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June 27, 2000

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FILED²

JUN 27 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'S REPLY TO UNION ELECTRIC COMPANY'S RESPONSE TO THE STAFF'S PROPOSED PROCEEDURAL SCHEDULE and STAFF'S MOTION TO LATE-FILE REPLY TO UNION ELECTRIC COMPANY'S RESPONSE TO THE STAFF'S PROPOSED PROCEDURAL SCHEDULE.

This filing has been mailed, hand-delivered or sent by facsimile transmission this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
Chief Deputy General Counsel
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Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JUN 27 2000

Missouri Public
Service Commission

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.)

**STAFF'S REPLY TO UNION ELECTRIC COMPANY'S RESPONSE
TO THE STAFF'S PROPOSED PROCEDURAL SCHEDULE**

Comes now the Staff of the Missouri Public Service Commission (Staff) in reply to Union Electric Company's (UE) June 16, 2000 response to the Staff's May 30, 2000 proposed procedural schedule (Union Electric Company's Response To The Staff's Proposed Procedural Schedule). Despite various discussions, the Staff, UE and Public Counsel have not been able to finalize a common proposed procedural schedule. Nonetheless, as a result of those discussions the Staff has made changes to its proposed procedural schedule in an effort to accommodate some of the concerns raised by UE in discussions with the Staff. In reply to UE's June 16, 2000 response, the Staff states as follows:

1. The procedural dates originally proposed by the Staff and the revised procedural dates now proposed by the Staff respecting unresolved items relating to the first year of the second experimental alternative regulation plan (EARP), which include all items covered by the Staff's Complaint filed on May 30, 2000, are as follows:

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STAFF'S ORIGINAL PROCEDURAL SCHEDULE PROPOSAL:
EVENT **DATES**

Staff and Public Counsel File Direct	May 30, 2000
Prehearing Conference	June 23, 2000
UE Files Rebuttal	July 18, 2000
List of Issues to be Heard, Order of Witnesses and Order of Cross-Examination	August 8, 2000
Statements of Positions	August 18, 2000
Staff and Public Counsel File Surrebuttal	August 24, 2000
Evidentiary Hearings	September 27-29, 2000

STAFF'S REVISED PROCEDURAL SCHEDULE PROPOSAL:
EVENT **DATES**

Staff and Public Counsel File Direct	May 30, 2000
UE Files Rebuttal	July 24, 2000
Staff and Public Counsel File Surrebuttal	August 24, 2000
Prehearing Conference	August 28, 2000
List of Issues to be Heard, Order of Witnesses and Order of Cross-Examination	September 20, 2000
Statements of Positions	September 21, 2000
Evidentiary Hearings	October 4-6, 2000

The Staff has provided UE with a copy of the Staff's revised procedural schedule in advance of the instant filing. UE's procedural schedule proposal remains unchanged. UE urges the Commission to adopt the procedural schedule that it filed with the Commission on June 16, 2000, which is set out below. The Staff has been authorized by UE to state that should the

Commission be disposed to adopt the Staff's revised procedural schedule, instead of UE's proposed procedural schedule, the dates in the Staff's revised procedural schedule do not present any conflicts for UE.

2. The Staff has not proposed a procedural schedule more ambitious than the Staff's original or revised procedural schedules set out above for several reasons. The principal reason being that two of the Staff's three witnesses that filed testimony in this docket on May 30, 2000, John Cassidy and John Boczkiewicz, are major Staff witnesses in the UE gas rate increase case, which has as the filing date for the Staff's direct testimony and schedules, August 8, 2000, and as the commencement date for the evidentiary hearings, October 30, 2000. The revised Staff procedural schedule proposal set out herein better accommodates UE's proposed Motion To Dismiss than the Staff's original proposed procedural schedule. The revised Staff procedural schedule proposal also generally affords UE approximately at least as much time between events as it had in the procedural schedule for litigating before the Commission the calculation of the sharing credit for the third sharing credit period of the first EARP and the rate reduction based on the average of the weather normalized sharing credits for the three sharing credit periods of the first EARP. Although the Staff's revised procedural schedule does not set out dates for UE to file and pursue a Motion To Dismiss the Staff's Complaint, the Staff believes that its revised procedural schedule permits UE to file and pursue a Motion To Dismiss. The Staff's revised procedural schedule proposal does not require suspending the filing of rebuttal testimony, and everything which procedurally follows the filing of rebuttal testimony, until the Commission rules on UE's Motion To Dismiss.

