Exhibit No.:
Issues: Alternative Regulation Plan
and Agreements
Territorial Agreements
Income Taxes
Witness: Stephen M. Rackers
Sponsoring Party: MoPSC Staff
Type of Exhibit: Surrebuttal Testimony
Case No.: EM-96-149

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

STEPHEN M. RACKERS

UNION ELECTRIC COMPANY

CASE NO. EM-96-149

Jefferson City, Missouri
April 1999

Exhibit No. 2
Date 6-1-99 Case No. EM-96-149
Reporter TC

SURREBUTTAL TESTIMONY

OF

STEPHEN M. RACKERS

CASE NO. EM-96-149

UNION ELECTRIC COMPANY

Q. Please state your name and business address.

A. Stephen M. Rackers, 815 Charter Commons Drive, Suite 100 B, Chesterfield, Missouri 63017.

Q. Are you the same Stephen M. Rackers who has previously filed direct testimony in this case on behalf of the Staff of the Missouri Public Service Commission (Staff)?

A. Yes.

Q. What is the purpose of your surrebuttal testimony?

A. My testimony will address the rebuttal testimony of Union Electric Company (UE or Company) witnesses D. E. Brandt, W. L. Baxter and G. S. Weiss regarding a general overview of the Case No. ER-95-411 Experimental Alternative Regulation Plan (EARP), and specifically the Staff's territorial agreements adjustment and the Staff's income taxes adjustment.

Q. Do you agree with Mr. Brandt's statements on page 3 of his rebuttal testimony that the Commission's acceptance of the Staff's and the Office of the Public Counsel's (OPC) positions would effect an uncompensated taking of the Company's property rights and a denial of due process?

A. No. The Stipulation and Agreement in Case No. ER-95-411 (Agreement) contemplates that the Staff, OPC or another party may propose adjustments which the Company may accept or may result in a dispute that the Commission will decide. There is

the inherent possibility that the Commission may decide against the Company. The Agreement does not provide for UE to have unilateral veto rights over adjustments it does not like. However, the Agreement does provide for parties to bring disputes before the Commission for resolution. This provision guarantees due process to all parties.

Q. Do you agree with Mr. Brandt's statements on page 3 that Commission acceptance of the Staff's and OPC's positions would repudiate the representations of the Commission and destroy the investment-backed expectations of the Company?

A. No. If the representations to which Mr. Brandt's refers are those cited by him on page 11 of his testimony, the Commission's acceptance of the Staff's and OPC's adjustments are not a repudiation. Acceptance of the proposed adjustments will not change whether the Agreement is in the public interest or whether it establishes just and reasonable rates. Acceptance of the proposed adjustments will not prevent UE from retaining a portion of its increased earnings or enjoying the benefits of a moratorium. Acceptance of the proposed adjustments should not prevent UE from remaining a strong company. All other arguments of the Staff aside, the magnitude of the Staff's and OPC's adjustments certainly should not destroy the investment decisions of a company with earnings of $290 million.

Q. Do you agree with Mr. Brandt's statements on page 5 of his testimony that the Staff and OPC have taken positions that completely repudiate their commitments under the Agreement?

A. No. It is impossible before-the-fact to devise reconciliation/monitoring procedures that comprehensively address all of the sharing credit concerns that may arise over the duration of the EARP. The EARP resulting from Case No. ER-95-411 is only the second alternative regulation plan approved by the Commission and the first for an electric utility.

Under the Staff's approach, which the Staff believes is consistent with the terms of the Agreement, items of concern are subject to discussion among the parties and if no reasonable agreement can be reached, the matter is to be taken to the Commission for a decision. In contrast, UE's approach is that its chosen method of accounting for a new or unanticipated item is controlling as long as it is consistent with "past practice" and/or Generally Accepted Accounting Principles (GAAP), as UE interprets these terms.

Q. Mr. Baxter, at pages 7-8, provides the Company's definition of the term "new category of costs." Does the Staff agree with the Company's definition?

A. No. The degree to which UE has confined its definition of this term is evident in the rebuttal testimony of Company witness Baxter. He states at page 7 of his rebuttal testimony that:

> "Under the terms of the Agreement, a new category of costs would arise in those rare situations where a particular category of cost that had never been previously included in any ratemaking proceeding might be incurred during one of the sharing periods and that category of costs was not, and could not, be foreseen by the Parties to the Agreement during the negotiations. It is quite difficult to pinpoint exactly what type of cost would fall under this category due to the limited circumstances when such an event would occur or was expected to occur." (Emphasis added)

Mr. Baxter, of course, is only able to speak to the Company's expectation.

