

Exhibit No.:
Issues: Interim Rates
Witness: Warner L. Baxter
Sponsoring Party: Union Electric Company
Type of Exhibit: Rebuttal Testimony
Case No.: ER-2010-0036
Date Testimony Prepared: November 17, 2009

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. ER-2010-0036

REBUTTAL TESTIMONY ON INTERIM RATES

OF

WARNER L. BAXTER

ON

BEHALF OF

**UNION ELECTRIC COMPANY
d/b/a AmerenUE**

**St. Louis, Missouri
November, 2009**

1 **REBUTTAL TESTIMONY ON INTERIM RATES**

2 **OF**

3 **WARNER L. BAXTER**

4 **CASE NO. ER-2010-0036**

5 **Q. Please state your name and business address.**

6 A. My name is Warner L. Baxter. My business address is 1901 Chouteau
7 Avenue, Saint Louis, Missouri 63103.

8 **Q. Are you the same Warner L. Baxter who filed direct testimony in this**
9 **case on July 24, 2009 and also filed direct testimony on interim rates on October 20,**
10 **2009?**

11 A. Yes, I am.

12 **Q. What is the purpose of your rebuttal testimony on interim rates?**

13 A. The purpose of my rebuttal testimony is to respond to portions of Missouri
14 Industrial Energy Consumers (“MIEC”) witness Michael Gorman’s direct testimony on
15 interim rates, which was filed on November 3, 2009. In particular, Mr. Gorman
16 mischaracterizes the Company’s position, and my direct testimony, on regulatory lag, and
17 mischaracterizes our objective in seeking interim rates. Moreover, Mr. Gorman’s
18 testimony on the Company’s interim rate request simply fails to consider the legitimate
19 interests of Company shareholders, and the related policy considerations associated with
20 the disincentive to invest created by the excessive regulatory lag being experienced at
21 AmerenUE.

22 **Q. In what respect does Mr. Gorman mischaracterize the Company’s**
23 **position concerning regulatory lag and its objective in seeking interim rates?**

1 A. Mr. Gorman erroneously states that the Company's interim rate request is
2 an attempt to "eliminate" regulatory lag. (Gorman Interim Rates Direct, p. 11, lines 3-5).

3 In fact, our interim rate request would not eliminate, or even come close to
4 eliminating, regulatory lag. Our interim rate request only addresses a portion of the
5 revenue requirement increase at issue in this case – less than 10 percent of it. Even if the
6 interim rate request were granted, there would remain substantial regulatory lag
7 associated with other elements of the revenue requirement, including revenue
8 requirement components other than plant-in-service, and plant placed in service after
9 May 31, 2009. Moreover, even for the portion of the revenue requirement that is covered
10 by the interim rate request – the revenue requirement increase associated with the
11 increase in net rate base from September 30, 2008 to May 31, 2009 – very substantial
12 regulatory lag would remain given that interim rates are still not in effect, and given that
13 it would appear interim rates could not take effect until perhaps January 1, 2010.¹
14 Assuming interim rates do take effect on January 1, 2010, they would still likely cover at
15 most roughly 5/12 of the annual revenue requirement associated with the plant placed in
16 service through May 2009, or just roughly 5/12 of the \$37.3 million annual interim rate
17 request that we have made. This would hardly "eliminate" regulatory lag, but authorizing
18 interim rates would still be an important step on the Commission's part to begin
19 addressing the chronic problems that excessive regulatory lag create.

20 **Q. Why does Mr. Gorman's testimony mischaracterize your testimony on**
21 **regulatory lag?**

¹ As Mr. Weiss explained in his direct testimony on interim rates, tens of millions of dollars of costs associated with plant placed in service between October 1, 2008 and September 30, 2009 will still be lost, even if interim rates are allowed, plus there will be more losses associated with plant placed in service from October 1, 2009 through the time rates to be set in this case take effect, which may be as late as June 2010.

