

ION

**FILED**<sup>2</sup>  
DEC 26 2001  
Missouri Public  
Service Commission

Case No. EC-2002-1

2. Ensuring that the current rates charged by Company will become interim subject to refund effective April 1, 2002 is an essential element of the Commission's Test Year Order. Unfortunately, there have been no previous commitments made by Company that would provide such a guarantee for electric customers. Despite a statement in the Test Year Order and

repeated statements made by the regulatory law judge in agenda discussions, Company has not made any binding commitments on the record in this case regarding retroactive rates. While there have been two vague "offers" made by Company in pleadings, these "offers" are based upon conditions that have not yet been met.

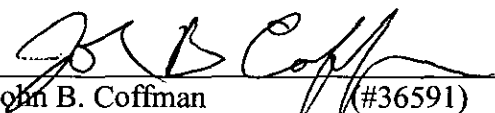
**If the Commission expects the rates that are currently charged by Company to become interim subject to refund effective April 1, 2002, then it must request Company to file tariffs that would allow this expectation to become legally binding.** Company, Staff, and Public Counsel have all pointed out to the Commission that retroactive rate treatment may not be ordered by the Commission. However, prevailing case law suggests that a tariff may be submitted by a utility and approved by the Commission in a manner that would be legally binding. *Midland Realty v. Kansas City Power & Light*, 300 U.S. 109, 114, 57, S.Ct. 345, 347, 81 L.Ed. 540, 544 (1937). See also Staff's Motion for Reconsideration, filed on December 11, 2001, pp. 12-13. This is the only method that has the potential of providing a guarantee to electric customers that rates would, in fact, become interim subject to refund effective April 1, 2002.

3. The Joint Stipulation filed by Staff and Company on today's date suggests that Staff would not object to Company being allowed to file an "alternative rate regulation plan" as part of its rebuttal testimony in this case. Absent an agreement of the parties the Commission should understand that the Commission does not have the statutory authority to approve an alternative regulation rate plan, such as the Experimental Alternative Regulation Plan (EARP) approved by the Commission on an experimental basis in Case No. EO-96-14. Furthermore, a new alternative regulation plan is beyond the scope of the matters in contention based upon Staff's Complaint and Company's Answer in this case.

WHEREFORE, Public Counsel respectfully requests that the Commission issue only such orders in this case as are consistent with the recommendations contained herein.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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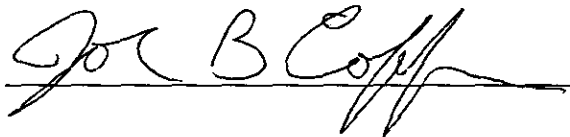
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A handwritten signature in black ink, appearing to read "J B Cook", written over a horizontal line.