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December 19, 2001

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Mr. Dale Hardy Roberts
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P. O. Box 360
Jefferson City, MO 65102

FILED²
DEC 19 2001
Missouri Public
Service Commission

**RE: Case No. EC-2002-1 – Staff of the Missouri Public Service Commission,
Complainant, vs. Union Electric Company, d/b/a/ AmerenUE, Respondent.**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF RESPONSE TO UNION ELECTRIC COMPANY'S REPLY TO STAFF'S MOTION FOR RECONSIDERATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
Chief Deputy General Counsel
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(573) 751-9285 (Fax)
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Enclosure
cc: Counsel of Record

ON

FILED²

DEC 19 2001

Missouri Public
Service Commission

Case No. EC-2002-1

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to Union Electric Company's Reply To Staff's Motion For Reconsideration Of Commission Order Establishing Test Year And Procedural Schedule filed on December 17, 2001. In response the Staff proposes a revised procedural schedule in lieu of the procedural schedule which the Staff proposed on December 11, 2001. The procedural schedule proposed herein endeavors to address the points raised by Union Electric Company, d/b/a AmerenUE in its filing on December 17, 2001. The Staff also recommends that the Commission again extend the date for the Office of the Public Counsel and Intervenors to file their rebuttal testimony and schedule a prehearing conference for December 27, 2001 to attempt to resolve all outstanding matters respecting a procedural schedule. In support thereof, the Staff states as follows:

1. The Staff suggests that the Commission schedule a prehearing conference for Thursday, December 27, 2001 for the purpose of the parties addressing the matters contained in UE's December 17, 2001 filing and in this reply of the Staff. As previously suggested by the

Staff, the Commission should extend the filing date for the Office of the Public Counsel and Intervenors to January 4, 2002, which is the day on which the Commission has directed that UE make its initial filing.

2. The Staff proposes the following procedural schedule based on the matters raised by UE in its December 17, 2001 filing with the Commission:

EVENT	DATE	DAYS BETWEEN SUCCESSIVE EVENTS
<u>Alternative Regulation Plan Phase</u>		
UE files direct testimony on alternative regulation plan	January 4, 2002	
		70 days
Staff and other parties file reb. to UE alt. reg. plan	March 15, 2002	
		70 days
UE files sur. on alt. reg. plan – Staff, OPC and Intervenors file cross sur.	May 24, 2002	
		4 days
Prehearing conference	May 28-31, 2002	
Staff files List of Issues, Order of Issues and Order of Cross-Examination	June 26, 2002	
		5 days
Parties file Statements of Position	July 1, 2002	
		6 days
Hearings	July 11-12, 15-19, 22-26, August 1-2, 2002	

<u>Excess Earnings/Revenues Complaint Case Phase</u>		
Staff files direct testimony on rates and rate design	March 1, 2002	
		70 days
UE and OPC file rebuttal testimony on rates and rate design	May 10, 2002	
		7 days
MIEC, MEG, Doe Run, AG, Retailers & Laclede file rebuttal	May 17, 2002	
		11 days

Prehearing conference	May 28-31, 2002	28 days
Staff files surrebuttal testimony & UE, OPC, MIEC, MEG, Doe Run, AG, MoRetailers & Laclede file cross-sur.	June 24, 2002	
Staff files List of Issues, Order of Issues and Order of Cross-Exam.	June 26, 2002	2 days
Parties file Statements of Position	July 1, 2002	5 days
Hearings	July 11-12, 15-19, 22-26, August 1-2, 2002	6 days

3. At page 2 of its December 17, 2001 filing UE announces that “the Company stands willing and able to abide by the procedural schedule set forth in the Commission Order of December 6, 2001.” At page 7, UE states that “[t]he Commission must recognize that it is Staff, not AmerenUE, that is requesting additional time as a result of the newly ordered procedural schedule.” There should be no excuse for UE not to be able to meet the procedural schedule set by the Commission on December 6, 2001, since, among other things, the data necessary for basing a revenue requirement determination on a test year of the 12 months ending June 30, 2001 is in the possession of UE. The necessary information is not in the possession of the Staff.

