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ROBERT G. SCHEMENAUER
KELVIN L. SIMMONS

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
http://www.psc.state.mo.us
November 8, 2000

BRIAN D. KINKADE
Executive Director
GORDON L. PERSINGER
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Director, Utility Operations
ROBERT SCHALLENBERG
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Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

FILED 2

NOV 08 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. EM-96-149 - 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.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed
copies of STAFF REPLY TO MOTION OF UNION ELECTRIC COMPANY FOR
RECONSIDERATION OF THE COMMISSION'S ORDER GRANTING IN PART THE
MOTION TO COMPEL.

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,

[Signature]

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

Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

NOV 08 2000

Missouri Public
Service Commission

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

**STAFF REPLY TO MOTION OF UNION ELECTRIC COMPANY FOR
RECONSIDERATION OF THE COMMISSION'S ORDER
GRANTING IN PART THE MOTION TO COMPEL**

Comes now the Staff of the Missouri Public Service Commission (Staff) in reply to the Motion For Reconsideration of Union Electric Company, d/b/a AmerenUE (UE) respecting the Commission's Order granting in part the Staff motion for an Order compelling UE to respond to Staff Data Requests. In response the Staff states as follows:

1. The Staff would first note that even though on November 2, 2000 UE filed its Motion For Reconsideration with the Commission, on November 7, 2000 UE provided to the Staff responses to Staff Data Request Nos. 13, 16-21, 23, 25, 26, 29, 35, 40 and 4114. Of the Staff Data Requests for which UE filed a Motion For Reconsideration, a response has not been received only for Staff Data Request Nos. 50 and 55. The Staff has not had an opportunity to determine as yet whether the answers provided by UE are complete and responsive to the Staff Data Requests.

2. Contrary to UE's assertion, the Staff Data Requests are not unlawful in the context of the operation of the second experimental alternative regulation plan (EARP). Contrary to UE's position, the information requested by the Staff is relevant and necessary to the

Staff's preparation of its recommendation, to be filed on February 1, 2001, on the future of any EARP. UE concentrates in its Motion For Reconsideration on Section 7.e. of the second EARP Stipulation And Agreement, ignoring the language in Section 7.g. that states "the monitoring reports and additional information required to be provided" is to be reviewed by the signatories. (Emphasis supplied). UE in addition completely ignores the part of the sentence in Section 7.e. that follows the language "UE will not be required to develop any new reports . . ." The part of the sentence ignored by UE states that "information presently being recorded and maintained by UE may be requested." Contrary to UE's contention, the Staff requesting "information presently being recorded and maintained by UE" does not require UE to develop any new reports.

3. Contrary to UE's contention, there is no disclosure and discovery mechanism created by the second EARP distinct from normal discovery under the Commission's rule 4 CSR 240-2.090 that borrows the data request device, but not the procedural rules or time limits of 4 CSR 240-2.090. UE states at page 3 of its Motion For Reconsideration that "no deadline is mandated for the response" to the data requests that are provided for as a form of discovery in Section 7.e of the Case No. EM-96-149 Stipulation And Agreement. Nonetheless, the language of Section 7.e. states that "Staff, OPC and the other signatories participating in the monitoring of the New Plan may follow up with data requests, meetings and interviews, as required, to which UE will respond on a timely basis." (Emphasis supplied).

4. The phrase "a timely basis" in the Case No. EM-96-149 Stipulation And Agreement is not inconsistent with the time limits or the fact that there are time limits in 4 CSR 240-2.090. UE does not otherwise suggest what is "a timely basis" for responses other than evidently its own conduct in taking 48 days to object to Staff Data Request Nos. 13, 16-21, 23, 25, 26, 29, 35, and 40; 41 days to object to Staff Data Request Nos. 50 and 55; and 37 days to

object to Staff Data Request No. 4114. If anything, it should be argued that if 4 CSR 240-2.090 timeframes do not apply to the second EARP, what the signatories to the Case No. EM-96-149 Stipulation And Agreement intended was shorter timeframes than in 4CSR 240-2.090 because of the compressed schedule wherein, for example, the Staff and other signatories to the Case No. EM-96-149 Stipulation And Agreement have 30 days after UE's filing of a final report for a sharing period to provide notice to the Commission that there may be areas of disagreement that need to be resolved.

5. UE's contention that the 4 CSR 240-2.090 discovery procedures do not apply to the EARP is inconsistent with UE's general line of contention which would have UE argue that since there is no specific provision in the Case No. EM-96-149 Stipulation And Agreement that literally, expressly and unquestionably states that 4 CSR 240-2.090 discovery procedures do not apply to the EARP, then 4 CSR 240-2.090 discovery procedures do apply to the EARP. In all but one other instance, UE has argued that what is not literally, expressly and unquestionably set out in the EARP Stipulation And Agreement is not required by the terms of the EARP.

6. UE raises on pages 2 and 4 of its Motion For Reconsideration a new objection to certain of the Staff's Data Requests, that contention being that certain Staff Data Requests seek information already provided by UE. The Staff disputes this assertion of UE and notes that pursuant to 4 CSR 240-2.090(2), UE waived this objection by not timely submitting it to the Staff. Commission rule 4 CSR 240-2.090(2) states, in part, as follows:

...If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the Commission...

