

October 3, 2001

VIA FEDERAL EXPRESS

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OCT 04 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor Office Building
200 Madison Street, Suite 100
Jefferson City, MO 65101

Missouri Public
Service Commission

Re: In the Matter of the Missouri Public Service Commission,
on Its Own Motion, to Rescind Rules Regarding Income
on Depreciation Fund Investments
Case No. AX-2001-634

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are an original and eight (8) copies of Comments and Request for Hearing of Union Electric Company.

Please kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed, self-addressed, stamped envelope.

Sincerely,



Thomas M. Byrne
Associate General Counsel

TMB:rd
Enclosures

cc: General Counsel
Office of Public Counsel



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

OCT 04 2001

Missouri Public
Service Commission

In the Matter of the Missouri)
Public Service Commission, on)
Its Own Motion, to Rescind Rules)
Regarding Income On Depreciation)
Fund Investments)

Case No. AX-2001-634

COMMENTS AND REQUEST FOR HEARING
OF UNION ELECTRIC COMPANY

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE"), by counsel, and herewith submits the following comments regarding the Missouri Public Service Commission's ("Commission") proposed rescission of 4 CSR 240-10.020, the Commission rule which prescribes the use of income on investments from depreciation funds and the means for accounting for that income. In addition, AmerenUE requests that the Commission schedule a hearing in this proceeding, and provide interested parties the procedural protections which are required by the Missouri Administrative Procedure Act (Chapter 536 RSMo. 1994) in a "contested case" proceeding.

A. Introduction.

This proceeding commenced when the Commission provided notice of its intent to rescind 4 CSR 240-10.020, which was published in the September 4, 2001 Missouri Register (Mo. Reg. Vol. 26, No. 17, p. 1657). The rule at issue, which has been in effect for over 25 years, prescribes the method for accounting for income earned by gas, electric, water, telegraph, telephone and heating utilities on depreciation funds, for purposes of determining the reasonableness of rates for service of such utilities.

Essentially, the rule requires that utility rates be reduced to reflect a credit of 3% for income earned on the investment of depreciation funds by the utility, whether or not such funds are kept in a segregated account. The rule also contains certain requirements applicable to the annual reports of affected utilities.

The notice that appeared in the Missouri Register stated that the rule is being repealed because it is "obsolete," in that it conflicts with the Commission's current practice of utilizing the accumulated depreciation reserve amount as a reduction to rate base when calculating rates. The notice also states that the proposed rescission will not cost public or private entities respectively more than \$500 in the aggregate. Finally, the notice states that no public hearing is scheduled.

B. Comments.

1. The Proposed Rescission Raises Important Policy Issues.

The Commission's proposed rescission of this rule raises important policy issues that significantly impact how depreciation can be handled and how rates can be set for public utilities. Although, as the published notice indicated, the Commission has not followed this rule in establishing rates and accounting for depreciation-related income in the recent past, this is an area of Commission policy that has changed substantially in the past year or two. In Laclede Gas Company's ("Laclede") recent rate proceeding, Case No. GR-99-315, for example, the Commission adopted a completely new approach to calculating the net salvage component of Laclede's depreciation rates that was a radical departure from both traditional depreciation methodologies and generally accepted accounting principles ("GAAP"). This change in policy significantly compromised Laclede's ability to timely recover its capital investment in utility assets. In a subsequent

rate case involving St. Louis County Water Company ("St. Louis County Water"), Case No. GR-2000-844, the Commission reverted to its traditional treatment of net salvage costs, but required St. Louis County Water to establish a separate account in which depreciation funds were to be kept. This is the only recent case in which a segregated account for depreciation funds has been required by the Commission.

Particularly in light of these recent decisions, AmerenUE believes that it is inappropriate for the Commission to casually repeal a rule of 25 years' standing that specifically directs the accounting and ratemaking treatment for depreciation accounts. The rule provides a treatment of depreciation-related income that is more favorable to utilities than the Commission's current practice, and arguably the rule should be retained given the Commission's decisions in the Laclede and St. Louis County Water cases. At a bare minimum, before the Commission decides whether to rescind this rule, it should obtain input from utilities and other parties with an interest in these important policy issues, in the form of testimony, and carefully consider the interaction of this rule with its evolving policies dealing with depreciation rates, depreciation accounts, and utility capital recovery issues in general. Furthermore, it should explore the issue of whether utility rates have been set at unlawfully low levels in the past, given the existence of this rule. In any event, merely declaring that the rule has become "obsolete" because the Commission has declined to follow it in the recent past does not constitute a sufficient justification to summarily rescind the rule under these circumstances.

