

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

MAY 30 2000

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

Missouri Public  
Service Commission

Case No. EC-2000- 795

COMPLAINT

Comes now the Missouri Public Service Commission Staff (Staff), pursuant to Section 7.f.vi. of the Stipulation And Agreement filed on July 12, 1996 in Case No. EM-96-149, approved by the Missouri Public Service Commission (Commission) in a Report And Order issued on February 21, 1997, and files the instant Complaint.<sup>1</sup> The Commission's approval of said Stipulation And Agreement established a second experimental alternative regulation plan (EARP) which commenced July 1, 1998. Among other things, this Stipulation And Agreement provides for the Staff to file a complaint with the Commission if the Staff believes that the operating results of Union Electric Company, d/b/a AmerenUE, have been manipulated to reduce amounts to be shared with customers. In support of the instant Complaint, the Staff states as follows:

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<sup>1</sup> The relevant sections in general respecting complaints are Sections 386.390, 393.130.1, 393.260 and 393.270 RSMo 1994. The relevant Commission Rule respecting complaints is 4 CSR 240-2.070. The Staff may file complaints by delegation of Commission authority, pursuant to Section 386.240 RSMo 1994. The Commission delegated such authority by its approval of the Stipulation And Agreement in Case No. EM-96-149.

1. Ameren Corporation (Ameren) is a Missouri corporation and a registered holding company under the Public Utility Holding Company Act of 1935, as amended, and Union Electric Company (UE), d/b/a AmerenUE, is a Missouri corporation and a utility subsidiary of Ameren. UE's principal office and place of business is located at One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, MO.

2. UE is an "electrical corporation" and a "public utility" as those terms are defined in Section 386.020 RSMo Cumulative Supp. 1999.

3. UE provides electric service within an area in Missouri certificated to it by the Commission.

4. UE is subject to the jurisdiction, regulation, and supervision of the Commission pursuant to Chapters 386 and 393.

5. Section 7.f.v.i. of the Stipulation And Agreement entered into by the Staff on July 12, 1996 and approved by the Commission on February 21, 1997 provides, in part, as follows:

If Staff, OPC or other signatories find evidence that operating results have been manipulated to reduce amounts to be shared with customers or to misrepresent actual earnings or expenses, Staff, OPC or other signatories may file a complaint with the Commission requesting that a full investigation and hearing be conducted regarding said complaint. UE shall have the right to respond to such request and present facts and argument as to why an investigation is unwarranted.

(Emphasis supplied). A not all-inclusive list of examples of earnings manipulation, among other things, is included in Section 7.f.vii. of the Stipulation And Agreement in Case No. EM-96-

149. Said section states as follows:

UE, Staff, OPC and other signatories reserve the right to bring issues which cannot be resolved by them, and which are related to the operation or implementation of the Plan, to the Commission for resolution. Examples include disagreements as to the mechanics of calculating the monitoring report, alleged violations of the Stipulation and Agreement, alleged manipulation of earnings results, or requests for information not previously maintained by UE. An allegation of manipulation could include significant variations in the level of

expenses associated with any category of cost, where no reasonable explanation has been provided. The Commission will determine in the first instance whether a question of manipulation exists and whether that question should be heard by it.

The Staff this date is filing its prepared direct testimony and schedules respecting areas of disagreement that it has not been able to resolve with UE respecting the first year of the second EARP. In said prepared direct testimony, the Staff witnesses identify the following adjustments as based, in part, on the manipulation of earnings by UE to reduce amounts to be shared with customers:

Advertising

Legal Fees

Environmental Expense

Injuries And Damages Expense

The prepared direct testimonies of the Staff witnesses identify additional grounds, Sections 7.f.vii. and/or 7.f.viii., for bringing these areas to the attention to the Commission for resolution.

6. The Staff this date also is filing a proposed procedural schedule for the hearing of these matters. The Staff does not believe that a different procedural schedule is required for Staff adjustments based on Section 7.f.vi. than for Staff adjustments based solely on Sections 7.f.vii. and/or Section 7.f.viii. UE may raise matters in its rebuttal testimony and schedules that warrant further investigation by the Staff, but except for a number of outstanding Staff data requests objected to or otherwise not yet responded to by UE, the Staff has completed its investigation.

Wherefore the Staff files the instant Complaint relating to those of its adjustments to the first year sharing credits of the second EARP of Union Electric Company that the Staff



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**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

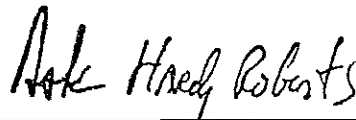
In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

Date: January 25, 1999



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Dale Hardy Roberts  
Secretary of the Commission

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION