BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Staff of the Missouri Public Service Commission,	)	
Complainant,	)	
vs.	)	**CASE NO. EC-2002-1**
Union Electric Company, d/b/a AmerenUE,	)	
Respondent.	)	

NOTICE OF COMPLAINT

AmerenUE
1901 Chouteau Avenue
P.O. Box 66149
St. Louis, MO 64166-6149

CERTIFIED MAIL

On July 2, 2001, the Staff of the Missouri Public Service Commission filed a complaint with the Missouri Public Service Commission against Union Electric Company, d/b/a AmerenUE, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, the Respondent shall have 30 days from the date of this notice to file an answer or to file notification that the nature of the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for voluntary mediation of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer shall be due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be

notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 11th day of July, 2001.

Roberts, Chief Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED[3]
JUL 0 2 2001
Missouri Public Service Commission

Staff of the Missouri Public Service Commission	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2002-1
	)	
Union Electric Company, d/b/a AmerenUE,	)	
	)	
Respondent.	)	

STAFF EXCESS EARNINGS COMPLAINT
AGAINST UNION ELECTRIC COMPANY

Comes now the Staff of the Missouri Public Service Commission (Staff) pursuant to Sections 386.240 and 386.390 RSMo 2000 and 4 CSR 240-2.070 and states as follows:

1. Union Electric Company (UE), d/b/a AmerenUE is a Missouri corporation with its principal office and place of business located at 1901 Chouteau Avenue, St. Louis, Missouri 63103.

2. UE is an "electrical corporation" and a "public utility" as these terms are defined in Section 386.020(12) and (32), respectively, and provides electrical service to customers in its certificated service area in Missouri.

3. UE is subject to the jurisdiction, regulation, supervision and control of the Missouri Public Service Commission (Commission) pursuant to Chapters 386 and 393 RSMo 2000.

4. Section 386.240 provides that "[t]he commission may authorize any person employed by it to do or perform any act, matter or thing which the commission is authorized by this chapter to do or perform; provided, that no order, rule, or regulation of any person employed

by the commission shall be binding on any public utility or any person unless expressly authorized or approved by the commission."

5. Section 386.390.1 provides that "[c]omplaint may be made by the commission of its own motion . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person, or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person, or public utility, in violation, or claimed to be in violation of any provision of law, or of any rule or order or decision of the commission; provided, that no complaint shall be entertained by the commission, except on its own motion, as to the reasonableness of any rates or charges of any . . . electrical . . . corporation, unless the same be signed by . . ."

6. Section 383.390.2 RSMo 1986 provides that "[a]ll matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties . . ."

7. Section 393.130.1 directs that "[a]ll charges made or demanded by any . . . electrical corporation . . . shall be just and reasonable and not more than allowed by law or by order or decision of the commission . . . Every unjust or unreasonable charge made or demanded for . . . electricity . . ., or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited."

8. Section 393.140(5) confers upon the Commission the power to determine "after a hearing had upon its own motion or upon complaint, that the rates or charges . . . of any corporations [under its supervision] are unjust, unreasonable, unjustly discriminatory or unduly preferential . . ." and further provides that "the Commission shall determine and prescribe the

just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute . . ."

9. Section 393.270 (2) provides that "[a]fter a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of . . .electricity . . . not exceeding that fixed by statute to be charged by such corporation . . . for the service to be furnished . . ."

10. Section 393.270 (4) provides that "[i]n determining the price to be charged for . . . electricity . . . , the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."

11. On October 25, 2000, the Staff filed, in Case No. EM-96-149, Staff Motion For A Commission Order Compelling Union Electric Company To Answer Staff Data Requests Relating To The Staff Making The Filing Required By Section 7.g. Of the Second EARP Stipulation And Agreement. The Staff advised the Commission that in addition to conducting its review of the second sharing period of the second experimental alternative regulation plan (EARP), the Staff was performing a revenue requirement cost of service audit of UE for purposes of meeting the Section 7.g. provision of the July 12, 1996 Stipulation And Agreement in Case No. EM-96-149, which states in part as follows: "By February 1, 2001, UE, Staff and OPC will file, and other signatories may file their recommendations with the Commission as to whether the New Plan should be continued as is, continued with changes (including new rates, if

recommended) or discontinued." The Staff informed the Commission that six accountants were working on site at UE's offices in St. Louis and Staff members in other departments than the Accounting Department were working on this matter in Jefferson City.

