

Exhibit No.:

Issues:

**Overview, Income Tax
and Territorial
Agreements**

Witness:

Stephen M. Rackers

Sponsoring Party:

MoPSC Staff

Type of Exhibit:

Direct Testimony

Case No.:

EO-96-14

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

DIRECT TESTIMONY

OF

STEPHEN M. RACKERS

UNION ELECTRIC COMPANY

CASE NO. EO-96-14

*Jefferson City, Missouri
February 1999*

Exhibit No. 1
Date 6-1-99 **Case No.** EO-96-14
Reporter JH

1 for Union Electric Company (UE or Company), approved in Case No.
2 ER-95-411.

3 2) The Staff's recommendation regarding the quantification of the weather
4 normalized permanent rate reduction which is an item that was agreed to
5 in conjunction with a second three year EARP proposed and approved in
6 Case No. EM-96-149.

7 3) A general discussion regarding the basis for all of the Staff's adjustments
8 which are at issue in this proceeding.

9 4) A discussion of the adjustments I am specifically supporting.

10 Q. Please explain the term "sharing credits".

11 A. The term relates to the amount of earnings that are returned to the ratepayers,
12 on a one-time basis, depending on UE's achieved equity return during each annual sharing
13 period. The annual sharing period is July 1 of one year through June 30 of the next year.
14 The initial EARP, approved in Case No. ER-95-411, provided for three annual sharing
15 periods from July 1, 1995 through June 30, 1998. The second EARP, approved in Case
16 No. EM-96-149, provides for three additional annual sharing periods from July 1, 1998
17 through June 30, 2001.

18 Q. How is the achieved return on equity determined for each one year sharing
19 period?

20 A. The achieved equity return is based on the average capital structure, the
21 average rate base and the booked earnings, as adjusted, during the particular one year
22 sharing period.

23 Q. What amount of sharing period earnings are credited to ratepayers?

24 A. Fifty percent of the sharing period earnings that reflect an achieved equity
25 return above 12.61% and less than or equal to 14% is credited to the ratepayers. One

1 hundred percent of the sharing period earnings that reflect an achieved equity return above
2 14% is credited to the ratepayers.

3 Q. What is the Staff's recommended level of credits for the sharing period ended
4 June 30, 1998?

5 A. The Staff's recommended level of sharing credits is \$40,609,000. This
6 amount of sharing credits is comprised of \$24,144,000 of earnings at the 50% sharing level
7 and \$16,465,000 at the 100% sharing level. These earnings levels have been factored-up
8 for income taxes. The Staff Accounting and Monitoring Schedules included in this direct
9 filing support these calculations. The amounts referenced above specifically appear on
10 Accounting Schedule 1 and Monitoring Schedule 4.

11 Q. Please explain the term "weather normalized permanent rate reduction".

12 A. In accordance with the Stipulation and Agreement approved in Case No.
13 EM-96-149, UE's rates will be reduced, on a permanent basis, by an amount equal to the
14 average level of credits for the three sharing periods, from July 1, 1995 through June 30,
15 1998, as adjusted for normal weather. The credits are adjusted by increasing or decreasing
16 earnings to reflect the level of KWh sales that would have been realized had normal
17 temperatures been experienced during the sharing period. The procedures for adjusting
18 earnings for normal weather appear in Attachment A to the Stipulation and Agreement
19 approved in Case No. EM-96-149. In accordance with these procedures, adjustments were
20 made to Revenue and Fuel Expense for the first three sharing periods.

21 Q. What is the Staff's recommendation for the permanent rate reduction?

22 A. The Staff's recommendation for the permanent rate reduction is \$27,394,000.
23 Schedule 2, attached to my testimony, summarizes the Staff's recommendations for the
24 sharing credits and permanent rate reduction.

1 Q. What methodology did the Staff use to adjust the sharing credits to reflect
2 normal weather?

3 A. The Staff's adjustments to KWh sales to reflect normal weather are discussed
4 in the testimony of Staff witnesses Dennis Patterson of the Commission's Electric
5 Department Staff and Dr. Steven Qi Hu, a climatological consultant appearing on behalf of
6 the Staff.

