

June 27, 2001

VIA HAND DELIVERY

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

FILED³
JUN 27 2001
Missouri Public
Service Commission

Re: MPSC Case No. EM-96-149

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company, d/b/a AmerenUE, ("the Company) please find the Company's **Amended Emergency Motion to Temporarily Stay Expiration of the EARP and to Establish a Schedule for Further Proceedings and for Expedited Treatment**. This pleading is being filed pursuant to the Commission's Order Directing Filing, issued on June 26, 2001.

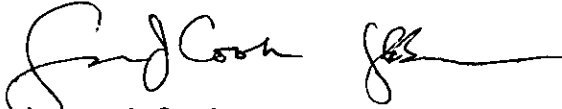
This pleading contains "Proprietary" information and is therefore filed pursuant to the Protective Order in this case. Therefore, the filing includes the following:

1. An original and eight copies of the pleading with the Proprietary information removed;
2. One copy of the pages which contain information which has been designated as Proprietary. Those pages are clearly designated as "Proprietary" and are filed in a separate envelope.
3. Six copies of the complete pleading, filed under seal for the Regulatory Law Judge and Commissioners. The Proprietary pages have been stamped "Proprietary," and the Proprietary information is set apart by two asterisks before and after the information, and underlined. These six copies are filed in one separate envelope.

Mr. Dale Hardy Roberts
Page 2
June 27, 2001

Kindly acknowledge receipt of this filing by stamping a copy of the enclosed letter and returning it to me in the enclosed self-addressed envelope.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James J. Cook", followed by a horizontal flourish.

James J. Cook
Managing Associate General Counsel

JJC/dhb
Enclosures

cc: Ms. Shelly Register
Parties on Attached Service List

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JUN 27 2001

Missouri Public
Service Commission

In the Matter of the Monitoring 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)

Case No. EM-96-149

**AMENDED EMERGENCY MOTION OF UNION ELECTRIC COMPANY
TO TEMPORARILY STAY EXPIRATION OF THE EARP AND
TO ESTABLISH A SCHEDULE FOR FURTHER PROCEEDINGS AND
FOR EXPEDITED TREATMENT**

PRELIMINARY STATEMENT

Union Electric Company, d/b/a AmerenUE ("UE"), respectfully requests that the Public Service Commission of the State of Missouri (the "Commission") agree to¹ a temporary stay of the expiration of the experimental alternative regulation plan ("EARP") currently in effect so that the Commission, the Staff of the Commission ("Staff"), the Office of Public Counsel ("OPC"), and other parties can consider a proposal by UE for further proceedings that we believe is vitally important not only to the interests of the parties to this proceeding, but to fundamental concerns for the reliable and efficient provision of electricity to Missourians in the near and long term – concerns that implicate the core mission of this Commission. Indeed, the Commission has been quite clear about how it understands its mission:

¹As the Commission knows, under Missouri law (which we have repeatedly cited in other filings in this matter) it is well-established that the Commission does not have the power to unilaterally order an EARP into existence, order modifications to an EARP, or order any extension of an EARP. Though this EARP was agreed to by the Staff, OPC, UE, and others, and then adopted by the Commission, as a matter of law only the agreement of the Commission and UE is necessary to establish or modify an EARP governing UE. Hence this motion seeks the *agreement* of the Commission to a temporary stay of the end of the EARP.

We will:

- ensure that Missourians receive safe and reliable utility services at just, reasonable, and affordable rates;
- support economic development through either traditional rate of return regulation or competition, as required by law;
- establish standards so that competition will maintain or improve the services provided to Missourians

MISSION STATEMENT, Missouri Public Service Commission Website

(www.psc.state.mo.us/mission.asp).

Notwithstanding the clarity and, frankly, the common sense of the Commission's vision of its mission, it has become apparent that the Commission's Staff is increasingly divorced from the vision of the officials they serve. This conclusion is inescapable when one compares the Commission's MISSION STATEMENT with the Staff's candid descriptions of their perspective, which show in some instances an extreme narrowness of focus devoid of any concern for long-term policy considerations, and in other instances a simple manipulation of numbers to produce the lowest results possible.

For example, in discovery the Staff has frankly confessed, "Staff contends that an analysis of how customers of UE have fared during the EARP relative to customers of similarly situated utilities under traditional cost of service regulation *should not, or need not*, be included in an assessment of whether the EARP should be continued as is, continued with changes, or discontinued." Staff's Responses to Union Electric Company's First Set of Interrogatories and First Request for Production of Documents, Response No. 27 (Jan. 25, 2001) (emphasis added).

Similarly, the "Staff does contend that any broader macroeconomic benefits in addition to customer benefits of the EARP *need not* be included in an assessment of whether the EARP should be continued as is, continued with changes, or discontinued." *Id.*, Response No. 29 (emphasis added).

Likewise, the Staff does not believe that, in the words of the Commission's Mission Statement, "ensur[ing] . . . reliable utility services" in the future has any implications for rate setting now. As they put it, "Staff does contend that UE's likely capital investment in generation, transmission, and distribution assets over the next three to five years *need not* be included in an assessment of whether the EARP should be continued as is, continued with changes, or discontinued." *Id.*, Response No. 31 (emphasis added).

When asked the obvious question, to "[i]dentify all U.S. utilities which, based on your current knowledge, are subject to incentive or performance-based regulation," the Staff responded: "Staff has performed no study or analysis of the regulation of utilities outside the state of Missouri." *Id.*, Response No. 32. Their reason? "Staff does not hold the belief that incentive or performance-based regulation is a condition of regulation of each Missouri utility." *Id.* Of course the question is not whether the Staff "believes" that performance-based regulation is a "condition" of regulation (whatever that means), but whether the Staff has a duty to advise the Commission of other possibly successful approaches to regulating utilities, advice that logically should be informed by what is going on in other states.

Clearly, this state of affairs has troubling implications not only for the principles that will govern ratemaking in Missouri, but for how those principles, and other judgments to be made in proceedings before this Commission, will shape the energy horizon for Missouri. We believe that *now* -- at this time, at this point in the regulation of UE, and at this point in the development of a sensible energy policy for Missouri -- it is vitally important to reintroduce *the Commission's* perspective on the fundamental principles of utility regulation, including the rate methodologies and other analytical steps that are the building blocks of energy rate-setting and policymaking. Having *the Commission's* thinking mold Staff initiatives from the beginning, rather than the

other way around, through rulings on the fundamental principles governing rate methodologies and analyses *before* the Staff files a rate case would be immensely valuable to the ultimate resolution of a ratemaking for UE, perhaps drawing the parties closer together and making a settlement a real possibility, or at the very least limiting the prospects of encumbering a rate plan for UE with extremely contentious litigation. But the broader benefits of what we will propose here are equally great, for the Commission making its mind known on fundamental policy issues with respect to the regulation of Missouri's largest utility will have broad implications for the development of a sensible energy policy for Missouri at large.