12. Staff in its February 1, 2001 Staff Report Regarding The Experimental Alternative Regulation Plans Of UE, filed in Case No. EM-96-149, stated at pages 26 and 12, respectively, as follows:

(a) "The Staff related in its February 10, 2000 report to the Commission in Case No. EO-96-14, that the Staff estimated that **UE was then in an excess earnings position in the amount of approximately $100 million dollars annually, adjusted for normal weather.** The Staff's current view of UE continues to support this position. In fact, the **Staff considers that amount previously reported to the Commission is conservative** if the Staff were to file an excess earnings complaint case at the expiration of the current EARP." (Emphasis added).

(b) "The Staff advised the Commission in February 2000 in a Staff Response To Commission Orders Of December 23, 1999 And January 20, 2000 that the Staff's current estimate of UE's ROE was in the range of 10.00%-10.50%. The Staff has again reviewed what it would recommend as UE's ROE. **For purposes of this report, the Staff's review indicates that the Staff's ROE range estimate provided to the Commission in February 2000 is conservative as are the results that ROE range would produce.**" (Emphasis added).

13. In the Staff's February 1, 2001 pleading, entitled "Staff's Filing Of Its Report Regarding The Experimental Alternative Regulation Plans Of Union Electric Company," which accompanied the filing of the Staff's report on the EARPs, the Staff stated as follows:

> 3. The revenue requirement cost of service audit which the Staff is in the process of performing preliminarily indicates that UE's earnings are substantially in excess of its cost of service and warrants the Staff filing an excess earnings complaint case upon the conclusion of the Case No. EM-96-149 EARP. The Staff's present conservative estimate is that UE's earnings on an annual basis are more than $100 million in excess of its cost of service.

> 4. Based upon the terms of the Stipulation And Agreement accepted by the Commission in its February 21, 1997 Report And Order in Case No. EM-96-149, the Staff believes that the Commission has authorized the Staff to file an excess earnings complaint case upon the conclusion of the Case No. EM-96-149 EARP should the Staff believe that such an action is warranted. The Staff plans to proceed in such a manner unless otherwise directed by the Commission.

14. At page 10 of the Recommendations Of Union Electric Company Concerning The Continuation Of The EARP filed by UE on February 1, 2001, UE stated as follows:

> A. Most obviously, the efficiencies achieved under the EARP regime to date suggest that **some reasonable rate reduction should be made**. We believe that it is prudent for this rate reduction to take the form of a one-time credit and a permanent rate reduction. Exactly what this rate reduction should be we are not prepared to state at this point, believing as we do that negotiation over this issue will be more productive if the parties are not in advanced locked into publicly announced positions.
>
> However, it is clear that such a reduction should not simply reduce rates by the amount that UE's cost of service has declined as a result of the first two EARP's, if such a cost of service is calculable. . . .

(Emphasis added.). Thus, even as early as February 1, 2001, there was no dispute that UE's rates and charges needed to be reduced after June 30, 2001. Post-June 30, 2001, there is no dispute that UE's present rates and charges are not just and reasonable. Those rates and charges will remain in effect until the Commission orders them to be changed.

15. On March 8, 2001 in Case No. EM-96-149, the Commission issued an Order Authorizing Earnings Investigation Filing July 1, 2001 authorizing the Staff to file an earnings complaint to seek reduction of the rates for UE, upon expiration of the second EARP on July 1, 2001, if the Staff determines that an earnings complaint is warranted. The Commission also ordered that the second EARP shall not be continued beyond its expiration on July 1, 2001.

