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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
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Missouri Public
Service Commission

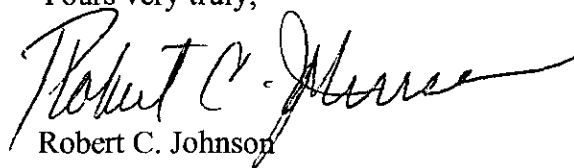
Re: Case NO.: EO-2000-580

Dear Mr. Roberts:

On behalf of the Missouri Energy Group, interruptible customers of Union Electric, Holnam, Inc. et al, I enclose herewith an original and eight (8) copies of their Reply Brief and request that you bring the same to the attention of the Commission.

Thank you for your prompt attention to this matter.

Yours very truly,


Robert C. Johnson

RCJ/gmw
Enclosures
cc: All parties of record

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

FILED

FEB 21 2001

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

**Missouri Public
Service Commission**

REPLY BRIEF OF MEG INTERRUPTIBLES

The MEG Interruptibles submit herewith their Reply Brief on the issues in this matter.

UNDISPUTED FACTS

The critical facts in this matter are undisputed and include the following:

1. The traditional interruptible Tariff in effect on the Union Electric ("U.E.") system (Rate 10M) for twenty or more years was effective and benefited all customers of the utility. It permitted numerous interruptions by U.E. that supported system reliability and contributed toward avoiding the "California" problems that we are witnessing almost on a daily basis at this time. Neither the Commission Staff nor U.E. has claimed that Rate 10M was ineffective in accomplishing its purposes.
2. The Brubaker Tariff proposal incorporates many of the best features of Rate 10M and also provides U.E. sixty hours of economic curtailment. It provides protection for system reliability through mandatory curtailments by the utility.
3. U.E. has a shortage of generation capacity. This undisputed fact is confirmed by the Brubaker testimony and by the testimony of Craig Nelson, a U.E. vice president, in Case No. EM-2001-233, in which U.E. is seeking to transfer of 500 MW of generation from its Illinois jurisdiction to Missouri. Portions of Vice President Nelson's testimony in this case were read into the record in this proceeding by Mr. Kovach, (TR p. 110, l. 16-

p. 111, l. 13). We urge the Commission to take administrative notice of the entire filing by U.E. in Case No. EM-2001-233.

4. Curtailments under Riders M and L, the replacement tariffs, presently in effect on the Union Electric system, are voluntary on the part of the customer and do not ensure protection for system reliability.

5. Interruptions by the utility under Riders M and L are based upon economic conditions and are triggered by high wholesale prices for electric energy. These tariffs permit U.E. to take advantage of "market opportunities" as noted by Mr. Kovach in his testimony (TR p. 121) given at the hearing in this proceeding. Accordingly, under Rider M., U.E. has the ability to sell curtailed customer power off system for an unregulated high price in the wholesale market. (TR. p. 121, l. 8-11)

REPLY TO U.E. BRIEF

ISSUE ONE

Should the Commission order U.E. to file tariff sheets to implement the Brubaker proposal of the MEG Interruptibles?

The Settlement by its express terms contemplated U.E. and the MEG Interruptibles would negotiate a mutually acceptable alternative replacement tariff for submission to the Commission. Several meetings did not produce agreement and U.E. arbitrarily filed a new tariff (Rider M) incorporating entirely new concepts for a voluntary curtailment tariff. (TR p. 11, l. 16-21). Essentially, Rider M is designed so as to provide for curtailment at the option of the customer and, in the event of an economic curtailment, permits the utility to sell a customer's power off system at higher wholesale prices.

Subsequently, the MEG Interruptibles prepared and submitted to U.E. the so-called Brubaker Tariff proposal. Although there were a number of meetings between representatives of

the MEG Interruptibles and U.E., no agreement was reached. (TR p. 33, l. 2-p. 34, l. 18). U.E. then filed the tariff that ultimately became identified as Rider M. The tariff proposal by U.E. was not useable by the MEG Interruptibles.

