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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 26th
day of February, 1998.

In the Matter of Union Electric Company's)	
Filing to Revise its Tariff Sheets)	<u>Case No. ET-98-110</u>
Applicable to Underground Distribution)	
System Extensions)	

**ORDER APPROVING REVISION TO UNDERGROUND
DISTRIBUTION SYSTEM EXTENSION STANDARDS**

Procedural History:

On July 22, 1997, Union Electric Company (UE or Company) filed proposed tariff sheets to revise UE's standards for underground distribution system extensions to residential subdivisions. On August 11 UE filed substitute tariff sheets and extended the effective date of the tariff sheets from August 21 to September 15. On September 8 Laclede Gas Company (Laclede) filed a motion to reject or, in the alternative, to suspend the tariff sheets and application to intervene. UE filed substitute tariff sheets on September 9 and extended the effective date of the tariff sheets from September 15 to September 19. On September 11 the Staff of the Commission (Staff) filed a Memorandum recommending approval of the proposed tariff sheets. On September 12 the International Brotherhood of Electrical Workers, AFL-CIO, Local No. 1439 (Local No. 1439) filed a motion to reject, or in the alternative, to suspend the tariff sheets and application to intervene.

On September 18 the Commission issued an Order Suspending Tariff Sheets and Granting Intervention. The Commission granted intervention to Laclede and Local No. 1439 and ordered the suspension of the tariff sheets

until March 17, 1998. The Commission also directed the parties to file a proposed procedural schedule no later than October 20, 1997. The parties filed a proposed procedural schedule on October 20, and on October 28 the Commission issued an Order Establishing Procedural Schedule.

Pursuant to the procedural schedule, the parties filed direct testimony on December 1 and rebuttal testimony on December 22. The International Brotherhood of Electrical Workers, AFL-CIO, Local No. 2 (Local No. 2) filed an untimely application to intervene on December 10. On December 19 UE filed an objection to Local No. 2's application to intervene. On December 30 the Commission issued an order denying the application to intervene of Local No. 2.

On January 9 the parties filed a hearing memorandum. On January 14 the Commission issued a notice canceling the evidentiary hearing and establishing a briefing schedule pursuant to the agreement of the parties to waive cross examination and submit case on prefiled testimony and briefs. The parties filed initial briefs on January 30 and reply briefs on February 9.

The Commission determines that the prefiled testimony submitted by the parties shall be received into the record as follows:

Exhibit No. 1: Direct Testimony of Richard J. Kovach filed by UE

Exhibit No. 2: Direct Testimony of Thomas W. Fagan filed by Local No. 1439

Exhibit No. 3: Rebuttal Testimony of Thomas W. Fagan filed by Local No. 1439

Exhibit No. 4: Rebuttal Testimony of Jeffrey A. Vaughn filed by Laclede

Exhibit No. 5: Direct Testimony of William L. McDuffey filed by Staff

Exhibit No. 6: Rebuttal testimony of William L. McDuffey filed by Staff

Written Testimony of Mr. Kovach:

Mr. Kovach, the Manager of the Rate Engineering Department at UE, states in his prefiled direct testimony that UE's current distribution extension tariffs provide two options to developers of residential subdivisions and multiple occupancy residential buildings, collectively referred to as subdivisions. Under the first option, the developer may avoid all UE underground fees and charges by installing, in accordance with UE specifications, a complete underground conduit system which would accommodate all of the various electrical cables and other distribution facilities which will be subsequently installed by UE. Under the second option, the developer may pay all UE per lot or per dwelling unit extension fees in advance and may then elect to subject such fee payments to an annual revenue test for the development. This revenue test, according to Mr. Kovach, compares the estimated total UE distribution system cost of serving the subdivision, on a per lot or per unit basis, with the estimated annual revenue to be received from the subdivision, on the same per lot or per unit basis. Any excess revenue above costs may be refunded to the developer up to the amount of fees or charges actually paid to the Company. The tariffs currently in effect are contained in Schedule 2 attached to the direct testimony of Mr. Kovach.