1 A. Mr. Gorman did not articulate my views on regulatory lag in their entirety. In
2 fact, he ignored some of my key points. In his testimony, Mr. Gorman states
3 “[r]egulatory lag works both for and against shareholders/customers, depending on the
4 cycle the utility is in in its construction program. Mr. Baxter acknowledges this reality.”
5 (Gorman Interim Rates Direct, p. 2, lines 19-21). What I stated in my direct testimony on
6 interim rates was that “some level of regulatory lag can be a good thing for customers and
7 utilities, but it is also true that excessive regulatory lag creates significant financial
8 challenges for utilities and creates a strong disincentive to make discretionary
9 investments due to the rising cost environment and significant investment cycle in which
10 we are operating.” (Baxter Interim Rates Direct, p. 8, lines 11-15). My testimony was
11 clear that we are experiencing *excessive* regulatory lag in Missouri. In particular, I stated
12 “regulatory lag of the magnitude we are experiencing in Missouri is excessive and not in
13 the best long-term interest of all of our stakeholders . . .” (Baxter Interim Rates Direct, p.
14 8, line 21 to p. 9, line 1).

15 Further, my testimony was clear on where we are in the construction cycle.
16 Specifically, I stated that “I do not see a period in the foreseeable future wherein
17 investment levels would be such that we experience a decline in net rate base. To the
18 contrary, all signs point to higher levels of costs and investment requirements in the
19 future based on existing federal and state policies and economic conditions.” (Baxter
20 Interim Rates Direct, p. 12, lines 5-10). Finally, I stated that Missouri’s existing
21 regulatory framework and the resulting regulatory lag creates strong disincentives for any
22 utility to pursue new investments to meet increasing customer expectations or strongly
23 support state and federal policies and initiatives, including the need to fuel the state’s

1 economy and create jobs. Therefore, when considering the impact of excessive regulatory
2 lag in Missouri, these points simply cannot be ignored.

3 **Q. You also noted above that Mr. Gorman’s testimony fails to consider**
4 **the legitimate interests of Company shareholders. Please elaborate.**

5 A. Mr. Gorman focuses on financial ratios that impact credit metrics (see, in
6 particular, pages 9 to 10 of Mr. Gorman’s testimony) and essentially argues that if a
7 utility can access capital, interim rates should not be considered. As I indicated in my
8 direct testimony, while I am not an attorney, I have been engaged in the regulated utility
9 industry and have dealt with public utility regulation long enough to understand the very
10 basic point that public utility commissions, including this one, have an obligation to fairly
11 consider the interests of utility shareholders who, after all, provide a critical component
12 of the capital that every utility needs to provide service. I am also advised by counsel,
13 (and I do not believe this is a controversial point) that a utility has a constitutional right to
14 be awarded rates that provide it with a reasonable opportunity to earn a fair return on
15 equity. Consequently, the issue is not just whether the Company’s “access to capital
16 remain[s] fairly strong,” (Gorman Interim Rates Direct p. 10, line 8) but also, are
17 legitimate shareholder interests being properly taken into account? Where the regulatory
18 framework prevents a utility from having a reasonable opportunity to earn a fair return,
19 the commission should take steps to address this issue.

20 **Q. Does this conclude your rebuttal testimony on interim rates?**

21 A. Yes, it does.

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

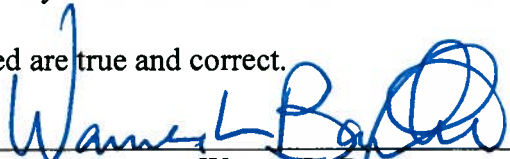
In the Matter of Union Electric Company)	Case No. ER-2010-0036
d/b/a AmerenUE's Tariffs to Increase its)	Tracking No. YE-2010-0054
Annual Revenues for Electric Service.)	Tracking No. YE-2010-0055

AFFIDAVIT OF WARNER L. BAXTER

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

Warner L. Baxter, being first duly sworn on his oath, states:

1. My name is Warner L. Baxter. I am employed by Union Electric Company d/b/a AmerenUE as President and Chief Executive Officer.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on Interim Rates on behalf of AmerenUE, consisting of 4 pages, which has been prepared in written form for introduction into evidence in the above-referenced docket.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.



Warner L. Baxter

Subscribed and sworn to before me this 17th day of November, 2009.



Notary Public

My commission expires: 7/29/2011

