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July 20, 2001

FILED

JUL 20 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Missouri Public
Service Commission

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

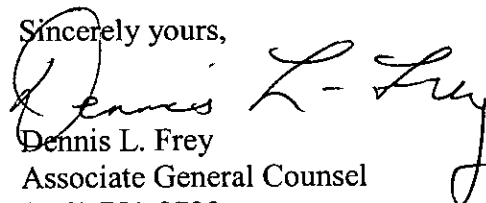
Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S REPLY TO UE'S PROPOSED PROCEDURAL SCHEDULE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,



Dennis L. Frey
Associate General Counsel
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Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

JUL 20 2001

Missouri Public
Service Commission

State of Missouri Public Service Commission,)
)
Complainant,)
)
v.)
)
Union Electric Company, d/b/a AmerenUE,)
)
Respondent.)

Case No. EC-2002-1

STAFF'S REPLY TO UE'S PROPOSED PROCEDURAL SCHEDULE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its Reply to the Response Of Union Electric Company To Staff's Proposed Procedural Schedule, respectfully states as follows:

1. On July 2, 2001, the Staff, pursuant to Sections 386.240 and 386.390 RSMo 2000 and 4 CSR 240-2.070, filed with the Missouri Public Service Commission ("Commission") an Excess Earnings Complaint against Union Electric Company, d/b/a AmerenUE ("UE" or "Company"). The Staff's filing asserted that the Company's excess earnings, based on Staff's return on common equity ("ROE") range of 9.04% to 10.04%, are between \$213,774,613 and \$250,071,725 annually.

2. The Staff's Complaint also included the following proposed procedural schedule:

<u>Event</u>	<u>Date</u>
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

3. On July 10, 2001, UE filed a response in opposition to the Staff's proposed procedural schedule. UE expressed concern that the Staff's proposal does not afford the Company due process of law, allegedly because the schedule fails to allow sufficient time for the development of "a record, fully illuminating all the issues, that is truly conducive to reasoned decision making by the Commission."

4. The Company correctly points out that, given the size of the Staff's proposed rate reduction, this is a major case, and certainly the Commission must exercise great care in the process of reaching its decision. At the same time, however, the size of the case underscores the importance of moving with all deliberate speed to resolve this matter, so as to return UE's rates

to a just and reasonable level. Until then, UE's electric customers in this state will continue to be billed at the unjust and unreasonable rates currently in effect.

5. In its aforementioned July 10 Response, the Company identified, as "a central problem" with Staff's proposed procedural schedule, the fact that it fails to allow enough time for UE to engage in the necessary discovery prior to filing its rebuttal testimony. UE cited some examples in an effort to illustrate the daunting nature of the case filed by the Staff. Among them were the number of Staff witnesses filing testimony (fifteen), the number of adjustments included in Staff's filing (more than 100), and the fact that Staff's filing was accompanied by a two thousand-page depreciation study relating to a proposed \$47,000,000 annual adjustment. According to the Company, the depreciation study will take a great deal of time to review and analyze, and further, UE expects to have its own depreciation study completed and available in January of next year. UE also cited the fact that the Staff produced a "lead-lag" cash working capital study that will require considerable investment in time on the part of UE for analysis, for follow-up discovery, and for the completion of its own lead-lag cash working capital study. In addition, the Company announced its intention to engage in extensive discovery, including "the deposition of each witness appearing against it," under the applicable Missouri Supreme Court rules.

