BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. ER-79-60

In the matter of Missouri Public Service Company of Kansas City, Missouri, for authority to file tariffs reflecting increased rates for electric service to its customers in the Missouri service area of the company.

CASE NO. GR-79-61

In the matter of Missouri Public Service Company of Kansas City, Missouri, for authority to file tariffs reflecting increased rates for gas service to its customers in the Missouri service area of the company.

When Company's existing rates and charges for electric and gas service are insufficient to yield reasonable compensation for electric and gas service rendered by it in this state, revisions in the Company's applicable tariff charges are proper and appropriate and will yield the Company a fair return on the net original cost rate base or the fair value rate base found proper herein.

APPEARANCES: GARY J. BROUILLETTE, Attorney at Law, 2500 City Center Square, 1100 Main Street, Kansas City, Missouri 64105,
and
ROBERT L. HAWKINS, JR., Attorney at Law, Hawkins, Brydon & Swearengen, 312 East Capitol, Jefferson City, Missouri 65101, for: Applicant, Missouri Public Service Company.

STANLEY CHRISTOPHER, Deputy County Counselor, Jackson County Courthouse, 415 East Twelfth Street, Kansas City, Missouri 64106, for: Intervenor, Jackson County, Missouri.

CARROL C. KENNETT, Assistant City Attorney, 2800 City Hall, Kansas City, Missouri 64106, for: Intervenor, City of Kansas City, Missouri.

KENT M. RAGSDALE and DANIEL S. OCHSTEIN, Assistants Public Counsel, Office of the Public Counsel, P. O. Box 1216, Jefferson City, Missouri 65102, for: The Public.

JAMES S. HAINES, JR., TREVA J. (LASKA) HEARNE, and WILLIAM F. SCHWER, Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102, for: Staff of the Missouri Public Service Commission.

REPORT AND ORDER

Procedural History

On September 1, 1978, Missouri Public Service Company (hereinafter MoPub or Company) submitted to the Commission revised electric rate schedules designed to increase Company's annual billed jurisdictional electric revenues by approximately $22,100,000 (exclusive of applicable franchise and occupational taxes). On the above mentioned date, Company also submitted revised gas rate schedules designed to increase Company's billed jurisdictional gas revenues by approximately $1,400,000 annually (exclusive of applicable franchise and occupational taxes). The revised schedules had a requested effective date of October 1, 1978.

On September 1, 1978, Company also filed with this Commission revised interim electric rate schedules designed to temporarily increase the Company's retail electric revenues by approximately $8,500,000 annually, not including franchise and occupational taxes. Said proceeding was docketed under Case No. ER-79-59. On December 1, 1978, the Commission issued its Report and Order in the interim proceeding, the same to become effective on December 15, 1978. Ordered 1 thereof directed Company to file tariffs designed to increase gross revenues by approximately $4,281,440, exclusive of gross receipts and franchise taxes. Ordered 2 directed Company to file the tariffs with the condition that if Company does not complete the sale of $3,000,000 of new common stock by public offering on or before the operation of law date in Company's permanent proceedings before this Commission (Case No. ER-79-60 and GR-79-61), Company will refund the entire $4,281,440 to its customers with 9 percent simple interest added to the amount of the refund. At this point the Commission wishes to note that the interim relief granted is inclusive of the amount requested in the permanent proceedings.

On September 14, 1978, the Commission issued its "Suspension Order" suspending the revised schedules for a period of one hundred twenty (120) days beyond the requested effective date of October 1, 1978 to January 29, 1979, unless otherwise ordered by the Commission. On October 12, 1978, the Commission issued its "Order of Consolidation, Suspension Order No. 2, and Notice of Hearing", wherein, an additional suspension period of six (6) months until July 29, 1979, was ordered. Such order also established a schedule of proceedings, whereby, dates for prefiling direct testimony, intervention, prehearing conference and hearing were specified. In addition, the order consolidated the gas and electric cases for hearing.

On October 20, 1978, Company requested an extension of time for filing its prepared testimony and exhibits. Such request was granted by order of the Commission and on December 15, 1978, MoPub filed the direct testimony and exhibits of its witnesses. Company also filed data required by the Commission's minimum filing requirements on such date.

On December 14, 1978, Counsel for the Staff of the Commission requested an extension of time for the filing of its prepared testimony and exhibits from March 15, 1979, to April 5, 1979. Such request was granted by order of the Commission dated December 20, 1978. Said order also reset the prehearing conference from April 2, 1979 to April 16, 1979 and the hearing from April 9, 1979 to April 23, 1979.

On January 15, 1979, Office of the Public Counsel requested that local hearings be held in the communities of Lee's Summit, Grandview, Raytown and Blue Springs, Missouri. Public Counsel also requested that the Commission order the Company to comply with 4 CSR-240-2.110(12) which relates to customer notice of rate proceedings. The Commission responded with an order on February 9, 1979, granting the Public Counsel's request.

On January 31, 1979, the Public Counsel served a "Notice Of Taking Depositions". Under such notice, Public Counsel took the deposition of Earl D. Dryer on February 16, 1979.

On February 9, 1979, Public Counsel served interrogatories upon the Company. Company timely answered said interrogatories pursuant to an agreement with the Public Counsel.

On March 13, 1979, Counsel for Staff filed a motion entitled "Motion For Extension Of Time In Which To File Prepared Testimony And For An Order Directing Missouri Public Service Company To Answer Information Requests Promptly". The Commission issued its order in response to such motion on March 13, 1979, granting it in its entirety. Accordingly, Staff's filing date was moved to April 9, 1979. On the aforementioned date, Staff filed the prepared testimony and exhibits of its witnesses.

On March 20, 1979, Staff served a "Notice Of Taking Depositions And For Subpoena For The Production Of Documents". Under such notice, Staff took the depositions of Colin C. Campbell, John R. Baker, James S. Allen, James Pearcy, Jackson E. Barry, and the Company on April 2, 1979.

On March 23, 1979, in response to a request from the Public Counsel, the Commission extended the date by which the Public Counsel was to file testimony and exhibits from March 15, 1979, to April 9, 1979. On such date the Public Counsel filed the testimony and exhibits of its witness.

On April 4 and 5, 1979, the Commission held local hearings at the locations aforementioned. Thirty-nine witnesses testified regarding the proposed rate increase.

On April 11, 1979, Company served a " Notice For Taking Depositions". By agreement of the parties, on April 16 and 17, 1979, Company took the depositions of James R. Dittmer, Pat L. Vossman, Robert E. Schallenberg, Steve M. Traxler, D. Michael Wood and David M. Long.

The City of Kansas City, Missouri, Jackson County, Missouri and the City of Blue Springs, Missouri were granted leave to intervene in this proceeding. Blue Springs did not make an appearance in this matter with Jackson County only participating in the local hearings. Public Counsel is a participant herein by virtue of Section 386.710, RSMo, 1978.

As prescribed by the Commission's procedural orders, a prehearing conference was conducted from April 17-20, 1979, at the Commission's hearing facilities located in the City of Jefferson, Missouri. Representatives of MoPub, Staff, Public Counsel and Kansas City attended the prehearing conference and participated in the discussions and negotiations which ensued therein. A hearing memorandum was prepared (Joint Exhibit No. 1), delineating the areas of conflict existing between the parties. At the conclusion of the hearing the parties presented a final reconciliation setting forth the final differences between the parties.

Formal evidentiary hearings were commenced on the afternoon of April 23, 1979, and continued from day to day until May 8, 1979. Pursuant to Joint Exhibit No. 1, the Commission scheduled a further hearing for July 5, 1979, at the conclusion of which the matter was submitted.

All parties attending the formal evidentiary hearings filed briefs and reply briefs. The briefs submitted have been considered by the Commission in reaching its decision in this matter. The parties have not requested oral argument in this matter and as such the same is waived. The reading of the transcript by the Commission has not been waived in this proceeding.

Findings of Fact

After giving due consideration to each issue and contested matter, based on competent and substantial evidence upon the record as a whole, the Commission finds and concludes as follows:

Treatment of Gas and Electric Cases

Joint Exhibit No. 1 sets forth the positions of the parties in regard to the various contested issues. Contained therein is the agreement that the resolution of any electric issue in Case ER-79-60 shall control the disposition of its counterpart in the gas case ER-79-61. The following issues are present in both cases: Plant in service, compensating balances, cash working capital provided by investors, cash working capital provided by ratepayers, deferred taxes, PSC assessment, depreciation expense, and cost of money/rate of return.

I. Rate Base

The Commission finds the net original cost of Company's Missouri jurisdictional rate base to be $220,057,911 for electric and $13,322,133 for gas. Such figures resulted from the Commission's determination of the following contested issues:

Minor Plant Closings

Company proposes that minor plant closings up to June 25, 1979, be included in rate base. Staff opposes inclusion of such amount for reasons set forth below. This issue is only applicable to the electric case.

Minor closings are such items as air compressors, generating station batteries and precipitator outlets. Major items are closed individually and are itemized for the Staff's review.

Staff opposes inclusion of the above amount due to Company tendering Staff a document which overstated the true dollar amount of the coal handling facilities at the Sibley generating station (major plant item). Originally, Company informed Staff that the amount of coal handling equipment in service was approximately $550,000 more than what was verified. Accordingly, since Company gave Staff incorrect information in regard to a major closing item and made no effort to correct same until Staff brought such overstatement to the attention of the Company, Staff will not accept the minor closings without an audit.

The Commission recognizes the Staff's concern for accepting unaudited adjustments to the rate base but also recognizes that Company presented a witness who gave sworn testimony regarding the minor closings. Such testimony stands uncontroverted in the record. The Commission also recognizes that although the Company has presented this Commission with incorrect information on this and other issues as this order will attest, the Commission cannot conclude based on the record of this proceeding that Company's information is incorrect on this issue. In the instant matter the Commission did not observe nor did the Staff present any matter which would render the witness's testimony suspect.

