FILED[3]
APR 20 2007
Missouri Public
Service Commission

Exhibit No.:
Issues: *EEInc. and 4 CSR 240-10.020*
Witness: *Robert E. Schallenberg*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *ER-2007-0002*
Date Testimony Prepared: *January 31, 2007*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

ROBERT E. SCHALLENBERG

UNION ELECTRIC COMPANY
D/B/A AMERENUE
CASE NO. ER-2007-0002

Jefferson City, Missouri
January 2007

<u>Denotes Highly Confidential Information</u>

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EXHIBIT
Reporter
236NP
Staff Exhibit No. 236NP
Date 3/12/07 Case No. ER-2007-0002
Reporter

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.	))))	Case No. ER-2007-0002

AFFIDAVIT OF ROBERT E. SCHALLENBERG

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Robert E. Schallenberg, 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 28 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.

Robert E. Schallenberg

Subscribed and sworn to before me this 31st day of January 2007

TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301

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REBUTTAL TESTIMONY OF

ROBERT E. SCHALLENBERG

UNION ELECTRIC COMPANY

d/b/a AMERENUE

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REBUTTAL TESTIMONY

OF

ROBERT E. SCHALLENBERG

UNION ELECTRIC COMPANY

d/b/a AMERENUE

CASE NO. ER-2007-0002

Q. Please state your name and business address.

A. Robert E. Schallenberg, 200 Madison Street, Jefferson City, Missouri, 65102.

Q. By whom are you employed and in what capacity?

A. I am the Director of the Utility Services Division of the Missouri Public Service Commission (MoPSC).

Q. Please describe your educational background.

A. I am a 1976 graduate of the University of Missouri at Kansas City with a Bachelor of Science degree and major emphasis in Accounting. In November 1976, I successfully completed the Uniform Certified Public Accountant (CPA) examination and subsequently received the CPA certificate. In 1989, I received my CPA license in Missouri. I began my employment with the Missouri Public Service Commission as a Public Utility Accountant in November 1976. I remained on the Staff of the Missouri Public Service Commission until May 1978, when I accepted the position of Senior Regulatory Auditor with the Kansas State Corporation Commission. In October 1978, I returned to the Staff of the Missouri Public Service Commission. Most immediately prior to October 1997, I was an Audit Supervisor/Regulatory Auditor V. In October 1997, I began my current position as Division Director of the Utility Services Division of the MoPSC.

Q. Please describe your responsibilities and experience while employed at the MoPSC as a Regulatory Auditor V?

A. As a Regulatory Auditor V for the MoPSC, I had several areas of responsibility. I was required to have and maintain a high degree of technical and substantive knowledge in utility regulation and regulatory auditing. Among my various responsibilities as a Regulatory Auditor V were:

1. To conduct the timely and efficient examination of the accounts, books, records and reports of jurisdictional utilities;

2. To aid in the planning of audits and investigations, including staffing decisions, and in the development of Staff positions in cases to which the Accounting Department of the MoPSC was assigned, in cooperation with Staff management as well as other Staff;

3. To serve as lead auditor, as assigned on a case-by-case basis, and to report to the Assistant Manager-Accounting at the conclusion of the case on the performance of less experienced auditors assigned to the case, for use in completion of annual written performance evaluations;

4. To assist in the technical training of other auditors in the Accounting Department;

5. To prepare and present testimony in proceedings before the MoPSC and the Federal Energy Regulatory Commission (FERC), and aid MoPSC Staff attorneys and the MoPSC's Washington, D.C. counsel in the preparation of pleadings and for hearings and arguments, as requested; and

6. To review and aid in the development of audit findings and prepared testimony to be filed by other auditors in the Accounting Department.

The MoPSC relies on the Regulatory Auditor V position to be able to present and defend positions both in filed testimony and orally at hearing. I have had many occasions to present testimony before the MoPSC on issues ranging from the prudence of building power plants to the appropriate method of calculating income taxes for ratemaking purposes. I have worked in the area of telephone, electric and gas utilities. I have taken depositions on behalf of the MoPSC in FERC dockets. Attached as Schedule 1, is a listing of cases and issues on which I have worked at the MoPSC. My responsibilities were expanded to assist in federal cases involving the MoPSC as assigned.

Q. Have you previously submitted testimony in proceedings before the FERC?

A. Yes. I submitted testimony in Docket Nos. RP94-365, RP95-136, RP96-173, et. al. These dockets were cases involving Williams Natural Gas Company (WNG). WNG provides gas transportation and storage services for local distribution companies serving the western portion of Missouri. WNG provides service to Missouri Gas Energy which serves the Kansas City area. My testimony in Docket No. RP94-365 involved a prudence challenge of the costs that WNG sought to recover in that case. I also filed testimony regarding certain cost of service issues in Docket No. RP95-136, WNG's rate case before the FERC. These issues included affiliated transactions between WNG and its parent. I filed testimony in Docket No. RP96-173, et. al., on the issue of whether the costs in question met FERC's eligibility criteria for recovery under FERC Order No. 636.

I submitted testimony in Docket No. RP96-199. This case is Mississippi River Transmission (MRT) Corporation's rate case. MRT provides gas transportation and storage services for local distribution companies serving the eastern portion of Missouri. MRT provides service to Laclede Gas Company which serves the St. Louis area. My testimony in

Docket No. RP96-199 involved cost of service issues. These issues included affiliated transactions between MRT and its parent.

EXECUTIVE SUMMARY

My rebuttal testimony addresses two matters that Union Electric Company, d/b/a AmerenUE (AmerenUE) raised in its Direct Testimony. The first matter is related to the specific issue identified as "Impact On Revenue Requirement Reflecting 4 CSR 240-10.020" in the Direct Testimony of AmerenUE witness Gary S. Weiss at pages 29-30. AmerenUE is presenting an interpretation of this rule that has monumental rate impacts (i.e., $ 387 million). This is a novel issue. Since AmerenUE first raised this issue in the immediate prior Staff earnings complaint case, Case No. EC- 2002-1, no other utility has sponsored a similar position nor filed for rates to be based on the rule interpretation which AmerenUE supports in this case. My testimony will show that the AmerenUE position is based on an interpretation of the rule, not on the actual language of the rule. AmerenUE did not file to increase rates to the level directly related to its rule interpretation of the rule. However, AmerenUE sponsors this issue as a contingency to allow it to receive the entire amount of its requested rate increase, $361 million, in the event that the MoPSC finds that adjustments are warranted in the areas (e.g., rate of return, Electric Energy, Inc, off-systems sales, fuel, etc.) that directly support the rate increase being sought by AmerenUE. My testimony will show that AmerenUE has not acted in a manner consistent with the rule interpretation now being pursued by it, nor filed its prior rate cases utilizing the methodology that AmerenUE now alleges has been required by this rule for approximately sixty (60) years.

The second matter is addressed in the "Expiration of AmerenUE's Power Purchase Agreement with Electric Energy, Inc." section of the Direct Testimony of AmerenUE witness

Michael L. Moehn at pages 10-16 and in the Direct Testimony of AmerenUE witness Robert C. Downs. The Electric Energy, Inc. issue is also addressed in the Direct Testimonies of 1) Michael L. Brosch on behalf of State of Missouri; 2) Ryan Kind of behalf of the Office of the Public Counsel; and 3) Kevin C. Higgins on behalf of The Commercial Group. I will refer to this issue as EEInc. The power plant / generating station that actually produces the power is located in Joppa, Illinois, is referred to as the Joppa station or power plant and is owned by EEInc.

EEInc. is a prudence issue. EEInc. is owned by three entities or Sponsoring Companies. These Sponsoring Companies are AmerenUE, (40%), Ameren Energy Resources Company (40%), and Kentucky Utilities Company (20%). AmerenUE had the right to use its allocated capacity and energy from EEInc. to serve its Missouri native load customers at cost based rates, but chose to vote to direct this capacity and energy to serve the market and incur higher costs than to serve its own customers. AmerenUE acted imprudently by engaging in actions which increased its costs of fuel and purchase power to serve its Missouri customers as well as reduced the amount of off-systems sales revenues that were available to offset AmerenUE's other incurred costs, which are also recovered by AmerenUE from its Missouri customers.

One of AmerenUE's directors on EEInc., Charles D. Naslund, stated in a deposition that this decision was based on ** _____

_____

_____

_____

_____

[redacted] **

EEInc. was not operated as a below-the-line investment and its debt was primarily supported by the purchase power payments paid by Union Electric and its customers, not the equity investment by Union Electric. The Power Supply Agreements were critical to the operation of EEInc. due to the owner decision to finance EEInc. with high debt levels and minimal equity investments. Union Electric received in rates from its customers rate treatment similar, if not better, for its share of the Joppa generating station as the other generating units owned by Union Electric. These payments were based on the ownership of the plant as well as a fifteen (15%) return on equity. The EEInc. Power Supply Agreement required Union Electric with the other Sponsoring Companies and the Department of Energy to make monthly payments for power which would enable EEInc. to recover all of the Joppa generating station's cost-of-service, which includes operating expenses, taxes, and interest plus generate a prescribed rate of return on equity capital of 15% net of federal income tax.

The obligations of Union Electric with the other Sponsoring Companies and the Department of Energy were absolute, unconditional, and could not be discharged or affected by the failure, impossibility or impracticality of EElnc. to generate or deliver electricity.

IMPACT OF RULE 4 CSR 240-10.020

Q. What Ameren UE witnesses will you address in this section of your rebuttal testimony?

A. I will address pages 29 and 30 of the Direct Testimony of Gary S. Weiss on behalf of Union Electric and schedule GSW-E-19.

Q. What is the value of this issue?

A. There are three different values that can be assigned to this issue because there are three different interpretations that can be given to the rule. The value of this issue depends on the interpretation of the rule ultimately adopted by the MoPSC.

Q. What are the three different interpretations of the rule and the related value for each interpretation?

A. First, AmerenUE interprets the rule to require that income be imputed into Staff's cost of service equivalent to 3% of the depreciation reserve amount **and** the depreciation reserve is no longer deducted from rate base. AmerenUE interprets that this rule must be applied to it in this manner and in any rate increase proceeding. Mr. Weiss assigns a value to AmerenUE's rule interpretation of $386,744,000 thus justifying a $747,453,000 overall rate increase as shown on lines 5 through 7 of page 30 of his Direct Testimony. Mr. Weiss goes on to state that despite AmerenUE's interpretation of this rule, AmerenUE is not proposing to recover the full amount of the revenue requirement that it is legally entitled to but is still entitled to the full $360,709,000 rate increase required by the rule until the

MoPSC finds adjustments to AmerenUE's revenue requirement exceeding the $386,744,000 value of this issue. There is an inconsistency between the AmerenUE position on this issue and the testimony of Mr. Robert C. Downs that I will discuss later in this testimony.

A second rule interpretation is that AmerenUE has made a showing to the MoPSC or the MoPSC has decided on its own "that the rate [of three percent (3%) per annum] is not reasonably and equitably applicable to it [i.e., to AmerenUE]" as provided in subsection (4) of the rule. This interpretation would result in no adjustment to the cost of service in this case or any other rate proceeding involving AmerenUE.

