

FILED<sup>2</sup>

NOV 2 2000

Missouri Public  
Service Commission

November 2, 2000

VIA HAND DELIVERY



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. EM-96-149

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 **Motion For Reconsideration of the Commission's Order Granting in Part the Motion to Compel**.

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,

*James J. Cook /sh*

James J. Cook  
Managing Associate General Counsel

JJC/dhb  
Enclosures

cc: Ms. Shelley Register  
Parties on Attached Service List

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

NOV 2 2000

Missouri Public  
Service Commission

In the Matter of the Application of Union Electric )  
Company for an Order Authorizing: (1) Certain )  
Merger Transactions Involving Union Electric )  
Company; (2) The Transfer of Certain Assets, Real )  
Estate, Leased Property, Easements and )  
Contractual Agreements to Central Illinois Public )  
Service Company; and (3) In Connection )  
Therewith, Certain Other Related Transactions )

Case No. EM-96-149

**MOTION OF UNION ELECTRIC COMPANY  
FOR RECONSIDERATION OF THE COMMISSION'S ORDER  
GRANTING IN PART THE MOTION TO COMPEL**

Union Electric Company, d/b/a AmerenUE ("UE") respectfully requests the Commission to reconsider its Order, issued on October 31, 2000 and to become effective on November 3, 2000, granting in part the motion of the Commission's Staff ("Staff") to compel discovery. Specifically, in that Order the Commission directed UE to answer 16 Data Requests to which UE had served written objections longer than 10 days after receipt of the Requests. The Commission issued this Order without the benefit of any response from UE to the Staff's Motion to Compel that would have addressed both the legal bases for our objections to these Data Requests and the practical irrelevance or redundancy of the Requests. Most importantly, by acting before receiving such a response, the Commission was unaware of the procedural ambiguity – whether the normal discovery procedure even applies in the operation of the EARP – that was both the essential issue the parties wished the Commission to clarify, but, in the absence of such a clarification, was the reason UE sought to express its concerns with the process, rather than file timely objections to discrete data requests according to a procedure that we do not believe applies in this context.

136

In brief, these Data Requests are unlawful in the context of the operation of the experimental alternative regulation plan (“EARP”) because they far exceed what is contemplated by the disclosure and discovery mechanism created by the EARP (which is distinct from normal discovery under the Commission’s Rules), and the information requested by the Staff is irrelevant or unnecessary to the preparation of the recommendation on the future of the EARP to be filed early next year. Indeed, with respect to some of the Data Requests at issue the Staff already has the information requested. Finally, we respectfully submit that the Commission’s Order is particularly unfair in that UE did not follow the usual procedure governing Data Requests because we believe that procedure does not apply in this context. We decided to memorialize our objections to the process being followed by the Staff in writing, but, after discussing the matter with the Staff, agreed that the dispute should be submitted to the Commission for its guidance on how this process under the EARP was to work. Precipitously penalizing UE for not following the very procedure that is in dispute, even if the Commission were to ultimately conclude that something like that usual practice should apply, seems to us fundamentally unfair and unjust. We set out these reasons for reconsidering the Order more fully below:

1. At the outset, UE agrees with the Staff that this dispute concerns the proper construction and operation of the EARP, and so is appropriately before the Commission for resolution. The question here is whether the usual discovery process under the Commission’s Rules, *see* 4 CSR 240-2.090(2), applies in the context of the EARP. We submit that it does not.

2. If the EARP were silent concerning the disclosure of information, the usual discovery process might indeed govern proceedings under the EARP. But, to the contrary, the signatories to the EARP negotiated and agreed to detailed provisions that provide for the disclosure of a wealth of information, resulting in a level of disclosure that they believed necessary to fulfill their obligations under the EARP, including the filing of the recommendation on the future of the EARP. *See* § 7.g. Thus the question is not whether the Staff will have the “comprehensive information” needed to make its proposals concerning the future of the EARP, but rather what are the rules that define and provide for the disclosure of that comprehensive information. Here, the EARP’s own disclosure provisions define what is the “comprehensive information” needed and govern information disclosure in lieu of the usual discovery process.

3. The first main disclosure provision of the EARP is set out in § 7.e. It expressly requires UE to provide nine categories of reports and data, and, in a significant departure from other discovery in proceedings under the Commission’s jurisdiction, the EARP expressly states that “UE will not be required to develop any new reports.” § 7.e. Consistent with this prohibition on UE developing new reports, the EARP only recognizes and authorizes data requests once, as a “follow up” to the nine categories of reports and data UE must provide, and no deadline is mandated for the response. *See id.* None of the Data Requests that the Commission has ordered us to answer (and indeed none that are in dispute) represents an inquiry following up on information provided by the reports and data UE has disclosed pursuant to § 7.e.