Contained in Schedule 1 attached to the testimony of Mr. Kovach are copies of the tariff sheets filed by UE on July 22 as substituted on August 11 and September 9. Schedule 3 is a copy of a letter from the Home Builder's Association of Greater St. Louis (HBA) in support of the Company's proposal. Schedule 4 contains a "marked up" or modified version of the Company's Schedule 1 tariffs. Mr. Kovach states that the modified version contained in Schedule 4 contains the recommended tariff sheets for which the Company seeks Commission approval in this case. Mr. Kovach

states that while the Company continues to believe that its original filing contained in Schedule 1 resulted in distinct advantages for both UE and HBA and should be viewed as relatively non-controversial, it nevertheless resulted in two interventions in opposition to portions of the filing. Mr. Kovach asserts that consideration of such interventions and subsequent discussions with the HBA resulted in the revisions proposed in Schedule 4.

Mr. Kovach states that UE filed the proposed tariffs contained in Schedule 1 because the Company has been aware, since 1996 or earlier, that its schedule of charges for underground service has been below its actual cost of supplying such service to subdivision developers. Therefore, in 1996 the Company began participating in discussions with the HBA to explore ways in which underground service can be supplied to subdivisions in a more cost effective manner. HBA also sought a greater degree of control over construction scheduling and development costs being incurred by its members. As a result of these discussions, UE elected to file the proposed tariff sheets in Schedule 1.

The tariff sheets contained in Schedules 1 and 4 attached to Mr. Kovach's testimony implement as standard the option the developer currently has of installing a complete underground conduit system with materials provided by the Company. The tariff sheets set forth in Schedule 1 provide for a one-time partial refund of the developer's installation cost of up to \$150.00 of the average net annual revenue per lot which exceeds the estimated extension cost per lot. A similar provision allows a refund for multiple occupancy dwelling units of up to \$50.00 of the average net revenue per dwelling unit which exceeds the estimated extension cost per dwelling unit. The modified version contained in Schedule 4 eliminates the \$150.00 per lot refund and retains the \$50.00 per unit refund for multiple occupancy buildings.

Written Testimony of Mr. Vaughn:

Mr. Vaughn, Manager of Residential Sales/Division Operations for Laclede, states that Laclede does not oppose the new tariff language set forth in Schedule 4 attached to the direct testimony of Mr. Kovach. Mr. Vaughn states this position of Laclede is based, in part, on Laclede's understanding that UE has no plans to make additional modifications to these tariffs in the foreseeable future that would incorporate or expand the use of revenue testing and that implementation of the tariff proposal will not be relied upon as a precedent by UE for implementing revenue testing in the future. Mr. Vaughn adopted the statements made by Laclede in its pleadings on September 8 and September 17 as to why Laclede opposed UE's original tariff filing. In those pleadings, Laclede alleges that the refund of up to \$150.00 per lot based on the average electric revenue generated by each lot constituted a load building measure for inducing developers to install electric appliances and established a prohibited promotional practice under Commission rule 4 CSR 240-14.020(1).

Written Testimony of Mr. Fagan:

Mr. Fagan, Business Manager for Local No. 1439, testified that the tariff revisions requested by UE are in violation of the collective bargaining agreement (agreement) between UE and Local No. 1439 and in violation of the long standing past practice between UE and Local No. 1439. However, the Commission notes that any such collective agreement would not be relevant or binding in this case. Moreover, the Commission does not have the authority to overturn or uphold bargaining agreements.

Mr. Fagan contends that the Commission should not grant the proposed tariff revisions because they would adversely impact working conditions and other terms and conditions of employment for members of Local 1439. Mr.

Fagan argues that approval of the tariff would violate Section 386.315.1, RSMo 1994,¹ which provides in part, "In establishing public utility rates, the commission shall not reduce or otherwise change any wage rate, benefit, working condition, or other term or condition of employment that is the subject of a collective bargaining agreement between the public utility and a labor organization." However, that statute is specifically directed to actions in which the Commission is "**establishing public utility rates**" (emphasis added), and that statute is not relevant in this case.

