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April 25, 2000

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FILED²

APR 25 2000

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: Case No. ET-2000-666 – In the Matter of the Union Electric Company's Tariff Sheets to Revise Rates for Interruptible Customers of Union Electric Company

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF RESPONSE IN OPPOSITION TO MEG INTERRUPTIBLES' MOTION TO SUSPEND TARIFF.**

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
Chief Deputy General Counsel
(573) 751-7489
(573) 751-9285 (Fax)

Enclosure
cc: Counsel of Record

FILED²

APR 25 2000

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

Missouri Public
Service Commission

In the Matter of the Union Electric Company's)
Tariff Sheets to Revise Rates for Interruptible)
Customers of Union Electric Company)

Case No. ET-2000-666
Tariff File No. 200000913

**STAFF RESPONSE IN OPPOSITION TO MEG INTERRUPTIBLES'
MOTION TO SUSPEND TARIFF**

Comes now the Missouri Public Service Staff (Staff) in response to the Missouri Public Service Commission's (Commission) April 20, 2000 Notice Establishing Time In Which To Respond respecting the April 19, 2000 Motion To Suspend of Holnam, Inc., Lone Star Industries, Inc., and River Cement Company (MEG Interruptibles) concerning the April 6, 2000 tariff filing of Union Electric Company identified as Tariff File No. 200000913. In support of its opposition to MEG Interruptibles' Motion To Suspend, the Staff states as follows:

1. Attached hereto as Appendix A is the Staff Recommendation For Approval Of Tariff Sheets Filed To Add An Option Based Curtailment Rider respecting Tariff File No. 200000913. Therein the Staff notes that MEG Interruptibles' Motion To Suspend does not state how its interest would be adversely affected by the Commission's approval of the Company's proposed Rider M. MEG Interruptibles' Motion To Suspend states only that (1) the terms and conditions of curtailment are different from those proposed by MEG Interruptibles in MEG Interruptibles' March 20, 2000 Application which established Case No. EO-2000-580, and (2) it would be inappropriate to permit UE's proposed Curtailment Tariff to go into effect since MEG Interruptibles have requested that the Commission approve MEG Interruptibles' proposed tariff on an interim basis.

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2. The attached Staff Recommendation also states that because none of UE's customers, including the MEG Interruptibles, would be required to take service under UE's proposed Rider M and because approval of UE's proposed Rider M would not preclude the Commission from subsequently approving the additional alternative rate option proposed by the MEG Interruptibles, the arguments of MEG Interruptibles are without merit, and Staff sees no reason to suspend UE's proposed Rider M.

3. The Missouri Constitution and Missouri statutes clearly indicate that no hearing is required simply because some entity requests a hearing. The "file and suspend" provisions of the Public Service Commission Law, Sections 393.140(11) and 393.150(1) and (2) RSMo 1994, do not require a hearing. For good cause shown, the Commission may allow changes in schedules of rates, charges or service, rules and regulations and forms of contract or agreement, without meeting the requirement of 30 days' notice to the Commission and publication for 30 days, and without a hearing. The Commission also may allow changes in schedules to go into effect, after 30 days' notice to the Commission and publication for 30 days, without suspension and a hearing.

The Court of Appeals, Kansas City District, in State ex rel. Laclede Gas Co. v. Public Serv. Comm'n, 535 S.W.2d561, 566 (Mo.App. 1976) stated as follows:

. . . Simply by non-action, the Commission can permit a requested rate to go into effect. Since no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so necessarily rests in its sound discretion.

Article V, Section 18 of the Missouri Constitution does not require a hearing in order for the Commission to determine whether to suspend or not to suspend a schedule change and contemplates a different standard of review in cases where a hearing is not required by law than in cases where a hearing is required by law:

All final decisions findings, rules and orders on any administrative officer or body existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record . . . [Emphasis added.]

Thus, where a hearing is not required by law administrative decisions, findings, rules and orders are subject to review only as to whether they are authorized by law and are not subject to review as to whether they are supported by competent and substantial evidence upon the whole record.