7 Q. What is the basis for the adjustments made by the Staff which are at issue in
8 this proceeding?

9 A. The Staff is proposing its adjustments in accordance with the criteria
10 established in the Stipulation and Agreements approved by the Commission in Case Nos.
11 ER-95-411 and EM-96-149. Part of this criteria from the Stipulation and Agreement
12 approved in Case No. ER-95-411 appear on pages 9 and 10 in sections 3.f.vii. and viii. These
13 same sections also appear on pages 17 and 18 of the Stipulation and Agreement approved in
14 Case No. EM-96-149. These sections state that:

15 vii.:
16 UE, Staff, OPC and other signatories reserve the right to bring issues
17 which cannot be resolved by them, and which are related to the
18 operation or implementation of the Plan, to the Commission for
19 resolution. Examples include disagreements as to the mechanics of
20 calculating the monitoring report, alleged violations of the Stipulation
21 and Agreement, alleged manipulations of earnings results, or requests
22 for information not previously maintained by UE. An allegation of
23 manipulation could include significant variations in the level of
24 expenses associated with any category of cost, where no reasonable
25 explanation has been provided. The Commission will determine in
26 the first instance whether a question of manipulation exists and
27 whether that question should be heard by it.

28
29 viii.:
30 Staff, OPC and other signatories have the right to present to the
31 Commission concerns over any category of cost that has been
32 included in UE's monitoring results and has not been included
33 previously in any ratemaking proceeding.
34
35

1 Adjustments based on this language are sponsored by Staff Accounting
2 witnesses Arlene Westerfield, Michael Gruner and myself.

3 Additional criterion from page 3, section 4 of the Stipulation and Agreement
4 approved in Case No. EM-96-149, states that:

5 The annual amortization of merger transaction and transition costs
6 will be the lesser of: (1) the Missouri jurisdictional portion of the total
7 Ameren amount of \$7.2 million; or (2) the Missouri jurisdictional
8 portion of the total Ameren unamortized amount of actual merger
9 transaction and transition costs incurred to date.

10
11 Adjustments based on this provision are discussed in the testimony of Staff
12 witness Gruner.

13 The Staff is also relying on the Reconciliation Procedure, Attachment C to the
14 Stipulation and Agreement in Case No. ER-95-411, Section 2.f., for an adjustment to the
15 calculation of income taxes. This section states, in part, that:

16 The earnings report will utilize: Staff's traditional calculation of
17 income tax (refer to the income tax calculation in Case No.
18 EC-87-114).

19
20 This provision also is in the Stipulation and Agreement for Case No. EM-96-
21 149. I will discuss this adjustment later in my testimony.

22 Finally, I would note that the Reconciliation Procedure, Attachment C,
23 Section 2.g. states, in part, that:

24 UE/Staff/OPC reserve the right to petition the Commission for
25 resolution of disputed items relating to the operation or
26 implementation of this Plan.

27
28 Q. Please identify the Staff Adjustments you are sponsoring that are at issue in
29 this case.

30 A. I am sponsoring the Staff Adjustments associated with Territorial Agreements
31 and Income Taxes.

1 Territorial Agreements

2 Q. Please explain the Staff Adjustments associated with territorial agreements.

3 A. These adjustments reverse the effect on earnings related to two territorial
4 agreements entered into between UE and Black River Cooperative, Case No. EO-95-400,
5 et al., and Macon Electric Cooperative, Case No. EO-97-6, et al. In both of these cases, the
6 Staff recommended approval of the territorial agreements with the condition that it have the
7 right to examine the effect that the sales from the customers in the affected service territories
8 would have on earnings and future sharing credit calculations.

9 Q. Why was this condition necessary?

10 A. The criteria that must be met for approval of a territorial agreement is no
11 detriment to ratepayers. In both of these cases, the earnings realized by UE declined as a
12 result of the territorial agreements. The decline in earnings resulted from UE realizing a net
13 loss of customers and associated revenue as a result of exchanging a portion of its service
14 area with the cooperatives. This decline in earnings could result in reducing the amount of
15 annual sharing credits, as well as the permanent rate reduction. In the Staff's opinion, this
16 situation would constitute detriment to ratepayers.