Therefore, the Commission finds that the minor closings should be included in Company's rate base.

Jeffrey Common Plant

Staff proposes that only 25 percent of the common facilities and indirect cost at the Jeffrey Energy Center (JEC) be included in rate base. If such position is adopted Company's rate base would be reduced by $3,630,476. Company contends that 100 percent of the above should be included in rate base. Public Counsel and Kansas City supports Staff's position.

Company is a partner in the joint project to plan, construct, and operate JEC. Upon completion, JEC will consist of four identical 680 MW coal fired generating stations. At present only one unit is fully operational and used for service (JEC-1). The remaining three units will come on line in 1980, 1982 and 1984 respectively.

Staff defines "common facility" as a plant item designed and constructed to be used with all four units at JEC, but which are currently used only with JEC-1. Common "indirect costs" are either tangible or intangible assets which will be used throughout construction of all four units at JEC (i.e. an engineering design or temporary construction facilities).

Staff proposes that the common facilities and indirect costs be allocated equally among the four units. To attain such end Staff simply added the amounts of the items in their opinion constituting common facilities and indirect costs and divided by four to arrive at 25 percent. Staff made no independent analysis of the type of facilities which were required at JEC-1 versus the other units. Staff used the value of $49,159,000 for facilities and $43,789,000 for indirect costs in reaching its adjustment. Staff Exhibit 14, a letter from the controller of Kansas Power and Light Company (KPL) showed such facilities to be valued at $71,491,789. KPL is the managing partner for JEC.

Company, in support of its position, presented extensive testimony regarding whether the items used by Staff in its adjustment are used and useful in connection with JEC-1 providing service. Company's witness concluded that all items were necessary for the operation of JEC-1. On cross-examination by Commission Counsel, the witness testified that the only item he disagreed with on Staff Exhibit 14 was that the water supply system could only be utilized for JEC-1 and JEC-2.

Company also contends that if 75 percent of the cost is put back into construction work in progress, then additional interest would have to be capitalized at the expense of the ratepayer. Company Exhibit 6 purports to show that if Staff's approach is adopted it will cost the ratepayers an additional $4,756,234. The Commission notes that Company Exhibit 6 is based on today's dollars with no inflation being accounted for.

While the foregoing has referred to Staff's position as an adjustment for convenience, the record reveals that Staff has presented this issue to the Commission for a policy decision. The Commission finds that common facilities and indirect costs incurred in the building of multi-unit plants should be allocated to each unit with the exception of the water supply system that is only used for units 1 and 2. Company's evidence shows that all facilities involved are necessary for the operation of JEC-1. The Commission does not refute such contention but is of the opinion that such fact is irrelevant. The crux of the matter is that the common facilities were designed to serve all four units at JEC. The question presented to the Commission is whether the ratepayer is to pay now or pay later. The Commission is of the opinion that Company's argument that Staff's position will cost more is nothing more than the general argument advanced against Proposition 1 [Section 393.135 RSMo, 1978]. All the facilities involved in this issue were designed to serve all four units. The Commission finds that the ratepayer should not be burdened with facilities which are not yet used or useful in the operation of units 2, 3 and 4.

The Commission further finds that the proper value of the common facilities and indirect costs to be $115,280,789. This results in the reduction of Company's rate base by $4,757,848.

Materials and Supplies

On this issue, Public Counsel and Staff propose to reduce Company's electric rate base by $577,461, related to materials and supplies inventory. Staff and Public Counsel also increased payroll expense by $22,000 for an inventory management supervisor related to this issue. Company contends that Staff's adjustment is erroneous and accordingly requests that its electric rate base be increased by a like amount. Company concurs that the payroll increase adjustment is proper.

In 1977, Company had a study of its purchasing department storekeeping procedures performed by Cresap, McCormick and Paget, Inc. This study was performed at the request of Company at a cost of $27,834.

Staff and Public Counsel's adjustment relies entirely upon the report which is in the record as Staff Exhibit 12. The report indicates that Company could reduce its inventory levels by an amount between $561,118 to $786,267, by implementing certain procedures.

Staff arrived at its adjustment by calculating a 13 month average of materials and supplies ending December, 1978, and then subtracted the inventory reductions possible based on Staff Exhibit 12. This amount was further reduced by the amount of inventory reductions Company has already achieved by implementing certain portions of the study. Staff Exhibit 13 sets forth Staff's adjustment in detail and shows that Company has implemented some parts of the study. The result has been an improved inventory turnover rate. Staff does, however, acknowledge that its adjustment is not precisely known and measurable.

Company's evidence was to the point that there are many good ideas contained in the report but due to Company's austerity program there has been a shortage of investment capital to implement the same. Company also tried to discredit the study. Company feels that a high turnover ratio could result in stockouts. Suppliers are much slower at the present time than when the study was performed. Company also claims that the study infers a central warehouse. Company's other evidence alleges that inflation and increased customer connections would eliminate any inventory savings.

As noted, the evidence shows that there is dispute as to the merits of some of the recommendations of the report. Thus, in any event, we could not assume that every recommendation of the report should be carried out. What is more important, however, is that the adjustment proposed by Staff is a purely hypothetical adjustment. Staff has created a hypothetical situation in which the recommendations of the study are assumed to have been carried out and attempted to assign monetary value to these hypothetical acts. The resulting adjustment can only be considered speculation.

We do find that the report appears to have merit and that Company's lack of implementation due to its unwillingness to hire the recommended inventory management supervisor appears shortsighted if the Company is truly interested in an austerely budget. Therefore, the Commission concludes that the Company should be permitted a $22,000 payroll increase adjustment. With the addition of a qualified person to implement the recommendations of the Cresap report, the Commission expects to have concrete information rather than hypothetical findings upon which to judge materials and supplies adjustments in future cases. The Commission rejects the Staff's rate base adjustment of $577,461 in this case.

Compensating Balances

Staff and Public Counsel propose that Company's compensating balances be excluded from rate base. Company contends that compensating bank balances should be included in rate base, and therefore, Staff's rate base should be increased by $2,722,214 (electric) and $230,047 (gas).

Compensating balances are monies some banks require in addition to interest on loans, that the borrower must maintain in direct proportion to the amount of funds borrowed and/or the amount of the commitment.

The total lines of credit available to Company involving compensating balances are $28,000,000. The following chart breaks the above amount into specifics:

	BANK	AMOUNT	COMPENSATING BALANCE REQUIRED
1.	Citibank of New York	$12,000,000	10% of line plus 10% of amt. borrowed
2.	Commerce Bank of Kansas City	$ 8,000,000	15% flat rate
3.	1st Nat. Bqnk of Chicago	$ 5,000,000	10% of line plus 10% of amt. borrowed
4.	1st Nat. Bank of Kansas City	$ 3,000,000	10% of line plus 10% of amt. borrowed

The record reveals that maintenance of compensating balances does not guarantee that the lines of credit will be available when needed, since either party to the arrangement can terminate the line at will (Public Counsel Exhibit 15). In the past three years Company has actually borrowed money only once. Such borrowing was for a short period of time and for a relatively small amount. While not actually borrowing any funds except as noted above, Company utilizes its lines of credit to support commercial paper. The commercial paper brokers require bank lines as the backup to support the sale of commercial paper. The Commission notes that commercial paper costs the consumer less than direct borrowing under the lines of credit. This is true because commercial paper is sold at a cheaper interest rate than that required for direct borrowing under the lines of credit. Thus, the lines of credit are incumbered to the extent of commercial paper sales according to the Company even though no actual borrowings occur. The bank lines also have been used in a similar manner to support the Jeffrey Energy Center Trust and the Greenwood Four Trust.

Based upon the record, the Commission finds that the Company has used its lines of credit in the test year even though direct borrowings occurred only once.

The Company's evidence in this case is substantially identical to Case No. ER-78-29 where the Commission rejected the Company's request to place compensating balances in its rate base. Therefore, the Commission concludes that since Company has continued to maintain its lines of credit virtually without use, an increase in electric rate base in the amount of $2,722,214 as proposed by the Company is not proper. The Commission also concludes that based on competent evidence in the record, Company could finance borrowing less expensively through other methods. The amount of $230,047 will be excluded from the gas rate base.

Three Percent Investment Tax Credit

On this issue, Public Counsel and Staff propose to offset Company's rate base by the unamortized balance of Company's pre-1969 three percent investment tax credit. Company opposes such adjustment and contends that Staff's calculation of rate base should be increased by $1,448,790.

Prior to 1969, the Company received a three percent tax credit for qualifying capital investments. This three percent credit was not taken into account in computing the Company's income tax liability for rate-making purposes. As a result, to the extent that Company received the three percent credit, its ratepayers were indirectly investing in the Company since they are paying the Company's income tax expense as if the three percent credit was not being received. Such tax savings are flowed back to the ratepayers evenly over the life of the investment which gave rise to the savings.

Staff proposes that Company's rate base should be reduced by the portion of the tax savings from the pre-1969 investment tax credits received by the Company which have not yet been flowed back to the ratepayer. If not so treated, the ratepayers become indirect investors in the Company's plant.

The Commission finds that Staff's adjustment is proper and reasonable. In light of the recent Supreme Court decision in State ex rel. Utility Consumers Council of Missouri, Inc. vs. Public Service Comm'n., No. 60848 (Mo. banc 1979) the Commission wishes to point out that Staff's adjustment only affects those tax savings of the Company which have not yet been flowed back to the ratepayer.

