

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 5, 2000**

CASE NO: GR-2000-512

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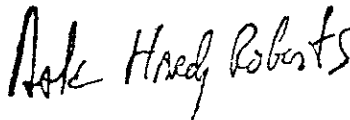
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of September, 2000.

In the Matter of Union Electric Company)
d/b/a AmerenUE for Authority to File) Case No. GR-2000-512
Tariffs Increasing Rates for Gas Service) Tariff No. 200000747
Provided to Customers in AmerenUE's)
Missouri Service Area.)

**ORDER GRANTING MOTION FOR AUTHORIZATION
TO FILE SUPPLEMENTAL DIRECT TESTIMONY**

On February 18, 2000, Union Electric Company d/b/a AmerenUE (AmerenUE) submitted to the Missouri Public Service Commission (Commission) tariffs reflecting increased rates for natural gas service provided to customers in the Missouri service area of AmerenUE. The proposed tariffs were assigned tariff number 200000747 and bear a requested effective date of April 2, 2000. The Commission, by order adopted March 3, 2000, suspended the proposed tariffs until January 27, 2001, and established a procedural schedule.

On August 2, 2000, AmerenUE filed its motion for authorization to file supplemental direct testimony. AmerenUE stated that, in accordance with that procedural schedule, on April 3, 2000, it filed direct testimony, which addressed both the increase in overall revenue requirement AmerenUE is supporting, as well as the rate design AmerenUE is recommending.

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AmerenUE stated that at the time it filed direct testimony, it was in the process of conducting a detailed site inventory of the facilities used in serving the customers in its interruptible and transportation rate classes. AmerenUE stated that because it serves a total of only about 100 customers within these two classes, it was able to survey each of these individual customer locations to examine, inventory and vintage-price all of the above-ground facilities, as well as the sizes and lengths of service lines used to serve each customer in these rate classes.

AmerenUE stated that, in addition to this individual site inventory information, it also collected data on the maximum non-coincident peak demands of each of these customers and the size of the distribution main to which each customer is connected. Based upon the information gathered from these site inventories, AmerenUE stated that it has been able to directly assign its investment in the specific on-site facilities used in providing service to the individual customers in these rate classes, and to restrict its allocation of distribution mains to such customers only to those main sizes actually used in providing service to them. AmerenUE pointed out that the use of this specific inventory information results in a more precise allocation of on-site costs and distribution mains to all of AmerenUE's rate classes.

AmerenUE stated that it completed the facilities inventory and the associated analysis several months after the direct testimony was filed in this case. AmerenUE stated that it has

presented the information gathered during its facilities inventory to the Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel), and Midwest Gas Users' Association (Midwest), an intervenor, at various points in time. AmerenUE stated that on June 28, 2000, it participated in a technical workshop with various members of the Staff and Public Counsel, and presented the results of its facilities inventory. AmerenUE stated that it also provided information derived from its facilities inventory in response to data requests submitted by the other parties. On July 27, 2000, AmerenUE stated that it sent by overnight mail to each of the parties the complete results of its inventory of facilities, an updated cost of service study incorporating the results of the inventory, and an updated calculation of specimen rates which would be derived from the updated cost of service study.

In addition, AmerenUE stated that it has discovered three minor errors in the cost of service study filed with its direct testimony. These errors in the cost of service study should be corrected, AmerenUE contends.

AmerenUE stated that it was requesting authority, pursuant to Commission Rule 4 CSR 240-2.130(8), to file supplemental direct testimony incorporating the results of its inventory of facilities and the correction of the above-mentioned minor errors. The supplemental direct testimony, which AmerenUE pointed out was being filed contemporaneously with its motion, includes the testimony of Philip B. Difani, Jr. (Difani), which

contains an updated version of the cost of service study contained in Difani's direct testimony. The updated cost of service study incorporates the data collected in the facilities inventory, and it corrects the minor errors in the study, AmerenUE stated. In addition, AmerenUE stated that it was filing the supplemental direct testimony of William M. Warwick (Warwick). AmerenUE stated that Warwick's testimony provides a calculation of specimen rates based on Difani's updated cost of service study.

AmerenUE maintains that the testimony of Difani and Warwick is designed to supplement, rather than replace, their pre-filed direct testimony. AmerenUE stated that it is not proposing to withdraw either the original cost of service study or the original rate calculations derived therefrom, which are contained in AmerenUE's direct testimony.

