



**Missouri Public Service Commission**

Commissioners

**KARL ZOBRIST**  
Chair

**KENNETH McCLURE**

**DUNCAN E. KINCHELOE**

**HAROLD CRUMPTON**

**M. DIANNE DRAINER**  
Vice Chair

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
573-526-5695 (TT)

October 21, 1996

**CECIL I. WRIGHT**  
Executive Secretary  
**SAM GOLDAMMER**  
Director, Utility Operations  
**GORDON L. PERSINGER**  
Director, Policy & Planning  
**KENNETH J. RADEMAN**  
Director, Utility Services  
**DONNA M. PRENGER**  
Director, Administration  
**DALE HARDY ROBERTS**  
Chief Administrative Law Judge  
**STEVEN DOTTHEIM**  
Acting General Counsel

Mr. Cecil I. Wright  
Executive Secretary  
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. Wright:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF MOTION FOR EXTENSION OF TIME TO FILE MARKET POWER TESTIMONY.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim  
Acting General Counsel  
573-751-7489

**FILED**  
**OCT 21 1996**  
**MISSOURI**  
**PUBLIC SERVICE COMMISSION**

SD:ceb  
Enclosure  
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**FILED**

**OCT 21 1996**

**STAFF MOTION FOR EXTENSION OF TIME  
TO FILE MARKET POWER TESTIMONY**

**MISSOURI  
PUBLIC SERVICE COMMISSION**

Comes now the Staff of the Missouri Public Service Commission (Staff) and requests that the Commission extend the filing date for the submission of market power testimony by all parties from November 1, 1996 to November 26, 1996, which latter date is the Tuesday of Thanksgiving Day week. In support thereof, the Staff states as follows:

1. On September 25, 1996, the Commission issued an Order Requesting Additional Information in this docket. Therein, the Commission directed the parties to submit additional testimony addressing the subject matter of market power as it relates to the instant predominantly electric utilities merger. The Commission made it very clear to the Staff on September 5, 1996, at the on the record presentation of the Stipulation And Agreement in this docket that it wanted the issue of market power addressed in future electric merger proceedings. The Commission subsequently in its Order of September 25, 1996 made it clear that the issue of market power is also to be addressed in the instant proceeding.

2. Given the advanced stage of the state proceedings regarding the Union Electric Company (UE)/CIPSCO Incorporated (CIPSCO) merger, the detail provided by the Commission

in its September 25, 1996 Order has been helpful in supplying guidance as to what specifically the Commission wants the parties to address respecting the market power issue.

3. The Staff has attempted to move as quickly as possible in response to the Commission's September 25, 1996 Order. Members of the Staff conferred with UE personnel at UE's offices in St. Louis the very next week after the Commission issued its Order Requesting Additional Information and the Staff has submitted data requests to UE. (More discovery will need to be conducted by the Staff.)

Even though the schedules of certain members of the Staff have permitted such individuals to focus their activity on responding to the Commission's September 25, 1996 Order since that date, this has not been true respecting other members of the Staff. Thus, even though a November 1, 1996 filing date is daunting for Staff members who have been able to focus on the Commission's September 25, 1996 Order, the impending November 1 filing date poses a practical impossibility for other Staff members due to other docketed proceedings.

4. The Staff is also seeking to address the Commission's request for market power testimony by utilizing a consultant. Given the experience of the September 5, 1996 on the record presentation to the Commission and the September 25, 1996 Commission Order Requesting Additional Information, the Staff would be pursuing retaining a consultant to assist the Staff in the market power area even if UE were just now filing its merger case. Regardless, the Staff is attempting to retain a consultant in a judicious manner on a very expedited basis. In part, the Staff views its use of a consultant as a means of addressing the present time constraints. The Staff is now reviewing proposals submitted in response to a request for assistance by the Staff based upon the specifics of the Commission's September 25, 1996 Order.

Even moving in an expedited manner after the Commission's issuance of its September 25, 1996 Order means that the Staff at this point expects to select a market power consultant by the close of business on Tuesday, October 22, 1996.

5. The Staff recognizes that UE is laboring under the same or similar time constraints as the Staff in this and other related and unrelated proceedings. The Staff hopes that UE will continue to attempt to be responsive to the Staff's data and other information needs and work with the Staff. The additional time requested by the Staff is premised on UE continuing to act in this manner and treating the Staff's consultant similarly.

6. The Staff notes that on Wednesday, October 16, 1996, the Federal Energy Regulatory Commission (FERC) set the UE/CIPSCO merger case for hearing, specifying that it was directing the FERC Administrative Law Judge to issue an initial opinion by no later than April 30, 1997:

The Commission orders:

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference to be held within approximately 15 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, including a date for the submission of the Applicants' updated case-in-chief, and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(F) The presiding judge shall issue an Initial Decision no later than April 30, 1997. Briefs on Exceptions shall be due on May 20, 1997, and Briefs Opposing Exceptions shall be due on May 30, 1997.

