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Missouri Public
Service Commission

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

Re: MPSC Case No. EO-2000-580

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 **Reply Brief**.

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
Managing Associate General Counsel

JJC/mlh
Enclosures

cc: Mr. Lewis Mills
Hearing Examiner

Parties on Attached Service List

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE
STATE OF MISSOURI

FILED

FEB 21 2001

Missouri Public Service Commission

In the Matter of an Investigation Into an Alternative Rate Option For Interruptible Customers of Union Electric Company d/b/a AmerenUE	))))	Case No. EO-2000-580

REPLY BRIEF OF UNION ELECTRIC COMPANY

COMES NOW Union Electric Company (the Company or UE) and submits the following as its Reply Brief in the above styled matter:

Commission Authority

Both the Commission Staff (Staff) and the MEG Interruptibles (MEG) submitted Initial Briefs in this matter. Staff's Initial Brief begins, and MEG's Brief ends with analyses of the question asked by the Commission concerning its legal authority to require the Company to implement a tariff such as the one proposed by MEG. The Staff and MEG argue that the Commission does have such authority. Without necessarily agreeing with these legal analyses, the Company does not argue in this case that the Commission is without legal authority to implement a tariff which is opposed by a utility. As previously stated in its Initial Brief, however, the Company strongly argues that a decision by the Commission approving the tariff proposed in this case would be a decision totally lacking in legal and factual support. The Company does not argue, however, in this matter, that the Commission is without the authority to impose such a tariff.

56

Merits of the MEG Proposal

The Staff is opposed to the interruptible rate proposed by MEG. The Company will not re-argue the points raised by the Staff in its Initial Brief.

MEG, of course, supports its proposal. The Company will address some of the points raised in MEG's Initial Brief.

In the Stipulation and Agreement that resolved EO-96-15, the Company and MEG agreed to a very simple sentence, as quoted in Schedule 2 to Mr. Kovach's Rebuttal Testimony, Exhibit 6: "The Company and the Industrials will enter into good faith discussions regarding alternative interruptible rate options." The sentence followed a three paragraph discussion of the details of the termination of the Interruptible Power Rate 10(M). MEG claims that it proposed "certain interruptible rate concepts to be incorporated in an alternative interruptible tariff (the so-called "Brubaker Tariff")." This was described as being "[I]n the exercise of their obligation for 'good faith' negotiations." MEG Brief, p.2. MEG then claims, in an obvious attempt to show "bad" faith on the Company's part, that "UE declined to respond to the Brubaker proposal other than to dismiss the concepts embodied in the proposal as not being of interest to U.E...." Id. P 4.

Staff's description of the "Brubaker proposal" is particularly apt:

> ... Staff was under the impression that if MEG subsequently decided to make its own proposal, MEG would actually be offering something new. Unfortunately, the MEG proposal at issue is nothing more than a not-so-veiled attempt to have the Commission re-institute a tariff provision that was fairly negotiated away by MEG, presumable in exchange for what MEG regarded as compensating benefits. The fact is that the MEG proposal is, in essence, the same as the now-defunct Rate 10M. ... Moreover, to the extent that the MEG proposal modifies Rate 10M, the overall effect is to put even tighter constraints on the Company...
>
> Staff Brief, p. 6.

Little wonder, then that the Company did not respond favorably to MEG's "alternative" proposal. Unfortunately, even in light of specific contradictory testimony by Mr. Kovach, (Ex. 6, p. 4) and the cross examination of Mr. Brubaker (Tr. p. 33, 34), MEG continues to claim that the Company "declined to respond to the Brubaker proposal..." (Brief, p. 4) This is simply not true. A closer reading of the Brief and Mr. Brubaker's answers to cross examination on page 34 of the transcript, reveal that MEG believes that failure to use the slightly modified 10M rate as the basis for discussions was, in fact a failure to respond. The Company clearly responded, as outlined on page 33 and 34 of the transcript. MEG didn't like the response, so it continues to claim that no response was provided.

MEG briefly "described" the Company's new Rider M. The description is not wholly accurate. Rider M is voluntary; however, once a contract is signed, the customer is obligated to curtail, pursuant to the terms of the agreement, which does contribute to enhanced system reliability. Moreover, the prices offered by UE under this rider are not arbitrary, but are guaranteed to the customer by contract. The implication that this is some sort of unregulated free for all, totally outside the purview of the Commission, is just not true.