As an example, he goes on to suggest that any cost which would be properly classified as fossil power plant maintenance, no matter how rare or extraordinary, would not be a new cost category because the Commission has addressed fossil power plant maintenance in previous ratemaking situations. In fact, he goes on to define the term "new cost category" by the limits of the Company's financial reporting system, starting at page 8, lines 3-7 of his rebuttal testimony as follows:

> . . . In fact, our financial reporting system does not track these subsets of costs separately because they are all part of the cost category known as fossil power plant maintenance. As a result, a category of cost must be considered in a broad sense under the terms of the Agreement. . . .

Q. How has the Staff define the term "new cost category?"

A. The Staff would define this term, which appears in section 3.f.viii. of the Agreement, as items arising in situations/circumstances significantly different than previously encountered by UE, or items the Commission has never addressed in a UE rate proceeding. The Staff believes this criteria applies to the Staff's adjustments for Year 2000 costs, deferred taxes resulting from the settlement of an Internal Revenue Service (IRS) audit, cash working capital benefits associated with the inability to make decommissioning trust fund deposits and reversal of the detrimental effects of territorial agreements. The Staff is not aware of any previous ratemaking proceedings involving UE where these items have been addressed

Q. At page 5 of his rebuttal testimony, Mr. Baxter states that an adjustment may arise due to the failure of UE to accurately follow accounting methodologies for calculating earnings. How does the Staff interpret other terms of the Agreement it has relied on to make its adjustments?

A. The other term of the Agreement that the Staff has principally relied on as justification for making its adjustments is the right to bring issues to the Commission that cannot be resolved between itself and UE relating to the operation and implementation of the EARP. These issues include, among other things, significant variations in the level of expenses associated with any category of cost, where a reasonable explanation has not been provided. The Staff interprets this provision, which appears in section 3.f.vii. of the Agreement, as allowing it to examine and challenge significant variations in expense levels from those previously incurred by the Company. To the extent that the Company's explanations do not provide, in the Staff's view, a reasonable basis for permitting recovery of the expense variation or for permitting the proposed treatment of the expense, i.e., for

example, expensing versus capitalization, an issue would exist between the Staff and the Company, which if the issue cannot be resolved by the Staff and the Company, the Staff would bring the item to the Commission for resolution. The Staff believes that this provision, section 3.f.vii. of the Agreement, provides justification for its adjustments regarding the significant variations in the level of computer costs and injuries and damages expense.

The right to bring issues to the Commission that cannot be resolved between the Staff and UE relating to the operation and implementation of the EARP also apply to disputes regarding the appropriate calculation of adjustments specifically identified in the Agreement and the Reconciliation Procedures. This right applies to the adjustments the Staff has proposed regarding the classification of certain advertising costs as merger related and the merger transaction and transition costs amortization. The inclusion of these costs through an amortization is specifically addressed in the Stipulation And Agreement in Case No. EM-96-149, which established a second EARP for an additional three years. This right also applies to the Staff's adjustment to current income tax, which is specifically identified in the Reconciliation Procedure, Attachment C to the Stipulation And Agreement.

Q. Is the Commission bound by the Company's interpretation of the language in the EARP, as discussed by Mr. Baxter on pages 5-6 of his rebuttal testimony?

A. No. UE's interpretation of the EARP language implicitly embodies fundamental regulatory policy changes in ratemaking compared to what has been practiced in the past. Examples include what the Company is proposing for sharing credit calculation purposes with regard to nonrecurring costs and potentially extraordinary costs (e.g., Year 2000 costs). The Company also seeks to make GAAP binding for rate making purposes (a position the Commission has repeatedly rejected in rate proceedings) and presumably would not allow prudence reviews (e.g., other computer costs, injuries and damages

expense, and year 2000 costs). UE did not make the Commission aware of these fundamental regulatory policy changes when it urged adoption of the Agreement. The Staff did not make the Commission aware of these fundamental regulatory policy changes because it was unaware of the Company's interpretation of the Agreement. The Staff strongly disagrees that the language of the Agreement calls for these changes in regulatory policy. In the Staff's opinion, neither the Commission nor the Staff is bound by UE's fundamental misinterpretation and misapplication of the EARP language.

