

April 19, 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

APR 19 2001

Missouri Public
Service Commission

Re: MPSC Case No. EM-2001-233

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 Response** in a CONFIDENTIAL version and the original of the PUBLIC version.

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

cc: Ms. Nancy Dippell
Parties on Attached Service List

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED³
APR 19 2001
Missouri Public
Service Commission

In the Matter of the Application of Union)
Electric Company, d/b/a AmerenUE for an Order)
Authorizing the Sale, Transfer and Assignment)
of Certain Assets, Real Estate Leased Property,)
Easements and Contractual Agreements to)
Central Illinois Public Service Company d/b/a)
AmerenCIPS, and, in Connection Therewith,)
Certain Other Related Transactions.)

Case No. EM-2001-233

REPLY TO STAFF RESPONSE

COMES NOW Union Electric Company d/b/a AmerenUE ("the Company" or "UE") and submits this Reply to the Staff Response ("Response") to the Company's March 29, 2001 filing ("Application") requesting leave to dismiss the instant proceeding.

The Company suggests that Staff's Response, unfortunately, provides little assistance to the Commission concerning the matter before it. The Company respectfully asks the Commission to dismiss this matter, as requested in the Company's filing.

In its introductory paragraph, Staff states that the Commission should be provided with more information. However, Staff does not advise the Commission what it should do with the Company's request, itself. Although one could surmise that the Staff's recommendation is that the Commission not grant UE's request until more information is provided, that is not made clear. Rather, Staff proceeds to provide its version of most of the information it apparently believes the Commission should know, and then recommends that the Company be punished by having its market based wholesale rate authority revoked.

In addition to the comments about needing additional information, the Staff makes two recommendations: (1) Staff apparently wants the Company's market based wholesale rate authority revoked; and (2) the Company should explain why it ** _____

_____ ¹** These are the only specific requests in the concluding "Wherefore" paragraph of Staff's response. Neither of these responses has anything to do with whether the Commission should grant the Company's request to dismiss this case.

In between its suggestion that more information is needed, and its request for punishment, the Staff discusses the procedural history of this matter, and seems to suggest that the Company is, or might be, in violation of certain provisions of a Stipulation and Agreement – although that is not clear. Such claims, if that is what Staff is saying, are patently untrue. The Company has acted properly and prudently.

Request for Additional Information

In its opening paragraphs, the Staff states that it believes the Commission should have additional information. These general statements are followed by the following:

** _____

¹ Several portions of Staff's pleading are treated as "Highly Confidential." The Company appreciates the Staff's cooperation in this matter. ** _____

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Therefore, this agreement has absolutely nothing to do with the Company's request to dismiss this case. That RFP process will continue whether the case is dismissed or not.

The Staff then refers to the Company's Supplemental Statement filed in Case No. EM-2000-580, wherein the Company informed the Commission that the Company's transmission facilities have become constrained, and therefore the Company's import capacity for the summer of 2001 is "severely limited." While this information was not included in the request for leave to dismiss the instant case, the Commission was obviously informed of this fact by the Company's Supplemental Statement. Again,

however, the condition of the Company's transmission system for the summer of 2001 has nothing to do with the request to dismiss this transfer of assets case, which was obviously not heading for a decision before the summer of 2001.

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While this information is interesting and relevant to the provision of capacity and energy for UE for the summer of 2001, it is totally irrelevant to the Company's request to dismiss this case. Therefore, this type of information was not included in this Company's request.

In reply to the Staff's request for additional information, the Company suggests that the additional information the Staff apparently wants the Commission to consider has absolutely nothing to do with the Company's request for leave to dismiss this case. The "additional information" Staff refers to only applies to the summer of 2001. **

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Market Based Wholesale Rate Authority

The Staff's first specific request to the Commission, as set out in its concluding "Wherefore" paragraph, is that the Company should be directed to explain why the Commission should not file a complaint with the FERC seeking to revoke UE's wholesale market based rate authority.