A third interpretation is that the rule requires the parties in this case to impute income into their cost of service determinations equivalent to 3% of the depreciation reserve amount that meets the provisions of the rule. I estimate this amount to be $134,294,027 ($4,476,467,556*.03) based upon the depreciation reserve amount reflected in the Staff's schedules. This amount would increase the amount of the excess earnings/revenues contained in the Staff's complaint case and decrease the AmerenUE revenue requirement in the rate increase case filed by AmerenUE by $134,294,027.

Q. What does this rule state?

A. The MoPSC rules states as follows:

> 4 CSR 240-10.020 Income on Depreciation Fund Investments
>
> PURPOSE: This rule prescribes the use of income on investments from depreciation funds and the means for accounting for that income.
>
> (1) In the process of determining the reasonableness of rates for service, income shall be determined on the depreciation funds of the gas, electric, water, telegraph, telephone and heating utilities pertaining to their properties used and useful in the public service in Missouri and shall be applied in reduction of the annual charges to operating income of those utilities.

(2) The income from the investment of moneys in depreciation funds shall be computed at the rate of three percent (3%) per annum of the principle amount of the depreciation funds.

(3) The principle amount of depreciation funds of any such utility, for the purposes of this rule, shall be deemed to be the equivalent to the balance in the depreciation reserve account of any such utility regardless of whether or not any such depreciation reserve account may be represented by a segregated fund ear-marked for that purpose: provided however, that the principal amount of the depreciation funds may be adjusted by the portion(s) of funds which may have been provided under circumstances other than by charges to operating income or otherwise, these adjustments to be subject to the approval of the commission. The terms depreciation funds and depreciation reserve accounts shall be deemed to include the terms retirement funds and retirement reserve accounts.

(4) The rate of three percent (3%) per annum referred to in section (3) shall be applied in the case of each gas, electric, water, telegraph, telephone and heating utility of Missouri; provided, however, that modification of the rate may be made upon the commission's own motion or upon proper showing by a utility that the rate is not reasonably and equitably applicable to it.

(5) Affected utilities shall prepare and include in their annual reports to the commission commencing with their annual reports for the year 1945, and in such other reports that may be required by the commission from time-to-time, schedules showing for the year or period covered by such reports, the income from the investment of moneys in depreciation funds. The schedules referred to shall be in the form prescribed by this commission and shall include, among other things that may be prescribed: the principle amount of depreciation funds as represented by balances in depreciation reserve accounts; any adjustments of such depreciation funds and accounts with complete details and explanations thereof; and, the amount of the income from the investment of moneys in depreciation funds computed at the rate of three percent (3%) per annum, or such other rate as may be prescribed by order of this commission.

(6) The commission shall retain jurisdiction in this matter for the purpose of making any change(s) in the interest rate prescribed in section (2) that may be warranted.

AUTHORITY: sections 392.280 and 393.260, RSMo (1986). *Original rule filed Dec. 19, 1975, effective Dec.29, 1975.

*Original authority: 392.280 RSMo (1939), amended 1987 and 393.260, RSMo (1967).

Q. Mr. Weis, in his testimony, states that the "rule generally requires that in the process of setting a utility's rates, the Commission must provide the utility's customers with a 3% annual credit to reflect income from investment of the money in the utility's depreciation reserve account". Does the rule contain language that supports this statement?

A. Yes. However, the rule contains no language that requires the MoPSC to calculate the company's revenue requirement consistent with the methodology contained on Mr. Weiss' Schedule GSW-E-19. The rule does contain language that requires the imputation of income equivalent to 3% of the depreciation reserve amount into a case that meets the qualifications of the rule absent a modification of the rate made by the MoPSC's own motion or upon proper showing by a utility that the rate is not reasonably and equitably applicable to it. The rule only requires the imputation of 3% income on the depreciation reserve balance.

The rule makes no mention regarding the required treatment of the depreciation reserve in the determination of rate base in rate cases that utilize the 3% income imputation. This feature is critical to AmerenUE's position on this issue. It is not a matter of regulatory practice that an item that is used to impute income or interest cannot be used in the determination of rate base. Both AmerenUE and Staff impute interest on customer deposits amounts and include the customer deposits balance in their respective rate base determinations. Depreciation reserves are commonly used in the determination of rate base. I infer from the fact that Mr. Weiss uses the word "generally" in his Direct Testimony that AmerenUE acknowledges that it is utilizing an interpretation to support its position on this issue in lieu of the existence of specific rule language to support AmerenUE's position.

Q. Did Mr. Weiss provide the basis for AmerenUE's interpretation of the rule?

A. No. There is neither support in Weiss' Direct Testimony nor any mention of reliance on a legal interpretation of the MoPSC's rule. Mr. Weiss does provide a quantification of AmerenUE's interpretation in his testimony. I could find no material in his work papers related to this issue.

Q. When did Staff first become aware of this issue?

A. Staff became aware of this issue in Case No. EC-2002-1 when AmerenUE raised the issue in that case.

Q. Did the Staff conduct any research regarding this rule after it became aware of AmerenUE's position?

A. Yes.

Q. What research did the Staff conduct?

A. The Staff conducted research in two areas. First, the Staff researched the development of the rule. Second, the Staff researched the history of the rule related to Union Electric.

Q. How was the rule developed?

A. The genesis of the rule is the MoPSC'ss Report and Order in Case No. 10,723, which was effective January 31, 1946. This Order cancelled General Order 38-A. The MoPSC issued an Order on December 19, 1975 directing the Secretary of the MoPSC "to refile with the Secretary of State of Missouri on or before December 19, 1975, a certified copy of all general orders, rules or orders required by Chapter 536, RSMo 1969 to be on file therein." On December 19, 1975 the MoPSC's Secretary filed certified copies of the MoPSC's rules and regulations with the Secretary of State. This material included the

Report and Order in Case No. 10,723. The Report and Order in Case No. 10,723, the MoPSC's December 19, 1975 Order, and the transmittal letter from the Commission Secretary are attached as Schedule 3 to this testimony.

Q. What is the history of AmerenUE's compliance with this rule?

A. AmerenUE conducted its business as Union Electric doing the relevant time period for this issue. AmerenUE could not identify any rate case in which it filed using the method contained in 4 CSR 240-10.020 or any annual report filed in compliance with the requirements of this rule. Schedule 4 attached to this testimony is a copy of Staff Data Request No. 179 in Case No. EC-2002-1 and Union Electric's response.

Staff reviewed Union Electric's annual reports for the period 1949 through 1958. Union Electric filed a "Special Depreciation Schedule" in its annual reports to the MoPSC in 1949, 1950, and 1951 but not in the 1952 annual report and thereafter. This "Special Depreciation Schedule" shows an income amount based on a 3% rate as stated in the MoPSC's Report and Order in Case No. 10,723. In its 1952 annual report, Union Electric no longer filed this special depreciation schedule but continued to cross out any reference that an asset account (e.g., Utility Plant) balance was less a reserve amount. Union Electric provided its reserves as a footnote to its balance sheet. In its 1958 annual report, Union Electric reported reserves as offsets to plant balances consistent with the process used today. In other words, the utility's rate of return is multiplied by net rate base, including original cost less accumulated depreciation, to calculate the return component of the utility's revenue requirement. Schedule 5 attached to this testimony is a copy of the Union Electric annual report material that I reviewed.

Q. Do you agree with Mr. Weiss' statement on page 29 of his Direct Testimony that "[i]n recent years, instead of following this rule, the Commission has subtracted accumulated depreciation from utilities' investment in rate base in calculating the return that is provided to the utilities' shareholders"?

A. No. I would assert the statement is inaccurate in terms of the period of time inferred by the use of words "[i]n recent years". I do not believe an approximately 50-year period (i.e., 1958 to 2007) can be accurately described as "[i]n recent years." I would also assert the suggestion in Mr. Weiss' Direct Testimony that the Commission was the actor in the subtraction of depreciation reserve from utility investment is misleading. Union Electric has filed its cases consistent with the methodology of subtraction of depreciation reserve from the utility investment during my tenure with the MoPSC.

Q. What interpretation of the rule do you believe is appropriate?

A. I believe that the MoPSC has modified the rate for Union Electric through either its own motion or upon proper showing by Union Electric that the 3% rate is not reasonably and equitably applicable on or around the 1958 or 1959 time period.

Q. What is the basis for your opinion?

A. I hold this opinion based on two facts. First, Union Electric began reporting the current method (i.e., plant less reserve) in the 1958-1959 timeframe. The MoPSC prescribed the form of its annual report. (4 CSR 240-10.020 and Sections 393.140(4) and (6).) The MoPSC, at least implicitly, adopts the form of its annual report. By 1952, the MoPSC did not require Union Electric to report the income associated with the depreciation reserve as specified by the rule. This would be an indication that the MoPSC made the decision to no longer follow the process described in the rule. When I joined the MoPSC

Staff in 1976 as an auditor, the MoPSC had a group of auditors review the annual reports for accuracy and compliance with the MoPSC rules. I believe that the previously discussed reporting changes in annual reports in the 1952 time frame would have been in response to some action by the MoPSC.

Second, the MoPSC would have at least implicitly if not explicitly accepted a Union Electric showing "that the rate [i.e., 3%] is not reasonably and equitably applicable to it" when it accepted Union Electric's first rate case using the depreciation reserve as a reduction to rate base. I do not know what case this was, but I believe that it occurred before Union Electric's Case No. ER-77-154. I have attached a copy of the MoPSC Report and Order in that case as Schedule 6. This Report and Order shows that the MoPSC used a net plant or depreciation reserve as an offset to plant balance in both its determination of fair value rate base on page 36 of the Report and Order and original cost rate base on Appendix A, Sheet 2 attached to the Report and Order.

Q. If the MoPSC decides not to adopt this conclusion, then which interpretation of 4 CSR 240-10.020 do you believe is most appropriate?

A. The interpretation that requires the Staff to impute income into its cost of service equivalent to 3% of the depreciation reserve amount that meets the qualifications of the rule, with the depreciation reserve used as a reduction to rate base.

Q. Why do you hold that opinion?

A. It has been recognized, since at least 1946, that customers are entitled to a reasonable and equitable return for the use of the funds that they provided in the form of depreciation reserves. If the MoPSC believes that it must impute a 3% income from the depreciation reserve, then the MoPSC should decide what treatment of the depreciation

reserve produces the most reasonable result. The rule does not state that the depreciation reserve cannot be used as a rate base offset as asserted by AmerenUE on this issue. The question that must be determined under this scenario is whether the return that customers receive should be more or less than AmerenUE's return on its investment. I believe it is reasonable to assume that customers should receive a greater return than AmerenUE given the customers' higher borrowing and opportunity costs.

Q. Has the Company included any testimony stating that the application of the 3% to its depreciation fund with the exclusion of the depreciation reserve as a reduction to rate base produces a reasonable and equitable amount?

A. No. Mr. Weiss only addresses the issue from the perspective that the Company's proposed treatment of the depreciation reserve is the only option. Mr. Weiss provides no testimony that such an approach is a just and reasonable result.