This Emergency Motion, and the expedited treatment² we seek, is necessitated by the Staff's apparent belief that they have an obligation to file a rate reduction case against UE immediately upon the expiration of the EARP, that is, on July 2, 2001. Only a stay of the expiration of the EARP can, in the Staff's view, remove this obligation and forestall the filing of the Staff's rate reduction case. This stay will provide time for both the Commission, the Staff, OPC, and other parties to consider what may be an innovative proposal, which we set out below, for further proceedings concerning UE's future rates and the regulatory structure that will govern the company going forward. In addition, given the unprecedented developments we see in the electric power industry today, as the events in California have illustrated, we offer this proposal in the recognition that breaking out of "the same old, same old" way of doing things might not only not be such a bad thing, but may be called for by our circumstances. Moreover, the issues to be addressed in the proceedings we propose below center on important questions of the methodology by which rates are set, and on the policy premises that shape such methodology,

² The rationale for expedited treatment required under 4 CSR 240-2.080(17) is set out throughout this Motion. For the convenience of the Commission, Attachment A summarizes those statements required by the Rule.

and which ultimately determine how a ready and reasonably priced supply of electricity is to be secured for Missourians of this, and succeeding, generations.

THE NEED FOR THE STAY AND COMMISSION ACTION ON METHODOLOGY AND POLICY QUESTIONS

THE FINANCIAL IMPACT

It is important to recognize that, though we believe Ameren to be a fundamentally healthy company, as it stands today, the financial community views the company as a somewhat below-average performer. In comparing Ameren's common stock performance to that of the 70 companies included in the Edison Electric Institute's ("EEI") Index of Investor-Owned Electrics³ over the three years which ended in March 2001, the median stock performance of those companies was +1.8 percent, while Ameren's was -2.8 percent. That performance earned Ameren a meager ranking of 42nd out of those 70 companies. *See* Attachment B. ** _____

³ Those 70 companies are the investor-owned electric utilities affiliated with EEI.

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UNDERLYING POLICY AND METHODOLOGY CONFUSION

Moreover, though the Staff, OPC, and UE have pursued good faith negotiations to see if a new EARP could be fashioned by agreement, the parties remain far apart, and the filing of such a severe rate reduction case will chill prospects for a settlement of this matter. To be sure, the

⁴**

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parties are far apart due to substantive differences concerning the proper application of the various methodologies by which just and reasonable rates can be lawfully determined, reflecting fundamentally different perspectives on how reliable and cost-efficient electric power is to be provided to Missourians. Indeed, at the root of these differences lie policy questions of the most fundamental sort, and we reluctantly must observe that the Staff's approach – and in some instances total blindness to the ramifications of these policy issues -- has resulted in the Staff drifting far afield from the Commission's own understanding of its mission. ** _____

_____ **

In one sense, we are all fortunate that these issues are coming to a head now. In California wrongheaded policies were pursued, and state government ignored the danger signals of the consequences of those policies for far too long, until skyrocketing electric bills and rolling blackouts burst on consumers with a vengeance. In Missouri, by contrast, we are coming to the close of six years under the EARP marked by a growing efficiency in the provision of electricity, the improved performance of UE, along with the lowest effective rates for electric power in the region. *See Attachment D.* We believe that the EARP has unmistakably demonstrated that the economics of electricity does not have to be a zero-sum game. For consumers to win, a utility does not have to lose, and vice versa.

It is undeniable that the EARP regime has delivered over \$425 million in direct benefits to UE's customers in the form of rate reductions and credits, with no reliable evidence that cost-of-service regulation could have delivered such benefits in a comparable time. Average rates of

UE's customers were 4.8 percent *lower* in 1999 than they were in 1994, before the EARP was implemented, while average rates of electric utilities in the West-North-Central Region⁵ over the same time *increased* by 0.5 percent and those in the East-North-Central Region⁶ decreased by only 2.3 percent. Notably the EARP induced a reduction in UE's cost of service, while maintaining UE's quality of service from the perspective of its customers. Traditional cost-of-service regulation would have only *penalized* such a reduction. It is hardly surprising that forms of incentive or performance-based regulation ("PBR") for electric utilities like the EARP are in place in 16 states,⁷ and the favorable opinion of regulators familiar with it, along with its even more well-established use in telecommunications regulation, strongly suggests widespread support for PBR. As FERC has put it, "we believe that PBR, especially if accompanied by explicit and well-designed incentives, may provide significant benefits over traditional forms of cost-of-service regulation."⁸

Surely an unbiased evaluation of these accomplishments in light of the Commission's own statement of its mission, quoted above, must give the EARP high marks. The EARP is not perfect, and so may not deserve an A+, but it clearly has been a fine example of creative regulatory policymaking, harnessing some of the elements of competition to produce "just, reasonable, and affordable rates" while improving the operations of UE.

What *is* surprising is that, notwithstanding these facts, the Staff in its February filing found so little of value in the EARP, and now is prepared to kill this "goose that lays the golden eggs" **

⁵ This region includes all utilities in Iowa, Kansas, Minnesota, Missouri, and South and North Dakota.

⁶ This region includes all utilities in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

⁷ Those 16 states are Alabama, California, Colorado, Florida, Iowa, Illinois, Louisiana, Maine, Massachusetts, Missouri, Mississippi, Montana, New York, North Dakota, Oregon, Rhode Island, South Dakota, and Washington.

⁸ FERC, *Order 2000* at 538.

** The answer

lies in what we have already pointed out to be the apparent divergence between *the Staff's* “beliefs” and what one would think would be the full, fair efforts of a Staff committed to support the Commission in fulfillment of all aspects of *its* mission. This divergence has shaped what we see as the fundamental flaws in the Staff's harsh, unfounded criticism of the EARP and in key errors of their cost of service calculations.