Q. Are there additional problems caused by allowing UE to deviate from fundamental regulatory policies?

A. Yes. Allowing UE to charge to expense items partially related to generation operations that are capitalized by other utilities (i.e., major software enhancements) is unfair and inequitable. This position of UE is unfair and inequitable, particularly with respect to potential stranded cost concerns that electric utilities may face in the future if restructuring is implemented. The EARP should not preclude the Commission from applying consistent standards for all Missouri electric utilities unless specifically provided for in the Agreement.

Q. Was the Staff aware of the manner in which UE would interpret the language in the EARP, as expressed by Mr. Baxter at pages 5-6 of his rebuttal testimony?

A. No. In its draft proposal for the EARP supplied to the Staff in January 1995, UE apparently utilized the monitoring procedures language, in part, from the Southwestern Bell Incentive Regulation Experiment (SBIRE). In fact, the January 1995 UE proposal even states that it is "loosely based on the Southwestern Bell Plan." Based upon Staff members' memories and the documentation that has been located by the Staff, there is no evidence that the meaning and practical implications of the monitoring language at issue in this proceeding was ever substantively discussed among the parties, let alone is consistent with UE's rebuttal testimony on this matter.

Q. Over the duration of the SBIRE, did the Staff propose adjustments to the Southwestern Bell Telephone Company's (SWBT's) earnings as the Staff has proposed for the third year of the EARP?

A. Yes. In each year covered by SBIRE, the Staff proposed adjustments in addition to those specifically identified in the various documents comprising the SBIRE agreement. In each year of SBIRE, the parties were able to resolve any disputes that arose as a result of these adjustments without going to the Commission for a resolution. Over the duration of the SBIRE, SWBT never raised objections to the Commission or interpreted the provisions of the plan as UE has in this proceeding. This experience with the operation of SBIRE guided the Staff's understanding of the language in EARP. Staff witness Robert E. Schallenberg discusses this point in more detail in his surrebuttal testimony.

Q. Was it the Staff's goal to put in place an incentive mechanism to encourage the Company to operate more efficiently, as Mr. Brandt states on page 10 of his rebuttal testimony?

A. No. In fact, it should be noted that the word "incentive" does not appear in the title of EARP. The Staff's position is that alternative regulation is useful as a way of passing on the impacts of changes in the cost of service to customers in a faster and more efficient way than through rate proceedings under traditional regulation. However, alternative regulation is not a vehicle for utilities to recover costs in a way that is contrary to traditional regulation, such as up-front recovery of nonrecurring and extraordinary costs, as UE's position would have it. Alternative regulation is also not a means to deny utilities recovery of costs they would be entitled to under traditional regulation.

Q. Has this plan produced the efficiencies alluded to by Mr. Brandt at page 10, lines 14-19 of his rebuttal testimony?

A. No. A review of operating and maintenance expenses does not show any apparent increase in efficiency. Total electric operation and maintenance expenses have increased during each of the twelve month sharing periods since the beginning of the EARP, July 1, 1995. Even if one attempts to account for deviations in weather and the affect of the Callaway Plant refuelings by eliminating production expenses, efficiency gains are not evident. Electric operation and maintenance expenses, net of production expenses, for the twelve months ended June 1998, have increased by over 12% when compared to the twelve months ended June 1995, the year prior to the start of the EARP.

Q. Based upon Schedule 1 of the rebuttal testimony of UE witness Gary S. Weiss, has UE included adjustments in its calculation of the Earnings Report which are inconsistent with its own interpretation of the terms of the Agreement?

A. Yes. The Company interprets the Agreement to allow adjustments to its calculation of the Final Earnings Report in only three situations:

1. Inadvertent failure to comply with the accounting methodologies in the Agreement – simple error;

2. Deliberate failure to comply with the accounting methodologies in the Agreement – manipulation; or

3. Issues involving a new category of cost.

According to the Company's interpretation of what is within the bounds of EARP, none of these situations would apply to its adjustments to its books and records for the reversal of the deferred tax adjustments resulting from the Company's settlement of an IRS audit. This adjustment is not the result of a simple error in complying with the accounting methodologies. The accounting methodologies deal with the calculation of current period income tax and do not address prior years deferrals related to IRS audits. As Mr. Brandt assures the Commission on page 21 of his rebuttal testimony, he would not permit

manipulation and the Staff certainly does not believe the IRS audit adjustments are necessary to correct manipulation, as defined by UE.

