

**CONFIDENTIAL**  
**FOR STAFF DISCUSSION PURPOSES ONLY**

**MEMORANDUM**

**TO:** David Rauch  
Ken Rademan  
Sam Goldammer  
Jay Moore  
Steve Rackers

Gordon Persinger  
Joan Wandel  
Doyle Gibbs  
Mark Oligschlaeger

**FROM:** Steven Dottheim SD

**DATE:** February 5, 1995

**SUBJECT:** Counterproposal To UE

Based on our internal meeting Tuesday, January 31, and some subsequent internal conversations, I have drafted the following outline of a counterproposal. It is my recollection that our conversations have not definitively set many of the parameters. Therefore, certain numbers utilized in this memorandum should be viewed with that in mind. I have attached a copy of our last revenue requirement stipulation and agreement with UE for reference purposes.

I also suggest that we keep in mind what I believe to be the negotiating experience with UE. If we forget to include an element in our package, and subsequently in our negotiations seek to raise the matter, UE will assert, if it is in its interest to do so, that this belated element is not what had been negotiated, and is not subject to discussion. Also, UE will imply, or outrightly charge, that we are not acting in good faith. Everything that we are ambiguous on and seek to clarify will be asserted by UE as not having been part of the settlement, i.e., assuming there is a settlement.

I note again that some of the rate reduction and one time refund numbers that we have discussed do not seem to me to be truly reflective of the size of the excess earnings that our mini-audit has identified. As a consequence of this and because we were so indefinite about these numbers, I have left these numbers blank in the section on the Staff's proposals.

It seems prudent to me to use checklists for what we want to accomplish regarding the elements of a settlement and the specific terms of the settlement. The components of what UE has proposed are as follows:

Exhibit No. 43  
Date 6-9-99 Case No. EO-96-14  
Reporter XF

**UE's PROPOSALS**

- (1) Incentive regulation
  - (a) Sharing grid
  - (b) Three years duration (through 1997) unless
    - (i) Earnings level falls below 10.70%, or
    - (ii) Unusual event occurs which would have a significant adverse impact on electric operations (See Joint Stipulation And Agreement respecting rate reduction reflecting end of the amortization of the Callaway phase-in deferrals, Case No. ER-93-52)
  - (c) Monitoring based on UE continuing to supply only what it apparently is presently providing to Staff, i.e., monthly surveillance reports and the quarterly report of rate of return on rate base
  - (d) ROE for sharing determination to be calculated by UE - UE proposes to us the reconciliation method it has set out in Attachment B to its proposal
    - (i) Period used in determining sharing will be calendar year
    - (ii) UE will submit its earnings report to the Commission and all parties to the agreement within 105 days after the end of each year
    - (iii) UE/Staff/OPC reserve the right to petition the Commission for resolution of disputed issues relating to the operation and implementation of the savings sharing plan
  - (e) Credit to customers will be based on KWH sales, and will be effectuated over a four-month period beginning June of the year after the period in review

(2) Nuclear decommissioning costs

- (a) Rates would be increased to reflect increased annual decommissioning costs (September 1, 1996 is UE's filing date for its next study), effective January 1, 1997, if UE's return on equity for 1996 is less than 10.7% based on UE's reconciliation procedure
- (b) If UE's return on equity for 1996 is not less than 10.7% based on UE's reconciliation procedure, then the updated annual decommissioning costs will be included in the calculation of UE's returns in determining whether sharing is to occur

**UE'S ONE TIME REFUND PROPOSAL**

- (3) One time refund to all customers of \$20 million
  - (a) Credit to all customers, based on KWH sales, over a four-month period beginning with the billing cycle following the entry of a final nonappealable order of the Commission
  - (b) Sharing grid

<u>Earnings Level</u>	<u>UE</u>	<u>Customer</u>
11.70% to 12.95% ROE	100%	0%
12.96% to 13.70% ROE	75%	25%
13.71% to 14.45% ROE	50%	50%
14.46% to 15.20% ROE	25%	75%
15.21% ROE and above	0%	100%