The Staff should first be asked to explain why the MPSC should even consider such an unwarranted, punitive action. It is certainly not clear from Staff's pleading what it is that has so enraged them. The first reference to this recommendation follows a discussion of the ** _____ ** and the reference to the Company's Supplemental Statement about capacity constraints on its transmission system. (Staff Response, PP 1, 2) ** _____

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It is also common knowledge that transmission constraints are occurring throughout the United States. Surely, the Staff cannot suggest that the fact that such constraints also exist on UE's system for this summer should result in the revocation of its market based rate authority. Order 888 clearly sets out procedures for a multi-step process to determine transmission availability from any source, and a procedure to handle

the need for transmission upgrades. The revocation Staff seeks is surely not warranted merely because such constraints exist. Staff's suggested punishment is not warranted.

Moreover, Staff's request, if ultimately successful at FERC, would work to the detriment of UE's Missouri retail customers. Market rate authority benefits the Company's Missouri customers through Ameren's actions under the Joint Dispatch Agreement. Revenues from off system sales at market rates are shared between UE and Genco. If the Company's market rate authority were suspended or revoked, the retail ratepayers would lose their share of those revenues.

More to the point here, however, is the fact that Staff concerns have nothing to do with whether the Commission should grant the Company leave to dismiss this case. The Company's decisions about how it will meet this summer's capacity and energy needs are not relevant to the question of whether the Company should be allowed to dismiss its case that asked for the transfer of assets from Union Electric to CIPS.

This "Response" of the Staff should be rejected.²

PUHCA Section 32(k)

Staff's second "Response" is that the Company should file "support for its contention that **

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² The Company has not attempted herein to address all of the reasons why it is totally inappropriate for the FERC to revoke the Company's market based rate authority. Nor has the Company addressed all of the reasons why it is inappropriate for the Commission to even file such a complaint with the FERC. Those reasons will be provided if the Commission were to grant Staff's request to have the Company explain why the Commission should not file such a complaint.

Staff is very clear in its preference for what the law should be:

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Again, however, this point has nothing to do with whether the Commission should grant the Company leave to dismiss this case. How the Company provides for the capacity and energy for its customers this summer is not an issue in a case that is currently not even scheduled to be decided until the end of the year.

Staff allegations of Company violations of regulations and stipulations

In its initial, October 30, 2000, response to the Company's original filing seeking authority to transfer assets, the Staff alleged that the Company's filing, (1) violated Commission precedent and Missouri laws by asking for ratemaking determination outside the context of a rate proceeding; and (2) violated the Stipulation in Case No. EM-96-149. It was also described as "unconventional," for a variety of reasons, in several places in that pleading. Now, the Company is asking to dismiss the case. Obviously, dismissing the case avoids all of the concerns Staff raised in their original response. Yet Staff now finds more problems where none exist.

Paragraph 16 of Staff's response includes several sections from the Stipulation and Agreement in the Genco case (No. EA-2000-37) with the introductory remark that "Various conditions agreed to by UE in the Unanimous Stipulation and Agreement which are **relevant to the likely consequences of the instant proceeding** are as follows: ..." (emphasis added) The Company feels obliged to go through each of those quoted sections and assure the Commission that the Company has not violated those sections, and that the granting of the Company's request to dismiss this case will not cause them to be violated.

Resource Planning Conditions (b) - This first section requires that the Company provide equal information to all bidders for future power supplies. Again, this has nothing to do with whether this case should be dismissed. However, the Staff and OPC were active participants in the development of the RFPs that were sent out for this summer, and all such rules were observed. The Company intends to continue to observe this requirement in the future.

Resource Planning Conditions (f) - This section assures the Commission that the Company will not claim that the Staff or OPC have waived their rights to object to the costs associated with the purchase of power resulting from an RFP that Staff or OPC reviewed, merely because they reviewed it. The Company has not suggested in any forum that this section is not still in force. The Company assumes that the Staff or OPC can contest "the ratemaking treatment to be afforded the purchase of capacity" as described in this stipulation.

Regulatory Conditions in Case No. EM-96-149 - This section restates conditions originally agreed to in the Company's merger case. It included three sections under the title, "State Jurisdictional Issues." The first section (e) addresses "Electric Contracts Required to be Filed with the FERC." It states that if a contract is filed with and approved by the FERC, the Company cannot later seek to overturn a MPSC order which pertains to "recovery, disallowance, deferral or ratemaking treatment of any expense, charge ... incurred or accrued by UE ... on the basis that such expense ..." was approved by the FERC. Obviously, this has not occurred here.