On page 5 of its Brief, MEG again raises the specter of "annual increase in power cost to these customers of approximately $2.4 million." This claim was debunked on cross-examination, and revealed to be grossly overstated in the Company's Initial Brief. Clearly, if MEG customers previously received a discount (which Staff has clearly stated many times was not cost-based) and now they do not get that discount, they will pay more. However, they have not actually sustained increased operating expenses of this

amount. Their claim is based on a gross bill increase figure which does not take into account the savings from no "lost production" that would be gained absent curtailments. In fact, the Company has shown from the MEG's own numbers, that the net increase in these customers' bills is only about 1/3 of the amount claimed!

Moreover, even if the customers should be able to get the old tariff back, the Company and the Staff are adamant that the discount which results in the $2.4 million figure is too generous. If the Commission would agree to the Brubaker proposal, but at a more appropriate level of discount, the Staff has made it clear that it does not have the information to determine what that discount should be. However, any discount near the levels of similar rates from other utilities which are lower and only paid during months of curtailment, would obviously provide less than $2.4 million to these customers. In fact, it's not clear that the lower discounts offered by other utilities would even be sufficient to offset the admitted production losses incurred by these customers during curtailments.

All of this suggests very strongly, that the Brubaker proposal should be rejected, and a "cut-the-baby-in-half" decision that calls for the adoption of a form of the Brubaker proposal, but only after a Staff study, should not be adopted by the Commission.

Reliability and Capacity

MEG's first point of Argument is the following: "System Reliability Should Be the Primary Concern in Designing a Curtailment Tariff." A theme running through MEG's testimony and brief, is that UE has a shortage of capacity and the Brubaker proposal is just the answer.

It should be remembered that Ameren, including AmerenUE, AmerenCIPS and AmerenEnergy, have the responsibility to assure that the Ameren system has sufficient

capacity to meet its various obligations. MEG's strategy to get back its discount, is to raise a capacity concern, claim that it has the answer, and threaten the Commission with dire consequences if its proposal is not adopted. In fact there is no capacity problem that requires providing the three MEG customers with unwarranted discounts in order to save the system.

Ameren companies have filed with various regulatory commissions to allow the transfer of the UE Illinois territory to AmerenCIPS. This will shift that part of UE's load to CIPS and free up some capacity for the remaining UE load, which will then be solely in Missouri. It is obvious that a public utility must always be alert to the need for and the cost of additional capacity. The Company has made a filing that will address that concern. To turn that prudent planning into a claimed potential crises, for which we must give into the demands of these customers for an unjustified discount, is simply wrong. The filing of a case to maintain a more desirable balance of capacity resources, should not be used in the manner suggested by the MEG.

Moreover, the Company is not asking the Commission to merely adopt the proposed transfer with no other programs in place. The new riders (L and M) are available and have been attracting significant participation. These more up-to-date, and customer friendly options have already attracted significantly more curtailable load than the old 10(M) rate.

MEG purports to have a better handle on the capacity needs of the Company than the Company, itself, or the Commission Staff. By declaring an emergency, raising the concern of California-type problems and then graciously suggesting its own proposal as the only option to save the Company, MEG has seriously misstated the state of affairs.

First, there is no emergency. Neither the Company nor the Staff has suggested that there is any reason to be so concerned about UE capacity, that the MEG proposal must be adopted. Secondly, the reference to California (Brief, p. 8) is wholly inappropriate. This Commission is well aware of the problems in California, and well knows that Missouri's regulatory history and Missouri's utility actions, are significantly different. Thirdly, MEG's 40 MW, made available at a discount that is seriously overstated, would do little, if anything to alleviate any serious capacity shortfall. And finally, the new voluntary riders have provided more than enough capacity to offset any loss from the elimination of the old 10(M) rate.

MEG "note[s] that "UE witness Kovach testified that Illinois presently has in place a mandatory curtailment tariff similar to the former Rate 10(M), (TR p. 122, line 21). Accordingly, our Illinois neighbors have a benefit that U.E. is denying to its Missouri customers." (Brief, p. 7) Incredibly, MEG failed to continue quoting from Mr. Kovach's answer to Commission Schemenauer. Picking up exactly from where MEG stopped, on line 21 of page 122 of the Transcript: "Yes, we had a similar tariff that was in effect in both states. And we would have taken similar action in Illinois except the legislation that's in effect in Illinois today precludes us from doing so at this time. But over the long run it would be our intention to move in the same direction in Illinois as we have in Missouri." Thus, since Illinois enacted a restructuring bill that has avoided the disasters of California, and which restricts the elimination of tariffs in the short run, as part of the overall restructuring plan, MEG would apparently have Missouri freeze all of its tariffs, also. Of course MEG fails to mention that this would be without the other several hundred provisions of the Illinois law.