**UE'S RATE REDUCTION ALTERNATIVE PLAN**

- (3') Rate reduction solely to Primary Service customers of \$10 million
  - (a) Tariffs to implement this reduction would become effective with the first billing cycle following the entry of a final nonappealable order of the Commission

(b) Sharing grid

<u>Earnings Level</u>	<u>UE</u>	<u>Customer</u>
11.70% to 13.20% ROE	100%	0%
13.21% to 13.95% ROE	75%	25%
13.96% to 14.70% ROE	50%	50%
14.71% to 15.45% ROE	25%	75%
15.46% ROE and above	0%	100%

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The following Staff "proposal scenarios" reflect our discussions, as best as I can remember them with help from some of you who I have visited with about these matters. Those items for which I do not recall our discussions, we did not engage in any discussions regarding, or our discussions were indefinite, I have plugged in a term or I have left a "fill-in the blank" device to signify that we need to arrive at a term. I believe that those Staff members who have been involved with monitoring the Southwestern Bell (SWBT) experiment should be consulted before we submit any proposal to UE. They should be able to provide guidance from our own experience on such matters, in particular, respecting UE's Reconciliation Procedure which is Attachment B to its proposals.

**STAFF'S PROPOSALS**

(1) Incentive regulation

(a) Sharing grid

(b) Three years duration (through 1997) unless

- (i) Earnings level falls below 10.00%, or
- (ii) Unusual event occurs which would have a significant adverse impact on electric operations, such as an act of God; or an extended outage or shut-down of a major generating unit or units; or a significant change in the federal or state tax laws

(c) Monitoring based on UE providing to Staff and OPC each month the reports and data that Staff and OPC identify must be provided as part of

any settlement agreement - also, Staff and OPC will follow-up with data requests, meetings, and interviews, as need be

- (d) ROE for sharing determination calculated by using methodology agreed upon by signatories to the settlement agreement (See monitoring procedures for SWBT experiment as a starting point for details)
  - (i) Period used in determining sharing will be calendar year
  - (ii) Ninety days after the calendar year, a preliminary earnings report along with a proposed sharing report will be submitted by UE - a final earnings report and proposed sharing report will be submitted within 105 days after the end of the calendar year - this report will provide the actual results of the year to be examined
  - (iii) UE's earnings will be adjusted to normalize the effects of any sharing credits from the prior year that are embedded in the earnings
  - (iv) If Staff/OPC find evidence that operating results have been manipulated to reduce amounts to be shared with customers or to misrepresent actual earnings or expenses, they may file a complaint with the Commission requesting that a full investigation and hearing be conducted regarding their complaint
  - (v) UE/Staff/OPC reserve the right to bring issues which cannot be resolved by them and which are related to the operation or implementation of the incentive plan, to the Commission for resolution - examples include disagreements as to the mechanics of calculating the monitoring report, alleged violations of the settlement agreement, or alleged manipulations of earnings results - an allegation of

manipulation could include significant variations in the level of expenses associated with any category of costs where no reasonable explanation has been provided - the Commission will determine in the first instance whether a question of manipulation exists and should be heard

- (vi) Staff/OPC have the right to present to the Commission concerns over any category of cost that has been included in UE's monitoring results and has not been included previously in any UE ratemaking proceedings
- (vii) Differences among UE/Staff/OPC should be brought to the Commission's attention for guidance as early in the process as possible
- (viii) The final report will be filed by April 15 (or the first business day thereafter) following the monitoring period - signatory parties have 30 days after this report is filed to provide notice that there may be areas of disagreement not previously brought to the attention of the Commission that need to be resolved
- (ix) Based on the final determination by the Commission, earnings will be restated, where necessary, and credits to customers will be effectuated, based on \_\_\_\_\_, by applying credits in the \_\_\_\_\_ billing period
- (x) Nothing in the settlement agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right of access to information and any statutory obligation