As the Commission may recall, this divergence was evident in the proceedings concerning the credit for the Third Sharing Period. For example, one Staff witness there, Mr. Rackers, was asked, “[H]aving more efficient utilities in the state of Missouri is good for economic development in the state of Missouri, isn't it?” Transcript of Proceedings, Hearing, at 391 (June 2, 1999). His response: “I have to say I don't know.” *Id.* Mr. Rackers was shown the Commission's Mission Statement, and candidly admitted that “I would have to say that I didn't consider that mission statement when I wrote my testimony.” *Id.* at 394. Then this exchange followed:

Q. My question is, when Staff then comes before the Commission and advances any particular position, it does so with the idea that that position is congruent with the full mission of the Commission?

A. When I advance the statements or, excuse me, the positions that I have in my testimony, I did not consider the full mission as it's labeled – excuse me – as it's discussed there.

...

Q. You do not know whether one of the missions of the Commission before you prepared this testimony was to support economic development?

A. That's correct.

Id. at 394, 396.

The Staff's instinctive way of thinking about energy regulatory matters is clearly not just a matter of not having read the Commission's MISSION STATEMENT. For example, in his deposition, Mr. Rackers acknowledged that "the Commission views it in the public interest that UE remain a strong company." Deposition of Stephen M. Rackers, at 64 (May 18, 1999). But when asked, "[D]oes the staff agree that it's in the public interest that UE remain a strong company?" *id.*, Mr. Rackers curiously demurred. "From my point of view," he said, "it depends on what you mean by a strong company." *Id.* A strong company to Mr. Rackers was simply a "viable company," which "is able to continue to provide service to its ratepayers." *Id.*

The broader policy implications of Mr. Racker's idea of what is a sufficiently strong utility is made plain by his further elaboration under questioning:

A. Let's say CIPSCO bought UE. If CIPSCO could provide safe and adequate service at a reasonable cost, I think that's – I don't think it would matter if UE remained a strong company.

Q. As long as UE is this much, and let the record reflect I'm about a quarter inch apart with my thumb and index finger, from Chapter 11, the Commission is indifferent?

A. I don't think the –

Q. Let the record reflect he had a quarter inch.

A. I don't know how this would translate into their viability as a utility, and their ability to offer service at a reasonable price.

Id. at 130-31. *See also* Deposition of Robert Schallenberg at 33-35 (May 12, 1999) (observing that the loss of UE's corporate independence by its acquisition by a company from outside Missouri was not important from the perspective of Missouri electric customers).

It is, of course, possible that there really is no divergence between the thinking of the Staff and the Commission on critical issues shaping electric power regulation in Missouri. Even if that is true, the proceedings we propose below still merit adoption by the Commission, for they will either make clear that such divergence does not exist, or end such divergence by making manifest the Commission's paramount judgments about vital matters of regulatory policy.

PROPOSAL FOR FURTHER PROCEEDINGS

In overview, our proposal consists of two parts: (a) a 120-day delay of the expiration of the EARP (including a delay in the filing of any rate reduction case by the Staff or any public comment by the parties concerning such a rate reduction) during which the parties will make detailed proposals to the Commission concerning the interim issues proceeding we propose, at the conclusion of which the Commission will decide whether, and in what manner, it wishes to have such proceedings, and (b) if the Commission does agree with us, a proceeding in which the parties will present testimony, briefs, and live cross-examination in a hearing addressing fundamental issues on which an adequate energy policy for Missouri must rest, including certain key methodology issues that will shape any ratemaking for UE.

More specifically, we respectfully propose the following:

1. Given the urgency of this Motion, and the unavoidably short time frame to consider it, the Commission would immediately order the Staff, OPC, or any other party who wishes to respond to this Motion to file such a response under seal by close of business on Wednesday, June 27. While this Motion is pending, all parties will also be expected to honor and preserve the confidentiality of the subjects under consideration, especially the fact and magnitude of any rate reduction that may ultimately be proposed.

2. By the close of business on June 29,⁹ the Commission will agree to a 120-day delay in the expiration of the EARP, and enter an order to that effect. This order will also provide for a continuing duty on the part of all parties to maintain the confidentiality of the subjects under consideration, **

⁹ Should the Commission wish to have any form of *in camera* hearing before ruling on this Motion, we will be happy to make ourselves available for that purpose.

_____ ** The order will also include a schedule for the proceedings over the subsequent 120-days. We suggest the following schedule:

- On or before August 24, UE will file its proposed issues to be addressed in the interim issues proceeding, including an explanation of why those issues merit the consideration of the Commission in this proceeding. Such issues may include how various methodologies to estimate UE's cost of equity are to be undertaken, what comparisons to the return of comparable companies need to be part of the ratemaking, and so on.
- On or before September 21, the Staff, OPC, and other interested parties will file any response to the issues proposed by UE they wish to make and issues they propose to be addressed in this proceeding, along with their justification for proposing those specific issues.
- On or before October 3, UE will file its response to the proposals made by the other parties.
- Sometime before October 17, the Commission will hold a hearing on the issues to be addressed. We would suggest that this hearing be more of a discussion between the parties and the Commission, allowing Commissioners to ask questions and seek further elaboration of points to help inform the Commission's consideration of this interim issues proceeding.
- On or before October 31, the Commission will issue an order, either setting out a schedule for the interim issues proceeding, or terminating the stay of the expiration of the EARP and allowing the Staff to proceed with its rate case.

3. The provisions of the current EARP would be maintained during this 120-day period of the stay. For the twelve months ending June 30, 2001, the Company will submit its filings for customer credits and ultimately pay credits to its customers in the normal course of business based on the provisions set forth in the EARP. Further, the Company will pay additional credits to its customers for the period from July 1, 2001 to October 31, 2001 if the return on equity thresholds set forth in the EARP are exceeded. For purposes of the continuation of the EARP past June 30, 2001, the return on equity will be calculated based on the Company's earnings for the twelve months ended October 31, 2001. The Company's earnings will be determined in the same manner as its earnings have been under the terms of the EARP. If it is determined that a sharing credit is appropriate for the twelve months ended October 31, 2001, then the amount of the customer credit which applies to the period from July 1, 2001 to October 31, 2001 will be determined by multiplying the credit calculated for the twelve months ending October 31, 2001 by the ratio of kilowatt-hours sales for Missouri retail customers for the period July 1 – October 31, 2001 to kilowatt-hour sales for Missouri retail customers for the period November 1, 2000– October 31, 2001. The Company will file its sharing credit calculation and supporting schedules in a manner which is consistent with the EARP.

