

July 10, 2001

**FILED<sup>2</sup>**

JUL 10 2001

**VIA HAND DELIVERY**

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 **Response of Union Electric Company to Staff's Proposed 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 "James J. Cook".

James J. Cook  
Managing Associate General Counsel

JJC/mlh  
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>  
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Missouri Public  
Service Commission

Staff of the Missouri Public Service Commission, )  
)  
Complainant, )  
)  
v. )  
)  
Union Electric Company, d/b/a AmerenUE, )  
)  
Respondent. )

Case No. EC-2002-1

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

Union Electric Company, d/b/a AmerenUE ("UE" or "the Company") respectfully submits this response to the procedural schedule proposed by the Staff of the Missouri Public Service Commission in their Complaint filed in this case on July 2, 2001. The Company strongly objects to the seriously inadequate time allowed for the Company to respond to the Staff's filing, and urges the Commission to adopt a more realistic schedule for these proceedings.

1. In determining the appropriate schedule for this case, the Commission must not merely respect all the parties' procedural rights, but rather it must establish a proceeding that is fair to all the parties and produces a record, fully illuminating all the issues, that is truly conducive to reasoned decision making by the Commission. The Staff has proposed a procedural schedule that falls seriously short of these goals, as a brief reflection on what will be involved here makes clear.

2. The significance of these proceedings, of course, cannot be overstated. UE is the largest electric utility in Missouri. At the end of the day, the decisions the Commission will make in this case will not only affect the rate for electricity used by UE's customers, but may also have a profound effect on the Company's ability to produce and deliver electricity to the citizens of this state. This case will present a variety of complicated, and often novel, issues for the Commission's consideration. The Staff's Complaint in this case seeks a massive rate reduction of between approximately \$214 to \$250 million dollars each year. Though this fact alone suggest a proceeding that will be broad in scope, this case will be further complicated by issues regarding the transition from, or perhaps the continuation of some form of the experimental alternative regulation plan ("EARP") that UE has been operating under for the last six years.

3. The complexity and scope of the issues to be addressed here is certainly underscored by the hundreds of pages of testimony and accounting schedules the Staff filed along with its Complaint. And at this stage we do not know how many witnesses from other interested parties, such as the Office of Public Counsel, will be added to the proceedings.

More specifically, after months of preparation, the Staff has filed testimony from 15 witnesses -- including proposals for more than 100 adjustments to the Company's books -- each of which must be analyzed, with discovery where necessary, and responded to. As an example, the Staff has filed a lengthy depreciation study (over 2000 pages). This study is an integral part of a total proposed \$47,000,000 annual adjustment to the Company's cost of service. It is vital that the Company be able to analyze this study in

detail, complete its own study (as much as possible<sup>1</sup>), and perhaps employ outside consultants to assist the Company in answering the Staff's proposal. The short time allowed in the Staff's proposed schedule is totally inadequate for the Company to respond to this issue.

Another example is the "lead-lag" study produced by the Staff. The Company must have the opportunity to study this document in detail, have adequate time to seek discovery from the Staff about its study, and conduct a study of its own – probably with outside help to be able to do it in as short a time as possible. The time allowed by the Staff's proposed schedule is again totally inadequate for the Company to do what it needs to do to respond to the Staff's proposals.

In addition, of course, the scores of other issues must all be reviewed, discovery must be conducted and rebuttal testimony prepared. This simply cannot be done in the time allowed under Staff's proposal.

4. In light of this mass of witnesses and proposed evidence the Staff alone has thrown against us, it is apparent that a central problem of the procedural schedule proposed by the Staff is their failure to include any serious opportunity for us to engage in necessary discovery before we must file our own testimony and proceed to a hearing. The absence of any realistic time to prepare for and take meaningful discovery in the Staff's proposal is hardly prudent, for it prevents the parties from truly understanding

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<sup>1</sup> The Company has already been working on this matter, and recently informed the Commission that the Company's depreciation study would be finished in early January, 2002 (Notice of Intent to File Depreciation Study and Data Base and Property Study Unit Catalog filed June 21, 2001). It is vital that this study be completed, or nearly so, before the Company can adequately address these \$47,000,000 issues. It clearly cannot be completed in time to meet the proposed September date for the Company's filing, as suggested by the Staff's proposal.

their adversary's positions and, consequently, from effectively joining the issues in the record before the Commission.