(2) Nuclear decommissioning costs

- (a) Rates would be increased to reflect increased annual decommissioning costs, if UE's return on equity for 1996 is less than 10.0% - amount of increase in decommissioning costs and determination of UE's return on equity based on agreement of signatories to this settlement agreement and the parties to the decommissioning case, or resolution by the Commission
  - (b) If UE's return on equity for 1996 is not less than 10.0%, as determined based on agreement of the signatories to this settlement agreement or resolution by the Commission, then the updated annual decommissioning costs will be included in the calculation of UE's returns in determining whether sharing is to occur
- (3) Full scale Staff audit of UE will commence March 1 and will continue unless a settlement agreement is reached with UE to which no interested entity will appeal a final Commission order

**STAFF'S SHARING GRID ALTERNATIVES**

(4) Alternative sharing grids

(a)

<u>Earnings Level</u>	<u>UE</u>	<u>Customer</u>
11.70% to 12.50% ROE	100%	0%
12.51% to 13.25% ROE	40%	60%
13.26% to 14.00% ROE	50%	50%
14.01% to 14.75% ROE	25%	75%
14.76% ROE and above	0%	100%

(b)

<u>Earnings Level</u>	<u>UE</u>	<u>Customer</u>
11.70% to 12.50% ROE	100%	0%
12.51% to 14.25% ROE	50%	50%
14.26% ROE and above	0%	100%

**STAFF'S RATE REDUCTION/REFUND ALTERNATIVES**

(5) Rate reduction to all customers of \$ \_\_\_\_\_ million

(a) Tariffs to implement the reduction would become effective with the first billing cycle following the entry of a final nonappealable order of the Commission, i.e., Staff will not enter into a settlement agreement unless a settlement agreement is reached to which no interested entity will appeal a final Commission order

(5') One time refund to all customers of \$ \_\_\_\_\_ million and rate reduction to all customers of \$ \_\_\_\_\_ million

(a) Credit to all customers will be effectuated, based on \_\_\_\_\_, by applying credits in the \_\_\_\_\_ billing period following the entry of a final nonappealable order of the Commission, i.e., Staff will not enter into a settlement agreement unless a settlement agreement is reached to which no interested entity will appeal a final Commission order

(b) Tariffs to implement the reduction would become effective with the first billing cycle following the entry of a final nonappealable order of the Commission, i.e., Staff will not enter into a settlement agreement unless a settlement agreement is reached to which no interested entity will appeal a final Commission order

(5") One time refund to all customers of \$ \_\_\_\_\_ million and January 1, 1996 rate reduction to all customers of \$ \_\_\_\_\_ million



- (a) Credit to all customers will be effectuated, based on \_\_\_\_\_, by applying credits in the \_\_\_\_\_ billing period following the entry of a final nonappealable order of the Commission, i.e., Staff will not enter into a settlement agreement unless a settlement agreement is reached to which no interested entity will appeal a final Commission order
- (b) Tariffs to implement the reduction would become effective for service rendered on or after January 1, 1996 - Staff will not enter into a settlement agreement unless a settlement agreement is reached to which no interested entity will appeal a final Commission order

SD:ceb

cc: Rob Hack  
Bob Schallenberg

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Union Electric Company            )    Case No. *ER-93-52*

JOINT STIPULATION AND AGREEMENT

As a result of discussions among the parties hereto, said parties hereby submit to the Commission for its consideration and approval the following:

1. Commencing with electric service provided on and after January 1, 1993, Union Electric Company shall reduce its annual Missouri electric revenues by \$40 million. The allocation of this decrease among customer classes shall be as set forth in Appendix 1 hereto.

2. The revenue decrease within each rate classification shown on Appendix 1 shall be accomplished (subject to rounding) by applying a levelized percentage to each class rate value, calculated to produce the revenue adjustments set forth in Appendix 1, but (with the exception of the lighting rates) without adjustment to existing class Customer Charges. Rider B credit rate values shall receive the same percentage adjustment as that applicable to the Primary/Interruptible Service Classification.