Q. Did the Commission attempt to rescind this rule?

A. Yes. On June 7, 2001 the Commission issued an "Order Finding Necessity For Rulemaking" regarding a proposed rescission of Commission Rule 4 CSR 240-10.20 - Income Depreciation Fund Investments in Case No. AX-2001-634. Laclede Gas Company, Missouri-American Water Company, Missouri Gas Energy, UtiliCorp United, Inc., and Union Electric Company filed comments and requested a hearing on this matter. Most of the comments were against rescission of the rule. Sprint supported the rescission but it was received after the published response time had expired. The Commission withdrew the proposed rescission as a result of the majority of comments.

ELECTRIC ENERGY, INC. (EEInc.)

Q. What portions of the Company's direct testimony regarding this issue are you addressing?

A. I will be addressing the Direct Testimony of AmerenUE witness Michael L. Moehn contained on pages 10 through 16 and any matters of fact raised in the Direct Testimony of AmerenUE witness Robert C. Downs. I am also aware of the Direct Testimony of: 1) Michael L. Brosch on behalf of the State of Missouri; 2) Ryan Kind on behalf of Office of the Public Counsel; and 3) Kevin C. Higgins on behalf of The Commercial Group.

Q. Were you aware of this issue prior to this rate case?

A. Yes. I was aware that AmerenUE intended to terminate on January 1, 2006 its use of the capacity and energy associated with its forty percent (40%) ownership of EEInc. to serve AmerenUE's customers at cost based rates. I first became aware of AmerenUE's intent sometime before the filing of Case No. EO-2004-0108. The case was filed August 25, 2003 and is sometimes referred to as the Metro East Case. I have been able to trace the genesis of this issue to the 1999 time frame after Union Electric Company merged with Central Illinois Public Service Company (CIPS). Prior to the merger, Union Electric intended to use the capacity and energy associated with its forty percent (40%) ownership of EEInc. to serve its native load customers.

Q. What is Staff's position regarding this issue?

A. It is Staff's position that AmerenUE engaged in an imprudent decision to sell the power from the capacity and energy associated with its forty percent (40%) ownership of EEInc. into the open market instead of seeking to use this capacity and energy to meet its obligations to its Missouri customers at cost based rates. This Ameren decision was not

based on any analysis that showed that such a decision was beneficial to either the reliability or costs of AmerenUE's utility operations in Missouri. AmerenUE's decision was based on the fact that AmerenUE could make more money by selling its power into the Illinois market than it could from selling its power to its Missouri customers. The critical element for this AmerenUE decision to produce the result desired by Ameren's senior management is that the MoPSC must authorize AmerenUE to charge Missouri customers higher rates to reflect the increased cost of service caused by AmerenUE incurring 1) higher fuel and purchase power costs to replace the energy formerly provided by the EEInc Joppa unit and 2) lower levels of off system sales that offset AmerenUE prudently incurred electric operations costs. It is important to note that AmerenUE's overall financial results were not impaired by this decision as it still records an increase in income from EEInc. to offset the increase in fuel and purchase power expense and loss of off-system sales recorded elsewhere on AmerenUE's financial statements. This decision was based on generating higher profits for AmerenUE's affiliated holding company, Ameren, at the expense of Missouri consumers. Missouri consumers should not be burdened to pay higher costs that AmerenUE would avoid if dealing with a non-affiliated entity. It should be noted that Kentucky Utilities, voted against the new market based rates Power Sales Agreement between EEInc. and Ameren Energy Marketing (AEM). Kentucky Utilities is the only EEInc. owner not affiliated with Ameren Corporation.

Q. What portions of Mr. Moehn's Direct Testimony, in particular, on this issue will you be addressing in your rebuttal testimony?

A. I will address the following portions of Mr. Moehn's Direct Testimony:

1) page 10, lines 14-15, where he states; "This agreement expired by its own terms on December 31, 2005."

2) page 10, lines 15-19 where he states; "Following the expiration of the agreement, EEInc. elected to cease selling power from the Joppa Plant on a cost plus basis, and instead sought and received authority from the Federal Energy Regulatory Commission (FERC) to sell power from the Joppa Plant at market prices. Consequently, AmerenUE no longer has the opportunity to purchase power from EEInc."

3) page 12, lines 5-19 where he states: "AmerenUE's stock in EEInc. was purchased with shareholder, not ratepayer funds, and has always been treated as a 'below-the-line' item for ratemaking purposes. This treatment has never been challenged in any regulatory proceeding. By 'below-the-line' I mean the investment in the stock is not and has never been on AmerenUE's books as an asset on which a return is figured in calculating the rates paid by AmerenUE's Missouri ratepayers. This is unlike an 'above-the-line' investment, such as a power plant or transmission line, which are put into rate base. Above-the-line items affect the Company's revenue requirement because the revenue requirement is determined based upon these rate base items, including depreciation expense (which is a return of the Company's investment) and return on equity (which is a return on the Company's investment). A below-the-line investment in stock – like AmerenUE's EEInc. stock – does not allow ratepayers to share in any of the revenues derived from stock ownership, nor does it expose ratepayers to the investment risk associated with owning the stock. Rather, with regard to EEInc., ratepayers have simply paid the cost of power purchased by AmerenUE from EEInc. as provided for under power supply agreements between AmerenUE and EEInc."

4) page 15, lines 1-3, where he states: "EEInc. sought and obtained authority from the FERC to sell power from the Joppa Plant at market-based rates. The FERC authorized such sales in its order in Docket Nos. ER05-1482-000 and ER05-1482-001 issued on December 8, 2005."

5) page 15, lines 7-9, where he states: "AmerenUE's most recent power supply agreement with EEInc. was originally executed in 1987 and contained a cost plus 10% rate for the power being delivered."

Q. Do you agree with Mr. Moehn's testimony on page 10, lines 14-5, where he states: "This agreement expired by its own terms on December 31, 2005"?

A. No. The agreement expired by AmerenUE when not consistent with its rights and regulatory obligations to its customers, it chose not to seek the best terms for its system and customers. Unlike Kentucky Utilities, the sole remaining non-Ameren affiliated EEInc. owner, AmerenUE had a ownership percentage significant enough to effectively extended the contract on its existing terms. I will discuss the Kentucky Utilities' situation relative to EEInc. later in this testimony. AmerenUE has effectively modified its EEInc. situation thereby effectuating a disposition of its system, diverting the Joppa lower cost capacity and energy from continued service to its native load customers from continuing to provide the Union Electric system the economical service, which it asserted would occur as the result of its EEInc. involvement.

Counsel to the Staff has advised me of a number of MoPSC and federal agency decisions. For example, Union Electric stated to the Commission in 1952 at page 4 of its Application in Case No. 12,463, In the Matter of the Application of Union Electric Company

of Missouri for authorization to acquire additional shares of capital stock of Electric Energy, Inc:

> 7. . . . The Sponsoring Companies have also agreed to purchase, in proportion to their respective stock participations, any surplus power from EEINC's generating station not required for delivery to AEC. It is estimated that when the entire generating station of EEINC is in full scale operation there will be available to the Sponsoring Companies, at an economic cost, in excess of 1,500,000,000 Kwh of energy of which Petitioner's share will be approximately 600,000,000 Kwh.
>
> 8. Petitioner submits that its additional investment in the capital stock of EEINC will contribute to the national defense program and will be in the public interest. Upon consummation of the arrangements outlined above Petitioner's system will have an additional efficient and economic source of power to meet the expanding requirements of the public in its service areas.

The Commission's Report And Order in Case No. 12,463 states at page 3:

> Petitioner further states that when the entire generating station of Electric Energy, Inc. is in full scale operation there will be available to Petitioner as its share of the surplus power from such station approximately 600,000,000 kwh of energy per annum at an economical cost which will provide an additional efficient and economic source of power to meet the expanding requirements of the public in the service areas of Petitioner's system.

In 1977 in *Re Union Electric Company*, Case No. EF-77-197, 21 Mo.P.S.C.(N.S.) 425 (1977), EEInc. proposed to acquire and install certain air pollution control equipment. In connection therewith, EEInc. filed a petition with the Illinois Commerce Commission seeking authority to issue and sell $10 million in principal amount of its 8½ percent First Mortgage Sinking Fund Bonds for the purpose of financing the cost of the acquisition, installation and construction of such air pollution control equipment. Union Electric proposed to enter into a second amendment to the Amended Intercompany Agreement which would have the effect of extending the provisions of the Amended Intercompany Agreement to cover and include the 8½ percent Bonds, and would be assigned to the Trustee as

additional security for the Bonds of EEInc. (including the 8½ percent Bonds). Said proposed amendment would make unconditional the obligations of the Sponsoring Companies to make payments to EEInc. to enable EEInc. to pay its operating and other costs and expenses so that in the event that EEInc. would be unable for any reason to generate or deliver any power or energy to the Sponsoring Companies, the Sponsoring Companies would be obligated to continue payments to EEInc. The obligations of the Sponsoring Companies were proposed to be so enlarged so as to induce the purchase of the 8½ percent Bonds. The MoPSC stated in its Report and Order as follows:

> . . . In return for its "guaranty" of EEI's financial obligations, Applicant will be assured of a continuous source of economical power, its entitlement of the surplus power not contractually obligated to ERDA. This surplus power is more economical to Applicant than the installation of other new generation or the purchase of such power from others. . . .

Q. Do you agree with Mr. Moehn's Direct Testimony on page 10, lines 15-19 that states; "Following the expiration of the agreement, EEInc. elected to cease selling power from the Joppa Plant on a cost plus basis, and instead sought and received authority from the Federal Energy Regulatory Commission (FERC) to sell power from the Joppa Plant at market prices. Consequently, AmerenUE no longer has the opportunity to purchase power from EEInc."?

A. No. AmerenUE because of its 40% ownership share of EEInc. could continue to purchase its proportionate share of Joppa Station output. The EEInc. Bylaws provided for the allocation of capacity and energy from the generation facilities owned by EEInc. in proportion to the sponsoring companies ownership shares. This provision, however, may be changed by a seventy-five percent vote of the outstanding shares. Since AmerenUE owned forty percent (40%) of EEInc. the bylaw provision could not be changed without

AmerenUE's agreement. AmerenUE did not seek to extend its purchase power agreement with EEInc. beyond the scheduled termination on December 31, 2005 and voted to allow the EEInc. capacity and energy to be removed from its system and be directed to support Ameren's non-regulated operations.

Q. What is the provision of the Bylaws to which you are referring?

A. "Article II, Section 6. Voting." of the By Laws of EEInc. states, in part, as follows:

> . . . In the event that any holder of voting capital of EEInc. (including, for these purposes, such holder's Affiliates) owns in excess of 50% of the voting capital stock of EEInc., then all corporate restructuring transactions and other major corporate actions shall be decided by the vote of the holders of 75% or more of the outstanding shares of the Corporation entitled to vote. Corporate restructuring transactions and other major corporate actions shall include: (a) sale of all or substantially all of EEInc.'s stock (or other securities) or assets; (b) issuance of new securities; (c) change in the relative percentages of ownership of stock (or securities) of EEInc. held by the current owners of EEInc.; (d) any other change in the ownership or control of EEInc.; (e) decisions to allocate the sale of the generating capacity of EEInc. among the EEInc. stockholders in a manner other than in accordance with their percentages of ownership of EEInc. stock, in the event of such capacity available for sale to parties other than the U.S. Enrichment Corporation changes materially; and (f) a material change in the business purpose or objectives of EEInc. . . .

