John B. Coffman
Acting Public Counsel

State of Missouri

Bob Holden
Governor

**Office of the Public Counsel**
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June 6, 2002

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

**RE: Union Electric Company,**
**Case No. EC-2002-1**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **PUBLIC COUNSEL'S SECOND MOTION TO COMPEL. (Both Proprietary and Non-Proprietary Versions).** Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Acting Public Counsel

JBC:jb

cc: Counsel of Record

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

| | | |
|---|---|---|
| STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION, Complainant, | ) | |
| vs. | ) | **Case No. EC-2002-1** |
| UNION ELECTRIC COMPANY, d/b/a AmerenUE, Respondent. | ) | |

## PUBLIC COUNSEL'S SECOND MOTION TO COMPEL

COMES NOW the Office of the Public Counsel (Public Counsel), pursuant to Commission rule 4 CSR 240-2.090 and the Rule of Civil Procedure 56.01, and for its Second Motion to Compel states as follows:

1. On August 17, 2001 Public Counsel propounded Data Request 515 to Union Electric Company d/b/a AmerenUE (Company) relating to a presentation by Company executive Charles Mueller to the Federal Reserve Board in June 2001. The St. Louis news media reported at that time that Mr. Mueller discussed "energy issues" in a presentation to the Federal Reserve Board, and was quoted as saying that "California aside, the nation is growing its production capacity faster than it is consuming electricity." Data Request 515 asks for copies of the documents presented to the participants at the June 2001 meeting. (Attachment 1) On June 24, 2001, Company lodged a timely objection, claiming that this data request is "irrelevant to any matter in this case." (Attachment 2) After Public Counsel and Company discussed this discovery

dispute, a conference was held on September 11, 2001, pursuant to Commission rule 4 CSR 240-2.090(8)(B). Company has still provided no response to this data request.

2. On May 10, 2002 Company filed prepared rebuttal testimony containing several references to the importance of this rate case to the energy policy in the State of Missouri and the relationship of energy demand and generation capacity. See Rebuttal of Gary L. Rainwater, p. 2, Rebuttal of Warner L. Baxter, p. 11 and Rebuttal of Gary L. Randolf, pp. 7-8. Public Counsel's data request seeking copies of materials associated with presentations made by one of the Company's executives regarding energy issues during the test year is relevant or reasonably calculated to be relevant to issues raised by Company in its rebuttal testimony in this case. The Commission deserves to know if Company executives are making consistent statements to different public entities.

3. Public Counsel Data Request 1026 was propounded on April 26, 2002, requesting from Company copies of certain work orders and supporting information relating to lobbying and legislative expenses. (Attachment 3) This data request references certain data requests propounded in Case No. EM-96-149 which explains that Public Counsel is requesting the documentation that identifies and describes the service provider for each cost, the actual services provided that support each cost, as well as the rationale for each individual legislative or lobbying cost. (Attachment 4) No timely objection was made to data request 1026 and only partial information has been provided to Public Counsel. Although Company has provided the work orders in question, it has not provided all of the supporting documentation.

Public Counsel has discussed this matter with the Company through a variety of telephone calls and correspondence over the past month. This matter was further

discussed at a 4 CSR 204-2.090(8)(B) teleconference with the regulatory law judge held on May 31, 2002.

4. On April 4, 2002 Public Counsel propounded Data Requests 5031 through 5048, requesting various information relating to Company's SO2 emission allowance transactions. (Attachment 5) No timely objection was lodged against these data requests and certain information was promptly provided by Jim Moore, employed by Ameren Energy Fuels & Services (AFS). Public Counsel believes that there are several other departments at Company or its affiliates that are now or have been involved in Company's SO2 allowance trading and SO2 environmental compliance. Additional departments that may have documents responsive to these data requests include Company's Comptroller, its Environmental Division, its Corporate Planning Division, and Ameren Energy Generating Company (AEG). Public Counsel also requested that the Company check with other personnel at AFS to see if additional responsive documents exist. On May 16, 2002, Public Counsel asked Company to check again within these departments and subsidiaries, and has been told that a search is taking place. To date, Public Counsel has received no responsive documents. This issue was discussed at the May 31, 2002 discovery teleconference pursuant to 4 CSR 240-2.090(8)(B).

5. Furthermore, with specific regard to Public Counsel Data Request 5048, which requests a summary of all SO2 allowance transactions involving AmerenUE SO2 allowances that have taken place since January 1, 2000, Company has not been fully responsive. (Attachment 5) No timely objection was made to this data request. Company promptly provided summaries of certain SO2 transactions; however, it

apparently deleted information about the transactions that occurred subsequent to December 31, 2001 from one of the summaries of SO2 allowance transactions. Public Counsel inquired about the deleted information on May 6, 2002 and discussed it during the May 31, 2002 teleconference pursuant to 4 CSR 240-2.090(8)(B).