AmerenUE's position is that authorizing it to file supplemental direct testimony will provide the parties and the Commission with additional information which is relevant to development of an appropriate rate design for AmerenUE. AmerenUE contends that since the facilities inventory which is addressed by the Supplemental Direct Testimony was not completed until after the due date for AmerenUE's direct testimony, this information could not have been incorporated into AmerenUE's direct testimony. But, by including this information as supplemental direct testimony, AmerenUE stated that it has thus

provided the information at the earliest possible time, to the benefit of all of the parties.

On August 9, 2000, the Public Counsel filed its response to AmerenUE's motion for authorization to file supplemental direct testimony.

Public Counsel stated that AmerenUE is correct that it discussed its facilities inventory with Public Counsel technical personnel on June 28, 2000. However, alleges Public Counsel, AmerenUE is incorrect that it discussed the final results of that inventory with Public Counsel. Public Counsel points out that Difani noted in his proposed supplemental direct testimony that at the June 28, 2000, meeting AmerenUE discussed and presented the "preliminary results" of the study. Public Counsel stated that Difani says: "[t]he Company described its [Distribution Inventory (DI)] Study as a 'work in progress' at that time, indicating that it would be provided to all parties when finalized." Public Counsel stated that it did not receive a final copy of the DI Study until July 27, 2000, as noted by Difani. Any implication that Public Counsel has had a final version of the DI Study since June 28, 2000, is simply wrong, according to Public Counsel.

Public Counsel maintains that the filing of the new DI Study and the supplemental direct testimony of Difani and Warwick raise significant new issues that will have to be thoroughly explored. For example, Public Counsel stated, as a result of the DI Study certain components of AmerenUE's class cost of service

study (CCOS) have changed. The workpapers for the old CCOS are not directly comparable to the workpapers supporting the new CCOS, in Public Counsel's view, and thus Public Counsel cannot readily compare and trace the changes that AmerenUE has made to its old CCOS.

Public Counsel stated that it is not opposed to having the Commission grant AmerenUE's proposal to file Supplemental Direct Testimony, provided Public Counsel is given an appropriate amount of time to review the new information provided by AmerenUE. Public Counsel requested that the Commission allow Public Counsel, Staff and any intervenor the right to file supplemental rate design direct testimony regarding issues raised by AmerenUE's Supplemental Direct Testimony on or before August 22, 2000¹. Public Counsel also requested that the Commission move the filing date for rebuttal testimony from September 26, 2000, to October 3, 2000, to allow appropriate discovery to be conducted regarding the new DI Study.

Public Counsel stated that it understands that AmerenUE, Staff and Midwest do not oppose changing the procedural schedule as requested by Public Counsel.

Public Counsel stated that it is opposed to AmerenUE attempting to change its "as filed" rates by the rates found in the Supplemental Direct Testimony of Warwick. Public Counsel stated that AmerenUE claims in its motion that it "is not

¹ No supplemental direct rate testimony has yet been filed by any other party than AmerenUE.

proposing to withdraw either the original cost of service study or the original rate calculations derived therefrom...." Those proposed rates, stated Public Counsel, are found on the proposed tariff sheets filed with AmerenUE's rate filing on February 18, 2000. Public Counsel stated that if AmerenUE wishes to file for new or different rates than it filed for in February, then it should be required to withdraw the proposed rates filed on February 18, 2000, and refile proposed tariffs with the new proposed rates to place all potential parties on notice of the new proposed rates. Public Counsel's position is that to the extent AmerenUE may claim it is changing its proposed tariffed rates via its August 2, 2000, filing from the rates filed on February 18, 2000, Public Counsel objects to such a filing.

On August 11, 2000, Staff filed its response to AmerenUE's motion for authorization to file its supplemental direct testimony.

Staff noted that the proposed Supplemental Direct Testimony of Difani contains an updated version of the cost of service study found in Difani's direct testimony and corrects some "minor errors," according to AmerenUE's motion. Staff also noted that the proposed Supplemental Direct Testimony of Warwick provides a calculation of new specimen rates based on Difani's updated cost of service study, according to AmerenUE's motion.

Staff noted that AmerenUE's motion also stated that AmerenUE provided the other parties with the results of its site inventory of the facilities used in serving the customers in

AmerenUE's interruptible and transportation rate classes. However, Staff maintains, AmerenUE's motion fails to recognize the severe problems and disadvantages that its motion presents for the other parties.