3. Respecting UE's proposed procedural schedule, which is structured around UE first filing its Motion To Dismiss Staff Complaint and the Commission ruling on that

Motion To Dismiss before UE is required to file rebuttal testimony, the Staff would note that the Staff's case stands independent of the Commission's ruling on any UE Motion To Dismiss. For each of those items regarding which the Staff asserts earnings manipulation in the direct testimony filed on May 30, 2000, the Staff also asserts another, independent basis for the adjustment, pursuant to the Stipulation And Agreement in Case No. EM-96-149. Thus, even if the Commission determines that UE did not engage in earnings manipulation respecting the various adjustments filed by the Staff, it must rule on other, independent grounds constituting the basis for the Staff's adjustments, pursuant to the Stipulation And Agreement in Case No. EM-96-149.

4. On the basis of UE's proposed schedule, even if the Commission were to rule on UE's Motion To Dismiss at UE's proposed August 18, 2000 hearing on UE's Motion To Dismiss, the evidentiary hearings under UE's proposal would commence no earlier than October 30, 2000 rather than on October 4, 2000, as proposed by the Staff. Since October 30, 2000, is the date set for the commencement of the evidentiary hearings for the UE gas rate increase case, the Staff assumes that, under UE's proposal, the evidentiary hearings in the instant case and the Staff's Complaint case (assuming the Commission does not dismiss the Complaint case, Case No. EC-2000-795) would commence no earlier than November 6, 2000. Thus, if the Commission set August 18, 2000 for a hearing on UE's Motion To Dismiss and the Commission were to rule on UE's Motion To Dismiss at the UE proposed August 18, 2000 hearing, the dates, for comparison purposes, in the instant case, the Staff's Complaint case and UE's gas rate increase case would be as follows:

EVENT	SET BY COMMISSION GR-2000-512	UE PROPOSAL EM-96-149 EC-2000-795	STAFF REV. PROPOSAL EM-96-149 EC-2000-795
UE files its Motion To Dismiss Complaint ¹ EM-96-149 & EC-2000-795		July 18, 2000	
Staff and OPC file Oppositions to UE's Motion EM-96-149 & EC-2000-795		Aug. 1, 2000	
UE files Reply in support of its Motion To Dismiss EM-96-149 & EC-2000-795		Aug. 11, 2000	
Hearing on UE's Motion To Dismiss		Aug. 18, 2000	
Prehearing Conference GR-2000-512	Aug. 28, 2000		
Rebuttal Testimony (UE only) EM-96-149 & EC-2000-795		Sept. 8, 2000	July 24, 2000
Rebuttal Testimony (all parties) GR-2000-512	Sept. 26, 2000		
Surr. (all parties other than UE) EM-96-149 & EC-2000-795		Sept. 22, 2000	Aug. 24, 2000
Surr. & Cross-Surr. Testimony (all parties) GR-2000-512	Oct. 17, 2000		
Prehearing Conference EM-96-149 & EC-2000-795		Sept. 29, 2000	Aug. 28, 2000
Depositions of Staff by UE ² EM-96-149 & EC-2000-795		Oct. 2-6, 2000	
List of Issues, etc. EM-96-149 & EC-2000-795		Oct. 12, 2000	Sept. 20, 2000

¹ The Staff does not show in its revised procedural schedule proposal dates for UE's Motion To Dismiss and responses and a reply because those pleadings are not proposed by the Staff and have not been ordered by the Commission. Nonetheless, the Staff believes that its revised procedural schedule proposal accommodates such pleadings.

² For the sake of developing a schedule pursuant to the parameters found in UE's June 16, 2000 proposal, in addition to assuming that the Commission will rule on UE's Motion To Dismiss at the August 18, 2000 hearing on said Motion To Dismiss, the Staff assumes that UE will conduct its depositions of the Staff during the week of October 2-6, 2000.

