

January 23, 2001

VIA FEDERAL EXPRESS



Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: MPSC Case No. EO-2000-580

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 **Initial Brief**.

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 dark ink, appearing to read "J. Cook", written over the typed name and title.

James J. Cook
Managing Associate General Counsel

JJC/mlh
Enclosures

cc: Parties on Attached Service List

FILED²

JAN 24 2001

Missouri Public
Service Commission

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

FILED²

JAN 24 2001

Missouri Public
Service Commission

In the Matter of an Investigation)
into an Alternative Rate Option For)
Interruptible Customers of Union)
Electric Company d/b/a AmerenUE)

Case No. EO-2000-580

INITIAL BRIEF OF UNION ELECTRIC COMPANY

COMES NOW Union Electric Company (the Company or UE) and submits the following as its Initial Brief in the above styled matter:

PROCEDURAL HISTORY

1. On March 20, 2000, Holnam, Inc., Lone Star Industries, Inc., and River Cement Company (Applicants, MEG Interruptibles, or MEG) filed a pleading with this Commission requesting that the Commission establish a case to investigate the establishment of an "alternative rate option for interruptible customers of Union Electric Company." Attached to that pleading was an outline of the concepts MEG wished to have included in any new rate.
2. On April 12, 2000, Union Electric Company filed its Response to the MEG request. In that response, the Company indicated that it had no procedural objections to the request, but asserted that the initiation of such a proceeding was unnecessary.
3. On April 13, 2000, the Commission Staff filed its Response to the MEG request. The Staff also raised no objection on procedural grounds to the establishment of such a case. The MEG had also requested that an interruptible rate option be made available on an interim basis. Both the Company and the Staff opposed that request.

4. On April 18, 2000, MEG filed a Motion to Consolidate the instant proceeding with a tariff filing (Rider M) that the Company had made on April 5, 2000 (ET-2000-666 Tariff No. 200000913). On that date, MEG also filed a pleading in ET-2000-666, objecting to and protesting the Company's filing and asking that the Company's filed tariff be suspended. The Company and the Staff opposed MEG's requests and on April 27, 2000, the Commission issued an Order in ET-2000-666 denying MEG's requests, and approving the tariff as filed.
5. On May 18, 2000, the Commission issued an Order in the instant case also denying the MEG Motion to Consolidate, and scheduled a prehearing conference to be held on June 21, 2000.
6. On June 21, 2000, the prehearing conference was held in this matter.
7. On July 5, 2000, MEG filed a pleading requesting that the Commission establish an expedited schedule, and schedule oral argument in support of MEG's application for approval of an interim alternative interruptible rate.
8. On July 15, 2000, UE and the Staff filed Responses to MEG's requests. Both the Staff and the Company opposed MEG's requests. Staff filed a suggested procedural schedule, and the Company indicated its support of that schedule.
9. On July 20, 2000, MEG filed its Reply to the Staff and Company Responses.
10. On July 27, 2000, the Commission issued an Order denying MEG's requests, and approved the Staff's suggested procedural schedule. That schedule called for the submission of Direct testimony by Applicants on July 31; Rebuttal testimony of all parties on September 14; surrebuttal and cross-surrebuttal on October 5 and evidentiary hearings on October 19 and 20, 2000.

11. On August 5, 2000, MEG filed a motion seeking rehearing of the Commission's order.
12. On September 29, 2000, the Staff submitted, with the concurrence of all parties, a list of issues, order of witnesses and order of cross-examination for the hearing. All parties filed their Statement of Positions on the issues.
13. On October 13, 2000, the Company filed its Motion to Strike Position Statements of the MEG Interruptibles.
14. On October 19, 2000, the Commission issued an order canceling the hearings, due to the death of the Governor.
15. On October 20, 2000, MEG filed a response to the Company's Motion to Strike Position Statement.
16. Evidentiary hearings were rescheduled for November 4, 2000, and later rescheduled again for November 30, 2000. Hearings were held on that date.

ISSUES AND POSITIONS OF THE PARTIES

ISSUE 1

Should the Commission order Union Electric Company to file tariff sheets to implement the interruptible rate concepts proposed by the MEG Interruptibles?

Positions of the Parties

The Company and the Staff answer this question with a clear "NO". The MEG position on this issue is "YES".

The remaining three issues are really "sub-issues" of the first. Moreover, it is only necessary to address issues 2 – 4 if the first is answered in the affirmative.

ISSUE 2

Should such interruptible rate provide for an average discount of \$5.00 per kilowatt per month?

The Company's position is that the MEG has not supported its proposal of \$5.00. Moreover, the Company believes that its current optional market-related curtailment Riders L and M provide a more appropriate discount for such service.

