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June 26, 2001

FILED³

JUN 26 2001

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
Governor's Office Building
Madison & E. Capitol
Jefferson City, MO 65101

Missouri Public
Service Commission

RE: *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, Lease 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*

Dear Judge Roberts:

Enclosed for filing in the above-referenced case are the original and 8 copies of State of Missouri's Suggestions in Opposition to Emergency Motion of Union Electric Company to Temporarily Stay Expiration of the EARP and to Establish a Schedule for Further Proceedings and for Expedited Treatment. Thank you for your attention to this matter.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

Ronald Molteni
Assistant Attorney General

Enclosures

cc: Judge Register
All Parties on the Service List

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JUN 26 2001

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

**STATE OF MISSOURI'S SUGGESTIONS IN OPPOSITION TO
EMERGENCY MOTION OF UNION ELECTRIC COMPANY
TO TEMPORARILY STAY EXPIRATION OF THE EARP AND TO
ESTABLISH A SCHEDULE FOR FURTHER PROCEEDINGS
AND FOR EXPEDITED TREATMENT**

The State of Missouri appears now through the Attorney General and asserts that it opposes Union Electric Company's Emergency Motion to Temporarily Stay the Expiration of the EARP and to Establish a Schedule for Further Proceedings and for Expedited Treatment. For its cause, the State notes the following:

1. The issues addressed in UE's Emergency Motion are issues of public policy. It should not be addressed in any secret proceedings subject to pleadings filed under seal without the ability of the public to understand how it will be billed for electric services by its monopolistic electric utility. Sealing UE's Emergency Motion, including the reasons for or against continuing with the EARP, is uncalled for, and may violate both the Commission's enabling statute, Chapter 386, RSMo, and provisions of the state's Sunshine Law, Chapter 610, RSMo.
2. There is little, if anything, regarding or contained in AmerenUE's Emergency Motion that warrants "proprietary treatment." The fundamental nature of UE's Emergency

Motion, whether or not to extend the EARP, deals with a matter of public concern, specifically how a company who enjoys a monopoly on the provision of electricity bills its Missouri customers. There need be no secrecy regarding the Emergency Motion or the request to schedule further proceedings. UE even acknowledges in its Emergency Motion that the issues it seeks to discuss are matters of public policy. It states at pages 4 through 5, "Moreover, the issues to be addressed in these proceedings we propose below center on important questions of methodology by which rates are set, and on the policy premises that shape such methodology, and which ultimately determine how a ready and reasonably priced supply of electricity is to be secured for Missourians of this, and succeeding, generations."

3. The "emergency" nature of UE's Motion is an emergency to no one but UE, and to UE, if at all, only because UE has made it one. The end of the EARP has been a date that has been visible for years. UE's alarmist, emergency request should not become the Commission's emergency (nor the other parties') because UE has waited to file its request until the last week of the EARP.

4. When the Commission solicited comments from the parties in the case whether to continue the EARP, only UE filed comments displaying its enamoration with the EARP. Neither the Commission Staff, Public Counsel, nor any of the interveners expressed any interest in continuing the EARP. Accordingly, forcing UE customers to continue with an experimental program with a longstanding sunset date in lieu of returning to traditional cost-of-service regulation, would be akin to unilaterally extending what UE argues to the Circuit Court of Cole County is a "contract." Moreover, unilaterally imposing the EARP contradicts the arguments that UE has made in its brief in Case Nos. 00CV323273 and 00CV323608, currently pending

before the Circuit Court of Cole County, in the case styled *Union Electric v. Public Service Commission*. UE in that case argues that the EARP is a “contract” that is the only source of authority for the Commission to play a role in the operation of the EARP. (UE Brief at p. 12.) UE goes on to state that, “It is undisputed that the Commission could not compel UE, or any utility, to share its earnings with customers in a regime like the EARP.” (UE Brief at p. 12.) The State of Missouri will argue in its response brief that if the EARP is a contract, it still fits within the Commission’s statutory framework of Chapter 836 and Chapter 393. If UE is to be held to its arguments in the Circuit Court, the Commission would have no authority to act any further on extending the EARP because it would be “a contract” whose terms have expired. If the EARP is a contract, it has to involve more than one party, and it cannot be a contract without a “mutual meeting of the minds” of the parties who are signatories to it. Simply put, UE cannot have its cake and eat it too.