Q. Do you agree with Mr. Moehn's Direct Testimony on page 12, lines 5-19 that states: "AmerenUE's stock in EEInc. was purchased with shareholder, not ratepayer funds, and has always been treated as a 'below-the-line' item for ratemaking purposes. This treatment has never been challenged in any regulatory proceeding. By 'below-the-line' I mean the investment in the stock is not and has never been on AmerenUE's books as an asset on which a return is figured in calculating the rates paid by AmerenUE's Missouri ratepayers. This is unlike an 'above-the-line' investment, such as a power plant or

transmission line, which are put into rate base. Above-the-line items affect the Company's revenue requirement because the revenue requirement is determined based upon these rate base items, including depreciation expense (which is a return of the Company's investment) and return on equity (which is a return on the Company's investment). A below-the-line investment in stock – like AmerenUE's EEInc. stock – does not allow ratepayers to share in any of the revenues derived from stock ownership, nor does it expose ratepayers to the investment risk associated with owning the stock. Rather, with regard to EEInc., ratepayers have simply paid the cost of power purchased by AmerenUE from EEInc. as provided for under power supply agreements between AmerenUE and EEInc."?

A. I disagree with several statements contained in this portion of Mr. Moehn's testimony. First, Union Electric's return on its equity investment in EEInc. was not treated as a below-the-line item for ratemaking purposes. Union Electric's return on its equity investment in EEInc. is specifically recorded in the capacity charges booked above the line and recorded in the costs used to set rates. Section 3.01 of the Power Supply Agreement between EEInc. and the Sponsoring Companies, in effect with modifications from 1987 to December 31, 2005, identifies the Joppa Plant Costs. This section specifies the determination of the monthly EEInc. cost components applicable to the ownership operation and maintenance of the Joppa Plant. The Power Supply Agreement specifies a "Component D" that consists of an amount equal to (1) the product of 1.25 dollars multiplied by the total number of outstanding shares at the end of the month of capital stock of the par value of $100 and (2) the product of .0125 multiplied by Company's retained earnings at December 31 of the previous year. This Section sets the EEInc. rates to the Sponsoring Companies based upon a 15% return on equity.

The fact that the Union Electric stock investment in EEInc. has never been on AmerenUE's books as an asset on which a return is figured in calculating the rates paid by AmerenUE's Missouri ratepayers does not prove that Missouri ratepayers have not been paying a return on Union Electric's investment in EEInc. The provision of a return on Union Electric stock investment in EEInc. would result in double recovery since the return costs were already included the demand charges booked above the line. Components A and D of Section 3.01 of the Power Supply Agreement provide for the payment of EEInc.'s interest and profit constitute return in ratemaking proceedings.

Q. Is there an important fact relative to this issue not mentioned in Mr. Moehn's testimony on page 15, lines 1-3, where he states: "EEInc. sought and obtained authority from the FERC to sell power from the Joppa Plant at market-based rates. The FERC authorized such sales in its order in Docket Nos. ER05-1482-000 and ER05-1482-001 issued on December 8, 2005"?

A. Yes. A key fact in these FERC dockets was the position of Kentucky Utilities, which is omitted by Mr. Moehn's testimony. The only owner of EEInc. that is not affiliated with Ameren Corporation, Kentucky Utilities owns 20% of EEInc. Kentucky Utilities noted in these FERC dockets that it could not commit and had not committed to using the capacity presently available pursuant the Power Supply Agreement between EEInc. and Kentucky Utilities beyond the existing term of the agreement (i.e., December 31, 2005) because Kentucky Utilities' contractual rights to that capacity would expire on December 31, 2005. As previously related, under the EEInc. Bylaws, Kentucky Utilities does not own enough stock to block a change in the allocation of capacity and energy from the generation facilities owned by EEInc. in proportion to the Sponsoring Companies ownership shares.

Only AmerenUE and its affiliate Ameren Energy Resources have ownership positions large enough to block such an effort.

Despite its minority position, Kentucky Utilities attempted to negotiate with EEInc. for a Power Supply Agreement for an additional term under the best possible pricing for the purpose of serving Kentucky Utilities' native load customers. Kentucky Utilities had used the capacity available to Kentucky Utilities under the Power Supply Agreement to serve its native load customers and desired to continue to use this capacity in the future for this purpose so long as the capacity remained a least-cost resource.

Kentucky Utilities had not made a commitment that it would continue to use capacity from the Joppa Plant available under the current Power Supply Agreement to serve Kentucky Utilities' native load customers in Kentucky past December 31, 2005, and such a commitment could not be made until EEInc. provided Kentucky Utilities with an offer, the appropriate least-cost analysis was completed, and contract negotiations and document execution were completed.

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Q. Do you agree with Mr. Moehn's Direct Testimony on page 15, lines 7-9, that states: "AmerenUE's most recent power supply agreement with EEInc. was

originally executed in 1987 and contained a cost plus 10% rate for the power being delivered?"

A. Not completely. This statement is correct regarding excess power available when the Department of Energy (DOE) and the other Sponsoring Companies were not scheduling the use of their respective capacity and for a component in the demand charge. This statement is not true regarding the total cost structure for capacity and energy assigned to any of the Sponsoring Companies.

The description of the EEInc. rate structure is contained in the EEInc. FERC Form 1 Annual Report to the FERC. This same information is contained in the 2005 EEInc. Annual Report to its shareholders. The rates for the capacity and energy available to the Sponsoring Companies under the Power Supply Agreement with Modification No. 16 (Mod 16) accepted by the FERC. In general, the Power Supply Agreement provided that that EEInc. would sell the power not dedicated to DOE to the Sponsoring Companies. Mod 16 required EEInc. to make available to DOE a specified percentage of the Joppa Station's capacity. DOE was committed to 0% of the Joppa's station's capacity for 2004 and 2005.

The EEInc. Power Supply Agreement required AmerenUE with other Sponsoring Companies and the Department of Energy to make monthly payments for power which would enable EEInc. to recover all of the Joppa's Station's cost-of-service, which included operating expenses, taxes, and interest plus generate a prescribed rate of return on equity capital of 15% net of federal income tax. The EEInc. FERC Form 1 Annual Report describes the Power Supply Agreement obligations of AmerenUE with the other Sponsoring Companies and DOE as absolute, unconditional, and shall not be discharged or affected by the failure, impossibility or impracticality of EEInc. to generate or deliver electricity. This

last feature shows that the Power Supply Agreement was not an agreement by AmerenUE to buy capacity and energy for its system from an independent separate third party supplier. This Power Supply Agreement reflects the cost obligations of the owners of EEInc.

Q. Do you have an example of the terms of an earlier Power Supply Agreement between EEInc. and the Sponsoring Companies?

A. Yes. The Electric Energy, Inc FERC Form 1 Annual Report for the year ending December 31, 1984 states, at page 122, as follows under the title Notes To Financial Statements, (1) Summary Of Significant Accounting Policies, (a) Operating Revenues:

> Electric Energy, Inc.'s (EEI) principal source of operating revenue is sales of electricity to the Department of Energy (DOE) and to four electric utility companies (Sponsoring Companies). Sales to the DOE are made under the Modification 11 Power Contract (the Power Contract), which became effective April 1, 1975, and amended in its entirety the original power contract as amended through Modification 10. Relations among the Sponsoring Companies and EEI are governed by the Intercompany Agreement, as amended, and the Interim, Supplemental and Surplus Power Agreement (IS&S Agreement). These agreements and the Power Contract continue in force through December 31, 1989, unless extended or canceled as provided under their terms.
>
> The Power contract and the IS&S Agreement, and thus the rates established therein for the sale of electricity to the DOE and the Sponsoring Companies, have been accepted by the Federal Energy Regulatory Commission. In general, the Power Contract requires EEI to make available to DOE a specified percentage of the established capacity of its generating facility until the termination date of the Power Contract. Pursuant to a request by DOE, a letter agreement effective October 1, 1981, significantly reduced the percentage of power made available to DOE over the two-year period ended September 30, 1983. The IS&S Agreement provides that EEI will sell the remaining power capability to the Sponsoring Companies.
>
> Under the Power Contract and the IS&S Agreement, the Sponsoring Companies and DOE are required to make monthly payments for power which will enable EEI to pay all of its operating expenses, taxes other than Federal income taxes, and interest and provide for retirement of outstanding debt, plus generate a prescribed net of

Federal income tax rate of return on equity capital (16.59% in 1984 and 13.685% in 1983). The obligations of each of the Sponsoring Companies and DOE are absolute and unconditional and shall not be discharged or affected by the failure, impossibility or impracticability of EEI to generate or deliver electricity.

Q. What portions of Mr. Downs' Direct Testimony on this issue will you be addressing in your rebuttal testimony?

A. My understanding is that Mr. Downs' testimony addresses no matters of fact. Therefore, I am not address addressing issues specific to Mr. Down's testimony. I have addressed Mr. Moehn's testimony which Mr. Downs' relies upon to reach some of his conclusions.

Q. Does this conclude your rebuttal testimony?

A. Yes.

RATE CASE PROCEEDING PARTICIPATION

ROBERT E. SCHALLENBERG

COMPANY	CASE NO.
Southwestern Bell Telephone Company	TR-79-213
Southwestern Bell Telephone Company	TR-80-256
Southwestern Bell Telephone Company	TR-81-208
Southwestern Bell Telephone Company	TR-82-199
Southwestern Bell Telephone Company	TR-83-253
Southwestern Bell Telephone Company	TR-86-84
Southwestern Bell Telephone Company	TC-89-14
Southwestern Bell Telephone Company	TO-89-56
Southwestern Bell Telephone Company	TR-90-98
Southwestern Bell Telephone Company	TC-93-224
Southwestern Bell Telephone Company	TO-82-3
Kansas City Power & Light Company	ER-77-118
Kansas City Power & Light Company	ER-78-252
Kansas City Power & Light Company	ER-80-48
Kansas City Power & Light Company	ER-81-42
Kansas City Power & Light Company	ER-82-66
Kansas City Power & Light Company	HR-82-67
Kansas City Power & Light Company	ER-83-49
Kansas City Power & Light Company	EO-85-185
Kansas City Power & Light Company	ER-85-128
Missouri Public Service Company	ER-78-29
Missouri Public Service Company	GR-78-30
Missouri Public Service Company	ER-90-101
General Telephone	TM-87-19
General Telephone	TR-86-148
General Telephone	TC-87-57

RATE CASE PROCEEDING PARTICIPATION

ROBERT E. SCHALLENBERG

General Telephone	TR-89-182
Gas Service Company	GR-78-70
Gas Service Company	GR-79-114
Union Electric Company	EC-87-114
Kansas Power & Light Company	GR-91-291
Kansas Power & Light Company	EC-91-213
Western Resources	GR-93-240
Western Resources	GM-94-40
United Telephone Company of Missouri	TR-80-235
St. Joseph Light and Power Company	EC-92-214
St. Joseph Light and Power Company	ER-93-41
Kansas Power and Light Company	EM-91-213
Laclede Gas Company	GR-94-220
Williams Natural Gas Company	RP94-365-000
Williams Natural Gas Company	RP95-136-000
Mississippi River Transmission	RP96-199-000
Union Electric Company d/b/a AmerenUE	EC-2002-1
Aquila, Inc.	ER-2005-0436
Missouri Pipeline Company	GC-2006-0491

CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG

Gas Service Company
Case No. GR-79-114
Date: June 15, 1979
Areas: Deferred Taxes as an Offset to Rate Base

Missouri Public Service Company
Case Nos. ER-78-29 and GR-78-30
Date: August 10, 1978
Areas: Fuel Expense, Electric Materials and Supplies, Electric and Gas Prepayments, Electric and Gas Cash Working Capital, Electric Revenues

Missouri Public Service Company
Case Nos. ER-79-60 and GR-79-61
Date: April 9, 1979
Areas: Depreciation Reserve, Cash Working Capital

Southwestern Bell Telephone Company
Case No. TR-79-213
Date: October 19, 1979
Areas: Income Taxes, Deferred Taxes

Kansas City Power & Light Company
Case Nos. ER-80-48 and ER-80-204
Date: March 11, 1980
Areas: Iatan Station Excess Capacity, Interest Synchronization, Allocations

Kansas City Power & Light Company
Case No. ER-81-42
Date: March 13, 1981
Areas: Iatan (AEC Sale), Normalization vs. Flow-Through, Allocations, Allowance for Known and Measurable Changes

Southwestern Bell Telephone Company
Case No. TR-80-256
Date: October 23, 1980
Areas: Flow-Through vs. Normalization

CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG

United Telephone Company of Missouri
Case No. TR-80-235
Date: December 1980
Areas: Rate of Return

Southwestern Bell Telephone Company
Case No. TR-81-08
Date: August 6, 1981
Areas: License Contract, Flow-Through vs. Normalization

Kansas City Power & Light Company
Case Nos. ER-82-66 and HR-82-67
Date: March 26, 1982
Areas: Indexing/Attrition, Normalization vs. Flow-Through, Deferred Taxes as an Offset to Rate Base, Annualization of Amortization of Deferred Income Taxes, Cost of Money/Rate of Return, Allocations, Fuel Inventories, Iatan AFDC Associated with AEC Sale, Forecasted Coal and Natural Gas Prices, Allowance for Known and Measurable Changes

Southwestern Bell Telephone Company
Case No. TR-82-199
Date: August 27, 1982
Areas: License Contract, Capitalized Property Taxes, Normalization vs. Flow-Through, Interest Expense, Separations, Consent Decree, Capital Structure Relationship

Kansas City Power & Light Company
Case No. ER-83-49
Date: February 11, 1983
Areas: Test Year, Fuel Inventories, Other O&M Expense Adjustment, Attrition Adjustment, Fuel Expense-Forecasted Fuel Prices, Deferred Taxes Offset to Rate Base

CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG

Kansas City Power & Light Company
Case Nos. EO-85-185 and ER-85-128
Date: April 11, 1985
Areas: Phase I - Electric Jurisdictional Allocations
Date: June 21, 1985
Areas: Phase III - Deferred Taxes Offset to Rate Base
Date: July 3, 1985
Areas: Phase IV - 47% vs. 41.5% Ownership, Phase-In, Test Year/True-Up, Decision to Build Wolf Creek, Non-Wolf Creek Depreciation Rates, Depreciation Reserve, Jurisdictional Steam Allocations/Grand Avenue Station

Southwestern Bell Telephone Company
Case No. TR-83-253
Date: September 23, 1983
Areas: Cost of Divestiture Relating to AT&T Communications, Test Year, True-Up, Management Efficiency and Economy

Generic Telecommunications - Straight Line Equal Life Group and Remaining Life Depreciation Methods
Case No. TO-82-3
Date: December 23, 1981
Areas: Depreciation

General Telephone Company of the Midwest
Case No. TM-87-19
Date: December 17, 1986
Areas: Merger

General Telephone Company of the Midwest
Case No. TC-87-57 (TR-86-48)
Date: December 1986
Areas: Background and Overview, GTE Service Corporation, Merger Adjustment, Adjustments to Income Statement

Southwestern Bell Telephone Company
Case No. TR-86-4
Date: 1986
No prefiled direct testimony - case settled before Staff testimony filed

CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG

Union Electric Company
Case No. EC-87-114
Date: April 27, 1987
Areas: Elimination of Further Company Phase-In Increases, Write-Off of Callaway I to Company's Capital Structure.

Western Resources
Case No. GM-94-40
Date: November 1993
Areas: Jurisdictional Consequences of the Sale of Missouri Gas Properties

Kansas Power & Light Company
Case No. EM-91-213
Date: April 1991
Areas: Purchase of Kansas Gas & Electric Company

Laclede Gas Company
Case No. GR-94-220
Date: July 1994
Areas: Property Taxes, Manufactured Gas Accruals, Deregulated Cost Assignments

Union Electric Company d/b/a AmerenUE
Case No.: EC-2002-1
Date: June 24, 2002
Area: Overview: 4 CSR 240-10.020; Alternative Regulation Plan

Aquila, Inc.
Case No. ER-2006-0436
Date: December 13, 2005
Areas: Unit Ownership Costs

Missouri Pipeline Company
Case No. GC-2006-0491
Date: September 6, 2006 (Direct): November 17, 2006 (Surrebuttal)
Areas: Affiliate Transactions, Tariff Violations and Associated Penalties; Transportation Tariffs

While in the employ of the Kansas State Corporation Commission in 1978, Mr. Schallenberg worked on a Gas Service Company rate case and rate cases of various electric cooperatives.

NO. 4505

DATA INFORMATION REQUEST
Union Electric Company, d/b/a AmerenUE
EC-2002-1

REQUESTED FROM: Suedeen Kelly/Mary Hoyt

DATE REQUESTED: 5/23/02

INFORMATION REQUESTED: What Missouri Public Service Commission orders or decisions did Suedeen Kelly review for the purpose of writing her rebuttal testimony? Did she review the particular order or decision in entirety?

REQUESTED BY: Steven Dottheim 573-751-7489

INFORMATION PROVIDED

Ms. Kelly reviewed the following Missouri Public Service Commission ("PSC") decisions:

- *In re Associated Natural Gas Company's Tariff Revisions*, 1999 Mo. PSC LEXIS 2.
- *In re Empire District Elec. Co.'s Tariff Sheets*, Case No. ER-2001-299 (Sept. 20, 2001).
- *In re Laclede Gas Co.'s Tariff Filing*, Case No GT-2001-329 (Sept. 20, 2001).
- *In re Missouri Public Service*, 1998 Mo. PSC LEXIS 21.
- *Petition of Southwestern Bell Telephone Co.*, 1997 Mo. PSC LEXIS 247.

Ms. Kelly reviewed the following court cases involving appeals of Missouri PSC decisions:

- *Barker v. Kansas City Gas Company*, 163 S.W. 854 (Mo. 1914).
- *Citizen's Gas Company of Hannibal v. PSC*, 8 F.2d 632 (W.D. Mo. 1925).
- *State ex rel. Associated Natural Gas Co. v. PSC*, 706 S.W.2d 870 (Mo. Ct. App. 1985).
- *State ex rel. Campbell Iron Co. v. PSC*, 296 S.W. 998 (Mo. 1927).
- *State ex rel. Capital City Water Co. v. PSC*, 252 S.W. 446 (Mo. 1923).
- *State ex rel. Chicago, Rock Island & Pac. R.R. Co. v. PSC*, 312 S.W.2d 791 (Mo. 1958).
- *State ex rel. City of St. Joseph v. PSC*, 30 S.W.2d 8 (Mo. 1930).
- *State ex rel. City of St. Louis v. PSC*, 34 S.W.2d 507 (Mo. 1930).
- *State ex rel. City of West Plains v. PSC*, 310 S.W.2d 925 (Mo. 1958).
- *State ex rel. Electric Co. of Missouri v. Atkinson*, 204 S.W. 897 (Mo. 1918).
- *State ex rel. Empire District Elec. v. PSC*, 100 S.W.2d 509 (Mo. 1936).
- *State ex rel. Harline v. PSC*, 343 S.W.2d 177 (Mo. Ct. App. 1960).
- *State ex rel. Hotel Continental v. Burton*, 334 S.W.2d 75 (Mo. 1960).
- *State ex rel. Jackson County v. PSC*, 532 S.W.2d 20 (Mo. 1975).
- *State ex rel. Joplin Water Works Co. v. PSC*, 495 S.W.2d 443 (Mo. 1973).
- *State ex rel. Laclede Gas Co. v. PSC*, 535 S.W.2d 561 (Mo. Ct. App. 1976).
- *State ex rel. Laclede Gas Co. v. PSC*, 600 S.W.2d 222 (Mo. Ct. App. 1980).

- *State ex rel. Martigney Creek Sewer Co. v. PSC*, 537 S.W.2d 388 (Mo. 1976).
- *State ex rel. McKittrick v. PSC*, 175 S.W.2d 857 (Mo. 1943).
- *State ex rel. Midwest Gas Users Ass'n v. PSC*, 976 SW.2d 470 (Mo. Ct. App. 1998).
- *State ex rel. Missouri Southern R.R. Co. v. PSC*, 168 S.W.2d 1156 (Mo. 1914).
- *State ex rel. Missouri Water Co. v. PSC*, 308 S.W. 2d 704 (Mo. 1957).
- *State ex rel. Pugh v. PSC*, 10 S.W.2d 946 (Mo. 1928).
- *State ex rel. Southwestern Bell Telephone Co. v. PSC*, 262 U.S. 276, 289 (1923).
- *State ex rel. Utility Consumers Council of Mo. v. PSC*, 585 S.W.2d 41 (Mo. 1979).
- *State ex rel. Valley Sewage Co. v. PSC*, 519 S.W.2d 845 (Mo. Ct. App. 1974).
- *State ex rel. Watts Engineering Co. v. PSC*, 191 S.W.2d 412 (Mo. 1917).

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EC-2002-1 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Ameren, St. Louis, Missouri office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to AmerenUE and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by: Sue Ann Kelly

Date Response Received: _____

Prepared by: Sue Ann Kelly

ORDER CANCELLING GENERAL ORDER 38-A (CASE NO. 10,723)

1) Adopted December 28, 1945.
2) Effective January 31, 1946.
3) I think that it is possible that this order should be a General Order. It does lay out some procedures for companies to follow in accounting.
4) No evidence of any supplementary or cancelling orders.

REPORT AND ORDER

On August 14, 1944, this Commission issued its General Order 33-A, Wilson, C., dissenting. The general order was directed to the gas, electric, water, telegraph, telephone and heating utilities under our jurisdiction and relates to depreciation and the accounting therefor by such utilities as prescribed by Sections 5656 and 5680, R.S. Mo., 1939. We stated in the general order that in our opinion the utilities are not fully complying with the provisions of Sections 5656 and 5680, in that the income from the investments of moneys in their depreciation reserve funds pertaining to property in Missouri is not being credited to and carried in such funds; also, that the utilities have their depreciation reserve funds invested in plant, securities and other properties and are deriving income from such investments. The general order required the utilities to file with this Commission on or before October 2, 1944, (a) statements showing income derived from their depreciation reserve funds for the year ended July 31, 1944, (b) copies of balance sheets as of July 31, 1944, and (c) statements showing income derived from all sources for the year ended July 31, 1944; and provided that unless appropriate pleadings showing cause to the contrary should be filed with this Commission on or before October 2, 1944, the utilities not so pleading would be required, on and after January 1, 1945, to credit their depreciation reserve funds pertaining to property in Missouri with the income derived from the investment of moneys in such funds, and to reduce their annual charges to operating income for depreciation by the amount of such income. The general order further provided that unless appropriate pleadings showing cause to the contrary should be filed with this Commission on or before October 2, 1944, the utilities would be required to set aside moneys and accrue same to their depreciation funds at the same annual rates then being used for such accruals, either pursuant to orders of this Commission or by orders of their managements, and to continue such rates for accruals unless and until cause should be shown why other and different rates should be used. Finally, the general order

provided that if appropriate pleading should be filed by any public utility, the issues raised thereby would be set down for hearing before this Commission on proper notice.

