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June 18, 1996

VIA FEDERAL EXPRESS

Mr. David L. Rauch  
Executive Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Re: MPSC Docket No. EM-96-149  
UE/CIPSCO Merger

Dear Mr. Rauch:

Enclosed for filing on behalf of Union Electric Company in the above matter is an original and fourteen (14) copies of its Motion to Strike Rebuttal Testimony of Trigen-St. Louis Energy Corporation.

Kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed envelope.

Sincerely,

A handwritten signature in cursive script that reads "Joseph H. Raybuck".

Joseph H. Raybuck  
Attorney

JHR/bb

Enclosure(s)

cc: R. W. French (via fax)  
Counsel of Record (via regular mail)

FILED

JUN 19 1996

MISSOURI  
PUBLIC SERVICE COMMISSION

FILED

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

JUN 19 1996

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. )

MISSOURI  
PUBLIC SERVICE COMMISSION

Docket No. EM-96-149

MOTION OF UNION ELECTRIC COMPANY  
TO STRIKE REBUTTAL TESTIMONY  
OF TRIGEN-ST. LOUIS ENERGY CORPORATION

COMES NOW, Union Electric Company (UE or Company), and moves to strike the rebuttal testimony filed by Trigen-St. Louis Energy Corporation (Trigen) on the grounds that (1) such testimony is not relevant to any of the issues in this proceeding and (2) Trigen is already pursuing the same contentions raised in its rebuttal testimony in other proceedings. In support of this Motion, UE states as follows:

I. PROCEDURAL HISTORY

1. On August 11, 1995, UE and CIPSCO Incorporated (CIPSCO) entered into an Agreement and Plan of Merger, announced to the public on Monday, August 14.

2. On August 24, 1995, Trigen sent UE a letter requesting certain transmission service from UE. UE and Trigen exchanged correspondence over the next several months in an attempt to better understand Trigen's request.

3. On November 7, 1995, UE filed its Application in this proceeding for approval of its merger with CIPSCO.

4. On November 21, 1995, Trigen filed a complaint against UE in Case No. EC-96-164 contending that UE's Rider E rates for supplementary service were discriminatory and otherwise unreasonable.

5. On December 22, 1995, UE and CIPSCO filed a Joint Application with the Federal Energy Regulatory Commission (FERC) seeking approval of their merger and related transactions. (Docket Nos. EC96-7-000 & EC96-679-000) On that same date, UE and CIPSCO also filed open access transmission tariffs to be offered by them as operating companies of the new holding company, Ameren Corporation. (Docket No. ER96-677-000)

6. On January 30, 1996, Trigen filed a Motion to Intervene in the FERC merger proceedings. In its Motion, Trigen contended that a hearing was necessary because both UE and CIPS have abused their market power over transmission, and because UE has sought to perpetuate its market power over generation by seeking to stifle competition. With regard to UE's alleged abuse of its transmission market power, Trigen cited its attempt to obtain transmission service from UE. With regard to Trigen's contention about UE's generation market power, it objected to UE's Rider E.

7. On March 19, 1996, Trigen filed an Application with the FERC seeking an order pursuant to Section 211 of the Federal Power Act (FPA) requiring UE to provide certain transmission service to Trigen.

8. On April 19, 1996, UE filed its Answer to Trigen's Application in the FERC proceeding. In its Answer, UE restated

an earlier written commitment to file a transmission rate schedule in order to provide to Trigen the requested transmission service.

9. On May 1, 1996, as had been promised in UE's Answer in the FERC proceeding, UE provided to Trigen a draft transmission agreement designed to provide Trigen the requested transmission service.

10. On May 7, 1996, Trigen filed in the current proceeding the Rebuttal Testimony of Mr. Spiewak. In summary, Mr. Spiewak contended that UE has abused its market power over transmission, and also that UE has sought to perpetuate its market power over generation by seeking to stifle competition. With regard to UE's alleged abuse of its transmission market power, Mr. Spiewak cited Trigen's attempt to obtain transmission service from UE. With regard to Trigen's contention about UE's generation market power, Mr. Spiewak cited Trigen's objection to Rider E.

11. On June 3, 1996, UE filed its Surrebuttal Testimony in the current proceeding, including the testimony of Maureen Borkowski and Richard Kovach. Ms. Borkowski responded to Mr. Spiewak's contentions regarding Trigen's request for transmission service from UE and UE's alleged abuse of its transmission market power. Mr. Kovach responded to Mr. Spiewak's contentions regarding UE's Rider E.

