BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of UNION ELECTRIC COMPANY for permission and authority to construct, operate and maintain two combustion turbine generating units in the State of Missouri	)))))	Case No. EA-79-119

MOTION TO DISMISS

Comes now the General Counsel of the Public Service Commission (Commission) and respectfully moves that the Application of Union Electric Company (Company) in the above-captioned matter be dismissed by the Commission (1) for failure to file such application in a timely manner; and (2) because the application for a certificate of convenience and necessity as set forth in Section 393.170 RSMo 1969 is improper and unnecessary in this instance.

In support of its Motion to Dismiss, the General Counsel states the following:

1. On November 20, 1978, Union Electric Company (Company) filed an application with the Commission seeking approval to build two 50 MW combustion turbines in order to provide electric service to its customers.

2. There is no allegation in the application and no evidence was submitted to the Commission which shows that these turbines will be constructed and located outside the certificated area of the company. When such turbines become used and useful in public service the Commission shall in the context of a rate matter determine how much if any of the costs of such turbines shall be borne by the ratepayers and whether they are necessary to serve the customers of the company. The utility by this application is merely attempting to get tacit approval of the Commission in advance.

(13)

3. The Commission set this matter for a hearing which was held on March 27, 1979, in the Commission's hearing room on the tenth floor of the Jefferson State Office Building, Jefferson City, Missouri.

4. The Company did, in fact, order these turbines in June, 1978, and did not file application with the Commission until four months after the units had actually been purchased by contract. And further, the General Counsel has found that the Company made a commitment to construct the instant combustion turbines in 1975.

5. The Company has the right to the independent exercise of its management authority. See: State ex rel. Kansas City Transit, Inc. v. Public Service Commission, 406 S.W.2d 5 (Mo 1966). Also see: In the matter of the Application of Missouri Power and Light Company for permission and authority to construct, operate and maintain a 54 megawatt combustion generating unit in Jefferson City, Cole County, Missouri, 18 MoPSC 116 (1973).

6. This is a management decision and the full responsibility of whether this decision was purdent and reasonable and for the best interest of the ratepayers must be borne in this instance at this time by the Company.

7. The record made before the Commission has sufficient evidence upon which to conclude that the application was unnecessarily filed. The combustion turbines in the instant application are within the service area of the Company and the Company need not ask the Commission for further approval unless there are special circumstances. See: State ex rel. Harline v. Public Service Commission of Missouri, 343 S.W.2d 177 (KC App 1960). The Company is merely adding these turbines to its existing electric plant.

WHEREFORE, the General Counsel respectfully submits that this application be dismissed for the reasons stated herein.

Respectfully submitted,

Paul W. Phillips
General Counsel

Treva J. Hearne
Assistant General Counsel
Attorneys for the Public Service Commission of the State of Missouri
P. O. Box 360
Jefferson City, Missouri 65102

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing [illegible] was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein with postage fully prepaid, and by depositing said envelopes in the United States Mail in Jefferson City Missouri This 24 day of May, 1979

Treva J. Hearne