6. In its July 10 Response, the Company proposed the following alternative procedural schedule:

<u>Event</u>	<u>Date</u>
UE Answers Complaint & serves written discovery (interrogatories, requests for production of documents, requests for admission). Intervenors seek intervention.	7/31/01
Intervenors file rebuttal testimony and schedules.	8/17/01
Staff answers written discovery.	8/31/01
UE serves written discovery (interrogatories, requests for production of documents, requests for admission) on Intervenors.	9/7/01
Intervenors answer written discovery .	10/5/01
Depositions of Staff and Intervenor witnesses.	9/17/01-11/16/01
UE files rebuttal testimony and schedules.	12/21/01
Prehearing conference.	1/8/02
Staff files surrebuttal testimony and UE and Intervenors file cross-surrebuttal.	2/16/02
Staff files List Of Issues & Order Of Issues or evidentiary hearing.	2/21/02
Parties submit Statements Of Position.	2/28/02
Evidentiary hearings.	3/12/02-3/23/02

7. Thus, the Company is proposing that the evidentiary hearings commence more than three full months later than they would under Staff's proposal. The Staff proposes to bring the matter to hearing in approximately five months following the filing of its Complaint, while the Company would extend the date of the hearing to almost 8-1/2 months from the date of the filing of the Complaint. The difference in the two proposals essentially is the difference in the

time allotted for the filing of UE's rebuttal testimony. The Staff asserts that the Company's proposed timeline is unacceptably long for the reasons set forth below.

8. Upon reading the Company's Response, one might be left with the impression that UE was "blind-sided" by the July 2 filing of Staff's Complaint, but that is not the case. Instead, the Staff, consistent with its general practice, signaled its intentions, shared information, and engaged in discussions with UE for a considerable period of time prior to making its filing. As was noted in the Staff's Complaint, 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 as the Staff completed additional areas of review. 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 also provided workpapers with each EMS run and made members of the Staff available to answer questions.

Beginning in February of 2001, UE publicly announced that it was engaged in negotiations with the Staff. The Staff provided the aforesaid information to UE to assist the negotiations that were occurring between the Company and the Staff. In addition, on December 26, 2000, in Case No. EM-96-149, the case involving the second Experimental Alternative Regulation Plan ("EARP"), the Company served on the Staff a total of 36 interrogatories (most of which contained multiple sub-parts) as well as requests for admission and a request for production of documents. The Staff responded fully to the UE discovery.

Thus, the Company was quite familiar with Staff's approaches and its positions well in advance of the filing of Staff's Complaint. Certainly UE was sufficiently versed to seek Commission action aimed at forestalling the anticipated Staff filing. In late June of this year, the Company moved (unsuccessfully) for a temporary stay in the expiration of the second EARP in Case No. EM-96-149.

In brief, UE's proposed procedural schedule ignores all of the benefits of prior discovery and the data provided by the Staff prior to the filing of the Staff's Complaint. Accordingly, the suggestion that the Complaint has presented the Company with an unusual and overwhelming burden, one that requires the establishment of an unusually protracted procedural schedule, is incorrect.

9. The Company's Response might suggest that this is the first excess earnings complaint the Staff has ever filed. Of course, it is not. In fact, it is not even the first such complaint filed against UE. The Staff previously filed an excess earnings complaint against the Company in 1987 (Case No. EC-87-114 et al.). In 1988 and 1993, Southwestern Bell Telephone Company was the subject of Staff excess earnings complaints (Case Nos. TC-89-14 et al. and TC-93-224 et al. respectively). In the 1990s, Staff filed two such complaints against St. Joseph Light & Power Company and one against Missouri Public Service, a division of UtiliCorp United, Inc. In the instant case, UE's proposal is not consistent with the Commission's past practice in handling excess earnings complaint cases. By contrast, Staff's proposal much more closely approximates the time frames that have been adopted by the Commission in the past. For purposes of comparison, the attached table shows key dates in the procedural schedules established by the Commission in three previous complaint cases.

In all three cases, the amount of time allowed between Staff's direct filing and the responsive testimony of the utility was less than four months.

Rate design was not heard in Case No. EC-87-14 et al. In Case No. TC-89-14 et al, revenue requirement and rate design, which included TeleFuture 2000, were heard by the Commission in different phases. Telecommunications rate design is not cost based in the manner that rate design is cost based for electrical corporations. Ten days of hearings were scheduled for rate design and TeleFuture 2000 in Case No. TC-89-14 et al. Revenue requirement and rate design were not scheduled in different phases in Case No. TC-93-224 et al., as it was in Case No. TC-89-14 et al.

