

February 4, 1999

VIA HAND DELIVERY

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
P. O. Box 360
Jefferson City, MO 65102

Re: MPSC Case No. EM-96-149

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 fourteen (14) copies of its Response to Staff's Proposal Respecting 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,

James J. Cook / sh

James J. Cook
Managing Associate General Counsel

JJC/bb
Enclosure(s)

FILED

FEB 4 1999

Missouri Public
Service Commission



BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED
FEB 4 1999

In the Matter of the Monitoring of the)
Experimental Alternative Regulation Plan)
of Union Electric Company)

Case No. EM-96-149

Missouri Public
Service Commission

**RESPONSE OF UNION ELECTRIC COMPANY
TO STAFF'S PROPOSAL
RESPECTING PROCEDURAL SCHEDULE**

Comes now Union Electric Company (AmerenUE or Company) and submits the following response to the proposal by the Staff of the Missouri Public Service Commission concerning the order of filing testimony.

1. Although Staff, in its pleading entitled "Staff Proposal Respecting Procedural Schedule" assumed that the Company's filing on February 1 would address this issue in detail, that pleading by the Company made only a brief reference to the issue. In that pleading, the Company suggested simultaneous filing of testimony would be acceptable to the Company if the issue were limited to the standard by which the Staff's concerns would be viewed.

To the extent that the testimony is not so limited, it is appropriate that the Company be allowed to submit its testimony first and last. While it is true, as the Staff suggests, that the Commission should be provided more, rather than less, information, that statement is not the end of the matter.

2. The Company is very concerned that the Staff has already taken several opportunities to present significant "factual" information and argument to the Commission about the Staff's proposed adjustments to the Company's earnings report. The Stipulation provides that after the Company has filed its final earnings report, the other parties (including Staff) "will have thirty (30) days after a final report is filed to

provide notice that there may be areas of disagreement not previously brought to the attention of the Commission that need to be resolved.” (Stipulation at Par 3.f.x.) The Staff has clearly gone significantly beyond the provisions of the Stipulation in their “notice” to the Commission about the areas of disagreement.

In its Motion for Setting An Expedited Early Prehearing Conference, the Staff “summarized” the areas of disagreement in its Attachment 1, which is an “Initial Staff Report Prepared by the Staff Accountants Assigned to Review the Third Year Results of the Alternative Regulation Plan.” (Staff pleading at pp. 3-4) Eight areas of disagreement are then set out by the descriptive title of each, e.g. Year 2000 Y2K Costs, Other Computer Costs, etc. The attachment is actually a six-page Memorandum to the Commission case file setting out in significant detail the Staff positions on each of the eight areas of disagreement. It includes a chart setting out the specific amounts of each proposed adjustment. In addition, a second attachment is included which details the Staff’s proposed weather adjustment.

The next opportunity the Staff took to present its case in significant detail came with the Staff’s Response to Union Electric Company Request for Commission Guidance. In that pleading, the Staff submitted significantly detailed discussions of the various issues this will be the subject of the proceedings for which testimony has yet to be filed.

The Company has not, so far, objected to the inclusion of such detailed “testimony” by Commission Staff. Clearly the “evidence” included in Staff’s pleadings goes far beyond the mere “notice” provided for in the Stipulation.

The Staff should not be allowed to continue to provide evidence to the Commission, now for the third time, in direct testimony, without allowing the Company to have the first and last word in the official filing of testimony.

3. The appropriate procedure to follow would be for the Company to file its earnings reports, as provided for in the Stipulation, and as was done here. Then, the Staff should have filed a "notice" of dispute, with perhaps an indication of the subject matter of the disputes, without any lengthy evidentiary material being included. Then, once it was clear that a dispute would need to go to the Commission for resolution, the Company should file its direct testimony setting out its earnings report. The Staff would then file rebuttal, explaining why the earnings report is flawed. The Company would then be allowed to reply. This procedure is efficient and would allow for the cleanest presentation of the issues to the Commission.

As it is, the Staff has already taken two opportunities to present significant "direct testimony". They should not be allowed to have to present their case a third time before the Company can be heard from.

The Company believes that the most efficient way to proceed from this point is to have the Company file direct testimony setting forth its earnings report. The Staff may then either reiterate the positions it has taken in its pleadings, or modify them as they see fit. Then the Commission and the Company and other parties will know exactly what the Staff's positions are. The Company would then respond.

4. The Staff may believe that its proposal allows the Company to file direct testimony addressing the unofficial objections as revealed in the Staff's pleadings while allowing the Staff to simultaneously file direct testimony addressing those same issues. They may suggest that this is more efficient, in that the ultimate issues in dispute are addressed more often. However, the Company cannot be assured that what it is addressing, based on the pleadings, will be the positions taken by the Staff in their direct testimony. Subsequent to the filing of Staff's pleadings, the Company and Staff have discussed the issues in dispute. It is possible that those discussions might have

changed the positions of the Staff on one of the disputed issues. Different reasons in support of the Staff's positions may have come to mind. If the Company addresses the Staff's pleadings in the Company's direct testimony, it is very possible that the Staff's simultaneous direct testimony will take an entirely different tact. Therefore, the Company may have addressed positions that the Staff no longer supports. Or, if the Staff has changed its reasoning on an issue, the Company will have addressed something that is no longer relevant.

The Staff's proposal assures that the issues will be very inefficiently presented, to the ultimate disadvantage of the Commission, in its attempt to reach a just decision.

5. The Company's proposal is the more logical, and will assure that the issues are presented to the Commission in a clear and efficient manner. The Staff's position will produce a very confused record.

6. The Company's proposal for simultaneous filing of testimony on the issue of the appropriate standard is not inconsistent with this argument. In that proposal, the parties are addressing a single issue of interpretation of the Stipulation. The subject of the submissions is known – the meaning of manipulation and the understanding of the parties to the agreement. In the procedure for filing testimony about disputes over the Company's earnings report, the topics are many. The Staff's position need not remain consistent with filings submitted with the pleadings, and the opportunity for wasted effort is significant.

WHEREFORE, for the reasons set out above, the Company requests that if the Company requests as set out in its February 1st filing are rejected by the Commission, the schedule as presented by the Staff be used, but with the filing of testimony as requested by the Company.

Respectfully submitted,

UNION ELECTRIC COMPANY

By *James J. Cook/sh*
Its Attorney

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DATED: February 4, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first-class, U.S. mail, postage prepaid, on this 4th day of February, 1999, to all parties on the attached service list.

James J. Cook /sh

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