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

SUGGESTIONS IN SUPPORT OF MOTION

On November 20, 1978, Union Electric Company ("Company") filed an application with the Public Service Commission ("Commission") seeking approval to build two 50 MW combustion turbines. The alleged purpose for construction of these turbines is to supplement the intermediate and base load capacity during hours of peak demand and to provide the Company's system with black start capability at the Sioux and Meramac plants. This peak demand is projected by the Company to require the use of each of these turbines from 200-400 hours a year.

After extensive research in this matter, the General Counsel of the Commission has determined that there is sufficient evidence in the record from which the Commission can dismiss this application as both unnecessary and as untimely filed. Constructing the two combustion turbines named in this application would not be the result of this Commission's decision from the record made before it in the hearing on March 27, 1979. The decision to build combustion turbines was made as a management decision by the Company when it canceled the construction of the Rush Island plants III and IV and chose to rely on supplemental peaking power from oil-fired combustion turbines. See: Staff (late-filed) Exhibit 2. Also see: TR-168-176 in this matter EA-79-119. This decision was made by the Company as a result of the changing situation in fuel supply which existed in 1974-75. The changing nature of the fuel situation was a primary motive in the Company's decision to build oil-fired combustion turbines. (Tr. 171-172) Information that would enable

the Commission to grant the application requested was not brought before it in a timely manner. (Tr. 148) If the primary factor in choosing combustion turbines instead of coal-fired intermediate base load generation, the Company ought to have brought this application before the Commission in 1974. Because of the extensive time period between the Company's decision and actual on-line commercial operation of the units (approximately 5 years in this case), the combustion turbines cannot be replaced with any other type unit in order to meet the alleged need of Company's customers. The time needed for construction of any other type unit would extend beyond the period when the capacity is needed, i.e., coal-fired intermediate units 6-7 years, gas-fired intermediate or peaking units 5-6 years. The application for these units was filed at a time when, if the Commission were to refuse its approval, the risk to the ratepayers that it is obligated to protect increases significantly because of the lack of alternatives. (Tr. 33-34)

If the Company had filed this application in a timely manner, the application is still unnecessarily filed. In the absence of special circumstances, the companies under the Commission's jurisdiction need not request approval to extend facilities and transmission lines within their service areas. The combustion turbines for which this application was filed by the Company are within the Company's service area. See: State ex rel. Harline v. Public Service Commission of Missouri, 343 S.W.2d 177 (K.C. App. 1960). In the Harline case the court found that the Commission was empowered to determine convenience and necessity when a Company was to begin business or when an established company intended to enter territory beyond the area certificated for it. The court went on to say that a "public utility was not required to obtain (an) additional certificate of convenience of necessity to construct each extension or addition to existing transmission lines and facilities within territory already allocated to it."

Since no further approval to construct a turbine within the Company's service area is required from the Commission unless there are special circumstances, the decision to construct falls within the independent management authority of the Company. See: In the matter of the Application of Missouri Power & Light Company for permission and authority to construct, operate, and maintain a fifty-four megawatt combustion generating unit in Jefferson City, Cole County, Missouri, 18 Mo.PSC 116 (1973). The Commission held hearings for this application which did include special circumstances of noise and other environmental concerns. While the majority joined to grant the certificate for this turbine that was to be constructed within Missouri Power & Light's service area, the Commission's order stated that special circumstances merited the Commission's approval and went on to state: "We (the Commission) do not feel we should interfere with such a management decision unless there is a clear showing that such decision is unreasonable and unsound." Commissioner Clark dissented and in his opinion cited the Harline case to support his opinion that the Company did not need to request authority under these circumstances from the Commission to construct the turbines.

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). The decision to construct the two combustion turbines in this application is a management decision and the full responsibility of whether this decision was prudent and reasonable and for the best interest of the ratepayers must be borne at this time and in this instance by the Company. When the units are commercially operable, the Commission will determine what expenditure is properly includable in rate base.

The advantage to the Company of seeking Commission approval each time it makes a significant expenditure is the hope that this will insure the inclusion of the item in rate base. The independent judgment of the Commission cannot be exercised in

circumstances that render the hearing process a mere acceptance of Company's management decisions.

The Company testified that other factors in its determination of the need for peak power stemmed from its involvement in certain power pools. The regulation of the power pool is outside the jurisdiction of the Commission. (Tr. 86-93) The testimony in the hearing for EA-79-119 indicates considerable uncertainty as to whether or not the Commission can have any further involvement in the type generation planned for use by Union Electric without a hearing on the subject in its entirety, a hearing not limited to specific units for use in specific years. (Tr. 156-160)

The Office of the General Counsel respectfully requests that the Commission grant its motion and dismiss the application in Case No. EA-79-119. While the Company did file its application before actual construction, the Company has filed unnecessarily and in an untimely manner because of the severely restricted alternatives and absence of any opportunity to make a meaningful judgment regarding the type of units to be constructed. This office believes it in the best interest of the Commission and the public to withhold any judgment in this matter at all until the next rate case at which these units are commercially operable and entered into rate base by the Company. The integrity of the Commission's authority and its hearing procedure will be substantially diminished if the Commission merely rubber-stamps the management decision of the Company at this time and and issues an order gratuitously.

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 [illegible] foregoing
instrument [illegible] of all
[illegible]
Missouri [illegible] 4 [illegible] May [illegible] 79 [illegible] City

Treva J. Raymond Hearne