A copy of General Order 38-A was served on each utility in Missouri of the classification affected by the order. Almost without exception, such utilities filed pleadings within the alloted time which were designed to show cause why the terms and provisions of General Order 38-A should not be applied. Various objections and questions were raised in the pleadings, both on legal and equitable grounds. Thereafter, conferences were held between representatives of certain of the utilities and this Commission and its staff, and a report was submitted to our staff by a committee of accountants representing the utilities.[1/] Following this, the matters involved were consolidated into this Case No. 10,273 and set down for hearing at Jefferson City on December 17, 1945, upon appropriate notice to all interested parties. Such hearing was duly held and at that time the cities of St. Louis and Kansas City were granted authority to intervene. All of the utilities which desired to be heard in the matter were represented by officials or by counsel. At the close of the hearing all utilities represented were advised by the Commission that unless they expressed disagreement with the evidence presented on behalf of the utilities it would be assumed that all adopted the evidence proffered at the hearing. Most of those present expressed their concurrence and none objected. For the reason that this is a matter of paramount importance, we deem it advisable to discuss the issues fully.

As is indicated above, the issuance of General Order 38-A arose out of the provisions of Sections 5656 and 5680 of our public utility act which relate to depreciation and depreciation accounting. The provisions of the two sections are identical except that 5656 applies to gas, electric and

1/ This report, dated June 11, 1945, deals with methods for determining the amount of income from depreciation funds. It was submitted at the request of our staff as a result of conferences between our staff and the utilities' accounting committee.

water utilities and 5680 to telegraph and telephone utilities; such provisions are made applicable to heating utilities by Section 5634. Section 5656 is quoted below:

> "The commission shall have power, after hearing, to require any or all gas corporations, electrical corporations and water corporations to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility. Each gas corporation, electrical corporation and water corporation shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. The income from the investments of moneys in such fund shall likewise be carried in such fund."

Pursuant to the authority granted by Sections 5656 and 5680, this Commission, in the past, has fixed depreciation rates for most of the utilities under its jurisdiction; in some instances the utilities have provided for depreciation based on rates fixed by their managements. Such rates have been designed to provide depreciation within the useful life of the utility property. The utilities have used the funds accumulated by reason of their depreciation reserve provisions for such purposes as construction of additions, betterments and extensions of property and plant, working capital and investments in securities, 2/ and admit that they are deriving income from such use of the funds. It is the income attributable to use by the utilities of depreciation funds that we are here concerned with. For Sections 5656 and 5680 provide that "the income from the investments of moneys in such fund (the depreciation fund) shall likewise be carried in such fund."

Although the utilities strenuously deny the proposition that their customers have any interest, in law or in fact, in depreciation funds, or any other utility funds or property, their witnesses agree with the validity

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2/ Since depreciation funds are not segregated from other funds in the accounting records of the utilities, it is not possible to trace the particular use of all of such funds. It can be determined, however, that such funds, together with funds procured from other sources, have been used by the utilities for such purposes as those enumerated.

of the principle that when an undepreciated rate base is used, a proper credit attributable to the use by the utilities of depreciation funds can fairly and equitably be applied for the benefit of the customers.[3] We do not see how this principle can be considered as other than fair and equitable. For depreciation is a component part of established rates for service and the funds to pay for depreciation are currently supplied to the utilities by their customers through their rates for service. And when such funds, pending their use for replacement of completely depreciated and retired plant, are used by the utilities for other purposes, the customers are equitably entitled, through their rates for service, to appropriate credit for such use, just as any investor is entitled to a return on funds supplied by him to a corporation for the corporation's use.[4] Accordingly, we shall require that appropriate credit shall be given with respect to the utilities' use of the depreciation funds, and that such credit shall take the form of a reduction of the utilities' operating expenses, which may in turn reduce the allowable return.

It is obvious, however, that if the utilities allowable return is reduced by income on depreciation funds, the utility rate base upon which the allowable return is predicated, should be an undepreciated rate base. This is true for the reason that to reduce the allowable return by deducting depreciation from the rate base and to also reduce it by income on the depreciation funds would obviously constitute duplication. While, in the past this Commission has followed the rulings of the Courts in fixing the rate base for the utilities, which required deduction of depreciation from the rate base, and under which the interest or income methods of computing

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3/ General Order 38-A provided that such income would be applied in reduction of annual charges to operating income for depreciation. This would reduce the utilities' allowable return, and the overall cost of service to the utilities' customers.

4/ As was stated by Prof. Herbert B. Dorau of Columbia University, a recognized authority in these matters, in his article entitled "Economic Implications of Public Utility Depreciation Accounting" (see The New York Certified Public Accountant, June 1944) "...It must be recognized that the assets reflected by the depreciation reserve balances arise from payments made by customers in order to meet a future liability, and that the customer is entitled to a return or compensation for the use of such funds by the company according to the character and extent of their employment as earnings assets until they are used up in extinguishing the liability reflected by the reserve..."

depreciation provisions in determination of the allowable return could not equitably be applied, we interpret the recent decisions of the United States Supreme Court in the Natural Gas Pipe Line Co. case and the Hope Natural Gas Co. case as no longer requiring adherence to the former rules. 5/

This Commission for some time has been concerned with the long delays and cumbersome procedure inherent in the determination of costs of reproduction of utility properties and the existing depreciation in utility properties, and has been desirous of adopting a rate making formula which will be simple, expeditious and effective. We are convinced that the so-called "original cost rate base," 6/ appropriately modified, adequately answers those requirements as to the utility rate base. Accordingly, it will be the policy of this Commission in the future, whenever possible and warranted by the facts, to fix the utility rate base upon which the allowable return is predicated based on the undepreciated original cost of the utility property used and useful in the public service, to which will be added materials and supplies and a reasonable allowance for cash working capital. Other adjustments in this rate base may be made when justified by the facts. With such a rate base, "income from the investment of moneys in depreciation funds" may be appropriately recognized.

The question presents itself as to whether the utilities shall be required to currently record in their books of account, as a reduction of

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5/ Federal Power Commission v. Natural Gas Pipe Line Co., 315 U.S. 575, 62 S. Ct. 736. Federal Power Commission et. al. v. Hope Natural Gas Co., 320 U.S. 591, 64 S. Ct. 281.

6/ The "original cost" rate base is sometimes referred to as "prudent investment," and may be modified when appropriate to reflect other allowable costs. The basic foundation, subject to appropriate modification, is the actual legitimate cost of the utility property at the time of its construction and dedication to the public service.

their annual charges to operating income for depreciation, the income attributable to their use of depreciation funds. Since this is a rate making matter, adopted for the primary purpose of preserving the principles of equity as between the customers of the utilities and the utilities, we see no reason for such a requirement. However, we shall require, in order that we may be currently informed and in a position to take such action as may be necessary, that the utilities shall include in their annual reports, and in such other reports that may be required by this Commission from time to time, schedules in such form as we shall prescribe showing the income from the investment of moneys in depreciation funds.

Perhaps the most difficult question for decision in this matter is the question of how the income from the investment of moneys in depreciation funds shall be determined. This question divides itself into two parts, (1) ascertainment of the principal amount of depreciation funds, and (2) having ascertained such principal amount, methods for determining the income attributable to the ascertained principal amount of the funds.

As to the first part of this question, it is obvious that the principal amounts of depreciation funds are exactly represented by the balances in the utilities' depreciation reserves, which are usually provided from operating income. However, the evidence shows that, in some instances, depreciation reserves have been provided, in part, not from operating income, but by appropriations from utility surplus, or otherwise than from operating income. It is obvious, that in such instances, depreciation funds have been provided by the utilities themselves, and not by their customers, and, accordingly, that in ascertaining the principal amount of depreciation funds subject to such income credit that we may impose, that total depreciation reserve balances should be adjusted by any portions thereof so provided. We will permit such adjustments but shall require convincing proof as to the validity thereof.

There is considerable evidence in the record relating to methods for determining the income attributable to the ascertained principal amount

of depreciation funds. We do not deem it necessary to review all of such evidence, but do consider it advisable to set forth the fundamental considerations which have formed the bases for our conclusions, including a brief discussion of the nature of depreciation funds and the relationship of the utilities and the utilities' customers to such funds. At the outset it should be stated that we are not dealing with the problem of determining accrued depreciation from the standpoint of the utility rate base, but rather the question of an appropriate credit which may be equitably applied for the benefit of the customers as representing income applicable to depreciation funds.

Depreciation, of course, represents the consumption in service of the utility property and is a part of the cost of the services rendered. Accordingly, the rates for service are designed to include a component for depreciation, in addition to all other costs of service, and a fair return upon the investment. It is an obligation of the customer to pay in his rates for the cost of the service, including the cost of depreciation, just as it is an obligation of the utility to render the service at cost, plus a fair return upon the investment. One of the objectives of depreciation accounting is to provide a reasonable method for charging currently to income the cost of depreciation, in such orderly manner that those in whose service the property is used up shall pay therefor.

Depreciation accounting results in the accumulation of moneys by the utility, which are commonly referred to as "depreciation funds", or "depreciation reserve funds". Accumulated depreciation funds cannot be returned to the investors of the capital but must be retained by the utilities so that when utility plant wears out in service, funds shall be available to provide new facilities in replacement of the worn out plant. Accordingly, depreciation funds are in the nature of trust funds, maintained for and dedicated to the replacement of worn out plant. The utilities are the custodians of the funds and are responsible for them to the end that funds shall be available as required to replace worn out plant and a continuity of service shall be maintained. And when, pending the use of depreciation funds for the

replacement of worn out plant, the utilities use the funds for other purposes, they are, in practical effect, borrowing from the funds. As we have previously stated, the utilities, from time to time, use the funds for such purposes as working capital, construction of property or investments in securities, and admit that they earn income from such use of the funds. The question before us is the rate of interest that the utilities shall be required to pay for such use of the funds.

We are aware that, to the extent possible, the utilities use accumulated depreciation funds for construction of property and that the utilities earn income from such property. However, it must be borne in mind that such property belongs to the utilities and that they (the utilities) are charged with the responsibility to maintain and operate the property in the public interest to the same extent and in the same manner as they are required to maintain and operate property acquired or constructed from funds derived from investors. The utilities assume all of the hazards and risks associated with the ownership, management and operation of such property, including any losses or reductions of earnings below a fair or compensatory return, whereas the customers assume no responsibilities or risks whatever, with respect to the property. And the utilities are justly entitled to receive proper compensation for assuming those responsibilities and risks. To deprive the utilities of the full amount of the income from such property, as interest on depreciation funds, would be grossly unfair, and would be equivalent to confiscating the property for the exclusive benefit of the customers, and at the same time requiring the utilities to gratuitously operate the property and assume all of the risks as to the property and its operation. However, the customers are entitled to share in such income at least to the extent of the value of depreciation funds, just as any lender of funds is paid from the income of a corporation for the value of his funds.