However, the Western District Court of Appeals in State ex rel. Utility Consumers Council of Missouri v. Public Serv. Comm'n, 585 S.W.2d 41, 49 (Mo. 1979) (State ex rel. UCCM) determined that when deciding no hearing is necessary, the Commission must consider all relevant factors and that a preference exists for a procedure where those opposed as well as those in favor can present their views:

. . . Even under the file and suspend method, by which a utility's rates may be increased without *requirement* of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended. *See State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 718-19, 720 (Mo.1957). However, a preference exists for the rate case method, at which those opposed to as well as those in sympathy with a proposed rate can present their views. *See State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d at 574.

Since the State ex rel. UCCM case involved the electrical corporation fuel adjustment clause, the all relevant factors that the Court identified that had to be considered were respecting ratemaking.

Section 536.090 RSMo 1994 of the Missouri Administrative Procedure Act, requiring in a "contested case" that all decisions and orders be in writing and shall include findings of fact and conclusions of law, has been held to apply to the Commission. State ex rel. Fischer v. Public

Serv. Comm'n, 645 S.W.2d 39, 42 n.3 (Mo.App. 1983). Nonetheless, a "contested case," as defined in Section 536.010(2) RSMo 1994, is a proceeding before an agency in which legal rights, duties or privileges are required by law to be determined after hearing, and no hearing is required by law respecting Tariff 200000913 or Case No. ET-2000-666. (The Staff would note that under Section 386.420.2 RSMo 1994, in a situation where an investigation is made by the Commission, which is not what has occurred the instant matter, it is the duty of the Commission "to make a report in writing in respect thereto, which shall state the conclusions of the commission, together with its decision, order or requirement in the premises.")

The Staff also would comment that 4 CSR 240-2.065(3) does not cause Commission case files to be "contested cases." This rule in general presently is entitled "Tariff Filings Which Create Docketed Cases, " effective April 30, 2000 will be entitled "Tariff Filings Which Create Cases" and provides as follows:

Presently effective:

When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed with the commission, the commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings and orders concerning the tariff shall be filed in the case file established for the tariff.

Effective April 30, 2000:

When a pleading, which objects to a tariff or requests the suspension of a tariff, is filed, the commission shall establish a case file for the tariff and shall file the tariff and pleading in that case file. All subsequent pleadings, orders, briefs, and correspondence concerning the tariff shall be filed in the case file established for the tariff. . . .

This rule does not cause docketed cases to be "contested cases." This rule merely provides a vehicle for tracking pleadings filed with the Commission.


The Commission on a number of occasions has permitted tariff sheets to go into effect without suspension even though a party has filed a motion to suspend and the party has sought judicial review. No such case has ever reached determination by a Missouri Court of Appeals, so there is no direct precedence to which the Staff can cite the Commission.

Wherefore, for the above stated reasons, the Staff is opposed to the Motion To Suspend Tariff of the MEG Interruptibles.

Respectfully submitted,

DANA K. JOYCE

General Counsel




Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

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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 25th day of April 2000.



MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. ET-2000-666, File No. 200000913
Union Electric Company

FROM: James Watkins, Regulatory Economist III, Project Coordinator
Mack McDuffey, Rate & Tariff Examiner II *mm*

James Watkins 4/24/00 *Steven Dote 4/25/00*
Project Coordinator / Date General Counsel's Office / Date

SUBJECT: Staff Recommendation for **Approval** of Tariff Sheets Filed to Add an Option Based Curtailment Rider

DATE: April 24, 2000

On April 6, 2000, Union Electric Company d/b/a AmerenUE (UE or Company) of St. Louis, Missouri filed four (4) tariff sheets proposed to become effective on May 6, 2000. UE is proposing to add an Option Based Curtailment Rider-Rider M as an option for its primary service customers. Rider M is designed to provide bill credits (Option Premium Payment) to primary service customers in exchange for granting UE the right to curtail their electrical usage based on customer selected options, plus additional credits (Curtailment Strike Price) for each kilowatt-hour (kWh) that the customer curtails. Rider M would be available, as an additional option, to any primary service rate customer (served under electric service classifications 4(M) – Small Primary Service Rate or 11(M) – Large Primary Service Rate) that voluntarily agrees to curtail a minimum of 1,000 kWh per hour at a single premise. Customers may take service under both Rider M and the Voluntary Curtailment Rider-Rider L.