Public Counsel believes that information about SO2 transactions during 2002 is relevant to important issues in this case and essential to determining the appropriate revenue requirement for this regulated electric company. Data regarding SO2 transactions during this time period is needed to update the recommendation and the alternative recommendation of Public Counsel witness Ryan Kind on this issue. See prepared rebuttal testimony of Ryan Kind, pages 37-38.

6. Public Counsel and the Commission's Staff have an ongoing statutory right to conduct discovery of regulated utilities (even outside the context of any contested case). Section 386.450 RSMo. 2000. Furthermore, pursuant to Section 386.710 RSMo, Public Counsel has the duty to represent and protect the interests of the public, and has been granted "all powers necessary to carry out" those duties. Section 396.710(4). The Commission has repeatedly recognized that the discovery powers of Public Counsel and Staff are different and greater than the discovery rights of other parties before the Commission. For example, see Order Granting Public Counsel's Motion to Compel, p. 3, issued on August 3, 1999 in Case No. GX-99-445.

WHEREFORE, Public Counsel respectfully requests that the Commission compel Company to produce all documents within the scope of Public Counsel Data Requests 515, 1026, and 5036 through 5048.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: _____

John B. Coffman (#36591)
Acting Public Counsel
P. O. Box 7800
Jefferson City, MO 65102
(573) 751-5565
(573) 751-5562 FAX
jcoffman@ded.state.mo.us

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 6th day of June 2002:

**GENERAL COUNSEL**
Missouri Public Service Commission
P O Box 360
Jefferson City MO 65102

**JAMES COOK**
Ameren Services Company
1901 Chouteau Avenue
P O Box 66149 (M/C 1310)
St. Louis MO 63166-6149

**DIANA M VUYLSTEKE ESQ**
Bryan Cave, LLP
211 North Broadway Suite 3600
St Louis MO 63102-2750

**ROBIN E FULTON**
Schnapp Fulton Fall Silvey & Reid LLC
135 East Main Street
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Fredericktown MO 63645

**ROBERT C JOHNSON /**
**LISA C LANGENECKERT**
Blackwell Sanders Peper & Martin
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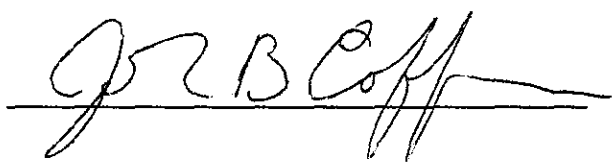

**PUBLIC COUNSEL DATA REQUEST** **NO. 515**

UNION ELECTRIC D/B/A AMERENUE
**CASE NO.** EC-2002-1

REQUESTED BY: RYAN KIND

REQUESTED FROM: DAPHNE BRADLEY

DATE OF REQUEST: AUGUST 17, 2001

INFORMATION REQUESTED: The June 8, 2001 edition of the St. Louis Business Journal contained an article entitled "Metcalf, Mueller Part of Big Business Trend at Fed. This article stated that "[Charles] Mueller and Metcalf spent the last two days of May in Washington, D.C., meeting with governors of the Federal Reserve Board and presenting an economic update of the region." The article continued with "'A major issue is energy,' said Mueller who presented an overview" and paraphrased Mr. Mueller as stating that "California aside, the nation is growing its production capacity faster than it is consuming electricity." Please provide a copy of all materials and documents that Mr. Mueller provided to some or all participants in the two days of meetings that were referenced in the St. Louis Business Journal article as well as any materials or documents that Mr. Mueller utilized in his presentations or discussions that took place at these meetings. If no documents within the scope of those requested in this DR exist, please provide a statement to that effect. If AmerenUE's response to this DR does not include all documents within the scope of those requested due to AmerenUE's belief that the excluded documents are covered by attorney client privilege or the attorney work product doctrine or some other objection, please provide the following information regarding each excluded document: the document's date, title, author, recipients, a general description of its contents, and a specific citation of the particular privilege cited.