In its brief, U.E. re-examines the terms of the Settlement and, among other things, argues that the MEG Interruptibles received benefits from the fact that the Rider B credits were “higher than recommended by staff or the Company....” This argument is not relevant to the issues in this case. Furthermore, U.E. fails to state that the Rider B credits specified under the Settlement were less than the Rider B credits that had previously been in effect so that industrial customers receiving Rider B credits in effect sustained an increase.

It’s important to bear in mind that the Brubaker Tariff is a compromise tariff. It incorporates sixty hours of economic curtailment in addition to provisions for mandatory curtailment based upon system reliability concerns. Clearly the MEG Interruptibles have fulfilled all their obligations under the Settlement. Furthermore, U.E.’s contention that the Brubaker Tariff is “essentially the same” as Rate 10M is patently wrong.

U.E. then argues that the MEG Interruptibles have failed to sustain their burden of showing why the Commission should approve the implementation of the Brubaker Tariff. The record in this case and the record in Case No. 2001-233 overwhelmingly satisfy whatever burden is imposed upon the MEG Interruptibles in support of their tariff proposal. Rate 10M had been in effect for twenty years or more and there have been numerous curtailments under that tariff by U.E. Obviously, there is a need for a tariff that grants the utility the right to mandate curtailments. In times of system stress, curtailment should not be a customer option if the customer chooses to take service under an interruptible tariff. Furthermore, if the Commission still has any doubts on this issue, it can review the reams of information being issued on power

shortages and related problems in the western states. There is nothing to be lost by implementation of the Brubaker Tariff that incorporates the economic curtailments demanded by U.E. and also permits mandated curtailment by the utility in times of system stress. Furthermore, the MEG Interruptibles are prepared to discuss modifications to their proposal and are more than willing to meet with the Staff and U.E. for this purpose.

U.E. has gone to great lengths to develop the cost of production losses that resulted from past curtailments and concluded that the benefit after adjustment for production losses was approximately \$880,000. As U.E. admits, this is a substantial sum. Furthermore, it does not take into account the ability of the plants to offset those production losses at other times of the year when electric power is plentiful. In any event, these are matters for determination by the MEG Interruptibles and not by U.E. These involve confidential business decisions that each company makes and U.E.'s estimates may or may not be accurate and clearly are not appropriate. Again, U.E.'s argument is not relevant to the issues in this case.

At Page 13 of its Initial Brief, U.E. contends that the Brubaker Tariff provisions are "more restrictive" on the utility than under Rate 10M. This is incorrect. The terms, conditions and penalties that apply to reliability curtailments are the same. The provisions applying to economic curtailments only may have appropriate changes.

With regard to the capacity shortage issue, U.E. argues that Riders M and L have attracted 170 megawatts of ostensibly curtailable power. As noted previously, curtailment under these tariffs is voluntary on the part of the customers. Furthermore there is no assurance under these Riders that a curtailing customer is actually taking power. The utility may be buying air. There is no evidence in this record or, to our knowledge, anywhere, which indicates how many customers will voluntarily curtail under these tariffs. The ability of U.E. to relieve system stress

under these tariffs is speculative at best. We note that U.E. in Case No.: EM-2001-233 (filed in October 2000) states that it will have a substantial shortfall of generation in 2001 and subsequent years. It seems that 40MW of curtailable power would be beneficial.

ISSUE TWO

Should the MEG Interruptible rate reflect a credit of \$5.00 per kilowatt per month?

