



Martha S. Hogerty  
Public Counsel

State of Missouri

Mel Carnahan  
Governor

**Office of the Public Counsel**  
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April 4, 1996

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

**FILED**  
**APR 4 - 1996**  
**MISSOURI**  
**PUBLIC SERVICE COMMISSION**

**RE: Union Electric Company**  
**Case No. EM-96-149**

Dear Mr. Rauch:

Enclosed for filing in the above-referenced case please find the original and fourteen copies of Public Counsel's **Motion to Compel**. I have on this date mailed or hand-delivered copies to all counsel of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

Lewis R. Mills, Jr.  
Deputy Public Counsel

LRM:bjr

Enclosures

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**  
**APR 4 - 1996**  
**MISSOURI**  
**PUBLIC SERVICE COMMISSION**

**MOTION TO COMPEL**

COMES NOW the Office of the Public Counsel (Public Counsel), and for its Motion to Compel, states as follows:

1. This case was initiated when Union Electric Company (UE) filed for an order authorizing merger transactions with Central Illinois Public Service Company on November 7, 1995. In that application, UE asked for expedited treatment (Application, para. 18, p. 6; see also p. 8).

2. On January 16, 1996, the parties to this case submitted a Joint Motion for Procedural Schedule that included a requested filing date for all parties other than UE of April 30, 1996. In that joint filing, UE once again states its request for expeditious treatment of this matter (para. 6, p. 3). The Public Service Commission (Commission) approved this procedural schedule by Order dated January 22, 1996.

3. Public Counsel has been submitting data requests to UE since early December, 1995. Although UE has not once informed Public Counsel within the ten day period required by 4 CSR 240-2.090(2) that it would be unable to answer data requests within 20 days, UE has nevertheless regularly

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exceeded 20 days in responding to discovery. In fact, of the data requests that Public Counsel has submitted to UE, the average response time is over 31 days. Put another way, only about one-fifth of all the responses that Public Counsel has received from UE have been timely. Some of the responses have been received more than 60 days after the request was submitted.

4. Public Counsel has contacted UE by telephone on a number of occasions to discuss this problem. Public Counsel also recently sent UE a letter expressing its concern about the time it was taking UE to respond (attached hereto as Attachment A), but the problem persists. UE has stated its intention to respond to some, but not all, of the overdue data requests in the next few days.

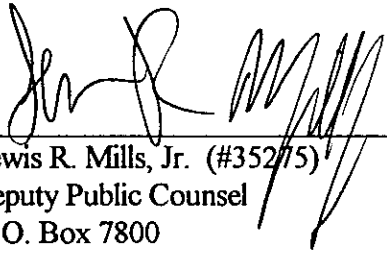
5. At the present time, Public Counsel has almost 100 data requests submitted to UE. Ten days has passed since most of these data requests were submitted to UE, and UE has not indicated that it will be unable to respond within twenty days. If UE's response time for these data requests is similar to the response time it has exhibited to date, Public Counsel will be unable to complete discovery in time to file rebuttal testimony on April 30, 1996.

6. As a result, Public Counsel requests that the Commission issue an Order compelling UE to immediately furnish responses to past due data requests (Public Counsel DR Nos. 522, 525, 530, 534, 535, 542, 2011, and 2012, attached hereto as Attachment B; DR No. 522 contains information designated highly confidential by UE, and so is furnished only to the Administrative Law Judge). Public Counsel also requests that the Commission direct UE to answer all outstanding data requests in a timely manner.

WHEREFORE, Public Counsel respectfully requests that the Commission order UE to immediately furnish responses to past due data requests and to respond to all outstanding data requests within twenty days of their submission.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By   
Lewis R. Mills, Jr. (#35275)  
Deputy Public Counsel  
P. O. Box 7800  
Jefferson City, MO 65102  
(573) 751-4857

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following on this 4<sup>th</sup> day of April, 1996:

Steve Dottheim  
Deputy General Counsel  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

James J. Cook  
Joseph H. Raybuck  
Union Electric Company  
P. O. Box 149 (M/C 1310)  
St. Louis, MO 63166

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

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

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

Michael C. Pendergast  
Laclede Gas Company  
720 Olive St., Room 1520  
St. Louis, MO 63101

Robert C. Johnson  
Diana M. Schmidt  
Peper, Martin, Jensen, et al.  
720 Olive St., 24th Floor  
St. Louis, MO 63101-2396

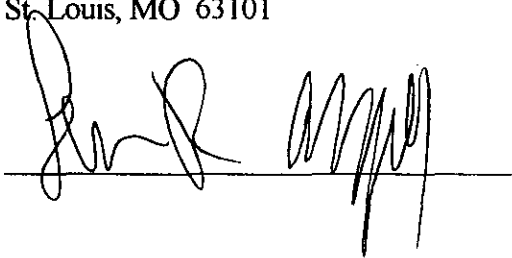
Susan B. Cunningham  
Staff Attorney  
Kansas City Power & Light Co.  
P. O. Box 418679  
Kansas City, MO 64141-9679

Jeremiah W. Nixon  
Daryl R. Hylton  
Office of the Attorney General  
P. O. Box 899  
Jefferson City, MO 65102

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

Daniel R. Devereaux  
Attorney at Law  
1215 Pine Street  
St. Louis, MO 63101

Marilyn S. Teitelbaum  
Schuchat, Cook & Werner  
1221 Locust St., 2nd Floor  
St. Louis, MO 63101



Two handwritten signatures are present on a horizontal line. The signature on the left is written in dark ink and appears to be 'D. Devereaux'. The signature on the right is written in lighter ink and appears to be 'M. Teitelbaum'.