4. If the Commission does order the interim issues proceeding, we believe that traditional procedure should govern that proceeding. That is, the Staff, OPC and other interested parties would file testimony addressing the methodology and policy issues that the Commission will have identified in its October 31 order. UE and other parties will then have the opportunity to take discovery, including depositions of those witnesses. UE then will file rebuttal testimony from its witnesses. Finally, the Staff, OPC and other interested parties would then file testimony in reply to UE's rebuttal testimony, if they so choose. Shortly thereafter, the Commission would

hold a hearing in which the witnesses would be presented and cross-examined, after which post-hearing briefs would be submitted. Sometime thereafter, the Commission would issue its decision concerning the issues addressed in the proceeding.

5. Informed by the Commission's decision, the parties could then consider whether renewed efforts at settlement would be productive, and possibly settle the case.

6. If settlement is not possible, the Staff could then file its rate case. Subsequent proceedings on the Staff's rate case would be abbreviated, however, since the interim issues proceeding would have already addressed and resolved many of the most contentious and complex issues that would otherwise have been raised in the rate case. At least for proceedings before the Commission, the interim rulings would be the law of the case, though obviously subject to challenge on appeal. Only new matters would be the subject of testimony, discovery, and so on. Thus, again, the interim issues proceeding would not in any serious way disrupt or lengthen rate proceedings that might ultimately occur.

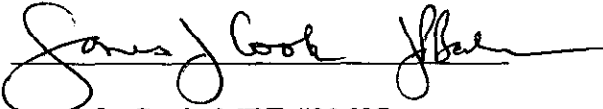
CONCLUSION

We believe that the proposal we have made merits the serious consideration of the Commission. Innovative though it may be, in a balanced way ** _____

_____ ** and the "locking in" of the parties and the Commission by the policy and methodology problems that are at this stage embedded in any case the Staff may file. We respectfully urge the Commission to grant this Motion.

Respectfully submitted,

UNION ELECTRIC COMPANY
d/b/a AmerenUE

By: 

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Vice President, General Counsel & Secretary

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DATED: June 27, 2001

STATEMENTS REQUIRED UNDER 4 CSR 240-2.080(17)
(GOVERNING MOTION FOR EXPEDITED TREATMENT)

(A) UE seeks to have the Commission consider two orders under expedited review by the following dates:

1. **Immediately:** An order that the Staff, OPC, or any other party who wishes to respond to this Motion to file such a response under seal by close of business on *Wednesday, June 27, 2001*.
2. **By close of business on Friday, June 29, 2001:** An order agreeing to a 120-day delay in the expiration of the experimental alternative regulation plan ("EARP"), including a schedule for the proceedings over the subsequent 120 days.

(B) If these motions are not expeditiously considered and adopted, ** _____

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By contrast, a stay of the expiration of the EARP will have no negative impact on UE's customers, because the current EARP would be maintained during the 120-day period.

(C) This motion was filed as soon as it could have been because its necessity only became clear in the past several days.

** _____

**

** _____

** This matter has always been of extreme importance to the Company.

PROPRIETARY

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** Although it appears that discrete items may be so
treated in the Staff's filing, the Company was advised only within the last few days that the
Staff would probably not keep ** _____ ** confidential. This was finally verified on
Friday, June 22, 2001. While the Company is not surprised that the Staff views such a
request as unusual, the Company had hoped that the Staff would recognize ** _____

** that they would therefore agree with
the Company's request.

As it became obvious that this might not be the case, the Company started looking at
alternatives to present to the Commission, ** _____ ** yet
address the obvious issue of the pending termination of the EARP. The instant pleading is
the result of that effort.

The Company suggests that the instant proposal addresses the concern that the Commission
might have ** _____

** and also prevents ** _____

** This proposal also protects customers, through the temporary
extension of the EARP. Since the necessity of developing such a proposal was not apparent
** _____

