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March 24, 2000

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

FILED 3

MAR 24 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-2000-583

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **STAFF RECOMMENDATION AND RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S 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,

Nathan Williams
Assistant General Counsel
(573) 751-8702
(573) 751-9285 (Fax)

NW/lb
Enclosure
cc: Counsel of Record

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

FILED³

MAR 24 2000

Missouri Public
Service Commission

In the Matter of A Proposed Revision)
To AmerenUE's Economic Development)
Rider Tariff)

Case No. ET-2000-583

**STAFF RECOMMENDATION AND RESPONSE TO
THE OFFICE OF THE PUBLIC COUNSEL'S MOTION TO SUSPEND TARIFF**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation and response states:

1. In the attached Memorandum, which is labeled Attachment 1, the Staff recommends that the Missouri Public Service Commission approve the tariff sheet filed on February 29, 2000 in File No. 200000774 either 1) by allowing it to go into effect by operation of law without suspension or 2) by entering an Order with an appropriate effective date approving the tariff sheet. The Staff further suggests that the Commission deny the Office of the Public Counsel's Motion to Suspend Tariff.

2. The "file and suspend" provisions of the Public Service Commission Law, Sections 393.140(11) and 393.150(1) and (2) RSMo. 1994, under which the tariff filing in this case was made, do not require a hearing. The Commission 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.

3

The Court of Appeals, Kansas City District, in State ex rel. Laclede Gas Co. v. Public Serv. Commn, 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:

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. Commn, 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 of a ratemaking nature.

Finally, 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. Commn., 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 200000774 or this case. The Staff notes 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 in the instant case, 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."

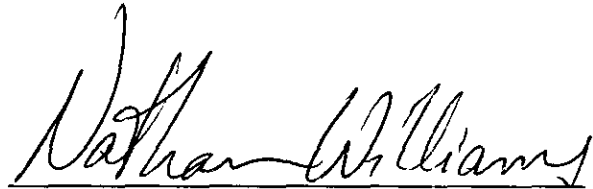
3. The tariff sheet filed in this case serves only to extend for an additional year, the availability of the existing AmerenUE Economic Development Rider. The Office of the Public Counsel raises only the passage of time as a changed circumstance supporting the Public Counsel's request for an opportunity to adduce evidence regarding the propriety of the existing AmerenUE Economic Development Rider. While it is the Staff's position that an evidentiary hearing is unnecessary, the Commission could give the Office of the Public Counsel the opportunity to review the propriety of the terms of AmerenUE's Economic Development Rider it seeks by treating the Motion to Suspend Tariff as a complaint made pursuant to §386.390.1,

RSMo. 1994. As stated in Attachment 1, the Staff would not oppose investigation of the Rider so long as it is in effect during such an investigation.

WHEREFORE the Staff of the Missouri Public Service Commission recommends that the Missouri Public Service Commission approve the tariff sheet filed on February 29, 2000 in File No. 200000774 either by 1) allowing it to go into effect by operation of law without suspension or 2) by entering an Order with an appropriate effective date approving it. The Staff further recommends that the Commission deny the Office of the Public Counsel's Motion to Suspend Tariff.

Respectfully submitted,

DANA K. JOYCE
General Counsel

A handwritten signature in cursive script, reading "Nathan Williams". The signature is written in dark ink and is positioned above the printed name and title of the signatory.

Nathan Williams
Assistant General Counsel
Missouri Bar No. 35512

Attorney for the
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Certificate of Service

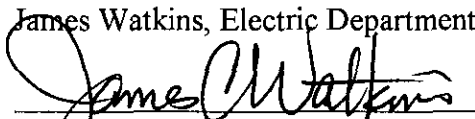
I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 24th day of March, 2000.

