

December 17, 2001

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

FILED³

DEC 17 2001

Missouri Public
Service Commission

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 Reply to Staff's Motion for Reconsideration of Commission Order Establishing Test Year and Procedural schedule.

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,

James J. Cook / sh

James J. Cook
Managing Associate General Counsel

JJC/mlh
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

DEC 17 2001

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

**UNION ELECTRIC COMPANY'S REPLY TO STAFF'S MOTION
FOR RECONSIDERATION OF COMMISSION ORDER
ESTABLISHING TEST YEAR AND PROCEDURAL SCHEDULE**

COMES NOW Union Electric Company ("AmerenUE" or "Company") and for its Reply to Staff's Motion for Reconsideration of Commission Order Establishing Test Year and Procedural Schedule, states as follows:

I. AmerenUE Agrees With Staff's Request That The Commission Should Not Reconsider Its Selection Of The Year Ending June 30, 2001 As The Test Year To Be Used In This Proceeding.

For the reasons stated in AmerenUE's previous filings, there can be no doubt that the more recent data contained in a test year ending June 30, 2001 is appropriate for the test year in this proceeding.

II. AmerenUE Has No Objection To Staff's Request To Shorten The Response Time To Staff's Motion For Reconsideration.

AmerenUE will comply with the Commission order which has been issued with respect to this issue.

III. AmerenUE Has No Objection To Staff's Request That The Filing Date For Rebuttal Testimony Of Public Counsel And Intervenors Be Moved From December 20, 2001 To January 4, 2002.

AmerenUE believes this to be a relatively minor issue in the overall scheme of these proceedings and therefore has no objection to this request.

IV. AmerenUE Objects To The New Procedural Schedule Proposed By Staff.

A. AmerenUE Is Willing And Able To Abide By The Procedural Schedule Adopted By This Commission On December 6, 2001.

(i) Although The Newly Ordered Procedural Schedule Is More Demanding To AmerenUE Than It Is To Staff, AmerenUE Stands Willing And Able To Abide By It.

The Commission's newly ordered procedural schedule, issued December 6, 2001, requires that AmerenUE file all testimony and schedules supporting an entirely new test year on January 4, 2002. Even ignoring the intervening holidays, this requires that the Company make an extremely significant filing, which will now serve as the basis for this entire case, in only twenty-nine days. Staff, on the other hand, will not only have forty-seven days from the date of the Commission's Order to supplement its already filed testimony, it will then also have another forty-six days to rebut the Company's case filed on January 4, 2002. This Commission need be advised that Staff has had all data relevant to a June 30, 2001 test year at its disposal since September 2001.¹ Although AmerenUE acknowledges that this is indeed a tight schedule, it is clearly more demanding to the Company than it is to Staff. Nonetheless, the Company stands willing and able to abide by the procedural schedule set forth in the Commission Order of December 6, 2001.

¹ Affidavit of Gary Weiss, at ¶ 3, previously attached to AmerenUE's Motion to Establish a Test Year and a Proposed Procedural Schedule, attached hereto as Exhibit 1 and incorporated herein. [Hereinafter, "Weiss Affidavit, at ¶ ____."].

(ii) Staff Should Not Now Be Rewarded With A New Procedural Schedule On The Basis That It Is Unprepared To Litigate A June 30, 2001 Test Year.

AmerenUE has fully cooperated in providing Staff with June 30, 2001 test year data in an expedited manner. To a large extent, the Company has provided Staff with such data as soon as it was available to the Company, primarily in July and August 2001.² Moreover, Staff was provided with all data relevant to the Company's June 30, 2001 test year no later than September 2001.³ The fact that Staff has chosen not to analyze this data for some four months should not now be used as a basis for a new procedural schedule. AmerenUE strongly urges this Commission to refuse Staff's request and not interject any further delay in this proceeding.

(iii) If The Commission Should Decide To Adopt A New Procedural Schedule It Should Adopt A New Procedural Schedule That Is Fair And Equitable To All.

In its Motion, Staff suggests a revised procedural schedule and, although Staff recognizes the intervening dates between successive events, it fails to recognize the amount of time Staff will have to prepare and file its case-in-chief from the date of the Procedural Schedule set forth in this Commission's December 6, 2001 Order.⁴ Staff's proposal would allow itself some eight-four days prior to filing its Direct Testimony.

It is readily apparent that Staff will not merely adopt the Company's June 30, 2001 test year data. Consistent with past practice, the Staff will recommend numerous adjustments to the test year data based upon a wide variety of techniques and methods. As a result, prior to the filing of Rebuttal Testimony, it is imperative that the Company be permitted time to fully understand and analyze Staff's modifications to the test year data. This knowledge can only be

² Weiss Affidavit, at ¶ 3.