** this filing could not have been filed sooner.

PROPRIETARY

Stock Performance Comparison

EEI Index Companies*

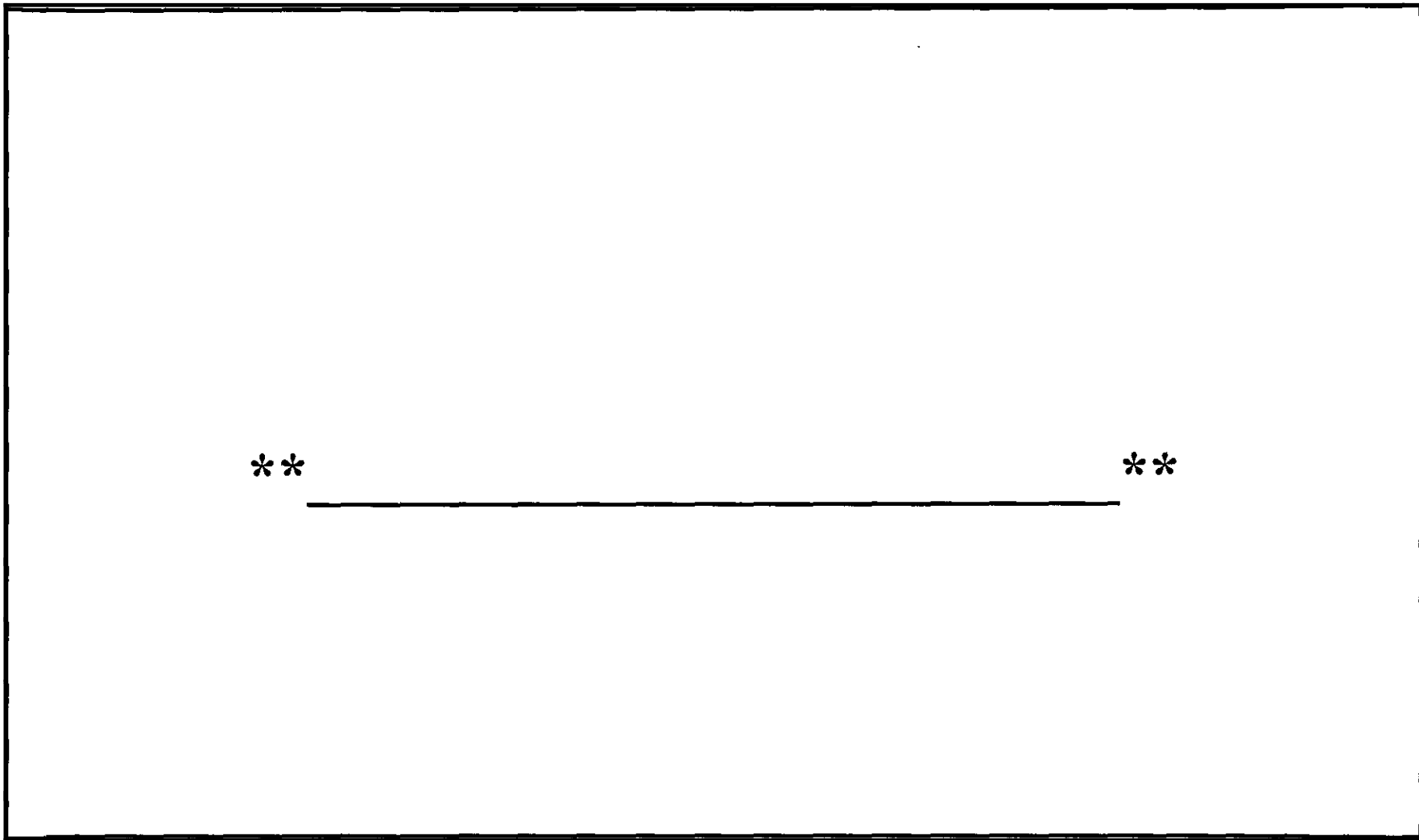
Three Years ended March 2001

<u>Rank</u>	<u>Company</u>	<u>% Return</u>	<u>Rank</u>	<u>Company</u>	<u>% Return</u>
1	Bangor Hydro-Elec. Co.	233.1	36	Unitil Corp.	1.5
2	Exelon Corp.	196.5	37	CH Energy Group, Inc.	1.4
3	Black Hills Corp.	97.1	38	IdaCorp	1.4
4	PPL Corp.	87.7	39	DTE Energy	1.2
5	Maine Public Service	86.3	40	Conectiv	-0.4
6	El Paso Electric Co.	70.5	41	United Illuminating Co.	-1.8
7	Reliant Energy	57.4	42	Ameren	-2.8
8	Dominion Resources Inc.	54.2	43	FPL Group Inc.	-4.6
9	Otter Tail Power Co.	51.5	44	Progress Energy Inc.	-4.8
10	MDU Resources	45.3	45	Alliant Energy	-5.5
11	DPL Inc.	44.1	46	American Electric Power	-6.5
12	Duke Energy	43.5	47	Potomac Electric Power	-6.7
13	Allegheny Energy	37.8	48	NSTAR	-8.7
14	Constellation Energy	34.9	49	Cinergy Inc.	-9.0
15	Cleco Corporation	32.7	50	First Energy	-9.4
16	Niagara Mohawk Power	30.0	51	Hawaiian Electric Inds	-11.0
17	Entergy Corp	27.7	52	Green Mountain Power Co.	-11.4
18	Southern Co.	26.7	53	Scana Corp	-12.2
19	Nisource	25.9	54	Energy East Corp	-13.0
20	Utilicorp United Inc.	23.1	55	Empire District Electric Co.	-13.6
21	Keyspan Corp.	22.0	56	Sempra Energy	-16.7
22	Allete	21.5	57	Puget Sound Energy	-18.8
23	Northeast Utilities	21.4	58	OGE Energy	-20.6
24	Unisource	20.9	59	Consolidated Edison of NY	-20.6
25	Public Service Co. of N. Mexico	18.8	60	DQE Inc.	-21.7
26	Public Service Entrp.	14.3	61	Montana Power Co.	-21.8
27	RGS Energy Group	13.8	62	Kansas City Power & Light	-21.9
28	Central Vermont Pub. Service	10.9	63	GPU Inc.	-26.6
29	Madison Gas & Electric Co.	7.5	64	Avista Corporation	-27.8
30	Northwestern Corp.	6.8	65	Wisconsin Energy Corp	-29.7
31	Teco Energy Inc.	6.1	66	CMS Energy Corp.	-37.0
32	TXU	5.1	67	Western Resources	-44.2
33	Pinnacle West Capital	3.3	68	Sierra Pacific Resources	-44.7
34	WPS Resources Corp.	2.5	69	Edison International	-57.0
35	Xcel Energy	2.1	70	PG&E Corp.	-62.3
	Median	1.8			

- The EEI Index is comprised of all 70 Investor-owned Electric Utilities in the U.S. affiliated with the Edison Electric Institute (EEI).

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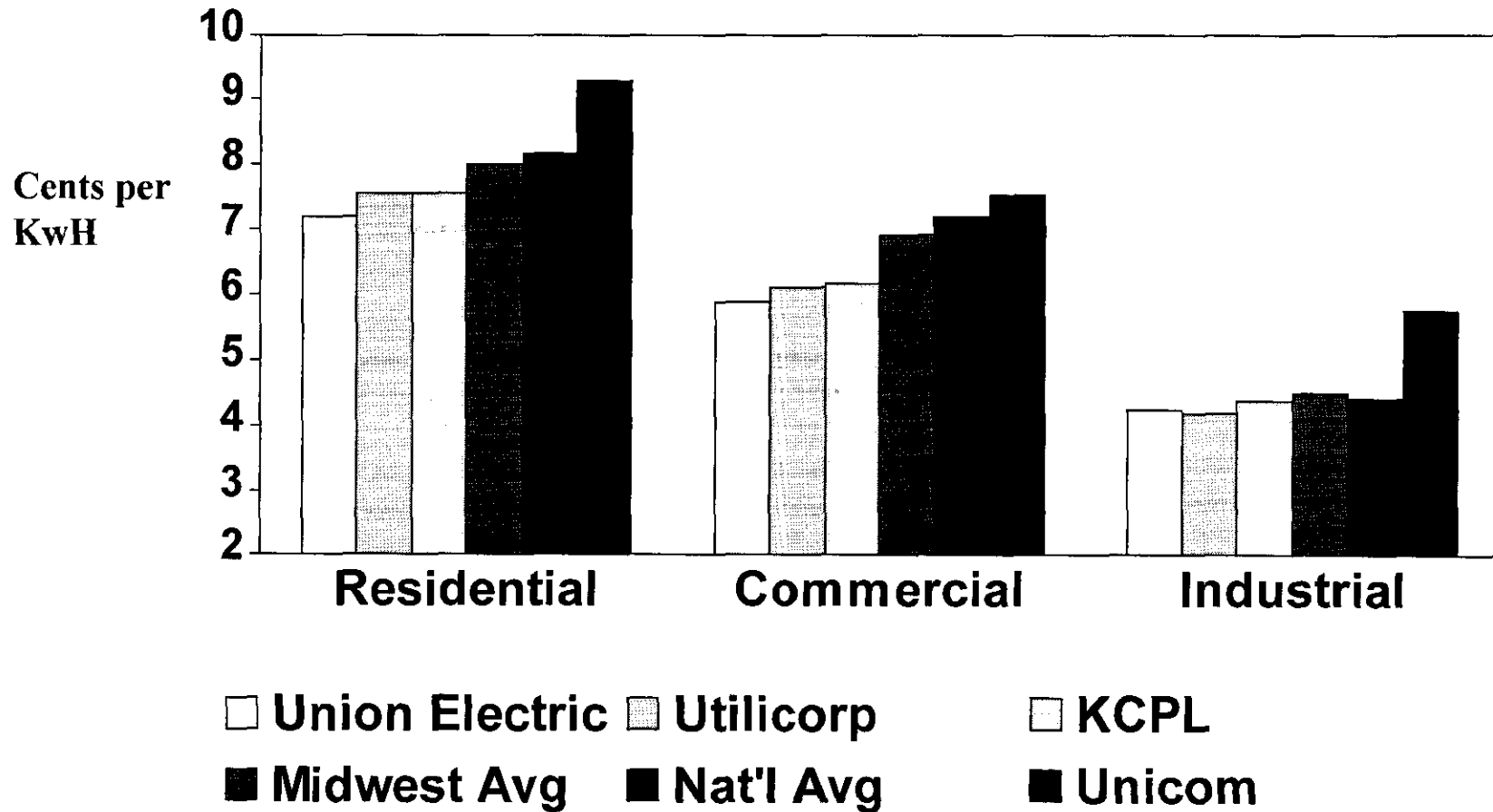
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"PROPRIETARY"

Attachment C

1999 Retail Revenue Comparison



NOTE: Union Electric revenues reflect EARP sharing credits.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via fax and first-class U. S. Mail, on this 27th day of June, 2001, on the following parties of record:

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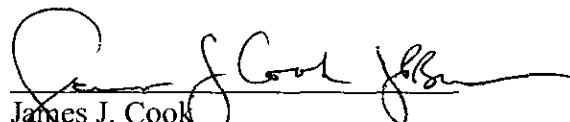
Robert C. Johnson/Lisa Langeneckert
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James J. Cook

CASE NO: EM-96-149

DATE FILED: 6/27/01

COMPANY: Union Electric

DESCRIPTION: ^{Amended} Emergency Motion to Temporarily Stay Expiration of the EARP and to Establish a Schedule for Further Proceedings and for Expedited Treatment

Date Delivered to:	Date	Returned	Destroyed	By
Lumpe	6/27/01			
Drainer	6/27/01			
Murray	6/27/01			
Simmons	6/27/01			
Gaw	6/27/01			
RLJ	6/27/01			
Henderson	6/27/01			
Schallenberg	6/27/01			

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EM-96-149

DATE 7/12/01 *mk*

and which ultimately determine how a ready and reasonably priced supply of electricity is to be secured for Missourians of this, and succeeding, generations.

FILED

JUN 27 2001

THE NEED FOR THE STAY AND COMMISSION ACTION ON METHODOLOGY AND POLICY QUESTIONS

THE FINANCIAL IMPACT

Missouri Public Service Commission

It is important to recognize that, though we believe Ameren to be a fundamentally healthy company, as it stands today, the financial community views the company as a somewhat below-average performer. In comparing Ameren's common stock performance to that of the 70 companies included in the Edison Electric Institute's ("EEI") Index of Investor-Owned Electrics³ over the three years which ended in March 2001, the median stock performance of those companies was +1.8 percent, while Ameren's was -2.8 percent. That performance earned Ameren a meager ranking of 42nd out of those 70 companies. See Attachment B. **Indeed, looking at Ameren's ranking among the EEI Index companies, Ameren is uncomfortably closer to the neighborhood of utilities that are in bankruptcy than to that of the top performers. The rate reduction case the Staff is poised to file against UE apparently will seek a massive permanent rate cut of up to \$250 million annually, thereby reducing UE's earnings by 44 percent and Ameren's consolidated earnings by 33 percent. The mere public filing of such a draconian initiative will have a severe impact on Ameren's financial standing and ability to secure the capital needed to meet future generation, transmission, and distribution needs.

With Ameren already in a vulnerable posture in the eyes of Wall Street, public announcement of an effort to cut Ameren's earnings by 33 percent can only drive the company's stock price farther down, and perhaps precipitously so. Stock valuation analysts who rely on the

³ Those 70 companies are the investor-owned electric utilities affiliated with EEI.

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discounted cash flow valuation technique would predict a drop in Ameren's stock price greater than 33 percent. Such a decline in stock prices would result from a sell-off of Ameren stock, commonly what amounts to a transfer of wealth from individual investors to speculators.⁴

Certainly the announcement of the Staff's filing will also trigger a review of the company by various bond rating agencies. Should the Staff's proposed rate reduction actually go into effect, UE's resulting interest and debt coverage ratios would no longer be consistent with that of an A+ rated utility, but instead would call for a rating of BBB-, the lowest investment-grade rating possible. This is a strikingly precarious position, just one notch away from a non-investment-grade rating, or what is commonly referred to as "junk bonds." Given the importance of bond ratings to individual and institutional investors alike, the mere fact that such a review is occurring, with the obvious prospect that such a lowering of the company's rating may take place, will immediately depress UE's creditworthiness in the banking and credit markets and significantly increase UE's costs to finance needed generation, transmission and distribution facilities. As a result, the actual decrease in Ameren's and UE's earnings will exceed the direct impact of the Staff's rate reduction described earlier since earnings will be further depressed by the increased interest expense the rate reduction will precipitate. See also Qualitative Effects of AmerenUE Bond Rating Downgrade (Attachment C).**

UNDERLYING POLICY AND METHODOLOGY CONFUSION

Moreover, though the Staff, OPC, and UE have pursued good faith negotiations to see if a new EARP could be fashioned by agreement, the parties remain far apart, and the filing of such a severe rate reduction case will chill prospects for a settlement of this matter. To be sure, the

