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February 6, 1997

VIA HAND DELIVERY

Mr. Cecil I. Wright  
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. Wright:

Enclosed for filing on behalf of Union Electric Company in the above matter is an original and fourteen (14) copies of its Motion for Continuance, Clarification and for Reconsideration of Commission Order Setting Hearing Dated January 31, 1997.

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,

*William J. Niehoff / slh*

William J. Niehoff  
Attorney

WJN/bb  
Enclosure(s)  
cc: Counsel of Record

**FILED**  
**FEB 6 - 1997**  
**MISSOURI**  
**PUBLIC SERVICE COMMISSION**

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  
FEB 6 - 1997  
MISSOURI  
PUBLIC SERVICE COMMISSION

MOTION TO CANCEL OR FOR CONTINUANCE, CLARIFICATION AND  
FOR RECONSIDERATION OF COMMISSION ORDER  
SETTING HEARING DATED JANUARY 31, 1997

COMES NOW Union Electric Company, (UE or Company) and submits  
its Motion for Continuance, Motion for Clarification, and Motion to  
Reconsider directed to the January 31, 1997 Order Setting Hearing,  
upon the following grounds:

FACTUAL BACKGROUND

1. On or about July 12, 1996, the parties to this matter,  
including the Missouri Public Service Commission Staff (Staff) and  
the Office of Public Counsel (OPC) reached a negotiated Stipulation  
and Agreement which recommended that the Commission approve this  
merger, subject to the terms and conditions set forth therein.

2. After submission of the Stipulation to the Commission and  
after an on-the-record presentation by the parties, which included  
statements taken under oath, the Commission issued its Order dated  
September 25, 1996 in which it requested filing of testimony  
regarding market power from UE, Staff and OPC.

3. On November 1, 1996, UE filed testimony with the  
Commission from Rodney Frame, its expert witness, and from

Donald E. Brandt and Maureen A. Borkowski which fully addressed the questions raised by the Commission about market power.

4. Staff and OPC filed testimony from their witnesses on this issue on or about November 26, 1996.

5. UE filed its response to the market power testimony on or about December 6, 1996 in which it stated its disagreement with much of the testimony submitted by Rosen and Wilson and in which it restated the reasons that it believed that no market power issues exist.

6. No party has served any objection to the admission of the testimony on market power issues nor has any party requested the opportunity to conduct cross-examination of witnesses even though more than 60 days has passed since the date of the last filing.

7. On January 29, 1997, hearings commenced before the Federal Energy Regulatory Commission (FERC) to consider limited issues related to this merger. The Missouri Public Service Commission intervened in this action and is a party thereto.

8. Although some uncertainty exists, hearings before FERC are not expected to conclude before February 12, 1997 to February 21, 1997 at the earliest, and may extend for a longer period.

9. On January 31, 1997, the MPSC issued its Order setting this matter for hearing on February 11, 1997 to permit:

....OPC and Staff to offer into evidence the testimony of OPC witness Dr. Richard A. Rosen and Staff witness Dr. John W. Wilson, to permit questions of these two witnesses from the Commission and to offer the opportunity for cross-examination of these witness by the various parties.

MOTION TO CANCEL OR FOR CONTINUANCE HEARING

UE requests that the hearing set for February 11, 1997 be cancelled or continued from that setting for the following reasons:

10. Union Electric attorneys, including William E. Jaudes, Vice President and General Counsel, James J. Cook, Associate General Counsel, and Joseph H. Raybuck, who have responsibility for the Missouri merger application are in Washington D.C. appearing before the FERC at hearings concerning this merger and would not be available to participate in the MPSC hearing if held on February 11, 1997.

11. Many of the UE witnesses who have knowledge and information regarding market power issues are expected to be witnesses before the FERC and may not be able to adequately prepare for or participate in the MPSC hearing if held on February 11, 1997.

12. Although UE has consistently requested expedited handling of this Application and is extremely reluctant to request any continuance, UE nonetheless believes that it would be fundamentally unfair and would deprive it of its rights to due process if a hearing were conducted on a date when UE attorneys and witnesses could not be adequately prepared or participate.

13. Union Electric witnesses and attorneys are expected to be available beginning in the first week of March 1997.

14. Although Union Electric, as stated elsewhere in this motion and in earlier filings, disagrees with much of the substance and basis for testimony submitted by Rosen and Wilson and believes

that market power is not an issue in this proceeding, it would be willing to stipulate to the admission of the testimony and would be willing to waive its right to cross-examine these witnesses provided that the testimony of UE witnesses Brandt, Borkowski and Frame is admitted and all other parties likewise waive cross-examination as to all market power witnesses. UE has conferred with a number of parties to this case and does not anticipate that any will object to the testimony or request leave to conduct cross-examination. If due process concerns remain, the Commission may wish to issue a notice allowing 10 days for any party to object or to request cross-examination.