Finally, on page 7 of his rebuttal testimony, Mr. Baxter states that new categories of costs are rare, unanticipated by the parties and related to categories of costs which had never before been addressed in ratemaking proceedings before the Commission. He indicated that none occurred during the third year or the EARP. The Company has certainly been audited by the IRS before. Therefore, according to the Company's interpretation, its adjustments to its books and records for the reversal of the deferred tax adjustments resulting from the settlement of an IRS audit should not be allowed since none of the situations which permit such an adjustment, pursuant to UE's position, apply.

Territorial Agreements

Q. Do you agree with the comments in the rebuttal testimonies of Mr. Brandt on pages 29 through 32 and Mr. Baxter on pages 39 through 44, regarding territorial agreements?

A. No. Both witnesses incorrectly argue that this adjustment is inappropriate based on the terms of the EARP and that the Commission has addressed the net revenues in the proceedings which approved the territorial agreements.

In Case No. EO-95-400, et al. involving the Black River Territorial Agreement, UE voiced no opposition to the Staff reexamination of the financial impacts of the territorial agreement at the time of the sharing credit calculations. On page 2, paragraph A of the Stipulation and Agreement in Case No. EO-97-6, et al., attached hereto as Schedule 1, involving the Macon Territorial Agreement, UE specifically agreed that the Staff has the right to reexamine the financial impacts of the territorial agreement as part of the annual sharing credit calculation for the EARP. The Staff's reservation of the right to reexamine the

financial impacts was not a unilateral act, contrary to the Company's implication. It was a provision of a Stipulation and Agreement between all the parties, including UE.

In the Orders, in both Case No. EO-95-400, et al. and Case No. EO-97-6, et al., the Commission made no rate determination regarding the net revenues associated with the territorial agreements. Neither of these cases were ratemaking proceedings.

The impact on revenues of territorial agreements has not been previously addressed by the Commission in a rate proceeding and is, therefore, clearly a new cost category. An item is not foreclosed from being addressed as a new cost category simply because the effects have been contained in the booked expense and revenue amounts in a previous year.

Q. Do you agree with the statements on page 9 and the calculations in Schedule 6 of the testimony of Mr. Weiss with regard to the territorial agreement adjustments?

A. No. Regarding the Black River Agreement, Mr. Weiss' own workpapers indicate that for the twelve months ended June 1996 the total level of customers, revenues and kwh sales were 10,461; $23,106,892 and 447,848,911; respectively. However, documents from Case No. EO-95-400, et al, indicate that the service area received by UE as part of the territorial agreement had only 2,992 customers, who produced only $2,600,463 of revenue and used only 36,097,168 kwh's. Mr. Weiss' calculations are simply incorrect and are not reflective of the circumstances in Case No. EO-95-400, et al. Mr. Weiss states that revenues and kwh sales have increased for the area exchanged with the Black River Cooperative by $276,000 and 22,680,000, respectively. This would represent over a 10% increase in revenues ($276,000 / $2,600,043) and a 63% increase in kwh sales (22,680,000 / 36,097,168), in only two years. During Case No. EO-95-400, the future growth in the Black River area was estimated by the Company as approximately 2% per year over the long-term horizon.

With regard to the area received by UE in the Macon Agreement, Mr. Weiss has identified an $1,313,009 offset to the loss in revenue for "excess energy sales." However, his workpapers show this amount was calculated by multiplying the June through August reduction in usage by the average of the highest cost of energy on UE's system during each hour of this period, $.108/kwh. This calculation arbitrarily assumes that all the reduction in usage during June through August will be available for sale at the average of the highest energy cost. There is no way to know the exact value of this energy. Even if the Company performed a simulated dispatch of the entire UE system under conditions which reflect the time in question, this calculation would be limited by the assumptions included in the simulation model. This calculation also fails to recognize that the reduction in usage for the non-summer months was priced at the average non-nuclear generation cost during the entire year ($.014/kwh). This average would need to be reduced to reflect the elimination of the higher cost generation during the summer months. Otherwise the highest cost of generation in the summer months will be included in the calculation twice.

