

July 5, 2002

VIA E-MAIL & FEDERAL EXPRESS



Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101

Re: MPSC Case No. EC-2002-1

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 **Union Electric Company's Response To Staff's Motion For Determination Of Procedure For Opening Statements And Motion For Expedited Treatment.**

It is respectfully requested that the Commission render a decision immediately so that the Company may properly prepare for the proceedings.

Very truly yours,

A handwritten signature in black ink, appearing to read "JJC", is written over the typed name of James J. Cook.

James J. Cook
Managing Associate General Counsel

JJC/www

Enclosures

16163

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

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

**UNION ELECTRIC COMPANY’S RESPONSE TO STAFF’S MOTION FOR
DETERMINATION OF PROCEDURE FOR OPENING STATEMENTS AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW Union Electric Company, d/b/a AmerenUE (“the Company” or “UE”) and in response to the Staff’s Motion for Determination of Procedure for Opening Statements, states as follows:

1. The Company strongly objects to the Staff’s request to restrict the Company’s right to present its case to the Commission in a totally proper and appropriate manner.
2. The Staff cites no rule, and the Company can find none that precludes the Respondent in a case from making its opening statement to the Commission at the opening of its case. Indeed, the practice in civil and criminal trials is that the respondent or defendant may “reserve” his or her opening until the close of the plaintiff’s case and the opening of the respondent’s case. There is a practical logic – particularly for the court, or, as in this case, the Commission – in hearing a party’s opening immediately before that party’s witnesses testify. After all, the opening is intended to be an introduction and preview of what that party will prove

(not some detailed argument as the Staff seems to imply), and such an introduction is, as a general matter, more helpful right before that party's witnesses will testify. Most witnesses will cover discrete, often highly technical issues, and the opening allows the Commission to understand, as it approaches such detailed testimony, how the evidence of each witness fits into the bottom-line conclusions UE is offering in response to the case against it. This is even more true here, where the total number of witnesses is large, and UE's witnesses will not even be testifying until nearly two weeks after all the other parties' witnesses will have been heard. It just makes practical sense, when the hearing is shifting from witnesses supporting the Staff's Complaint to those against it, to have UE's opening, giving the Commission an overview of the competing perspective it will now hear.

3. Staff expresses concerns that the Company "should not be accorded special opportunities for the presentation of its positions and for commenting on other parties' positions." Staff notes their concerns that the Company will not only "address UE's rebuttal case, but will in all likelihood, also address the evidentiary proceedings that have occurred in the course of the preceding nine (9) days of hearings." This is a particularly specious argument, and, in fact, underscores why a UE opening at the start of its witnesses is fair and reasonable. The Staff and the other parties supporting the Complaint have the burden to make their case that a rate cut, as they have proposed, is lawful. The Complaint could fail even if UE put in no evidence, which it is not obligated to do. Here, of course, UE, as the "Respondent," has put in evidence, which, by definition "responds" to the Staff's and Intervenors' evidence. As a result, UE's opening -- which, as we described above, is an introduction to the Company's evidence -- must give the Commission an overview of how UE responds to the evidence supporting the Complaint. But at the beginning of the hearing, only the pre-filed testimony, not all the evidence

supporting the Complaint, will be in the record. Certainly, if a witness for the Staff or other party testifies on cross-examination or in response to questions from the bench, that testimony becomes part of the evidence supporting the Complaint, and the Company has a right to “respond” to that testimony. Thus an opening for UE before its witnesses begin to testify is the best point at which to give an overview of how the Company will respond – both from the perspective of UE in ensuring it can respond to *all* the evidence presented against it, and from the perspective of the Commission in understanding UE’s position on all the matters raised during the proceedings. Far from a “special opportunity” for the Respondent, then, letting UE exercise its right to present its opening just before its witnesses testify is fair (given the legal burdens of the parties), is efficient (in allowing the Commission to have an introduction to UE’s case that truly covers the evidence against it), and is consistent with the basic notion of due process (in allowing UE to truly respond to all the evidence against it).

Response to Motion for Expedited Treatment

The Company joins in the request for expedited treatment of this matter. If at all possible, the Company requests a decision on Monday, July 8, 2002, unless, of course, it is necessary for the Commission itself to make the decision on this matter. In which case, the Company would also ask that a decision be rendered on July 9, 2002. Obviously, the Company’s preparation for the first few days of the hearings will vary, depending upon that decision.

WHEREFORE, for the aforementioned reasons, UE respectfully submits that the Staff’s request that all opening statements by the parties be delivered at the commencement of the evidentiary proceedings on July 11, 2002, be denied, and that UE be allowed to exercise its right to deliver its opening statement immediately before the bulk of its witnesses¹ begin to testify.

¹ Due to a scheduling conflict, one of UE’s witnesses, Mr. William Stout, will be testifying on July 11, just before

Respectfully submitted,

UNION ELECTRIC COMPANY

d/b/a AmerenUE

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the Staff's witnesses are scheduled to begin. Mr. Stout is the only UE witness who will be taken out of the order of the parties in presenting evidence in this way. UE proposes to present its opening immediately before its body of witnesses begin to testify, on or about July 24, 2002.

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DATED: July 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Federal Express or Hand Delivery on this 5th day of July, 2002, on the following parties of record:

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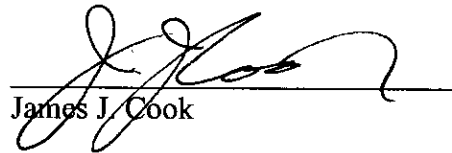
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