3. The resulting rate values to which the parties agree are shown on the tariff sheets which are attached hereto as Appendix 2. Said tariff sheets shall be filed with the Commission on or before November 16, 1992, if the Commission has approved this Joint Stipulation and Agreement by that date.

**FILED**

AUG 24 1992

PUBLIC SERVICE COMMISSION

4. Prior to September 1, 1994, no party shall file with the Commission, or encourage or assist in any filing, for a general increase or decrease in Union Electric's Missouri electric revenues; provided, however, that UE may file for a rate increase prior to that date if its return on Missouri electric rate base (as shown in one of its quarterly 12 month rate of return studies) falls below 9.5%; or if an unusual event which would have a significant adverse impact on electric operations occurs, such as (i) an act of God; or (ii) an extended outage or shut-down of a major generating unit or units; or (iii) a significant change in the federal or state tax laws; or (iv) the adoption by the accounting profession and/or the Securities and Exchange Commission of a significant change in Generally Accepted Accounting Principles and/or regulations applicable to public utility accounting for post retirement benefits other than pensions, beyond what was contemplated in the Commission's Accounting Authority Order of June 12, 1992 in Case No. EO-92-179. In the event Union Electric Company does file for a rate increase pursuant to any of the above exceptions, any other party may file for or may recommend a lesser increase or a general decrease in the Company's Missouri electric revenues.

5. The "moratorium" period specified in paragraph 4 shall also apply to any filing with the Commission for a change in the Company's electric rates pursuant to § 393.292 RSMo. to reflect a change in the projected level or annual accrual of funding for decommissioning the Callaway nuclear plant.

6. Notwithstanding paragraph 4, any party may file with the Commission a request for consideration of changes in rate design and/or other tariff provisions; provided, however, that no such change shall result in any shift of revenues between classes, and provided further that if a request for consideration of changes in rate design and/or other tariff provisions is filed, any party may oppose such request and shall not be deemed to have consented to the establishment of a new docket to consider such request or to the proposals of the party making such request.

7. Notwithstanding paragraph 4, any party may at any time file a request with the Commission for an Accounting Authority Order, provided that such filing would not result in a change in the Company's electric rates prior to August 1, 1995, in the event of a general rate increase case (i.e., prior to the time a general rate increase case would likely be completed after termination of the filing "moratorium" specified in paragraph 4 above), or prior to the issuance of a Report and Order in a general rate decrease case filed after August 31, 1994. Any party may oppose any such request for an Accounting Authority Order, and shall not be deemed to have consented to the establishment of a new docket to consider such request or to the proposals of the party making such request.

8. The Staff shall have the right to submit to the Commission, in memorandum form, an explanation of its rationale for entering into this Joint Stipulation and Agreement and to provide to the Commission whatever further explanation the Commission requests. Such memorandum shall not become a part of the record of

this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Joint Stipulation and Agreement. It is understood by the signatories hereto that any rationales advanced by the Staff in such a memorandum are its own and are not acquiesced in or otherwise adopted by UE or any other party hereto.

9. This Joint Stipulation and Agreement represents a negotiated settlement for the sole purpose of determining reasonable electric rates for Union Electric Company. Except as specified herein, the parties to this Joint Stipulation and Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Joint Stipulation and Agreement in any future proceeding, or in any proceeding currently pending under a separate docket, and/or in this proceeding should the Commission decide not to approve the instant Joint Stipulation and Agreement, or in any way condition its approval of same; provided, however, that in the pending cases regarding the Company's proposed sales of its Iowa and northern Illinois service areas, any party may argue what impact (if any) the general rate case moratorium has on the allocation of costs and benefits from such sales between Company customers and shareholders, and no party is precluded from making any argument regarding the terms of these sales.

10. None of the parties to this Joint Stipulation and Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service

methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Joint Stipulation and Agreement, or for which provision is made in this Joint Stipulation and Agreement.

11. The provisions of this Joint Stipulation and Agreement have resulted from negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Joint Stipulation and Agreement in total, it shall be void and no party shall be bound, prejudiced or in any way affected by any of the agreements or provisions hereof.