As such, the Commission is of the opinion that it is not engaging in retroactive rate-making. The Commission finds Staff's adjustment proper because the investment tax credit represents dollars collected from the ratepayer, which the Company has the use of until such time the savings are flowed back to the ratepayer. If the adjustment is not taken, the ratepayer is not given credit for the monies he has already invested in the Company.

Investor-Supplied Cash Working Capital

All parties agree that an amount for cash working capital is an appropriate rate base item. Any operating business needs cash to conduct its day-to-day operations because of the time differential between the provision of service and the payment therefor by the recipient. For some time, the practice was to accept an amount equal to a 45-day supply of cash, which was a rule of thumb developed by the Federal Power Commission. We have recently encouraged the use of lead lag studies which attempt to quantify the actual timing differences and arrive at a specific cash working capital figure rather than using an arbitrary rule. In the instant case we have been favored with lead lag studies from both Staff and Company and we reiterate our appreciation of this approach.

There are two time intervals measured in a properly conducted lead lag study. One is the revenue lag, which measures the elapsed time between provision of service and receipt of payment. The expense lag is a measurement of the time between the incurrence of an operation and maintenance expense and the actual cash payment for that expense by the Company.

In its study, Staff determined the revenue lag to be 43 days, composed of 15 days' usage period, 6 days to process the bill, and 22 days from the mailing date of the bill to the day that payment is received. The Staff's expense lag was calculated at 27 days.

The Company on the other hand arrived at a revenue lag of 61 days. The components of the 61-day lag are the same as Staff's with the exception of a 40-day time lapse from billing to receipt of payment rather than the 22 days contained in Staff's analysis. Further the Company has calculated its expense lag to be 36 days.

An immediate difference noted in the two results is the 18-day difference in the revenue lag, which results from the difference in the computation of the number of days from mailing of bill to receipt of payment. Both Company and Staff used an accounts receivable turnover calculation to arrive at the latter figure.

(Staff Exhibit 30, Page 3; Company Exhibit 16.) In this calculation an average accounts receivable balance is arrived at, which is divided into total revenues. This results in an accounts receivable turnover ratio which is applied to 365 days to equal the total number of days of accounts receivable turnover, which can be equated to the time to collect a bill after it is mailed. It is noted that the monthly accounts receivable balances used by Company are a good deal larger than those used by Staff. This results in a larger average accounts receivable balance which in turn results in a longer lag between time of billing and time of payment. The testimony made clear that the difference in the monthly figures resulted from the fact that Company included unbilled receivables in its figure.

The fallacy inherent in Company's position is apparent. The point of the analysis is to determine the amount of time from billing to payment. The effect of unbilled receivables is built into the other components of the revenue lag, the usage period and the time necessary to process the bill. To then allow Company to use those same unbilled items as part of the third component would be redundant and allow that one factor unequal weight in the formula. The result is then incorrectly inflated.

Similar differences in approach are noted in the calculation of expense lag performed by the parties. The Staff's composite expense lag, rounded to 27 days, was the result of Staff's performing a thorough analysis of three separate voucher analyses and arriving at a weighted average. Company on the other hand performed a simple average of a quite small sample which, Staff's witness averred, appeared to be intentionally chosen to arrive at the Company's position. In view of all of the testimony and evidence on this question, we find that Staff's approach to the expense lag calculation to be most persuasive.

The Commission therefore finds that Staff's analysis of the cash working capital requirement is the direct approach which results in an offset to rate base in the negative amount of $236,326.

Ratepayer-Supplied Cash Working Capital

Public Counsel urges the Commission to further reduce rate base by considering accrued interest on long-term debt and accrued preferred and preference stock dividends as offsets to cash working capital. The theory proposed is that these accruals are ratepayer-supplied funds which should be offset to rate base, similar to offsets for tax accruals that are commonly accepted and have been used in this case.

Company, on the other hand, asserts that the accruals in question are in fact funds belonging to the investors in the Company (long-term bondholders and preferred and preference stockholders) and thus are not a proper offset. If one accepts Company's characterization of the funds in question, it would result in utilizing investor funds to offset investor funds.

The Staff took no position in regard to this issue.

It has long been recognized that some tax amounts are proper offsets to cash working capital. This is so because the tax amount is a separate component of the rate structure and is in the rate for the sole purpose of being collected from the ratepayer and passed on to the appropriate taxing authority. It has been recognized that such funds, while in the hands of the Company, are a free source of cash provided by the ratepayer. That is, neither the Company nor its shareholders have any ownership rights in those funds, but the Company does have the use of them for some period of time prior to passing them on.

This Commission has previously determined (Case No. ER-79-19, June 1, 1979) that amounts collected as a part of rates to pay the interest on long-term debt should be treated similarly as an offset to rate base. This is so because the obligation to pay the interest on debt is a known and certain obligation, and the amount is precollected from the ratepayer for the sole purpose of passing it on to the bondholders. In that same case, however, we recognized the very real distinctions between bondholders and shareholders, and held that dividend amounts accrued to pay preferred and preference stockholders should not be so treated.

We continue to maintain this position, and thus hold that the adjustment of Public Counsel will be allowed to the extent of accrued interest on long-term debt but will be disallowed as to the accruals for preferred and preference dividends.

II. Operating Income

The Commission finds Company's operating income should be $20,179,310 for electric and $1,221,640 for gas. Such figures resulted from the Commission's determination of the following contested issues:

Interchange Energy Sales

Staff based revenues from jurisdictional interchange sales on estimated sales of 59,515 megawatt hours (MWH). Company based its revenues from jurisdictional interchange sales on estimated sales of 20,125 MWH. Therefore, Company contends that Staff's revenues should be decreased by $678,540. Public Counsel and Kansas City support Staff's adjustment.

Staff Exhibit 9 shows that Company had test year energy sales of 8,857 MWH. Staff determined the test year amount was abnormally low due to restriction of interchange sales during the UMW coal strike that lasted from December 6, 1977 through April 4, 1978. During this period Company had only 1,112 MWH of interchange sales. Such amount is abnormally low when compared to the same four-month period for the previous two years (129,475 MWH and 128,725 MWH respectively). During the same four-month period after the test year, Company was able to sell 54,558 MWH. Staff used the December, 1978 through April, 1979, time period as the basis for its adjustment. Thus, Staff only adjusted interchange sales for the period of time affected by the coal strike during the test year. Staff accepted Company numbers for the remaining months even though they appeared to be low. Staff chose to leave the remaining eight months alone to avoid relying strictly upon past experience. As noted above, the adjustment made is based on a period of time following the test year period.

Company's evidence to support its adjustment was to the point that interchange sales would decrease in the coming year. In the past, 85 to 90 percent of its sales have been from coal-fired units. However, Company's current coal contract will soon expire with the new contract almost doubling the cost of coal. Company maintains this will dull their current competitive edge in interchange sales. Company also, in the past five years, has increased their oil-peaking capacity to coal base load generation.

Company attacked Staff's position for several reasons. Company claimed that Staff's use of the current four-month data is inaccurate, due to extremely cold weather during that period of time. Further, Staff did not investigate other utilities that purchased power from Company to determine whether or not the purchases were in excess of what they normally purchase from the Company during the test year time frame. Further, Staff did not take into consideration the competitive position of the Company due to its increased cost of fuel, nor did they consider the capacity increase of the Company as well as connected companies in peaking versus base generation units.

The Commission finds that Staff's position is the proper one to be followed. Rates should be set as nearly as possible upon normal levels of operation. The Commission has considered Company's contentions regarding deficiencies in Staff's method but does not find them convincing. This is especially true because the eight months of Company data that Staff has utilized is very conservative. Thus, Staff's position approximates as nearly as possible the normal level of operation while giving effect to Company's argument that interchange sales may decrease in the future. The Commission is of the opinion that a proper level of interchange sales has been reached by using Staff's position.

Fuel and Purchase Power

Company and Staff differ as to the generating mix and level of purchase power that should be used in loading Company's system to meet the demand placed upon it. Company contends that Staff's fuel and purchase power expense should be increased by $420,982. Company and Staff disagree as to the amount of oil generation, purchase power and monthly percentage of gas to be included in Company's load curve.

In reaching Staff's position, an historical review for four 12-month periods ending September, 1975; September, 1976; September, 1977; and September, 1978 was taken to determine Company's past allocations to various generation sources. Staff utilized various historical peak months and compared them to the test year, the Company case total and the Staff total. Based on past experience, Staff loaded the Company's five available sources of generation monthly by utilizing the most economical source first and then progressing downward to the least economical source. Company's available energy sources are listed as follows starting with the most economical and progressing to the least economical:

1. Coal fired generation
2. Gas generation
3. Purchase power other than oil
4. Oil generation
5. Purchase power by oil

On the other hand, Company utilized a load duration curve to load its system requirements. This was done on a monthly basis to determine what each unit will generate under specific conditions and demands. Company's proposed loading departs from the historical loading to a considerable degree. A few examples will illustrate the magnitude of the change. In July, 1980, Company has loaded 8,222 MWH to gas generation. In July of the test year, Company produced 17,718 MWH by gas generation. The Company loading to gas generation in its filed case has been decreased by 54 percent while loading to more expensive oil generation has been increased to 32 percent over the test year. Another representative example of Company's loading policy is August, 1979. Historically 12,000 to 13,000 MWH has been generated by gas. The Company, however, includes only 7,306 MWH of gas generation, a 42 percent decrease. On the other hand, over the previous four years, the largest amount of MWH generated by oil in the month of August was 5,024 MWH Company loads 12,937 MWH to more expensive oil generation in August 1979, a 155 percent increase over any one of the four previous years. Turning to purchase power other than oil, the Company has loaded only 154,711 MWH, a 50 percent decrease over previous years.

