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Witness: Mark L. Oligschlaeger
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

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REBUTTAL TESTIMONY

Missouri Public
Service Commission

OF

MARK L. OLIGSCHLAEGER

OZARK TELEPHONE COMPANY

CASE NO. TT-2001-117

Jefferson City, Missouri
November, 2000

REBUTTAL TESTIMONY
OF
MARK L. OLIGSCHLAEGER
OZARK TELEPHONE COMPANY
CASE NO. TT-2001-117

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Jefferson City, Missouri 65102.

Q. Please describe your educational background and work experience.

A. I attended Rockhurst College in Kansas City, Missouri, and received a Bachelor of Science degree in Business Administration with a major in Accounting in 1981. I have been employed by the Missouri Public Service Commission (Commission) since September 1981 with the Accounting Department. In November 1981, I passed the Uniform Certified Public Accountant (CPA) examination and, since February 1989, have been licensed in the state of Missouri as a CPA.

Q. Have you previously filed testimony before this Commission?

A. Yes. A listing of the cases in which I have previously filed testimony before this Commission is given in Schedule 1, which is attached to this rebuttal testimony.

Q. With reference to Case No. TT-20001-117, have you examined the books and records of Ozark Telephone Company (Ozark or Company)?

A. Yes, with the assistance of other members of the Commission Staff (Staff).

1 Q. What is the purpose of your rebuttal testimony?

2 A. The purpose of my rebuttal testimony is to present the Staff's
3 recommendations concerning Ozark's tariff filing which requests that the "interim and
4 subject to refund" provision which currently exists with regard to the Company's
5 originating and terminating Carrier Common Line (CCL) rates be eliminated, with the
6 result that the rates become permanent. This request is presented within the direct
7 testimony that Ozark witness Robert C. Schoonmaker filed earlier in this proceeding.

8 Q. Please provide a brief history of the events leading up to the Company's
9 tariff filing in this proceeding.

10 A. In June 1999, the Commission implemented intraLATA dialing parity for
11 telephone companies operating within its jurisdiction, as reflected in 31 Reports and
12 Orders issued on that date. Simultaneously, the Commission terminated the Primary Toll
13 Carrier (PTC) Plan then in effect, in its Report and Order in Case No. TO-99-254. At
14 that time, the Commission gave Ozark and other affected telephone companies the option
15 of filing revisions to their access rates in order to maintain "revenue neutrality" after
16 termination of the PTC plan. Ozark undertook this option, and filed revised intrastate
17 CCL rates to recover the revenue shortfall it expected to experience as a result of
18 termination of the PTC Plan. The purpose of the Company's filing in this proceeding is
19 to make the portion of the intrastate CCL rate that is "interim and subject to refund"
20 permanent, on the claimed basis that the interim rate is not excessive and has not resulted
21 in Ozark's over recovering in rates the actual revenue loss associated with the termination
22 of the PTC Plan.

1 Q. Before you begin discussing the Staff's recommendations in this case,
2 please define the term "revenue neutrality."

3 A. As the term is used in this testimony, "revenue neutrality" refers to the
4 concept by which the Commission, when it takes an action that changes the nature and
5 quantity of gross revenues that a telephone company receives through normal operation
6 of its business, authorizes the company to change its rate structure so that the company's
7 gross revenues after the regulatory change are equal to its gross revenues before the
8 regulatory change. As an example, some telephone utilities asserted that termination of
9 the PTC Plan would result in a decrease in their overall revenue levels, all else being
10 equal. As a consequence, these utilities argued that the Commission should allow them
11 to increase their rates so as to allow the companies the opportunity to maintain the same
12 overall revenue levels after termination of the PTC Plan as before.

13 Q. Did the Commission allow telephone utilities the option to charge interim
14 rates, subject to refund, to allow them the opportunity to maintain revenue neutrality after
15 termination of the PTC Plan?

16 A. Yes. That opportunity was afforded to Ozark and other telephone utilities
17 in the Report and Order in Case No. TO-99-254.