Income Taxes

Q. Do you agree with Mr. Baxter's comments regarding income taxes on page 54 of his rebuttal testimony?

A. No. In my direct testimony, I addressed two distinct areas relating to income taxes. The first area dealt with the proper treatment of deferred income tax expense for accelerated depreciation, other deferred items and investment tax credit resulting from an audit of the Company by the IRS. This is discussed in my direct testimony on line 25 of page 7 through line 13 of page 12. The second area deals with a deduction for the debt portion of allowance for funds used during construction (AFUDC). This is discussed in my direct testimony on line 14 of page 12 through line 6 of page 13. The data request referred to by Mr. Baxter only relates to the AFUDC deduction and is unrelated to the deferred taxes

resulting from the IRS audit. The Company has not requested any additional information from me with regard to the treatment of the deferred taxes resulting from the IRS audit, either verbally or in a data request.

Q. When did you receive the data request from the Company regarding the AFUDC deduction?

A. The data request was received at the Commission's office in St. Louis on March 29, 1999. Since I was out of the office working at Laclede Gas Company, I did not become aware of the data request until March 30, 1999. I responded to the data request on the following day, March 31, 1999.

Q. What was requested and supplied in response to this data request?

A. UE requested a workpaper showing the Missouri jurisdictional allocated portion of a total Company amount, which UE itself had previously supplied to the Staff. In complete response to the data request, the Staff supplied a workpaper showing the total Company amount, the allocation factor, the development of the allocation factor and the Missouri Jurisdictional amount. The Staff discussed this item in its direct testimony and this data request did not ask for any additional support or explanation of the rationale behind the Staff's use of this amount in the calculation of current income tax. Therefore, it would be inappropriate for the Company to file supplemental testimony at some future date in this proceeding with regard to taxes, except to challenge the quantification of the amount the Staff has used in its tax calculation associated with the interest portion of AFUDC.

Q. In your direct testimony on page 12, you stated that in Staff Data Request No. 82 the Staff asked the Company to disaggregate the IRS adjustment into its separate components by provision for and amortization of the deferred taxes associated with other deferred items. You related that in response, the Company stated that a quantification of the

IRS adjustment for other deferred tax items was not developed separately by provision and amortization, and that quantifying the separate components would be extremely time consuming. You further explained that the Company responded that it could not provide a reliable estimate of the dollar value of the separate components and as a result, the Staff has calculated an estimate of the separate components and provided it to UE for the Company's critique. Has the Company replied to this data request?

A. Yes, the Staff submitted its data request to the Company on February 23, 1999 and the Company responded in detail on April 5, 1999. Based on this response, the Staff has calculated that $1,878,751 on a total Company basis, should be restored to the deferred tax reserve and be amortized over some future period. As discussed in my direct testimony, the Staff proposes to defer ratemaking treatment of this item until the first general rate or complaint case following the EARP approved in Case No. EM-96-149.

Q. How would current inclusion, rather than deferral, of the effects of the other deferred tax items change the Staff's calculation of the third year sharing credits and the permanent rate reduction?

A. If the Commission chose to include the effect of the other deferred tax items currently, the third year sharing credits and the permanent rate reduction would increase by $3,050,000 and $1,016,000 respectively. These amounts reflect an immediate amortization of the restored deferred tax reserve. A different amortization period would result in smaller increases in the third year sharing credits and the permanent rate reduction.

Q. Do you reserve the right to file supplemental surrebuttal testimony?

A. Yes. The Staff, after its review of UE's rebuttal testimony, submitted several data requests to the Company, to which it has not yet responded. Also, in his testimony, Mr. Baxter has reserved the right to file supplemental rebuttal testimony regarding territorial agreements and income taxes. Based on the Company's response to these data requests and

any supplemental rebuttal testimony filed by Mr. Baxter, I or another member of the Staff may need to file supplemental surrebuttal.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company For An Order Authorizing: (1) Certain Merger Transactions Involving Union Electric Company; (2) The Transfer of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company; And (3) In Connection Therewith, Certain Other Related Transactions	)	EM-96-149

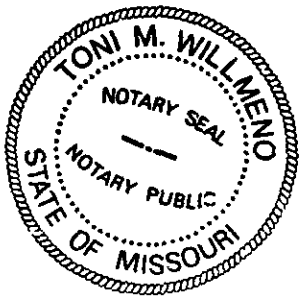
AFFIDAVIT OF STEPHEN M. RACKERS

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Stephen M. Rackers, is of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 14 pages to be presented in the above case; that the answers in the foregoing Surrebuttal 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.