Company maintains that the changes are necessary due to the unavailability of purchase power and its increasing cost when compared with the oil generated power at Company's facilities. In regard to gas generation, Company states that gas restrictions prevent economical use of this type of unit. Company Exhibits 3 and 4 set forth that the percentage of power generated by oil as compared to total generation has been gradually rising over the past few years. Company also sets forth that because of increasing cost of purchased oil generation, Company has found it cheaper to generate its own power by oil. Also, Company maintains it is unable to buy random purchase power in excess of 24 to 48 hours ahead of the need and thus cannot plan on it.

The Commission finds that Staff's adjustment is proper and reasonable. While there may be some validity to Company's arguments, the Commission cannot accept that conditions have changed so much in one year. In regard to gas generation, the record reveals that Company's gas suppliers will tender Company the same quantity as in the preceeding year.

It appears to the Commission that Company is building unnecessary dollars for fuel expense in its case so rates will be based on higher fuel costs. There is no requirement that Company has to burn the amount of oil set in this matter.

Therefore, even though Company burns less than is allowed in this proceeding, the ratepayer would still have to pay rates based on the exorbitant amount of oil generation if it was allowed. The Commission adopts Staff's position because to hold otherwise would be to set rates on a fictitious fuel mix and cost, since less expensive alternative sources of generation are available and should be used first. In adopting Staff's position, the Commission is of the opinion that a reasonable and proper amount of fuel expense has been found in this case.

Sibley Maintenance Expense

Company proposes that $741,823 representing the amount of Sibley maintenance expense disallowed in its last rate case (ER-78-29) be included in this proceeding. Staff did not include in cost of service any amount for the amortization of Sibley maintenance expense not allowed in ER-78-29.

In ER-78-29, the Commission found that a historical average was proper as opposed to actual expenditures. In essence, Company is simply seeking the amount of actual expenditures over that allowed by the Commission. Company in its brief alleges that the Commission simply forgot to include an allowance for amortization of actual expenditures in excess of the historical average found proper. The Commission does not agree with that allegation and submits that if such were the case, it should have been raised in Company's motion for rehearing.

There is no disagreement concerning the Sibley Generating Station maintenance expense in the present case. In the present proceeding, all parties agree that the Company should be allowed its actual test period maintenance expenses.

It is sometimes appropriate to include in cost of service an out-of-period item which will occur in the future and is presently measurable. The basis for the foregoing sentence is that rate and revenue requirements are set for the future. Therefore, under the correct set of facts it would be proper to give effect to measurable cost of service items which are certain to occur when rates and a revenue requirement will be in effect. However, it is unusual to include in cost of service an out-of-period item which occurred in the past. This is particularly so when the item in question has once been rejected and there is not only no new evidence presented but there is also not even a new analysis of old evidence presented. Based upon the foregoing, the Commission finds that the Company's adjustment must fail.

Fuel Expense Related to UMW Strike

Staff proposes that Company's cost of service be reduced by $385,309 due to Staff's belief that Company did not carry a proper quantity of coal into the UMW strike that lasted from December 6, 1977 through April 4, 1978. Company contends that an additional $1,552,120, apparently representing unrecovered fuel expenses should be allowed. Thus, the difference between Company and Staff on this issue is $1,937,429. Public Counsel and Intervenor Kansas City support Staff on this issue.

Staff Exhibit 6 sets forth that Company entered into the strike with 210,063 tons of coal. Company presented no evidence to refute such amount and the Commission finds it to be accurate. The evidence presented shows that it is Company's policy to keep the coal pile at 250,000 to 270,000 tons. Illustrative of this fact is that at the end of 1978, Company had 250,000 tons in inventory.

Company contends that the low amount of coal on hand at the beginning of the strike can be attributed to several reasons. First, Sibley No. 3 (Company's main baseload generating unit) was off line during March, April, May, June and part of July, 1977 for maintenance. In addition, this unit was off line during November, 1977 for a short while. In total, Sibley No. 3 was off line for 4,000 hours during 1977. Because Sibley was off line for four months, Company had deliveries from Peabody Coal stopped on July 6, 1977. Peabody is Company's main supplier. Shipments were halted because in Company's opinion the coal pile was at maximum capacity. Second, Company ran a coal test in August of 1977, using 10,000 tons of universal coal. The test was run to ascertain the quality of universal coal. Such test was necessitated by the fact that Company's contract with Peabody Coal was due to expire in 1979. To store the test coal, Company had to make room for it in the pile where it could be segregated from the usual stock. Third, Company maintains that the coal pile was low because 1977 was a poor year for coal delivery by railroads.

While not being relevant to the low quantity of coal going into the strike, Company points out that coal strikes historically have lasted only 30 to 45 days. Further, Company Exhibit 2 which consists of Commission memorandums, points out that the Commission was also of the opinion that the strike would not exceed 45 days.

Staff in reaching its adjustment, analyzed Company's coal pile going into the strike. The amount of coal on hand and available to be burned determined the fuel mix used during the strike. Staff concluded Company entered the strike with a deficiency in coal, causing it to incur higher generation costs and higher purchased power costs, which would not have been incurred if a proper amount of coal had been maintained. The dollar amount of Staff's adjustment was passed through the fuel adjustment clause. The purpose of Staff's adjustment is to refund to the ratepayers the fuel adjustment revenues that Company would not have incurred if it had an adequate coal pile. An adequate coal pile going into the strike would have put more coal into the fuel mix, thus reducing the cost to Company.

Staff, in preparation of its adjustment, tested Company's contentions regarding the coal pile. Staff agrees to the time periods that Sibley No. 3 was off line. Staff found on June 6, 1977, Company's coal pile contained 313,000 tons of coal. By July 17, 1977, the coal pile had been reduced to 234,000 tons. Further reductions occurred until November of 1977 at which time the pile contained 210,063 unadjusted tons. Shipments from Peabody Coal were stopped by MoPub on July 6, 1977 and did not resume until August 16, 1977. Sibley No. 3 came back on line during July of 1977. After Sibley No. 3 was on line, it was impossible to build up the coal pile even if maximum coal delivery had occurred due to its burn rate. Staff Exhibit 6 shows that the universal coal test depleted Company's coal pile by 49,245 tons. In regards to poor deliveries by the railroads, Staff Exhibit 6 shows that 1977 was a good year for coal deliveries.

Staff's analysis revealed that during the first month of the strike, Company made no attempt to find replacement coal. Once Company made an effort to do so, it was successful in finding replacement coal on the spot market. In burning the coal during the strike, Company had to make substantial downward adjustments to the amount of coal available in the pile due to interface problems. Interfacing of coal renders it unusable and occurrs at coal piles within a year to some degree.

Staff also found that Company maintains two sets of books reflecting inventory at the coal pile. One set is at the Sibley plant, where downward adjustments are recorded. The other set is kept at Company's general office building. The general office records did not reflect any adjustments. The result is that management relies on the general office records which show higher levels of inventory than in fact exist. After considering the downward adjustments, Company only had sixty-six (66) days of burnable coal at December 3, 1977.

In regards to whether Company's coal pile was at capacity on July 6, 1977, the record reflects that the Company did not know how much coal was in the coal pile at such time. Further, that Company has no scales at the Sibley facility, thus any determination of the amount of coal there is based on an "eyeball" estimate. Public Counsel Exhibit 8 points out that Company's annual report to stockholders sets forth that on December 1, 1977, Company had the largest stockpile of coal in its history, with one exception. However, a review of Staff Exhibit 6 and Public Counsel Exhibit 14 reveal there were several instances in which the Company had a coal inventory which exceeded these amounts.

Staff arrived at the dollar amount of its adjustment by using the following method. First, Staff determined how many megawatt hours could be obtained from a ton of Peabody Coal. Peabody Coal is Company's regular supplier. To arrive at such figure, the net coal generation for 1977 was found and divided by the tons of coal used for the same year. The amount arrived at was 2.13 megawatt hours per ton. Second, Staff took Company's abnormal generation figure of 34,137 megawatt hours due to the strike. This figure was adjusted to 32,526 megawatt hours to account for abnormally low gas generation. Then the 32,526 megawatt hours was divided by 2.13 megawatt hours to determine the Company would need 15,270 tons of coal to replace the generation. Third, Staff determined that Company lost 49,245 tons due to the Universal coal test further discussed below. Such amount was based on Staff's determination that the test affected four weeks, with expected deliveries estimated at 16,526 tons per week. The difference between this amount and actual deliveries yields a shortage of 49,245 tons. Fourth, Staff subtracted the 15,270 tons needed to avoid the abnormal generation to arrive at 33,975 tons in excess of the amount needed to eliminate the abnormal generation. This amount was transformed into pounds and multiplied by $11.9825 (representing price differential of Peabody Coal and strike coal) to arrive at Staff's adjustment of $385,309 (based on a jurisdictional allocation of 94.64 percent). The above is set forth on page 7 of Staff Exhibit 6.

Based upon the facts set forth in the discussion of Staff's adjustment, the Commission finds that such adjustment cannot stand. On the other hand, the Commission finds Company's proposed increase of $1,552,120 cannot be allowed. The Company presented no evidence to substantiate the dollar amount requested. In failing to do so, Company has not sustained its burden of proof and the adjustment is rejected. In addition, the Commission rejects Company's adjustment for the additional reasons set forth in discussion concerning Staff's adjustment. Further, the Commission also notes that this issue is a nonrecurring item and as such is improper for ratemaking purposes.

The Commission is of the opinion that the above findings are further required by the language of the Supreme Court of Missouri's recent decision in State ex rel. Utility Consumers Council of Missouri, Inc. vs. Public Service Comm'n. No. 60848, (Mo. banc 1979).