The Staff states that if the MEG proposal were to be used, a further analysis of the Company's current avoided costs would have to be performed in order to determine the appropriate level of discount.

Although MEG's Statement of Position does not address this issue, one may presume its position that the Commission should adopt Mr. Brubaker's concepts as MEG's support of the \$5.00 discount.

ISSUE 3

Should such interruptible rate explicitly provide for the number and cumulative hours of interruptions allowable?

The Company opposes this restriction. Rather, a rate structure that is more flexible to both customers and the Company, is more appropriate to meet various operating conditions and to respond to costs incurred or potential costs avoided.

The Staff believes that a rate based on the concepts of the MEG proposal should explicitly state the maximum number and/or cumulative hours of load curtailments that are allowed during each year. Again however, a "further analysis" would be required to determine what that number should be. Such a number, if determined, would only be

appropriate for the specific period covered by the additional analysis suggested by the Staff.

MEG again does not address this issue in its Statement of Position.

ISSUE 4

Should such interruptible rate explicitly state the conditions under which interruptions may occur, and, if so, should those conditions be such that they are capable of being objectively verified?

The Company strongly suggests that the era of trying to anticipate, and then dictating what types of system conditions should occur before curtailments can occur, has long past. Curtailment options based upon voluntary and flexible market-related conditions are much more common in the industry today, and much more logical. In addition, they eliminate the potential for gaming the system and the resulting lengthy disputes that occurred under the old rate and would likely occur under the modified old rate, herein referred to as the Brubaker proposal.

The Staff takes the position that, assuming the Brubaker concepts have been adopted, no conditions should be placed on curtailing load up to the maximum allowed each year. Exceptions should be explicitly described in advance and be verifiable. This maximum would also need to be taken into account in the additional analysis required to determine the appropriate discount.

MEG again does not address this issue in its Statement of Position.

DISCUSSION

ISSUE 1

Should the Commission order Union Electric Company to file tariff sheets to implement the interruptible rate concepts proposed by the MEG Interruptibles?

This issue is, of course, the crux of the matter before the Commission in this case. Should the Commission require the Company to implement the rate proposed by the MEG customers? The other issues are merely sub-issues; they are to be addressed only if the ultimate question is first determined in the affirmative. The burden here is on the MEG to explain why the Commission should undo the very recent settlement agreement it approved in Case No. EO-96-15 to eliminate this rate; why the Commission should even consider forcing a rate on an unwilling utility which is also opposed by the Commission's own Staff. MEG has clearly not met that burden.

Why should a utility refuse to provide a service that is desired? Why not continue to give customers the discount they have been receiving for so long? In this case, we have a situation where the customers claim to be merely asking to get back the discount and the service they had been receiving for years before they voluntarily gave it up. What can be so wrong about that?

Utilities do attempt to provide products and services to customers that will meet customers' needs and desires. But they do not continue to give discounts and types of service that no longer make sense to their own business. They do not provide products and services at a price that fails to cover their costs and provide a fair profit (unless perhaps, they are allowed to recover those lost costs and profits from other customers).

Here, the MEG customers previously received a service and a discount that, at one time, may have made sense. That service, the 10(M) Interruptible Rate, which included a very generous discount, served a purpose at one time. It met certain needs of the Company, and provided a nice discount to customers who could meet the requirements of the tariff. But, just as one might still like to buy a luxury automobile, without all that annoying emission equipment, and pay only \$3,000, that is not possible today. There are many reasons why that is not possible, but the customer's desire is just not enough to force the dealer to make that deal.

Why should the Commission force AmerenUE to file tariffs based on the Brubaker concepts?

MEG has certainly made clear what it wants out of this case:

"The Brubaker Tariff would be beneficial to Lone Star Industries and permit it to achieve operational savings.... It is our estimate that under the Brubaker Tariff Lone Star Industries would realize savings that would approximate the savings under the original Rider (sic) 10M or possibly slightly less than we achieved in past years." (Direct Testimony of Don Schuette, Electrical/Electronic Superintendent of Lone Star Industries, Inc, Exhibit 4, p5, lines 6, 7 and 12 – 14)

"Holnam felt that the Rate 10M curtailment credit, coupled with the frequency of curtailments tied primarily to system reliability, was a fair balance with the production losses realized during curtailments...." (Direct Testimony of David F. Dorris Plant Manager, Holnam, Inc., Exhibit 5, p. 2, lines 11 – 13)

"We ask the Commission to put into effect immediately an interruptible rate that contains the combination of features from prior Rate 10M and the seven points outlined on Schedule 1." (Direct Testimony of Maurice Brubaker, Exhibit 1, page 14, lines 4, 5) (emphasis in original)

It is clear that the customers want their discount back. They are willing to tweak the rate by suggesting the seven points mentioned by Mr. Brubaker; but the bottom line is

that they want the 10(M) rate discount back. Of course there is no mention of giving up the benefits they received as part of the stipulation that resulted in the elimination of the 10(M) rate. But, one cannot blame a customer for wanting to get electric service at a cheaper rate.