Statements of Positions
EM-96-149 & EC-2000-795

Oct. 12, 2000

Sept. 21, 2000

Evidentiary Hearings
EM-96-149 & EC-2000-795

Oct. 30- ?, 2000

Oct. 4-6, 2000

Evidentiary Hearings
GR-2000-512

Oct. 30 – Nov. 3, 2000

5. No one should assume that UE's ratepayers would not be "prejudiced" by UE's proposed procedural schedule because UE in a filing on June 9, 2000 in the instant case advised the Commission that it was putting in an interest bearing account \$14.9 million, which is the undisputed amount of the sharing credit for the first year of the second EARP. Union Electric Company's Notice In Response To The Staff Report Respecting First Sharing Period Of Second Union Electric Company Experimental Alternative Regulation Plan And To The OPC Notice Of Areas Of Disagreement states in paragraph 2 as follows:

We are now approaching one year since the close of the First Sharing Period of the second EARP, and, in light of the positions taken by the Staff and OPC, it is not clear whether extended proceedings before the Commission and the courts will be necessary before the credit is actually paid. UE does not believe its customers should be prejudiced by these developments, and so has decided to place the \$14.9 million credit we believe is due in an interest bearing account, which is currently earning interest at the rate of 6.25%. If, at the conclusion of the proceedings triggered by the Staff and OPC, UE's customers are still entitled to receive at least that credit, they will also receive the after-tax interest that credit has earned while these proceedings were pending. If, because of legal rulings in those proceedings this credit is no longer due, both the credit and the related interest will be returned to UE. In this way, UE's customers will not the [sic] lose the time value of the credit to which we believe they are entitled.

Although the Stipulation And Agreement in Case No. EM-96-149 does not require UE to put these monies in an interest bearing account, it had and still has another option if it does not want to "prejudice" its customers. UE could refund to customers the undisputed amount of the sharing credits and put the disputed amount in an interest bearing account. UE has chosen not to do this, and it has failed to explain why it needs until July 18, 2000 (49 days after May 30, 2000, the date when the Staff filed its Complaint) to submit its Motion To Dismiss.

July 18, 2000 is the date that the Staff suggested in its original procedural schedule proposal for UE to file its rebuttal testimony. UE filed its Answer to the Staff's Complaint on June 16, 2000, and on that date requested a procedural schedule, which, among other things, would give it till July 18, 2000 to file its Motion To Dismiss.

The Staff is now proposing that UE file its rebuttal testimony on July 24, 2000, which is 55 days after May 30, 2000, the date when the Staff filed its Complaint. The Staff also is now proposing that the evidentiary hearings commence October 4, 2000, 41 days after the Staff files its surrebuttal testimony, rather than on September 27, 2000.

6. The court and Commission cases cited by UE in its Response filed on June 16, 2000 do not further its cause. At page 3 of its Response filed on June 16, 2000, UE cites State ex rel. Kansas City Terminal Ry. Co. v. Public Serv. Comm'n., 270 S.W. 957, 960 (1925) and MCI Worldcom Communications, Inc. v. Southwestern Bell Tel. Co., Case Nos. TC-2000-225 and TC-2000-294, p. 7 (Dec. 7, 1999) for the proposition that, in the words of UE, "[a] complaint that does not fairly present for determination a matter which falls within the jurisdiction of the Commission--it fails to state a claim on which relief could be granted--must be dismissed." The Court in Kansas City Terminal Ry. Co. stated as follows: "But a complaint under the Public Service Commission Law is not to be tested by the technical rules of evidence; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient." Id. The Staff's Complaint filed on May 30, 2000 clearly presents for determination a matter which falls within the jurisdiction of the Commission.

UE also asserts at page 3 of its Response filed on June 16, 2000 that "[t]he Commission ordinarily decides motions to dismiss prior to considering the merits of the complaint." UE has failed to provide an explanation as to why that was not possible with the

Staff's procedural schedule proposal filed on May 30, 2000. As previously noted, the Staff's revised procedural schedule proposal provides UE additional days between the filing of the Staff's Complaint and UE's filing of rebuttal testimony, and provides UE additional days between the filing of the Staff's surrebuttal testimony and the evidentiary hearings.

None of the Commission cases cited by UE in its June 16, 2000 Response To The Staff's Proposed Procedural Schedule are remotely related to an experimental alternative regulation plan, credit sharing and the other terms of the Stipulation And Agreement in Case No. EM-96-149. The cases cited by UE involve matters relating to a railroad crossing, telecommunications interconnection agreements, a billing disagreement involving a natural gas company and an application for a telecommunications certificate of convenience and necessity.

Wherefore the Staff proposes the revised procedural schedule indicated above for the unresolved items respecting the first year of the second EARP, including the items relating to the Staff's Complaint filed on May 30, 2000 in Case No. EM-2000-795, and requests that the Commission adopt said revised procedural schedule proposal.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered or sent by facsimile transmission to all counsel of record as shown on the attached service list this 27th day of June 2000.



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June 27, 2000**

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