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December 3, 1998

FILED

DEC 3 1998

Missouri Public
Service Commission

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

**RE: Monitoring of the Experimental Alternative Regulation Plan of U.E.
Case No.: EO-96-14; and,
Union Electric for Order Authorizing Merger Transactions With
Central Illinois Public Service
Case No.: EM-96-149**

Dear Mr. Roberts:

Enclosed for filing, in the above referenced case, please find the original and 14 copies of the **Office of the Public Counsel's Response to Company's Request For Commission Guidance**. Please "file stamp" the extra enclosed copy and return it to this office. I have on this date mailed or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:rjr

cc: Counsel of Record

Enclosure

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

FILED

DEC 3 1998

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

**OFFICE OF THE PUBLIC COUNSEL'S RESPONSE
TO COMPANY'S REQUEST FOR COMMISSION GUIDANCE**

COMES NOW the Office of the Public Counsel ("Public Counsel") and for its Response to Company's Request for Commission Guidance, states as follows:

1. On November 24, 1998, Union Electric Company d/b/a AmerenUE ("Company") filed a Request for Commission Guidance, asking the Public Service Commission ("Commission") to construe one particular word (i.e., "manipulated") from paragraph 3.f.vi. of the Stipulation and Agreement approved in Case No. ER-95-411. Specifically, Company is requesting that the Commission adopt the second part of the second dictionary definition found in a particular dictionary and then "direct the parties" to use this particularly narrow definition in interpreting paragraph 3.f.vi.

2. It is Public Counsel's belief that paragraph 3.f.vi. of the Stipulation and Agreement does not apply to any of the remaining "areas of disagreement" for which Public Counsel and the Staff of the Missouri Public Service Commission ("Staff") have each brought to the attention of the Commission in this case¹. Paragraph 3.f.vi. refers to the right of Staff and Public Counsel to "file a complaint with the Commission requesting that a full investigation and hearing be conducted regarding said complaint," if Staff or Public Counsel believe that there has been manipulation or misrepresentation of the calculations of operating results provided by the Company. Neither Staff nor Public Counsel has filed such a complaint with the Commission, and so this paragraph has not been invoked in this matter.

3. The phrase "manipulated" in Paragraph 3.f.vi. refers to only one type of issue that Public Counsel and Staff have a right to bring to the Commission's attention pursuant to the Stipulation and Agreement. Paragraph 3.f.vii. clearly states that Staff, Public Counsel, and other signatories to the Stipulation and Agreement reserve the right to bring any unresolved issues relating to the Stipulation and Agreement to the Commission for resolution. This paragraph provides a list of four examples (which is not all inclusive):

- (a) "disagreements as to the mechanics of calculating the monitoring report,"
- (b) "alleged violations of the Stipulation and Agreement,"
- (c) "alleged manipulations of earning results,"
- (d) "requests for information not previously maintain by AmerenUE."

It is obvious from this list of potential issues that, regardless of the interpretation and construction of the word "manipulated," the parties have the right to bring issues to the Commission's attention involving any disagreement regarding the calculation of Company's

¹ Public Counsel's Notice filed on November 24, 1998; Staff's Motion for Setting an Expedited Early Prehearing Conference filed on November 25, 1998.

earnings for the purpose of the sharing plan. Potentially contested issues do not have to be “manipulations.” Nearly all of the unresolved issues identified to date by Public Counsel and Staff could be described under the first example listed in paragraph 3.f.vii. -- “disagreements as to the mechanics of calculating the monitoring report.”

4. Moreover, Company is attempting to elicit from the Commission a tortured definition of the word “manipulated,” a definition that inappropriately attaches a mental element to the word. Public Counsel’s interpretation of this word as it is used in paragraph 3.f.vi. of the Stipulation and Agreement is that it simply refers to any accounting decision which skillfully portrays Company’s financial earnings or expenses in a light favorable to Company, but which is inappropriate from a regulatory perspective. Apparently, Company would like the Commission to state that Staff or Public Counsel must produce evidence of an “insidious” motive by Company personnel before any area of disagreement could proceed in this matter. That would be an absurd result. Since it is nearly impossible to know the mental impressions of Company personnel, Company’s interpretation would effectively force the Commission and other parties to accept its earnings reports at face value and allow issues to be contested only in the unlikely case that evidence of an evil motive was somehow uncovered.

Staff and Public Counsel never gave up their right to verify the accuracy and propriety of Company’s earnings calculations. It is also important to note that nothing in the Stipulation and Agreement suggests that the burden of proof in this matter should be borne by any party except Company.

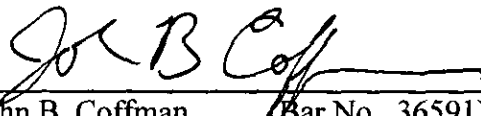
5. The sharing plan outlined in the Stipulation and Agreement provides a method of determining rate reductions which is certainly less extensive than the full and complete audit and investigation performed in a general rate case. Accordingly, neither Staff nor Public Counsel has

conducted anything close to a full investigation in this matter. For instance, the Stipulation and Agreement makes it clear that return on equity may not be litigated at this time despite the fact that the agreed upon sharing grid would be unreasonably and unjustly high based upon current factors. The appropriate treatment for other ratemaking elements is also specifically spelled out in the Stipulation and Agreement. However, there remain several disagreements between the parties in this matter which are based upon reasonable disagreements between reasonable parties. The Stipulation and Agreement could not anticipate every ambiguity or future disagreement regarding the proper method of accounting for every expense when calculating Company's earnings report. Paragraph 3.f.vii. clearly anticipates that there would potentially be such disagreements for which the Commission might be asked to resolve which were not alleged manipulations.

WHEREFORE, Public Counsel requests that the Commission state that, with regard to the provisions of paragraph 3.f.vi. of the Stipulation and Agreement, the word "manipulated" does not require Staff and Public Counsel to bear the burden of proof to produce evidence of the mental intent of Company's personnel and Public Counsel further requests that the Commission clarify that Staff and Public Counsel have reserved the right under the Stipulation and Agreement to bring to the Commission for resolution "areas of disagreement" that are not necessarily "alleged manipulations."

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

BY:


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been faxed, mailed, or hand-delivered to the following counsel of record on this 3rd day of December, 1998:

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A handwritten signature in cursive script, appearing to read "J B Coff", is written over a horizontal line.