10. Specifically, with regard to the Company's lament that it has to pore over a 2000-page depreciation study, Staff would note, first of all, that the information provided to the Company is the complete set of workpapers supporting the testimony of the Staff's witness on depreciation, and constitute the basis of the study that she performed. As such, some types of documents included therein will necessarily be of much greater interest to the Company than others, and UE can be expected to quickly focus on those, perhaps to the exclusion of the others. The Staff believes that the key document types, (e.g., original life tables, survivor curve graphs, printouts of calculated annual and accrued depreciation) comprise no more than one-third to perhaps one-half of the total number of workpaper pages. Moreover, as noted in its testimony, the Staff has proposed adjustments to the depreciation rates of only half of UE's property accounts. Thus, of the two thousand pages to which UE refers, probably no more than about 500 of these pages would be of any significant interest to the Company. It should also be remembered that all of the data contained in these workpapers were actually supplied to the Staff by UE. Thus, the Company should be quite familiar with the information on which the Staff's

depreciation study is based and should be able to assimilate the study without the need for an extended time frame.

As further justification for an extended procedural schedule, UE alludes to the need to complete its own depreciation study, which, pursuant to 4 CSR 240-20.030(5)(B)3, the Company expects to file no later than the end of January 2002. The Staff believes that this proceeding should not be delayed in anticipation of the completion of that study. Although the application of the above-noted Commission rule requires the Company to complete a depreciation study by the end of January 2002, UE was not precluded from completing such a study earlier, so that it might have been used in the instant proceeding. (Indeed, the Staff would have used such information.) The Company, however, chose not to do so, while knowing that the Staff was performing a depreciation study for a Staff filing as early as July 2, 2001. At this point, then, the timing of the completion of the UE depreciation study must be regarded as irrelevant. Otherwise, one would be forced to conclude that if, for example, the second EARP had expired on June 30, 2000 instead of June 30, 2001, another whole year would be needed for the Commission to process an excess earnings complaint case because UE is not required to submit a depreciation study before the end of January 2002. Surely, no one would suggest that the timing of the Staff's filing of an excess earnings complaint in which depreciation is an issue should be dictated by the subject utility's legal deadline for submitting its depreciation study.

11. The Company's need to deal with cash working capital lead-lag studies is certainly a task that can be managed within the time frame suggested by the Staff. Such lead-lag studies have been performed by regulated utilities in this state for several decades and, although fairly involved, they nevertheless have become rather routine. Moreover, in the instant case, more than half of the expense lags that were utilized for purposes of the cash working capital

calculation were developed within the context of the Company's recent gas rate increase case (Case No. GR-2000-512). As a result, the workload should be reduced considerably, since UE has had prior knowledge of the many of the details of the Staff's cash working capital lead-lag study for quite some time.

Furthermore, with respect to the number of adjustments the Staff proposes in its Complaint, it should be noted that some of these adjustments were incorporated in the Staff's previous sharing credit calculations and filings in Case No. EM-96-149 for the second EARP and Case No. EO-96-14 for the first EARP. The Company therefore had advance notice of some of the adjustments, and presumably has already considered them and developed its position concerning them.

12. As further evidence of the "complexity and scope" of the Staff's Complaint, UE makes reference in its Response to the fact that the Complaint was accompanied by "hundreds of pages of testimony and accounting schedules." The Staff's filing totaled 436 pages. Again, this is hardly unusual. In the aforementioned recent UE gas rate case (Case No. GR-2000-512), the Staff filed 289 pages of testimony and schedules. The comparable totals for rate cases involving Laclede Gas (Case No. GR-99-315) and Missouri Public Service (Case No. ER-97-394 et al.) were 331 pages and 674 pages respectively. None of these cases required an extended procedural schedule.