The Company's witness, Mr. Richard J. Kovach, Manager of the Rate Engineering Department of AmerenUE, provided testimony about how the 10(M) rate was agreed to be discontinued. In his Rebuttal Testimony (Exhibit 6) at page 2, and in Schedule 2 to his testimony, the story of the elimination of the 10(M) rate can be found. By agreement of the Company, the Staff and various other parties, including the interruptible customers, themselves, the 10(M) rate "shall no longer be available for service to additional customers... [and]....will be available to current interruptible customers through the May 2000 billing period, but not thereafter."

Mr. Kovach continues on page 3 to state the obvious: that the MEG customers received other benefits as part of the negotiations that resulted in the elimination of the 10(M) rate; that new voluntary curtailment options are available to them; and curtailment is no longer mandatory, as it was under 10(M). In response to questions from the Bench during the hearing on this matter, Mr. Kovach enumerated specific benefits that the MEG customers received in that settlement: those customers transferred to the Large Primary Rate, which received an above-average rate reduction; the energy charges (inaccurately transcribed as "emergency" charges on page 116) were reduced by more than the demand charges, thus benefiting the high-load factor customers, which included the MEG customers. In addition, the final agreement provided for Rider B credits that were higher than recommended by the Staff or the Company – to the benefit of these customers. And

they were allowed to retain the 10(M) rate beyond the time when the rates of other customers were changed. (Transcript pp. 115, 116)

In that prior case, both the Company and the Commission staff recognized that the 10(M) rate was no longer appropriate. Its terms and conditions, as well as its discount, were no longer just or reasonable.

And just as that rate was no longer appropriate at the time it was agreed to be eliminated, it is not appropriate now.

It is clear that the MEG customers have not met their burden of showing why the Commission should order the Company to file tariff sheets to implement the interruptible rate concepts proposed by the MEG Interruptibles. The Commission should not do so.

However, the MEG's burden in this case is to tell the Commission why MEG should get what it wants; it is not the Company's burden to convince the Commission why something similar to the old 10(M) rate should not be reactivated. Although MEG has provided testimony from several witnesses, including a respected expert and representatives for the three customers, there is virtually no evidence or argument to support its request, other than "we used to have this service and we want it back."

A review of the Direct Testimony of Mr. Brubaker would be the most logical place to look for the reasoning to support the MEG request. But a review of that testimony shows almost nothing that helps answer the ultimate question here. But, let us go through that testimony and see what is said concerning why the Commission should force the Company to provide this discounted service.

1. Mr. Brubaker starts with a reference to Case No. EO-96-15. He claims that the parties were "unable to reach agreement on the appropriate structure and price

level for the continuation of an interruptible rate.” (Exhibit 1, page 2, line 4) He then skips to the point in the Stipulation and Agreement in that case that “provided the option for Interruptible Customer to file to initiate this docket.” He fails to mention that the Stipulation eliminated the Interruptible Rate. His telling makes it sound like the parties merely put interruptible service on hold while the details of the structure and price level were worked out.

That is clearly not the case. As stated by Mr. Watkins, the Staff witness, “There is no evidence presented that Company needs such a tariff to continue to provide reliable service to its customers.” (Exhibit 7, p. 2, line 14) Mr. Kovach included the relevant section of the Stipulation, which clearly states that, “The present ...Interruptible Power Rate shall no longer be available for service...” Near the end of that section of the Stipulation, it states, “The Company and the Industrials will enter into good faith discussions regarding alternative interruptible rate options.” (Exhibit 6, Schedule 2) Clearly, the old rate was to be eliminated, and it was. Then, the parties were to, and did, enter into good faith negotiations about what happens next.

Therefore, MEG’s first reason for the Commission to act, is merely that the Stipulation which eliminated the old Interruptible Rate allowed the customers to file a request with the Commission “regarding interruptible rate options.” Of course, this merely allows MEG in the door; it says nothing about why their request should be granted.

2. The second reason seems to be that the Company did not provide a “specific critique” of the proposals suggested by MEG at the discussions. (Brubaker Direct, Exhibit 1, p, 3) Mr. Brubaker claimed that “no meaningful discussions took

place.” However, a careful reading of Mr. Brubaker’s testimony and his cross examination clearly shows that the reason he believes no meaningful discussions took place is that the Company would not agree to his proposals. It is clear that he wished the discussion to center on what modifications to his proposal might be acceptable.