Nathan Williams

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. ET-2000-583, File No. 200000774, Union Electric Company

FROM: James Watkins, Electric Department - Rates & Tariffs


Project Coordinator/Date

 3/24/00
General Counsel's Office/Date

NW 3/24/00

SUBJECT: Staff Recommendation For **Approval** Of Tariff Sheets Filed To Extend The Availability
Of Economic Development Rider

DATE: March 24, 2000

On February 29, 2000, Union Electric Company d/b/a AmerenUE (UE or Company) of St. Louis, Missouri filed one (1) tariff sheet proposed to become effective on March 31, 2000. The Company's stated purpose for this filing is to "continue to demonstrate the Company's full support to both the state and the community efforts in attracting new businesses and creating new jobs." Approval of this filing will extend the availability of the Company's present Economic Development Rider (EDR) through March 31, 2001; otherwise, it will not be available to new loads added subsequent to March 31, 2000.

On February 9, 2000, UE had made a similar filing [File No. 200000713], which UE withdrew because it had come to the attention of the Company that the Office of the Public Counsel (OPC) was not properly notified of the February 9, 2000 filing.

The only change proposed to the EDR from UE's present EDR is to extend its availability through March 31, 2001. UE's EDR is only available in conjunction with local, regional, and state governmental economic development activities where incentives have been offered and accepted by the customer requesting service to locate or expand existing facilities in the Company's service area. Customers that have met the availability and applicability criteria enter into a five-year incentive contract and are required to remain a full requirements customer for at least five years to retain the benefit from the discounted rate. OPC objected to this requirement in Case No. ET-99-471; however, the Commission found that this requirement "would be acceptable in a competitive marketplace because the customer would be free to change supplier and repay the discount to UE."

OPC initially raised its concerns in KCPL's Case No. ET-97-113 regarding a utility using "contracts to enhance its competitive position during the transition to, and commencement of retail competition. OPC believes that if the public is to benefit from retail competition, and that new and existing policies that enhance the competitive advantage that most incumbent providers already enjoy, will delay and reduce any benefits that the public may receive from retail competition." (Ryan Kind, Direct Testimony, page 3). The arguments in that case revolved around market-out clauses and limiting the term of contracts. The arguments advanced by OPC in Case No. ET-99-471 revolved around the specific form of the market-out clause in UE's EDR. Attached for the Commission's convenience are Attachment A, the Staff's recommendation in Case No. ET-99-471, and Attachment B, the Commission's Order Approving Tariff in Case No. ET-99-471.

On March 20, 2000, the Office of the Public Counsel filed its Motion to Suspend Tariff, opposing extending the availability of Company's current Rider EDR unless modified as proposed by OPC. OPC states that it incorporates the same arguments made in its Motion to Suspend Tariff and in its Application for Rehearing filed in Case No. ET-99-471.

The relief requested by OPC is to "have the opportunity to file prepared testimony and explain to the Commission why it believes that it is unreasonable to include the objectionable provision quoted above in an EDR Tariff, why it does not enhance economic development, and why it is harmful to the public interest." (Motion to Suspend, Paragraph 3). "Public Counsel believes that this provision is unreasonable and harmful to economic development and that the further in time that this provision is made available, the greater the harm to the public." (Motion to Suspend, Paragraph 2).

Suspension of the proposed tariff is not required in order for OPC to bring its concerns to the Commission's attention. The Commission's rules (4 CSR 240-2.070 (3)) provide that formal complaints may be made by Public Counsel as to the reasonableness of any rates or charges of any public utility. The Staff would not oppose the investigation of the reasonableness of Rider EDR while it remains in effect; however, the Staff sees no reason to suspend UE's Rider EDR while OPC revisits the issues it raised in Case No. ET-99-471 and Case No. ET-97-113.