17 Q. How do the Staff's Adjustments prevent detriment to ratepayers?

18 A. The adjustments reverse the net reduction in earnings realized during the third
19 sharing period. By reversing the net reduction in earnings, the effect of the territorial
20 agreements on the sharing credits and the permanent rate reduction is eliminated. This
21 reversal was accomplished by restoring the net loss in revenues and the associated fuel cost,
22 maintenance expense, depreciation expense, and plant and reserve additions. By restoring
23 the net reduction in earnings the Staff has prevented any detrimental impacts of the territorial
24 agreements from being flowed through to UE's customers.

1 Q. What section of the Stipulation and Agreement approved in Case No.
2 ER-95-411 provides the Staff's justification for making this adjustment in the context of the
3 calculation of the sharing credits?

4 A. Section 3.f.viii. states that signatories have the right to present to the
5 Commission concerns over any category of cost that has been included in UE's monitoring
6 results and has not been included previously in any ratemaking proceeding. The Staff is not
7 aware of a situation where earnings results were adjusted to prevent detriment to ratepayers
8 as a result of the affect of a territorial agreement in a revenue requirement determination
9 proceeding. Section 3.f.vii. states that the Staff reserves the right to bring issues which are
10 related to the operation or implementation of the EARP to the Commission for resolution.

11 In both dockets, EO-95-400 and EO-97-6, the Staff's recommendation stated
12 that the Staff reserved the right to examine the revenue requirement effect of the territorial
13 agreements in the context of a future rate case or sharing credit calculation. UE did not
14 indicate an objection to this approach. A similar concern of the Staff is seen in Section 4
15 "Rate Design" of the Stipulation and Agreement wherein there is provision for determining
16 on a case-by-case basis, by agreement or by decision of the Commission, how revenues
17 foregone as a result of a change in rate design and/or other tariff language will be treated for
18 purposes of the Plan Reconciliation Procedure (Attachment C). This section of the Case No.
19 ER-95-411 Stipulation and Agreement shows concern that changes in rate design and/or
20 other tariff provisions not automatically be precluded because of the change causing a
21 reduction in credits that would otherwise be available for distribution under the EARP.

22 Income Taxes

23 Q. Please explain the Staff's Adjustments to income taxes.

24 A. In December 1997, UE made several adjustments on its books to income tax
25 expense associated with the results of Internal Revenue Service (IRS) audits for tax years
26

1 1978 through 1991. The Staff's Adjustments eliminate the effect of these IRS adjustments
2 from the calculation of sharing credits.

3 Q. Please discuss the IRS adjustments.

4 A. The adjustments can be divided into three components: accelerated
5 depreciation, other deferred items and investment tax credit (ITC).

6 Accelerated depreciation refers to the use of tax depreciation rates rather than
7 Commission approved book depreciation rates to more rapidly recover capital assets for tax
8 purposes. The use of these different rates results in a reduction in current income taxes and
9 an offsetting increase in deferred income taxes. In this instance, the IRS disallowed
10 accelerated depreciation on a portion of the Company's plant causing a write-off of the
11 associated balance of deferred tax reserves.

12 Other deferred items refers to items that are recognized as income or
13 expenses for tax purposes during a different period than when the items are recognized on the
14 Company's books. An example would be the expensing by the Company of deferred
15 compensation in the year it is earned. For tax purposes, deferred compensation would not be
16 a deductible expense until it was paid. The difference in current income tax realized due to
17 the recognition of this item is offset by a corresponding provision for deferred taxes. In this
18 instance, the Company was allowed by the IRS to recognize more deductions than previously
19 taken. This caused a reduction in current income taxes and an increase in associated deferred
20 income taxes

21 ITC refers to a credit or reduction in income taxes paid, as a result of
22 investment in certain types of property. ITC reduces current income tax expense and is offset
23 by an increase in deferred taxes. In this instance, the Company was allowed by the IRS to
24 recognize (1) additional ITC to reduce current tax and (2) a resulting increase in the
25 amortization of deferred ITC.

1 Q. How have these items historically been treated for regulatory purposes?

2 A. UE has received full normalization treatment with regard to these items in the
3 past by the Commission. This means that although the Company's tax liability was reduced
4 for accelerated depreciation, other deferred items and ITC, the tax expense reflected in the
5 cost of service and rates was unaffected. Consequently, the Company had use of the funds
6 generated as a result of charging rates associated with higher booked income tax expense
7 rather than actual taxes paid to the IRS. With regard to accelerated depreciation and other
8 deferred items, the ratepayer is compensated by receiving a reduction in rate base for the
9 related balance of deferred taxes and an amortization of this balance over the life of the
10 associated plant. With regard to ITC, the ratepayer only receives an amortization of the
11 related deferred tax balance over the life of the associated plant.