On page 2 of his Direct Testimony (Exhibit 1) , Mr. Brubaker tells about how the customers “offered a proposal to UE which would modify the existing Interruptible Rate 10M...” On cross examination, Mr. Brubaker admitted to having heard each of several objections AmerenUE had raised to his proposal. In response, he modified his earlier claim that the Company had not offered a critique, to say that “... what I was trying to convey was that there was no discussion of the particular aspects of the proposal that we had made. There was no back and forth about the specific terms...” (Tr. 34, lines 8 – 11)

What is obvious, is that the customers were offering only a modified version of a tariff that the Company and the Staff had found unacceptable in the previous case, and that those minor modifications were clearly not sufficient to make the proposal acceptable. The Company obviously did not believe the proposal was acceptable. This does not mean that meaningful discussion did not take place. It does mean that the Company could not be convinced to accept Mr. Brubaker's proposal as a starting point for discussion, because Mr. Brubaker’s proposal was merely a warmed over version of the eliminated rate. But rather than try to modify the proposal to meet some of those objections, or work with the Company’s proposal during such discussions, or suggest a different approach entirely, the MEG decided to see if it could get the Commission to force this proposal on the Company through this proceeding.

3. The third reason seems to be that the MEG customers find one of the new optional rates offered by the Company to be an inadequate substitute for the old 10(M) rate. It may be true that the customer benefits of the new Rider M are not as attractive to these three customers as the old rate, but at least five customers, with approximately 24 MWs of load found it attractive enough to sign up for it during 2000. (Tr. 115, line 2 – 4, examination of Mr. Kovach) But, as Mr. Rader agreed on cross examination, the Brubaker proposal is more beneficial to his company than Rider M because the Brubaker proposal is “essentially the same” as UE’s old rate. (Tr. 54, lines 9, 10)

Of course, whether Rider M is an adequate substitute for the old rate is not the issue. It was not advertised as such; nor was the elimination of the old rate conditioned upon the Company’s filing of new rates that would be an adequate substitute. Moreover, MEG has made it clear that the only “adequate” substitute would be one that provided at least the same level of discount as the old rate. This, too, was not a part of the stipulation.

4. Actually, there is no 4th reason. At this point in his testimony, Mr. Brubaker begins explaining the “elements of the tariff which industrial customers are proposing, and the differences from the rate 10M.” (Exhibit 1, p 4, line 1) One supposes that MEG may argue that it is the proposed modifications to the old rate that justify its adoption. The Company argues that these modifications provide no such support for the proposed tariff’s adoption.

The easiest place to look for a summary of the modifications is Schedule 3 to Mr. Kovach’s testimony (Exhibit 6). There, Mr. Kovach sets out each of the concepts included in Mr. Brubaker’s proposal, and then compares them to the provisions in the old

10(M) rate. Mr. Kovach has more than the seven “concepts” from Mr. Brubaker’s schedule because Mr. Kovach includes all of the major provisions of the proposal, including those provisions that are unchanged from the old rate.

As can clearly be seen from Mr. Kovach’s Schedule 3, Mr. Brubaker’s proposal continues many of the provisions of the old rate. Those provisions that are new or different are, almost without exception, more restrictive on the Company than the old, unacceptable rate. Penalties for non-compliance are reduced, peak hours are reduced, curtailments for system peaks are eliminated, a new notice requirement is imposed on the Company, new record keeping requirements are added, and the assurance notice requirement is reduced. The only benefit to the Company is the addition of limited economic curtailment provisions that the Company found to be inadequate.

While a detailed discussion of the comparison of the Brubaker tariff with the old 10(M) rate may be interesting, we were actually searching for reasons why the Commission should require the Company to adopt the Brubaker tariff. We are still searching. Nothing in this section of Mr. Brubaker’s testimony gives us any compelling reason, or any reason at all.

Pages 4 – 13 of Mr. Brubaker’s direct testimony are devoted entirely to explaining the various concepts of the proposed tariff that Mr. Brubaker wanted to highlight. He briefly explains those provisions and sometimes suggests why one is better than the competing provision in the old rate. Perhaps if the assignment had been to come up with seven ways to make the old interruptible rate different, his testimony would be helpful. But that was not the assignment. If the assignment was to suggest ways to make the old interruptible rate even more attractive to customers and even more onerous to the utility,

it would have been helpful, but that was not the assignment, either. The burden that MEG has in this case is to justify its proposal. Explaining the relative alleged benefits of tweaked provisions of an eliminated tariff versus the provisions of that eliminated tariff does not begin to meet that burden.

5. The closest Mr. Brubaker comes to discussing why his proposal should be forced on the Company begins on page 13 of his direct testimony. There he addresses what he refers to as “the consequence of interruptible customers having elected to take firm service.”

