Exhibit No.:	
Issues:	Interim Rate Refund
Witness:	Mark L. Oligschlaeger
Sponsoring Party:	MoPSC Staff
Type of Exhibit:	Rebuttal Testimony
Case No.:	TT-2001-328

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

OREGON FARMERS MUTUAL TELEPHONE COMPANY

CASE NO. TT-2001-328

Jefferson City, Missouri
March, 2001

REBUTTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

OREGON FARMERS MUTUAL TELEPHONE COMPANY

CASE NO. TT-2001-328

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Jefferson City, Missouri 65102.

Q. Please describe your educational background and work experience.

A. I attended Rockhurst College in Kansas City, Missouri, and received a Bachelor of Science degree in Business Administration with a major in Accounting in 1981. I have been employed by the Missouri Public Service Commission (Commission) since September 1981 with the Accounting Department. In November 1981, I passed the Uniform Certified Public Accountant (CPA) examination and, since February 1989, have been licensed in the state of Missouri as a CPA.

Q. Have you previously filed testimony before this Commission?

A. Yes. A listing of the cases in which I have previously filed testimony before this Commission is given in Schedule 1, which is attached to this rebuttal testimony.

Q. With reference to Case No. TT-2001-328, have you examined the books and records of Oregon Farmers Mutual Telephone Company (Oregon or Company)?

A. Yes, with the assistance of other members of the Commission Staff (Staff).

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to present the Staff's recommendations concerning Oregon's tariff filing which requests that the "interim and subject to refund" provision that currently exists with regard to the Company's originating and terminating Carrier Common Line (CCL) rates be eliminated, with the result that the rates become permanent. This request is presented within the direct testimony that Oregon witness Robert C. Schoonmaker filed earlier in this proceeding.

Q. Please provide a brief history of the events leading up to the Company's tariff filing in this proceeding.

A. In June 1999, the Commission implemented intraLATA dialing parity for telephone companies operating within its jurisdiction, as reflected in 31 Reports and Orders issued on that date. Simultaneously, the Commission terminated the Primary Toll Carrier (PTC) Plan then in effect, in its Report and Order in Case No. TO-99-254. At that time, the Commission gave Oregon and other affected telephone companies the option of filing revisions to their access rates in order to maintain "revenue neutrality" after termination of the PTC plan. Oregon undertook this option, and filed revised intrastate CCL rates to recover the revenue shortfall it expected to experience as a result of termination of the PTC Plan. The purpose of the Company's filing in this proceeding is to make the portion of the intrastate CCL rate that is "interim and subject to refund" permanent, on the claimed basis that the interim rate is not excessive and has not resulted in Oregon's over recovering in rates the actual revenue loss associated with the termination of the PTC Plan.

Q. Before you begin discussing the Staff's recommendations in this case, please define the term "revenue neutrality".

A. As the term is used in this testimony, "revenue neutrality" refers to the concept by which the Commission, when it takes an action that changes the nature and quantity of gross revenues that a telephone company receives through normal operation of its business, authorizes the company to change its rate structure so that the company's gross revenues after the regulatory change are equal to its gross revenues before the regulatory change. As an example, some telephone utilities asserted that termination of the PTC Plan would result in a decrease in their overall revenue levels, all else being equal. As a consequence, these utilities argued that the Commission should allow them to increase their rates so as to give the companies the opportunity to maintain the same overall revenue levels after termination of the PTC Plan as before.

Q. Did the Commission grant telephone utilities the option to charge interim rates, subject to refund, to allow them the opportunity to maintain revenue neutrality after elimination of the PTC Plan?

A. Yes. That opportunity was afforded to Oregon and other telephone utilities in the Report and Order in Case No. TO-99-254.

Q. In this testimony, is the Staff agreeing with the contention that the Commission has a legal obligation to allow telephone utilities revenue neutrality in circumstances such as the termination of the PTC Plan?