2. Rescission of this Rule Will Cost Private Entities Far More Than \$500 in the Aggregate.

Rescission of this rule, which would change the prescribed methodology for accounting for depreciation reserves and setting rates, is likely to have more than a de

minimus financial impact on the utilities that are subject to the rule. In fact, if rates were calculated to reflect a 3% credit for income earned on depreciation reserves (as the rule requires) rather than by deducting accumulated depreciation from rate base (as has been the Commission's recent practice), revenues for Missouri utilities would almost certainly increase by tens of millions of dollars in the aggregate. Some utilities, including AmerenUE, are currently involved in proceedings before the Commission in which rates will be set. For these utilities alone, rescission of this rule would have an immediate and detrimental impact far greater than the \$500 cost recited in the Missouri Register notice, if the Commission determines that rescission of this rule will be effective for pending cases. Consequently, the Commission must issue a revised notice that provides the actual cost that would be incurred by private entities as a result of the rescission of this rule.

3. Pursuant to Missouri Statutes, the Commission Must Conduct a Hearing Regarding the Proposed Rescission and Utilize "Contested Case" Procedures.

Missouri statutes require the Commission to conduct a hearing to address the proposed rescission of this rule. Specifically, Section 393.240.1 (RSMo. 1994) provides:

The commission shall have power, after hearing, to require any or all gas corporations, electrical corporations, water corporations and sewer corporations to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. (Emphasis supplied.)

In addition, Section 386.250.6 (RSMo. Supp. 2001) requires the Commission to conduct a hearing in conjunction with rulemaking proceedings. Moreover, this proceeding constitutes a "contested case" under Section 536.010.2 (RSMo. 1994) of the Missouri Administrative Procedure Act, because it is a proceeding before an agency in which legal rights, duties or privileges of specific parties (in this case the utilities that are subject to the rule) are required by law to be determined after a hearing. In such circumstances, in

accordance with the Missouri Administrative Procedure Act, the Commission must afford all parties to these proceedings the full range of procedural rights and requirements applicable to a contested case. Among these are (1) the right to receive notice (Section 536.067 (RSMo. Supp. 1998)); (2) the right to conduct discovery through the use of various discovery mechanisms (Section 536.073 (RSMo. Supp. 1998) and Section 536.077 (RSMo. 1994)); (3) the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses and to rebut opposing evidence (Section 536.070(2) (RSMo. 1994)); (4) the right to have all oral evidence received only on oath or affirmation (Section 536.070(1) (RSMo. 1994)); (5) the right to have a printed transcript of all proceedings (Section 536.070(4) (RSMo. 1994)); (6) the right to present oral arguments or written briefs at or after the hearing (Section 536.080(1) (RSMo. 1994)); (7) the right to have all portions of the record which are cited by the parties in the oral argument or briefs reviewed and considered by each official of the agency who renders or joins in rendering a final decision (Section 536.080(2) (RSMo. 1994)); and (8) the right to a final written decision accompanied by findings of fact and conclusions of law (Section 536.090 (RSMo. 1994)). These provisions are not discretionary. The Commission must provide them to ensure that the parties are afforded a full and fair hearing of the important issues implicated by this proposed rescission, and that the record presented to the Commission in this proceeding is adequate to enable the Commission to reach a fair and lawful decision.

C. Conclusion.

Based on the foregoing, AmerenUE respectfully requests that the Commission re-issue the notice of its proposed rescission of the rule with an accurate calculation of the

cost of this rescission to private entities. Following the publication of this revised notice in the Missouri Register, the Commission should schedule an early prehearing conference in this proceeding, so that interested parties can develop a schedule for the prefiling of direct, rebuttal and surrebuttal testimony addressing the issues raised by this proposed rescission. Finally, the Commission should schedule a hearing in this proceeding to afford the interested parties the opportunity to cross-examine witnesses, and it should permit the parties to brief the issues following the hearing.

Respectfully submitted,

UNION ELECTRIC COMPANY

d/b/a AmerenUE

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