In regard to Company's citation of Sam vs. St. Louis and Milwaukee Railroad Company, 73 SW 686(1903), the Commission is of the opinion that it is in compliance with such case. In the aforementioned case the court set forth that where there are two concerns engaged in precisely the same business and both conducted it in the same manner, a statute or policy which would undertake to impose a liability on one and not on the other cannot be sustained in face of either state or federal constitution. In Company's brief, it was set forth that the Sho-Me Power Corporation was allowed to recover excess costs due to the strike through the use of a surcharge. The Commission, after reviewing the record, cannot find any evidence to support a finding that MoPub and Sho-Me Power Corporation were conducted in the same manner during the strike, and as such discounts Company's contention.

EPRI, EEI and NAEC

On this issue, Public Counsel proposes to exclude from Company's test year expenses $388,536 representing the majority of Company's Electric Power Research Institute (EPRI) dues. EPRI is a research organization which conducts a research and development program for the benefit of its members. Public Counsel proposes that this amount be capitalized in a non-rate base account. Further, the Public Counsel proposes that the Company be allowed to recover $3,230 of its EPRI dues amortized over a five year period. The Company opposes this treatment and seeks to include in its test year cost of service $389,182 for test year EPRI dues. Staff and Kansas City take no position in regard to Public Counsel's adjustment.

Traditionally, this Commission has allowed dues to organizations when a direct benefit results to the utility ratepayer from the activities of that organization. In re: Laclede Gas Company, Case No. GR-78-148. In the case of EPRI, the Commission set a further standard for inclusion of such an amount as a proper expense for ratemaking purposes. See in re: Empire District Electric Company, Case No. 17,583. In the above cited case the Commission held that EPRI dues would be addressed in each rate proceeding. The burden of proof would be upon the Company to have knowledge of the expenses incurred. The Report and Order stated that all reasonable expenditures from each Missouri electric utility's pro rata assessment for membership to EPRI would be a reasonable operating expense of the utility commencing with the 1973 calendar year. Thus, the issue presented for consideration is whether Company's dues to EPRI are reasonable in the test year.

The Commission finds that Public Counsel's adjustment cannot stand. The EPRI budget has many facets to it. To demand the Company to prove that each dollar spent is of a direct benefit to the ratepayer would place an almost insurmountable burden of proof upon the Company. The expense of trying the issue and the time involved would exceed any savings to the consumer. Further, we have previously recognized (Case No. 17,583) that research and development, in light of the complexity of present technology and the constraints of the economy, are beyond the means of individual utilities, even though research and development are necessary for the most efficient functioning of the utilities, and thus of benefit to the ratepayer.

Having found that the Public Counsel's adjustment cannot be applied, the Commission is of the opinion that Company's dues to EPRI are reasonable in the test year. We reiterate, however, that utilities are expected to monitor the activities of such research groups and further expected to make a showing in that regard if the expenditure is to receive favorable ratemaking treatment.

Public Counsel also proposes that Company's test year cost of service be reduced by $3,149 representing dues to National Association of Electric Companies (NAEC) and by $22,549 associated with dues to Edison Electric Institute (EEI). Company opposes both adjustments in their entirety. Staff and Kansas City take no stance on these two items.

Public Counsel asserts that such associations do not provide any benefit to the ratepayers and more importantly, these associations regularly attempt to influence decisions of regulators and legislators. The Commission finds that the dues to NAEC and EEI based upon the record should be excluded as they both attempt to influence decisions of regulators and legislators and as such engage in lobbying. The Commission sees no direct benefit to the ratepayer from the activities of NAEC and EEI and these amounts should not be allowed for ratemaking. The Commission is aware of nothing improper concerning the activities of these organizations or the stockholders of the Company contributing to them. However, the expense should not be borne by the ratepayer.

III. Rate of Return

All of the parties to this matter have stipulated and agreed to the following capital structure with the exception of those items which remain blank:

Type of Capital	Capitalization Ratio (%)	Cost	Weighted Cost
Common Equity	30.35	13.0	3.95
Preferred and Preference Stock	15.78	8.61	1.36
Long-term Debt	53.87	7.16	3.86
	100.00		9.17

As can be noted no agreement has been reached on the cost of common equity and therefore none can be reached on the overall rate of return. Company asserts that it requires a return on equity of 15.5 percent with a weighted cost of 4.70. This would result in a rate of return of 9.92 percent. Staff's evidence, on the other hand, would support a return on equity falling within a range of 12.97 to 13.90 on equity, with corresponding weighted costs ranging from 3.94 to 4.22 and range of overall return of 9.16 to 9.44.

Company's witness reached his conclusions through the use of the Discounted Cash Flow (DCF) method of computation. The DCF computation attempts to measure investor response to the security in question with the assumption that the price of a common share should equal the discounted or adjusted present value of the sum of all the future income to be received from that share. The deceptively simple formula for making this determination is expressed as:

$$k = \frac{d}{p} + g$$

where: k = expected return on investment in stock
d = dividend per share
p = price of stock
g = expected growth in dividends

The equation can be adjusted for pressure and offering expenses to reach the final answer expressing the desired rate of return on equity. As so adjusted, the formula becomes:

$$k = \frac{d/p}{(1-f)} + g$$

where: f = flotation costs

Flotation costs are those costs incurred in marketing an issue, such as underwriters compensation. Those costs must be recovered above the book value in order to prevent dilution of the existing equity.

In applying this formula, Company's witness used a market price per share of $11 and a flotation adjustment of 9 percent. As a growth factor, he used a sum of an expected earnings per share growth of 3 percent and a 4 percent growth in the stock dividend. This computation resulted in an expected return of 17 percent. After adjusting this figure, Company's witness arrived at his recommended range of returns as noted above.

Staff's witness, while agreeing that the DCF analysis is one method frequently used, criticized the way in which Company applied the formula in this case. Specifically, it was noted that the current market price of the stock was in the neighborhood of $12 rather than $11 and, as will be noted below, Staff believes a proper flotation adjustment to be 6 percent. Most severely criticized was the growth rate which is the result of adding two different growth rates. Staff's witness noted that the proper method of applying the growth rate is to pick one specific rate or use an average of rates but certainly not to add disparate growth rates.

It is obvious that the growth rate used by Company is the critical factor in arriving at the range of return recommended by Company's witness. If one accepts Company's logic in summing earnings per share and dividends per share rates, one would assume that, for a given dividend period, the cash dividend would be paid on the base holding of the shareholder as well as on the concurrently issued stock dividend. This is simply not the case. If we take the most optimistic growth rate suggested by Company of 4 percent and apply it to the formula using Company's suggested market price and flotation costs, the indicated return is 13.99 percent. Performing the same calculation with Staff's suggested market price and flotation costs the return is 12.87 percent. It is immediately noted that this range approximates quite closely the range arrived at by Staff's analyses, *infra*.

The approach of Staff was to determine an appropriate market to book ratio to allow the common stock of the Company to trade above book value. The amount above book value, as defined in Staff's analysis, is that amount sufficient to provide the Company with a net proceed of book value after the flotation costs of selling the share have been satisfied. Based upon an average arrived at from the results of this Company's stock issues since 1973, Staff's witness determined a reasonable market to book ratio to be 106 percent. This would allow Company to market new equity without dilution of the present shareholders' equity.

Having reached that conclusion, Staff's witness used a statistical technique, multiple regression analysis, to test variables for possible investor significance in determining the price they are willing to pay for the common stock in question. The goal of the analysis is to determine those characteristics that influence an investor in purchasing stock, as shown by its market to book ratio. A base of 85 electric and combination electric utility companies were used to develop the data necessary to make the analysis. It should be noted that Missouri Public Service Company was not included in that group of 85 companies because of its common stock dividend policy, which results in a lower cash dividend yield and a lower common dividend payout ratio than other similar utilities. We have previously noted on several occasions that this Company's stock dividend policy is a matter within the discretion of its management and we will not treat the Company differently from other regulated utilities simply because its management chooses to maintain this frequently criticized policy. Thus we hold that Staff's analysis is proper in its use of the operating characteristics of representative utilities rather than bending the data and formulae in an attempt to accomodate the "unique" characteristics of this Company.

Using a group of 21 independent variables tested by the regression technique for significance, Staff's analysis produced a model which explained 83.4 percent of the variability in the average market to book value of the studied companies by reference to eight significant variables: 1. book yield; 2. average bond yields; 3. ten year growth in earnings per share; 4. common equity ratio; 5. dividends per share coverage; 6. Duff and Phelps regulatory ranking of 1 and 2; 7. Duff and Phelps regulatory ranking of 4, 5 and 6; 8. operating revenues less than $100,000,000. Staff's testimony further demonstrated that several testing procedures had substantiated the significance of the variables arrived at by the regression analysis.

An equation was then developed using the targeted market to book ratio of 1.06 and inserting values for all of the variables except book yield. The equation is then solved to determine book yield which allows a determination of a recommended return for common equity, given a specified common dividend payout ratio. The equation so developed is expressed as follows:

1.06 = .9431 + .0224 (2.9, D.P.S. coverage) - .0316 (low D & P ranking) + 1.668 (.0232, 10 year E.P.S. growth) + .4724 (.283, common equity ratio) - 12.9445 (.092, avg. public utility bond yields) + 11.3225 (x, book yield)

$$1.06 = .9431 + .06496 - .0316 + .0387 + .1337 - 1.191 + 11.3225X$$

$$1.06 = 11.3225X - .04214$$

$$1.10214 = 11.3225X$$

$$.0973 = X \text{ (book yield)}$$

Staff's witness then arrived at a range for his recommended return on equity by applying common dividend payout ratios in the range of 70 to 75 percent to the required book yield as resulting from the above equation. This results in a 13.9 return at 70 percent payout, 13.42 at 72.5 percent payout and 12.97 at 75 percent payout.