Written Testimony of Mr. McDuffey:

Mr. McDuffey is a Rate and Tariff Examiner in the Electric Department of the Staff's Operations Division. Mr. McDuffey testifies that Staff is not opposed to the tariff sheets filed by UE on July 22 as substituted because the filing will provide overall cost savings, efficient scheduling of construction and better coordination with other utilities. Mr. McDuffey states that Schedule 4 of Mr. Kovach's testimony removes the provision for a refund of up to \$150.00 for single family construction and retains the refund of up to \$50.00 per unit for multiple occupancy construction. This modification, according to Mr. McDuffey, does not change Staff's recommendation for approval. Mr. McDuffey disagrees with Mr. Fagan's request because Mr. McDuffey believes that UE's underground extension policy should be determined by the Commission, not by an arbitrator. Mr. McDuffey testifies that the current per lot rates for underground line extensions are so far below current actual costs as to be unreasonable.

According to Mr. McDuffey, the alternative of requiring UE to continue to install underground distribution systems while increasing the

¹All statutory references are to the Revised Statutes of Missouri, 1994, unless otherwise indicated.

developer's contribution to current costs would have various shortcomings. Specifying fixed per lot charges cannot account for cost difference between residential subdivisions caused by different surface and subsurface conditions, obstructions, stage of construction, or access to right-of-way. Furthermore, Mr. McDuffey states that the average subdivision lot size in square feet does not accurately reflect the linear feet of conduit installation. Mr. McDuffey recommends that the Commission approve the proposed tariff sheets as filed and revised to go into effect no later than March 1, 1997, in order to be available at the beginning of the home building season.

Legal Briefs:

Staff requests in its initial and reply briefs that the Commission approve UE's proposed general rules and regulations applicable to underground distribution extensions to residential subdivisions as set forth in Schedule 4 to the Direct Testimony of Mr. Kovach. Staff states that UE's proposal will benefit the developer with overall cost savings, efficient scheduling of construction and better coordination with other utilities. Staff adds that UE will benefit by more efficiently utilizing its skilled work force, lessening the construction period and eliminating the out-of-date contribution charges.

In response to the claims of Local No. 1439, Staff points out that the Commission has general supervision of electrical companies such as UE pursuant to Section 386.250, RSMo Supp. 1997, and Section 393.140. Therefore, Staff believes that the Commission, not an arbitrator, should determine UE's underground line extension policy. Staff argues that the approval of the tariff revisions does not violate Section 386.315.1 because

the revisions do not cause a change to any "term or condition of employment."

Local No. 1439 continues in its brief the argument stated in Mr. Fagan's testimony that the proposed tariff revisions should be rejected because the proposal would change and negatively impact the working conditions and other terms or conditions of employment of bargaining unit employees in violation of Section 386.315.1. Again, this statute is not on point.

According to Local No. 1439, any action taken by the Commission in furtherance of UE's proposed changes prior to the arbitral award would result in substantial prejudice to the interests of Local No. 1439 and would effectively nullify the grievance and arbitration process. Local No. 1439 asks, assuming arguendo that the Commission finds the terms of Section 386.315.1 inapplicable to this case, that the Commission refrain from any action on the proposed tariff sheets until the arbitrator enters the award. Local No. 1439 asks that the Commission take into account the award when the Commission makes its decision. The Commission finds that this process should be reversed inasmuch as the Commission's decision should be binding.

Laclede states in its brief that it does not oppose the implementation of the revised tariffs set forth in Schedule 4 to the direct testimony of Mr. Kovach. Laclede states this position is based on its understanding that: (1) UE has no plans to make additional modifications to these tariffs in the foreseeable future that would incorporate or expand the use of revenue testing; and (2) implementation of the new tariff proposal will not be relied upon as a precedent by UE for implementing revenue testing in the future.

UE requests in its initial and reply briefs that the testimony and arguments of Local No. 1439 related to Section 386.315.1 should be stricken

or disregarded because Local No. 1439 first raised this issue in rebuttal testimony. UE contends that nowhere did UE's witness testify that UE's rate structure is inextricably bound up with its proposed tariff revisions, so that the argument raised by Local No. 1439 was not responsive to UE's direct testimony. UE agrees with Staff that Section 386.315.1 has no application to this matter because the Commission is not being asked to establish public utility rates or to reduce or otherwise change any wage rate, benefit, working condition or other term or condition of employment that is the subject of a collective bargaining agreement. UE points out that Local No. 1439's interpretation of Section 386.315.1 is overly broad and unprecedented because under the same logic the Commission would be prohibited from adjusting the rate of return for any jurisdictional utility if doing so would reduce funds available to the utility and would result in the possibility of layoffs or reductions in hiring in a bargaining unit.