³ Weiss Affidavit, at ¶ 3.

⁴ As a matter of clarification, it is AmerenUE's understanding that no Company filing would be required on January 4, 2002 under Staff's proposed procedural schedule.

ascertained through data requests followed by depositions of Staff's pertinent witnesses. The results of this discovery must then be included in the Company's Rebuttal Testimony. This simply cannot be accomplished within the forty-five (45) days set forth in Staff's newly proposed procedural schedule. **At a minimum, should a new procedural schedule be adopted by this Commission, AmerenUE would require a minimum of seventy (70) days to respond to Staff's newly proposed Direct Testimony.** ⁵

Notwithstanding the foregoing, it is the Company's position that the procedural schedule adopted in the Commission's Order of December 6, 2001 should remain intact. The Company strongly urges this Commission to maintain the current procedural schedule with hearings in March 2002.

V. With One Caveat, AmerenUE Will Honor Staff's Request That AmerenUE File Tariffs And Put In Place Procedures For The Retention Of Customers' Records So That A Reduction In Rates Resulting From Case No. EC-2002-1 Will Be Made Retroactive To April 1, 2002. ⁶

AmerenUE believes that these requests are generally consistent with the proposal set forth in its recent filings and therefore, with one caveat, it has no objection. The Company will commit to keeping customer records to allow it to make rates effective retroactive to April 1, 2002 in the same manner as was done for the last rate reduction, resulting from the Report and Order of the Commission in Case No. EM-96-149. In addition, prior to the Staff's initial filing of testimony reflecting the new test year, the Company will file the appropriate tariff changes

⁵ This would be merely equitable in light of the fact that according to Staff's proposed alternative procedural schedule, Staff has allowed itself eighty-four (84) days from the Commission's Order of December 6, 2001 to file its Direct Testimony.

⁶ Both Staff and the Office of Public Counsel point out that AmerenUE offered rate treatment retroactive to April 1, 2002 if the Commission (i) adopted the Company's June 30, 2001 test year; and (ii) extended the Company's Rebuttal Testimony filing date to January 25, 2002. Although the Commission did not technically meet these two criterion (the Company's Rebuttal Testimony is due on January 4, 2002) the Commission has substantially agreed to the Company's request and it therefore agrees to make its rates retroactive to April 1, 2001 based upon the Commission's adoption of the June 30, 2001 test year and the adoption of the ordered procedural schedule. In addition, for Company's reaction to certain substantive changes now proposed by Staff, see, Point V, pp. 4-5 herein.

making rates collected on and after April 1, 2002 interim, subject to adjustment based upon a final non-appealable order of the Commission setting rates and establishing rate design in this proceeding.

That being said however, Staff's proposal goes well beyond merely seeking additional time to file testimony. Instead, it affirmatively seeks extinguishment of the Company's substantive right to: (i) update the June 30, 2001 test year for known and measurable changes (Point VII below); and (ii) file an alternative rate regulation proposal as part of this proceeding (Point VIII below). In essence, Staff now attempts to substantially and materially modify the retroactive rate deal that has previously been struck. These proposals, if granted by this Commission, clearly go beyond mere procedural issues to the substantive core of this proceeding as well as the substantive core of the retroactive rate treatment proposed by the Company. The Company's retroactive rate offer was made to ensure no harm would be suffered by ratepayers as a result of the Commission's consideration of the more recent test year data. The Company never agreed to the additional conditions now urged by Staff and they are not a part of the Agreement proposed by the Company and accepted by this Commission. Accordingly, if Staff's request as to either one of these critical issues is granted, the Company is left with no choice but to withdraw its offer of retroactive rate treatment.

VI. Ameren Objects To Staff's Request To Shorten The Response Time To Data Requests From 20 Days To 10 Days.

A. Staff Has Had Full Access To June 30 Test Year Data Since September 2001.

The Staff's Motion for Reconsideration time and again seeks to limit, restrict or extinguish AmerenUE's substantive and procedural rights. To request that this Commission unilaterally impose a shortening of AmerenUE's codified time to respond to data requests is inappropriate. The possibility of a test year ending June 30, 2001 has been foreseeable to the Staff for some time. Since AmerenUE has provided Staff full access to the Company's June 30,

2001 books since at least September 2001,⁷ it is apparent that Staff's discovery with respect to this test year should have been completed long ago. Consequently, the Company believes it is inappropriate to shorten its time to respond to Staff's data requests. Moreover, the Company believes that it needs this time to provide the Staff with adequate responses to its discovery.