Staff stated that AmerenUE first alleges that it presented the results of its facilities inventory to Staff, Public Counsel, and Midwest at various times, beginning on June 28, 2000. However, Staff noted, the proposed Supplemental Direct Testimony offered by AmerenUE shows that this is substantially incorrect in that only "preliminary results" of an "ongoing study" were provided. In the testimony, Staff stated, the facilities inventory is referred to by AmerenUE as a DI Study.

Staff stated that AmerenUE states that the "preliminary results" of the DI Study were discussed at a technical meeting with Staff and Public Counsel. Staff stated that the DI Study was described by AmerenUE as a "work in progress." The final results, according to Staff, of the study were to be provided to all parties when completed. Staff alleges that the final details were not sent to the other parties until July 27, 2000, and, in fact, that Staff received a final copy of the results on July 28, 2000.

Staff pointed out that Staff, Public Counsel and any other parties must file their rate design testimony by August 15, 2000. Staff argued that AmerenUE's motion was filed much too late to be considered and analyzed prior to August 15, 2000. Staff stated that providing the parties with new information on July 28, 2000,

was much too late to be considered in the Staffs' audit and analysis that were completed prior to July 28, 2000.

Staff noted that in AmerenUE's motion, AmerenUE states its purpose was to provide new information regarding its cost of service study to all of the parties at the earliest possible date. However, in Staff's view, it has been clearly established that this information was not provided to Staff until July 28, 2000. Staff stated that AmerenUE ignores the hardship that is placing on Staff. In fact, Staff argued, the filing of this Supplemental Direct Testimony will prevent the Staff from conducting proper discovery at this point in the procedural schedule.

Staff stated that it cannot respond to something that was not provided to Staff in a timely manner. Staff stated that it is highly prejudiced by this late filing. Staff stated that it cannot be sure about how the proposed testimony and materials will change Staff's position or analysis due to inadequate notice and failure to fully file the materials in a timely manner. Staff stated that AmerenUE relies on Commission Rule 4 CSR 240-2.130(8) as authority to file its Supplemental Direct Testimony. However, Staff stated, AmerenUE does not and has not suggested any accommodations for the facilitation of Staff's case due to severe prejudice caused by AmerenUE. For these reasons, Staff requested that AmerenUE's motion to File Supplemental Direct Testimony be denied.

On August 14, 2000, Midwest filed its response to AmerenUE's motion and stated that it did not oppose the motion.

On August 21, 2000, AmerenUE filed its reply to Staff and Public Counsel's responses to AmerenUE's motion.

AmerenUE stated that it is surprised and disappointed by the response that the Staff has filed to AmerenUE's motion. AmerenUE stated that it believes it has done everything it reasonably could to put the information contained in its supplemental direct testimony into the record at the earliest possible time, with a minimum of prejudice to the other parties. AmerenUE stated that it was impossible for it to file this information with its direct testimony since the facilities inventory, which is the subject of the supplemental testimony, was not completed until after AmerenUE's direct testimony was filed. Once the study was substantially completed, however, AmerenUE stated that it immediately presented the results to the other parties. To that end, AmerenUE stated that it attempted to schedule a technical workshop with representatives of the Staff and Public Counsel in early June of 2000, which was ultimately held on June 28, 2000. As a part of that workshop, AmerenUE stated that it explained in detail the work it had done to inventory the facilities serving its interruptible and transportation customers, and presented preliminary revisions to its cost of service study that were based on the facilities inventory. AmerenUE stated that although, as Staff points out, this presentation did not contain the "final" revisions to the

cost of service study that are included in the supplemental direct testimony, it provided a complete explanation of what AmerenUE had done, and a quantification showing the order of magnitude of the impact of the inventory on AmerenUE's cost of service study.

AmerenUE stated that it also provided data from its facilities inventory in response to data requests submitted by other parties. As early as mid-May, 2000, AmerenUE alleges that it provided both the Staff and Public Counsel with an electronic file of the data collected in the facilities inventory, in response to a Staff data request. Following the June 28 technical workshop, AmerenUE stated that it provided all of its workpapers related to the facilities inventory and the associated changes to AmerenUE's cost of service study to the Staff and Public Counsel in response to another data request submitted by Public Counsel. In addition, following the filing of the Supplemental Direct Testimony, AmerenUE stated that it contacted the Staff and Public Counsel to discuss extending the procedural schedule to provide the other parties with sufficient time to adequately respond to AmerenUE's Supplemental Direct Testimony. Although the attorney representing the Staff was unable to participate in the discussion, AmerenUE stated that it was AmerenUE's understanding that the proposed extension of the procedural schedule set forth in Public Counsel's response was not objected to by any party, including the Staff.

