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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 4th
day of November, 1994.

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| Tesson Heights Enterprises |) | |
| 12335 W. Bend Drive, |) | |
| St. Louis, Missouri 63128 |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | <u>Case No. EC-95-58</u> |
| |) | |
| Union Electric Company, |) | |
| 1901 Chouteau Avenue |) | |
| St. Louis, Missouri 63103 |) | |
| |) | |
| Respondent. |) | |

ORDER REGARDING MOTIONS AND PROCEDURAL MATTERS

On August 25, 1994, a complaint was filed by Excel Retirement Community, Inc., d/b/a Tesson Heights Retirement Community, against Union Electric Company. On September 28, 1994, Respondent Union Electric Company (UE) filed three documents, those being an answer and counterclaim, a motion to hold the proceeding in abeyance, and a motion to dismiss or alternatively to strike portions of the complaint. On October 5, 1994, a motion to amend the complaint and an amended complaint were filed by a different complainant, that being Tesson Heights Enterprises.

UE's motion to dismiss or strike of September 28, 1994, is based on the fact that the original complainant, Excel Retirement, is not the real party in interest. The second complainant, Tesson Heights, states as much in its motion to amend the complaint and corrects that error in its amended complaint. The Commission finds no prejudice to any party by allowing the amended complaint, as the complaint could have simply been refiled correctly had the Commission dismissed it initially. The motion

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to amend the complaint will be granted, and that part of UE's motion to dismiss based on the original complaint being filed by an improper party is found to be moot.

The remainder of UE's motion to dismiss or strike is based on arguments by UE which can be succinctly stated as ". . . it is beyond the Commission's jurisdiction to declare or enforce any principle of law or equity." UE requests the Commission to strike those portions of the original complaint which allege that actions of UE were unlawful or violated specific statutory provisions. UE acknowledges the Commission's jurisdiction to review its actions and tariffs and make a determination as to whether it acted properly regarding those tariffs. UE renewed all three motions on the same grounds on October 24, 1994, pertaining to the amended complaint.

Review of the UE motion and the amended complaint reveal, as suggested by the Commission Staff, issues and arguments which might better be raised in the evidentiary hearing of this matter, rather than in a motion. The amended complaint itself clearly states a complaint involving an alleged misapplication of a rate schedule in UE's service classification tariffs. The Commission finds the amended complaint to be sufficiently stated. Arguments as to matters of fact and application of various regulations and statutes are more properly taken up in the evidentiary hearing of this matter, to be decided by the Commission if necessary and relevant. The remainder of UE's second motion to dismiss or strike is denied.

The second motion by UE of October 24, 1994, is one to hold the proceeding in abeyance based on the fact that two cases, allegedly involving similar issues of law and fact, are currently pending on appeal

and, therefore, may substantially affect the outcome of this proceeding. The cases in question are referred to corporately as "Friendship Village."

After review of the Friendship Village case, the Commission would note that the facts as alleged by the complainant may be materially different than those facts decided in Friendship Village. Until evidentiary hearing of this matter, however, the Commission has no way to determine whether substantial and competent evidence of record will show this matter to be, for purposes of decision, like or unlike the Friendship Village case. In addition, to delay this matter due to a prior decision currently on appeal, which in no way involved the complainant, would, in the Commission's opinion, be fundamentally unfair to the complainant. Therefore, the motion of October 24, 1994, by UE to hold this matter in abeyance is denied for the reasons as set out above.

Finally, UE has filed a request to be allowed until November 8, 1994, to respond to data requests served on it by the complainant. The complainant has no objection to this request. The Commission will allow UE until 3:00 p.m., November 10, 1994, to respond to the data requests.

In order to move this matter forward, the Commission will order an early prehearing conference be held, beginning at 10:00 a.m. December 19, 1994, at the Commission offices, Harry S. Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri.

As a result of this conference, at a minimum, the Commission expects the parties to produce a suggested procedural schedule for the filing of testimony and the prosecution of the evidentiary hearing of this matter.

IT IS THEREFORE ORDERED:

1. That an early prehearing conference will be held beginning December 19, 1994, at 10:00 a.m. in the Commission's offices, Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri.

2. That the motion to amend the complaint, filed October 5, 1994, is granted for the reasons as set out above, and the style of this case is hereby ordered changed to reflect the proper complainant.

3. That all motions by respondent regarding the original complaint, filed prior to the filing of the amended complaint, are dismissed as being moot.

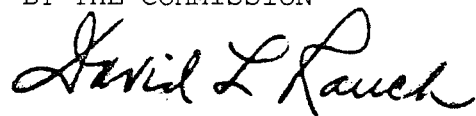
4. That the motions by respondent, filed October 24, 1994, to dismiss the amended complaint or alternatively to strike language from the amended complaint, are denied for the reasons as set out above.

5. That the motion by respondent, filed October 24, 1994, to hold this case in abeyance, is denied for the reasons as set out above.

6. That the respondent has until November 10, 1994, at 3:00 p.m. to respond to the data requests of complainant.

7. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in black ink, reading "David L. Rauch". The signature is written in a cursive, flowing style.

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,
Kincheloe and Crumpton, CC., Concur.