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August 6, 2001

FILED³
AUG 06 2001 *JS*

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
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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 **REPLY OF STAFF TO UNION ELECTRIC COMPANY'S JULY 27, 2001 FILING.**

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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Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

AUG 06 2001

Missouri Public
Service Commission

Staff of the Missouri Public Service Commission)
)
Complainant,)
)
v.)
)
Union Electric Company, d/b/a AmerenUE,)
)
Respondent.)

Case No. EC-2002-1

REPLY OF STAFF TO UNION ELECTRIC COMPANY'S JULY 27, 2001 FILING

Comes now the Staff of the Missouri Public Service Commission (Staff) in reply to the July 27, 2001 filing of Union Electric Company (UE), d/b/a AmerenUE. The Staff would not normally file an additional reply, but normally the respondent would not have submitted a second response. The Staff does not seek to burden the record and will only briefly address a few statements of UE. Thus, in reply to the July 27, 2001 response of UE, the Staff states as follows that the Missouri Public Service Commission (Commission) has experience with the termination of an earnings based alternative regulation experiment:

At pages 2-3 of its July 27, 2001 filing, UE states: "Just one distinctive feature of this case, separating it from all the others noted by the Staff, is that this case marks the first time the Staff is seeking to transition an *electric* utility out of a performance-based regulation plan like the EARP." (Emphasis supplied). The Staff would note what UE has chosen not to mention. There is one other return on common equity sharing grid alternative regulation plan: *Re In The Matter Of An Incentive Plan For Southwestern Bell Telephone Company*, Order Granting Interventions And Approving Joint Recommendation, Case No. TO-90-1, 30 Mo.P.S.C.(N.S.) 499 (1991), i.e., the incentive regulation plan which the Commission first

adopted for Southwestern Bell Telephone Company (Southwestern Bell) in 1989. This incentive regulation plan was scheduled to terminate at the end of 1992, but was extended without the need for a procedure such as that proposed in the June 25, 2001 Emergency Motion Of Union Electric Company To Temporarily Stay Expiration Of The EARP And To Establish A Schedule For Further Proceedings And For Expedited Treatment.

Southwestern Bell, the Staff and the Office of the Public Counsel (Public Counsel) agreed in 1992 to recommend to the Commission that the incentive regulation plan should be extended through 1993 during which time the Commission would determine whether to proceed forward with another alternative regulation plan for Southwestern Bell. Unlike UE's recent proposal, which would have prevented the Staff from filing an excessive earnings complaint case, as occurred on July 2, 2001, Southwestern Bell, the Staff and Public Counsel proposed that the extension of the then existing Southwestern Bell incentive regulation plan would not preclude parties from seeking modifications to the plan or from pursuing a complaint or rate proceeding on or after January 1, 1993, the original termination date for the existing incentive regulation plan.

The Commission accepted the recommendations of Southwestern Bell, the Staff and Public Counsel, and extended the incentive regulation plan to January 1, 1994 and did not preclude the filing of a complaint or rate proceeding on or after January 1, 1993. *Re In The Matter Of An Incentive Plan For Southwestern Bell Telephone Company, Order Extending Incentive Regulation Plan And Setting Prehearing Conference, Case No. TO-90-1, 1 Mo.P.S.C.3d 411 (1992).* The foundation of the termination of an earnings based alternative regulation experiment is the determination of the utility's revenue requirement.

The Staff filed an excessive earnings complaint case against Southwestern Bell on January 15, 1993 and submitted prepared direct testimony on February 1, 1993. Southwestern Bell filed its answer on February 23, 1993. The Staff's excessive earnings complaint case was consolidated by the Commission with Case No. TO-93-192, In the Matter Of Proposals To Establish An Alternate Regulation Plan For Southwestern Bell Telephone Company. On December 17, 1993 the Commission issued its Report And Order with an effective date of January 1, 1994 respecting the Staff's excessive earnings complaint case against Southwestern Bell. *Re Staff Of The Missouri Public Service Commission v. Southwestern Bell Telephone Company*, Case Nos. TC-93-224 et al., Report And Order, 2 Mo.P.S.C.3d 479 (1993). The Commission ordered a reduction in Southwestern Bell's rates in the amount of \$84,617,000 and offered Southwestern Bell a new incentive regulation plan which the Commission called the Accelerated Modernization Plan (AMP). Southwestern Bell declined to accept the AMP. *Re Staff Of The Missouri Public Service Commission v. Southwestern Bell Telephone Company*, Case Nos. TC-93-224 et al., Order Concerning Applications For Rehearing 2 Mo.P.S.C.3d 590 (1994).

