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June 12, 2002

**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

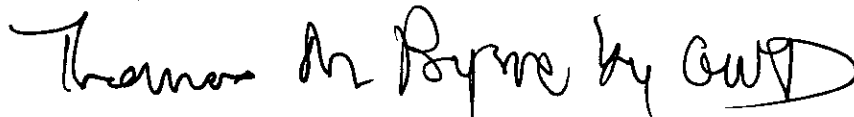
Re: MPSC Case No. EC-2002-1

Dear Mr. Roberts:

Enclosed for filing in the above matter, please find an original and eight (8) copies of **Response of AmerenUE To Staff's Motion For Commission Order Scheduling Additional Hearing Dates, Resolving Structure of Evidentiary Hearings and Addressing Use Of Depositions.**

Please 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,

A handwritten signature in black ink that reads "Thomas M. Byrne by CWD". The signature is written in a cursive, flowing style.

Thomas M. Byrne  
Associate General Counsel

TMB:rd  
Enclosures

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

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

**RESPONSE OF AMERENUE TO STAFF'S MOTION FOR  
COMMISSION ORDER SCEDULING ADDITIONAL HEARING DATES,  
RESOLVING STRUCTURE OF EVIDENTIARY HEARINGS AND  
ADDRESSING USE OF DEPOSITIONS**

COMES NOW Union Electric Company d/b/a AmerenUE ("UE") and in response to the Missouri Public Service Commission Staff ("Staff") Motion for Commission Order Scheduling Additional Hearing Dates, Resolving Structure of Evidentiary Hearings and Addressing Use of Depositions filed in this proceeding on June 12, 2002 (Staff's "Motion") states as follows:

1. In order to address a dispute among the parties to this proceeding regarding the scheduling of hearing dates and the structure of the evidentiary hearings, the Staff yesterday filed its Motion. Among other things, the Staff's Motion proposed a procedure to address the receipt into the record of depositions that UE has taken in this proceeding. The Staff's recommendations should be rejected because they are inconsistent with the Missouri Rules of Civil Procedure regarding the use of depositions in civil proceedings, they are inconsistent with the Commission's consistent past practice concerning the use of depositions, and they are inconsistent with the goal of managing

the time set for the hearing in this proceeding, by permitting the parties to enter depositions into the record as a substitute, in whole or in part, for live cross-examination.

2. The Staff's request is wholly at odds with the Missouri Rules of Civil Procedure concerning the use of a deposition of an adverse party. Rule 57.07(a) provides that the deposition of a party opponent may be used "for any purpose." This permits any party to introduce an adverse party's deposition into the record whether the adverse party is present or not. In civil cases, the introduction of depositions typically occurs by reading the deposition into the record. *See Carlyle v. E. Lai, M.D.*, 783 S.W.2d 925 (W.D. 1989). In Missouri Commission proceedings, the typical practice has been to permit the introduction of the transcript of the party opponent's deposition into the record as an exhibit. *See, for example, In the Matter of Laclede Gas Company*, Case No. GR-99-315, TR pp. 575-589 (ruling following oral argument concerning the admissibility of Staff witness Dr. Steve Hu's deposition). Moreover, the Staff itself has entered the depositions of utility witnesses into the record in various proceedings when they have been party opponents. *See, for example, In the Matter of Laclede Gas Company*, Case No. GT-99-303, Exhibit No. 28, Deposition of Kenneth Neises, Exhibit No. 29, Deposition of Steve Mathews.)

3. In contrast to this procedure contemplated by the rule, the Staff asks that the Commission "...direct UE to file with the Commission a pleading that identifies the portions of each deposition which UE asserts is relevant to the particular issues in this case as identified in UE's rebuttal testimony." The Staff argues that all other portions of the depositions should not be received into evidence. (Staff's Motion, p. 3.) This limitation on the use of depositions is clearly inconsistent with Rule 57.07(a) which

permits UE to use these depositions “for any purpose.” Clearly the majority of the questions and answers in the deposition relate to the Staff’s direct testimony in this proceeding, not UE’s rebuttal, which had not yet been filed at the time the depositions were taken. Moreover, it makes absolutely no difference whether any particular question in a deposition can be related to any particular portion of any party’s prefiled testimony. As long as these depositions covered issues that are relevant to the issues addressed in this proceeding (and all of them did) they may be introduced into the record in this proceeding and used by UE for any purpose.

4. In addition to being entirely consistent with the Missouri rules and the consistent practice of this Commission and Missouri courts, introduction of the depositions into evidence in this proceeding will provide significant benefits in terms of limiting cross-examination and ensuring that this hearing will be conducted in a timely and efficient manner. This will be an important practical consideration whether the Commission grants the Staff’s request for additional hearing time or not. Judge Mills explicitly recognized this consideration at the outset of the prehearing conference, and it has become an even more important consideration as disputes over the scheduling of the hearing in this proceeding have arisen.

WHEREFORE, for the aforementioned reasons, UE respectfully requests that the Commission deny the Staff’s request to limit the use of depositions in this proceeding, and permit the parties to introduce the depositions of party opponents into evidence, and use them for any purpose, as contemplated by Rule 57.07(a) of the Missouri Rules of Civil Procedure and past Commission practice.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a AmerenUE

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DATED: June 12, 2002

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via hand delivery, Federal Express or e-mail on this 12th day of June, 2002, on the following parties of record:

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