Counsel for U.E. argues that this credit is higher than the credit for any other utility in the State. Such an argument is specious because every utility rate has to be priced on the basis of the cost and obligations of each specific utility. The \$5.00 discount has been in effect for many years and there is no external factor that would indicate that it is excessive. Furthermore, U.E. Vice President Nelson's own testimony on the cost of combustion turbines now being installed by U.E. confirms that the \$5.00 discount rate is cost based and, if anything, may be too low. (TR p. 111, l. 23-p. 112, l. 14). U.E. said that other utilities are not paying \$5.00, but – significantly – it did not say that \$5.00 is too much. It said that MEG “has not supported its proposal of \$5.00,” but U.E. did not submit any figure of its own. Thus, U.E. prefers to rely on its failure to submit relevant data. At a time when U.E. plans to install new capacity at a cost higher than \$5.00/KW-month, the \$5.00 credit is reasonable.

ISSUE THREE

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

As noted by U.E., the Brubaker Tariff proposes unlimited interruptions for reliability purposes and in addition provides an additional sixty hours of interruption during “high cost periods” – in other words, for economic reasons. U.E. now argues that the customers under Riders M and L should determine when they are willing to be curtailed. The customers of course have no information adequate to determine whether or not the system is under stress and

reliability is a concern. That's a matter for determination by U.E. That burden should not be the obligations of the utility.

ISSUE FOUR

Should the interruptible rate incorporate the conditions upon which interruptions may occur and, if so, should those conditions be capable of being objectively verified.

U.E. apparently contends that the conditions for curtailment and the pricing are matters that need to be determined by U.E. from time-to-time and that it is not necessary to incorporate these in the tariff. We disagree. The customer needs to know what the terms and conditions are for curtailment. These terms and conditions are either described in detail in the Brubaker Tariff proposal or can be readily determined based upon the concepts recited in the Brubaker Tariff proposal. We are completely confident that if the Commission so directs, a tariff will be promptly prepared that will comport with the concepts described in the Brubaker Tariff.

REPLY TO STAFF'S INITIAL BRIEF

The Legal Question

The Staff and MEG Interruptibles are in agreement on the issue of the authority of the Commission to require implementation of a tariff incorporating the Brubaker Tariff proposal. In their initial briefs, Staff and MEG Interruptibles cited ample statutory authority and case law that make it absolutely clear that the Commission has such authority either by the filing of a new alternative tariff or by filing a modification or amendment of an existing tariff. While the U.E. brief on this issue is not clear, as we understand it, it is the U.E. position is that they do not oppose the position of Staff and MEG Interruptibles on this issue.

Staff Positions on the Merits of the MEG Interruptibles Proposal

Staff contends that the Brubaker Tariff proposal is essentially the same as the former rate 10M and that it imposes "tighter restraints on the Company." Nothing could be further from the

truth and a reading of the Brubaker Tariff confirms this without question. The Brubaker Tariff proposal incorporates sixty hours of economic curtailment which was included in response to U.E. proposals. Clearly, the Brubaker Tariff proposal is a compromise proposal that incorporates the concepts proposed by U.E. and also concepts reflected in the former rate 10M and therefore provides U.E. much greater flexibility. It's of critical importance to note that under the Brubaker Tariff proposal, U.E. also has the right to mandate curtailments at times of system stress.

The Staff further argues that the Brubaker Tariff has eliminated the right of the utility to curtail during times of system peak and increases U.E.'s reserve requirements. This is not correct on both accounts. Under the Brubaker Tariff, U.E. may mandate a curtailment at any time that system reliability is threatened, whether or not the utility is experiencing a system peak. System reliability is the criteria, not system peak, which may or may not occur at a time of system stress. Furthermore the Brubaker Tariff clearly does not require an increase in reserve requirements because it gives U.E. the right to curtail — a right not given under Rider L and M which could increase reserve requirements.

Staff next contends that there is no evidence of a reliability problem. We refer Staff to the U.E. filing in Case No. EM-2001-233 wherein U.E. seeks to transfer 500 megawatts of generation to its Missouri jurisdiction because of the inadequacy of its reserves for serving Missouri customers. On this issue, it is significant to note that U.E. has not denied that it has a capacity shortage. Furthermore, the last summer was very mild and not an adequate test of curtailments under Riders L and M.