1st Consequence

The first consequence is that “they pay more money to UE – their bills go up on an annual basis by about \$2,400,000.” (Exhibit 1, p. 13, line 17)

The Company does not dispute the \$2,400,000 difference in the annual bills of the MEG customers. As stated in Mr. Kovach’s testimony (Exhibit 6, p. 4, line 10) this billing difference is derived from “a direct comparison between the eliminated 10(M) Interruptible Rate and the Company’s current Large Primary Service Rate 11(M).” Mr. Kovach then proceeded to discuss three benefits that the direct comparison ignores. However, in addition to those three benefits, is the matter of the offsetting savings realized by the MEG customers as a result of the elimination of lost production during the 10(M) curtailments.

Mr. Rader, for River Cement Company, stated that his company’s savings from the 10(M) rate were “partially offset by production losses experienced during curtailment periods.” (Ex. 3, p. 2, l. 21) Mr. Schuette, of Lone Star Industries, Inc., stated that the savings his company achieved because of the Rate 10(M) discount were “partially offset

by production losses experienced during curtailments.” (Ex. 4, p. 3, l. 6) Mr. Dorris, of Holnam, Inc., also stated that curtailments resulted in reduced cement production, which “creates operating losses in terms of lost revenues from sales of cement.”

(Ex. 5, p. 2, l. 9)

Obviously, if a customer is not curtailed, those lost production periods do not occur. The avoided lost production was not included in the \$2.4 million figure MEG repeatedly uses in this case. Although Mr. Dorris does not describe specific dollars for his company, the other two witnesses clearly state that the figures they report as the savings that they received under Rate 10(M) had not been adjusted to reflect the production losses. (Ex. 3, p. 2, l. 20, 21; and Ex 4, p. 3, l. 6)

A few simple calculations indicate approximately what the 10(M) net savings actually were for each MEG customer. For River Cement, (Ex. 3, p. 2, l. 19) the gross annual 10(M) savings were approximately \$800,000/yr. On cross examination, Mr. Rader indicated that during the same period, River Cement incurred approximately \$586,000/yr in annual production losses due to those curtailments. (Tr. 50, l. 2 – 22) Mr. Schuette indicated that Lone Star’s average savings of \$500,000/yr would need to be offset by production losses also. For 1999, those losses were \$238,400. (Tr. 63, l. 2 - 25). An average figure was apparently not available.

Thus, for River Cement and Lone Star, the total average annual savings of approximately \$1,300,000 would need to be offset by production losses of \$824,400, producing a NET savings of \$475,600 – or approximately 37% of the gross savings. Mr. Dorris didn’t share his savings or production losses with the Commission. However, if the total gross savings for the three customers was \$2.4 million, and River Cement and

Lone Star account for \$1.1 million (\$800,000 and \$500,000 respectively), Holnam must have received \$1.1 million. If we apply a similar average production loss ratio to \$1.1 million, it can be estimated that Holnam had offsetting production losses of about \$693,000 – for an annual net savings of approximately \$407,000.

If we add the avoided production losses for the three companies (\$586,000 plus \$238,400 plus \$693,000) we see that the total avoided production losses equal \$1,517,400; leaving a NET lost savings due to the elimination of the 10(M) rate of \$882,600, instead of the claimed \$2.4 million.

The Company does not dispute that \$882,600 is a significant figure, despite the fact that it would be even lower after consideration of off-setting income tax reductions. However, to claim that the customers have incurred a \$2,400,000 loss, when in fact the difference is substantially less, is misleading.

2nd Consequence

The second consequence mentioned by Mr. Brubaker is that “UE no longer has the right to curtail the 40,000 kilowatts of interruptible load that Interruptible Customers previously offered to UE in the event that service to firm customers was jeopardized.” (Exhibit 1, p. 13, line 19)

Finally, at the very end of his Direct Testimony, Mr. Brubaker makes a claim that, if everything he suggests were true, begins to look like a reason that at least allows for argument (other than that his clients prefer it to the other options now available). He states that these customers and their 40 MWs of curtailable load are now not available to UE for curtailment. (So far, what he says is true.) He then suggests that this is “extremely valuable” and warns that the ability to “curtail load for reliability purposes ...

puts the potential for brownouts or even blackouts of firm load that much further away from reality.” (p. 13, line 23 – page 14, line 1) (He makes no claim that there is any imminent danger of such a problem – he merely raises the specter.)

And that’s it! That is the only claim one can find in any of the testimony of MEG – direct or surrebuttal, that even comes close to providing a reason that the Commission could use to justify requiring the Company to offer this discounted service. Some of his surrebuttal testimony attempts to buttress this claim, and most of the surrebuttal merely continues the discussion about the benefits of his proposal in comparison to the eliminated rate, but no additional reasons for adopting that tariff are suggested anywhere.

