

October 5, 2001

FILED

OCT 9 2001

VIA FEDERAL EXPRESS

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

Missouri Public
Service Commission



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 its **Reply Of Union Electric Company To The Office Of The Public Counsel's Request For Order Setting Evidentiary Hearing, To The Staff Response To That Request And To The Missouri Industrial Energy Consumers' Motion To Establish Procedural Schedule.**

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,

A handwritten signature in black ink, appearing to read "J. Cook", is written over the typed name and title.

James J. Cook
Managing Associate General Counsel

JJC/mlh
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

OCT 9 2001

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Union Electric Company, d/b/a
AmerenUE,

Respondent.

Missouri Public
Service Commission

Case No. EC-2002-1

**REPLY OF UNION ELECTRIC COMPANY TO THE OFFICE OF THE PUBLIC
COUNSEL'S REQUEST FOR ORDER SETTING EVIDENTIARY HEARING,
TO THE STAFF RESPONSE TO THAT REQUEST, AND TO THE MISSOURI
INDUSTRIAL ENERGY CONSUMERS' MOTION TO ESTABLISH
PROCEDURAL SCHEDULE**

Union Electric Company, d/b/a AmerenUE ("UE") respectfully replies to the Office of Public Counsel's ("OPC's") Request for Order Setting an Evidentiary Hearing, to the Staff's Response to that Request, and to the Missouri Industrial Energy Consumers' ("MIEC") Motion to Establish Procedural Schedule by proposing a procedural schedule that tracks in large measure the schedule proposed by the Staff in their Request, with certain differences. In support of our proposal, we submit the following:

1. OPC's Request is obviously a one-sided piece of advocacy, premised on the unvarnished notion that everything claimed in the Complaint in this case is true, and that UE is therefore over-earning. Assuming this to be the inevitable result of these proceedings, OPC goes on to claim that consumers are being deprived of tens of millions of dollars by the time consumed in this matter, and urges the Commission to set an

expeditious schedule to achieve what appears to OPC to be a foreordained result. OPC makes no mention of the seriousness or complexity of the issues raised in this case, much less do they acknowledge the possibility that the claims made in the Complaint may be without merit.

We have already detailed our views of the procedural needs of this case in the Response of Union Electric Company to Staff's Proposed Procedural Schedule (filed July 10, 2001), and will not reiterate that description here. But OPC's unwillingness to even recognize the complex issues in this case, and what will be required to fairly analyze and present them to the Commission, reveals a complete blindness to the demands of fairness and prudence. Putting aside the vulnerability on appeal of any Commission action based on OPC's recommended course, much is at stake in this case, and it is simply critical that the Commission "get it right." Prudence dictates the kind of process we have proposed and that the Staff has now, apparently, embraced.

2. As the Staff notes, *see* Staff Response at 4-5, we have not been idle, preparing and serving interrogatories, requests for admission, and requests for production of documents on the Staff, in order to properly prepare for depositions of the Staff witnesses. We delayed serving such discovery on the intervenors now admitted into the case, the MIEC, because in granting the motion to intervene, the Commission had ordered the MIEC to respond to the Staff's Complaint by September 19, 2001. We believed it sensible to hold our discovery until we could pose all our questions to the MIEC, much of which would logically focus on their response to the Complaint. On September 24, the MIEC moved for an extension of time for filing their response until 20 days after the Staff responded to data requests posed by the MIEC. Accordingly, we

have moved forward with our discovery preparations, and will be serving discovery on the MIEC concerning issues we can now address, filing further discovery once the MIEC has responded to the Complaint.

3. Moreover, once we have received all the Staff's responses to our discovery, and have analyzed the information produced,¹ we will be in a position to begin the first round of depositions, essentially depositions of the 15 Staff witnesses. It is our goal to schedule and take those depositions as efficiently as possible, keeping disruption of those witnesses' schedules to a minimum. At this time, we do not know when production will be complete, nor do we know the particular demands of the Staff witnesses' schedules, which we wish to accommodate. Accordingly, though we have proposed a tentative schedule for depositions below, we have no way of knowing with absolute assurance when this round of depositions will be complete.

The subsequent rounds of depositions will focus on witnesses, if any, from OPC, the MIEC, and any other intervenors, and witnesses offering surrebuttal testimony.

4. Once the first round of depositions is complete, we will be in a position to complete our rebuttal testimony. Here, too, we have not been idle. Initial work is proceeding on rebuttal testimony so the important information generated in the discovery process can be expeditiously incorporated into the testimony as appropriate.

5. In short, in the absence of a schedule ordered by the Commission, we have tried to follow the procedural schedule we originally proposed. We have not been able to follow that schedule precisely, due to the understandable needs of the Staff for added time to respond to our discovery and the equally understandable need of the MIEC for

¹ The answers to that discovery obviously will be critical to preparing thorough and efficient depositions.

responses to their data requests before filing their response to the Complaint. We hope to be able to meet the schedule we originally proposed. Since our proposed schedule is so closely followed by the Staff's new proposal, for the convenience of the Commission we set out their proposal below, with our changes noted:

<u>Event</u>	<u>Proposed Date</u>	
Staff Filed Complaint, Direct Testimony & Schedules and Motion For A Protective Order	07/02/01	
Secretary Served A Copy Of Complaint Upon UE	07/10/01	
UE Answered Complaint	08/10/01	
Commission Issued Protective Order	09/05/01	
Commission Issues Order Setting Intervention Period & Date For Early Prehearing Conference	10/04/01	
<u>Depositions of Staff Witnesses</u>	<u>10/22/01</u>	-
	<u>12/7/01</u>	
Intervention Period Closes	10/24/01	
Early Prehearing Conference	10/25/01	
UE & Intervenors File Rebuttal Testimony & Schedules	12/21/01	
<u>Depositions of Intervenor Witnesses</u>	<u>1/7/02</u>	-
	<u>1/31/02</u>	
Prehearing Conference	01/07/02	-
	01/11/02	
Staff Files Surrebuttal Testimony & Schedules and UE, Public Counsel & Intervenors File Cross-Surrebuttal	02/19/02	
Staff Files List Of Issues, Order Of Issues, Order Of Witnesses & Order Of Cross-Examination	02/21/02	

<u>Deposition of Surrebuttal Witnesses</u>	<u>2/27/02</u>	–
	<u>3/8/02</u>	
Parties Submit Statements Of Positions	02/28/02	
Evidentiary Hearings	03/11/02	–
	03/22/02	

6. As we noted above, the need to accommodate witnesses, and other exigencies, may require adjustments to this schedule as we move forward. Nevertheless, with our fairly slight modifications, we concur with the Staff that this schedule is fair, and fully protects the rights of all concerned.²

October 5, 2001

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: 

James J. Cook, MBE #22697
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Steven R. Sullivan, MBE #33102
Vice President, General Counsel &
Secretary

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² The MIEC Motion makes no new arguments for the need to set a procedural schedule, and simply seeks the setting of a schedule without proposing one. We would hope that the MIEC would now agree with the merits of the schedule we are proposing.

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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 5th day of October, 2001, on the following parties of record:

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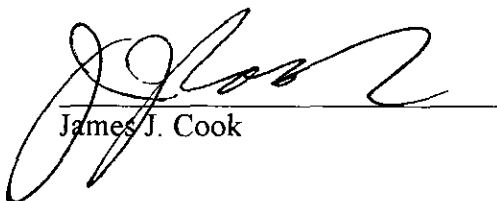
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