Also, UE has had an unprecedented 186 days to respond to the Staff’s case. In fact in the Staff’s July 20, 2001 Reply To UE’s Proposed Procedural Schedule, the Staff identified the following response times directed by the Commission in prior Staff excess earnings/revenues complaint cases: in the Staff’s 1987 excess earnings/revenues complaint case against UE, Case Nos. EC-87-114 et al., UE was provided 98 days to respond to the Staff’s direct case; in the Staff’s 1988-89 excess earnings/revenues complaint case against Southwestern Bell Telephone Company (SWBT), Case Nos. TC-89-14 et al., SWBT was provided 95 days to respond to the Staff’s direct case; and in the Staff’s 1993 excess earnings/revenues complaint

case against SWBT, Case Nos. TC-93-224 et al., SWBT was provided 108 days to respond to the Staff's direct case.

4. UE appended to its December 17, 2001 filing the affidavit of Mr. Gary S. Weiss, which UE appended to its November 13, 2001 filing. The Staff previously noted Mr. Weiss's statement at the bottom of page 1 of his affidavit, in paragraph 2, that he offered to give to the Staff a copy of his year-end cost of service run for the 12 months ended December 31, 2000, and that none of the Staff accountants recall Mr. Weiss indicating at any time that he had a year-end cost of service run for the 12 months ended December 31, 2000. Again, the filing of Mr. Weiss' affidavit on November 13, 2001 is the first that the Staff became aware that Mr. Weiss purportedly has a year end cost of service run for the 12 months ended December 31, 2000. Attached to this Staff response is the verified statement of Greg R. Meyer.

The Staff also notes that on page 2 of his affidavit, in paragraph 3, Mr. Weiss asserts that "the September 2001 filing of the last sharing period earnings report, included a detailed cost of service accounting run along with workpapers." In paragraph 4 at the bottom of page 2 and the top of page 3 of his affidavit, Mr. Weiss states, respecting a period that UE asserts has been auditable for some time now, that UE "estimates" that the normalized electric net operating income decreased \$50 to \$75 million for the 12 months ended June 30, 2001 compared to the 12 months ended June 30, 2000. Of this \$50 to \$75 million decrease, he specifically identifies a total of only \$35 million in cost increases. The September 2001 filing of the last sharing period earnings report, which Mr. Weiss states includes a detailed cost of service accounting run along with workpapers, is not in sufficient detail to identify the \$15 million increase in electric labor, the \$5 million increase in contract power plant maintenance, the \$5 million increase in Missouri distribution other expenses and the \$10 million increase in injuries

and damages expense which he contends occurred. These items add up to \$35 million in increases, not to the \$50 to \$75 million by which he claims normalized electric operating income decreased. The alleged \$35 million increase in expense is not comparable to the \$50 to \$75 million decrease in operating income. The asserted \$35 million increase in expense is a pre-tax number while the \$50 to \$75 million number is an after-tax amount. The \$35 million number would be reduced to approximately \$21 million to reflect, on an after-tax basis, the operating income associated with expense increases.

There are two additional items of note in Mr. Weiss's affidavit. First, Mr. Weiss evidently is only able to estimate the operating income results on UE's test year of June 30, 2001 as late as November 13, 2001, the date that his affidavit was executed. This contradicts UE's assertion that all necessary data has been available since September 2001. If all the data were available, then there would be no need for Mr. Weiss to estimate the change in results for the year ending June 30, 2001. Mr. Weiss would have been able to provide the actual results.

Second, Ameren Corporation reported to the Securities and Exchange Commission in its 10-Q filing on August 14, 2001 that its "[e]arnings for the 12 months ended June 30, 2001, were \$435 million, or \$3.17 per share, compared to \$419 million, or \$3.06 per share, for the preceding 12-month period." UE's Missouri retail electric operations are a significant portion of Ameren Corporation's overall operations. Therefore, while Mr. Weiss is telling the Commission that UE is estimating a \$50 to \$75 million decrease in income for the year ended June 30, 2001 compared to the previous year, Ameren Corporation has publicly reported that it has experienced a growth in earnings for the same period. This situation illustrates the need for the Staff to investigate the factors underlying the test year adopted by the Commission.