⁴ **Of the 108,664 total accounts in Ameren's common stockholder records, 34,820 are registered to persons residing in Missouri.**

parties are far apart due to substantive differences concerning the proper application of the various methodologies by which just and reasonable rates can be lawfully determined, reflecting fundamentally different perspectives on how reliable and cost-efficient electric power is to be provided to Missourians. Indeed, at the root of these differences lie policy questions of the most fundamental sort, and we reluctantly must observe that the Staff's approach – and in some instances total blindness to the ramifications of these policy issues -- has resulted in the Staff drifting far afield from the Commission's own understanding of its mission. **In more ordinary cases, of lesser magnitude, perhaps the parties can afford to ignore – or, more accurately, cannot prudently afford to challenge – the positions Staff adopts, no matter how irrational or harmful to a sensible, long-term, energy policy. Given the extraordinary size of the rate cut the Staff wishes to pursue, UE does not have that luxury.**

In one sense, we are all fortunate that these issues are coming to a head now. In California wrongheaded policies were pursued, and state government ignored the danger signals of the consequences of those policies for far too long, until skyrocketing electric bills and rolling blackouts burst on consumers with a vengeance. In Missouri, by contrast, we are coming to the close of six years under the EARP marked by a growing efficiency in the provision of electricity, the improved performance of UE, along with the lowest effective rates for electric power in the region. See Attachment D. We believe that the EARP has unmistakably demonstrated that the economics of electricity does not have to be a zero-sum game. For consumers to win, a utility does not have to lose, and vice versa.

It is undeniable that the EARP regime has delivered over \$425 million in direct benefits to UE's customers in the form of rate reductions and credits, with no reliable evidence that cost-of-service regulation could have delivered such benefits in a comparable time. Average rates of

UE's customers were 4.8 percent *lower* in 1999 than they were in 1994, before the EARP was implemented, while average rates of electric utilities in the West-North-Central Region⁵ over the same time *increased* by 0.5 percent and those in the East-North-Central Region⁶ decreased by only 2.3 percent. Notably the EARP induced a reduction in UE's cost of service, while maintaining UE's quality of service from the perspective of its customers. Traditional cost-of-service regulation would have only *penalized* such a reduction. It is hardly surprising that forms of incentive or performance-based regulation ("PBR") for electric utilities like the EARP are in place in 16 states,⁷ and the favorable opinion of regulators familiar with it, along with its even more well-established use in telecommunications regulation, strongly suggests widespread support for PBR. As FERC has put it, "we believe that PBR, especially if accompanied by explicit and well-designed incentives, may provide significant benefits over traditional forms of cost-of-service regulation."⁸

Surely an unbiased evaluation of these accomplishments in light of the Commission's own statement of its mission, quoted above, must give the EARP high marks. The EARP is not perfect, and so may not deserve an A+, but it clearly has been a fine example of creative regulatory policymaking, harnessing some of the elements of competition to produce "just, reasonable, and affordable rates" while improving the operations of UE.

What *is* surprising is that, notwithstanding these facts, the Staff in its February filing found so little of value in the EARP, and now is prepared to kill this "goose that lays the golden eggs" **by taking away 44 percent of UE's earnings in one stroke. Even ignoring the impact of

⁵ This region includes all utilities in Iowa, Kansas, Minnesota, Missouri, and South and North Dakota.

⁶ This region includes all utilities in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

⁷ Those 16 states are Alabama, California, Colorado, Florida, Iowa, Illinois, Louisiana, Maine, Massachusetts, Missouri, Mississippi, Montana, New York, North Dakota, Oregon, Rhode Island, South Dakota, and Washington.

⁸ FERC, *Order 2000* at 538.

such a step on UE's ability to finance needed generation, transmission or distribution assets, by what surreal logic does responsible regulatory policy reward the lowest effective rates as far as the eye can see, along with consistent quality of service, with a massive rate cut?*** The answer lies in what we have already pointed out to be the apparent divergence between *the Staff's* "beliefs" and what one would think would be the full, fair efforts of a Staff committed to support the Commission in fulfillment of all aspects of *its* mission. This divergence has shaped what we see as the fundamental flaws in the Staff's harsh, unfounded criticism of the EARP and in key errors of their cost of service calculations.

As the Commission may recall, this divergence was evident in the proceedings concerning the credit for the Third Sharing Period. For example, one Staff witness there, Mr. Rackers, was asked, "[H]aving more efficient utilities in the state of Missouri is good for economic development in the state of Missouri, isn't it?" Transcript of Proceedings, Hearing, at 391 (June 2, 1999). His response: "I have to say I don't know." *Id.* Mr. Rackers was shown the Commission's Mission Statement, and candidly admitted that "I would have to say that I didn't consider that mission statement when I wrote my testimony." *Id.* at 394. Then this exchange followed:

Q. My question is, when Staff then comes before the Commission and advances any particular position, it does so with the idea that that position is congruent with the full mission of the Commission?

A. When I advance the statements or, excuse me, the positions that I have in my testimony, I did not consider the full mission as it's labeled – excuse me – as it's discussed there.

...

Q. You do not know whether one of the missions of the Commission before you prepared this testimony was to support economic development?

A. That's correct.

Id. at 394, 396.

PROPOSAL FOR FURTHER PROCEEDINGS

In overview, our proposal consists of two parts: (a) a 120-day delay of the expiration of the EARP (including a delay in the filing of any rate reduction case by the Staff or any public comment by the parties concerning such a rate reduction) during which the parties will make detailed proposals to the Commission concerning the interim issues proceeding we propose, at the conclusion of which the Commission will decide whether, and in what manner, it wishes to have such proceedings, and (b) if the Commission does agree with us, a proceeding in which the parties will present testimony, briefs, and live cross-examination in a hearing addressing fundamental issues on which an adequate energy policy for Missouri must rest, including certain key methodology issues that will shape any ratemaking for UE.

More specifically, we respectfully propose the following:

1. Given the urgency of this Motion, and the unavoidably short time frame to consider it, the Commission would immediately order the Staff, OPC, or any other party who wishes to respond to this Motion to file such a response under seal by close of business on Wednesday, June 27. While this Motion is pending, all parties will also be expected to honor and preserve the confidentiality of the subjects under consideration, especially the fact and magnitude of any rate reduction that may ultimately be proposed.