Respectfully submitted,

STAFF OF THE MISSOURI PUBLIC  
SERVICE COMMISSION

by: *Steven Dotson*

UNION ELECTRIC COMPANY

by: *Paul A. Ogden*

ASARCO, Inc. and THE DOE RUN  
COMPANY

by: *Kobin Fulton by L.R.*

OFFICE OF PUBLIC COUNSEL

by: *Martha H. Hight*

INDUSTRIAL INTERVENORS<sup>1</sup>

by: *Robert C. Johnson / P.T.*

COMINCO AMERICAN COMPANY

by: *Paul D. Lamb*

DATED: *August 27, 1992*

<sup>1</sup>Anheuser-Busch, Inc.; Chrysler Corporation; Continental Cement Company; Emerson Electric Company; Ford Motor Company; General Motors Corporation; Holnam, Inc.; MEMC Electronic Materials Co.; Mallinckrodt, Inc.; McDonnell Douglas Corporation; Monsanto Company; Nooter Corporation; and Pea Ridge Iron Ore Company.

UNION ELECTRIC COMPANY  
MISSOURI REVENUE ADJUSTMENT

12 MONTHS ENDING JUNE 1992 REVENUES(1)  
(\$1,000)

<u>CUSTOMER CLASS</u>	<u>REVENUES @ 11/30/90 RATE LEVELS</u>	<u>REVENUES @ ADJUSTED RATE LEVELS</u>	<u>REVENUE REDUCTION</u>	<u>% REDUCTION</u>
RESIDENTIAL	\$720,271	\$702,480	(\$17,791)	-2.4700%
SMALL GENERAL SERVICE	\$214,153	\$208,863	(\$5,290)	-2.4700%
LARGE GENERAL SERVICE	\$345,605	\$337,068	(\$8,536)	-2.4700%
PRIMARY/INTER SERVICE	\$315,266	\$307,479	(\$7,787)	-2.4700%
LIGHTING	\$24,129	\$23,533	(\$596)	-2.4700%
TOTAL	\$1,619,423	\$1,579,423	(\$40,000)	-2.4700%

(1) Reflects weather adjustment and APL acquisition.

UNION ELECTRIC COMPANY

MISSOURI NORMAL REVENUES  
FOR 12 MONTHS ENDING JUNE 1992  
(\$1,000)

	<u>1992 REVENUES</u>	<u>WEATHER ADJ.</u>	<u>A P &amp; L ADJ.</u>	<u>TOTAL</u>	<u>REVENUE DISTRIBUTION</u>
RESIDENTIAL	\$714,746	-\$5,710	\$11,235	\$720,271	44.5%
SMALL GENERAL SERVICE	\$212,076	-\$703	\$2,780	\$214,153	13.2%
LARGE GENERAL SERVICE	\$340,039	-\$158	\$5,724	\$345,605	21.3%
PRIMARY/INTER SERVICE	\$305,302	-\$195	\$10,159	\$315,266	19.5%
LIGHTING	\$23,926	\$0	\$203	\$24,129	1.5%
TOTAL	\$1,596,089	-\$6,766	\$30,100	\$1,619,423	100.0%



UNION ELECTRIC COMPANY  
ARKANSAS POWER AND LIGHT ANNUALIZATION  
12 MONTHS ENDING JUNE 1992  
(\$1,000)

	July 1991 through Feb. 1992	Mar. 1 through Mar. 12, 1992	TOTAL	ADJUSTED TOTAL*
RESIDENTIAL	\$10,753	\$482	\$11,235	\$11,235
SMALL GENERAL SERVICE	\$2,665	\$115	\$2,780	\$2,780
LARGE GENERAL SERVICE	\$5,578	\$211	\$5,789	\$5,724
PRIMARY SERVICE	\$9,780	\$404	\$10,184	\$10,159
LIGHTING	\$194	\$9	\$203	\$203
TOTAL	\$28,970	\$1,221	\$30,191	\$30,100

\* Reflects billing reductions to certain customers formerly served under AP & L's Large General Service and Large Power Service Rates.