5. At page 7 of its December 17, 2001 filing, UE states that "AmerenUE strongly objects to the Staff's request that the Company be prohibited from providing any data updating the June 30, 2001 test year. . . . [T]he Staff has offered **no authority or reason** why updating should not be permitted." (Emphasis in UE's Reply). UE in its December 17, 2001 reply identifies no end date for its proposal to update. (The Staff assumes that the date "June 30, 2002" which appears twice on page 7 is intended to be "June 30, 2001.")

First, the Western District Court of Appeals in *State ex rel. GTE North, Inc. v. Public Serv. Comm'n*, 835 S.W.2d 356, 370 (Mo.App. 1992) held that it is not required by law that the Commission recognize and incorporate all known and measurable events outside the test year, so long as rates that are just and reasonable result. Second, UE's proposal is contrary to the practice of the Commission. For example, the Commission in its June 21, 2001 Suspension Order And Notice for Case No. ER-2001-672, the presently pending Missouri Public Service rate increase case, states at page 3 as follows respecting "test year," "updated test year," and "known and measurable":

All test year proposals shall include a specific 12-month period as a test year and should include any additional period for which a party has updated significant items from the test year. The test year with the additional period will be called a test year as updated, or updated test year. In addition to a proposed test year or a proposed updated test year, a party may request isolated changes, such as those imposed by governmental bodies, as part of its case and the Commission will consider whether those isolated changes are known and measurable and whether they should be included in Company's revenue requirement. An issue to be considered in this determination is whether the proposed adjustment affects the matching of rate base, expenses and revenue.

On August 14, 2001, the Commission issued in Case No. ER-2001-672 an Order Concerning Test Year And True-Up, Resetting Evidentiary And True-Up Hearings, Adopting Procedural Schedule, and Concerning Local Public Hearings. The Commission's Order directed in part as follows:

1. That the test year in this matter shall be the 12 months ending December 31, 2000, updated for known and measurable changes through June 30, 2001, but not including those items for which a true-up is requested. UtiliCorp United, Inc., shall update its accounting information consistent with the test year herein selected.

2. That the true-up audit shall be conducted as discussed herein as of January 31, 2002. The true-up shall be limited to those accounts necessarily concerned with the MEP Pleasant Hill, L.L.C., power unit and UtiliCorp's Power Sales Agreement for electric power generated by that unit.

3. That the parties shall jointly file a list of accounts to be trued-up on or before August 31, 2001.

4. That the true-up hearing shall be held on March 26 and 27, 2002.

As previously addressed in the Staff's November 13, 2001 and November 26, 2001 filings in this case, at the prehearing conference on November 8, 2001, UE mentioned an update period ending September 30, 2001. In order to meet UE's conditions for agreeing that a reduction in rates resulting from Case No. EC-2002-1 be made retroactive to April 1, 2002, the Staff proposes an update period through September 30, 2001. It is important for a final decision to be made concerning the matters of test year, update, and true-up so the Staff will know the parameters of its new required filing. If UE is going to leave the matters of update and true-up open ended, then this case may never be appropriately completed.

6. The other item that UE states will cause it to withdraw its offer of retroactive rate treatment commencing April 1, 2002 is the denial of the opportunity for UE to file an alternative regulation plan as part of Case No. EC-2002-1. The Staff's proposal was in part based on the fact that the Staff has not and will not propose an alternative regulation plan. There is presently no alternative regulation plan in existence respecting UE. Thus, the burden of proof respecting the adoption of an alternative regulation plan is on the party proposing the alternative regulation plan, which will be UE. It therefore is appropriate for UE to make filings of direct testimony and

surrebuttal testimony, and for the other parties to make filings of rebuttal testimony and cross-surrebuttal testimony. Since UE in its December 17, 2001 reply relates that it can make the January 4, 2002 filing date ordered by the Commission, then the Staff proposes that UE file its alternative regulation plan proposal on that date. The Staff, OPC and the Intervenors would file rebuttal testimony on March 15, 2002. UE would file surrebuttal testimony and the Staff, OPC and Intervenors would file cross-surrebuttal testimony on May 24, 2002.