UE argues that the Commission should not delegate its authority to an arbitrator and to the vagaries of the collective bargaining process because the subject matter of the tariff revisions is unequivocally within the Commission's jurisdiction pursuant to Section 386.250, RSMo Supp. 1997, and Section 393.140. UE states that Local No. 1439 failed to establish that the collective bargaining agreement has been breached or that Local No. 1439 is likely to prevail in any subsequent arbitration. According to UE, Local No. 1439 witness Mr. Fagan failed to identify any harm which would be caused by the Commission's approval of the tariffs because he merely speculated of the possibility of layoffs or reductions in hiring. UE adds that Local No. 1439 failed to present any competent evidence that the arbitrator would not have the ability to fashion a remedy if, in fact, Local No. 1439's complaints might be found to have any merit, which UE denies.

UE points out that the tariff included as Schedule 4 to Mr. Kovach's direct testimony implements as standard the current option the developer has of installing a complete underground conduit system. Therefore, UE states that Schedule 4 does not impose a radical change, but only implements as standard the options and practices that are currently permitted under UE's tariffs. The changes are sought by UE for two reasons: (1) since at least 1996, UE has been aware that its schedule of charges for underground service has been below its actual cost for supplying such service to subdivision developers; and (2) the developers wanted to have the conduit installation responsibility in order to gain greater control over construction scheduling and development costs.

Determination:

The Commission has reviewed the prefiled testimony and briefs of the parties. The Commission concludes this is not a case in which the Commission will "reduce or otherwise change any wage rate, benefit, working condition, or other term" of employment as provided in Section 386.315.1. UE is requesting the Commission to exercise its statutory authority pursuant to Section 386.250, RSMo Supp. 1997, and Section 393.140 to approve UE's proposed changes to its standards for underground distribution system extensions. Section 386.250, RSMo Supp. 1997, and Section 393.140 provide for the Commission to have jurisdiction over the installation and maintenance of underground electrical lines and conduits. The Commission concludes that the approval of the proposed tariff revisions would not violate Section 386.315.1. This case does not involve establishing public utility rates as set forth in Section 386.315.1.

The Commission determines that the proposal set forth in Schedule 4 to the direct testimony of Mr. Kovach will provide overall cost savings for

the installation of underground distribution system extensions. The Commission determines that the proposal set forth in Schedule 4 will allow more efficient scheduling of construction and better coordination with other utilities. The Commission finds that Local No. 1439 has not established that the Commission's approval of the proposal would result in layoffs or a reduction in hiring in the bargaining unit or that the arbitration process would be rendered a nullity. The Commission determines that it is not proper for the Commission to refrain from taking any action on the proposed tariffs until a final decision is rendered on alleged violations of the collective bargaining agreement.

The Commission will approve the proposed tariff revisions set forth in Schedule 4 to the direct testimony of Mr. Kovach and will order UE to file tariff sheets consistent with those sheets set forth in Schedule 4. The Commission will reject the tariff sheets filed by UE on July 22, 1997, as substituted on August 11 and September 9, which UE no longer supports.

IT IS THEREFORE ORDERED:

1. That the tariff sheets filed by Union Electric Company on July 22, 1997, as substituted on August 11, 1997, and on September 9, 1997, assigned tariff file No. 9800067 and subsequently docketed in Case No. ET-98-110, are rejected.

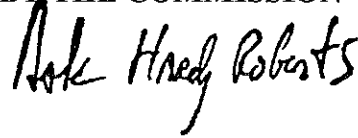
2. That the proposed tariff revisions set forth in Schedule 4 to the direct testimony of Mr. Kovach (Exhibit 1) are approved, and that Union Electric Company is authorized to file tariff sheets consistent with Schedule 4.

3. That Exhibits 1 through 6 as identified in this order are received into the record by agreement of the parties.

4. That those motions and objections not specifically ruled on in this order are denied or overruled.

5. That this order shall become effective on March 10, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, and Drainer, CC., concur.
Crumpton, C., absent.

G. George, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION