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June 27, 2001

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

FILED³

JUN 27 2001

Missouri Public
Service Commission


**RE: Union Electric Company,
Case No. EM-96-149**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies **The Office of the Public Counsel's Response in Opposition to "Emergency Motion of Union Electric Company to Temporarily Stay Expiration of the EARP"**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to all counsel of record. Please "file" stamp the extra enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,


John B. Coffman
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED

JUN 27 2001

Missouri Public
Service Commission

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.)

Case No. EM-96-149

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE IN
OPPOSITION TO "EMERGENCY MOTION OF UNION ELECTRIC
COMPANY TO TEMPORARILY STAY EXPIREATION OF THE EARP"**

COMES NOW, the Office of the Public Counsel (Public Counsel) and for its response in opposition to the June 25, 2001 Motion filed by Union Electric Company d/b/a AmerenUE (UE), states as follows:

1) Pursuant to the Public Service Commission's June 26, 2001 Order Directing Filing, Public Counsel is providing to the Commission its preliminary arguments in opposition to what it considers several outrageous and unprecedented requests in UE's Motion. Public Counsel will discuss herein why staying the expiration of the EARP beyond June 30, 2001 would be unlawful and contrary to sound public policy. Public Counsel will also explain why no good cause exists for expedited treatment of UE's requests and why nothing in UE's June 25, 2001 Motion can properly be described as "Proprietary" under the Commission's Rules and the

Protective Order, and thus should be declassified in its entirety. Public Counsel reserves the right to provide further arguments and evidence on these matters at a later date.

2) If the alarmist, sky-is-falling rhetoric of UE's June 25, 2001 Motion is stripped away, it should be obvious that this is simply an attempt to convince the Commission to "gag" its Staff and overturn the Commission's March 8, 2001 "Order Authorizing Earnings Investigation Filing July 1, 2001". In that order, the Commission recognized that all parties to this case, with the exception of UE, believe that the experimentation with alternative regulation for this electric company should end on the date the parties stipulated--June 30, 2001.¹ The July 12, 1996 Stipulation and Agreement states that the signatories may not file a rate reduction case through June 30, 2001 except under certain extraordinary conditions. Ibid., p. 8, Section 7c.

STAYING THE EXPIRATION OF THE EARP II WOULD BE UNLAWFUL

3) On February 1, 2001, pursuant to the Section 7.g. of Stipulation and Agreement, several signatories filed recommendations with the Commission regarding whether the EARP II should be continued. Public Counsel, along with several other parties, recommended that even if any future alternative regulation plan is approved for UE, it should be preceded by a full audit and general rate case or rate complaint case in order to "rebase" electric rates. Public Counsel's Report Regarding the Experimental Alternative Regulation Plan II, p. 6. In its March 8, 2001 Order, the Commission stated as follows:

None of the parties recommended that the Second EARP be continued as is, and the parties did not agree to a continuation with changes. Therefore, the Commission will not order the Second EARP to be continued. While most of the

¹ The Second Experimental Alternative Regulation Plan (EARP II) is attached to the Commission's Report and Order issued in this case on February 21, 1997, which approved a merger between Union Electric Company and Central Illinois Public Service Company.

parties advocated the discontinuance of the EARP, AmerenUE supports continuing the EARP with certain modifications. As a part of its recommendations, AmerenUE agreed that "some reasonable rate reduction should be made." Staff, Public Counsel, MEG, and MIEC all recommend that a case be established to reduce rates, "rebase" rates, or reduce the return on equity. Therefore, the Commission finds it reasonable to establish a case for the purpose of rate reductions immediately following the expiration of the Second EARP.

The Commission is not approving modification or continuance of the EARP. As AmerenUE stated, if there is to be a new EARP, "it will only come about by agreement of the interested parties."

The Commission will authorize the Staff to file an earnings complaint case on July 1, 2001. The Commission expects that all of the parties will cooperate in preparing for the expiration of the Second EARP.

Order Authorizing Earnings Investigation Filing July 1, 2001, pps. 1-2.

UE filed no motion for rehearing or reconsideration of this Order. UE waited over 3 ½ months to ask the Commission to reverse this Order and request a stay of the EARP II. UE waited until we are now on the very brink of its expiration, apparently attempting to create a false sense of "emergency."

4) To grant a temporary stay of the expiration of the EARP II would be a bizarre and unlawful act by the Commission. As the Commission noted in its March 8, 2001 Order, quoted above, the Commission recognized that an alternative regulation plan can only be approved by agreement of all of the interested parties. In fact, UE has acknowledged that the Commission does not have the legal authority to order that an EARP be implemented without agreement according to the arguments it made in its Cole County Circuit Court appeal of the Commission's Sharing Credits Order issued in Case No. EO-96-14 on December 23, 1999. Case No. 00CV323273 et al., UE Brief, pps. 12-13.

Contrary to this argument it is making in court, UE is arguing that the Commission should impose an EARP beyond the date negotiated by the parties to the Stipulation and

Agreement. Such an order would violate the Stipulation and Agreement as well as the Commission's statutory obligation to ensure just and reasonable rates. Section 393.130 RSMo. 2000. Forcing the parties to continue under a plan beyond the date for which those parties bargained would also violate serious principles of law and equity.