There is considerable testimony in the record as to the proper rate of interest which should be applied with respect to the utilities' use of depreciation funds. Witnesses for the utilities assert that when the funds

are used for construction of additional property, the interest rate should not exceed, or should be less than the rate the utilities would be required to pay if the funds were borrowed on long-term funded obligations, such as first mortgage bonds. These witnesses introduced evidence showing that, for some time in the past, utility bonds were marketed at approximately 3 percent per annum, and that recently two of our larger Missouri utilities sold their bonds (or debentures) at an approximate yield of 2 3/4 percent. The witnesses point out that the cost of money and the worth or value of money are largely dependent on the element of risk, and maintain that there is less risk associated with depreciation funds than with any class of utility capital, even first mortgage bonds. In support of their position, the witnesses point out that the income attributable to the use of depreciation funds would be applied for the benefit of customers in reduction of the utilities' allowable return prior to and without regard to the payment of interest on bonds or other obligations, and, thus, that as to safety of income, depreciation funds rank ahead of bonds or other obligations; and as to principal, that the amounts of depreciation funds to which interest rates would be applied are completely within the jurisdiction of this Commission, and thus are subject to little, if any, risk. The witnesses further contend that, as a matter of fairness, and bearing in mind that interest on depreciation funds will be applied in reduction of the utilities' allowable return, the utilities, in any event, should not be required to pay more for depreciation funds, when used by them for construction of additional property, than they would be required to pay out of their allowable return for funds they could borrow on long-term funded obligation.

Other witnesses referred to the fact that at times the utilities are unable to use depreciation funds for construction of additional property. They point to the recent war period, when restrictions on materials needed for the war effort so curtailed construction that many utilities could not use depreciation funds for property additions and extensions, and that as a result, depreciation funds remained idle or were invested in short-term

government securities, yielding in many instances less than 1 percent per annum. It was stated that similar conditions have occurred during periods of high prices or industrial depression. The witnesses further stated that even in normal times accumulated depreciation funds cannot always be immediately used for property additions, resulting in a lag between the time the funds become available and the time they may be so used, during which periods the funds are idle and earn no income. The witnesses urged that these conditions be taken into account in fixing the interest rate for depreciation funds.

Other witnesses for the utilities expressed the view that an appropriate interest rate for depreciation funds should not exceed the interest rates on government securities, which they stated range from less than 1% to approximately 2% per annum. They pointed to the trust character of depreciation funds, and asserted that the interest rate for government securities most nearly reflects the worth of trust funds and the risks associated with trust funds.

An Exhibit which was submitted in evidence to show yields on a representative list of high grade bonds included only two Missouri utility companies. One of these was earning a yield to maturity of 3.46% the other was earning 2.63%. The Commission is aware that only two Missouri utilities have bonds outstanding which bear a coupon rate of less than 3%. Other utility bonds which have been issued in Missouri have coupon rates in excess of 3%. In some cases the rate is considerably in excess of 3%.

We have given careful consideration to all of the evidence introduced in this proceeding, and also to the principles above discussed relating to the nature of depreciation funds. There can be no doubt that when the utilities use depreciation funds for construction of property (which, as we have before indicated, represents the predominant use of the funds) the utilities are entitled to just compensation for discharging their obligations to manage and operate such property in the public interest, and for assuming the

risks associated with such property, [1] and that to deprive the utilities of a disproportionate share of the permissible income from such property, as income on depreciation funds, would be unfair to the utilities. On the other hand, the customers of the utilities, who supply depreciation funds, are entitled to receive adequate and just recognition with respect to the use of the funds by the utilities consistent with the worth or value of the funds.

The fixing of an interest rate for depreciation funds is an integral part of the rate making process in public utility regulation, since the interest credit produced thereby directly affects the utilities' allowable return and the rates charged to the public for utility service. The Public Service Commission Act (Chapter 35, R.S. Mo. 1939) establishes the policies of this State in connection with public utility regulation, and while these policies are necessarily set forth in the act in broad outline, Section 5579 of the act vests this Commission with "all powers necessary or proper to enable it to carry out fully and effectually all of the purposes (of the act)." And one of the primary purposes of our Public Service Commission Act is just and reasonable rates and charges for utility service.

Accordingly, we believe that the fixing of the interest rate for depreciation funds is a function of the regulatory authority, and that under the general powers delegated to us we are authorized to fix the interest rate for depreciation funds to the end that the rates charged in this State for public utility service shall be just and reasonable, and the policies established by the legislature shall be fully and effectually carried out. Moreover, Sections 5656 and 5680 of the act authorize this Commission, in connection with depreciation funds, to prescribe, in its descretion, rules and regulations "both as to original expenditure and subsequent replacement" of such funds and further provide, "The income from investments of moneys in such fund shall likewise be carried in such fund." We believe that such authority

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[1] As was stated in the Report to the Board of Public Utility Commissioners of New Jersey on the Rate Adjustment Plan for New Jersey Power & Light Company (see Page 66) "The utility is entitled to compensation for management of the investment and for performance of the risk taking function. Unless the enterprise is reasonably compensated, management might be expected in the absence of regulatory restraint, to reduce the risk and responsibility by investment (of depreciation funds) in government bonds, or other relatively risk-free securities."

necessarily includes the authority to prescribe rules and regulations as to the amounts to be credited for the use of such funds.

Upon consideration of all of the evidence in this matter, and based upon our intimate knowledge of the operations and finances of the utilities under our jurisdiction, and taking into consideration the fact that the utilities at times, varying with economic conditions, are not able to invest depreciation reserve funds in income producing assets, we are of the opinion that an appropriate interest rate for use in determining the income from the investment of moneys in depreciation funds to be applied in the rate making process in reduction of the utilities' allowable return is 3% per annum. We are also of the opinion, since the circumstances surrounding the use of depreciation funds are generally the same as to all utilities, that such rate should be applied in the case of all of the gas, electric, water, telegraph, telephone, and heating utilities under our jurisdiction. However, if it should appear to the Commission or if any utility shall prove that due to unusual or extraordinary circumstances, such rate is not fairly and equitably applicable to it, such rate may be modified according to the circumstances of the particular case.

In conclusion, we are of the opinion that the ratemaking practices and policies established in this order are an important step in promoting efficient public utility regulation in this State. This is particularly true in connection with our announced policy relating to the establishment of the utility rate base in future proceedings. For a rate base predicated on original cost can be fixed with a minimum of delay, and original cost having once been established, can be brought up to date on short notice. Moreover, and of equal importance, is the fact that original cost avoids the inflationary effects of reproduction cost in the establishment of the rate base. Also, the consideration of income from the investment of moneys in depreciation reserve funds in the fixing of rates is in the direction of reducing the overall cost of service.

We are also of the opinion that these practices and policies will be of advantage to the utilities. Their rate base will be stable, and they will be able to determine at all times with reasonable exactitude their position as to allowable income, and thus be in a position to plan more intelligently for the future. In addition, the public utility industry requires large amounts of capital which must be secured on the open market in competition with other industries. And with a stabilized rate structure, capital requirements can be more effectively financed.

Accordingly, it is

ORDERED: 1. That General Order 38-A, issued by this Commission on August 14, 1944, be and is hereby cancelled, set aside and for naught held.

ORDERED: 2. That in the process of determining the reasonableness of rates for service, income shall be determined on the depreciation funds of the gas, electric, water, telegraph, telephone and heating utilities pertaining to their properties used and useful in the public service in Missouri, and shall be applied in reduction of the annual charges to operating income of such utilities.

ORDERED: 3. That the income from the investment of moneys in depreciation funds shall be computed at the rate of 3 percent per annum of the principal amount of such depreciation funds.

ORDERED: 4. That the principal amount of depreciation funds of any such utility, for the purposes of this order, shall be deemed to be equivalent to the balance in the depreciation reserve account of any such utility regardless of whether or not any such depreciation reserve account may be represented by a segregated fund earmarked for such purpose; provided, however, that the principal amount of such depreciation funds may be adjusted by the portion or portions thereof which may have been provided under circumstances other than by charges to operating income, or otherwise, such adjustments to be subject to the approval of this Commission. The terms "depreciation funds" and "depreciation reserve accounts" shall be deemed to

include the terms "retirement funds" and "retirement reserve accounts."

ORDERED: 5. That the rate of 3 percent per annum referred to in Ordered: 3 above shall be applied in the case of each gas, electric, water, telegraph, telephone and heating utility of the State of Missouri, provided, however, that modification of such rate may be made upon the Commission's own motion or upon proper showing by a utility that such rate is not reasonably and equitably applicable to it.

ORDERED: 6. That such utilities shall prepare and include in their annual reports to this Commission commencing with their annual reports for the year 1945, and in such other reports that may be required by this Commission from time to time, schedules showing for the year or period covered by such reports, the income from the investment of moneys in depreciation funds. The schedules referred to shall be in the form prescribed by this Commission and shall include, among other things that may be prescribed (1) the principal amount of depreciation funds as represented by balances in depreciation reserve accounts; (2) any adjustments of such depreciation funds and accounts with complete details and explanations thereof; and (3) the amount of the income from the investment of moneys in depreciation funds computed at the rate of 3 percent per annum, or such other rate as may be prescribed by order of this Commission.

ORDERED: 7. That the Commission shall retain jurisdiction of this proceeding for the purpose of making any change or changes in the interest rate prescribed in paragraph "Ordered: 3" hereof that may be warranted.

ORDERED: 8. That this order shall take effect on and after January 31, 1946, and that the Secretary of this Commission shall forthwith serve a copy of this order on all parties interested herein, and that said interested parties be required to notify the Commission on or before January 31, 1946 in the manner required by Section 5601, R.S. Mo. 1939, whether the terms of this order are accepted and will be obeyed.

BY THE COMMISSION
Willard B. Leavitt
WILLARD B. LEAVITT,
SECRETARY

Osburn, Chr., Williams, Henson and McClintock, CC., concur.
Wilson, C., dissents in separate opinion.

Dated at Jefferson City, Missouri,

Schedule 3-15

DISSENTING OPINION OF COMMISSIONER WILSON

I am unable to concur in this order. I am still of the opinion which I expressed on July 17, 1944 at the time of the issuance of General Order No. 38, and On August 14, 1944 at the time of the issuance of General Order No. 38-A that there is nothing in the language of the statute - Sections 5656 and 5680, R.S. Mo. 1939 - either express or implied, or elsewhere in the law which authorizes the making of such an order.