The Staff notes that respecting other Commission cases where a utility proposed or the Commission offered alternative regulation, separate rate proceedings and alternative regulation cases were docketed. The Commission in its Report and Order in the Staff's 1988-89 excess earnings/revenues complaint case against SWBT identified the proceedings as follows:

On July 19, 1988, SWB filed a proposal to change the way it is regulated by the Commission. This proposal SWB entitled TeleFuture 2000. In August, [1988], both Staff and Public counsel filed complaints against SWB alleging SWB's rates were excessive and SWB was overearning by over \$200 million. The Commission determined that before it could address SWB's proposal for removing SWB from rate base/rate of return regulation there would have to be a resolution of the allegations in the two complaints. The Commission consolidated the TeleFuture 2000 proposal with the two complaints and an inquiry into SWB's rate design. . . .

Re Southwestern Bell Telephone, Case Nos. TC-89-14 (Staff complaint case), TO-89-10 (SWBT's TeleFuture 2000 proposal), et al., Report And Order, 29 Mo.P.S.C.(N.S.) 607, 664 (1989). SWBT's TeleFuture 2000 proposal was Case No. TO-89-10, In the matter of a rate stability proposal for Southwestern Bell Telephone Company.

The Commission's Report And Order in the Staff's 1993 excess earnings/revenues complaint case against SWBT states as indicated below respecting the alternative regulation plan proposals. The reports filed by the Staff and UE on February 1, 2001

respecting the second UE experimental alternative regulation plan are comparable to the reports referred to in the first sentence below:

The issue of an alternative form of regulation for SWB originated in the reports filed by SWB, Staff and OPC in Case No. TO-90-1. . . . The reports discussed the perceived successes or failures of the experimental plan and offered proposals for the development of a future plan. Case No. TO-93-192 was established to address a future plan and Staff's complaint case, TC-93-224, was consolidated with TO-93-192 since many of the issues and positions of the parties in the two cases overlapped. The proposals sometimes refer to the plans as incentive plans. For the Commission's purposes, the proposals will be viewed as proposals for alternative regulation, and thus the focus is shifted to the reasonableness of an alternative form of regulation rather than the need for incentives and what those are incentives are.

Re Southwestern Bell Telephone, Case Nos. TC-93-224 and TO-93-192, Report And Order, 2 Mo.P.S.C.3d 479, 567 (1993).

7. At page 6 of its December 17, 2001 response, UE states that if the Commission should shorten the response time for data requests from twenty days to ten days, this result should apply to all parties, including the Staff. The Staff's request that the Commission shorten the time for UE to respond to Staff data requests was made on behalf of the Staff and not on behalf of any other party. Undersigned Staff counsel apologizes for the Staff's December 11, 2001 motion not having been clear enough on this matter and not having been clear enough to indicate that the Staff also should be bound by any directive of the Commission on data request response times. However, the Staff had not intended to speak on behalf of any of the other parties.

8. The Staff would refer the Commission to UE's December 17, 2001 filing, the sentence at the bottom of page 4 which carries over to the top of page 5. UE states that "prior to the Staff's initial filing of testimony reflecting the new test year, the Company will file the appropriate tariff changes making rates collected on and after April 1, 2002 interim, subject to

adjustment based upon a final non-appealable order of the Commission setting rates and establishing rate design in this proceeding.” Before accepting this specific language or UE’s offer at all as the basis of any agreement, the Staff suggests that an effort be made to address a matter that was of concern to all of the parties involved with litigating the third year of the first EARP including the Commission, i.e., will UE agree to reduce rates and refund monies collected interim, subject to refund that reflect dollars not at issue among the parties.

Wherefore the Staff proposes above a revised procedural schedule in lieu of the procedural schedule which the Staff proposed on December 11, 2001. This procedural schedule endeavors to address the points raised by Union Electric Company in its filing on December 17, 2001. The Staff also recommends that the Commission again extend the date for the Office of the Public Counsel and Intervenors to file their rebuttal testimony and requests that the Commission schedule a prehearing conference for Thursday, December 27, 2001 to attempt to resolve all outstanding matters respecting a procedural schedule.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been electronically mailed and mailed or hand-delivered to all counsel of record as shown on the attached service list this 19th day of December, 2001.