12 Q. How has normalization treatment been accomplished with regard to these
13 items?

14 A. Normalization treatment has been accomplished through two methods:
15 explicit recognition and omission. When explicitly normalizing an item, a specific increase
16 or decrease in current income tax and an offsetting decrease or increase in deferred income
17 tax, respectively, appear in the tax calculation. When normalizing by omission, the item is
18 simply left out of the tax calculation. The use of either method results in the ratepayer
19 providing the same total income tax expense in rates. The use of either method also entitles
20 the ratepayer to the recognition of a related deferred tax balance offset to rate base and an
21 associated amortization of this balance over the life of the plant.

22 Q. What treatment is the Staff proposing with regard to each of these
23 components in the calculation of sharing credits?

24 A. The Staff is proposing to eliminate the affect of the adjustment associated
25 with accelerated depreciation (i.e., reverse the IRS adjustment). The Staff believes the

1 elimination of this item is appropriate since the Company has been denied any past and future
2 accelerated depreciation on the associated plant.

3 The Staff is also proposing to eliminate deferred tax expense associated with
4 other deferred items (i.e., reverse the IRS adjustment). Because these other deferred items
5 would have received full normalization treatment in the years realized, there would have been
6 no effect on the total tax expense included in customers' rates. Although the Company
7 would have experienced lower taxes in the years realized, the ratepayers would have been
8 unaffected. As a result, the ratepayer is not liable for this increase in deferred tax expense.
9 However, as previously discussed, the ratepayer is entitled to the related deferred tax balance
10 as an offset to rate base and an associated amortization of these deferred taxes. The Staff
11 proposes to defer ratemaking treatment on this item until the first general rate or complaint
12 case following the second EARP.

13 Finally, the Staff is proposing to eliminate the deferred tax expense associated
14 with ITC (i.e., reverse the IRS adjustment). However, as previously discussed the ratepayer
15 is entitled to an amortization of these deferred taxes. The past regulatory treatment with
16 regard to ITC is recognition of the amortization. The ITC should not be eliminated but
17 should flow to ratepayers consistent with past regulatory treatment. The Staff is also
18 proposing to defer ratemaking treatment on this item until the first general rate or complaint
19 case following the second EARP.

20 Q. Why is the Staff proposing to defer ratemaking treatment until the first
21 general rate or complaint case following the second EARP?

22 A. The ITC and other deferred items are associated with tax years 1978 through
23 1988. During those years, new rates became effective as a result of 7 rate cases filed by UE
24 and one complaint case filed by the Staff and the Office of Public Counsel. The total effects
25 of similar tax items were flowed to the cost of service and ratepayers in those cases.

1 Therefore, the Staff believes that the revenue requirement effect of these items should be
2 flowed to ratepayers in their entirety, rather than being reduced through an earnings sharing
3 mechanism.

4 Q. What section of the Stipulation and Agreement approved in Case No.
5 ER-95-411 provides the Staff's justification for making this adjustment in the context of the
6 calculation of the sharing credits?

7 A. Section 3.f.viii. states that signatories have the right to present to the
8 Commission concerns over any category of cost that has been included in UE's monitoring
9 results and has not been included previously in any ratemaking proceeding. The Staff is not
10 aware of a situation where the effect of IRS adjustments on earnings was considered in a
11 revenue requirement determination proceeding. Section 3.f.vii, states that the Staff reserves
12 the right to bring issues which are related to the operation or implementation of the EARP to
13 the Commission for resolution.

14 Q. Has UE reversed the IRS adjustments in its calculation of sharing credits?

15 A. Yes. UE is proposing to reverse the IRS adjustments. In this instance, UE is
16 proposing adjustments to booked earnings as appropriate for the calculation of sharing
17 credits.

18 Q. How would current inclusion, rather than deferral, of the effects of ITC and
19 the other deferred tax items change the Staff's calculation of the third year sharing credits
20 and the permanent rate reduction?