Although the Company prefers to blame regulation for its inability to earn its authorized rate of return, the Commission believes that one of the factors contributing to the low market to book value of the Company's stock is the stock dividend. In a market that is looking for current yield, only the narrowest base of shareholders is attracted to a stock dividend. Another significant factor in the Company's inability to earn its authorized rate of return is the Company's policy of maintaining a high debt to equity ratio. The Commission majority took the unique step in Case No. ER-79-59 of ordering the Company to issue equity or refund to ratepayers the amount of the emergency relief granted. In that Report and Order we allowed Company an interim increase of approximately $4.2 million upon the express condition that if Company did not complete the sale of $3 million of new common stock by public offering before the operation of law date in this present case (July 29, 1979), the entire amount of additional revenue collected as a result of the interim case was to be refunded to its customers with 9 percent simple interest. We do not need to reach the question of the refund provision because Company's Late-Filed Exhibit No. 37 shows that on June 6, 1979, Company offered 300,000 shares of its common stock through a negotiated public offering which resulted in total proceeds of $3,525,000. We thus find that the condition in the interim rate order has been satisfied, but note that Company's stated intention of seeking a lower debt to equity ratio seems only to result from Commission action, not Company initiative.

We believe that the analysis of Staff to be the correct method to arrive at a fair and reasonable rate of return for Company. We do note that the average bond yield used in Staff's equation is a minimal figure in view of the current condition of the economy. We believe that a return on equity in the lowpoint of Staff's recommended range is the proper return to be allowed. The Commission therefore finds that the Company should be allowed an opportunity to earn a return on common equity of 13.0 percent, resulting in an overall return on rate base of 9.17 percent.

IV. Rate Design

With certain minor exceptions, Company filed its tariff sheets in this matter applying the increased revenues therein on a constant percentage basis. Staff and Public Counsel on the other hand suggest that any change in the revenue be spread among the rate classifications on an equal percentage basis and on a per unit basis within each rate classification. The effect of Staff's proposal would be to tend to flatten the Company's declining block structure thereby increasing the ratio to tail block users by a greater amount than would be the case with an equal percentage increase.

Staff has also proposed that the Company be ordered to submit a proposal for a load research study within 30 days of the effective date of this Report and Order. We agree with Staff that this data is needed by the Commission, and will so order.

The Commission, in ER-78-29, began to make minor adjustments in Company's rate design to accomplish some flattening of declining block rates. Staff's proposal in this case to allocate percentage increases among classes on a per unit basis within each classification carries forward the decisions on rate restructuring begun by the Commission in ER-78-29. The Commission recognizes this to be a social policy decision which is consistent with present conservation oriented societal goals. Accordingly, we find that Staff's proposal is reasonable and the proper one to utilize.

No party to this case objected to Company's proposal that any change in gas rates be applied on a per unit basis to each rate block of each gas rate schedule. The Commission agrees that this approach should be followed as to the gas rate schedules.

V. Jeffrey Energy Center Unit No. 1 In Service Date

The last general rate case of this Company was ER-78-29, in which the operation of law date was July 5, 1978. At the conclusion of the hearing in that case, it was acknowledged by all of the parties that the total amount of plant in service for inclusion in rate base could not be finally determined until quite near the time the Commission would be constrained to issue its Report and Order. This situation resulted from the fact that the Jeffrey Energy Center Unit No. 1 was nearing completion but, at the time of the hearing, was still necessarily considered construction work in progress. Company has an 8 percent interest in the Jeffrey Energy Center and participates therein with the Kansas Power and Light Company, Kansas Gas and Electric Company and Central Telephone & Utilities Corporation. The Kansas Power and Light Company is the operator of the power plant. Consequently, Company was given permission to file a late-filed exhibit to bring plant in service up to date to the time the new rates would become effective.

On June 16, 1978, Company filed late-filed Exhibit 52 which included a letter and telegram from a representative of the Kansas Power and Light Company. The body of the letter, dated June 15, 1978, stated, "On Sunday, June 11, 1978, Jeffrey Energy Center Unit No. 1 was in service generating electricity. Power was delivered to the owners in the approximate amount of ownership percentage." The telegram dated June 16, 1978, stated, "Jeffrey Energy Center Unit 1 On Line Generating Electricity This Date June 16, 1978 Energy Is Being Delivered To Owners In Their Respective Ownership Percentages."

Based upon the representations of late-filed Exhibit 52, the Commission, in Case ER-78-29, included Company's proportionate share of the Jeffrey Energy Center Unit No. 1 as plant in service in rate base for the purpose of the rates that were set by that case.

In this case Staff and Public Counsel assert that in fact the Jeffrey Energy Center Unit No. 1 did not become "fully operational and used for service" until July 30, 1978, and that Section 393.135, RSMo, prohibits its inclusion in rate base until that point in time. Section 393.135, RSMo, provides as follows:

> "Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the cost of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited."

The effect of this Section is to prevent charging ratepayers with any of the fixed or operating costs of plant under construction. The plain words of the statute make it clear that plant is to be considered under construction until such time as "it is fully operational and used for service". In support of its position, Staff conducted an extensive investigation and presented voluminous exhibits and detailed testimony. Several documents (Staff Exhibit 5, Schedules 5 through 17) indicate rather clearly that Kansas Power and Light did not consider the unit to be in commercial operation until July 30, 1978, and that this determination on its part was accepted and agreed to by the other co-owners, with the exception of Company. Included among these documents are transcripts of testimony of each of the other three co-owners before the Kansas Corporation Commission in which they indicate July 30, 1978, as the commercial operation date of the unit.

On the other hand, Company asserts that it determined the unit to be fully operational and used for service on June 30, 1978, based upon its judgment that the unit was at that time supplying sufficient energy to be a recognizable factor in dispatching its total system requirements. Additionally, Company presented testimony to the effect that sufficient testing had taken place in the months preceding the month of June, 1978 to indicate that, coupled with the actual performance of the unit after initial start-up on June 11, 1978, the unit was shown to be sufficiently reliable to carry load and thus could be considered commercial and in service on June 30, 1978.

In view of the sharply divergent positions of the parties, we believe it would be helpful to review the operating history of the unit during the critical period of June and July, 1978. In this connection we observe that Jeffrey Energy Center Unit No. 1 is a base load, coal fired generating unit with a nameplate capacity of 680 MW. Its minimum operating level is 250 MW. The expected load factor of the unit for the first six months of operation was 55 percent, which would produce 8,976 MWH per day if operated the entire day at the expected load factor.

The evidence before the Commission shows that the initial start-up of the unit took place on June 11, 1978. The generation history of the unit for the remainder of the month of June and the months of July and August is tabulated on Staff Exhibit 19 and graphically illustrated in Staff Exhibit 5, Schedule 35 Revised. These exhibits and the evidence therein contained are uncontroverted by the parties.

It is initially noted that the unit was operated from start-up through June 24 (all dates 1978) using oil as fuel 100 percent of the time that it was in operation. During that period of time there were 5 days when no energy was produced. The highest amount of energy produced during that period was 1,337 MWH, which is contrasted to the 6,000 MWH the unit would produce if operated at the minimum load for an entire day, and the 8,976 MWH produced at the expected load factor. From June 25 through August 23, the unit was operated with varying percentages of coal and oil, finally reaching 100 percent reliance upon its designed fuel on August 25. The minimum daily operating level of the unit was reached on July 11, but not consistently maintained until after August 4.

As noted earlier, the expected load factor to be maintained by this generating unit during the first six months of its operation was 55 percent. Operation at that level would result in the production of 8,976 MWH per day. That level of production was not reached until July 30, 1978 when 9,162 MWH were produced. Subsequently the expected load factor was attained with sufficient regularity (22 days in the month of August) to indicate the reliability of the plant.

Staff's position that July 30, 1978 was the proper date to consider the unit fully operational and used for service was based upon the application of five criteria, as set out in Staff's testimony. These criteria are: 1. Operating at its minimum level consistently; 2. Operation at expected load factor; 3. Operation at nameplate capacity; 4. Reliance upon its designed energy input; 5. Completion of testing. Applying these criteria to the generating history of this plant, we find the following.

As to operation at the minimum operating level, the evidence shows that JEC-1 first reached that level on July 11. Consistent running at that level is not noted until August 4 and thereafter.

The expected load factor of 55 percent was not reached until July 30 and was subsequently maintained with fair consistency. This same date, July 30, saw the unit first satisfy the third criterion proposed by Staff in that at three o'clock that afternoon it reached 680 MW and maintained that generation for the hour from three to four o'clock.

Staff's exhibits referred to above show that the sole energy input was oil rather than coal through June 24. At that time some coal began to be used and the relative amount was increased daily until July 1, when coal generation amounted to 93.3 percent of the total generation for the day. Even subsequent to that date, however, varying amounts of oil were burned throughout the months of July and August until August 24 when, for the first time, 100 percent of the generation was produced from coal.

The evidence concerning the question of testing, Staff's fifth criterion, is not the major basis for our finding in regard to this question. While the evidence made rather clear that the major testing of the unit took place prior to start-up, June 11, it is also clear that additional testing took place through the end of July. There is further evidence in the record to the effect that the testing of a major generating facility continues throughout its life although not at the level necessary before a plant becomes fully operational.

The question before the Commission in this issue is one of first impression. Neither this Commission nor the courts have been called upon to apply the terms of Proposition No. 1 so specifically. Only the vagaries of coincidence have presented the question with such clarity. The transcript in this matter is replete with examples of the loose and unspecific manner in which the terms "in service", "commercial service", "used and useful", "fully operational", and other similar terms are used in the industry. The question would, of course, never arise unless one is faced with a statute similar to ours.