AmerenUE Capacity

Since this is the only claim made by MEG to support the need for their proposed discounted rate, it should be addressed separately. In his Direct Testimony, Mr. Brubaker merely makes the generic statement that 40 MWs of curtailable load would be a good thing. It would put brown outs and black outs further away. In his Surrebuttal, he gets more specific, claiming that UE had recently “stated that it is short of capacity to serve its current native load.” (Exhibit 2, p. 2, line 16)

First - the question of the lost 40 MWs. Mr. Kovach addressed this at the request of the Chair. Clearly, if the MEG customers do not choose to take advantage of one of the Company’s new voluntary riders, their 40 MWs of what was once curtailable load is no longer curtailable. However, as Mr. Kovach pointed out, the Company’s new curtailment options (Riders M and L) have attracted more than 100 customers with a total of 170 MWs of curtailable load. (Tr. 115, line 6) It is possible that MEG will argue that

the 170 MWs will not be curtailable under the same conditions as the 10(M) curtailable load was. This is irrelevant however. Since the new riders are designed to provide the Company with curtailable load that will make sense both to the customers and the company from an economic standpoint, the Company believes that the new curtailable load will, in fact far more than offset the loss of the MEG's 40 MWs. (Tr. 115, line 12)

Second - the question of the need for additional capacity. Mr. Brubaker claimed in his surrebuttal, that "UE has recently stated that it is short of capacity to serve its current native load." (Ex. 2, p. 2, l 16, 17) That was the extent of Mr. Brubaker's statement. One would think that such a claim would cry out for more detail, if it were true. But he provided no source, no citation, nothing. However, based on MEG's counsel's cross examination of the Company's Mr. Kovach, we can assume Mr. Brubaker was referring to the testimony of Mr. Craig Nelson, in Case No. EM-2001-233. That case requests this commission's approval of the transfer of Union Electric's Illinois operations to AmerenCIPS. Of course, no quote from Mr. Nelson about an alleged capacity shortage was read into the record; nor was the entire testimony of Mr. Nelson offered. Counsel for MEG had Mr. Kovach read very limited portions of that testimony into the record in this case. But Mr. Kovach was not asked to read anything about an alleged shortage of capacity to serve native load. Only those portions concerning the cost of a combustion turbine was referenced. (That point will be addressed below.)

Obviously, the Company has maintained that the transfer of customers and their associated load to AmerenCIPS will free up capacity for AmerenUE. In that case, the Company suggests that that transfer will be at an attractive cost to UE customers. Thus, this proposed transfer is merely between the Ameren operating companies, and will move

the reserve margins of these companies to a more desirable balance. Ameren Corporation has no capacity requirements which will be alleviated by the MEG's 40 MW. There is no evidence that the Company is so short on capacity that it needs the MEG's 40 MWs in addition to the other curtailable load available from Riders M and L.

After all of MEG's evidence is considered, it is obviously that there is virtually no evidence to support their request. We know that they miss the discount; but we know that the lost discount is not as large as MEG claims, once we net out the avoided production losses. We know that they are unhappy that the Company did not agree to the reinstatement of a modified version of the old rate. We know that the Company's new optional curtailment riders apparently are not as attractive to MEG as the old rate, but are attractive to a significant number of other customers. In addition, it is clear that the "alternative" proposed by Mr. Brubaker is virtually the same as the old rate, with only minor modifications that neither the Company nor the Staff find acceptable. And finally, we know that there is no Ameren capacity crisis that warrants giving the MEG what they request just to be able to curtail their 40 MWs. In fact, there is virtually no evidence whatsoever, to give any legal support to the imposition of this rate on the Company. The MEG request should be denied.

ISSUE 2

Should such interruptible rate provide for an average discount of \$5.00 per kilowatt per month?

This second issue really needs little discussion. First, it should not be reached, because the Commission should reject the MEG request outright. Moreover, even if the

Commission would decide to require the Company to file tariffs to implement the “rate concepts” proposed by MEG, it is clear that the record is woefully inadequate to justify the \$5.00 discount.

The testimony of both Mr. Kovach and Mr. Watkins indicates that the value of curtailable load is much less than the \$5.00 proposed by Mr. Brubaker. Mr. Brubaker’s number comes from a simple calculation of the capital cost of a combustion turbine assuming a carrying charge rate of 15%. (Exhibit 1, p 11) Mr. Brubaker introduces that figure by stating that “Sometimes, the reasonableness of the interruptible credit is measured by the cost of installing a combustion turbine peaking unit...” (Id. Line 14) (emphasis added) Yet in his surrebuttal testimony, he states that “Since the credit is for the purpose of reflecting the fact that utilities do not install generation capacity to serve interruptible load, the higher a utility’s rates, the higher the credit should be.” (Exhibit 2, page 11, line 9) Thus, apparently, the credit should be determined by looking at the cost of the avoided capacity addition, but should then perhaps be higher or lower, depending on the relative magnitude of the utility’s rates. What the rates should be compared with is unclear. Apparently, Mr. Brubaker suggests that the credit for an AmerenUE customer should be higher because its firm demand charges are higher than some other utilities. Mr. Brubaker provides no real explanation of how this correlation of rates between utilities actually should affect the discount. In contrast, however, the fact that a \$5.00 discount is so much in excess of other such discounts provided by utilities within the State of Missouri, is certainly relevant.