18 Q. In this testimony, is the Staff agreeing with the contention that the
19 Commission has a legal obligation to allow telephone utilities revenue neutrality in
20 circumstances such as the elimination of the PTC Plan?

21 A. No. That is a legal determination for which I am not expressing an
22 opinion in this testimony.

1 Q. On what basis should the Commission the Commission decide whether to
2 order that all or a part of the interim CCL rate collections received by the Company since
3 the interim rate was made effective be refunded to customers?

4 A. Any refund ordered by the Commission in this proceeding should be based
5 on a determination of whether implementation of the interim CCL rate has allowed Ozark
6 to earn a rate of return that exceeded just and reasonable levels.

7 Q. Why is Ozark's overall earnings level relevant to this tariff filing?

8 A. If Ozark does not need to retain the interim CCL rate to earn a reasonable
9 rate of return, then the Company's request to make the interim rate permanent should be
10 rejected by the Commission. Otherwise, keeping the interim rate in place would result in
11 ongoing excessive earnings for the Company. Furthermore, if Ozark did not require the
12 interim CCL rate in the first place in order to earn a reasonable rate of return, then any
13 monies collected by Ozark as a result of implementation of the interim rate should be
14 refunded to its customers, with interest.

15 Q. What is the proper means for the Commission to determine whether Ozark
16 is currently earning a reasonable rate of return, without considering the interim CCL
17 charge?

18 A. A determination of whether Ozark is currently earning a reasonable rate of
19 return is appropriately made in the context of a general rate proceeding, in which all
20 relevant factors affecting revenue requirement are considered by all parties to the
21 proceeding and by the Commission.

1 Q. Please explain the relationship between the interim CCL rate,
2 implemented in order to allow telephone utilities to maintain revenue neutrality, and the
3 need for a general rate proceeding.

4 A. The traditional regulatory practice in Missouri and other jurisdictions has
5 been to allow utilities an opportunity to earn a reasonable profit, but not to guarantee that
6 the company will receive a particular level of revenues to be received in rates unless it is
7 required by statute or by judicial determination. Therefore, the Staff believes that
8 revenue neutrality is not required under any circumstances if revenue neutrality is not
9 necessary to allow a utility to continue to earn a reasonable rate of return. For example,
10 if a utility is experiencing a level of over earnings sufficient to cover whatever revenue
11 loss it may experience from termination of the PTC Plan, there is no just or reasonable
12 rationale to allow that utility to increase rates for revenue neutrality purposes. For this
13 reason, utilities should not be allowed to increase rates to maintain revenue neutrality
14 unless the rate increase is done in conjunction with a review of all relevant factors in a
15 rate proceeding. If for administrative reasons, such a review cannot be done prior to
16 implementation of the rate increase that was allegedly justified by revenue neutrality,
17 then the rate increase should be made interim, and subject to refund with interest if a later
18 general rate case review indicates the increased charge was not justified by the utility's
19 overall earnings level. The latter situation was exactly the course of action followed by
20 the Commission when it ordered elimination of the PTC Plan.

21 Further, my legal counsel has advised me that there is case law that the granting
22 of an interim rate change by the Commission must be ancillary to a permanent rate
23 proceeding for the utility in question to be lawful.

1 Q. Has the Commission previously agreed with the Staff's position
2 concerning the relationship between revenue neutrality charges and general rate
3 proceedings?

