

August 10, 2001

**FILED<sup>3</sup>**

AUG 10 2001

**VIA HAND DELIVERY**

Missouri Public  
**Service Commission**



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 **Answer**.

Kindly acknowledge receipt of this filing by stamping a copy of the enclosed letter and returning it to me in the enclosed self-addressed envelope.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James J. Cook", is written over the typed name and title.

James J. Cook  
Managing Associate General Counsel

JJC/mlh  
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED**<sup>3</sup>  
AUG 10 2001

The Staff of the Missouri Public  
Service Commission,

Complainant,

v.

Union Electric Company, d/b/a  
AmerenUE,

Respondent.

Missouri Public  
Service Commission

Case No. EC-2002-1

**ANSWER**

Comes now Union Electric Company, d/b/a Ameren UE ("Respondent" or "UE")  
to answer the Complaint as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The rates proposed by the Complaint are not just and reasonable.

**THIRD DEFENSE**

The rates proposed by the Complaint are unsupported by competent and  
substantial evidence.

**FOURTH DEFENSE**

The rates proposed by the Complaint are produced by calculations and accounting  
adjustments manipulated solely to reduce UE's rates, and so are the result of improper,  
arbitrary, and unlawful regulatory opportunism.

#### **FIFTH DEFENSE**

The rates proposed by the Complaint cannot reasonably be expected to maintain the financial integrity of UE, attract necessary capital to UE, fairly compensate investors in UE for the risks they assume, and protect the public interest.

#### **SIXTH DEFENSE**

The rates proposed by the Complaint are not based on any competent, fair, or rational evaluation of the results of the experimental alternative regulation plan ("EARP"), and so are arbitrary, capricious, and unreasonable.

#### **SEVENTH DEFENSE**

The effective rates under the EARP were just and reasonable and the change in rates proposed by the Complaint is unsupported by competent and substantial evidence, and is arbitrary, capricious, and unreasonable.

#### **EIGHTH DEFENSE**

The adoption of a revised EARP, to be proposed by UE, rather than the adoption of the rates proposed by the Complaint, will result in just and reasonable rates, will ensure a return of, and a fair return on, all of UE's prudently incurred investments and costs, will continue to provide incentives for the efficient operation of UE, maximizing the productivity of its assets for the benefit of its customers and stockholders, and will help to establish a responsible and reliable energy policy for Missouri's future.

#### **NINTH DEFENSE**

The rates proposed by the Complaint, by denying UE the opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs, are

confiscatory, and so would effect a taking of UE's property without just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

#### **TENTH DEFENSE**

The rates proposed by the Complaint, by denying UE the opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs, are confiscatory, and so would effect a taking of UE's property without just compensation, in violation of Article 1, Section 26, of the Missouri Constitution.

#### **ELEVENTH DEFENSE**

The rates proposed by the Complaint deny UE the opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs undertaken to fulfill UE's obligations under its regulatory compact with the government, and so effect a taking of UE's property without just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

#### **TWELFTH DEFENSE**

The rates proposed by the Complaint deny UE the opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs undertaken to fulfill UE's obligations under its regulatory compact with the government, and so effect a taking of UE's property without just compensation, in violation of Article 1, Section 26, of the Missouri Constitution.

#### **THIRTEENTH DEFENSE**

The rates proposed by the Complaint result in an arbitrary and irrational denial of UE's right to a reasonable opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs, and thereby deprives UE of its property

without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

#### **FOURTEENTH DEFENSE**

The rates proposed by the Complaint result in an arbitrary and irrational denial of UE's right to a reasonable opportunity to earn a return of, and a fair return on, all of its prudently incurred investments and costs, and thereby deprives UE of its property without due process of law in violation of Article 1, Section 10, of the Missouri Constitution.

#### **FIFTEENTH DEFENSE**

The rates proposed by the Complaint effect a taking of UE's property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution by retroactively depriving UE of the benefits of the bargain agreed to in the EARP.

#### **SIXTEENTH DEFENSE**

The rates proposed by the Complaint effect a taking of UE's property without just compensation in violation of Article 1, Section 26, of the Missouri Constitution by retroactively depriving UE of the benefits of the bargain agreed to in the EARP.

#### **SEVENTEENTH DEFENSE**

The Complaint, by effectively using the revenues UE will earn in the interstate transmission of electricity to subsidize in part the rates it proposes, deprives UE of the benefit of those revenues, and in other ways, interferes with the exclusive jurisdiction of the Federal Energy Regulatory Commission over the interstate transmission of electricity, and so is preempted by federal law.

#### **EIGHTEENTH DEFENSE**

The rates proposed by the Complaint are produced in part by changes in accounting methodology concerning the unrecognized gains in UE's ERISA pension fund, accounting changes which in effect penalize UE for successfully fulfilling its fiduciary duties under ERISA, and so are preempted by federal law.

#### **NINETEENTH DEFENSE**

The rates proposed by the Complaint are in part subsidized by the revenues UE will earn in transactions not within the regulatory authority of the Missouri Public Service Commission, and so are beyond the jurisdiction of the Commission.

#### **TWENTIETH DEFENSE**

The rates proposed by the Complaint are in part subsidized by the revenues UE will earn in transactions not within the regulatory authority of the Missouri Public Service Commission, and so effect a taking of UE's property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

#### **TWENTY-FIRST DEFENSE**

The rates proposed by the Complaint are in part subsidized by the revenues UE will earn in transactions not within the regulatory authority of the Missouri Public Service Commission, and so effect a taking of UE's property without just compensation in violation of Article 1, Section 26, of the Missouri Constitution.

#### **TWENTY-SECOND DEFENSE**

The rates proposed by the Complaint would deprive UE of the rights, privileges and immunities secured by the Constitution and laws of the United States.

**TWENTY-THIRD DEFENSE**

The rates proposed by the Complaint would interfere with interstate commerce.

**TWENTY-FOURTH DEFENSE**

The rates proposed by the Complaint substantially and retroactively impair the obligations of the EARP, to achieve no legitimate policy objective of the State of Missouri, in violation of the Contract Clause of the United States Constitution.

**TWENTY-FIFTH DEFENSE**

The rates proposed by the Complaint substantially and retroactively impair the obligations of the EARP, to achieve no legitimate policy objective of the State of Missouri, in violation of Article 1, Section 13, of the Missouri Constitution.

**TWENTY-SIXTH DEFENSE**

Even if the EARP is not construed as a contract, the rates proposed by the Complaint retroactively deprive UE of the benefits of the EARP, and so deprive UE of its reasonable, investment-backed expectations created by the representations made in the EARP, thereby taking UE's property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

**TWENTY-SEVENTH DEFENSE**

Even if the EARP is not construed as a contract, the rates proposed by the Complaint retroactively deprive UE of the benefits of the EARP, and so deprive UE of its reasonable, investment-backed expectations created by the representations made in the EARP, thereby taking UE's property without just compensation in violation of Article 1, Section 26, of the Missouri Constitution.

## **TWENTY-EIGHTH DEFENSE**

Respondent answers the numbered paragraphs of the Complaint by correspondingly numbered paragraphs as follows:

1. Respondent admits the allegations of Paragraph 1.
2. This paragraph contains conclusions of law rather than allegations of fact to which an answer is required, but, to the extent an answer may be deemed to be required, Respondent admits the allegations of Paragraph 2.
3. This paragraph contains broad conclusions of law rather than allegations of fact to which an answer is required, but, to the extent an answer may be deemed to be required, Respondent denies the allegations of Paragraph 3 as an overbroad and incomplete statement of the law and its application in the context of this case.
4. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 4. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.
5. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 5. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.



6. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 6. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

7. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 7. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

8. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 8. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

9. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 9. The

Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

10. This paragraph contains a partial quotation of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute in part so provides, but otherwise denies the allegations of Paragraph 10. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

11. Respondent admits the allegations of the first sentence of Paragraph 11. The remaining sentences of Paragraph 11 simply purport to characterize the contents of the document identified in the first sentence of Paragraph 11. Such a characterization is not an allegation of fact to which an answer is required, but to the extent an answer may be deemed to be required, Respondent denies these allegations and respectfully refers the Commission to the document for a full and accurate statement of its contents.