Under these sections this Commission does not have power to fix the rate for earnings upon the depreciation account. In the case of State ex rel. Empire District Electric Company v. Public Service Commission, 339 Mo. 1188, 100 SW (2d) 509 l.c. 511, Judge Frank speaking for the Court said:

> "The power of the commission to make orders relative to the depreciation reserve of the company is conferred by statute. We must therefore look to the statute to determine whether the commission had authority to make the order in question. It has been well said that, 'when a particular power is exercised by the commission, or is claimed for it, that power should have its basis in the language of the statute, or should be necessarily implied therefrom.' People ex rel. Railways Co. v. Public Service Commission, 223 N.Y. 373, 119 N.E. 848, 849; Havre De Grace & Perryville Bridge Co. v. Towers, 132 Md. 16, 103 A. 319. Turning to the statute, we find that it gives the commission power, after hearing, to make an order requiring the company to carry a depreciation reserve account in an amount fixed by the commission, subject to the regulatory control of the commission."

At the hearing it was given as an opinion by the President of the Union Electric Company of Missouri testifying upon behalf of the utilities that the Commission does not have the power to fix a rate for earnings upon the depreciaton account under the language of the last sentence contained in said Sections 5656 and 5680, i.e., "The income from investments of moneys in such fund shall likewise be carried in such fund." This witness stated that it was his opinion that that language applied to the sinking-fund method rather than the straight-line method of providing for depreciation. The witness stated that it was his opinion that the Commission had the power to fix a rate for the earnings on the investment of depreciation funds in determining what is a fair rate and what is a fair rate base. I agree with the opinion of this witness that this language does not apply to the straight-line method of providing for depreciation and believe that this language

in the statute is probably explainable by the fact that the Public Service Commission was originally considered to have jurisdiction over municipally-owned utilities the depreciation requirements of which are generally provided for under the terms of the mortgages in the form of a sinking-fund.

I cannot agree, however, that our general rate-making powers give us the right to fix a rate for the earnings upon the depreciation account applicable to all electric, gas, water, steam-heating, telegraph and telephone utilities operating under the jurisdicton of this Commission alike when conditions and circumstances relating to the investment of depreciation accounts vary with the several utilities. That there are various circumstances was recognized by counsel conducting the hearing on behalf of the utilities at the outset of the hearing and is recognized by the Report and Order itself in providing in ORDERED: 5. that "modification of such rate may be made upon the Commission's own motion or upon proper showing by such utility that such rate is not reasonably and equitably applicable to it." It is my belief that even if the Commission had power to make a general order upon this subject, and if the matter were a proper subject for a general order, which I do not think it is, the evidence is not sufficient upon which to base such a general order as the Commisson does not have before it ample evidence touching the circumstances relating to the various utilities, and the rate so fixed can be nothing more than a guess and it is conceivable that it may result that there are as many exceptions as there are utilities which may come within the provisions of the Order.

The statute reads in part as follows:

> "The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility."

It is to be noted that the singular number is used - "corporation, person or public utility" not corporations, persons and public utilities. Also, the statute reads further:

> "Each gas corporation, electrical corporation and water corporation shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the moneys so provided for out of earnings and

> carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe."

In Section 5660 relating to telegraph and telephone corporations the language used is as follows:

> "The commission, may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such public utility."

and:

> "Each telegraph corporation and telephone corporation shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the money . . ."

Section 5633 relating to common carriers provides in part as follows:

> "The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of such corporation, person or public utility. Each railroad corporation, street railroad corporation and common carrier shall conform its depreciation accounts to the rates so ascertained,, , ."

I believe this statute contemplates that depreciation requirements shall be fixed by the Commission for each utility singly and not collectively. It is my opinion that this matter is not a proper subject for a general order, but that the jurisdiction of the Commission over the depreciation reserve of the several companies should be exercised in individual cases, and I do not consider this impossible or impracticable, but rather a problem that can be accomplished with an adequate staff and diligent effort.

The Order is further objectionable for the reason that it assumes that the Commission has power to require the investment of the depreciation account. If the depreciation account is not invested and there are no earnings, then the fixing of three per cent is confiscatory and for that reason unlawful.

Section 5638 R.S. Mo. 1939 is identical with Sections 5656 and 5660 except that it applies to railroad corporations, street railroad corporations and common carriers. This Order is not made applicable to railroad corporations, street railways and common carriers and for that reason is discriminatory.

Underscoring by writer.

After careful consideration, it is my opinion that the Order is unlawful and exceeds the powers of the Commission.

Agnes Mac Wilson
Commissioner.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

CASE NO. 10,723

IN THE MATTER OF GENERAL ORDER NO. 38-A

No. 10,511 Alma Telephone Company, Albany Telephone Company, Auxvasse Telephone Company, Ava Telephone Company, Blackwater-Arrow Rock Telephone Company, Bland Telephone Company, Bolivar Telephone Company, Bosworth Telephone Company, Bourbon Telephone Company, Branson Telephone Company, Brashear, Hurdland & Novelty Telephone Company, Dorsey Telephone Company, Bucklin & Ethel Telephone Company, Buffalo Telephone Company, Inland Telephone Exchange, Cassville Telephone Company, Concordia Telephone Company, Crane Telephone Company, Creighton Telephone Company, DeSoto Telephone Exchange, Triangle Telephone Exchange, Doniphan Telephone Company, Durham & Maywood Telephone Company, El Dorado Springs Telephone Company, Ellington Telephone Company, Jones Telephone Company, Pleasanton Telephone Company, Galt Telephone Company, The Inter-County Telephone Company, Clearfork Telephone Company, Mid-Missouri Telephone Company, Grant City Telephone Corporation, Golden City Telephone Company, D. C. Myers Telephone Company, Greenfield Telephone Company, Hale Telephone Company, Cass County Telephone Company, Citizens Telephone Company, Hume & Metz Telephone Company, Huntsville Telephone Company, Ironton-Arcadia Telephone Company, Laredo Telephone Company, LaBelle Telephone Company, Laclede Telephone Exchange, LaPlata Telephone Company, Leonard Telephone Exchange, West Lawn Telephone Company, Liberal Mutual Telephone Company, Madison Telephone Exchange, Mansfield Telephone Company, Webster County Telephone Company, Martinsburg Telephone Exchange, The Hanamo Telephone Company, Mendon-Sumner Telephone Company, West Missouri Telephone Service, Farmers Telephone Company of Sullivan County, Miller Community Telephone Company, Mokane Telephone Company, Newark Telephone Company, New London Telephone Company, Oregon Farmers Mutual Telephone Company, Osage Valley Telephone Company, Christian County Telephone Company, Northside Telephone Company, Home Telephone Company of Perry, Clinton County Telephone Company, Middle States Utilities Company, Potosi Telephone Company, Richards Telephone Exchange, Rich Hill Telephone Exchange, Rosebud Telephone Company, Ozark Central Telephone Company, St. James Telephone Company, Salisbury Home Telephone Company, Andrew County Mutual Telephone Company,

Seneca Telephone Company, Consolidated Telephone Company, Steffenville Telephone Exchange, Fidelity Telephone Company, Atchison County Telephone Company, Carter County Telephone Company, Vandalia Union Telephone Company, Central Missouri Telephone Company, Wentworth Telephone Company, Lincoln Telephone Company, Wheatland Telephone Company.

No. 10,515 Carl Junction Gas Company.
No. 10,516 Central West Utility Company.
No. 10,517 The Empire District Electric Company.
No. 10,518 The Gas Service Company.
No. 10,519 The Kansas City Gas Company.
No. 10,520 Kansas Gas and Electric Company.
No. 10,521 Laclede Power & Light Company.
No. 10,522 Missouri Telephone Company and Crane Telephone Company.
No. 10,523 Missouri Utilities Company.
No. 10,524 Joplin Water Works Company.
No. 10,525 St. Joseph Water Company.
No. 10,526 Gasconade Power Company.
No. 10,527 Missouri Power & Light Company.
No. 10,528 Capital City Water Company.
No. 10,529 The Laclede Gas Light Company.
No. 10,530 Kansas City Power & Light Company.
No. 10,531 Andrew County Mutual Telephone Company.
No. 10,532 Clinton County Telephone Company.
No. 10,533 Middle States Utilities Company of Missouri.
No. 10,534 City Light & Traction Company.
No. 10,535 Citizens Gas Company of Hannibal.
No. 10,536 East Missouri Power Company.
No. 10,537 Missouri Edison Company.
No. 10,538 Sedalia Water Company.
No. 10,539 St. Joseph Light & Power Company
No. 10,540 Springfield City Water Company.
No. 10,541 St. Louis County Gas Company.
No. 10,542 Union Electric Company of Missouri.
No. 10,543 Western Light & Telephone Company.
No. 10,544 St. Louis County Water Company.
No. 10,545 Missouri Water Company.
No. 10,546 Arkansas-Missouri Power Corporation.
No. 10,547 Consumers Public Service Company.
No. 10,548 Independence Waterworks Company.
No. 10,549 Maryville Electric Light & Power Company.
No. 10,559 Missouri Public Service Corporation.
No. 10,551 Missouri Natural Gas Company.
No. 10,552 Missouri Gas & Electric Service Company.
No. 10,553 Missouri Western Gas Company.
No. 10,554 The United Telephone Company.
No. 10,555 Capital City Telephone Company.
No. 10,556 Southeast Missouri Telephone Company.
No. 10,557 Southwestern Bell Telephone Company.
No. 10,558 The Western Union Telegraph Company.
No. 10,560 Missouri General Utilities Company.

Ameren Services

One Ameren Plaza
1901 Chouteau Avenue
PO Box 66149
St. Louis, MO 63166-6149
314.621.3222
314.554.2514
314.554.4014 (fax)
tbyrne@ameren.com

June 3, 2002

VIA FAX AND U.S. MAIL
(573) 751-9285

Ameren

Mr. Steve Dottheim
Missouri Public Service Commission
200 Madison Street, Suite 100
Governor Office Building
Jefferson City, MO 65101

Re: Case No. EC-2002-1

Dear Mr. Dottheim:

AmerenUE hereby objects to Staff Data Request No. 179 in the above matter on the grounds that the information requested is irrelevant to the issues in this proceeding. In addition, the information sought by this data request would be unduly burdensome for AmerenUE to produce in that it covers rate cases filed since 1950 and annual reports filed since 1945. Finally, the Company objects to the request on the ground that it seeks information that is equally accessible by both the Staff and the Company in the Commission records department or in reported cases. Notwithstanding this objection, AmerenUE will provide a response to this request to the extent it seeks information which is not objectionable, and which is in the Company's possession.

If you have any questions, please contact me or Mary Hoyt to discuss our objection to this data request.

Very truly yours,

Thomas M. Byrne
Associate General Counsel

RECEIVED
JUN 10 2002
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

Schedule 4-1

No. 179

DATA INFORMATION REQUEST
Union Electric Company
CASE NO. EC-02-001

Requested From: Mary Hoyt
Date Requested: 05/24/02
Information Requested:

For each rate/complaint case UE has filed since 1950, please cite the cases UE has filed in compliance with rule 4 CSR 240-10.020. Provide copies of the witness's testimony and exhibits that document the inclusion of the above rule. If the Company did not file in conformance with the rule, please provide copies of the Company's request for a variance from the rule. Also, please identify and provide copies of the applicable sections of the Company's annual report filings with the Commission since 1945, that detail complaince with the rule mentioned above.

Requested By: Greg Meyer

Information Provided: _____

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. EC-02-001 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the Union Electric Company office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addressee, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies of data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control within your knowledge. The pronoun "your" or "your" refers to Union Electric Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed By: _____

Date Response Received: _____

Schedule 4-2

Prepared By: _____