In the alternative, if the Commission determines to hold hearings, and the Commission, the parties and witnesses are having difficulty in finding a timely alternative date on which to conduct this hearing, Union Electric would agree to waive its right to cross-examine Rosen and Wilson and would propose that the Commission consider submitting any questions it may have in writing to the parties, with each party reserving the right to cross-respond to answers of the others. Reasonable time limits could be imposed for responding to Commission questions, for example, establishing March 15, 1997 as the due date for initial responses with cross-responses being due within 10 days thereafter.

In the further alternative, UE requests that the hearing be continued and not rescheduled until after March 3, 1997.

MOTION FOR CLARIFICATION

UE requests that the January 31, 1997 order be clarified to permit testimony from UE witnesses regarding market power to be admitted and to permit these witnesses to participate to the same degree and extent as Rosen and Wilson, for the following reasons:

15. The January 31, 1997 Order states that it is "appropriate" to allow admission of testimony by OPC witness Rosen and Staff witness Wilson, to have these witnesses available for questions from the Commission and for cross-examination.

16. Although presumably the Commission would be equally interested in receiving testimony from all parties, the order fails to contain any statement that it is "appropriate" to allow admission of testimony by UE witnesses Rodney Frame, Donald Brandt and Maureen Borkowski, to have UE witnesses available for questions from the Commission or for cross-examination.

17. It would be fundamentally unfair and would deprive UE of a fair hearing and of its right to due process should the Commission fail to admit testimony from its witnesses or fail to permit their participation to the same extent as witnesses for other parties.

18. UE requests that the Commission clarify its order to state that, in any further hearing or proceeding, it is appropriate for UE to offer testimony of its witnesses on market power and to have these witnesses and such other personnel as may be appropriate available to address issues of market power, including, as stated

in the January 31, 1997 Order, an independent system operator and non-pancaked transmission pricing.

MOTION TO RECONSIDER

UE requests the Commission to reconsider and withdraw its January 31, 1997 Order, for the following reasons:

19. Notwithstanding the testimony of Staff witness Wilson, Union Electric, Staff and OPC, as well as all other parties, continue to support and recommend approval of the Stipulation reached in July 1996 and which is pending before this Commission.

20. Union Electric has made very plain that it disagrees with many of the analyses, conclusions and recommendations of Wilson and Rosen. (See Response of Union Electric Company To The Market Power Testimony Filed By The Commission Staff And Office Of Public Counsel, filed December 6, 1996).

21. In light of the continued support of the parties for the Stipulation, UE believes that it is unnecessary to burden the record with further hearings. In any event, the Company's testimony filed November 1, 1996 explains why there are no market power issues which the Commission need address in this proceeding. To repeat but one of UE's basic points: if and when the electric industry is restructured to allow for retail electric competition to occur in Missouri, other than on an experimental basis (such as through the pilot program included as part of the Stipulation), such a dramatic change would require significant changes in laws and regulations. The Commission would certainly have an

opportunity at that time to assess what mitigation, if any, might be necessary.

22. However, no need exists to address market power or mitigation in this proceeding. Among other reasons, UE has no significant transmission constraints and is not acquiring any Missouri customers as a result of the merger. Moreover, upon completion of the merger, Ameren will have a single system-wide rate for transmission services, where now there exist separate charges for UE and CIPS. Thus, approving the merger would reduce transmission costs by eliminating one transmission charge to potential competitors. Finally, Union Electric has stated on the record that it is its intention to remain subject to Commission jurisdiction to the same extent after the merger as before and has incorporated this promise as an integral part of the Stipulation. Thus, if market power and mitigation become issues at a later date for electric utilities as a whole in Missouri, the Commission would have ample opportunity to assess and treat UE equally with all other electric utilities, instead of singling it out, possibly for selective treatment.

23. UE submits that the proposed merger, as set forth in the Stipulation and Agreement, cannot be found to be detrimental to the public interest and thus requests that the Commission reconsider and withdraw its January 31, 1997 Order and instead enter its Order approving the Merger.



WHEREFORE, Union Electric Company requests that the Commission approve the Stipulation and Agreement pending before it.

Respectfully submitted,

UNION ELECTRIC COMPANY

By William J. Niehoff / Jlh  
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 1997, a copy of the foregoing was served upon All Parties of Record.

William J. Niehoff / Jlh  
William J. Niehoff