12. This paragraph contains a partial quotation of a document filed by the Staff, and does not contain any allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent denies the allegations in Paragraph 12 and respectfully refers the Commission to the document for a full and accurate statement of its contents.

13. This paragraph contains a partial quotation of a document filed by the Staff, and does not contain any allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent denies the allegations in

Paragraph 13 and respectfully refers the Commission to the document for a full and accurate statement of its contents.

14. Respondent admits that on February 1, 2001, it filed with the Commission the "Recommendations of Union Electric Company Concerning the Continuation of the EARP." The first sentence of this paragraph contains a partial quotation from that filing, not any allegation of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the quoted document in part so states, but otherwise denies the allegations of the first sentence of Paragraph 14. Respondent denies the allegations in the second and third sentences of Paragraph 14. Respondent admits the allegation in the last sentence of Paragraph 14.

15. This paragraph contains characterizations of an Order issued by the Commission, not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent admits that the Order identified in Paragraph 15 was issued, but otherwise denies the allegations of Paragraph 15, and respectfully refers the Commission to that Order for a full and accurate statement of its contents.

16. With respect to the first sentence of Paragraph 16, Respondent admits that UE engaged in discussions with the Staff concerning a possible third EARP, but otherwise denies the allegations of this sentence. Respondent admits the allegation in the second sentence of Paragraph 16. The remaining sentences of Paragraph 16 quote from part of a document, and refer to and characterize portions of another document, but do not make allegations of fact to which an answer is required. To the extent that an answer may be

deemed to be required, Respondent admits that the quoted document in part so states to the extent that the quotation is accurate, but otherwise denies the allegations of the remaining sentences of Paragraph 16. Respondent respectfully refers the Commission to the documents cited for a full and accurate statement of their contents.

17. Respondent admits that in “performing its earnings audit, the Staff has used a test year of the 12 months ended June 30, 2000,” but otherwise denies the allegations of Paragraph 17.

18. This paragraph refers to certain documents being provided to Respondent, and then proceeds to characterize the contents of those documents, which are not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent admits that the Staff provided it with a copy of the Staff’s “Exhibit Manipulation System” run on February 6, April 26, May 8, and June 12, 2001, but otherwise denies the allegations of Paragraph 18.

19. Paragraph 19 contains the Staff’s characterization of its case and a recitation of the testimony filed by them, which are not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent admits that the testimony listed in the paragraph was filed with the Complaint, but otherwise denies the allegations in Paragraph 19.

20. The first two sentences of Paragraph 20 contain a summary of specific Commission Rules, and so are not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent admits that the text of 4 CSR 240-2.110(5) and of 4 CSR 240-2.070(7) contain provisions that may be relevant to this case, and respectfully refers the Commission to the actual text of those

Rules for a full and accurate statement of their contents, but otherwise denies those allegations. The third sentence of Paragraph 20 contains the Staff's proposed procedural schedule for this case, which are not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent denies the allegations in that sentence. The remaining sentences of Paragraph 20 contain the Staff's characterizations of filings made by UE and argument based on those characterizations, not allegations of fact to which an answer is required. To the extent an answer may be deemed to be required, Respondent denies these remaining sentences of Paragraph 20.

21. Respondent admits the allegations in the first two sentences of Paragraph 21. The remaining sentences in Paragraph 21 contain a statement of the relief requested and related procedural requests, not allegations of fact to which an answer is required. To the extent that an answer may be deemed to be required, Respondent denies the allegations in these remaining sentences of Paragraph 21.

22. Respondent denies any allegation not specifically answered herein.

WHEREFORE, having fully answered, Respondent requests the Commission to dismiss this Complaint with prejudice and adopt the EARP to be proposed by UE.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a AmerenUE

By: 

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Dated: August 10, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 10th day of August, 2001, on the following parties of record:

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