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December 3, 2001

VIA HAND DELIVERY

FILED[2]
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Missouri Public Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
Jefferson City, MO 65101

Ameren

Re: MPSC Case No. EC-2002-1

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 **Union Electric Company's Response to Staff Reply Brief Concerning Test Year; Request to Modify Pending Procedural Schedule and Proposal for Retroactive Application of New Rates.**

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/mlh
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

The Staff of the Missouri Public Service Commission, Complainant,	)	
v.	)	Case No. EC-2002-1
Union Electric Company, d/b/a AmerenUE, Respondent.	)	

UNION ELECTRIC COMPANY'S RESPONSE TO STAFF REPLY BRIEF CONCERNING TEST YEAR; REQUEST TO MODIFY PENDING PROCEDURAL SCHEDULE AND PROPOSAL FOR RETROACTIVE APPLICATION OF NEW RATES

COMES NOW Union Electric Company ("the Company") and for its Response to Staff Reply Brief Concerning Test Year; Request to Modify Pending Procedural Schedule and Proposal for Retroactive Application of New Rates states as follows:

The Company's Test Year and Suggested Procedural Schedule Do Not Harm Customers and Do Allow Adequate Time for Staff and Other Parties to Respond. In Suggesting an April 1, 2002 Proposed Effective Date, the Company is Affirmatively Eliminating Any Argument that Using Accurate Up-To-Date Information Will Delay Commission Ordered Benefits to the Consumer.

1. Union Electric Company has previously requested that the Commission establish a test year in this case using the twelve months ending June 30, 2001, the most recent and best possible data to serve as a basis for the Company's future rates. Even Staff itself has recently recognized this concept (Staff's Reply Brief, at p. 4) when it quoted from the Missouri Court of Appeals:

> ...Mindful that the central purpose of the "test year" is as a **predictor**, it makes sense for the Commission to be allowed flexibility in order to establish that the **best possible data** be

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analyzed for its predictions to achieve a degree of accuracy...
(emphasis added)

State ex rel. GTE North, Inc. v Public Service Commission, 835 S.W.2d 356, 372 (Mo.App. 1992)

2. As part of that request, the Company recognized that by the time a rate order would be issued by the Commission in this proceeding, Staff's test year data would be two to three years old.[1] Staff's initial reaction was that additional time would likely be needed by the parties to accommodate this request. In order to assure the Commission that use of the more current and appropriate test year would not result in a delay of any possible rate reduction, the Company proposed a **retroactive** effective date for new rates of June 1, 2002 - the date when rates would be expected to become effective under Staff's initial proposal of the Company's test year was adopted. Therefore, although the hearing schedule would be delayed, any potential resulting benefit to ratepayers would not.

3. The Staff has objected to this request in its Response claiming that there were inequities in the time allowed for Company and Staff filings, and that the Company's procedural schedule would delay the "processing of this case".[2] Staff claimed that the Company had allowed the Staff only two weeks to respond to the Company. (Staff Reply pp. 2-3) In fact, the two-week period was for the final Staff filing. The Company's proposed schedule allows the Staff a full three months to reply to the Company's Rebuttal filing. (See Attachment 1 to the

[1] Given that the purpose of a test year is as a "predictor", the Staff has a significant burden showing that such outdated data is a better predictor than more current data. The Company has argued, and is prepared to show, that the more current data is, in fact a much more reliable predictor than two and three year old data.

[2] The "processing of this case" should not be the central issue. The central issue should be that the Commission be provided with the most accurate information available in order to make the most informed decision it can in a case that is so critical to energy policy and regulation in the State of Missouri.

Other parties have been quoted as stating that this case is "the highest profile, most important case of the year," and that it is "the largest complaint case in the history of the Commission." *St. Louis Post-Dispatch,* November 29, 2001. Putting aside some of our real concerns on how this case is being depicted in the media, Union Electric agrees that this is an important case. It is important to the Company's customers; it is important to the Company's shareholders; it is important to the State of Missouri.

Company's November 13 Motion) Moreover, a concern about a delay in the "processing" of the case should not have the perverse result of delaying the possibility of an **earlier effective date for rates** as is now proposed by the Company.

4. In its November 21, 2001 Reply to the Staff's test year pleading, the Company recognized that there could be legitimate differences among the parties concerning the interim filing dates prior to the evidentiary hearings in this case. Accordingly, the Company suggested a Scheduling Conference be ordered, to allow the parties to work out those differences. The Company renews that suggestion.