5. Whether or not it makes sense for the Commission to continue the EARP should be a matter independent of any rate case filed by the Staff. In fact, after years of regulation through the EARP, it may be imperative that the Staff file a rate case. A rate case should not be held up so that the Staff, Public Counsel, the other interveners, and any other interested party can evaluate the pros and cons of proceeding further with an EARP or returning to traditional cost-of-service regulation. If Staff has the statutory authority to file a rate case, and it certainly does, it is inappropriate to stay its ability to do so merely because it would be an inconvenience to UE. Nothing about proceeding with a rate case would impair, should it desire, the Commission’s consideration of an “innovative proposal” concerning UE’s future rates and regulatory structure.

6. UE's arguments regarding developments in California as the grounds for entertaining UE's Motion are completely unfounded. In fact, California's departure from traditional cost-of-service regulation may have contributed, if not to the underlying causes regarding its crisis, certainly to the exacerbation of that crisis.

7. UE's filing is duplicitous. It uses the nightmare experience in California as a reason to continue with the EARP, yet it argues that performance based regulations for electric utilities like the EARP are in place in 16 states – including California!

8. As a courtesy to UE, until the Commission adjudicates the necessity to conduct these proceedings in the open or under the cloak of secrecy requested by UE, the State will not address the specifics of UE's financial impact arguments. The State of Missouri will only state for the time being that this Commission should not refrain from carrying out its statutory responsibilities to the public because doing so might trigger market sector evaluations of a utility's financial standing. This Commission does not exist to protect utility shareholders from normal market evaluative forces which analyze that utility's stock performance.

9. The State of Missouri opposes a 120-day delay of the expiration of the EARP. Its expiration date has been visible for years and, the true benefits of any EARP to the utility and its customers will best be flushed out by a rate case brought by the Staff so that the Commission can consider how the EARP would have fared versus traditional cost-of-service regulation. More importantly, the Commission can consider how all the parties at interest would have fared or have fared utilizing the EARP versus traditional cost-of-service regulation.

Accordingly, for the foregoing reasons, the State of Missouri urges that the Commission do the following:

- a. Deny UE's request to delay the expiration date of the EARP;
- b. Refrain from issuing any stay regarding any rate case the Commission Staff sees fit to file;
- c. Proceed with the regulation of rates charged by UE to its Missouri customers in a manner consistent with the Commission's enabling statutes and regulations and not substitute some sort of artificial proceeding as a forum to adjudicate what UE considers to be its public policy interests;
- d. Reject any notion that the Emergency Motion filed by AmerenUE ought to be under seal;
- e. Reject any notion that the Commission should issue an order violating the Sunshine Law by imposing confidentiality on subject matters of consideration which are issues of public policy and which deal with the methodology of charging Missouri rate-payers for the electricity they purchase from a monopoly supplier;
- f. Reject the schedule provided by UE in its Emergency Motion; and
- g. Establish some sort of advisory docket or roundtable whereat UE and others could argue to the Commission the merits and demerits of EARP versus traditional cost-of-service regulation in a forum open to the public.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 26th day of June, 2001, to:

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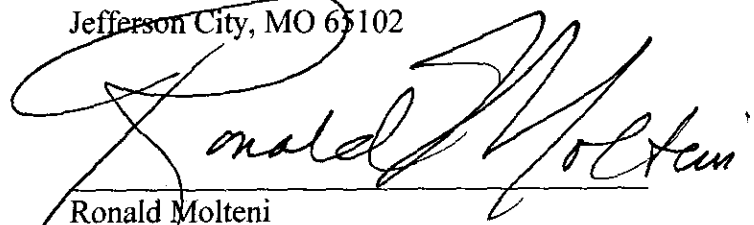
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