The Missouri Public Service Commission Electric-Rates & Tariffs Staff has reviewed this filing and recommends approving the following tariff sheet, as filed on February 29, 2000, to go into effect for service on and after March 31, 2000, the requested effective date:

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

6th Revised SHEET NO. 122.31 CANCELLING 5th Revised SHEET NO. 122.31

Because this filing was made on thirty (30) days or greater notice, no order is necessary to indicate approval. 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
 Manager - Electric Department
 Steven R. Sullivan, V.P. and General Counsel, UE
 James J. Cook, attorney, UE
 Office of the Public Counsel

MEMORANDUM

FILED

APR 22 1999

TO: Missouri Public Service Commission Official Case File
Case No. ET-99-471, File No. 9900733, Union Electric Company Missouri Public Service Commission

FROM: Mack McDuffey, Electric Department - Rates & Tariffs *mm* *BM*

Wes Hadlee 4-22-99
Utility Operations Division/Date

Steven J. Jot 4/22/99
General Counsel's Office/Date

SUBJECT: Staff Recommendation for **Approval** of Tariff Sheets Filed to Reinstate and Revise Economic Development Rider

DATE: April 21, 1999

On March 26, 1999, Union Electric Company d/b/a AmerenUE₂ (UE or Company) of St. Louis, Missouri filed six (6) electric rate tariff sheets proposed to become effective on April 27, 1999. This filing proposes modifications to the Company's Economic Development Rider (EDR) that expired on December 31, 1998.

On April 16, 1999, the Office of the Public Counsel filed its Motion to Suspend Tariff opposing the modification that requires an EDR customer to remain a full requirements customer for at least five years in order to receive any benefits from the discounted rate.

UE's EDR, originally became effective on November 5, 1989, has been refiled various times with modifications, and lapsed upon its expiration on December 31, 1998. The following is a list of EDR modifications and renewals:

- 11-05-89 Original Rider EDR became effective.
- 01-20-91 Large Primary Service (11M) service classification was made available.
- 01-02-92 Rider EDR made available to new loads added through December 31, 1992.
Restricted the credits to the eight non-summer billing periods plus one summer billing period.
- 01-02-92 Rider EDR made available to new loads added through December 31, 1993.
- 02-05-94 Rider EDR made available to new loads added through December 31, 1994.
Credit EDR customers on an annual basis and only if customer has at least a 55% load factor during the entire term and an average monthly billing demand of at least 200 kW during each contract year.
- 02-05-94 Rider EDR made available to new loads added through December 31, 1995.
- 10-30-95 Rider EDR made available to new loads added through December 31, 1996.
- 11-16-96 Rider EDR made available to new loads added through December 31, 1997.
- 11-24-97 Rider EDR made available to new loads added through December 31, 1998.

UE has proposed the following modifications to become effective on April 27, 1999:

1. Change credit percentage from a sliding scale of 30%, 25%, 20%, 15%, and 10% over five years to a fixed 15% in each year.

2. Limit availability to facilities not involved in selling or providing goods and services directly to the general public.
3. Require EDR customers to return all EDR credits received from UE in the event that the customer commences taking service from an alternative energy supplier prior to the expiration of the contract term of five years.

Despite OPC's allegations that "The Proposed Tariff contains important utility issues which address broad policy matters that deserve Commission review through a full and complete evidentiary hearing," OPC states that its "objection to the Proposed Tariff would be cured if the five year contractual commitment is removed from the tariff language and from the form of contract to state that any contract for service entered into under the Economic Development Rider would be terminated upon any change in law or regulation that would allow a customer under such a tariff to choose another electric service provider." OPC's present objections to EDR contracts continuing after the advent of retail competition were raised in Kansas City Power & Light Company's Case No. ET-99-113 respecting special contracts. After a full and complete evidentiary hearing in that case, OPC's arguments were considered and rejected by the Commission. The Staff sees no need to revisit this issue at this time, although the Commission may want to consider whether OPC has new arguments to present for the Commission's consideration, changed circumstances exist or Public Counsel can distinguish the instant situation from that in Case No. ET-97-113.

The Missouri Public Service Commission Electric - Rates & Tariffs Staff (Staff) has reviewed the filed tariff sheets and has no objections to the proposed modifications. Staff is not aware of any other matter before the Commission that affects or is affected by this filing. Staff therefore recommends that the Commission approve the proposed tariff sheets to become effective on April 27, 1999, the requested effective date.

