

November 21, 2001

VIA FEDERAL EXPRESS

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

FILED³
NOV 26 2001

**Missouri Public
Service Commission**

Re: MPSC Case No. EC-2002-1

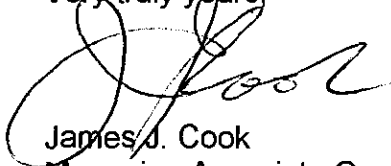
Dear Mr. Roberts:

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 **Union Electric Company's Reply to Test Year Submissions of the Missouri Public Service Commission Staff, the Office of the Public Counsel, and the State of Missouri.**

The Company asked for ten days to respond to the submissions of the Staff and other parties, which would be Friday, November 23, 2001. We have just been informed that the Commission Office will be closed that day, so we are sending this filing by Federal Express to be delivered Monday morning, November 26.

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
Managing Associate General Counsel

JJC/mlh
Enclosures



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
NOV 26 2001

Missouri Public
Service Commission

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Union Electric Company, d/b/a
AmerenUE,

Respondent.

Case No. EC-2002-1

**UNION ELECTRIC COMPANY'S REPLY TO
TEST YEAR SUBMISSIONS OF THE
MISSOURI PUBLIC SERVICE COMMISSION STAFF,
THE OFFICE OF THE PUBLIC COUNSEL,
AND THE STATE OF MISSOURI**

Union Electric Company ("the Company" or "UE"), in reply to the submissions of the Missouri Public Service Commission Staff ("Staff"), the Office of the Public Counsel ("OPC"), and the State of Missouri ("State"), concerning the test year to be used in this case, and the schedule of proceedings herein, states as follows:

SUMMARY

The Staff's test year will result in the following: rates based on outdated cost information; an unnecessary increase in the number of issues to be decided by the Commission; scheduling problems because the Staff's direct testimony is still not complete; a significant likelihood of a rate case being filed in the very near future to take into account significant changes in the Company's cost of service since the end of the Staff's test year.

The Company's test year will not result in a delay in the effective date of the rates to be set in this case, because of the Company's agreement to have such rates become effective at the same time as they would under the Staff's schedule. It will result in rates being based on more current, and therefore more representative cost data. It should negate the need for an immediate rate case filing. It will allow the parties and the Commission to avoid dealing with the many adjustments that the Company will need to propose to update discrete cost of service items.

Absent a very good reason, the Commission should direct that the more current and representative period be used. The Staff's pleading sets forth only two reasons why its test year should be used. One is the delay that they claim would be necessary, and the other is that a change in the test year would take away the burden of the Company to suggest updated cost and revenue figures. Neither of these reasons is valid.

Most importantly, there will be no delay in the effective date of new rates if the Commission adopts the Company's proposed schedule. In addition, the Staff's suggestion that the Company should bear the burden of proving that more current costs are more representative, is legally wrong.

DELAY

Staff's comments regarding the Company's proposed test year seem to rest largely on the claim that it would delay the case. The Company has solved that problem by agreeing to the retroactive application of the rates that will result from this case. By making those rates effective at the same point in time when rates under Staff's proposed schedule would become effective, there can be no harm resulting from using the more current test year.

As discussed below, the Staff's plans to file supplemental testimony at some point in the future, and the obvious necessity of allowing the Company to review and respond to that supplemental testimony, would, in and of itself, cause a delay in the case, beyond the time provided in the Staff's proposed schedule. The Company's proposed schedule will allow for those supplemental filings and still not delay the effective date of the rates, beyond the date assumed in the Staff's schedule.

SHIFTING BURDEN OF PROOF

In explaining why using the more current test year would cause a delay in the proceedings, the Staff seems to argue that under the Staff's test year, the Company has the burden of proving that the Staff's numbers are inappropriate. The Staff states such things as, "[i]nstead of dealing with discrete adjustments made by UE to the Staff's test year..." and "without the requirement that UE specifically identify and justify the appropriateness of these items..." and "[u]nder the Staff's proposal, UE would be required to specifically adjust the Staff's test year for its affiliate transaction expense and explain the reasonableness of these increases in expense." Staff Response, p. 7, 8.

