

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
NOV 06 2002
Missouri Public
Service Commission

Zoltek Corporation,)	
)	
Complainant,)	
)	Case No. EC-2001-345
v.)	
)	
Union Electric Company,)	
d/b/a AmerenUE,)	
)	
Respondent.)	

**RESPONDENT'S MOTION TO (i) REOPEN THE EVIDENTIARY
HEARING, (ii) REOPEN THE BRIEFING PERIOD AND/OR (iii) REQUIRE
STAFF TO ADVISE THE COMMISSION OF ITS POSITION
WITH RESPECT TO THE QUALITY OF SERVICE PROVIDED TO COMPLAINANT**

Comes now respondent, Union Electric Company d/b/a AmerenUE ("AmerenUE"), and for its Motion to (i) Reopen the Evidentiary Hearing, (ii) Reopen the Briefing Period and/or (iii) Require Staff to Advise the Commission of its Position with Respect to the Quality of Service Provided to Complainant, states as follows:

1. The evidentiary hearing of this matter took place on January 22, 23 and 24 and March 5, 2002.
2. Post-hearing briefs and proposed findings of fact and conclusions of law were thereafter filed by both AmerenUE and complainant, Zoltek Corporation ("Zoltek").
3. The Staff did not submit any pre-filed testimony and did not offer any testimony at the hearing. The Staff also failed to file any post-hearing briefs or proposed findings and conclusions.
4. In its Statement of Positions on the Issues, filed on January 10, 2002, the only position taken by the Staff was with respect to jurisdictional issues. The position of

the Staff was that the Missouri Public Service Commission (the "Commission") has jurisdiction over issues dealing with the safety, adequacy and reliability of service provided by AmerenUE to Zoltek but does not have jurisdiction to construe the agreement between AmerenUE and the Missouri Research Park, pursuant to which Zoltek contended it was entitled to "more reliable" service through "looped service."

5. It now appears that all parties are in agreement with respect to the two jurisdictional issues are now before the Commission:

a. Does the Commission have jurisdiction to determine the quality of the electric service provided Zoltek by AmerenUE?

Yes. All parties agree that the Commission has the jurisdiction to address this issue and, in fact, given the Commission's expertise in this area, it is essential that the Commission make this factual determination. Notably, however, while the Staff agrees that the Commission has jurisdiction to determine this issue, it has failed to provide any testimony or argument. AmerenUE submits it would be of benefit to the Commission, as well as to AmerenUE and Zoltek, if the Staff's position on this issue could be obtained. The Staff should be directed to file a brief and/or present testimony addressing the issue of whether AmerenUE provided a level of electric service which met the requirements of the Commission and AmerenUE's tariffs.

b. Does the Commission have authority to construe or interpret the contract between AmerenUE and the University of Missouri?

No. At issue in this proceeding is the legal impact of an agreement entered into by the University of Missouri and AmerenUE which purportedly called for a "looped

system" at the Missouri Research Park. The parties now all agree that the construction and impact of this agreement is beyond the scope of this Commission's jurisdiction.

6. Zoltek's Complaint herein, and the evidence presented to the Commission by the parties, raises two quality of service issues which the Commission not only has jurisdiction to determine but is uniquely qualified to do so:

a. Did Zoltek carry its burden of proving that AmerenUE failed to provide safe, adequate and reliable electric service as required by AmerenUE's tariff?

Zoltek has the burden of proof by clear and satisfactory evidence that AmerenUE violated its tariff and failed to provide Zoltek with safe, adequate and reliable service. See, e.g., R.S.Mo. § 386.430; Deaconess Manor Association v. Union Electric Company, 1997 Mo. P.S.C. Lexis 123 (1997). As the Commission has stated, Zoltek "must establish all facts necessary to support the relief it seeks by a preponderance of the credible evidence." GS Technology Operating Co., Inc. v. Kansas City Power & Light Co., 2000 Mo. P.S.C. Lexis 1009 (2000). Zoltek failed to produce any credible evidence at the evidentiary hearing that AmerenUE violated its tariff and failed to provide reliable service. As such, Zoltek has failed to meet its burden with respect to this issue.

However, if there is any doubt with respect to this issue, which all parties agree is within this Commission's jurisdiction, the Staff should be required to provide its position, either by additional testimony and/or a brief, with respect to the quality of service issues

presented in this case. Staff is peculiarly qualified to provide the parties and this Commission guidance on quality of service issues.¹

b. Did Zoltek carry its burden of proving that the “looped system,” from which Zoltek claims it was entitled to benefit, would have had any effect on the quality of service issues raised by Zoltek in its Complaint?

Again, Zoltek has the burden of proving this fact.² By the testimony of its only expert, however, Zoltek failed to do so. Dean Park testified that he could not tie any changes in the service provided to Zoltek over the years to the installation of a “looped system” by AmerenUE.

- Q. “...So the loop system may not have done anything to Zoltek?
A. It may not have.
Q. Okay. So that may not even be an issue here in what Zoltek is experiencing?
A. I think it’s still an issue because they were entitled to it.
Q. But they don’t necessarily need it to have reliable service?
A. No.”
Q. You can’t tell that. Correct?
A. I can’t tell that.

(Tr. 728-29).

In fact, Park admitted that a manual “looped system,” which he would have expected to find at the Missouri Research Park, would have had no effect on the vast

¹ As the Commission will recall, the St. Louis City Circuit Court ordered that the Commission determine in this proceeding all issues “pertaining to [AmerenUE’s] rendering of electrical service to [Zoltek], and the...adequacy of such services.” See October 23, 2000 Order, Exhibit A to Zoltek’s Complaint. In doing so, the Circuit Court acknowledged that these issues required the administrative knowledge and expertise of the Commission, the determination of technical fact questions and the need for uniformity in the regulatory scheme. It is in these very areas that the Staff’s input is required.

² AmerenUE does not concede Zoltek is entitled to any benefits under the 1988 agreement between AmerenUE and the University of Missouri. However, without reaching that issue, the Commission should still make a determination as to the impact a “looped system” would have had on the service provided by AmerenUE to Zoltek.

majority of "service quality incidents" about which Zoltek complained since such a system would have no impact on the frequency of such incidents. (Tr. 743-45).

Again, if there is any doubt with respect to this issue, and the impact of Zoltek's own testimony, the Staff should be required to provide its views on this issue by testimony and/or brief. This issue presents another quality of service question on which the application of the Staff's expertise would be advantageous.

WHEREFORE, respondent, Union Electric Company d/b/a AmerenUE, respectfully requests that the Commission reopen the evidentiary hearing in this case and direct the Staff to file a brief and/or to present testimony to the Commission addressing the two quality of service issues which are pending before the Commission, as noted herein, and for such other and further relief as the Commission deems necessary and appropriate.

Respectfully submitted

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Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion to (i) Reopen the Evidentiary Hearing, (ii) Reopen the Briefing Period and/or (iii) Require Staff to Advise the Commission of its Position with Respect to the Quality of Service Provided to Complainant was sent by facsimile transmission and mailed, first-class, postage prepaid this 6th day of November, 2002 to Brian H. May, Yates & May, L.C., 101 South Hanley, Suite 1025, Clayton, MO 63105 and Terry Allen, 102 East High Street, Suite 200, P.O. Box 1497, Jefferson City, Missouri 65102, attorneys for petitioner, John B. Coffman, Office of Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102 and Lera Shemwell, Associate General Counsel, Missouri Public Service Commission, 200 Madison Street, P.O. Box 360, Jefferson City, MO 65102

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