7. At page 4 of its Motion For Reconsideration, UE relates that "[t]he work papers used to develop these [preliminary earnings and final earnings] reports, which obviously provide

an additional body of detail on the revenues, expenses, and operations of UE, are also provided to the Staff.” The Staff in particular notes this statement of UE because it is a makeshift argument that is anomalous to UE’s other contentions. This UE argument is inconsistent with the general line of contention of UE that would argue that since there is no specific provision in the Case No. EM-96-149 Stipulation And Agreement that literally, expressly and unquestionably requires that UE provide to the Staff its workpapers in support of UE’s preliminary earnings report and final earnings report for each year of the EARP, such workpapers are not required by the Case No. EM-96-149 Stipulation And Agreement to be provided to the Staff. UE generally has argued that what is not literally, expressly and unquestionably set out in the EARP Stipulation And Agreement is not required by the terms of the EARP.

8. Commission rule 4 CSR 240-2.090(1) provides as follows regarding the applicability of the rules of civil procedure to discovery before the Commission:

Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

9. The Western District Court of Appeals in State ex rel. Arkansas Power & Light Co. v. Public Serv. Comm’n, 736 S.W.2d 457, 460 (Mo.App. 1987) held as follows respecting sanctions for failure of a party to comply with 4 CSR 240-2.090:

The PSC may adopt rules as to hearings and investigations. Section 386.410, RSMo 1986. Commission Rule 4 CSR 240-2.090 allows the use of written interrogatories under the same conditions as in civil cases. State ex rel. Southwestern Bell Telephone Company v. Public Service Commission, 645 S.W.2d 44, 49-50 (Mo.App. 1983). . . .

Trial courts are allowed wide discretion in meting out sanctions under Rule 61.01.
. . .

This court holds the PSC may impose sanctions pursuant to Rule 61.01. . . .

(736 S.W.2d at 460.). Missouri Civil Procedure Rule 61.01 "Failure To Make Discovery: Sanctions" states, in part, as follows respecting the failure to timely object to discovery, in particular to interrogatories:

(a) Failure to Act – Evasive or Incomplete Answers. Any failure to act described in this Rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed timely objections to the discovery request or has applied for a protective order as provided by Rule 56.01(c).

(b) Failure to Answer Interrogatories. If a party fails to answer interrogatories or file objections thereto within the time provided by law, or if objections are filed thereto which are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just . . .

(Emphasis supplied).

Wherefore based upon the foregoing, the Staff requests that the Commission deny UE's Motion For Reconsideration.

Respectfully submitted,

DANA K. JOYCE
General Counsel




Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (Telephone)
(573) 751-9285 (Fax)
sdotthei@mail.state.mo.us

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 8th day of November 2000.



**SERVICE LIST FOR
CASE NO. EM-96-149
October 30, 2000**

John B. Coffman
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Richard S. Brownlee, III
Hendren and Andrae
P.O. Box 1069
Jefferson City, MO 65102

Gary W. Duffy/Sondra Morgan
Brydon, Swearingen & England P.C.
312 East. Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456

Diana M. Vulysteke
Bryan Cave LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

James M. Fischer
Attorney at Law
101 W. McCarty Street, Suite 215
Jefferson City, MO 65101

Paul S. DeFord
Lanthrop & Norquist, L.C.,
2345 Grand Blvd., Suite 2500
Kansas City, MO 64108

James J. Cook
William J. Niehoff
Union Electric Company
P.O. Box 149 (M/C 1310)
St. Louis, MO 63166

Ronald Molteni/Marl E. Long
Office of the Attorney General
221 W. High Street, P.O. Box 899
Jefferson City, MO 65102

Charles Brent Stewart
Stewart & Keevil
1001 Cherry Street, Suite 302
Columbia, MO 65201

Marilyn S. Teitelbaum
Schuchat, Cook & Werner
1221 Locust Street, 2nd Floor
St. Louis, MO 63103-2364

Jim Berger
Local 309, IBEW
2000 Mall St. (Rte. 157)
Collinsville, IL 62234

Robert C. Johnson
Peper, Martin, Jensen, Maichel & Hetlage
720 Olive Street, 24th Floor
St. Louis, MO 63101

Michael C. Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

William G. Riggins
Kansas City Power & Light Company
1201 Walnut Street
P. O. Box 418679
Kansas City, MO 64141-9679

William A. Spencer
216 E. Capitol Ave., P.O. Box 717
Jefferson City, MO 65102

John W. McKinney
Missouri Public Service
10700 E. 350 Hwy., PO Box 11739
Kansas City, MO 64138

F. Jay Cummings
Southern Union Gas Co.
504 Lavaca, Ste. 800
Austin, TX 78701

Dave White
Local 2, IBEW
209 Flora Dr.
Jefferson City, MO 65101

Robert B. Fancher
Empire District Electric Co.
602 Joplin, PO Box 127
Joplin, MO 64801

Robin E. Fulton
Schnapp, Fulton, Fall, McNamara
& Silvey L.L.C.
135 E. Main Street, Box 151
Fredericktown, MO 63645-0151

Sam Overfelt
618 E. Capital Ave.,
P.O. Box 1336
Jefferson City, MO 65102

Michael Datillo
Local 1455, IBEW
5570 Fyler Ave.
St. Louis, MO 63139

Kenneth J. Neises
Laclede Gas Co.
720 Olive St., Rm. 1514
St. Louis, MO 63101

Charles J. Fishman
Trigen-St. Louis Energy Corp.
One Ashley Place
St. Louis, MO 63102

Gary Roan
Local 702, IBEW
106 N. Monroe
West Frankfort, IL 62896

Joe Lakshmanan
Illinois Power Company
600 South 27th St., PO Box 511
Decatur, IL 62525

Paul Gardner

Goller & Associates
131 E. High St.
Jefferson City, MO 65102

James Swearengen

Brydon, Swearengen & England P.C.
312 East. Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456

Robert J. Cynkar

Cooper, Carvin & Rosenthal
1500 K Street, N.W., Suite 200
Washington, DC 20005