Mr. Watkins and Mr. Kovach address why the mere cost of a peaking unit should not be the sole determining factor in setting a discount. Mr. Watkins addresses this in his

testimony at page 3. He notes that Mr. Brubaker's calculation "fails to account for the availability differences." Obviously, a combustion turbine is available at any time; equally obviously, MEG customers did not like to be curtailed at all, and certainly not more than the average of 6 times a year. Mr. Watkins goes into additional methods to determine an appropriate discount, but the bottom line for Staff is that "further analysis of Union Electric Company's current avoided costs..." would need to be performed.

(Staff's Statement of Positions on the Issues)

Mr. Kovach noted on Redirect Examination (Tr. 128), that the figures used by Mr. Nelson in his testimony, and attempted to be used by MEG on cross examination as proof of the value of the curtailable load, were merely a capital cost for new capacity. While that figure is appropriate for the use it was put to by Mr. Nelson, it is not appropriate for determining the value of curtailable load. Mr. Nelson was obviously testifying about the cost of providing gas-fired capacity, which, as Mr. Watkins noted, is virtually always available (in excess of 95% of the time). (Tr. 138, l. 25) That cost is not appropriate for determining the value of load that is curtailable only at limited times and for limited durations.

"Further analysis" is clearly needed to determine the appropriate discount, should the Commission decide to require the filing of tariffs with Mr. Brubaker's concepts. This record is inadequate to make that determination – other than to determine that the \$5.00 is not correct. It should again be recalled that the burden is on the party proposing this rate. Here, even if the Commission decides that it wants tariffs along these lines, the party proposing those tariffs has clearly not provided sufficient evidence to sustain its burden

of proving the justness and reasonableness of the rate. Accordingly, the rate and the tariff proposal which includes the rate should be rejected.

ISSUE 3

Should such interruptible rate explicitly provide for the number and cumulative hours of interruption allowable?

The Company believes that the structure of an interruptible rate should be such that it is flexible enough for both customers and the Company to meet various operating conditions and the costs incurred or potential costs avoided. It should not explicitly be restricted to a predetermined number and cumulative hours of interruptions, but rather, upon actual operating needs.

Staff disagrees, but recognizes that the number of interruptions and the total number of hours interrupted would have a direct bearing on the discount.

MEG's Statement of Position provides no help whatsoever on this issue. However, a review of Mr. Brubaker's Schedule 1 suggests that he proposes that interruptions for reliability purposes are unlimited, but his "high cost period" interruptions would be limited to 60 hours a year, with some exceptions.

The Company's point is a simple one. Using available voluntary riders, the MEG customers can determine under what conditions they are willing to be curtailed. No artificial number of times or cumulative hours need be set. What could be simpler or better than that type of tariff flexibility?

Again, it is obvious that the MEG customers have not met their burden of proving that the proposed tariff provisions relevant to this issue are reasonable. "Further

analysis” would also be needed here. However, since the party proposing the change has not met its burden, further analysis should not be ordered; the proposal should be rejected.

ISSUE 4

Should such interruptible rate explicitly state the conditions under which interruptions may occur, and, if so, should those conditions be such that they are capable of being objectively verified?

The Company suggests that trying to micro-manage these details is a thing of the past. It could be argued that if a utility could decide when it will interrupt a customer, there should probably be some objective criteria agreed to in advance that could then be verified. But why go to all that trouble? Why guarantee disputes over what the actual condition was on the transmission system or in the power plants, that caused the utility to mandate a reliability interruption? Why try to determine, in advance what the appropriate number of “high cost” periods should be in any given year, and have that number set permanently in the tariff? Whose forecast should be used? Why argue over the “value” of avoided generation cost versus the “cost” of avoided generation additions?

The Company’s voluntary market related curtailment price offerings allows customers to make informed decisions, in advance, based on the conditions at the times the offerings are made. The Brubaker proposal requires the Commission to substitute its judgement about the questions set out above. That is just not necessary.