A. No. That is a legal determination for which I am not expressing an opinion in this testimony.

Q. Has there been a recent court ruling concerning revenue neutrality in the context of the elimination of PTC Plan in Missouri?

A. Yes. On January 16, 2001, the Western District of the Missouri Court of Appeals made a ruling (Case No. WD58324) that affirmed the Cole County Circuit Court's decision overturning the Commission's Order in Case No. TO-99-254 as it concerned revenue neutrality. It is my understanding that the Western District Court of Appeals ruling is not final at this time.

Q. On what basis should the Commission decide whether to order that all or a part of the interim CCL rate collections that the Company has received since the interim rate was made effective be refunded to customers?

A. Any refund ordered by the Commission in this proceeding should be based on a determination of whether implementation of the interim CCL rate has allowed Oregon to earn a rate of return that exceeded just and reasonable levels.

Q. Why is Oregon's overall earnings level relevant to this tariff filing?

A. If Oregon does not need to retain the interim CCL rate to earn a reasonable rate of return, then the Company's request to make the interim rate permanent should be rejected by the Commission. Otherwise, keeping the interim rate in place would result in ongoing excessive earnings for the Company. Furthermore, if Oregon did not require the interim CCL rate in the first place in order for it to earn a reasonable rate of return, then any monies collected by Oregon as a result of implementation of the interim rate should be refunded to its customers with interest.

Q. What is the proper means for the Commission to determine whether Oregon is currently earning a reasonable rate of return, without considering the interim CCL charge?

A. A determination of whether Oregon is currently earning a reasonable rate of return is appropriately made in the context of a general rate proceeding, in which all relevant factors affecting revenue requirement are considered by all parties to the proceeding and by the Commission.

Q. Please explain the relationship between the interim CCL rate, implemented in order to allow telephone utilities to maintain revenue neutrality, and the need for a general rate proceeding.

A. The traditional regulatory practice in Missouri and other jurisdictions has been to allow utilities an opportunity to earn a reasonable profit, but not to guarantee that the company will receive a particular level of revenues. Therefore, unless it is required by statute or judicial determination, the Staff believes that revenue neutrality is not required under any circumstances if revenue neutrality is not needed for the utility to continue to earn a reasonable rate of return. For example, if a utility is experiencing a level of over earnings sufficient to cover whatever revenue loss it may experience from termination of the PTC Plan, there is no just or reasonable rationale to allow that utility to increase rates for revenue neutrality purposes due to termination of the PTC Plan. For this reason, utilities should not be allowed to increase rates to maintain revenue neutrality unless the rate increase is done in conjunction with a review of all relevant factors in a rate proceeding. If, for administrative reasons, such a review cannot be done prior to implementation of the rate increase that was allegedly justified by revenue neutrality, then the rate increase should be made interim, and subject to refund with interest if a later general rate case review indicates the increased charge was not justified by the utility's overall earnings level. The latter situation was exactly the course of action followed by the Commission when it ordered elimination of the PTC Plan.

Further, my legal counsel has advised me that there is case law that the granting of an interim rate change by the Commission must be ancillary to a permanent rate proceeding for the utility in question to be lawful.

Q. Has the Commission previously agreed with the Staff's position concerning the relationship between revenue neutrality charges and general rate proceedings?

A. Yes. In fact, in its Order in Case No. TO-99-254, et al., the Commission specifically conditioned the interim increases in CCL rates upon an obligation by those utilities to file a general rate case within eight to ten months after the interim rates going into effect. The Commission specifically stated the following:

> ...each LEC that requests revenue neutrality will file a general rate case as specified in the Report and Order approving its Report and Order once it has operated for a period of time after termination of the PTC Plan. In this rate case, all relevant factors and the LEC's entire rate design will be examined. (Report and Order, p. 17, Case No. TO-99-254)

In its Order Regarding Rehearing in Case No. TO-99-518, which concerned Oregon's Toll Dialing Parity Implementation Plan, the Commission further explained the relationship between any setting of rates designed to achieve revenue neutrality and a subsequent general rate proceeding:

> The LECs that file rate increases to implement revenue neutrality should rightly bear the burden of proof to show that such increases are necessary. Because of the time strictures placed upon the

> Commission by the FCC, there is simply not time to examine all relevant factors to determine whether the increase is warranted before implementing IntraLATA Dialing Parity (ILDP) and eliminating the Primary Toll Carrier (PTC) plan. <u>Thus the Commission is allowing LECs to raise rates, if they choose, but only if they are willing to prove that the increase was necessary in a subsequent rate case.</u> The time constraint does not mean that the burden of proof should shift away from the LEC that is raising its rates, it simply means that the proof necessarily comes after the surcharge is implemented on a subject to refund basis. If the LEC is unable to prove that the increase was necessary, it will be required to refund it.
> (Emphasis Added; Order Regarding Rehearing, pp. 2-3, Case No. TO-99-518)

Q. Has Oregon met the condition set by the Commission of filing a general rate case within eight to ten months after it implemented an interim subject to refund increase for revenue neutrality?

A. No. Oregon did not file a general rate case. Nor did it file sufficient information concerning all relevant factors pertaining to its overall earnings levels as part of its tariff filing. The information provided by the Company does not provide a reasonable basis for the Commission to make a determination of whether Oregon's current earned rate of return is adequate or not.

Q. What kind of information is necessary to properly assess a utility's earnings level?

A. To make that assessment, the Commission would need information from the utility concerning its current cost of capital, and whether its current revenue levels are sufficient to allow it to recover its reasonable and prudent level of expenses and earn that current cost of capital. Evidence concerning the appropriate assumed lives of plant assets, and whether depreciation rates should be changed to match current reasonably expected life assumptions for the assets, would normally be considered. The actual revenue and expense totals incurred by a utility within the test year ordered by the Commission should be adjusted as appropriate to both normalize and annualize the amounts, so that the ratemaking process is forward-looking and prospective in nature.

Oregon did not provide information in its testimony or supporting schedules concerning an estimate of its current cost of capital. Nor did Oregon appear to propose an entire set of appropriate annualization or normalization adjustments to its actual historic revenue and expense levels in this tariff filing. No evidence was filed respecting appropriate depreciation rates for Oregon's regulated assets. The data provided by Oregon in this application in response to the Commission's previous directive to file a general rate proceeding is very deficient in terms of both quality and quantity in comparison to that normally filed by regulated utilities seeking a general change in rates.

Q. Since, in the Staff's opinion, the Company has failed to comply with the Commission's condition concerning filing of a general rate proceeding after setting its rates on an interim, subject to refund basis to achieve revenue neutrality, would the Commission, in the Staff's opinion, be justified in rejecting Oregon's requests in this tariff filing?

A. Yes. The Commission would be justified on this basis alone to reject the current Oregon tariff filing, to order the elimination of Oregon's interim rate, and to order that all monies paid in by the Company's customers per the interim surcharge be refunded with interest.

Q. If the Commission chooses not to follow that course of action, how should the Commission otherwise proceed with its review of Oregon's interim CCL tariff filing?

A. The Staff proposes that the Commission utilize the results of an earnings review of Oregon that is being conducted by the Staff in conjunction with and in relation to the interim CCL tariff filing. This earnings review is being performed for three purposes: 1) to make a recommendation as to whether all or a portion of Oregon's interim CCL rate collections should be refunded with interest to its customers; 2) to make a recommendation to the Commission as to whether the Company's interim CCL rate should be made permanent; and 3) to make a recommendation as to whether Oregon's rates should be reduced on a permanent basis due to over earnings.

Q. What Staff witness is addressing in testimony Oregon's current revenue requirement?

A. Staff Accounting witness Steve M. Traxler discusses the Staff's overall revenue requirement findings for Oregon in his rebuttal testimony.