13. UE also indicated in its July 10 Response that it intends to engage in extensive discovery. The fact that the Company intends to depose all witnesses against it, however, is hardly unprecedented. In Case No. TC-89-14 et al., an excess earnings complaint case against Southwestern Bell Telephone Company ("SWBT"), a total of twenty Staff witnesses filed direct testimony, and the utility deposed all of them without need of the extended procedural schedule

which UE requests. Again, in Case No. TC-93-224 et al., a second excess earnings complaint case against SWBT, twenty Staff witnesses filed direct testimony. Staff's 1987 excess earnings complaint case against UE (Case No. EC-87-114 et al.) saw a total of 10 Staff witnesses file direct testimony, and the Company deposed most of them.¹

UE shows on its proposed procedural schedule that on July 31, 2001, it will serve the Staff with written discovery in the form of interrogatories, requests for production of documents and/or requests for admissions. However, neither the Commission's rules on discovery nor the Missouri Supreme Court Rules require that UE submit discovery to a party all at once, nor do they prevent UE from submitting on a daily basis any discovery that the Company has prepared. Such continual submission of discovery is normal procedure at the Commission in the case of data requests, and would likewise be appropriate for interrogatories, requests for production of documents and requests for admissions. In fact, the only time that the Staff presents a utility with data requests en masse is when the Staff starts an audit and gives the utility a large quantity of data requests that either are generic to most rate case audits or are patterned on data requests submitted to that same utility in an earlier audit.

14. Clearly UE is enjoying excessive earnings. The final year of the second EARP has now expired and it is anticipated that there will be sharing credits owed to customers for this final period, July 1, 2000 to June 30, 2001. Moreover, the Company acknowledged on February 1, 2001 that a rate reduction is appropriate. "Most obviously, the efficiencies achieved under the EARP suggest that some reasonable rate reduction should be made." (Recommendations Of Union Electric Company Concerning The Continuation Of The EARP, p. 10, filed February 1,

¹ The fact that 15 Staff witnesses filed direct testimony in this case is not at all unusual. Following are the counts of Staff witnesses filing direct testimony in other recent rate cases: ER-97-394 et al. (Missouri Public Service)---21 Staff witnesses; GR-99-315 (Laclede Gas Company)---16 Staff witnesses; GR-2000-512 (UE)---13 Staff witnesses; ER-2001-299 (The Empire District Electric Company)---16 Staff witnesses.

2001 in Case No. EM-96-149). The dispute, then, reduces to the question of the appropriate amount of rate reduction.

15. The procedural schedules adopted in the above-noted excess earnings complaint cases reflect time frames that in the past have afforded due process to all interested parties. The Staff's proposed procedural schedule in the instant case approximates those schedules, while the schedule proposed by UE is unjustly and unreasonably protracted. Although it is certainly understandable that UE would wish to delay the instant proceeding for as long as possible, the Company has failed to present a convincing argument as to why those previously utilized time frames should now be ignored in favor of a much more attenuated schedule. Apparently, UE is requesting excessive due process to complement the excessive earnings the Company is enjoying.

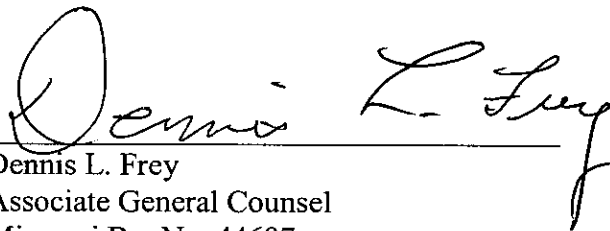
16. In an excess earnings environment, the Commission must, of course, allow sufficient time to permit a fair and thorough hearing of the issues involved, but at the same time, the Commission must be mindful of the need, as quickly as is practicable, to relieve UE's electric ratepayers of the undue burden of unjust and unreasonable rates. Indeed, every day of unnecessary delay in implementing an appropriate rate reduction costs UE's customers up to \$685,000 ($\$250,071,725 / 365$ days). In contrast to UE's proposal, the Staff's proposed procedural schedule recognizes the Company's due process rights and, at the same time, meets the need for expeditious resolution of the question as to how much of a reduction in the Company's rates is appropriate.

