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December 3, 1998

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FILED
 DEC 3 1998
 Missouri Public
 Service Commission

RE: EO-96-14 and EM-96-149

Dear Mr. Roberts:

Enclosed for filing in the above-captioned cases are an original and fifteen (15) conformed copies of a **STAFF RESPONSE TO UNION ELECTRIC COMPANY REQUEST FOR COMMISSION GUIDANCE.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
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Enclosure
 cc: Counsel of Record

FILED

DEC 3 1998

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Monitoring of the Experimental)
Alternative Regulation Plan of Union Electric Company)

Case No. EO-96-14

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

Case No. EM-96-149

**STAFF RESPONSE TO UNION ELECTRIC COMPANY
REQUEST FOR COMMISSION GUIDANCE**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the Request For Commission Guidance of Union Electric Company, d/b/a AmerenUE filed on November 23, 1998. The Staff concurs with the request of UE to the extent that the Staff believes that Commission guidance is now required respecting the application of the Stipulation And Agreement approved by the Commission in Case No. ER-95-411. The Staff maintains that the issues raised in its Motion For Setting Expedited Early Prehearing Conference filed in this docket on November 25, 1998 are appropriate issues for Commission determination within the context of the meaning of the terms of the Stipulation And Agreement approved by the Commission in Case No. ER-95-411, and the Commission should schedule the expedited early prehearing conference requested in the Staff's November 25, 1998 Motion. In support thereof the Staff states as follows:

1. The significance of the matters presented by this dispute is considerable. First, there is the significance to UE and its customers. Not only do these matters affect the amount of the sharing credit for the last year of the first UE alternative regulation plan, these matters affect the amount of the rate reduction which will occur as a result of the Stipulation And Agreement approved by the Commission in Case No. EM-96-149, UE's CIPSCO, Inc. merger case. Of further significance is the fact that the second three-year UE alternative regulation plan commenced July 1, 1998. Thus, there are three more years to be administered under terms which are to be decided for the first time ever by the Commission. Other than a modification of the sharing grid, the Case No. EM-96-149 UE alternative regulation plan is a replica of the first UE alternative regulation plan. The instant controversy also is of significance because other companies regulated by the Commission have sought (Missouri Public Service, a division of UtiliCorp United, Inc., in Case No. ER-97-394) or are now seeking (Western Resources, Inc. – Kansas City Power & Light Company in Case No. EM-97-515) incentive rate regulation and cite the UE alternative regulation plans as bases for seeking similar treatment.

Even though much of the language of the UE alternative regulation plans was taken from the Southwestern Bell Telephone Company (SWBT) alternative regulation plan in Case No. TO-90-1 (In the Matter of an Incentive Plan For Southwestern Bell Telephone Company), this is the first occasion where the Commission will be called upon to determine the meaning of the terms of such an alternative regulation plan. The Staff, Public Counsel and SWBT never required Commission resolution of the Staff and Public Counsel's monitoring of SWBT not because disputes never arose, but because the Staff, Public Counsel and SWBT ultimately were able to resolve disputes without requiring Commission intervention.

2. UE alleges in paragraph "2." of its November 23, 1998 Request For Commission Guidance that "the disagreement between the Company and the Staff is because of one fundamental issue - the definition of the term 'manipulate' as used in the Stipulation and Agreement." In paragraph "3.," UE contends that "[s]pecifically, the term 'manipulation' appears in those sections of the Stipulation and Agreement which describe under what circumstances the Company's earnings report may be contested." In paragraph "6.," UE asserts that "[i]f the Staff or OPC or other signatory suspects that such impropriety has occurred, it can bring it to the attention of the Commission, and the procedure set out in Paragraph 3 f vii will come into play."

The Staff will address herein the issue of the proper definition to be given to the word "manipulate," but the dispute between the Staff and UE is not limited to that narrow characterization which UE seeks to impose on the Staff's challenge of UE's Final Earnings Report and Proposed Sharing Report for the Third Sharing Period (July 1, 1997 – June 30, 1998).

The Staff at the outset would note that UE cites at paragraph "6." of its pleading to Webster's Ninth New Collegiate Dictionary for the following definition of "the term 'manipulation'":

2. b. to control or to play upon by artful, unfair, or insidious means
esp. to one's own advantage.