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Exhibit No. _____
Issues _____
Name _____
Sponsoring Party _____
Type of Exhibit _____
Case No. _____
Date testimony rendered _____

Verified Statement

Gregory Meyer

MOI SC Staff

Verified Statement

EC-2002-1

December 19, 2001

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

VERIFIED STATEMENT

OF

GREGORY MEYER

UNION ELECTRIC COMPANY

d/b/a AMBERNUE

CASE NO. EC-2002-1

Jefferson City, Missouri
December 2001

1 **VERIFIED STATEMENT OF**
2 **GREG R. MEYER**
3 **UNION ELECTRIC COMPANY**
4 **d/b/a AMERENUE**
5 **CASE NO. EC-2002-1**
6

7 Q. Please state your name and business address.

8 A. Greg R. Meyer, 815 Charter Commons Drive, Suite 100B, Chesterfield,
9 Missouri 63017.

10 Q. By whom are you employed and in what capacity?

11 A. I am a Regulatory Auditor V with the Missouri Public Service
12 Commission (Commission), Staff (Staff).

13 Q. Are you the same Greg R. Meyer who caused to be filed direct testimony
14 in this case?

15 A. Yes, I am.

16 Q. What is the purpose of this verified statement?

17 A. This verified statement will discuss the Staff's differences with certain
18 statements made by Mr. Gary Weiss of Union Electric Company, d/b/a AmerenUE
19 (Company) within the context of his November 13, 2001, affidavit and the Company's
20 filings regarding test year and the procedural schedule. Specifically, this verified
21 statement will address the following:

- 22 1. The availability and offer of Mr. Weiss to provide to the Staff a
23 cost of service run for the 12 months ended December 31, 2000.

1 service calculation for the 12 months ended June 30, 2001. Does the Staff agree with this
2 assertion?

3 A. No, absolutely not. The Company repeatedly has stated to the
4 Commission that due to the requests to update the Staff data requests through June 2001
5 and the Company's September 2001 filing of the last sharing period earnings report, the
6 Staff has all the information necessary to calculate cost of service as of June 30, 2001.
7 This statement is simply not correct.

8 The Company, through Mr. Weiss' affidavit and its filings, fails to inform
9 the Commission that the Staff submitted numerous data requests regarding each EARP
10 credit-sharing period. For example, during the fifth credit-sharing period (July 1, 1999
11 through June 30, 2000, Staff's test year) the Staff submitted 71 data requests. These
12 requests were submitted to monitor the earnings of AmerenUE and to clarify or obtain
13 additional information that was not provided through the workpapers supporting the
14 Company's credit calculation. If the workpapers supporting the Company's credit
15 calculation were as extensive as portrayed by AmerenUE, Staff data requests to the
16 Company would not be necessary. It should also be stated that the Staff's review of the
17 Company's credit sharing calculation does not require or permit the level of detail that is
18 necessary for a complaint filing.

19 As noted earlier, the Staff's original test year was the 12 months ending
20 June 30, 2000. The Staff's test year was the identical period used to calculate the
21 Company's fifth year sharing credits. In addition to using the Staff data requests
22 submitted for the Company's fifth year sharing credits, the Staff also submitted in excess

1 of 300 additional data requests to aid the Staff in its earnings/revenues review complaint
2 filing.

3 For the Company to suggest that the Staff has the information necessary to
4 file a cost of service run at June 30, 2001, in the same detail as the cost of service run for
5 the 12 months ending June 30, 2000 that forms the basis of the Staff's July 2, 2001
6 complaint, without the necessity of additional discovery (data requests), is unfounded.

7 If this were truly the case, the Staff would not have found it necessary to
8 submit the additional data requests that were intended to be attached to the Staff's
9 December 11, 2001, filing before the Commission and which were filed on December 12,
10 2001. It should be noted that many of these initial Staff data requests will have to be
11 supplemented with additional data requests for information needed to address the new
12 Commission-ordered test year.

13 The Staff would agree that it has information through June 30, 2001
14 regarding certain areas of the Staff's complaint. This information was obtained by
15 updates to the Staff's original data requests and was utilized to monitor the Company's
16 operations in certain areas beyond the Staff's test year. However, many of the Staff's
17 data requests previously submitted pertained to a test year and update period, which were
18 not adopted by the Commission.

19 Q. What would be the effect of the Company not being required to answer the
20 data requests that the Staff has recently submitted?

21 A. The Staff's ability to obtain the information it needs to address the new
22 test year ordered by the Commission would be greatly impaired. The Staff has already