12. On June 4, 1996, the Commission issued an order in Case No. EC-96-164 allowing Trigen to proceed with its contentions

against Rider E at a hearing, with an early Prehearing Conference held on June 14, 1996.

II. ARGUMENT

13. The Rebuttal Testimony of Mr. Spiewak on behalf of Trigen is not relevant to the instant proceeding and therefore should not be admitted into the evidentiary record. Trigen would not be harmed if this testimony were not admitted because Trigen can pursue its same contentions in other proceedings pending before this Commission and before the FERC.

The only purpose behind Trigen's rebuttal testimony seems to be one of attempting to obtain leverage over UE in this proceeding regarding matters that do not relate at all to the merger.

14. Regarding Trigen's transmission request, this issue is not related to the merger. Trigen has expressly instructed UE that it is seeking transmission service from UE and not from Ameren. Based on the representations in Mr. Spiewak's rebuttal testimony that Trigen plans to build a generating facility in the St. Louis area, Trigen presumably would have requested transmission service from UE even if there had been no merger with CIPSCO.

Further, Trigen's contentions regarding UE's alleged abuse of transmission market power are issues to be resolved by the FERC, and not by this Commission. Under Section 201 of the FPA, the FERC has authority to determine the rates, terms and

conditions of transmission service in interstate commerce. 16 U.S.C. 824(a) & (b).

In any case, Trigen's contentions are moot in light of its Application to FERC for an order requiring UE to provide transmission service, and UE's commitment to file a transmission rate schedule with FERC. As addressed in UE's Answer to Trigen's Application, if Trigen did not find UE's draft Agreement acceptable, UE would file it with FERC. That Commission would then set rates, terms and conditions which are just and reasonable, with any appropriate input offered by Trigen. The rates would be subject to refund pending a hearing, if any. Thus, Trigen will have a rate schedule in place if and when its proposed plant is ready for commercial operation.

Finally, aside from such claims being irrelevant to the UE-CIPSCO merger, it would represent a waste of resources if Trigen were allowed to pursue them twice. It would also be prejudicial to UE in that the Company would be forced to defend itself against the same claims twice, and thereby face the possibility of differing or inconsistent rulings.

15. With regard to Rider E, Trigen's contentions are also not relevant to the merger. As was the case with Trigen's transmission contentions, its arguments regarding Rider E are directed to UE alone, and not directed to Ameren. Further, had there been no merger, UE still would have had a Rider E.

In any case, Trigen will be allowed to pursue its same contentions against Rider E in Case No. EC-96-164. Thus, there

is no need for Trigen to pursue these claims in this proceeding.

Finally, it would be wasteful to allow Trigen to pursue its same claims twice, and would be prejudicial to UE for the reasons set forth in paragraph number 15.

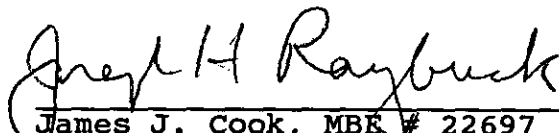
16. In the event that UE's Motion to Strike were granted, UE would withdraw those portions of Ms. Borkowski's Surrebuttal Testimony pertaining to Mr. Spiewak. (These are contained in pages 16 [lines 5-9, 14-22], 17, 18 [lines 1-20], 21 [lines 10-12 & 21-22], & 22 [lines 1-15]). Further, UE would withdraw all of Mr. Kovach's Surrebuttal Testimony, as it pertains only to Rider E.

17. In conclusion, UE's Motion to Strike Trigen's testimony should be granted because (1) this testimony is not relevant to any of the issues involved in this merger proceeding, (2) Trigen can pursue those same contentions in other proceedings before this Commission and the FERC, and thus would suffer no harm, and (3) it would be a waste of resources and prejudicial to UE if Trigen were allowed to litigate its transmission and Rider E claims twice--once in this proceeding and once in proceedings either before this Commission in EC-96-164 or before the FERC.

WHEREFORE, Union Electric Company respectfully requests that its Motion to Strike the Rebuttal Testimony of Trigen-St. Louis Energy Corporation be granted.

Respectfully submitted,

UNION ELECTRIC COMPANY



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CERTIFICATE OF SERVICE

I, Joseph H. Raybuck, an attorney for Union Electric Company, do hereby certify that a copy of the foregoing was served on all Parties of Record, by first-class mail, postage prepaid, this 18th day of June, 1996.



Joseph H. Raybuck



**MISSOURI PUBLIC SERVICE COMMISSION  
Docket No. EM-96-149  
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