The most current edition that the Staff has been able to locate of Webster's New Collegiate Dictionary is Webster's Eighth New Collegiate Dictionary. There is a Webster's Ninth New Collegiate Dictionary, but in the available time the Staff has not been able to locate a copy. Webster's Eighth New Collegiate Dictionary contains the following definition of "artful":

1 : performed with or showing art or skill . . . 2 : ARTIFICIAL . . .
3 a : using or characterized by art and skill : DEXTEROUS . . . b :

adroit in attaining an end often by insinuating or indirect means :
syn see SLY *ant* artless

Webster's Eighth New Collegiate Dictionary contains definitions for the word "manipulate." The "2. b." definition of "manipulate" cited by UE appears, but it shows the following as the "2 a" definition, which is not to cited by UE in its pleading:

1 : to treat or operate with the hands or by mechanical means esp. in a skillful manner 2 a : to manage or utilize skillfully . . . b : to control or play upon by artful, unfair, or insidious means esp. to one's own advantage . . . [Emphasis added]

Webster's Third New International Dictionary (Unabridged) shows under "manipulate" a definition at "2 b 2" similar to the definition cited by UE in Webster's Ninth New Collegiate Dictionary, but also shows the following definitions:

1 : to treat, work, or operate with the hands or by mechanical means : handle or manage esp. with skill or dexterity . . . 2 a : to treat or manage with the mind or intellect . . . b (1) : to control the action or course of by management : utilize by controlling and managing . . . (2) : to control, manage, or play upon by artful, unfair, or insidious means esp. to one's own advantage . . . [Emphasis added]

3. For a proper focus on the instant dispute, paragraphs "3.f.vi." through "3.f.ix." of the Stipulation And Agreement in Case No. ER-95-411 should be quoted in entirety, not just "3.f.vi." as UE has done in its Request For Commission Guidance. Those paragraphs appear in the Case No. ER-95-411 Stipulation And Agreement as follows (the underlining of certain words is the Staff's underlining for purposes of focus):

vi. If Staff, OPC or other signatories find evidence that operating results have been manipulated to reduce amounts to be shared with customers or to misrepresent actual earnings or expenses, Staff, OPC or other signatories may file a complaint with the Commission requesting that a full investigation and hearing be conducted regarding said complaint. UE shall have the right to

respond to such request and present facts and argument as to why an investigation is unwarranted.

vii. UE, Staff, OPC and other signatories reserve the right to bring issues which cannot be resolved by them, and which are related to the operation or implementation of the Plan, to the Commission for resolution. Examples include disagreement as to the mechanics of calculating the monitoring report, alleged violations of the Stipulation and Agreement, alleged manipulations of earnings results, or requests for information not previously maintained by UE. An allegation of manipulation could include significant variations in the level of expenses associated with any category of cost, where no reasonable explanation has been provided. The Commission will determine in the first instance whether a question of manipulation exists and whether that question should be heard by it.

viii. Staff, OPC and other signatories have the right to present to the Commission concerns over any category of cost that has been included in UE's monitoring results and has not been included previously in any ratemaking proceeding.

ix. Differences among UE, Staff, OPC and other signatories will be brought to the Commission's attention for guidance as early in the process as possible.

4. Paragraph "3.f.vi." does not refer solely to manipulation "to misrepresent actual earnings or expenses" as is the focus of the argument of UE's November 23, 1998 pleading. Alternatively, paragraph "3.f.vi." refers to manipulation "to reduce amounts to be shared with customers." Thus, paragraph "3.f.vi." does not identify as the same conduct (a) manipulation of operating results to reduce amounts to be shared with customers and (b) manipulation of operating results to misrepresent actual earnings or expenses. Similarly, the Webster's Ninth New Collegiate Dictionary definition for "manipulation" provided by UE in its pleading gives alternative characterizations of "manipulation" as the use of "artful, unfair, or insidious" means. "Artful" does not have the same meaning as "insidious," or even the same meaning as "unfair." Furthermore, a named example of "manipulation" found in paragraph "3.f.vii." is "significant

variations in the level of expenses associated with any category of cost, where no reasonable explanation has been provided.”

5. Paragraph “3.f.vii.” makes clear that manipulation to misrepresent the actual earnings or expenses is not the only basis for the Staff, OPC or other signatories to contest UE’s monitoring reports. Alleged manipulation of earnings results to reduce amounts to be shared with customers is only one of the possible bases for disagreement addressed by the Stipulation And Agreement. There are other bases of disagreement “which are related to the operation or implementation of the Plan” that may be brought to the Commission for resolution. Examples are provided in the Stipulation And Agreement, but the examples that are identified in the Stipulation And Agreement are not indicated as comprising or intended to comprise an all-inclusive list.