However, if the Brubaker proposal is adopted by the Commission, the Commission will need to answer those questions. Further analysis would need to be done to even come up with all of the questions that need to be asked. The Brubaker proposal

probably assures the Commission that it will be deciding complaint cases related to disputes over curtailments, so it is probably better to try to be explicit in the tariff about how, when, why and how often curtailments can occur. (Even stating the categories of “conditions under which interruptions may occur” sounds daunting.)

Staff seems to agree that rules will need to be set. Staff also points out that the amount of the discount is also tied to how these rules are set. Obviously, further analysis will need to be done to determine those rules and the resulting amount of the discount. The Company suggests that there has been no showing of system benefits which would result from these required efforts.

Once again, the MEG’s Statement of Position gives us no help on this issue. However, since Mr. Brubaker’s proposal seems to set all sorts of limits, conditions, times, election periods and definitions of “high cost periods”, one can assume MEG answers this issue in the affirmative.

ADDITIONAL ISSUE

Even if the Commission determines that a tariff similar to the “Brubaker Proposal” would be in the public interest, what authority does the Commission have to require Union Electric Company d/b/a AmerenUE to file a tariff implementing that proposal?

This is an excellent question, and one that seems to have no clear answer. It is clear that the Commission has broad powers and broad discretion. Staff can no doubt cite countless cases supporting that proposition. However, the Company has found no case

where the Commission has required a utility to file tariffs other than modifications of tariff sheets originally filed by the utility.

Even the statutory references to Commission authority seem to presume that the utility has initiated the filing of the tariff. The Commission obviously fixes rates after a tariff is filed and hearings are held (Section 393.150). The Commission has the “power to require every ... electric corporation ... to file with the Commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced ... (Section 393.140 911) But that section seems to merely require that rates already filed pursuant to other sections and then approved by the Commission may be required to be filed as finally approved.

Section 393.140 (5) gives the Commission the authority to review “upon its own motion or upon complaint” the “rates or charges or the acts or regulations” of utilities to see if they are “unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law....” If so determined, the Commission “shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statutes...” This seems to get close, but doesn’t really say that the Commission can force a utility to provide a service it does not wish to provide.

There may be a legitimate question of whether a commission can go beyond requiring that a utility provide “safe and adequate service at a just and reasonable rate” to a particular group of customers. Clearly, the Commission can determine whether the service being offered is safe and adequate and can direct changes in the utility’s practices to insure that the Commission’s standards are being met. Moreover, it is clear that the

Commission can direct that a utility raise or lower its rates. But whether a commission can direct an entire tariff filing, when none had been first filed by the utility, is a different question.

While the Company has serious concerns about this issue, it will not raise the lack of such authority in this case. The Company suggests that the MEG customers have the burden to assure the Commission that they do have that authority. However, because of the Stipulation previously referenced, the Company believes it has waived its right to object to the MEG filing on the grounds that this question suggests. Let there be no misunderstanding, however. The Company strongly believes that the effect of this MEG filing is to renege on the agreement in the stipulation to eliminate the 10(M) rate. The Brubaker proposal is, and is admitted by the MEG to be, merely a slight modification of that rate. The proposal does nothing to eliminate the problems with the rate that had been raised by the Staff in the EO-96-15 case, and which caused the Company and Staff to press for its elimination. The MEG customers agreed to its elimination and received the other benefits that resulted from the settlement of the entire case. MEG was authorized by the Stipulation to file "alternative" proposals with the Commission without objection by the Company or the Staff. Clearly, a filing that merely copied the old rate with minor tweaking, is not an alternative.

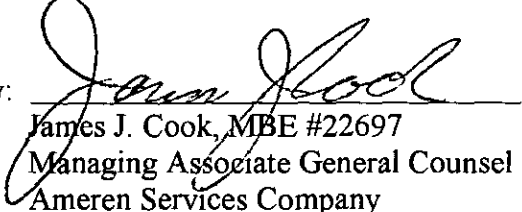
However, the Company committed not to object on procedural grounds to such an application by MEG. Although it could be argued that this is a jurisdictional question and not procedural, the Company will not make that distinction. If the Commission decides to order the filing of such tariffs, the Company will not object or appeal on the grounds that the Commission did not have the statutory authority to require such a filing.

However, as discussed above, the Company clearly does not believe that there is sufficient evidence to support a decision imposing this tariff on it. The Company's position on the question of the authority of the Commission to impose a rate on a utility is different from the question of whether that decision is factually and legally supportable. In addition, the Company believes it will have the right to file proposed modifications or even file to eliminate the tariff if it later believes that the tariff is not working, or for other appropriate reasons.

WHEREFORE, for the reasons set forth above, Union Electric Company, d/b/a AmerenUE requests that the Commission reject the proposal filed by the MEG Interruptibles, and close this case with no further action being authorized.

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Respectfully submitted,
UNION ELECTRIC COMPANY
d/b/a AmerenUE

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