2. By the close of business on June 29,⁹ the Commission will agree to a 120-day delay in the expiration of the EARP, and enter an order to that effect. This order will also provide for a continuing duty on the part of all parties to maintain the confidentiality of the subjects under consideration, **especially the fact and magnitude of any rate reduction that may ultimately be

⁹ Should the Commission wish to have any form of *in camera* hearing before ruling on this Motion, we will be happy to make ourselves available for that purpose.

proposed.** The order will also include a schedule for the proceedings over the subsequent 120-days. We suggest the following schedule:

- On or before August 24, UE will file its proposed issues to be addressed in the interim issues proceeding, including an explanation of why those issues merit the consideration of the Commission in this proceeding. Such issues may include how various methodologies to estimate UE's cost of equity are to be undertaken, what comparisons to the return of comparable companies need to be part of the ratemaking, and so on.
- On or before September 21, the Staff, OPC, and other interested parties will file any response to the issues proposed by UE they wish to make and issues they propose to be addressed in this proceeding, along with their justification for proposing those specific issues.
- On or before October 3, UE will file its response to the proposals made by the other parties.
- Sometime before October 17, the Commission will hold a hearing on the issues to be addressed. We would suggest that this hearing be more of a discussion between the parties and the Commission, allowing Commissioners to ask questions and seek further elaboration of points to help inform the Commission's consideration of this interim issues proceeding.
- On or before October 31, the Commission will issue an order, either setting out a schedule for the interim issues proceeding, or terminating the stay of the expiration of the EARP and allowing the Staff to proceed with its rate case.

hold a hearing in which the witnesses would be presented and cross-examined, after which post-hearing briefs would be submitted. Sometime thereafter, the Commission would issue its decision concerning the issues addressed in the proceeding.

5. Informed by the Commission's decision, the parties could then consider whether renewed efforts at settlement would be productive, and possibly settle the case.

6. If settlement is not possible, the Staff could then file its rate case. Subsequent proceedings on the Staff's rate case would be abbreviated, however, since the interim issues proceeding would have already addressed and resolved many of the most contentious and complex issues that would otherwise have been raised in the rate case. At least for proceedings before the Commission, the interim rulings would be the law of the case, though obviously subject to challenge on appeal. Only new matters would be the subject of testimony, discovery, and so on. Thus, again, the interim issues proceeding would not in any serious way disrupt or lengthen rate proceedings that might ultimately occur.

CONCLUSION

We believe that the proposal we have made merits the serious consideration of the Commission. Innovative though it may be, in a balanced way**it avoids the several very serious problems caused by simply launching into a public ratemaking at this juncture, including both the heavy financial blow to UE by the filing of a radical rate reduction,** and the "locking in" of the parties and the Commission by the policy and methodology problems that are at this stage embedded in any case the Staff may file. We respectfully urge the Commission to grant this Motion.

STATEMENTS REQUIRED UNDER 4 CSR 240-2.080(17)
(GOVERNING MOTION FOR EXPEDITED TREATMENT)

- (A) UE seeks to have the Commission consider two orders under expedited review by the following dates:
1. **Immediately:** An order that the Staff, OPC, or any other party who wishes to respond to this Motion to file such a response under seal by close of business on *Wednesday, June 27, 2001*.
 2. **By close of business on Friday, June 29, 2001:** An order agreeing to a 120-day delay in the expiration of the experimental alternative regulation plan ("EARP"), including a schedule for the proceedings over the subsequent 120 days.
- (B) If these motions are not expeditiously considered and adopted, **UE will suffer a severe impact to its financial standing and ability to secure the capital needed to meet future generation, transmission, and distribution needs. Examples of the financial damage expected to result from public announcement of the rate reduction case that Staff proposes to file on July 2, 2001 are a drastic freefall of UE's stock prices, as well as a severe downgrading of UE's bond rating.**

By contrast, a stay of the expiration of the EARP will have no negative impact on UE's customers, because the current EARP would be maintained during the 120-day period.

- (C) This motion was filed as soon as it could have been because its necessity only became clear in the past several days.

In prior pleadings filed in this case, the Company has consistently taken the position that the public announcement of such matters as the possible early termination of the EARP or the size of Staff's proposed rate reduction would have serious detrimental effects on the Company's standing in the financial community. Moreover, the Commission has previously cooperated in this request and was very careful in earlier orders to keep certain information confidential, at the request of the Company. The Company is aware of the general magnitude of the Staff's planned filing, and knows that it may be as much as \$250 million. The severe consequences of that information being made public is discussed in some detail in the body of this pleading. Clearly, the same concerns that previously warranted the Company's requested confidential treatment apply with even greater magnitude in relation to this proposed rate reduction.

In all responses to Staff discovery requests, the Company has been consistent in its position that the Company's financial data is to be kept confidential. This matter has always been of extreme importance to the Company.

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The Company had asked the Commission Staff to continue to keep such financial information confidential in its filing. Although it appears that discrete items may be so treated in the Staff's filing, the Company was advised only within the last few days that the Staff would probably not keep **the final numbers** confidential. This was finally verified on Friday, June 22, 2001. While the Company is not surprised that the Staff views such a request as unusual, the Company had hoped that the Staff would recognize **the severe consequences that the mere announcement of this unusually large rate reduction request would have on the Company's financial position, and** that they would therefore agree with the Company's request.

As it became obvious that this might not be the case, the Company started looking at alternatives to present to the Commission, **which would mitigate this potential damage,** yet address the obvious issue of the pending termination of the EARP. The instant pleading is the result of that effort.

The Company suggests that the instant proposal addresses the concern that the Commission might have **about proceeding through a rate complaint case with the numbers being kept confidential,** and also prevents **the damage that would be done by the public release of the proposed rate reduction.** This proposal also protects customers, through the temporary extension of the EARP. Since the necessity of developing such a proposal was not apparent **until it began to become clear that the magnitude of the proposed reduction would be made public,** this filing could not have been filed sooner.

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ATTACHMENT A
Page 2 of 2

Qualitative Effects of AmerenUE Bond Rating Downgrade

As a weaker credit --

- ☑ The range of financing options available to AmerenUE will become limited
- ☑ Certain structures may become cost prohibitive
- ☑ Investment decisions will necessarily be driven by availability of financing, not by need for generation and transmission
- ☑ Commercial paper as AmerenUE's least costly source of liquidity will become more difficult to obtain; at times, the market may be closed to AmerenUE entirely
- ☑ Interest rate volatility will increase

-- there may be times when ALL short-term and long-term markets will be shut off to AmerenUE

Attachment C

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