Stephen M. Rackers

Subscribed and sworn to before me this 19th day of April, 1999.



Toni M. Willmeno
Notary Public, State of Missouri
County of Callaway
My Commission Expires June 24, 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Union Electric Company and Macon Electric Cooperative, Inc. for approval of a written Territorial Agreement designating the Boundaries of Each Electric Service Supplier Within Macon, Randolph, Monroe, Shelby, Adair, Linn, Knox, Sullivan, and Chariton Counties in Missouri and for Authority to Transfer Customers and Certain Property in Accordance With the Terms of Said Agreement.	)	Case No. EO-97-6
In the Matter of the Application of Union Electric Company for a Certificate of Convenience and Necessity Authorizing it to Own, Control, Manage, and Maintain an Electric Power System for the Public in Chariton, Linn, Monroe, Randolph Counties in Missouri.	)	Case No. EA-97-55
In the Matter of the Application of Union Electric Company to Transfer Transmission Facilities to Northeast Missouri Electric Power Cooperative.	)	Case No. EM-97-61

STIPULATION AND AGREEMENT

On July 5, 1996, Union Electric Company ("UE") and Macon Electric Cooperative, Inc. ("MEC" or "Macon"), submitted for filing a joint application for approval of a territorial agreement between the two companies. In conjunction with this application, on August 9, 1996, UE filed an application for a certificate of public convenience and necessity (Case No. EA-97-55) requesting the Commission authorize it to serve a portion of the area contained in the territorial agreement, and on August 14, 1996 UE filed an application requesting transfer of various facilities

from UE to Northeast Missouri Electric Power Cooperative as a result of the proposed territorial agreement (Case No. EM-97-61). On August 20, 1996 the Commission issued an Order Regarding Consolidation of Cases, Intervention, and Procedural Schedule. The Order of Consolidation consolidated the three cases, as approval or rejection of any one of the three cases would, logically, result in failure of the entire proposal, with Case No. EO-97-6 being the lead case. The Commission granted intervention to the Missouri Association of Municipal Utilities (MAMU) and North Central Missouri Electrical Cooperative (NCM).

In accordance with the procedural schedule established by Order, UE and MEC submitted the prepared direct testimony of Mr. Ronald W. Loesch and Mr. Wayne Hackman respectively.

On September 20, the Staff of the Commission submitted the prepared rebuttal testimony of Mr. B.J. Washburn, Mr. James L. Ketter, Ms. Susan G. Meyer, and Mr. Stephen M. Rackers.

On September 27, UE and MEC both submitted surrebuttal testimony prepared by the same witnesses who had prepared direct testimony.

The parties held informal discussions during the prehearing on October 1. In response to those discussions, the Staff, OPC, Macon and UE have reached the following Stipulation And Agreement to completely resolve these proceedings as follows:

A. UE agrees that the Staff has the right to re-examine the financial impacts of the territorial agreement as part of the annual sharing credits for UE's current Experimental Alternative Regulatory Plan approved by the Commission on July 21, 1995. Adjustments to book earnings, based on more current data, can be proposed at that time, if necessary.

B. Macon will reduce the availability charge for residential consumers by $1.00 per month for five (5) years effective upon the transfer of the first consumer from UE to Macon. Macon

will file with the Commission a certified copy of its Board Resolution reducing the availability charge within ten (10) days of the date of this Stipulation And Agreement. In the event that the Board of Directors Resolution is not received within this time period, the Stipulation And Agreement shall be null and void.

1. In the event the Commission accepts the specific terms of this Stipulation And Agreement, the parties waive their respective rights to cross-examine witnesses and to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1994; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986.

2. This Stipulation And Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and none of the signatories to this Stipulation And Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation And Agreement in any other proceeding, except as otherwise specified herein.

3. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rational for entering into this Stipulation And Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this

Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commissions's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or otherwise protected from disclosure.

4. This Stipulation And Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation And Agreement in total, this Stipulation And Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Commission issue its Order granting the relief requested by the Applicants in Case Nos. EO-97-6, EA-97-55 and EM-97-61 subject to the terms of this Stipulation And Agreement, and such further relief as may be appropriate and necessary to implement the Stipulation And Agreement.

Respectfully submitted,