By filing its Supplemental Direct Testimony, AmerenUE stated that it is simply providing the Commission with additional, relevant information that was unavailable at the time it filed its direct testimony. AmerenUE stated that supplemental testimony is commonly used in Commission proceedings for such purposes and that not all information relevant to the development of rates is always available months ahead of the hearing for a proceeding when prefiled testimony typically must be filed. AmerenUE pointed out that the Staff itself has often utilized supplemental testimony, and the Commission frequently has permitted the filing of such testimony in the past where it provides relevant information that is useful to the Commission in reaching a decision.

AmerenUE stated that the Staff has not questioned the relevance or usefulness of the information presented in AmerenUE's Supplemental Direct Testimony to the Commission's resolution of the rate design issues in this case.

AmerenUE stated that the Staff alleges that AmerenUE has not suggested any accommodations to offset the prejudice caused to Staff's case as a result of AmerenUE's filing. On the contrary, AmerenUE stated that it contacted both the Staff and Public Counsel to negotiate an extension of the procedural schedule to accommodate the parties' responses to AmerenUE's Supplemental Direct Testimony. AmerenUE stated that although the Staff was unable to participate in those discussions, it was

AmerenUE's understanding that the agreed-upon extension was not objectionable to Staff.

AmerenUE stated that it is also important to point out that its Supplemental Direct Testimony is not being sprung on the other parties immediately prior to the hearing scheduled for this case. AmerenUE stated that its supplemental filing was made almost three months prior to the date on which the hearing for this case is scheduled. According to AmerenUE, the June 28, 2000, technical conference, in which AmerenUE explained the effect of its facilities inventory on its cost of service study to the other parties, was held six weeks prior to the due date for the other parties' direct testimony on rate design, and more than four months prior to the date scheduled for the hearing. Under these circumstances, AmerenUE maintains, the Staff's claim that it has been "severely disadvantaged" by this filing does not seem plausible. In AmerenUE's view, fairness dictates that the Staff and the other parties are afforded a reasonable opportunity to respond to the Supplemental Direct Testimony. But, stated AmerenUE, contrary to the Staff's position, fairness does not require the outright rejection of relevant information provided months in advance of the hearing, particularly when the information did not exist at the time AmerenUE filed its direct testimony.

Finally, AmerenUE stated that in response to Public Counsel's concern that AmerenUE's Supplemental Direct Testimony could be construed as a withdrawal of the "as filed" rates which

initiated this proceeding, AmerenUE stated that it is not withdrawing any part of its initial filing. AmerenUE stated that it is simply providing additional information to supplement its direct testimony addressing rate design. AmerenUE recognizes that the Commission may or may not utilize this Supplemental Direct Testimony in determining the appropriate design for AmerenUE's rates, just like the testimony concerning rate design provided by the other parties.

AmerenUE thus again requested that the Commission grant its motion for authorization to file supplemental direct testimony, and added a request that the Commission amend the procedural schedule as agreed to by the parties and set forth in Public Counsel's response to AmerenUE's motion.

Commission Rule 4 CSR 240-2.130(8) states, in part: "No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission."

The Commission finds AmerenUE's arguments persuasive. In complex rates cases such as this one, the more evidence the Commission has, the more informed its decision will be. At the same time, the Commission also recognizes that it must allow time for responses to AmerenUE's testimony and, in order to accommodate the parties, amend the procedural schedule to allow for a later date for the filing of rebuttal testimony.

IT IS THEREFORE ORDERED:

1. That the motion for authorization to file supplemental direct testimony filed by Union Electric Company d/b/a AmerenUE on August 2, 2000, is granted.
2. That the other parties may file supplemental direct rate design testimony no later than September 15, 2000.
3. That the procedural schedule shall be amended so that the filing date for rebuttal testimony is October 3, 2000.
4. That this order shall become effective on September 15, 2000.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Hopkins, Senior Regulatory Law Judge

ALJ/Sec'y:

Hopkins/Mills/Boyer

Date Circulated

CASE NO.

8-31

CR-2000-512

8/28/00

7,8,9,14

ma

Draimer, Vice Chair

Mr 79

Murray, Commissioner

RT

Schenenauer, Commissioner

KS

Simmons, Commissioner

Agenda Date

9-5

Action taken:

5045

Must Vote Not Later Than

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 5th day of September 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