UE states in paragraph 8 of its Request For Commission Guidance:

. . . Under Staff’s definition of “manipulation” and the adjustments that therefore follow, the fact that the costs included in the Company’s rate of return calculation actually were incurred is of no importance. The fact that their treatment in that calculation is consistent with long-standing policies previously approved by this Commission is to be ignored. Staff has made it clear that consistency with past policies of the Commission is not relevant to their review

UE did not identify any “long-standing policies previously approved by this Commission” to which it might be referring. Perhaps UE is referring to UE conduct not previously challenged by the Staff.

Regardless, assuming UE’s intended point is as stated by UE in paragraph “8.,” then under this scenario the Staff could not question an expense that UE actually incurred, which had not been incurred for the first time ever in the sharing period under review, for which UE’s treatment is asserted to be consistent with long-standing policies previously approved by the

Commission, regardless of a marked increase in the level of expense, if UE has what UE asserts is a "reasonable explanation." If this is the accepted interpretation, then UE in every instance could fashion a situation whereby it could argue that the Staff's proposed treatment is in violation of the Stipulation And Agreement. Also under UE's interpretation, no changed facts or circumstances would warrant a challenge by a party to the Stipulation And Agreement.

6. At paragraph "9." of its Request For Commission Guidance, UE states that "[t]he Company is concerned that perhaps a change in personnel at the management level of the Staff has had the result of changing the review of the Company's filing from a monitoring to assure no manipulation, into a rate case review." First, there is no denying that there have been changes in personnel at the management level of the Staff over the course of the three-years of the first UE alternative regulation plan. Regardless, the third year of the first UE alternative regulation plan is being administered by the Staff consistent with the terms of the Case No. ER-95-411 Stipulation And Agreement and consistent with the SWBT alternative regulation plan.

Undersigned counsel stated on July 19, 1995 at the on the record presentation of the Stipulation And Agreement in Case No. ER-95-411 that it was the Staff's intent to monitor UE in the manner that the Staff had monitored SWBT in Case No. TO-90-1:

[Dottheim] Part of the Stipulation and Agreement set out therein and in Attachment C is a rigorous monitoring of utilities' [sic] financial data similar to the monitoring of Southwestern Bell that occurred in the Southwestern Bell experimental alternative regulation plan. [Transcript, Vol. One, p.13, Case No. ER-95-411]

[Dottheim] I think there is also provision for, if any dispute, disagreement arises, problems from our perspective, we may bring it to the Commission for a resolution. And hopefully that situation will not occur.

The language of much of this phase or portion of the Stipulation and Agreement tracks the language in the Southwestern Bell

settlement agreement that was effectuated in 1989, if my memory serves me correctly, which led to the establishment of the alternative regulation plan for Southwestern Bell and a monitoring by the Staff. [Transcript, Vol. One, p. 36, Case No. ER-95-411]

In fact, Utility Services Division Director, Robert E. Schallenberg, who is referenced in paragraph "4." of UE's Request For Guidance as articulating the difference in interpretation of the instant Stipulation And Agreement, was the Staff member designated by the Commission to negotiate the monitoring procedures for the alternative regulation experiment with SWBT, and was the Staff member subsequently responsible for the Staff's monitoring audits of SWBT in Case No. TO-90-1. UE has not asserted that the Staff has operated beyond the scope of the monitoring of the SWBT alternative regulation experiment.

Although ultimately for the second year of UE's first alternative regulation plan there was no necessity for the Commission to decide any dispute, the Commission will recall that on November 25, 1997 the Staff filed in this docket a Motion To Late File Report And For Setting An Early Prehearing Conference. In said pleading, the Staff advised the Commission of one item that had not been resolved with UE and another item that had been dropped by the Staff for lack of materiality:

5. There is one item that the Staff has not been able to resolve with UE which the Staff believes must be addressed at this point and which the Public Counsel concurs in. The item which the Staff has not been able to resolve with UE is the Staff's view that UE's electric cost of service does not reflect an appropriate allocation of expenses and investment to UE's non-utility subsidiary operations, including expenses relating to UE officers and support personnel. The Staff proposes that UE's electric cost of service be reduced by \$2,504,000, on a total company basis, which would increase the sharing credits to UE's electric customers by \$1,148,000 from \$17,726,000 to \$18,874,000.