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

4th Revised SHEET NO. 122.1 CANCELLING 3rd Revised SHEET NO. 122.1
4th Revised SHEET NO. 122.2 CANCELLING 3rd Revised SHEET NO. 122.2
5th Revised SHEET NO. 122.3 CANCELLING 4th Revised SHEET NO. 122.3
5th Revised SHEET NO. 122.31 CANCELLING 4th Revised SHEET NO. 122.31
3rd Revised SHEET NO. 122.4 CANCELLING 2nd Revised SHEET NO. 122.4
2nd Revised SHEET NO. 122.5 CANCELLING 1st Revised SHEET NO. 122.5

copies: Director - Utility Operations Division
Director - Research and Public Affairs Division
Director - Utility Services Division
General Counsel
Manager - Financial Analysis Department
Manager - Accounting Department
Manager - Electric Department
Steven R. Sullivan, V.P. and General Counsel, UE
James J. Cook, attorney, UE
Office of the Public Counsel

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 22nd
day of April, 1999.

In the Matter of a Tariff Filing by Union) Case No. ET-99-471
Electric Company d/b/a AmerenUE to Replace) Tariff File No. 9900733
the Economic Development Rider.)

ORDER APPROVING TARIFF

Union Electric Company d/b/a AmerenUE (Company or UE) filed revised tariff sheets on March 26, 1999, which would replace the Company's Economic Development Rider (EDR). The EDR establishes discounted rates under certain circumstances. On April 16, 1999, the Office of the Public Counsel (OPC) moved to suspend the proposed tariff.

In the Motion to Suspend, the OPC stated that the proposed EDR "contains significant modifications" and in particular the OPC objected to a provision "that any eligible customer must remain a full requirements customer for at least five years" to retain the benefit from the discounted rates. The OPC termed this requirement an "exit fee" and alleged that an exit fee would impair the development of a fully fair and competitive marketplace, and thus is unjust and unreasonable.

On April 22, 1999, the Staff of the Commission filed its memorandum recommending approval of the proposed tariff sheets. Staff states that the Commission considered and rejected the arguments made here

by the OPC in another case, ET-97-113,¹ wherein Kansas City Power and Light proposed a similar tariff.

The Commission has considered the revised tariff sheets, the OPC's motion and Staff's memorandum. The Commission finds the proposed tariff revision would be acceptable in a competitive marketplace because the customer would be free to change supplier and repay the discount to UE. The Commission concludes that the proposed revised tariff sheets are just and reasonable and should be approved to take effect on April 27, 1999.

IT IS THEREFORE ORDERED:

1. That the Motion to Suspend Tariff filed herein by the Office of the Public Counsel is denied.

2. That the proposed revised tariff sheets filed by Union Electric Company d/b/a AmerenUE on March 26, 1999, are approved, effective April 27, 1999. The tariff sheets approved are:

P.S.C. MO. No. 5

4 th Revised Sheet No. 122.1, Cancelling	3 rd Revised Sheet No. 122.1
4 th Revised Sheet No. 122.2, Cancelling	3 rd Revised Sheet No. 122.2
5 th Revised Sheet No. 122.3, Cancelling	4 th Revised Sheet No. 122.3
5 th Revised Sheet No. 122.31, Cancelling	4 th Revised Sheet No. 122.31
3 rd Revised Sheet No. 122.4, Cancelling	2 nd Revised Sheet No. 122.4
2 nd Revised Sheet No. 122.5, Cancelling	1 st Revised Sheet No. 122.5

¹ In the Matter of Kansas City Power & Light Company's Tariffs for Standby Service and Special Contracts, Case No. ET-97-113 (Report and Order, June 13, 1997.)

3. That this order shall become effective on April 27, 1999.
4. That this case may be closed on April 28, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray,
and Schemenauer, CC., concur.
Crumpton, C., absent.

Thornburg, Regulatory Law Judge

Service List for
Case No. ET-2000-583
Revised: March 24, 2000

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