The Staff also notes that UE filed its market power testimony at the time it filed its merger application at the FERC. The FERC in its Order of October 16, 1996 has instructed UE to file additional information:

... we will set for hearing the effect of the transmission constraints noted above on: (1) the appropriate geographic markets, (2) the Applicants' projects to remedy the constraints, and (3) the Applicants' post-merger market power, if any. To expedite the Commission's consideration of the merger application, we direct the Applicants to provide in their updated case-in-chief the information indicated in Attachment B to this order.

7. The Staff realizes the additional pressure that the FERC Order of October 16, 1996 creates for this Commission to issue its own merger report and order. Nonetheless, with all due respect to the FERC, this Commission is a separate and distinct ratemaking regulatory body with its own sphere of jurisdiction. Although in order for this Commission to act responsibly it must act in a timely manner, as likewise for its Staff, this Commission must have or develop before it the record which it believes is necessary for it to act on UE's merger application.

8. The Staff believes that an extension of the filing date of the market power testimony from November 1, 1996 to November 26, 1996 will provide the Staff and its consultant the minimum amount of time needed to address the Commission's Order of September 25, 1996 in some fashion. The Staff very reluctantly requests additional time for the filing of the requested market power testimony, but the Staff believes that the extension of time which it is proposing is neither unwarranted nor will it cause undue delay.

9. The Staff notes that the Commission's Order of September 25, 1996 does not indicate whether the Commission will set dates for the filing of additional testimony and hearings. Assuming that UE can meet the November 1 filing date presently set by the Commission for the filing of

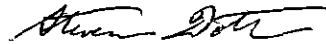
market power testimony, UE and the Commission may want to consider keeping November 1 as the filing date for UE while it permits other parties a later filing date. In this proceeding, UE is the applicant, the moving party, the party (including CIPSCO) with the necessary information to be reviewed and analyzed. Just as with the other testimony in this proceeding, it would not be unreasonable for UE to file its market power testimony in advance of the other parties filing their testimony.

10. On Friday, October 18, 1996, the Staff advised counsel for UE that the Staff intended to file this pleading imminently. On Saturday, October 19, 1996, the Staff sent a draft copy of this pleading to counsel for UE by facsimile transmission. Counsel for UE were working in their offices on Saturday. (Staff counsel appreciate that UE counsel and personnel have made themselves accessible outside of regular business hours to address matters in this proceeding, as have counsel and personnel for other parties in this proceeding.)

11. Due to the impending November 1 date, the Staff requests that the Commission set an expedited time period for UE to respond to this pleading.

WHEREFORE, the Staff requests that the Commission extend the filing date for the filing of market power testimony from November 1, 1996 to November 26, 1996.

Respectfully submitted



Steven Dottheim  
Acting General Counsel  
Missouri Bar # 29149  
(573)751-7489

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
573-751-9285 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 21st day of October, 1996.



Service list for:  
Case No. EM-96-149  
Updated: October 18, 1996

Joe Raybuck  
Union Electric Company  
1901 Chouteau Avenue  
P.O. Box 149 (M/C 1310)  
St. Louis, MO 63103

Richard W. French  
French & Stewart  
1001 E. Cherry Street  
Suite 302  
Columbia, MO 65201

Michael C. Pendergast  
Laclede Gas Company  
720 Olive Street  
Room 1530  
St. Louis, MO 63101

Robert C. Johnson  
Peper, Martin, Jensen, Maichel and Hetlage  
720 Olive Street  
24th Floor  
St. Louis, MO 63101

Jeremiah W. Nixon  
Attorney General's Office  
221 W. High Street  
P.O. Box 899  
Jefferson City, MO 65102

Susan B. Cunningham  
Kansas City Power & Light Co.  
1201 Walnut Street  
P.O. Box 418679  
Kansas City, MO 64141-9679

Lewis R. Mills, Jr.  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

James C. Swearngen  
Brydon, Swearngen & England  
312 E. Capitol  
P.O. Box 456  
Jefferson City, MO 65102

Marilyn S. Teitelbaum  
Schuchat, Cook & Werner  
1221 Locust Street  
2nd Floor  
St. Louis, MO 63103

Gary W. Duffy  
Brydon, Swearngen & England  
312 E. Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102

Paul S. DeFord  
Lathrop & Norquist, L.C.  
2345 Grand Blvd.  
Suite 2500  
Kansas City, MO 64108

James M. Fischer  
Mutual Savings Bank  
1001 W. McCarty, Suite 215  
Jefferson City, MO 65101

William A. Spencer  
215 E. Capitol Avenue  
Jefferson City, MO 65102



Robin E. Fulton  
Schnapp, Fulton, Fall, McNamara & Silvey, L.L.C.  
135 E. Main Street  
Fredericktown, MO 63645-0151