Perhaps even more importantly, the absence of meaningful discovery in this context is blatantly unfair and unlawful. Under Commission Rule 4 CSR 240-2.090(1), UE has the right to obtain discovery "by the same means and under the same conditions as in civil actions in the circuit court."

5. Consistent with those rights under Missouri law, and basic principles of due process of law, UE intends to propose interrogatories, requests for production of documents, and requests for admissions to the Staff and, as appropriate, to any intervenor. *See* Missouri Sup. Ct. Rules 57.01, 58.01, and 59.01. After that written discovery, UE intends to take the deposition of each witness appearing against it. Only then will UE be in a position to file meaningful rebuttal testimony. Given the volume of material filed by the Staff, it will take UE at least some time, probably a few weeks, to analyze the Staff's filings and prepare its initial written discovery. The Staff will have 30 days in which to respond to that discovery. Then UE will have to digest the Staff's responses and conduct the depositions of the Staff's 15 witnesses. And all this is not even to address discovery from intervenors appearing against UE.

6. In its Complaint, the Staff suggests that the proceedings here can be truncated because, in its proposal for an interim issues proceeding, UE suggested that it could submit a list of issues to be addressed in that proceeding by August 24. Complaint, ¶ 20. Why that proposal justifies the shortcuts in the Staff's procedural proposal is hardly clear. In the context of that interim issues proceeding, what we proposed to file on August 24 was a detailed list of *issues* we thought important for the Commission to consider, not our

rebuttal to the Staff's *positions* on those issues. (Since under our proposal we would not have had any testimony from the Staff by that time, it would have been impossible to prepare such rebuttal in any event.) Moreover, after the filing of issues, we proposed that the Staff and other parties would file testimony on those issues, after which "UE and other parties [would] then have the opportunity to take discovery, including depositions of those witnesses." Emergency Motion of Union Electric, at 13 (June 23, 2001). Only then would UE file its rebuttal testimony. And it also bears remembering that the issues in the interim issues proceeding were expected to be large, overarching policy issues, not the scores of detailed issues to be confronted in the radical rate reduction case the Staff has now filed, as well as the significant policy issues that the Staff's filing raises. In sum, our proposal for an interim issues proceeding, which the Staff vigorously opposed, cannot now be used as an excuse to deprive UE of due process in this case.

7. In light of these concerns, along with a good faith intention to move this case along as expeditiously as possible, we propose the following procedural schedule for this case:

<b>DATE</b>	<b>EVENT</b>
7/31/01	UE files answer. UE serves written discovery (interrogatories, requests for production of documents, requests for admission). Intervenors seek intervention.
8/17/01	Intervenors file rebuttal testimony and schedules.
8/31/01	Staff answers written discovery.
9/7/01	UE serves written discovery (interrogatories, requests for production of documents, requests for admission) on intervenors.
10/5/01	Intervenors answer written discovery.

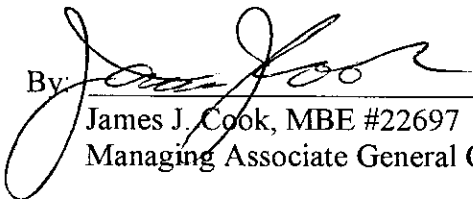
9/17/01 – 11/16/01 Depositions of Staff and intervenor witnesses.  
12/21/01 UE files rebuttal testimony and schedules.  
1/8/02 Prehearing Conference  
2/16/02 Staff files surrebuttal testimony and UE and intervenors file cross-surrebuttal  
2/21/02 Staff files list of issues and order of issues for hearing.  
2/28/02 Parties submit statements of position.  
3/12/02 – 3/23/02 Evidentiary hearings.

### CONCLUSION

Rate reduction proceedings of the magnitude now initiated by the Staff cannot be treated lightly, nor the process trimmed simply to “move things along.” Adopting the procedural schedule proposed by the Staff would be unfair, undermine the value of these proceedings as an aid to reasoned decision making, and violate the legal rights of UE. The procedural schedule we have proposed above, in contrast, is fair and fully protects the procedural rights of all concerned, but is not overly generous in the time allowed for the essential events in the proceedings. The Company’s proposed schedule would move this case along with appropriate speed, and, we respectfully submit, it should be adopted by the Commission to govern these proceedings.

Respectfully submitted,

UNION ELECTRIC COMPANY  
d/b/a AmerenUE

By:   
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DATED: July 10, 2001



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 10th day of July, 2001, on the following parties of record:


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