WHEREFORE, for the reasons stated, the Staff respectfully requests that the Commission reject the procedural schedule proposed by the Company in its July 10, 2001

Response, and instead adopt the proposed procedural schedule included in the Staff's Excess Earnings Complaint, filed on July 2, 2001.

Respectfully submitted,

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General Counsel



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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 20th day of July 2001.

Dennis L. Frey

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 20, 2001**

CASE NO: EC-2002-1

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Company's Proposal

Union Electric	EC-2002-1	No. of Days
Staff Direct Testimony Filed	7/2/2001	> 46
Intervenor Rebuttal Testimony Filed	8/17/2001	> 126
Company Rebuttal Testimony Filed	12/21/2001	> 57
Staff Surrebuttal Testimony Filed and Intervenors Cross-Surrebuttal Filed	2/16/2002	> 24
Hearing	3/12/2002 to 3/23/2002	

Staff's Proposal

Union Electric		EC-2002-1	No. of Days
Staff Direct Testimony Filed	7/2/2001	>	78
Company & Intervenors Rebuttal Testimony Filed	9/18/2001	>	56
All Surrebuttal and Cross- Surrebuttal Testimony Filed	11/13/2001	>	20
Hearing	12/3/2001 to 12/14/2001		

Union Electric Co.	EC-87-114 et al.	No. of Days
Staff Direct Testimony Filed	4/24/1987	> 98
Company Rebuttal To Staff Direct Testimony Filed	7/31/1987	> 3
Intervenors Direct Testimony Filed	8/3/1987	> 14
Company Rebuttal To Intervenors Direct Testimony Filed	8/17/1987	> 23
Staff, OPC & Intervenors Surrebuttal Testimony Filed	9/9/1987	> 5
Hearing	9/14/1987 to 9/25/1987	

SWBT	TC-89-14, et al.	No. of Days
Staff Filed Direct Testimony - Revenue Requirement	8/12/1988	> 95
Company & Intervenors Filed Rebuttal Testimony - Revenue Requirement	11/15/1988	> 16
Company & Intervenors Filed Surrebuttal Testimony To Each Other's Rebuttal Testimony - Revenue Requirement	12/1/1988	
Staff & OPC Filed Rebuttal Testimony To Each Other's Direct Testimony - Revenue Requirement	12/1/1988	> 36
Staff & OPC Filed Surrebuttal Testimony - Revenue Requirement - for Days January 10-13, 1989 of Hearing	1/5/1989	
Hearing	1/10/1989 to 1/13/1989	> 7
Staff & OPC Filed Surrebuttal Testimony - Revenue Requirement - for Days January 17-31, 1989 of Hearing	1/12/1989	> 5
Hearing	1/17/1989 to 1/31/1989	

SWBT	TC-89-14, et al.	No. of Days
All Parties Filed Direct Testimony - Rate Design	1/6/1989	> 39
All Parties Filed Rebuttal Testimony - Rate Design, TeleFuture 2000	2/14/89	> 45
All Parties Filed Surrebuttal Testimony - Rate Design, TeleFuture 2000	3/31/89	> 3
Hearing - Rate Design, TeleFuture 2000	4/3/89	

SWBT		TC-93-224		No. of Days	
Staff Direct Testimony Filed	1/15/1993			>	108
Company & Intervenors Rebuttal Testimony Filed	5/3/1993			>	42
All Surrebuttal Testimony Filed	6/14/1993			>	28
Hearing	7/12/1993 to 7/23/1993 8/2/1993 to 8/6/1993				