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THIS RESPONSE INCLUDES:

☐ Printed Materials _____ Total Pages ☐ Magnetic Media _____ Number of disks or tapes

Please number each section of multiple pages as: File formats for data: _____

**# of Total #**

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The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present known facts to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE RECEIVED: _____ SIGNED BY: _____

TITLE: _____

Attachment 1

Ameren Services

One Ameren Plaza
1901 Chouteau Avenue
PO Box 66149
St. Louis, MO 63166-6149
314.621.3222

FILE COPY

314.554.2237
314.554.4014 (fax)
JJCook@ameren.com

August 24, 2001

**VIA FEDERAL EXPRESS MAIL**

Ameren

Mr. John B. Coffman
Office of the Public Counsel
200 Madison Street, Suite 650
Governor Office Building
Jefferson City, MO 65101

Re: Case No. EC-2002-1
Staff's Excess Earnings Complaint Against Union Electric Company

Dear Mr. Coffman:

AmerenUE hereby objects to Data Request No. 515 in the above matter on the grounds that the information requested is irrelevant. Mr. Mueller's meeting with the governors of the Federal Reserve Board was in his role as the Chairman of the St. Louis Federal Reserve Bank. Therefore, it is irrelevant to any matter in this case.

If you have any questions, please call me or Daphyne Bradley to discuss this objection.

Sincerely,

James J. Cook
Managing Associate General Counsel

Attachment 2

14757

AUG 2 7 2001

No. 1026

# OFFICE OF THE PUBLIC COUNSEL
# DATA REQUEST

## UNION ELECTRIC COMPANY
## CASE NO. EC-2002-1

Requested From: Mary Hoyt

Requested By: Ted Robertson

Date Requested: April 26, 2002

Information Requested: For the update period July 1, 2001 though September 30, 2001, please provide copies of the same work orders (with all costs, etc.), and lobbying/legislative information, requested in OPC DR Nos. 1027, 1027a, 1046 and MPSC Staff DR No. 42, in Case No. EM-96-149 Year 3.

Response Provided:

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received:_____ Received By:_____

Prepared By:_____

Attachment 3

No. 1027

# OFFICE OF THE PUBLIC COUNSEL
# DATA REQUEST

**UNION ELECTRIC COMPANY**
**CASE NO. EM-96-149**
**3rd Year EARP II**
**(6th Sharing Period)**

Requested From: Daphyne Bradley

Requested By: Ted Robertson

Date Requested: November 14, 2001

Information Requested: Regarding the Company's response to MPSC Staff Data Request No. 42, please provide the following:

1. A copy of the AMS Service Requests A0387, A0388, A0393 and A0633 (including all allocation factors and costs).

2. Copies of all test year expense reports for Jeanne Kay Smith, Susan L. Labombard, Donna K. Hale, Drue W. Duncan, Otis Cowan Jr., Donna K. Bailey, George N. Sheppard and Daniel O'Brian.

Response Provided:

_____

_____

_____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received:_____ Received By:_____

Prepared By:_____

No. 1027a

# OFFICE OF THE PUBLIC COUNSEL
# DATA REQUEST

**UNION ELECTRIC COMPANY**
**CASE NO. EM-96-149**
**3rd Year EARP II**
**(6th Sharing Period)**

Requested From: Mary Hoyt

Requested By: Ted Robertson

Date Requested: February 4, 2002

Information Requested: The original request asked for copies of four service requests along with all allocation factors and costs. Your response to OPC Data Request No. 1027 provided the allocation factors but the costs you provided appear to be only a selected portion from the respective service requests rather that all costs assigned to each of the respective service requests. Does the response included all costs assigned during the test year to each service requests referenced? If no, please provide all the costs assigned to the respective service requests during the test year as originally requested.

Response Provided:

_____

_____

The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received:_____ Received By:_____

Prepared By:_____

No. 1046

# OFFICE OF THE PUBLIC COUNSEL
# DATA REQUEST

**UNION ELECTRIC COMPANY**
**CASE NO. EM-96-149**
**3rd Year EARP II**
**(6th Sharing Period)**

Requested From: Mary Hoyt

Requested By: Ted Robertson

Date Requested: April 1, 2002

Information Requested: Regarding the costs shown on Work Order A0633, please provide copies of (or access to if voluminous, and if voluminous, please state the exact beginning date that the information will be available for my review) the documentation that identifies and describes in detail the service provider for each cost, the actual services provided that support each cost and the regulatory purpose/rationale for each of the individual costs. The documentation that OPC is requesting should include but not be limited to detailed descriptions of each service provider, detailed descriptions of each service provided, detailed descriptions of the purpose of service provided, copies of all correspondence between the service providers and the Company or Company personnel, copies of contracts, billing invoices, journal entries or other accounting data that show exactly, by Company, the USOA Account/Sub-account to which each cost was ultimately booked, progress reports, memorandums, management reports, expense reports, time reports, etc.

Response Provided:

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The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

Date Received:_____ Received By:_____

Prepared By:_____

# ATTACHMENT 5
# HAS BEEN DEEMED
# "PROPRIETARY"
# IN ITS ENTIRETY