Simultaneous Rate Cases and Resulting Significant Short-Term Swings in Rates is Not Good Public Policy

5. The Company has previously informed the Commission that the Company's revenues and costs in its proposed test year (ending June 30, 2001) are substantially different than the revenues and costs in Staff's proposed test year.[3] **This difference is so significant that the Company will be compelled to file its own rate case using a more current test year prior to the conclusion of the pending complaint case, if the Commission adopts the Staff's test year.** This is not necessary, will not be helpful to the Commission and will be much more work for all concerned. We respectfully request the Commission to use the "best possible data" as suggested by the Missouri Court of Appeals.

6. There can be no doubt that the Company's rate case would result in an increase over the rates that could result from the use of Staff's proposed test year in this proceeding.

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[3] It has already become a cliché that the world is different today from what it was before September 11. While a cliché, the fact of the matter is that economic and operating conditions are different today from what they were in 1999 and 2000. Moreover, the recent official declaration that the country has been in a recession since March 2001, further highlights the almost irrelevant nature of cost data from 1999. Staff's test year and update will totally miss the significant changes that have occurred since the end of Staff's review period. To refuse to consider the effects of those events on Union Electric's cost of service is not good public policy. Yet, that is what Staff is asking the Commission to do.

7. This will not be in the best interest of ratepayers, the Commission or any party. It will result in a temporary decrease in June 2002 (assuming Staff's numbers are accepted without question), followed by an increase in rates as early as October 2002. This would not demonstrate a sound and stable approach to energy policy in the state of Missouri. It is unnecessary because under the Company's suggested approach, **a short delay in the proceedings,** with **no delay in the benefits** for ratepayers, allows the Commission to conduct its rate making duties in the most responsible manner.

April 1, 2002 Effective Date and Extension of Time to File Rebuttal Testimony

8. An unfortunate, but inevitable result of trying to deal with this issue (caused largely by the Staff's use of test year data that was already outdated by the time Staff filed its case), is the problem of trying to prepare Company's Rebuttal Testimony at a time when there has not been a determination of the appropriate test year. Without such a determination by the Commission, the Company is left in limbo as to whether its Rebuttal Testimony should respond to Staff's June 30, 2000 test year or, as proposed by the Company, should submit data reflecting a June 30, 2001 test year.

9. The attempt to meet these conflicting requirements, and the uncertainty of what test year will be directed by the Commission, has left the Company virtually unable to meet the originally agreed upon, <u>but not yet ordered</u>, filing date of December 20, 2001, for its Rebuttal Testimony. The Commission should not assume that the Company should be able to meet the December 20th date by merely adopting the Staff's test year, on the theory that the Company has had this information since the original filing. The Company has been working diligently since the Staff's filing – but that effort has been complicated by the Staff's use of the old data. As that data was examined by the Company, and compared against more current data, it became apparent that mere piecemeal updates would not be adequate. Therefore, the more in-depth

analysis of the Company's cost of service and rebuttal preparation has been ongoing. The uncertainty, however, of whether the Company was rebutting the old data with new data - issue by issue, in addition to rebutting the proposed adjustment methodologies; or rebutting the old data with a new test year, has made it impossible to finalize that testimony until the test year issue is resolved. There is not enough time between the anticipated order from the Commission resolving this issue, and the previously agreed to rebuttal date of December 20, 2001 to complete that testimony.

10. Accordingly, the Company respectfully requests that its rebuttal filing date be set for January 18, 2002. This request is made irrespective of which test year is adopted by the Commission.

11. In order to assure this Commission that this additional time to respond to the Commission's test year decision will not adversely affect customers, the Company agrees that the rates resulting from the proceeding may be made retroactive to April 1, 2002, if: (i) the test year is set at the twelve months ending June 30, 2001; and (ii) the filing date for the Rebuttal Testimony be extended to January 25, 2002. **This offer of retroactive rate treatment is one that cannot be ordered by the Commission nor is the Company obliged to make such an offer; instead, the Company is simply making this offer to ensure that the most appropriate test year data is used, ratepayers will not be harmed by a short delay in the procedural schedule and that ratepayers will not be required to encounter short-term rate swings as previously discussed.** The Company further requests a Scheduling Conference to determine further filing dates.

Conclusion

WHEREFORE, for the reasons stated above, the Company respectfully requests that the Commission order the parties to use a test year of the twelve months ending June 30, 2001; that the Company's Rebuttal Testimony filing be set for January 25, 2002; that the parties be directed to attend a Scheduling Conference to determine subsequent filing dates.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

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DATED: December 3, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 3rd day of December, 2001, on the following parties of record:

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