Notwithstanding the foregoing, the Company represents to this Commission that it will use its best efforts to respond to the Staff's data requests as quickly as possible. Certainly, when the Company's response is completed in less than twenty days, it will provide those responses to Staff as soon as they are available. Nonetheless, the Company wishes to forewarn this Commission that it is now clear that the Staff intends to complete six months of discovery within a one-to-two month time frame. It appears that certain of the Staff's data requests will be of a nature that they cannot be adequately responded to within twenty days, let alone ten days.⁸

B. Alternatively, If The Commission Should Shorten The Response Time For Data Requests From Twenty Days To Ten Days, This Result Should Apply To All Parties, Including Staff.

As previously discussed, at page 2, the Procedural Schedule adopted by this Commission in its December 6, 2001 Order is significantly more demanding to AmerenUE than to Staff or any other party. Accordingly, should this Commission decide to shorten the response time for data requests, this decision should apply to all parties, including Staff.

⁷ Weiss Affidavit, at ¶ 3.

⁸ Indicative of Staff's and Office of Public Counsel's displeasure with this Commission's decision of December 6, 2001, is the fact that the Company has already received more than 100 data requests from these two parties. Many of these data requests request information that has already been provided to these parties.

VII. AmerenUE Objects To Staff's Request That No Party Shall Be Allowed To Update Data From The Test Year Consisting Of The Twelve Months Ended June 30, 2001.

AmerenUE strongly objects to the Staff's request that the Company be prohibited from providing any data updating the June 30, 2001 test year. It is well-settled law that the Public Service Commission **must** consider "all relevant facts" in determining just and reasonable rates. State ex rel. Capital City Water v. PSC, 252 S.W. 446, 454 (Mo. 1923). Moreover, it is long-standing practice to update test year data for "known and measurable" changes. Staff, itself, routinely engaged in this practice in its Direct Testimony filed in this case nearly six months ago.

In addition, the Staff has offered **no authority or reason** why updating should not be permitted. No principle of law or practical procedural concern could possibly justify denying this Commission access to the most recent and relevant information in this way. It is clear, particularly in light of the Company's offer of retroactive rate treatment, that the Commission should fully consider all relevant information in reaching its final decision in this case. This Commission must recognize that it is Staff, and not AmerenUE, that is requesting additional time as a result of the newly ordered procedural schedule. AmerenUE does not need additional time to evaluate potential matters to update beyond June 30, 2002, despite the fact that the Company's updating entries will be identified in its January 4, 2002 filing. Staff's rebuttal testimony concerning such updating is not due until February 19, 2002 – some forty-six (46) days after the Company's testimony regarding these same items.

Finally, it is absolutely critical that the Commission not be restrained in its consideration of all information relevant to its decision in this proceeding. The significance of this case to Missouri ratepayers, AmerenUE and the future direction of energy policy in this state cannot be overstated. To hold otherwise handicaps this Commission, sabotages settlement talks, and short-changes ratepayers. Accordingly, Staff's request to prohibit updating June 30, 2002 test year data must be rejected.

VIII. AmerenUE Objects To Staff's Request That Any Alternative Rate Regulation Proposal To Be Filed By AmerenUE Must Be Filed In A Separate Case.

AmerenUE strongly objects to the Staff's unusual request that the Company be directed "to file any alternative regulation proposal in a case other than Case No. EC-2002-1." It has long been settled law that the Public Service Commission **must** consider "all relevant facts" in determining just and reasonable rates. State ex rel. Capital City Water Co. v. PSC, 252 S.W. 446, 454 (Mo. 1923).

The facts relating to AmerenUE's performance under the EARPs cannot be avoided in this complaint case; not only are they relevant, they are the *very foundation* of the Staff's case. The Staff's complaint sets forth and contains a number of allegations concerning the EARPs. *See, e.g.*, Complaint ¶¶ 11-13, 16. The Staff has contended that AmerenUE was "in an excess earnings position" under the EARPs, Complaint ¶ 12 (*citing* Staff's Report Regarding the Experimental Alternative Regulation Plans of Union Electric Company (filed on February 1, 2001 in Case No. EM-96-149) ("Staff's EARP Report")); *see also* Staff's EARP Report at page 27 (claiming "excess revenues" during each of the first 4 years of the EARPs). Indeed, it is *impossible* for the Commission to determine the appropriate rates to be charged by AmerenUE without evaluating the Company's operations under the EARPs—both the test year adopted by the Commission and the rejected test year proposed by Staff measure costs and rate base under the EARP. It is obvious that a major premise of the case filed by the Staff is that the Commission was wrong to have determined that just and reasonable rates would result from the EARP. The EARPs are inherently and fundamentally a part of the instant case, and the Staff's suggestion that the potential adoption of a new alternative regulation plan be excluded from the Commission's consideration in this case makes no sense.

Even worse, the Staff's suggestion does harm to the very process in which we are engaged. Whether the Commission decides to return to cost of service ratemaking for AmerenUE, or continues to experiment with an incentive regime, is the fundamental issue affecting its policy choice. The Staff seeks to artificially narrow the perspective of the Commission, excluding from this case the option that we contend will provide the best assurance of just and reasonable rates for AmerenUE's ratepayers. Indeed, in the filings made in February of this year, AmerenUE made it clear that we thought that another incentive regulation plan was the sensible way to proceed, but with the provisions amended by what we have learned under six years of the EARP. The Commission has not had the occasion to consider that option, and surely it is only prudent for the Commission to have before it all the policy alternatives it may wish to consider – particularly in light of the harsh, unprecedented rate cut being urged by the Staff.

Moreover, the Staff has **not offered any authority** for constraining the response of the Company to the Staff's complaint in this way. Certainly **no principle of law** suggests that our response to the case brought by the complaining party should be defined by the complaining party's preferences in this way. Equally certainly, no practical, procedural concern could justify handicapping this Commission in this way. After all, in its Motion for Reconsideration, the Staff argues in part that delaying the hearing in this case as it requests to meet *its* needs is acceptable because AmerenUE has made a commitment that any rates resulting from this proceeding will be made retroactive to April 1, 2002. Staff Motion at 3. However, with respect to our proposal for a new incentive regulation plan, the Staff does a turnabout, claiming that these proceedings should not be held "captive" to consideration of such an option. *Id.* at 12. It would seem that, with our commitment to have any new, lawful rates retroactive to April 1, 2002, this case is no

X. AmerenUE Agrees With Staff's Request That The Commission's December 6, 2001 Order Correctly Reflect A Test Year In This Proceeding Of July 1, 2000 Through June 30, 2001, Rather Than The Thirteen Month Period Of July 1, 2000 Through July 30, 2001 As Was Erroneously Stated In The Commission's Order.

AmerenUE believes that the item set forth above was merely a typographical error in the Commission's Order and therefore has no objection to this request.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: James J. Cook / sh
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DATED: December 17, 2001

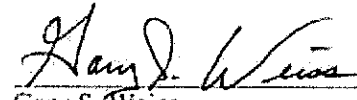
that there were some prior period entries recorded in December, 1999 that had to be adjusted out for the test year June 30, 2000 but would not be a problem if they moved to the December 31, 2000 test year.

3 Later as the MPSC Staff started providing me with workpapers, I noticed that even on the expense adjustment workpapers the data through December 31, 2000 was included and in some instances used to calculate the adjustment made to the June 2000 test year. They did attempt to make an adjustment to operating expenses to reflect the 12 months ended December 31, 2000 labor expenses. They also used the actual fuel cost for the year 2000 to calculate their fuel expense for weather normalized and adjusted kWh sales. Throughout the spring and early summer, many of the MPSC Staff's data requests were being updated with current data. By the time the MPSC Staff completed their on site audit they actually had information through April and/or May of 2001. The June 2001 data was provided in late July or early August; and the September 2001 filing of the last sharing period earnings report, included a detailed cost of service accounting run along with workpapers.

4. By not moving to the 12 months ended June 2001, the MPSC Staff is ignoring some significant increases in expenses. For example the electric labor increased more than \$15 million without annualizing the wage increases that took effect during this period; the contract power plant maintenance increased more than \$5 million; the Missouri distribution other expenses, includes tree trimming, increased over \$5 million; and the injuries and damages expense increase by more than \$10 million. In total, the Company estimates that the normalized electric net operating income decreased \$50 to

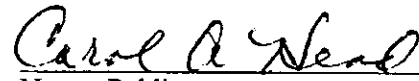
\$75 million for the 12 months ended June 30, 2001 compared to the 12 months ended June 30, 2000.

5 hereby swear and affirm that the information contained in this affidavit is true and correct.



Gary S. Weiss

Subscribed and sworn to before me this 13th day of November, 2001



Notary Public

My Commission expires: 9-23-2002

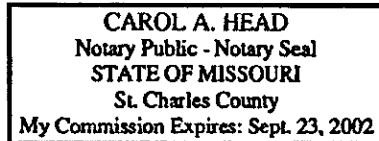


Exhibit 1

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 17th day of December, 2001, on the following parties of record:

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