

November 3, 2000

FILED<sup>3</sup>

NOV 03 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

Missouri Public  
Service Commission

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 **Opposition To Staff Motion For A Commission Order Compelling Union Electric Company to Answer Staff Data Requests Relating to the Staff Making the Filing Required by Section 7.G of the Second EARP Stipulation and Agreement.**

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>3</sup>  
NOV 03 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

**OPPOSITION OF UNION ELECTRIC COMPANY TO STAFF MOTION FOR A  
COMMISSION ORDER COMPELLING UNION ELECTRIC COMPANY TO ANSWER  
STAFF DATA REQUESTS RELATING TO THE STAFF MAKING THE FILING  
REQUIRED BY SECTION 7.G OF THE SECOND EARP STIPULATION AND  
AGREEMENT**

Union Electric Company, d/b/a AmerenUE ("UE") respectfully opposes the motion of the Staff of the Missouri Public Service Commission (the "Staff") for an Order compelling UE to respond to Staff data requests (the "Staff's Motion"). We agree with the Staff that this dispute, however unfortunate and unnecessary, is properly before the Commission, but we believe that the Staff's Motion should be denied under the governing law and relevant facts.

1. The Staff's Motion illustrates the burden that their "revenue requirement cost of service audit" is imposing on UE, with a team of six accountants working on site at UE in St. Louis. See Staff's Motion at 2. The flurry of Data Requests that has been visited upon UE is, from the Staff's perspective, an essential part of this "revenue requirement cost of service audit," and responding to these requests creates a sizable administrative burden on UE.<sup>1</sup>

What the Staff fails to address, however, is the simple fact that they do not have a roving commission to impose the rigors and costs of a "revenue requirement cost of service audit"

<sup>1</sup> In addition, not only is the presence of the Staff's team at UE's offices unnecessary for any task under the EARP, but it too imposes a not inconsiderable administrative burden on UE--for we have had to provide desks, bookcases, and other materials for this team, and we have had to create a secure location for them.

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wherever they choose, whenever they feel such an ordeal is necessitated by the circumstances. An important check on the Staff is the fact that the authority to undertake a "revenue requirement cost of service audit" resides in the Commission, not the Staff, and must be delegated to the Staff when, in the judgment of the Commission, such a course is warranted. *See* MO. REV. STAT. §§ 386.240, 386.250. Commonly, the Commission will authorize the Staff to perform this kind of audit 60 to 90 days before a rate case is to be filed (such as when the end of a rate moratorium is approaching).

2. In this regard, it is important to underscore that the Commission could authorize a "revenue requirement cost of service audit" some reasonable time (such as the familiar 60 to 90 days) before July 1, 2001, when under the experimental alternative regulation plan ("EARP") a rate case could be filed. *See* § 7.c. Not only has the Commission not authorized this "revenue requirement cost of service audit," but, without any such authority, the Staff has launched this massive audit an unprecedented *nine months* before a rate case could be filed. The recommendations concerning the future of the experimental alternative regulation plan ("EARP") to be filed on February 1, 2001, are not in any way akin to the filing of a rate case, which can occur only after June 30, 2001. The Commission cannot order new rates, or indeed order a new EARP, as a result of the February 1 filings. It obviously can order new rates only at the conclusion of a rate case. Thus the February 1 filings do not mark any event similar to the end of a rate moratorium, and all the Staff's discussion of audits undertaken before the conclusion of rate moratoriums, *see* Staff's Motion at 8-10, is quite beside the point.

3. The Staff baldly claims that the "revenue requirement cost of service audit" is "necessitated by Section 7.g," but cites no authority whatsoever for this conclusion. The only attempt at supporting this claim the Staff makes is to state that "Section 7.g also states that in the final year of the second EARP, UE, Staff, OPC and other signatories 'shall meet to review the

monitoring reports and **additional information** required to be provided.’ (Emphasis added.)” Staff’s Motion at 2. The Staff then goes on to observe, correctly, that “monitoring reports data” is not the only information that is to be provided to the Staff. *Id.* But the Staff does not show how this reference to “additional information” automatically means a full “revenue requirement cost of service audit.” To the contrary, referring to the text of the EARP itself makes quite clear what this additional information is, and what it is not. Section 7.e of the EARP sets out nine categories of reports and data that UE must supply to the Staff and OPC “on a timely basis,” but it then provides that “Staff, OPC, and the other signatories participating in the monitoring of the New Plan may follow up with data requests, meetings and interviews, as required, to which UE will respond on a timely basis.” § 7.e. Thus the additional information contemplated by the parties in drafting the EARP was inquiries following up on reports and data that had already been provided under § 7.e, not some free-standing “revenue requirement cost of service audit.” Further confirming that the parties did not contemplate that a “revenue requirement cost of service audit” would take place under the EARP is the provision of § 7.e that “UE will not be required to develop any new reports,” *id.*, a limitation certainly not seen in the context of the usual “revenue requirement cost of service audit.”

4. Beyond their unsuccessful effort to find language in the EARP to support their supposed authority to undertake a full “revenue requirement cost of service audit” at this point, the Staff argues, apparently, that the logic of the procedure for submitting recommendations on the future of the EARP to the Commission requires them to undertake a “revenue requirement cost of service audit.” Accordingly, they say, without a “revenue requirement cost of service audit” their “analysis would be so narrowly confined so as to not permit the Staff to make truly informed and substantive recommendations as to whether the second EARP should be continued as is, continued with changes (including new rates, if recommended) or discontinued.” Staff’s

Motion at 10. This is a curious argument. The information that must be provided by UE under § 7.e is obviously *not*, as the Staff surprisingly claims, only “monitoring data as UE has seen fit to provide the Staff under its interpretation of Section 7.g.” *Id.* Section 7.e was negotiated by the parties with the goal that all would have sufficient information to review and understand how the EARP was operating and to fulfill all their obligations under the EARP. What must be disclosed under § 7.e is not simply a matter of what UE “sees fit” to provide, but what the terms of this provision, to which all agreed, *require* it to provide. If UE in some way failed to comply with the provision, the Staff or another party could bring UE before the Commission to have the provision enforced, as the Staff’s counsel pointed out in the proceeding in which the first EARP was presented to the Commission. *See* Transcript, Hearing of the Public Service Comm’n, Case No. ER-95-411, at 36 (July 19, 1995) (“1995 Hearing”) (Mr. Dottheim: “I think there is also a provision for, if any dispute, disagreement arises, problems from our perspective, we may bring it to the Commission for a resolution.”).