4 A. Yes. In fact, in its Order in Case No. TO-99-254, et al., the Commission
5 specifically conditioned the interim increases in CCL rates upon an obligation by those
6 utilities maintaining rates and rate levels in that manner to file a general rate case within
7 eight to ten months after the interim rates going into effect. The Commission specifically
8 stated the following:

9 ...each LEC that requests revenue neutrality will file a
10 general rate case as specified in the Report and Order
11 approving its Report and Order once it has operated for a
12 period of time after termination of the PTC Plan. In this
13 rate case, all relevant factors and the LEC's entire rate
14 design will be examined. Report and Order, p. 17, (Case
15 No. TO-99-254)

16
17 In its Order Regarding Rehearing in Case No. TO-99-524, which concerned Alma
18 Telephone Company's Toll Dialing Parity Implementation Plan, the Commission further
19 explained the relationship between setting of any rates designed to achieve revenue
20 neutrality and a subsequent general rate proceeding:

21 The LECs that file rate increases to implement revenue
22 neutrality should rightly bear the burden of proof to show
23 that such increases are necessary. Because of the time
24 strictures placed upon the Commission by the FCC, there is
25 simply not time to examine all relevant factors to determine
26 whether the increase is warranted before implementing
27 IntraLATA Dialing Parity (ILDPA) and eliminating the
28 Primary Toll Carrier (PTC) plan. Thus the Commission is
29 allowing LECs to raise rates, if they choose, but only if
30 they are willing to prove that the increase was necessary in
31 a subsequent rate case. The time constraint does not mean
32 that the burden of proof should shift away from the LEC
33 that is raising its rates, it simply means that the proof
34 necessarily comes after the surcharge is implemented on a

1 subject to refund basis. If the LEC is unable to prove that
2 the increase was necessary, it will be required to refund it.
3 (Order Regarding Rehearing, p. 2, Case No. TO-99-524)
4

5 Q. Has Ozark met the condition set by the Commission of filing a general
6 rate case within eight to ten months after it implemented an interim subject to refund rate
7 for revenue neutrality?

8 A. No. Ozark did not file sufficient information concerning all relevant
9 factors pertaining to its overall earnings levels as part of this tariff filing. The
10 information provided by the Company does not provide a reasonable basis for the
11 Commission to make a determination of whether Ozark's current earned rate of return is
12 adequate or not.

13 Q. What kind of information is necessary to properly assess a utility's
14 earnings level?

15 A. To make that assessment, the Commission would need information from
16 the utility concerning its current cost of capital, and whether its current revenue levels are
17 sufficient to allow it to recover its reasonable and prudent level of expenses and earn that
18 current cost of capital. Evidence concerning the appropriate assumed lives of plant
19 assets, and whether depreciation rates should be changed to match current reasonably
20 expected life assumptions for the assets, would normally be considered. The actual
21 revenue and expense totals incurred by a utility within the test year ordered by the
22 Commission should be adjusted as appropriate to both normalize and annualize the
23 amounts, so that the ratemaking process is forward-looking and prospective in nature.

24 Ozark did not provide information in its testimony, supporting schedules, or in the
25 supporting workpapers that it provided in data request responses, concerning an estimate

1 of its current cost of capital. Nor did Ozark propose an entire set of appropriate
2 annualization or normalization adjustments to its actual historic revenue and expense
3 levels in this tariff filing. No evidence was filed respecting appropriate depreciation rates
4 for Ozark's regulated assets. The data provided by Ozark in this application in response
5 to the Commission's previous directive to file a general rate proceeding is very deficient
6 in terms of both quality and quantity in comparison to that normally filed by regulated
7 utilities seeking a general change in rates.

8 Q. Has Ozark admitted that its tariff filing in this proceeding does not
9 constitute a general rate proceeding?

10 A. Yes. In a letter to Mr. Dale Hardy Roberts, Secretary/Chief Regulatory
11 Law Judge for the Commission from Mr. Brian McCartney, counsel for Ozark in this
12 proceeding, dated October 31, 2000, and which is contained in the Commission's case
13 file for Case No. TT-2001-117, Mr. McCartney attached a letter from Mr. W. R. England,
14 III, also counsel to Ozark, to Mr. Keith Krueger of the Commission's General Counsel
15 Office, concerning certain objections to Staff data requests issued to Ozark in this
16 proceeding. In that letter, Mr. England stated the following:

17 Finally, as you know, the Company does not believe that the tariff
18 filing that initiated this case constitutes a "rate increase" request
19 inasmuch as the Company did not file for "an overall increase in
20 revenues through a company-wide increase in rates.
21 4 CSR 240-10.070(2). Accordingly, by responding to these data
22 requests, I want to make clear that the Company has not implicitly
23 agreed or admitted that it is seeking a rate increase in this
24 proceeding.
25
26

27 Q. Since, in the Staff's opinion, the Company has failed to comply with the
28 Commission's condition concerning filing of a general rate proceeding after setting its

1 rates to achieve revenue neutrality on an interim, subject to refund basis, would the
2 Commission, in the Staff's opinion, be justified in rejecting Ozark's requests in this tariff
3 filing?

4 A. Yes. The Commission would be justified on this basis alone to reject the
5 current Ozark tariff filing, order the elimination of Ozark's interim rate, as well as order
6 all monies paid in by the Company's customers per the interim surcharge to be refunded
7 with interest.

8 Q. If the Commission chooses not to follow that course of action, how should
9 the Commission otherwise proceed with its review of Ozark's interim CCL tariff filing?

10 A. The Staff recommends that the Commission utilize the results of an
11 earnings review of Ozark that is being conducted by the Staff in conjunction with and in
12 relation to this CCL tariff filing. This earnings review is being performed for three
13 purposes: 1) to make a recommendation as to whether all or a portion of Ozark's interim
14 CCL rate collections should be refunded with interest to its customers; 2) to make a
15 recommendation to the Commission as to whether the Company's interim CCL rate
16 should be made permanent; and 3) to make a recommendation as to whether Ozark's
17 rates should be reduced on a permanent basis due to over earnings.

18 Q. What Staff witness is addressing in testimony Ozark's current revenue
19 requirement?

20 A. Staff Accounting witness Roy M. Boltz discusses the Staff's overall
21 revenue requirement findings for Ozark in his rebuttal testimony.

22 Q. What findings has the Staff made regarding Ozark's current earnings
23 level?

1 A. As discussed in the testimony of Staff witness Boltz, the Staff believes
2 Ozark's current earnings level, including the impact of interim CCL rate collections, is
3 excessive. However, this finding is preliminary, as to the level of over earnings being
4 experienced, as the Staff believes it is appropriate to perform further audit steps in
5 developing a comprehensive and complete earnings review of Ozark. Accordingly, the
6 Staff is proposing that the Commission not act immediately on Ozark's request that its
7 current interim, subject to refund rate be made permanent, and that the CCL rate continue
8 to be collected in an interim, subject to refund fashion until further information on the
9 level of Ozark's overall earnings is available.

10 Q. Since the evidence contained in Staff witness Boltz's testimony indicates
11 that Ozark is currently over earning, what are the Staff's intentions?

12 A. The Staff intends to complete its investigation of Ozark's revenue
13 requirement, including affiliated transactions, and to incorporate the results in an earnings
14 complaint, once the level of over earnings is better determined by the completed audit.
15 The results as a complaint case will be filed no later than January 31, 2001. The Staff
16 also intends to enter into discussions with Ozark concerning its current earnings, and to
17 explore the possibility of entering into a stipulation and agreement with the Company to
18 resolve any questions or issues concerning its over earnings and possible rate changes
19 and the disposition of the current interim rate and refund matters. In any event, whether
20 through a filed earnings complaint case, stipulation and agreement or some other means,
21 the Staff's intends to inform the Commission of its findings concerning a completed
22 earnings audit of Ozark by January 31, 2001. Again, this filing will contain, as
23 appropriate, further recommendations concerning disposition of Ozark's current interim

1 CCL rate and any necessary refunds to customers of interim rate collections. The timing
2 of this filing will allow the Commission to take further action as necessary before the
3 effective date of the tariff filed by Ozark in this case, February 28, 2001.

4 Q. Mr. Schoonmaker's direct testimony indicates that the Company asserts
5 that any refund of charges collected on an interim, subject to refund basis should be made
6 based strictly on a comparison of actual revenue losses associated with the elimination of
7 the PTC Plan to the interim rate collections. Please comment.