"Union Electric Proposals (sic)"

MEG continues to have trouble remembering what is a proposal and what is in the tariffs. The "Brubaker proposal" is a proposal to reinstate the "now-defunct" Rate 10(M). Riders L and M are not "proposals," but are Commission-approved tariffs that are in effect, currently available, and providing more curtailable load than the old Rate 10(M). Union Electric's "proposals" are not what is before the Commission. Union Electric's Riders L and M were previously presented to the Commission and approved. Rider L was part of the Stipulation that eliminated the old Interruptible Rate 10(M), and Rider M was approved by the Commission separately.

This section of MEG's Initial Brief complains that the new Company riders "effectively deregulate the sale of curtailed customer power." Brief, p. 10. MEG tries to make it sound like the Company forcefully curtails a customer and then sells that power at a profit, leaving the customer high and dry. That is simply not true. Riders L and M are totally voluntary. If a customer does not want to be curtailed; if a customer does not believe the prices offered by the Company are high enough; if there are any terms and conditions the customer does not like; if the customer is opposed to the very concept of the Riders, the customer merely chooses not to sign up for the Riders. If the customer thinks it's a good deal, he can sign up for it. Will these Riders result in the customer realizing the same profit he might get if there were a totally deregulated system? Perhaps not. Are the significant risks that are obviously present in a totally deregulated system likely to fall on customers who chose to take one of these Riders? Obviously, not. Are Riders L and M attempts to bring about total deregulation to Missouri? No. Is Missouri

thus precluded from trying limited experiments to see what does and does not work, as we approach a new era of utility regulation? One would hope not.

But since the Company's new Riders do not provide the same level of discount to these three customers as they voluntarily gave up, MEG claims that the Company's riders are some kind of *risky schemes* with pricing which is "determined solely by U.E. without Commission oversight or regulation." MEG Brief, p. 12. That, again, is simply not true. Even Mr. Brubaker, himself, admitted that the new riders are not "unjust." On page 129 of the transcript, he stated, in response to a question from Chair Lumpe: " I wouldn't say that they are unjust. I would say they are entirely different from the reliability based rate 10M, and they certainly don't seem to be usable by the customers who provided the reliability interruptions under 10M."

There should be no misunderstanding. Union Electric is serious about making sure that it is a highly reliable utility. As stated by Mr. Kovach in response to questions by Chair Lumpe, the Company is "not doing anything to shirk our responsibility in that area." Tr. p. 121, line 19. "We do intend to provide firm service to the customers in our service territory, those that want firm service." Id. Line 5. Clearly, the Staff was not concerned that the elimination of the old 10(M) rate would cause a reliability problem. Nor is the Staff concerned that the rejection of the reinstatement of a slightly modified 10M causes any reliability problems. Moreover, <u>even if there were such concerns</u>, the adoption of the Brubaker proposal is not the appropriate answer.

<u>Further Studies</u>

The Staff has indicated throughout its testimony and Initial Brief, that if the Commission were to want to adopt the Brubaker proposal, a variety of additional studies

would be required to determine the appropriate discount, and other details of the tariff. The Company respectfully requests that the Commission not attempt to compromise this case by directing the parties to conduct such studies and determine the "appropriate" level of discount and other details. The Company believes, and suspects that the Staff believes, that our plates are too full for such an exercise.

CONCLUSION

The customers who are making this request are three customers, out of over a million, all of whom would probably like lower rates. These three customers are, without a doubt, important customers of Union Electric Company. They provide a significant amount of revenue to the Company, and the Company does not enjoy being at odds with them before this Commission. However, not every customer request is justified. Not every customer desire can be met. Particularly in a regulated world, utilities must work with their Commissions and those Commissions' staffs to provide reliable service at a fair and reasonable price. The Company and the Commission's staff believe that the MEG's request would not be fair or reasonable. It should not be adopted.

Dated: February 20, 2001

Respectfully submitted,
UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via Federal Express mail on this 20th day of February, 2001, on the following parties of record:

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