UE will credit the Option Premium Payment to each participating customer's bill in four equal installments during the summer billing months (June, July, August and September). The amount of the Option Premium Payment will be based on the specific options selected by the customer at the time the customer contracts with the Company each year for service under Rider M. Participating customers will choose one option from each of the following three option categories:

- a. Curtailment Strike Price of either \$0.10, \$0.25, \$0.50, \$0.75 or \$1.00 per kWh;
- b. Allowed Frequency of Curtailment of either 1, 2, 3, 4 or 5 weekdays per week; and
- c. Curtailment Interval Duration of either eight (8) or sixteen (16) hours.

Customers will, therefore, select one of 50 possible combinations of these options. (5 Curtailment Strike Price options * 5 Frequency of Curtailment options * 2 Curtailment Interval Duration options = 50 possible combinations of options). Due to market price volatility, the dollar amount of the Option Premium Payment that Company will offer to customers at any point in time will depend on the Company's projection of power market prices and conditions for the forthcoming summer at the

time that the contract is entered into by the customer and the Company. However, all customers will be quoted the same Option Premium, per unit of load reduction, for the same selected customer options at the same point in time.

The credit for kWh's that the customer actually curtails (Curtailment Strike Price * Curtailment Kilowatt-hours) will be paid to the customer as a credit on the customer's bill for the month during which the curtailment occurred, or by check.

Unlike service under the Company's Voluntary Curtailment Rider-Rider L, curtailments are not voluntary under the proposed Option Based Curtailment Rider-Rider M. If the customer fails to reduce load to the level called for by its contract, then the customer must pay the Company the Passthrough Market Price for each kWh that the customer failed to curtail. The Passthrough Market Price will be based on the Weighted Average Index Price For Delivery To Cinergy-Trades For Standard 16-Hour Products as published in Megawatt Daily for the day the customer failed to curtail. Verification of the amount of the customer's load reduction is based on the customer's average load during the corresponding hours on the fifteen (15) non-curtailed, non-holiday weekdays immediately prior to the date of notification.

Notification of required curtailments will be provided by telephone facsimile no later than 10:00 a.m. on the business day prior to the required curtailment.

On April 19, 2000, Holnam, Inc., Lone Star Industries, Inc., and River Cement Company ("MEG Interruptibles") filed a Motion To Suspend Tariff. The Commission established a case file (Case No. ET-2000-666) in which to file MEG Interruptibles' pleading and the Company's proposed tariff. On April 19, 2000, MEG Interruptibles also filed its Motion To Consolidate Case No. ET-2000-666 with Case No. EO-2000-580, which was established to consider MEG Interruptibles' Application to Initiate A Docket For Consideration Of An Alternative Rate Option For Interruptible Customers Of Union Electric Company And For Approval Of An Interim Alternative Interruptible Rate (Application).

MEG Interruptibles' Motion To Suspend does not state how its interest would be adversely affected by the Commission's approval of the Company's proposed Rider M. It states only that the terms and conditions of curtailment are different from those proposed by MEG Interruptibles in its March 20, 2000 Application and that it would be inappropriate to permit UE's proposed Curtailment Tariff to go into effect since MEG Interruptibles have requested that the Commission approve its proposed tariff on an interim basis.

Because none of UE's customers, including the MEG Interruptibles, would be required to take service under UE's proposed Rider M and because approval of UE's proposed Rider M would not preclude the Commission from subsequently approving the additional alternative rate option proposed by the MEG Interruptibles, the arguments of MEG Interruptibles are without merit, and Staff sees no reason to suspend UE's proposed Rider M.

The Missouri Public Service Commission Electric-Rates & Tariffs Staff has reviewed this filing and recommends approving the following tariff sheets, as filed on April 6, 2000, to go into effect for service on and after May 6, 2000, the requested effective date:

P.S.C. MO. SCHEDULE NO. 5

Original SHEET NO. 116.3

Original SHEET NO. 116.4

Original SHEET NO. 116.5

Original SHEET NO. 116.6

Because the Commission created a case file pursuant to 4 CSR 240-2.065(3), an order is necessary to indicate approval of the tariff sheets. The Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

copies: Director - Utility Operations Division
 Director - Research and Public Affairs Division
 Director - Utility Services Division
 General Counsel
 Manager - Financial Analysis Department
 Manager - Accounting Department
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 Richard J. Kovach, Manager, Rate Engineering, Union Electric Company
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Case No. ET-2000-666
April 25, 2000

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