This, of course is a reversal of the proper roles in this case. This is a "Complaint" case and Staff has the burden of proving that the Company's rates are excessive. Yet, Staff has chosen to use an outdated period (except for very selected uses of more current data) and then attempt to switch the burden to the Company to prove that this data is inappropriate.

UNNECESSARY INCREASE IN THE NUMBER OF ISSUES

The use of the outdated period as a test year will significantly increase the number of issues that will be before the Commission. The Staff has "adjusted" many of the test

year costs taken from the Company's books. The Company will rebut many of those adjustments, based upon the adjustment methodologies that Staff has used. However, in addition to those issues, the Company will also be obliged to argue that the adjustment is being made to an outdated number. Thus, there will be two issues for many proposed adjustments: the adjustment method used by the Staff, and the base cost figure to which the adjustment is made.

In addition, even for costs for which the Staff may not make any adjustment, the mere fact that the cost included in the Staff's case is outdated, will require the Company to make that fact an additional issue. Thus, the Company will be arguing that for many discrete items, the period used is not representative of the costs that the Company will be incurring when the rates become effective. While it might be suggested that a Commission decision setting the test year would preclude the Company from making that argument, the Staff explicitly states that such an order "would not prevent UE from presenting to the Commission any adjustments to the Staff's test year that UE deems to be appropriate." (emphasis added) They continue by saying that "UE can adjust Staff's test year for every cost of service item that UE alleges is not appropriately reflected in the Staff's test year." (emphasis added) Staff Response, p. 1, 2.

Thus, it is clear that Staff acknowledges that the Company is not precluded from arguing that the period used to quantify a cost of service item is not representative. What Staff ignores, however, is that their insistence on two to three year old data will significantly increase the number of issues contested in the case and increase the burden on the parties and the Commission to address and decide those issues.

Staff may argue that the adjustments they propose will also mitigate the effect of using outdated cost of service data. Their theory might be that their adjustments are meant to “normalize” the item, and therefore, the base year becomes unimportant. However, normalizing old data will not correct for that problem. Even if the normalization method would be found to be appropriate (and the Company strongly disputes many of the Staff’s “normalization” methods), one still only has a cost figure that is normalized for a past time period. And while some of the normalization methods may include a more recent period than the Staff’s test year, others do not.

CATCH - 22

There will likely be yet one more significant issue that will be raised by Staff’s proposal to use their original test year and allow the Company to propose “any adjustments...that UE deems to be appropriate.” If the Company only proposes updated cost figures that result in an increase in the Company’s cost of service, the obvious objection would be that the Company is ignoring changes in costs that are lower and therefore, unfairly presenting a one-sided case. The only way to fully prevent that objection is to submit, virtually, an entirely new cost of service accounting run. That would be, in effect, a new test year cost of service filing, which would surely be objected to as being in contravention of the Commission’s decision on the test year. Thus, the Company would face the Catch-22 situation of being told that it can present any updated figures it wants, as long as it presents the entire picture; yet be precluded from doing so, because the entire picture is prohibited by the test year decision.

In fact, the Staff’s pleading quotes a section of the Commission’s Southwestern Bell order that addressed this point. It states that “[p]arties may seek isolated adjustments

beyond the test year as updated if they believe significant changes have occurred which were sufficiently known and measurable and which will not unreasonably distort the matching of investment, expenses and revenues developed using the test year and any update.” And the Order also states that “this update is not for all accounts.” Staff Response, p. 4.

Therefore, although the Staff has claimed that the use of an old test year is not a problem because the Company can recommend “any adjustments” it wishes, the Staff can be expected to argue for significant limitations on that right. It appears that Staff’s offer to allow the Company to propose adjustments is a meaningless offer.

COMMON TEST YEAR

The Company does not disagree with the obvious observation made by Staff that a “common test year is necessary in order to identify and quantify issues.” Staff Response, p. 2. The Company is not suggesting otherwise. The only issue is whether to use an old test year or a more current year.