Contrary to UE's contention that there must be some procedure respecting transitioning from the end of its second experimental alternative regulation plan (EARP) to traditional rate base regulation, there was no transitioning of Southwestern Bell from its incentive regulation plan to traditional rate base regulation. As indicated above, Southwestern Bell declined the Commission's AMP proposal and as addressed in the Commission's Report And Order in Case Nos. TC-93-224 et al., Southwestern Bell returned to traditional rate base regulation:

... The Report And Order in this case includes the Commission's review of SWB's overall revenue requirement and the Commission decisions concerning

just and reasonable rates. *In compliance with its statutory obligations, the Commission has found that SWB's revenue requirement should be reduced by \$84,617,000.* This reduction is based upon the Commission's review of all facts presented which have any bearing on the determination of the just and reasonable rates.

In addition, the Commission has found that based upon its responsibility to set rates based upon all relevant factors, it could not approve SWB's proposal to approve an alternative regulation plan as an extension of the experimental incentive regulation plan. *The Commission, though, concludes that it has the requisite statutory authority to approve an alternative regulation plan such as the AMP for SWB once it has reached a decision concerning SWB's revenue requirement.* Several parties, including the Attorney General and MCTA, have challenged this authority.

2 Mo.P.S.C.3d at 583; Emphasis supplied in italics.

Under the terms of the AMP approved by the Commission, Commission Staff will audit SWB's operations in four years to determine whether the rates set in this Report And Order remain just and reasonable. If that audit results in a proceeding before the Commission, the Commission will then again determine a reasonable revenue requirement for SWB and set just and reasonable rates based upon that revenue requirement. The Commission believes this review complies with its statutory duty to ensure SWB's rates remain at a reasonable level. Any other person or group of persons authorized by statute may bring a complaint against SWB's rates during the duration of the plan. Thus, no person is deprived of any statutory right under the approved plan.

Id. at 584; Emphasis supplied in italics. Missouri statutes require a revenue requirement determination.

The only ratemaking transitioning that the Staff is aware of is that provided for by Section 393.155 RSMo. 2000 for phasing in large rate base additions as occurred with UE's Callaway Nuclear Generating Station, Kansas City Power & Light Company's Wolf Creek Generating Station and Arkansas Power & Light Company respecting the Grand Gulf Nuclear Generating Station. Section 393.155 provides as follows:

1. If, after hearing, the commission determines that any electrical corporation should be allowed a total increase in revenue that is primarily due to an unusually large increase in the corporation's rate base, the commission, in its discretion, need not allow the full amount of such increase to take effect at one time, but may instead phase in such increase over a reasonable number of years. Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved.

2. If, after hearing, the commission determines that an electrical corporation, which is a wholly owned subsidiary of a public utility holding company registered under the Public Utility Holding Company Act of 1935, should be allowed an unusually large increase in total revenue which is primarily due to an unusually large increase in expense resulting from the Federal Energy Regulatory Commission regulation of expenses related to a generating facility owned by another wholly owned subsidiary of the same public utility holding company; then the commission, in its discretion, need not allow the full amount of such increase in total revenue to take effect at one time, but may instead phase in such increase over a reasonable number of years. Any phase-in authorized pursuant to this subsection shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years, including reasonable financing costs incurred in connection therewith. In order to implement a phase-in authorized pursuant to this subsection, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved.

The Staff is not aware of any Missouri statutory provision for transitioning into traditional rate base regulation from performance-based regulation.

Wherefore the Staff files this reply to the July 27, 2001 filing of UE and continues to state that the procedural schedule proposed by the Staff is consistent with the requirements of due process and is consistent with Commission experience and practice.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 6th day of August, 2001.



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Case No. EC-2002-1
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