounting reasons why the Company's treatment of this matter was inappropriate. Other than a passing reference in Mr. Harrison's testimony that may or may not be related, this new accounting argument is nowhere to be found in the proffered testimony and inappropriate as

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<sup>1</sup> Staff claims that the Company did not comply with the Commission rules because no "applicable statutory provision or other authority authorizing the striking of testimony prior to hearing" was cited. (Staff Response, paragraph 4) The Company suggests that the Staff has added words to the Commission's rule. The rule states that the "pleading shall include a clear and concise statement of the relief requested and specific reference to the statutory provision **or other authority** under which relief is requested." (emphasis added) The Company clearly cited the authority of the Commission's own Order of January 3 which set the test year in this case. If any party attempts to do something in violation of the Commission's order, an aggrieved party may certainly bring that matter to the attention of the Commission and request that the violation be corrected (here, by striking testimony that is in violation) or, if the Company has misunderstood the Order, request a clarification. Obviously, it is also more efficient to address this issue at the earliest possible time, rather than prepare needless rebuttal to evidence that should be stricken when requested, or to clarify the matter in time for the Company to properly prepare its testimony to include post-updated test year data, without the need for additional time.

a response to this Motion. The question at issue in this Motion is whether post-September 30 data can be admitted to adjust test year data, not what the accounting should have been.

3. Staff suggests that it is merely trying to prevent the Company from “double recovery.” (Staff pleading, paragraph 17) The Company suggests that the Company should also be prevented from “under-recovery.” Such under-recovery could occur in several categories of cost, if post-September 30 data is not allowed into evidence. Apparently, however, it is Staff’s position that only Staff’s proposed adjustments using data outside the updated test year, can be considered by the Commission.

4. Of course Staff denies that it is using post-September 30 data to “adjust” test year data. Instead, the Staff claims that it is using post-September 30 data to “more accurately quantify an event that occurred within the test year.” (Staff Response, paragraph 17) There can be no doubt that Staff is using post-September 30 data. Staff admits it. (Response, paragraph 17, second sentence) There can also be no doubt that it is being used to adjust updated test year numbers. Obviously, Staff believes that the facts surrounding this particular expense warrant the use of post-updated test year evidence. The Commission may or may not find the Staff’s argument persuasive. However, if the Staff is allowed to submit post-September testimony on this issue, because of the facts particular to this issue, then the Company should also be allowed to submit testimony of other post-September 30 “data to more accurately quantify [other events] that occurred within the test year” as well.

5. The Company’s Motion is simple; it does not require the Staff’s seven-page response. Can the parties, or can they not, submit evidence of post-updated test year data? If they cannot, the testimony should be stricken. If they can, then the Company asks that the Commission make that clear, so the Company can modify its rebuttal testimony accordingly.

WHEREFORE, for the reasons stated above, the Company requests that the Commission order the testimony specified in the Company's Motion be stricken, or, in the alternative, clarify the Commission's Order to make it clear that post-September 30 evidence is admissible to adjust test year data.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a AmerenUE

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DATED: April 12, 2002

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Hand-Delivery or U.S. Mail on this 12<sup>th</sup> day of April, 2002, on the following parties of record:

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