6. There is a second item in the second year of the UEEARP that the Staff has identified as being in dispute with UE, which the Public Counsel also concurs in, but there is no need to address at

this time because of a lack of materiality during the second year of the UEEARP. This item is the decommissioning funds collected by UE in rates for the first quarter of 1997, which monies UE had the use of during part of the second year of the UEEARP since it could not pay the funds into the decommissioning trust fund. The Commission may be called upon to address this item respecting the results of the third year of the UEEARP, but that is not certain at this time and need not be addressed now. The reason that the Staff notes this matter at this time is that the language of the Stipulation and Agreement in Case No. ER-95-411 indicates that matters such as this are to be brought to the Commission's attention when identified by the parties. Also, the Staff and the Public Counsel do not want their decisions not to seek a Commission determination of this matter at this time to constitute some form of a waiver respecting this item and the results of the third year of the UEEARP.

7. The Staff's adjustments are appropriate and in accordance with the Stipulation And Agreements in Case Nos. ER-95-411 and EM-96-149. UE's The Staff's bases for each of its proposed adjustments are briefly noted below.

As provided for, in particular, in paragraph "3.f.viii." of the Stipulation And Agreement in Case No. ER-95-411, the Staff may present concerns to the Commission regarding any category of cost which is included in UE's monitoring results and has not been included previously in any ratemaking proceeding. The Staff's adjustment regarding the Year 2000 costs falls within this provision. The Staff is unaware of any previous ratemaking proceeding in which these costs have been addressed. This is also true of the deferred tax issue resulting from an Internal Revenue Service audit of UE. The Staff is unaware of any previous ratemaking proceeding in which a determination was made regarding the appropriate treatment of this deferred tax matter.

As provided for, in particular, in paragraph "3.f.vii." of the Stipulation And Agreement in Case No. ER-95-411, the Staff reserved the right to bring issues to the

Commission for resolution that cannot be resolved by itself and UE, and which are related to the operation and implementation of the alternative regulation plan. Such items can include significant variations in the level of expenses associated with any category of cost, where no reasonable explanation has been provided. The Staff's adjustments for the CSS, EMPRV and AMRAPs computer systems fall within this paragraph. The CSS system costs are part of a project that will not be completed until 1999. Therefore, it is not reasonable to include these costs in expense during the third sharing period, since UE did not receive benefits from these costs during that period. In addition, this project, when completed, will represent, as do the EMPRV and AMRAPs computer systems, the development of a significant asset that will provide benefits for multiple years. It is unreasonable to expense the cost in a single year associated with an asset that will provide benefits over such future periods. UE's treatment of such asset costs is not appropriate and affects UE's earnings results.

As part of the Stipulation And Agreement in Case No. EM-96-149, section "4. Transaction and Transition Costs" at pages 2-3 of the Stipulation And Agreement, UE was allowed to amortize merger-related costs associated with its acquisition of CIPSCO, Inc. pursuant to certain terms set out therein. The Staff's adjustments for merger-related costs and advertising are both provided for as a result of this section of the Stipulation And Agreement. The Staff's merger-related cost adjustment simply updates these costs based on actual amounts incurred and the most recent estimates of future expenditures. The Staff's advertising adjustment identifies ads that UE ran in an effort to develop recognition of the new AmerenUE name. This cost was incurred as a direct result of the merger and should be treated in a similar manner as other merger-related costs under the Case No. ER-96-149 Stipulation And Agreement. Thus, these adjustments are consistent, in particular, with the Stipulation And Agreement in Case No.

EM-96-149 and also with paragraph "3.f.vii" of the Case No. ER-95-411 Stipulation and Agreement.

As part of the Staff's second year sharing credit calculation, the Staff brought to the Commission's attention the matter of UE having use of funds that could not be deposited in the decommissioning trust fund. The Staff did not pursue this item in the calculation of the credit associated with that sharing period, due to materiality. However, UE was aware of the Staff's position and concern regarding this item, as a result of the Staff's actions in the prior sharing period credit calculation. In addition, the Staff is not aware of any previous ratemaking proceeding in which a determination has been made regarding the appropriate treatment of the cash working capital benefits resulting from an inability to make decommissioning trust fund deposits. Thus, this adjustment is consistent with paragraphs "3.f.vii." and "3.f.viii."

The Staff's adjustment regarding territorial agreements exercises the right reserved in both Case Nos. EO-95-400, et al. and EO-97-6, et al. In those cases, the Staff recommended that these territorial agreements be examined as part of the annual sharing credit calculation under UE's alternative regulation plan. Thus, this adjustment is consistent with paragraphs "3.f.vii" and "3.f.viii."