21 A. If the Commission chose to include the effect of ITC currently, the third year
22 sharing credits and permanent rate reduction would increase by \$6,162,000 and \$2,054,000,
23 respectively. The Staff is currently attempting to calculate the effects of the other deferred
24 items. Based on these calculations, the Staff will supply the Commission with its best

1 estimate of the effects of the other deferred items on the third year sharing credits and
2 permanent rate reduction.

3 Q. What attempts has the Staff made to calculate the effects of the other deferred
4 items on the third year sharing credits and permanent rate reduction?

5 A. In Staff Date Request No. 82, the Staff asked the Company to disaggregate
6 the IRS adjustment into its separate components by provision for and amortization of the
7 deferred taxes associated with other deferred items. In response, the Company stated that a
8 quantification of the IRS adjustment for other deferred tax items was not developed
9 separately by provision and amortization. In addition, the Company stated that quantifying
10 the separate components would be extremely time consuming. Finally, the Company
11 responded that it could not provide a reliable estimate of the dollar value of the separate
12 components. As a result, the Staff has calculated an estimate of the separate components and
13 provided it to UE for the Company's critique.

14 Q. Has the Staff made any other adjustments to the calculation of income taxes?

15 A. Yes. The Staff has included the debt portion of the allowance for funds used
16 during construction (AFUDC) as a deduction for the calculation of current income taxes.

17 Q. Why is this adjustment appropriate?

18 A. A provision for deferred tax associated with AFUDC has been included in the
19 calculation of income taxes. Therefore, it is appropriate to have an associated deduction in
20 the calculation of current income taxes.

21 Q. What section of the Stipulation and Agreement approved in Case No.
22 ER-95-411 provides the Staff's justification for making this adjustment in the context of the
23 calculation of the sharing credits?

24 A. Section 2.f. of Attachment C, the Reconciliation Procedure, states that the
25 earnings report will utilize the Staff's traditional calculation of income tax and references

1 Case No. EC-87-114. The treatment of the debt portion of AFUDC is consistent with the
2 income tax calculation in that case. Section 2.g. of the Reconciliation Procedure states in part
3 that:

4 UE/Staff/OPC reserve the right to petition the Commission
5 for resolution of disputed items relating to the operation or
6 implementation of this Plan.
7

8 Q. Does this conclude your direct testimony?

9 A. Yes, it does.

RATE PROCEEDING PARTICIPATION

STEPHEN M. RACKERS

<u>Company</u>	<u>Case Number</u>
Bowling Green Gas Company	GR-78-218
Central Telephone Company	TR-78-258
Empire District Electric Company	ER-79-19
Fidelity Telephone Company	TR-80-269
St. Louis County Water Company	WR-80-314
Union Electric Company	ER-81-180
Laclede Gas Company	GR-81-245
Great River Gas Company	GR-81-353
Union Electric Company	ER-82-52
Laclede Gas Company	GR-82-200
St. Louis County Water Company	WR-82-249
Union Electric Company	ER-83-163
Union Electric Company	ER-84-168
Arkansas Power and Light Company	ER-85-20
Kansas City Power and Light Company	ER-85-128
Arkansas Power and Light Company	ER-85-265
Union Electric Company	EC-87-114
Union Electric Company	GR-87-62
Southwestern Bell Telephone Company	TC-89-14
St. Louis County Water Company	WR-89-246
Laclede Gas Company	GR-90-120
Missouri Cities Water Company	WR-91-172
St. Louis County Water Company	WR-91-361
Laclede Gas Company	GR-92-165
Missouri Pipeline Company	GR-92-314
St. Louis County Water Company	WR-92-204

St. Louis County Water Company

WR-94-166

St. Louis County Water Company

WR-95-145

Union Electric Company

EO-95-400 et al.

St. Louis County Water Company

WR-96-263

Union Electric Company

EO-97-6 et al.

St. Louis County Water Company

WR-97-382

St. Louis County Water Company

WO-98-223

CALCULATION OF PERMANENT RATE REDUCTION

	<u>SHARING CREDITS</u>	<u>WEATHER NORMALIZED CREDITS</u>
FIRST YEAR	43,674	14,634
SECOND YEAR	17,851	30,747
THIRD YEAR	40,609	36,801
AVERAGE / PERMANENT RATE REDUCTION		27,394