

February 26, 1999

FILED

FEB 26 1999

VIA HAND DELIVERY

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

Missouri Public
Service Commission

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 Statement with Respect to the Filing of Direct Testimony by Other Parties in the Absence of an Order Establishing a Schedule for Proceedings and Objection to the Filing of Said Testimony.

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)



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Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

Case No. EM-96-149

**UNION ELECTRIC COMPANY'S STATEMENT
WITH RESPECT TO THE FILING OF DIRECT TESTIMONY
BY OTHER PARTIES IN THE ABSENCE OF AN ORDER
ESTABLISHING A SCHEDULE FOR PROCEEDINGS
AND OBJECTION TO THE FILING OF SAID TESTIMONY**

Comes now Union Electric Company ("Union Electric" or the "Company") and respectfully submits this Statement upon the filing of direct testimony in this matter by the Staff of the Missouri Public Service Commission ("Staff") and by the Office of Public Counsel ("Public Counsel").

1. Both of these filings – the testimony of seven witnesses offered by the Staff and one by Public Counsel – were not made pursuant to any order of the Commission or any agreement among the parties. Rather, these filings were unilaterally made according to the schedule and order of filing preferred by the Staff and Public Counsel. That schedule and order of filing, reflecting the substantive positions adopted by those parties, is fundamentally at odds with the binding obligations created in the Stipulations and Agreements adopted by the Commission to establish both the first and second Experimental Alternative Regulation Plans ("EARP"), Case Nos. ER-95-411 and EM-96-149, respectively. Union Electric has not submitted direct testimony of its own at this time not only because the Commission has not yet ruled on the competing schedule proposed by it, but because the schedule the Staff and Public Counsel apparently wish to force on these proceedings, like their substantive positions, severely prejudices the rights of Union Electric under the Agreements which created the EARPs.

2. Whether one understands those Agreements as establishing mutual contractual commitments or articulating representations on which Union Electric reasonably relied, they created binding legal obligations that no party – including the Commission – is free to ignore or repudiate. To be sure, the bargain here benefited – and we hope will continue to benefit – not only all the parties, but all the customers of Union Electric. Indeed, by Union Electric's calculation, the first EARP has produced approximately \$206 million of benefits for its customers over three years.

3. To accomplish such results, these Agreements put in place a mechanism for establishing rates that was truly forward-looking from a regulatory perspective and reflected elements of the competitive market, creating incentives for Union Electric to run its business more efficiently, establishing a new arrangement for customers to share in the Company's profitability, and lowering the costs of regulation by significantly reducing the need for extensive regulatory intervention and proceedings. At the heart of this mechanism was the agreement by the parties that the Company's earnings would be calculated, almost mechanically, by objective and well-understood accounting methodologies involving no subjective second-guessing by after-the-fact regulatory proceedings. Thus, as part of this bargain, Union Electric surrendered the right to file a rate case except in the most extreme circumstances, while the other parties gave up the ability to file a complaint seeking rate reductions.

4. The central notion was to establish agreed-upon accounting methodologies – set out in the Reconciliation Procedures attached to the Stipulations and Agreements – that would at the outset not be skewed to favor the interests of any parties. The earnings on which the sharing credits would be based would then be whatever they would be when those methodologies were applied. Certainly all the parties could monitor the Company's application of those

methodologies to be sure of accuracy, and corrections have been made thanks to the careful participation of all concerned. But the Staff and Public Counsel now seek to change the earnings calculated for the third sharing period not because of problems with the application of the accounting methodologies, but, apparently, because they do not like the results.

5. The recent filings of these parties illustrate this. For example, one witness, Stephen M. Rackers, says that the Staff is proposing adjustments "in accordance with the criteria" established by these Agreements. Rackers Direct Testimony at 4. Yet he goes on to argue in essence that the Agreements allow parties to bring *any* "issues which cannot be resolved by them" to the Commission for resolution. *Id.* His argument then never once admits that there *are* binding criteria which severely limit the scope of appropriate disputes under these Agreements.

6. In short, the parties are separated by a fundamentally different understanding of the nature of the obligations created by the Agreements and the legal standards by which they are to be evaluated. And as Union Electric pointed out in its filing of February 1, 1999, not only the Agreements themselves, but simple common sense, dictate that the issue of these standards be resolved first, before the application of those standards for a particular year of the EARP is addressed. (Indeed, as the Company also pointed out in that filing, resolution of the legal standards issue may resolve what really is the key dispute between the parties and so obviate the need to undertake the more burdensome examination of the application of those standards.)

7. As Union Electric proposed in its February 1 filing, the Commission may address this question of legal standards based on the terms of the Agreements themselves, or establish a procedural schedule to develop a record on the question of the legal standards created by the Agreements, and decide that issue first. Again, if the Commission rejects these proposals and

would open proceedings on the full range of issues addressed by the filing made by the Staff and Public Counsel, Union Electric should be entitled to present its direct testimony first, followed by the Staff's and Public Counsel's.

8. WHEREFORE, for the reasons set forth above, the Company objects to the filing of the Direct Testimony of the Staff and Public Counsel and asks that the Commission direct that it be returned to the Staff and Public Counsel until an Order is issued addressing the matters previously raised by the Company and setting a schedule and order of filing.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: *James J. Cook / sh*

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DATED: February 26, 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 26th day of February, 1999, to all parties on the attached service list.

James J. Cook/sh

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