Next, the Staff contends that Riders L and M will answer U.E.'s needs during times of system stress. We disagree. These tariffs are voluntary on the part of the customer and accordingly there is no assurance or any evidence in this case that the interruptible customers

will voluntarily accept curtailment and protect the system reliability for all customers of this utility.

Staff next contends that the interruptible credit should be “cost-based.” The MEG Interruptibles would have no objection to Staff’s conducting a study provided that the tariff is first implemented and in place. The Staff can then take it’s time and conduct whatever study it feels may be appropriate. We point out that the interruptible credit of \$60 per year has been in effect for many years and apparently without objection from the Staff or the utility. We also point out that in the record of this case, it is clear that U.E.’s new capacity will be combustion turbines and that the carrying cost of these new generating facilities would produce an interruptible credit of approximately \$68 per year, an amount higher than the proposed credit in the Brubaker Tariff proposal. (TR p. 111, l. 23-p. 112, l. 14)

At page eight (8) of its brief, Staff contends that U.E. must first attempt a purchase of power “at any cost” prior to curtailing its interruptible customers. This is incorrect. While it was true under former Rate 10M, under the Brubaker Tariff, U.E. could interrupt for sixty hours for economic reasons, even if reliability was not threatened.

Staff next argues that “there is a strong likelihood that power will always be available, though perhaps at a very high price,” U.E. disagrees. As noted in our Initial Brief, U.E. Vice President, Craig Nelson, testified in Case No.: EM-2001-233, that power may not be available at any price.

Next, Staff objects to the buy-through provision of the Brubaker Tariff proposal which requires the utility to obtain prices of purchased power and give the customer the option either to pay the price (plus an adder) or to curtail. This is a very common provision in numerous of

utility tariffs and simply gives the customer the option either to pay the high price, if such is the case, or to curtail. In either event, the system reliability is protected.

Among other things, the Staff contends that the number of curtailments should be specified in the tariff. Neither U.E. nor the MEG Interruptibles support Staff on this issue. In any event, we would have no objection to the limitations suggested by Staff in its brief. Staff also contends in its brief that other parties would be required to pay the \$2.4 million revenue increase now being paid by the MEG Interruptibles as a result of their being on the firm rate. We submit that Staff is incorrect on this issue. As testified by witness Brubaker, rates were set in the recent cost of service rate case on the basis of billing determinates that reflected the fact that the MEG Interruptibles remained on the old Rate 10M tariff. Accordingly, at this time, no customer of this utility is required to absorb this differential. In point of fact, U.E. is in a substantial over-earnings position and a recent proposed settlement of the revenue sharing case indicates that a refund of approximately \$28 million will be paid to U.E. customers and an equal amount will further enhance U.E.'s current earnings.

Staff argues that Holnam, Inc. can't comply with curtailment requirements. Holnam, Inc. has operated for many years under Rate 10M and has curtailed numerous times under that tariff. If there had been a problem, U.E. would have proposed changes in the tariff.

ADDITIONAL ISSUE

The authority of the Commission to require U.E. to implement a tariff incorporating the "Brubaker Proposal".

Staff and the MEG Interruptibles are in agreement that the Commission clearly has the authority to require U.E. to implement a tariff incorporating the "Brubaker Proposal."

Supporting case and statutory law has been cited and discussed at length in the initial briefs filed herein and will not be repeated in this Reply Brief. Suffice it to say that the law is absolutely clear that the Commission has such authority. If the law were to the contrary, regulation of utilities in Missouri would be severely restricted.

CONCLUSION

WHEREFORE, for the reasons set forth above, the MEG Interruptibles request that the Commission enter its Order requiring U.E. to file an interruptible tariff incorporating tariff concepts described in the Brubaker Tariff proposal.

Dated: February 20, 2001

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing has been mailed or hand-delivered to the following on this 20th day of February 2001.



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