The Staff's proposed adjustment relating to injuries and damages expense is premised upon the very large increase in these costs in the current sharing period compared to the first two sharing periods. Based on UE's explanation for this increase, the Staff has concerns that UE's treatment of these costs, both flowing through in entirety to customers the costs of several significant adverse legal judgments and increasing its accrual for the injuries and damages reserve for expected increased future claims, is inappropriate for the purpose of calculating the credit amount under the alternative regulation plan. The Staff also notes that

there is precedent in past UE rate proceedings for normalization of injuries and damages expense when there are increases/fluctuations in these costs from year-to-year. Such an adjustment was presented and adopted by the Commission in Case No. EC-87-114. Thus, this adjustment is consistent, in particular, with paragraph "3.f.vii."

The Staff's adjustments do not need to rely on even the definition of "manipulate" highlighted in paragraph "2." of this pleading.

8. Provision for Commission determination of the issue raised by the Staff respecting the appropriate methodology for weather normalizing the earnings credited to/shared with customers after each of the three alternative regulation plan years of the first experimental alternative regulation plan is clearly within the terms of Section "6. Rate Reduction" of the Stipulation And Agreement in Case No. EM-96-149. The Staff is responding to UE's change to its model, the provision for which is covered in the Stipulation And Agreement.

9. UE contends in paragraph "9." of its Request For Commission Guidance that the Staff's third year monitoring of UE constitutes a rate case review. In no manner has the Staff's monitoring of UE constituted a rate case review. The number of auditors involved, the areas addressed and the amount of time expended in the monitoring could not be confused with a rate or complaint case review by anyone familiar with rate or complaint case reviews by the Staff. If the third year monitoring had been a rate case review, then areas such as rate of return would have been subjected to detailed analysis, many more Staff members would have been involved, many more data requests would have been submitted by the Staff and undoubtedly there would have been a larger number of adjustments proposed. UE's concept of monitoring is a very limited book audit.

10. UE asserts in its Conclusion on page 3 of its Request for Commission Guidance that “[this] matter should be easily resolved by the Commission without further proceedings, other than a response from the Staff, and an opportunity for the Company to reply.” UE is attempting to require the Staff to meet some burden of proof without even allowing the Staff to respond to the specifics of UE’s contentions regarding each of the Staff’s proposed adjustments, assuming UE intends to respond to each of the Staff’s adjustments in its reply. The Staff, Public Counsel and UE met on November 10, 1998 to go over each of the Staff’s adjustments. At that time, Public Counsel identified various concerns it has. UE indicated at that time that it did not believe that the Staff’s adjustments are consistent with the Case No. ER-95-411 Stipulation And Agreement. UE indicated this position again in a November 19, 1998 conference call with the Staff and Public Counsel. Nonetheless, UE’s Request For Commission Guidance does not address specifics, but presumably will do so in a response to which UE proposes that the Staff and Public Counsel have no reply.

UE chose to file its Request For Commission Guidance in advance of the Staff filing its proposed adjustments on November 25, 1998. Under the procedure proposed by UE in the “Conclusion” of its Request For Commission Guidance, either UE will continue its blanket condemnation of the Staff’s adjustments without addressing them with any specificity, or UE will respond in detail, while having proposed a procedure whereby the Staff would be precluded from addressing any of the details in UE’s reply.

11. The Staff is concerned that UE feels aggrieved by the monitoring that the Staff has performed, and which the Staff intends to continue to perform unless directed otherwise by the Commission. The Staff can only speak on its own behalf and not on the behalf of any other party to the Case No. EM-96-149 Stipulation And Agreement, but if UE is of a view that it

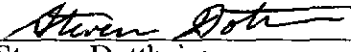
would like to work toward a clarification of language, modification or even a termination of the second three-year alternative regulation plan, the Staff would be willing to discuss achieving such ends. (The Staff wants to be very clear that a termination of the second experimental alternative regulation plan is not the end to which the Staff has conducted its monitoring of UE and proposed its adjustments.)

The Staff believes that the second alternative regulation plan, like the first, lacks the flexibility to permit efforts that UE might want to seek Commission authorization to engage in, in preparation for retail competition, such as accelerated depreciation of the Callaway nuclear generating unit in mitigation of purported "stranded costs." Either a modification or termination of the second alternative regulation plan would open the remainder of the period, which concludes June 30, 2001, to such possibilities.

Wherefore the Staff submits that the issues raised in its Motion For Setting Expedited Early Prehearing Conference filed in this docket on November 25, 1998 are appropriate issues for Commission determination within the context of the meaning of the terms of the Stipulation And Agreement approved by the Commission in Case No. ER-95-411, and the Commission should schedule an expedited early prehearing conference as requested by the Staff in its November 25, 1998 Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 3rd day of December, 1998.



**SERVICE LIST FOR
CASE NO. EO-96-14 & EM-96-149
Revised: December 3, 1998**

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