8 A. Ozark's position on a possible refund of the interim CCL charge
9 collections is contrary to the intent of the Commission as clearly expressed in earlier
10 orders. However, if the Commission for any reason accepts the Company's position
11 regarding a refund of the interim CCL charges, the rebuttal testimony of Staff witness
12 William A. Meyer, Jr. presents the Staff's findings as to an appropriate reconciliation
13 between the interim rate collections and Ozark's revenue loss associated with termination
14 of the PTC Plan.

15 Q. Please summarize the Staff's recommendations in this case.

16 A. The Staff believes that Ozark's failure to meet the Commission's stated
17 condition of filing a general rate proceeding within eight to ten months after
18 implementing an interim, subject to refund revenue neutrality rate has caused Ozark to be
19 unable to prove its case for a permanent CCL tariff. As a consequence, the Commission
20 could reject Ozark's filed tariff, eliminate the interim subject to refund CCL charge, and
21 order all interim CCL surcharge collections to be refunded to customers with interest.

22 If the Commission chooses not to adopt this approach, the Staff proposes that the
23 Commission not act at this time to make the Company's current CCL interim, subject to

1 refund rates permanent, until additional information is available concerning Ozark's
2 earnings level. The Staff will file with the Commission a report on the Company's
3 current earnings level on or before January 31, 2001, in conjunction with an earnings
4 complaint, stipulation and agreement, or some other notice, which will contain
5 recommendations on disposition of the current interim CCL rate and a possible refund of
6 interim rate collections to customers. The option outlined in this paragraph is the Staff's
7 suggested course of action for the Commission to take in this proceeding.

8 In the event the Commission chooses not to wait for the Staff's excess earnings
9 complaint case filing before making a determination of the final disposition of Ozark's
10 interim, subject to refund CCL tariff, the failure of Ozark to prove its case for its
11 proposed interim tariff and the information contained within the rebuttal testimony of
12 Staff witness Boltz concerning the magnitude of the Company's current excess earnings
13 would justify rejection of the permanent CCL tariff, elimination of the interim, subject to
14 refund CCL charge, and refund of all interim CCL surcharges collected by Ozark.

15 Finally, Ozark has the option of filing a general rate increase case. Even if Ozark
16 were to do this immediately, the Staff intends to file an excess earnings complaint case on
17 or before January 31, 2001.

18 Q. Does this conclude your rebuttal testimony?

19 A. Yes, it does.

D SUZIE MANKIN
NOTARY PUBLIC STATE OF MISSOURI
COLE COUNTY
MY COMMISSION EXP. JUNE 21, 2004

MARK L. OLIGSCHLAEGER

<u>COMPANY</u>	<u>CASE NO.</u>
Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14
Western Resources, Inc.	GR-90-40 & GR-91-149
Missouri-American Water Company	WR-91-211
UtiliCorp United Inc. / Missouri Public Service	EO-91-358 & EO-91-360
Generic: Expanded Calling Scopes	TO-92-306
Generic: Energy Policy Act of 1992	EO-93-218
Western Resources, Inc./Southern Union Company	GM-94-40
St. Louis County Water Company	WR-95-145
Union Electric Company	EM-96-149
St. Louis County Water Company	WR-96-263
Missouri Gas Energy	GR-96-285
The Empire District Electric Company	ER-97-82
UtiliCorp United, Inc./Missouri Public Service	ER-97-394
Western Resources, Inc./Kansas City Power & Light Company	EM-97-515
United Water Missouri, Inc.	WA-98-187

MARK L. OLIGSCHLAEGER

<u>COMPANY</u>	<u>CASE NO.</u>
Missouri-American Water Company	WM-2000-222
UtiliCorp United Inc. / St. Joseph Light & Power Company	EM-2000-292
UtiliCorp United Inc. / The Empire District Electric Company	EM-2000-369