UE'S REQUEST FOR EXPEDITED TREATMENT

5) Attachment A to UE's June 25, 2001 Motion contains no good cause for granting expedited treatment of UE's request. The date of the expiration of EARP II has been known for many years and the Commission's Order authorizing an earnings investigation and rate complaint case has been known for 3 ½ months. UE should not be allowed to generate the appearance of an emergency simply because it chose to request certain relief less than a week before the EARP II expires. The parties should have more than of a couple of days to respond to the extraordinary special treatment that UE is requesting in its Motion. The due process rights of the other parties would also be compromised by granting UE's request on such on an expedited timetable.

The statements UE includes in Attachment A to its motion do not even come close to justifying the Commission's good cause standard under 4 CSR 240-2.080(17). UE has known for many months that any earnings investigation and rate complaint was a possibility. UE also knows that the Commission has never required that the amount of a rate reduction requested in a complaint case to be placed under seal. Such special treatment for UE would be detrimental to the public interest and wholly inconsistent with Missouri's Sunshine Law. Although certain sensitive portions of rate case filings have been classified as Highly Confidential or Proprietary

in appropriate situations, the total impact of rate case requests before the Commission has always been a matter open to the public. For the Commission or its Staff to act otherwise would be extremely unusual and unanticipated.

UE's MOTION SHOULD BE DECLASSIFIED IN ITS ENTIRETY

6) As the Commission has already noted in its June 27, 2001 Order Directing Filing, UE's Motion violated Commission Rule 4 CSR 240-2.085 and the Commission's December 13, 1995 Protective Order. Public Counsel requests that the Commission immediately declassify the entirety of UE's motion, including its attachments, as none of the information contained therein can reasonably be classified as "proprietary." This rule, as well as the Protective Order, defines proprietary information as follows:

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

Although UE's motion contains histrionic characterizations and speculation about events that may or may not occur, none of this discussion constitutes a trade secret or nor does it constitute private technical, financial or business information under the Commission's definition "proprietary." Placing this information under seal abusing Commission procedures.

7) The matter of how UE's rates should be set is in an extraordinarily important government function and one that concerns its ratepayers immensely. To abuse the Commission's Protective Order procedures in such a manner is an affront to the ratemaking process and the principles of open government. The Commission should use its Protective Order procedures judiciously and in only the most limited manner where it is appropriate.

STAFF'S IMPENDING RATE COMPLAINT CASE

8) It is important for the Commission to place in context the rate complaint case that the Commission has authorized its Staff to file as early as next week. UE has not had its rates set based upon a full cost of service rate case since 1987. Certain rate reductions and rate credits have occurred since that time, but there has been no opportunity for the Commission to review UE's cost of service in a full-fledged cost of service rate case. Ever since the first EARP was implemented in July 1995, UE has been allowed to retain 100% of its earnings up to a return on equity level of 12.61% and to retain significant portions of those earnings above that level. It should come as no surprise to any party that UE's rates today need to be reduced significantly under rate of return regulation.

On February 1, 2001 the Staff of the Commission stated in its report that it, at that time, a "conservative" estimate of UE's over-earnings were \$100 million. That conservative estimate has been widely disseminated to the public, including the investment community. UE informed its shareholders of this estimate in its 2000 Annual Report. Ibid. at p. 32. It will come as no surprise if an earnings investigation were to suggest a significantly higher rate reduction is in order.

UE's current Missouri jurisdictional electric revenues are approximately \$2 billion. A reduction in UE's authorized revenue requirement at various hypothetical levels would produce the following percentage reduction in overall revenues:

\$100M	5.0%
\$150M	7.5%
\$200M	10.0%

\$250M

12.5%

\$300M

15.0%

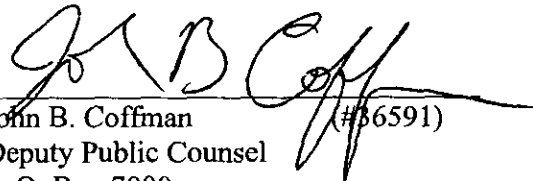
9) Public Counsel has engaged in confidential negotiations with UE and Staff regarding what terms might form the basis of a new EARP agreement. Thus far these negotiations have not borne fruit. Public Counsel will continue good faith negotiations on this matter if other parties are willing to discuss it, and despite misgivings about the implementation of EARP I and EARP II, would enter into another plan if the benefits to the public warranted such a new plan. Forcing Staff to delay the filing of a complaint case would do nothing to facilitate such negotiations. If anything, it would more than likely drive the parties further apart.

WHEREFORE, Public Counsel respectfully requests that the Commission deny UE's request to temporarily "stay" the expiration of the EARP II, deny UE's request for expedited treatment of this matter, and completely declassify UE's June 25, 2001 Motion as none of the information contained therein falls within the Commission's definition of proprietary information. Furthermore, if the Commission grants any special treatment to UE involving a continuation of the terms contained in the EARP II, it should do so without prohibiting its Staff from filing any complaint case Staff believes is warranted. The Commission should reaffirm its March 8, 2001 Order Authorizing Earnings Investigation filing July 1, 2001.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 27th day of June 2001:

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