Q. What findings has the Staff made regarding Oregon's current earnings level?

A. As discussed in the testimony of Staff witness Traxler, the Staff believes Oregon's current earnings level, including the impact of interim CCL rate collections, is excessive.

Q. Since the evidence contained in Staff witness Traxler's testimony indicates that Oregon is currently over earning, what are the Staff's intentions?

A. Concurrent with this testimony, the Staff is filing an earnings complaint against Oregon. Based on Oregon's level of over earnings and the Staff's complaint filing, the Staff recommends that the Commission reject Oregon's proposed CCL tariff, eliminate the current interim, subject to refund CCL charge, and order a refund, with interest, of all interim CCL surcharges collected to date by the Company.

The Staff also intends to enter into discussions with Oregon concerning its current earnings, and explore the possibility of entering into a stipulation and agreement with the Company to resolve any questions or issues concerning its over earnings and possible rate changes and disposition of the current interim rate and refund matters.

Q. Mr. Schoonmaker's direct testimony indicates that the Company asserts that any refund of charges collected on an interim, subject to refund basis should be made based strictly on a comparison of actual revenue losses associated with the elimination of the PTC Plan to the interim rate collections. Please comment.

A. Oregon's position on a possible refund of the interim CCL charge collections is contrary to the intent of the Commission as clearly expressed in earlier orders. However, if the Commission for any reason accepts the Company's position regarding a refund of the interim CCL charges, the rebuttal testimony of Staff Accounting witness William A. Meyer, Jr. presents the Staff's findings as to an appropriate reconciliation between the interim rate collections and Oregon's revenue loss associated with termination of the PTC Plan.

Q. Please summarize the Staff's proposals in this case.

A. Based on the Staff's earnings complaint against Oregon, and the magnitude of the over earnings identified in Oregon's earnings review, the Staff recommends that the Commission reject Oregon's proposed permanent CCL tariff, eliminate the current interim, subject to refund CCL charge, and order a refund, with interest, of all interim CCL surcharges collected to date by Oregon.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Tariff Filing of	)	
Oregon Farmers Mutual Telephone Company	)	Case No. TT-2001-328

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 11 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

Mark L. Oligschlaeger

MARK L. OLIGSCHLAEGER

Subscribed and sworn to before me this 28th day of February, 2001.

Toni M Charlton

Notary Public

My Commission Expires: ___________________

TONI M. CHARLTON
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires December 28, 2004

MARK L. OLIGSCHLAEGER

COMPANY	CASE NO.
Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14
Western Resources	GR-90-40 & GR-91-149
Missouri-American Water Company	WR-91-211
UtiliCorp United Inc. / Missouri Public Service	EO-91-358 & EO-91-360
Generic: Expanded Calling Scopes	TO-92-306
Generic: Energy Policy Act of 1992	EO-93-218
Western Resources, Inc./Southern Union Company	GM-94-40
St. Louis County Water Company	WR-95-145
Union Electric Company	EM-96-149
St. Louis County Water Company	WR-96-263
Missouri Gas Energy	GR-96-285
The Empire District Electric Company	ER-97-82
UtiliCorp United, Inc./Missouri Public Service	ER-97-394
Western Resources, Inc./Kansas City Power & Light Company	EM-97-515
United Water Missouri, Inc.	WA-98-187

MARK L. OLIGSCHLAEGER

COMPANY	**CASE NO.**
Missouri-American Water Company	WM-2000-222
UtiliCorp United Inc. / St. Joseph Light & Power Company	EM-2000-292
UtiliCorp United Inc. / The Empire District Electric Company	EM-2000-369
Green Hills Telephone Corporation	TT-2001-115
IAMO Telephone Company	TT-2001-116
Ozark Telephone Company	TT-2001-117
Peace Valley Telephone Company, Inc.	TT-2001-118
Holway Telephone Company	TT-2001-119
KLM Telephone Company	TT-2001-120
Ozark Telephone Company	TC-2001-402