16. The Staff has engaged in discussions with UE about a possible third EARP which, from the Staff's perspective, would only occur if there was also a rebasing of UE's rates as a result of the Staff's earnings audit. Discussions between UE and the Staff commenced in

October 2000 and occurred even before the Staff could provide UE with an approximate revenue requirement number. In a news release on February 6, 2001, which Ameren entitled "Ameren Corporation Reports Record Year-End Earnings," Ameren stated as follows:

> Also affecting 2000 revenues were estimated credits of $65 million to Missouri electric customers, which reduced earnings 27 cents per share, compared to credits of $33 million in 1999, which reduced earnings 14 cents per share. . . .
>
> . . . .
>
> On Feb. 1, 2001, the company, Missouri Public Service Commission (MPSC) staff and other parties submitted filings to the MPSC addressing the merits of extending the current experimental alternative regulation plan, which will expire June 30, 2001. **In its filing, Ameren supported an extension of this plan with certain modifications, including retail electric rate reductions and additional customer credits.** The MPSC staff filing noted several concerns with the current plan and suggested that under traditional cost of service ratemaking, an annualized electric rate decrease of at least $100 million could be warranted. **The company has been engaged in discussions with the MPSC staff and other parties in an effort to address issues associated with the possible extension of the current experimental alternative regulation plan.** At this time, the company cannot predict the outcome of these discussions or the timing or amount of any future electric rate reductions.

[Emphasis added]. Similar statements appear in Ameren's 2000 Annual Report to shareholders at pages 32 and 20, respectively.

17. In performing its earnings audit, the Staff has used a test year of the 12 months ended June 30, 2000, updated for known and measurable changes to December 31, 2000.

18. The Staff first provided UE a copy of the Staff's cost of service computer printout, which is referred to by the Staff as the Staff's EMS (Exhibit Manipulation System) run, on February 9, 2001. The Staff provided subsequent EMS runs to UE on April 26, 2001, May 8, 2001 and June 12, 2001. The negative revenue requirement increased on each successive EMS run provided to UE, including the negative revenue requirement that is the Staff's direct case filed on July 2, 2001. These increases in what the Staff identified as excess earnings by UE

occurred with each successive EMS run because over time the Staff audited more areas of operations of UE and, in general, UE is in a declining cost situation.

The Staff's direct case as filed this date, July 2, 2001, shows that UE's rates and charges are not just and reasonable as required by Chapters 386 and 393, but instead are excessive in a range of from $213,774,613 at the high end of the Staff's return on common equity (ROE) range to $250,071,725 at the low end of the Staff's ROE range.

Staff Direct Case Filing	Range	
	Staff ROE & Revenue Req.	Staff ROE & Revenue Req.
7/02/01	9.04% -$250,071,725	10.04% -$213,774,613

19. The principal issues that comprise the Staff's negative revenue requirement/ excess earnings case against UE are return on common equity, depreciation rates/theoretical reserve, income taxes, other postretirement employee benefits and pensions, power plant maintenance expense and revenues/customer growth. The areas covered by the Staff and addressed in direct testimony and schedules being filed this date, July 2, 2001, are as follows:

Rate of Return:

Ronald L. Bible

Rate Design:

James C. Watkins

Janice Pyatte

Rate Base:

Paul R. Harrison:

- Plant In Service
- Depreciation Reserve
- Customer Deposits
- Customer Advances
- Materials & Supplies
- Prepayments

Fuel Inventories

Leasha Teel:
Cash Working Capital
Interest & Income Tax Offsets

Stephen M. Rackers:
Deferred Income Taxes

Revenues:

Janice Pyatte:
Normal Weather
Rate Change

Doyle Gibbs:
Customer Growth
Eliminate Gross Receipts Tax
Territorial Agreements
Uncollectible Revenues
Rate Refunds

Mr. Gibbs will sponsor all of the above revenue adjustments for input into the Staff's revenue requirement calculation.

Expenses:

Fuel:

Leon C. Bender:
Production Cost Model

Lena M. Mantle:
Net System Input

Alan J. Bax:
System Losses

John P. Cassidy:
Purchased Power & Interchange Sales
Callaway Refueling Adjustment

Payroll and Employee Benefits:

Mark D. Griggs:
Payroll and Benefits other than Pensions
Payroll Taxes
Injuries and Damages

Greg R. Meyer:
OPEBs and Pensions

General:

Leasha Teel:
- Dues and Donations
- Advertising
- Rate Case Expense
- PSC Assessment
- Administrative and General Expense Analysis

Paul R. Harrison:
- Property Taxes
- Tree Trimming
- Power Plant Maintenance
- Year 2000 Normalization and Amortization
- Capitalized Software Expense
- Automated Meter Reading
- Interest on Customer Deposits

John P. Cassidy:
- Accrued Legal Expenses
- Accrued Environmental Expense

Doyle Gibbs:
- Gross Receipts Tax Expense

Depreciation:

Jolie Mathis:
- Depreciation Rates
- Elimination of Net Salvage
- Theoretical Reserve

James D. Schwieterman:
- Adjustment for Net Salvage
- Depreciation Expense Adjustment

Income Taxes:

Stephen M. Rackers:
- Current Income Taxes

Allocations:

James D. Schwieterman:
- Total Cost of Service Allocations

Alan J. Bax:
- Jurisdictional Allocations

20. Commission Rule 4 CSR 240-2.110(5) provides that unless otherwise agreed to by the parties or ordered by the presiding officer, the order of procedure in hearings shall be that the complainant shall open and close. Commission Rule 4 CSR 240-2.070(7) provides that upon the filing of a complaint in compliance with the Commission's rules, the Secretary of the Commission shall serve by certified mail, postage prepaid, a copy of the complaint upon the public utility against which the complaint has been filed, which shall be accompanied by notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice. The Staff proposes the following procedural schedule:

Event	Date
Staff Files Complaint & Direct Testimony & Schedules	7/02/01
Secretary Serves A Copy Of The Complaint Upon UE	
Commission Sets Intervention Period	
UE Answers Complaint & Intervention Period Closes	
UE & Intervenors File Rebuttal Testimony & Schedules	9/18/01
Prehearing Conference	9/24/01 – 9/28/01
Staff Files Surrebuttal Testimony & Schedules and UE and Intervenors File Cross-Surrebuttal	11/13/01
Staff Files List Of Issues & Order Of Issues For Evidentiary Hearing	11/19/01
Parties Submit Statements Of Position	11/26/01
Evidentiary Hearings	12/03/01 – 12/14/01

In regard to the Commission considering the matter of a procedural schedule, the Staff would note that in UE's Emergency Motion To Temporarily Stay Expiration Of The EARP And To Establish A Schedule For Further Proceedings And For Expedited Treatment, UE proposed that on or before August 24, 2001, UE would file in an interim issues proceeding, a list of proposed issues to be addressed, including an explanation of why those issues merit the consideration of the Commission. UE indicated in its June 25, 2001 pleading that its suggested August 24, 2001 filing would be a detailed proposal. Given the August 24, 2001 date proposed by UE for its filing under its June 25, 2001 Emergency Motion, the Staff is recommending that UE's rebuttal filing be ordered to occur on September 18, 2001.

21. UE this date is taking possession in Jefferson City of 5 complete copies of the Staff's filing. The Staff this date is also commencing to provide a copy of its workpapers to UE.

Wherefore, the Staff states that its audit of the books, records and operations of UE as related in the Staff's direct testimony and schedules filed this date, July 2, 2001, shows that the current rates and charges of UE are not just and reasonable, but instead are excessive and should be reduced by Order of the Commission in the range of $213,774,613 to $250,071,725, on an annual basis. As a consequence, the Staff requests that the Secretary of the Commission serve by certified mail, postage prepaid, a copy of the instant complaint upon UE, which shall be accompanied by notice that the matter complained of be satisfied, or that the complaint be answered by UE, within thirty (30) days of the date of the notice, and that the Commission issue an Order setting an intervention period and adopting the procedural schedule proposed above by the Staff.

Respectfully submitted,

DANA K. JOYCE
General Counsel

Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)

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 2nd day of July, 2001.

Service List for
Case No. EC-2002-1
July 2, 2001

James J. Cook
Ameren Services
P.O. Box 66149 (M/C 1310)
St. Louis, MO 63166

Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102