The Commission recognizes the difficulty of applying a hard and fast rule as to when the statute is satisfied in every instance, and indeed believes that such is not possible in view of the different circumstances which can surround a specific piece of construction in a specific setting. We do believe, however, that the criteria proposed by Staff are valid and may properly be used by the Commission in making the individual judgment that it must make in each specific case. We are particularly persuaded by the ability of the unit to operate at its expected load factor and its further ability to achieve its maximum operational capability. As has previously been noted, both of those occurrences took place on July 30. The invalidity of the Company's asserted "in service" date is well illustrated by the fact that the unit was not shown to be able to function at even its minimum daily load until well after that date.

The Commission believes that Section 393.135, RSMo, 1978, requires an electric generating facility to be not only used for service but also shown to be fully operational prior to its inclusion in rate base. Throughout the months of June and July there is no question that the machine was used for service to some minimal degree, but we cannot agree that it became <u>fully operational</u> until July 30.

We therefore find that Jeffrey Energy Center Unit No. 1 became fully operational and used for service as contemplated by the provisions of Section 393.135, RSMo, on July 30, 1978.

Having so found, we are faced with the fact that the Company received revenue based upon the inclusion of the unit in its rate base for the period from July 5, 1978 (when the rates approved in the last case went into effect) through July 30, 1978, contrary to the prohibition of Section 393.135. Staff suggested that the Commission order the Company to refund an amount of money equal to that collected through December 14, 1978 as a result of the inclusion of the unit in rate base. That date was suggested because it was on that date that the present (interim) rates went into effect and, it is asserted, that was the first point in time that the Company would have been able to obtain a rate increase to cover the fixed and operating costs for the unit. The Commission agrees that December 14, 1978, was the next time this plant could have been placed in rate base, and thus finds the excess revenue to be in the amount of $2,142,803, which is the amount the Company collected in the period from July 5, to December 14, 1978.

Having reached the foregoing conclusions, the Commission finds itself in the awkward position of having found that the Company unlawfully received the foregoing amount of revenue from its ratepayers, but having no remedy available to redress the wrong. We believe that the language of the Missouri Supreme Court in <u>State ex rel. Utility Consumers Council of Missouri, Inc. et al. v. Public Service Commission et al.</u>, No. 60848, June 29, 1979, effectively prevents us from ordering Company to refund the excess revenues or, indeed, from any other method of disgorgement. While the Supreme Court did indicate that the surcharge in the foregoing case was subject to refund, it based its conclusion on the fact that the surcharge amounts were funds collected by the utilities under an old rate that was no longer in effect and that such funds were not collectible under the filed rate in effect at the time they were collected. The funds in the instant case were in fact collected according to the rate then filed and approved by this Commission.

It is clear, however, that the funds collected in the period July 5, to December 14, 1978, were so collected in violation of Section 393.135 and by virtue of the language of that statute should be considered "...unjust and unreasonable, and ...prohibited." We thus see a distinct similarity in the Company's right to retain such funds and the right to retain the surcharge noted in the foregoing opinion. The Court there noted that the utility had no vested right to or legitimate expectation in the surcharge fund and that their retention would amount to a windfall, leaving the ratepayers with no remedy for recover of the unlawfully collected funds. The Court then went on to note its inherent power to afford redress and to direct restitution in situations such as there existing. We do not believe, however, that this Commission is possessed of similar authority. We therefore instruct the General Counsel of the Commission to pursue such remedies at law as appear feasible to recover the foregoing amount on behalf of the ratepayers of Company and for any statutory penalties available.

VI. Current Income Taxes

The calculation of current income taxes was to a large degree agreed upon by the parties to this case. Two schedule "M" items remain in contention, however. In the first case the Staff used a repair allowance deduction in the amount of $648,677, which the Company did not use in its calculation. Secondly, Company and Staff differ on the amount of the deduction for the Jeffrey Energy Center Trust expenses.

During the course of the hearing, Company's witness testified that the Company did not take a repair allowance on its 1977 tax return, and does not intend to take it as a deduction on its 1978 return. He testified that should there be some change in the Company's plans, if it did in fact determine to use the deduction, Company would agree to flow the effect of that deduction back to the ratepayers at the time of its next rate case. This undertaking on behalf of Company can be found at page 2474 of the transcript in this matter. Based upon this assurance, Staff agreed to eliminate the deduction for repair allowance from its case.

Public Counsel, in this instance, does not agree with Staff's position. As set out in the brief, it appears to be Public Counsel's position that the Commission should force Company to use the repair allowance because Staff would then recommend that such a deduction be flowed through rather than normalized. As noted by Public Counsel, Company has chosen to take additional investment tax credit rather than utilizing the repair allowance deduction. Staff recommends normalization of investment tax credit.

In this instance, Company is faced with two alternatives and has chosen that which it feels is most beneficial to it. We therefore find that the agreement reached by Company and Staff is a reasonable solution to the matter. We do, however, make specific note of Staff's reliance upon Company's assertions as set out in the record. The Commission likewise relies upon those assertions.

VII. Wage and Price Control Guidelines

It is the Commission's position that any rate relief given to any utility should not exceed the voluntary price standards prescribed by the President as part of his anti-inflation program in the absence of extraordinary circumstances. However, the aforementioned statement is mitigated to the extent that the Commission has a legal obligation to set utility rates at a level which affords regulated companies a reasonable opportunity to earn a fair return on their investment. FPC v. Hope Natural Gas Co. 320 US 591 (1943); Bluefield Water Works and Improvement Co. v. Public Service Commission, 262 US 679 (1923). Rates which do not afford such an opportunity are confiscatory, and in violation of the due process provisions of Amendment 14, Constitution of the United States, and Article I, Section 10, Constitution of Missouri (1945).

The Commission finds that the rate relief granted herein meets both the price deceleration test and the profit margin test. Thus, under both standards the Company is in compliance.

VIII. Fair Value Rate Base

We find the Missouri jurisdictional portion of the Company's fair value rate base to be $408,246,642 for electric and $27,850,243 for gas (Company Exhibit No. 1, Section 3, Schedule 2 for gas and electric). The above amounts include all necessary components of rate base. Applying the net operating income of $20,179,310 for electric which we have found reasonable in this case to the electric fair value rate base produces a fair rate thereon of 4.94percent. The same computation applied to gas derives a fair return of 4.39 percent (based on a gas net operating income of $1,221,640).

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1978.

The Company's tariffs which are the subject matter of this proceeding were suspended pursuant to the authority vested in this Commission by Section 393.150, RSMo 1978.

The burden of proof to show that the proposed increased rates are just and reasonable is upon the Company.

The Commission, after notice and hearing, may order a change in the rate, charge, or rental, in any regulation or practice affecting the rate, charge or rental, and it may determine and prescribe the lawful rate, charge or rental, and the lawful regulation or practice affecting said rate, charge, or rental thereafter to be observed.

The Commission may consider all facts, which in its judgment, have any bearing upon a proper determination of the price to be charged with due regard, among other things, to a reasonable average return upon the capital actually expended, and to the necessity of making reservations out of income for surplus and contingencies.

The Order of this Commission is based upon competent and substantial evidence upon the whole record.

The Company's existing rates and charges for electric service are insufficient to yield reasonable compensation for electric service rendered by it in this State, and accordingly, revisions in the Company's applicable tariff charges, as herein authorized, are proper and appropriate and will yield the Company a fair return on the net original cost rate base or the fair value rate base found proper herein. Rates resulting from the authorized revisions will be fair, just, reasonable and sufficient and will not be unduly discriminatory or unduly preferential.

All late-filed exhibits are admitted.

All motions not heretofore ruled on are denied and all objections not heretofore ruled upon are overruled.

The fair value rate bases of $408,246,642 (electric) and $27,850,243 (gas) and operating incomes of $20,179,310 (electric) and $1,221,640 (gas) are hereby determined to be fair, just and reasonable.

The Company should file in lieu of the proposed revised tariffs, new tariffs designed to increase gross electric revenues by approximately $1,351,307 and gas revenues by approximately $46,096, exclusive of gross receipts taxes.

It is, therefore,

ORDERED: 1. That the proposed revised electric tariffs filed by Missouri Public Service Company in Case No. ER-79-60 are hereby disapproved and the Company is authorized to file in lieu thereof, for approval by this Commission, tariffs designed to increase gross revenues by approximately $1,351,307 in excess of the interim relief granted in ER-79-59, exclusive of gross receipts and franchise taxes.

ORDERED: 2. That the proposed revised gas tariffs filed by Missouri Public Service Company in Case No. GR-79-61 are hereby disapproved and the Company is authorized to file in lieu thereof, for approval by this Commission, tariffs designed to increase gross revenues by approximately $46,096, exclusive of gross receipts and franchise taxes.

ORDERED: 3. That the Missouri Public Service Company shall file its tariffs in compliance with this Report and Order on or before July 23, 1979, using the rate design as set out in this Report and Order.

ORDERED: 4. That the rates established in the tariffs may become effective for service rendered on and after the 29th day of July, 1979.

ORDERED: 5. That this Report and Order shall become effective on the 29th day of July, 1979.

BY THE COMMISSION

Lawson Phaby

Lawson Phaby
Acting Secretary

(S E A L)

McCartney, Slavin and Dority, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo, 1969. Fraas, Chm., Concurs in part and dissents in part.

Dated at Jefferson City, Missouri, this 19th day of July, 1979.