4. The second major provision of the EARP mandating information disclosure is § 7.f.iv, which requires UE to prepare a “preliminary earnings report,” followed by a

“final earnings report,” for each Sharing Period. The work papers used to develop these reports, which obviously provide an additional body of detail on the revenues, expenses, and operations of UE, are also provided to the Staff. However no reference is made here to data requests, or to any other procedure that would suggest the signatories contemplated that the normal discovery process would apply to the EARP.

5. Legally, then, it is clear that nothing in the EARP either adopts or incorporates the familiar data request process. Rather, the EARP establishes its own disclosure mechanisms, which borrow the data request device (but not its procedural rules or time limits) for a discrete purpose. Beyond the legal conclusion that none of the Data Requests at issue were made for the purpose adopted by the EARP, as a factual matter also they serve no purpose under the operation of the EARP.

6. Data Requests 13, item 2 in 16, 25, 26, 29, 35, and 50 all seek information the Staff already has through the work papers supporting the earnings reports and various ledgers. The remaining Data Requests the Commission’s Order has directed us to answer, 17-21, 23, 40, 55, and 4114, either require UE to develop new reports in violation of the express terms of the EARP, *see* § 7.e, or have no apparent relevance to any issue that could be addressed in the recommendations to be filed next February.

7. In our Opposition to the Staff’s Motion to Compel, now due on November 3, we will more fully explain our legal and practical objections to the Staff’s discovery efforts. As that filing will discuss, though we object to the scope and manner of the Staff’s current discovery efforts, we do agree that the Staff needs a reasonably full compilation of relevant information not only to make its February 1, 2001 filing, but also to thoroughly consider alternatives on which the parties might agree. Accordingly, we

plan to approach the Staff to discuss these issues and hopefully fashion a workable alternative to the course the Staff has at present chosen to follow.

For the foregoing reasons, UE respectfully urges the Commission to reconsider and withdraw its Order of October 31, 2000 directing UE to answer certain Data Requests.

November 2, 2000

Respectfully submitted,

AmerenUE

By: James J. Cook / sh  
James J. Cook, MBE #22697  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 64166-6149  
314-554-2237  
314-554-2098  
314-554-4014 (fax)

OF COUNSEL:

Robert J. Cynkar  
Victor J. Wolski  
Cooper, Carvin & Rosenthal  
1500 K Street, N.W.  
Suite 200  
Washington, D.C. 20005  
202-220-9600  
202-220-6901 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 2<sup>nd</sup> day of November, 2000, on the following parties of record:

Mr. James M. Fischer  
101 Madison Street  
Suite 400  
Jefferson City, MO 65101

Mr. Michael C. Pendergast  
Laclede Gas Company  
720 Olive Street  
Room 1530  
St. Louis, MO 63101

Mr. Robert C. Johnson  
720 Olive Street  
27<sup>th</sup> Floor  
St. Louis, MO 63101

Ms. Diana Schmidt-Vuylsteke  
Bryan Cave LLP  
One Metropolitan Square  
211 North Broadway  
Suite 3600  
St. Louis, MO 63102

Mr. Jeremiah W. Nixon  
Mr. Ronald Molteni  
Attorney General's Office  
221 W. High Street  
P.O. Box 899  
Jefferson City, MO 65102

Mr. William Riggins  
Kansas City Power & Light Co.  
1201 Walnut Street  
P.O. Box 418679  
Kansas City, MO 64141-9679

Mr. Steve Dottheim  
General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Mr. John B. Coffman  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Mr. James C. Swearengen  
Brydon, Swearengen & England  
312 E. Capitol  
P.O. Box 456  
Jefferson City, MO 65102

Ms. Marilyn S. Teitelbaum  
Schuchat, Cook & Werner  
1221 locust Street  
2<sup>nd</sup> Floor  
St. Louis, MO 63103

Mr. Gary W. Duffy  
Brydon, Swearengen & England  
312 E. Capitol  
P.O. Box 456 Jefferson City, MO 65102

Mr. Paul S. DeFord  
Lathrop & Norquist, L.C.  
2345 Grand Blvd.  
Suite 2500  
Kansas City, MO 64108

James J. Cook / sh  
James J. Cook