Furthermore, there is that “additional information,” discussed above, that provides multiple avenues for securing a wealth of data that a party might find relevant. This point was echoed by the Staff’s counsel at the 1995 presentation of the original EARP to the Commission, when he was asked whether the nine categories of information set out in § 7.e would be sufficient. He replied:

It is our belief that – the Staff’s belief that the nine points will be adequate. I think the document also reflects that there’s not just a provision of these nine items. This can – the information that is provided to the Staff may be followed up with data requests or requests for interviews. So it’s not just the nine items that are on Page 7 when the Staff indicates that what is contained within the Stipulation and Agreement itself is adequate.

*Id.*

But the information available to the Staff in order to make “informed and substantive recommendations” is not limited to the information provided under § 7.e. In addition, each year of the EARP (that is, each “Sharing Period”), UE must prepare a “preliminary earnings report,” followed by a “final earnings report,” which “provide[s] the actual results of the Sharing Period.” § 7.f.iv. The underlying work papers from which those reports are compiled are also provided to the Staff. These reports and their related work papers provide great insight into the revenues, expenses, and overall operation of UE for each year of the EARP. When added to the information already provided under the monitoring provisions of the EARP, the Staff has more than enough information to fulfill every task under the EARP, including determining whether they wish to suggest new rates in the recommendations that must be filed by February 1, 2001. See § 7.g.

5. What even more strikingly confirms that a “revenue requirement cost of service audit” is neither authorized by the EARP, nor necessary for the Staff to properly perform its duties under it, are the actual Data Requests that are the subjects of this dispute. Remember that the § 7.g recommendations focus exclusively on whether the EARP “should be continued as is, continued with changes (including new rates, if recommended), or discontinued.” § 7.g. Even with its reference to “new rates, if recommended,” this provision concerns only the continuation of the EARP, and new rates in *that context*. It does not establish a cost-of-service ratemaking, with the range of prudence and other issues that such a traditional cost of service ratemaking proceeding could entail. Indeed, the whole point of the EARP, with its defined Reconciliation Procedure and sharing grid is to avoid the retrospective flyspecking of expenses that is common in traditional ratemaking and to create a powerful incentive to avoid unnecessary or imprudent expenses through the mechanism of sharing the resulting profitability of the company. In short,

many questions that arguably could be relevant in a traditional cost-of-service ratemaking are not relevant for the February 1 filing.

In this context, it is not hard to see, even from the Staff's own description of sample Data Requests, that the bulk of the information sought has no bearing on any of the possible issues to be considered in the § 7.g proceeding. For example, what possible relevance could a request asking for "copies of interviews and internal correspondence relating to the Venice power plant outage" (Staff's Motion at 3) have to the terms of a future EARP? Or how about the two requests that "ask for information from 1993 forward respecting payments to and correspondence with a certain law firm engaged in lobbying activities"? *Id.* The Staff goes on to point out that, "[I]n the past, the Commission has disallowed lobbying expenses from recovery in rates." *Id.* Just so. Indeed, the EARP itself *excludes* lobbying expenses from the calculation of UE's return on equity. *See* Reconciliation Procedure, § 2.c. Unless the Staff wants to propose that a future EARP should allow lobbying expenses to be included in these calculations, what relevance does such Data Requests have? Indeed, all the Data Requests to which we have objected fall into one of two categories. Either, as these examples illustrate, the request seeks information that has no relevance whatsoever to the EARP proceedings. Or, even worse, the request asks for information the Staff already has in its possession from UE ledgers or the work papers supporting the earnings reports.

6. We began by characterizing this dispute as unfortunate and unnecessary, and wish to reiterate that characterization in closing because, as the foregoing discussion illustrates, no major legal issue need be joined to address the reasonable, practical question at the bottom of all this argument. We do not disagree 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 other matters or alternatives on which the parties might agree. But responsible and fair agreement

cannot come by creating rigid positions based on labels or slogans, like a supposed need for a full "revenue requirement cost of service audit." This is particularly true when, as we have shown above, such labels have such a broad and ambiguous meaning that they can be used to justify any demand the Staff wishes to make, even if that demand has no plausible relevance to the issues at hand.

The Staff's discovery strategy, and now its claims before this Commission, suggest a highly inappropriate use of what is, at best, the *Commission's* power delegated to the Staff. But the intrusive power the Staff claims the right to exercise here has *not* in fact been delegated to the Staff in this matter, and, to be sure, would be at odds with terms of the EARP that carefully ensure that all parties have the information they need to perform their obligations under the EARP. UE fully intends to discuss informally with the Staff their reasonable needs for information, and we are hopeful that we can fully meet those needs. However, the Staff's Motion is, as a matter of law, wholly without merit and should be denied, or, at the very least, held in abeyance while the parties discuss the matter, and possibly avoid the need for any Commission action.

November 3, 2000

Respectfully submitted,  
AmerenUE

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 3<sup>rd</sup> day of November, 2000, on the following parties of record:

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