The difference in the amount of the Jeffrey Energy Center Trust expense is the result of each of the parties using a different period of time to figure the expense. Company has used the actual test year expenses in the amount of $1,783,104 Staff, on the other hand, contends that the deduction should be figured on the amount that will be available during the year the rates to be set in this case will be in effect, with a resulting figure of $1,987,397. The difference is $204,293.

The sole objection to the use of Staff's figure raised by Company is that it is an out of test year expense. While we agree that this Commission has traditionally used an historical test period, we also point out that known and measurable changes beyond the period of the test year have frequently been recognized by the Commission and utilized to effect a more realistic level of future rates.

In the instant situation Staff has been able to compute the level of expense during the time the rates set in this case are to be in effect because of certain known and measurable changes. Specifically, Jeffrey Energy Center Unit No. 2 will be going into its final stages of construction during the year immediately following the entry of this order, and will cause greater expense to be present than Company experienced during the test year. The deduction for tax purposes will, of course, be correspondingly greater. We believe Staff's adjustment will provide a more realistic basis upon which to set rates for the future, and find that the proper amount to be used in this calculation is $1,987,397.

Deferred Taxes: Flow Through Versus Normalization

In this case Staff and Public Counsel have proposed that certain tax timing differences be flowed through. Specifically it is suggested that: 1. allowance for funds used during construction, 2. pensions and taxes capitalized, 3. Jeffrey Energy Center Trust deduction, and 4. removal costs received flow through treatment. This is substantially the same overall treatment ordered by the Commission in Company's last permanent rate case. Company takes the position that it should be allowed to return to a fully normalized basis as it was prior to the last case.

We no longer feel it necessary to go into great detail explaining the policy of the Commission as to the treatment of tax timing differences. We have repeatedly over recent years ruled that cash flow, interest coverage and internally generated funds analyses will determine the need of a given company for normalization. We so specifically held in Company's last permanent rate case, Case No. ER-78-29.

The Staff has shown that Company's cash flow and coverage situation has not deteriorated from that found to be a fact in the last case. Staff's evidence shows funds internally generated during 1978 to be 46.64 percent or 54.08 percent as adjusted to exclude construction expenditures at the Jeffrey Energy Center. The 1979 figures as indicated by Staff's testimony will be 65.06 percent as adjusted to take into account certain budgeted construction cuts proposed by Company or 47.85 percent if the entire budgeted amount of construction is engaged in. As indicated in Staff's testimony, Company's interest coverage after a planned $15,000,000 bond issue in March of 1980 will be 2.51. Company's indenture requires a coverage of 2.0, and the Company has identified 2.15 as their considered allowable low point. Company further indicates that it believes its interest coverage will have sagged to the neighborhood of 1.70 by the end of the current calendar year.

Staff's examination of Company's 1979 construction budget shows with either an unadjusted budget or an adjusted budget which recognizes reasonable cuts fully supported by evidence that internal funds percentages are well above the industry average of 35 percent to 40 percent. Company indicates that its percentage of internally generated funds to construction expenditures will be approximately 30 percent throughout the period in question.

The Commission concludes that the Company's gloomy analyses of its cash flow, interest coverage and internally generated funds is overly pessimistic. The Commission finds that although Staff's analysis may be somewhat optimistic, it is the proper one to be followed. Company's cash flow, interest coverage and internally generated funds will remain adequate if Company is allowed to normalize investment tax credit, accelerated depreciation, amortization of extraordinary purchased power costs and numerous quick turnaround items. Allowance for funds used during construction, pensions and taxes capitalized, Jeffrey Energy Trust deduction and removal costs shall be flowed through. Based on the above, the Commission rejects Company's request for a return to full normalization.

VII. Wage and Price Control Guidelines

It is the Commission's position that any rate relief given to any utility should not exceed the voluntary price standards prescribed by the President as part of his anti-inflation program in the absence of extraordinary circumstances. However, the aforementioned statement is mitigated to the extent that the Commission has a legal obligation to set utility rates at a level which affords regulated companies a reasonable opportunity to earn a fair return on their investment. FPC v. Hope Natural Gas Co. 320 US 591 (1943); Bluefield Water Works and Improvement Co. v. Public Service Commission, 262 US 679 (1923). Rates which do not afford such an opportunity are confiscatory, and in violation of the due process provisions of Amendment 14, Constitution of the United States, and Article I, Section 10, Constitution of Missouri (1945).

The Commission finds that the rate relief granted herein meets both the price deceleration test and the profit margin test. Thus, under both standards the Company is in compliance.

VIII. Fair Value Rate Base

We find the Missouri jurisdictional portion of the Company's fair value rate base to be $408,246,642 for electric and $27,850,243 for gas (Company Exhibit No. 1, Section 3, Schedule 2 for gas and electric). The above amounts include all necessary components of rate base. Applying the net operating income of $20,179,310 for electric which we have found reasonable in this case to the electric fair value rate base produces a fair rate thereon of 4.94 percent. The same computation applied to gas derives a fair return of 4.39 percent (based on a gas net operating income of $1,221,640).

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1978.

The Company's tariffs which are the subject matter of this proceeding were suspended pursuant to the authority vested in this Commission by Section 393.150, RSMo 1978.

The burden of proof to show that the proposed increased rates are just and reasonable is upon the Company.

The Commission, after notice and hearing, may order a change in the rate, charge, or rental, in any regulation or practice affecting the rate, charge or rental, and it may determine and prescribe the lawful rate, charge or rental, and the lawful regulation or practice affecting said rate, charge, or rental thereafter to be observed.

The Commission may consider all facts, which in its judgment, have any bearing upon a proper determination of the price to be charged with due regard, among other things, to a reasonable average return upon the capital actually expended, and to the necessity of making reservations out of income for surplus and contingencies.

The Order of this Commission is based upon competent and substantial evidence upon the whole record.

The Company's existing rates and charges for electric service are insufficient to yield reasonable compensation for electric service rendered by it in this State, and accordingly, revisions in the Company's applicable tariff charges, as herein authorized, are proper and appropriate and will yield the Company a fair return on the net original cost rate base or the fair value rate base found proper herein. Rates resulting from the authorized revisions will be fair, just, reasonable and sufficient and will not be unduly discriminatory or unduly preferential.

All late-filed exhibits are admitted.

All motions not heretofore ruled on are denied and all objections not heretofore ruled upon are overruled.

The fair value rate bases of $408,246,642 (electric) and $27,850,243 (gas) and operating incomes of $20,179,310 (electric) and $1,221,640 (gas) are hereby determined to be fair, just and reasonable.

The Company should file in lieu of the proposed revised tariffs, new tariffs designed to increase gross electric revenues by approximately $1,351,307 and gas revenues by approximately $46,096, exclusive of gross receipts taxes.

It is, therefore,

ORDERED: 1. That the proposed revised electric tariffs filed by Missouri Public Service Company in Case No. ER-79-60 are hereby disapproved and the Company is authorized to file in lieu thereof, for approval by this Commission, tariffs designed to increase gross revenues by approximately $1,351,307 in excess of the interim relief granted in ER-79-59, exclusive of gross receipts and franchise taxes.

ORDERED: 2. That the proposed revised gas tariffs filed by Missouri Public Service Company in Case No. GR-79-61 are hereby disapproved and the Company is authorized to file in lieu thereof, for approval by this Commission, tariffs designed to increase gross revenues by approximately $46,096, exclusive of gross receipts and franchise taxes.

ORDERED: 3. That the Missouri Public Service Company shall file its tariffs in compliance with this Report and Order on or before July 23, 1979, using the rate design as set out in this Report and Order.

ORDERED: 4. That the rates established in the tariffs may become effective for service rendered on and after the 29th day of July, 1979.

ORDERED: 5. That this Report and Order shall become effective on the 29th day of July, 1979.

BY THE COMMISSION

Lawson Phaby

Lawson Phaby
Acting Secretary

(S E A L)

McCartney, Slavin and Dority, CC.,
Concur and certify compliance with the provisions of Section 536.080, RSMo, 1969.
Fraas, Chm., Concurs in part and dissents in part.

Dated at Jefferson City, Missouri,
this 19th day of July, 1979.

DISSENT OF CHAIRMAN CHARLES J. FRAAS, JR.

CASE NOS. ER-79-60 AND GR-79-61

While I concur with the majority in its treatment of most of the issues in this case, I feel that I must respectfully dissent on the following issues:

Ratepayer-Supplied Cash Working Capital

In this case the Commission has again offset accrued interest on long-term debt to the cash working capital component of rate base. In Case No. ER-79-19, June 1, 1979, the Commission first took this position, a position contrary to that it had previously taken. The dissent in that case clearly sets out my position in regard to this adjustment, as does the Report and Order in Case No. ER-78-252, March 5, 1979.

Deferred Taxes

This Company had been fully normalized prior to the last permanent rate case. In that case the Commission ordered the flow through of items similar to those to which the majority has afforded the same treatment in this case. Within six months of the granting of the increase in the last permanent rate case, a majority of the Commission found it necessary to grant Company an emergency increase of approximately $4.2 million (ER-79-59, December 1, 1978). While the cash flow crisis which led to the granting of interim relief is certainly not totally the result of the Commission's change of position as to Company's treatment of tax timing differences, that change must be considered an important contributing factor. There has been no substantial change in this regard since the time of the interim case and it appears that a return to the normalized treatment allowed previously would be the best course to take in view of this Company's continued problems.

Rate of Return

The rate of return granted herein is unrealistically low. In view of current economic trends and the necessarily somewhat stale data presented in evidence to substantiate the rate of return range, a figure closer to the center of Staff's recommended range of rate of return would be more practical.

Respectfully submitted,

Charles J. Fraas, Jr.

Charles J. Fraas, Jr.
Chairman