The second section, (g) indicates that the MPSC will not pre-approve contracts that are filed with the SEC or FERC, but is free to make its own ratemaking determinations later. This has also not occurred here.

The third section, (h) states that if somehow, even without UE's effort, a court invalidates a decision of the MPSC, because FERC has decided the issue, then another process, known as Attachment D goes into effect. This has also not happened here.

Additional Conditions - Two sections are set out here. The first, (b) states that even after the Commission enters an order containing the findings required by PUHCA,

the Company will not hold the MPSC to those findings in a later case, concerning ratemaking treatment of related matters. The second section, (c) sets forth the Company's agreement that it will not seek to overturn an MPSC order based on the fact that the FERC had already approved a charge, or based on the fact that the MPSC has made certain findings that allowed the formation of the Genco. Again, no such actions have been attempted by the Company.

None of these sections are relevant to the instant request by the Company. The Company's plans for the future, including the summer of 2001 will, perhaps result in various agreements being reviewed by this and other regulatory authorities. These quoted sections, which the Company continues to abide by, should comfort the Commission that it still retains much authority over Union Electric. The Commission should not be threatened by the Staff with what Staff darkly calls "likely consequences of the instant proceeding."

CONCLUSION

Staff's Response is troubling. It provides little useful guidance to the Commission. It expresses the Staff's frustration over the fact that other regulatory bodies may have jurisdiction over parts of the Company's business. It suggests that it has a different interpretation of a federal statute. But it provides no direction to the Commission concerning whether it should dismiss this case.

Had not the Company submitted testimony with its initial filing, it could have dismissed this case without leave from the Commission. The rule requiring Commission leave after testimony is filed is obviously to prevent abuse of the Commission's time and effort. It would not be appropriate to allow parties to lightly file cases and later dismiss

them, with no concern about the effort the Commission and other parties have incurred in response to the filing.

Here, the Company filed its case in good faith. It fully informed the Commission, the Staff and all parties, that it needed quick action. The Staff was unable to respond, to the extent it thought appropriate, in the time requested. Time passed. Markets changed. The Company had to make decisions. The facts facing the Company changed, and so its plans had to change. What would have been a good deal for the Company and its customers, had it been approved quickly, could not be approved quickly, and was lost. Conditions change and another plan needed to be developed. That plan does not call for the transfer of assets that had been contemplated last year. Therefore, the Company has asked that its filing be dismissed.

To the extent that the new plans for the Company's capacity and energy needs require the approval of the SEC, FERC, MPSC, ICC or any other body, the Company will make all appropriate filings. The Company continues to meet regularly with the Staff and OPC about capacity planning issues. The Staff and OPC are kept fully up to date. Since the MPSC prefers not to approve Company plans and agreements in advance, they are generally not filed with the Commission, unless otherwise required.

The MPSC retains the ratemaking approval it has carefully guarded in its recent orders and approvals of stipulations, and so it will continue to have that authority. The Staff and the Company may occasionally disagree on the interpretation of a regulation, law or stipulation condition. The Company commits to continue to work informally with the Staff in an attempt to resolve such issues as quickly and fairly as possible. If they cannot be resolved informally, other procedures may follow.

However, none of the concerns that the Staff has raised in its Response is relevant to the question of whether this case should be dismissed.

This case should be dismissed, forthwith.

Dated April 19, 2001

Respectfully submitted,
Union Electric Company
d/b/a AmerenUE

By: _____
James J. Cook, MBE #22697
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
P. O. Box 66149 (MC1310)
St. Louis, MO 63166-6149
314-554-2237
314-554-4014 (fax)
jjcook@ameren.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the following parties of record via U.S. First-Class Mail on this 19th day of April, 2001:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

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

Diana M. Vuylsteke
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

Robert C. Johnson
Attorney at Law
720 Olive Street, Suite 2400
St. Louis, MO 63101

Robin E. Fulton
Schnapp, Fulton, Fall, McNamara & Silvey
135 E. Main Street
P.O. Box 151
Fredericktown, MO 63645

James J. Cook / sh
James J. Cook