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Case No. GR-97-393

ORDER REGARDING PROCEDURAL MOTIONS

On October 10 Union Electric Company (UE) filed a motion to strike certain testimony. UE requests that the Commission strike certain testimony and schedules filed by the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (Public Counsel) dealing with affiliate transactions standards. UE states that consideration of these standards is not necessary in this rate case and should be deferred to existing dockets which have been established for the purpose of considering affiliate transactions standards. UE states that issues surrounding the need for and content of affiliate transaction standards are extremely significant and are appropriately considered in a docket which permits full participation and discourse.

On October 20 Staff filed a response to UE's motion to strike. Staff states that UE's characterization of Staff's testimony as proposing rules is incorrect, that Staff is proposing UE tariff changes rather than rules, and that it is appropriate to consider this company-specific issue in this rate proceeding. On October 24 Public Counsel filed a response to UE's motion to strike. Public Counsel states that UE's desire to deal with the issue of affiliate transactions in a rulemaking docket should not

prevent Staff and Public Counsel from having the opportunity to propose affiliated transactions standards in UE's tariff.

The Commission shall grant UE's motion because it would not be efficient to consider affiliate transactions standards for UE in the context of this rate proceeding when the Commission will be considering a rule governing interaffiliate transactions for all gas corporations¹ in the state, including UE, in a rulemaking docket.

On October 10 Public Counsel filed a Motion to File Supplemental Direct Testimony of Ms. Hong Hu and Ms. Barbara A. Meisenheimer. Public Counsel states as a result of obtaining additional information from UE Ms. Hu has changed her services allocator. Public Counsel further states that it has provided updated Class Cost of Service Results and Services work papers to all parties that attended the rate design portion of the prehearing conference for this case on September 11 that show the modifications. The Class Cost of Service Study in Ms. Meisenheimer's Supplemental Direct Testimony contains new information obtained since September 11, including the new services allocator and the proposed revenue settlement amount of \$11.5 million.

On October 15 UE filed a motion to file supplemental direct testimony of Philip B. Difani, Jr. UE states that the parties reached a settlement of the overall revenue requirement in this case. UE proposes the supplemental direct testimony of Mr. Difani to provide the Commission and the parties the Company's cost of service study updated to reflect this settlement as well as corrected for certain minor errors discovered since the original filing. UE states that the updated and corrected study should assist the parties in preparation of any rebuttal or surrebuttal testimony

¹ As defined at section 386.020(18) RSMo 1996.

and should provide the Commission an up-to-date record for its consideration. On November 3 UE filed a motion to file revised schedule to supplemental direct testimony of Philip B. Difani, Jr. UE states that several additional adjustments have been made to reflect: (a) changes in allocators to follow the principle of "expense follows plant"; (2) an adjustment for the Weatherization Program; and (c) changes in dollar figures to match Staff's figures.

On October 16 Staff filed a motion to file supplemental direct testimony of Henry Warren and Anne Ross. Staff states that as a result of discussions at the prehearing conference in this case relating to revenue requirement issues, Staff witnesses Warren and Ross changed their rate design calculations. Staff states that no parties to this proceeding will be prejudiced by allowing this supplemental filing and that the filing should permit other parties to respond to Staff's current position in a timely manner. Staff states that it has provided work papers reflecting these changes along with service of the supplemental testimony.

On October 20 Midwest Gas Users' Association (Midwest) filed a motion to strike the supplemental direct testimony of Staff witnesses Anne E. Ross and Henry L. Warren. Midwest recites the procedural schedule in this case which requires Staff's rate design testimony to be filed by 3:00 p.m. on September 11 and all parties rebuttal testimony to be filed by 3:00 p.m. on October 20. Midwest states that on October 17 its consultant received a copy of Staff's proposed supplemental direct testimony. Midwest states that Midwest's counsel received neither a motion for leave to file the supplemental testimony nor copies of the proposed supplemental testimony. Midwest states that counsel became aware of the proposed filing only by indirect means. Midwest further states that it received responses to its data requests to Staff on October 15 and that these data requests

were based on Staff's direct testimony filing of September 11. Midwest states that Staff witness Ross' supplemental direct presents significant modifications to the original direct testimony and that Staff witness Warren's supplemental testimony appears to carry forward the adjustments, modifications and new material and issues raised by Ms. Ross' supplemental testimony.

Midwest states that the eve-of-rebuttal filing of supplemental direct by Staff renders meaningless the procedural schedule ordered by the Commission and that much of Midwest's discovery based on the earlier testimony will now have to be redone and the results of the discovery that Midwest now has in hand is of uncertain applicability to the new Staff proposals since much of that material has been supplanted by the Staff's proposed supplemental surrebuttal filing.

On October 27 UE filed a response to Staff's motion to file supplemental direct testimony wherein UE requests the Commission to deny Staff's motion for the reasons set out in Midwest's motion.

The Commission will grant the Staff's motion to file supplemental direct testimony so that the Commission and parties have the benefit of the most recent work of Staff regarding these issues. To the extent that Midwest and UE have not had an opportunity to discover the basis of Staff's revised position, time remains for further discovery. Staff provided its underlying work papers, and Midwest and UE will have an opportunity to cross-examine these witnesses in the event there is no settlement of these issues by the time of hearing.

IT IS THEREFORE ORDERED:

1. That Union Electric Company's Motion to Strike Testimony filed on October 10, 1997, is granted.

2. That Public Counsel's Motion to File Supplemental Direct Testimony filed on October 10, 1997, is granted.

3. That Union Electric Company's Motion to File Supplemental Direct Testimony filed on October 15, 1997, is granted.

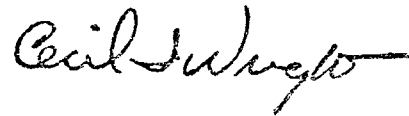
4. That Union Electric Company's Motion to File Revised Schedule filed on November 3, 1997, is granted.

5. That Staff's Motion to File Supplemental Direct Testimony filed on October 16, 1997, is granted.

6. That the Motion To Strike filed by Midwest Gas Users' Association on October 20, 1997, is denied.

7. That this order shall become effective on November 10, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Thomas H. Luckenbill, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to 4 CSR 240-2.120(1),
(November 30, 1995) and Section 386.240,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 10th day of November, 1997.