ERRORS AND OMISSIONS

Staff notes that they sent a Data Request to the Company, asking that any errors, miscalculations or omissions found in the Staff’s workpapers be brought to the Staff’s attention. Staff also states that no such matters have been noted. The Company has responded to that Data Request by informing the Staff that the Company will, of course, notify the Staff of any mathematical errors or miscalculations it discovers. However, the Company also responded that, “Since, in many cases, the Staff treats data differently from the Company, the Company will not assume that these different treatments are

errors, miscalculations or omissions. Rather, the Company will assume they are intended to be different treatment of the data.” Data Response 314R

Moreover, it is not until after discovery is complete, including depositions of Staff witnesses (which are ongoing as this pleading is filed) that the Company can determine which items are the result of errors and which are intended by the Staff.

SOUTHWESTERN BELL

The Staff notes that UE has “frequently sought to distinguish its situation due to the fact that it had an experimental alternative regulation plan.” Staff Response, p. 3. It is true that UE has pointed that fact out on many occasions, because it is relevant and important to many issues concerning UE and the Commission. Just as frequently, it seems, the Staff cites the experience of the Southwester Bell alternative regulation plan. While reference to the Southwestern Bell and its experiences with the Commission may be instructive, they should be looked at carefully.

The SWBT alternative regulation plan was one of the first, if not the first opportunity for the Commission to deal with this type of alternative regulation. Obviously, Southwestern Bell, the Commission and its Staff were learning how to operate under its provisions. It was an experiment. And as with virtually any experiment, mistakes were made; some things worked well and others needed to be adjusted. Yet, the Staff treats decisions that were made under that case as if they were “writ in stone.” They seem to view Commission actions in that case as binding precedent.

The Staff’s treatment of Southwestern Bell under its alternative rate plan, the Commission’s decisions in that experiment and the effects of those decisions are not

necessarily appropriate for Union Electric Company and its experimental alternative regulation plan. Union Electric Company is not Southwestern Bell. One important distinction is that Union Electric Company still has its corporate headquarters in St. Louis. The state of Missouri has not lost Union Electric as a native company; and Union Electric hopes to keep it that way.

In addition, it has been a full decade since the SWBT case cited by Staff. Much has changed in the regulated world since then. As one example, while the Commission may have found that a two year period between the test year and the effective date of new rates was acceptable for Southwestern Bell then, such should not be the case for Union Electric Company now. The stakes are too high, the potential damage that could be done to the Company is too great, to blindly follow what was done to Bell ten years ago. Union Electric Company believes that the evidence is clear that such decisions were not in the best interest of Missouri, and strongly urges that those decisions not be repeated here.

Notice also that the Commission in that case stated that adopting SWBT's test year would "...delay the case..." Here, UE has agreed that rates resulting from this case should be retroactive to the date that rate would be effective under the Staff's test year and schedule.

STAFF'S CASE IS STILL NOT COMPLETE

During the deposition of Staff witness Leon Bender, it was learned that the Staff's production cost modeling is still not complete. In Mr. Bender's prefiled testimony, he states that he was still working on the analysis of the Joint Dispatch Agreement in his Production Cost Model runs. (Bender Direct, p. 11) He stated that, "in order to properly

calculate the transfers of energy from one company to another," additional work needed to be done. This work has been held up waiting for assistance from the "model provider." In his deposition, Mr. Bender indicated that work had continued on this problem, but that the vendor had not yet solved it. He hoped that the problem will be solved in early December and that the Staff would file additional testimony sometime thereafter.

This issue concerns the "production cost" for Union Electric Company. Mr. Bender testifies that that number is almost \$344 million dollars. Any modification to the production cost model run that Mr. Bender makes can have a multi-million dollar difference in that number. Such a significant change in the Company's production cost figures will have a significant effect on the ultimate rates, which will be determined in this case.

The fact that the Staff's work on this important cost of service item is not complete further justifies a delay in this case. Staff's proposed schedule does not provide any time for the Company to respond to the additional testimony Mr. Bender intends to file. This would absolutely preclude any early phased hearings in this case. But it would also make it impossible to be sure that the Company's testimony was fully responsive to the Staff's testimony within the time allowed in the schedule the parties have agreed to under the Staff's test year scenario.

The Company has previously indicated its agreement to the Staff's proposed schedule if the Commission adopts the Staff's test year. However, that agreement did not anticipate that the Staff's supplemental testimony would be filed after the Company had its only opportunity to file testimony, as is assumed in that schedule. If that test year and

that schedule are adopted, the Company will request the opportunity to rebut that new information. It is not clear how many Company witnesses' testimony will be affected, directly or indirectly. Depending upon when that Staff supplemental testimony is filed, and the magnitude of the change in the Staff's numbers, the time the Company may need to review the information and respond may impact other dates on the proposed schedule. It is impossible to know now what that impact will be. To deny the Company an adequate opportunity to review and respond will raise due process issues that will unnecessarily cloud this case.

It should be noted, however, that the Company's proposed schedule will probably allow for that new data to be incorporated into the Staff's filing, and the Company would have adequate time to respond. All of these procedural problems would be solved, and the rates would still go into effect at the same time as if the Staff's schedule were adopted.

SCHEDULING CONFERENCE

In its filing of November 13, 2001, the Company proposed a detailed schedule to accommodate its proposed test year. It called for various filing dates for the parties in this case. Since other parties did not have an opportunity to comment on the suggested dates and intervals included in that schedule, the Company suggests that if the Commission decides to adopt the Company's proposal, it schedule a "scheduling conference" to allow the parties to work out the details.

CONCLUSION

Union Electric does not seek to delay this case. It does seek to have this case decided fairly. The Commission cannot set rates fairly if those rates are based on

outdated costs and incomplete testimony. A single case, rather than two cases, using data that will minimize the number of issues to be adjudicated, is the more efficient way to proceed.

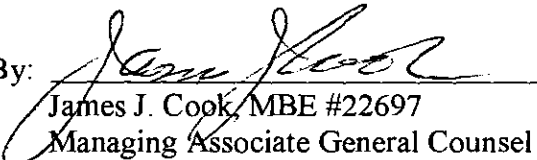
The use of the Company's proposed test year does not harm consumers, because there will be no delay in the effective date of the resulting rates – assuming the Company's proposed schedule is adopted. It protects the Commission from the unnecessary burden of deciding issues that are raised merely because the test year cost data is outdated. It protects all parties from the necessity of dealing with another rate case in the near future that the Company will feel obliged to file, in order to meet its fiscal responsibilities to its shareholders. The use of the more recent test year is simply the right thing to do.

WHEREFORE, for the reasons stated above, Union Electric Company respectfully requests this Commission to direct that the parties utilize a test year in this case of the twelve months ending June 30, 2001; and that the Commission adopt the schedule proposed by the Company in its motion filed November 13, 2001.

November 21, 2001

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: 
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Managing Associate General Counsel

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Vice President, General Counsel &
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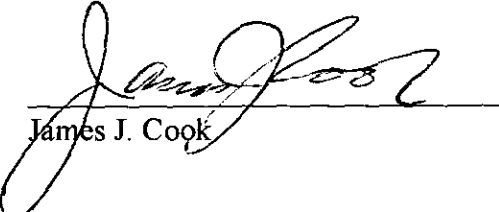
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VERIFICATION

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

I, James J. Cook, an attorney of Union Electric Company d/b/a AmerenUE, being duly sworn upon my oath, do hereby state that I have read the foregoing document and that the facts stated therein are true and correct to the best of my knowledge, information and belief, and that I am authorized to file such document on behalf of said Company.


James J. Cook

Subscribed and sworn to before me this 21st day of November, 2001.


Notary Public

DEBBY ANZALONE
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: April 18, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 21st day of November, 2001, on the following parties of record:

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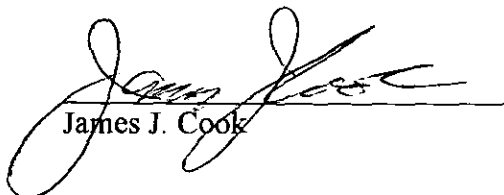
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