Martha S. Hogerty  
Public Counsel

State of Missouri

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March 25, 1996

Mr. Jim Cook  
Union Electric Company  
P.O. Box 149 (M/C 1310)  
St. Louis, MO 63166

Dear Mr. Cook:

This letter will serve to alert you of Public Counsel's increasing concern with the amount of time it has been taking you to respond to our discovery requests. As I have mentioned to you in our frequent phone conversations on this subject, many of the responses we have received have been quite late, with some responses not arriving here until more than sixty days after you received the request. I have attached to this letter a current (as of March 25, 1996) log of our requests showing the date you received each request and the date we received the response. The blanks under the date received column indicate that we have not yet received a reply.

As you are aware, the Commission's rules [4 CSR 240-2.090(2)] require you to notify us within ten days of the date of submission if you have objections or will not be able to answer within twenty days, as well as let us know when you will respond. I don't believe you have been complying with this section of the rule.

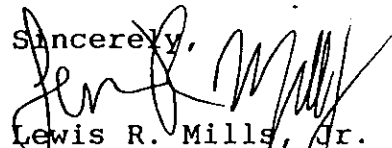
Since the period of time in which we had to conduct discovery was fairly long, and the date for the filing of our testimony was comfortably distant, I have not yet brought this problem to the Commission's attention. However, as our filing date approaches, we can no longer allow you extra time to respond -- at least not without changing the schedule in the case. If you believe that Union Electric will continue to be unable to meet the deadlines established in the Commission's rules, then we must quickly bring this problem to the Commission's attention. Allowing you extra time to respond to discovery without allowing us extra time in which to prepare testimony would be quite unfair.

If I do not let the Commission know about this situation, I run the risk that the Commission may decide that I've waited too long to ask for relief, and force us to file on schedule without

the benefit of full discovery. On the other hand, I have no wish to bother the Commission with this problem if it was due to the Illinois filing, and will not be happening in the future.

So that I will not waive any objections to your late responses, as well as a possible claim for a need for additional time in which to complete discovery before our filing date, I plan to file a motion to compel you to respond to any data requests that remain past due at the end of this week. As you can see from the attached log, there are quite a few that are already overdue, and more that will be due this week. In addition, we are now at the point of submitting, during this week, what is likely to be the last big batch. If we are unable to get timely responses to these requests, it will be virtually impossible to meet our filing deadline. Please let me know if you have any questions.

Sincerely,



Lewis R. Mills, Jr.  
Deputy Public Counsel

No. 525

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: February 29, 1996

INFORMATION REQUESTED: Please provide a copy of all documents created by UE or its agents, or CIPSCO or its agents, in the last five years that contain descriptions or analyses of savings that could be achieved through participating with a neighboring utility(ies) in joint dispatch, cycling of units, sharing non-spinning operating reserves, coordinated maintenance scheduling, reduced start-up costs due to fewer units, better heat rates, or a more competitive interchange market.

REQUESTED BY: Ryan Kind

INFORMATION PROVIDED: \_\_\_\_\_  
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The information provided to the Office of the Public Counsel in response to the above information request is accurate and complete, and contains no material misrepresentations or omissions based upon present facts known to the undersigned. The undersigned agrees to immediately inform the Office of the Public Counsel if any matters are discovered which would materially affect the accuracy or completeness of the information provided in response to the above information.

DATE RECEIVED: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

TITLE \_\_\_\_\_



UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 8, 1996

INFORMATION REQUESTED: At line 17 on page 17 of Mr. Gary Rainwater's Direct Testimony, he states that "[w]e also propose, however, that our stockholders be allowed an opportunity to recover the investment which was required to achieve those savings, and be allowed to share in net merger savings." Regarding this statement:

- a) Please cite all out-of-pocket expenses that UE or CIPSCO stockholders have made in order to make this "investment."
- b) Please provide a copy of all documents created by UE or its agents, or CIPSCO or its agents, that contain descriptions or analyses of UE's or CIPSCO's lack of opportunity to recover the "investment" that would occur if the merger premium is not recovered from ratepayers. If no such documents exist, please provide a statement to that effect.
- c) Please explain how UE's proposal only allows "an opportunity to recover" the merger premium as opposed to 100% certainty that the premium will be recovered.

REQUESTED BY: Ryan Kind *RIC*

INFORMATION PROVIDED: \_\_\_\_\_  
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TITLE \_\_\_\_\_

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 8, 1996

INFORMATION REQUESTED: Beginning at line 3 on page 25 of Mr. Gary Rainwater's Direct Testimony, he responds to a question regarding UE's proposal for "treating merger cost recovery during the remaining term of UE's 1995 electric incentive rate agreement" by stating that:

The amortized portion of our merger costs, including one-half of net savings as shown in Schedule 10, should be accounted for above the line as an adjustment to cost of service.

Please answer the following questions regarding the above quote:

- a) Provide specific references (document name, page number, paragraph, and sentence) to each portion of the Commission's Report and Order or the Stipulation and Agreement in Case No. ER-95-411 that would allow UE to include the amortized portion of its merger costs (acquisition premium or transition costs) above the line as an adjustment to cost of service.
- b) Provide specific references (document name, page number, paragraph, and sentence) to each portion of the Commission's Report and Order and the Stipulation and Agreement in Case No. ER-95-411 that would allow UE to include "one-half of net savings as shown in Schedule 10" above the line as an adjustment to cost of service.

REQUESTED BY: Ryan Kind *RIC*

INFORMATION PROVIDED: \_\_\_\_\_

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DATE RECEIVED: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

TITLE \_\_\_\_\_

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 8, 1996

INFORMATION REQUESTED: At line 8 on page 3 of Mr. Douglas Kimmelman's Direct Testimony, he states that "[c]learly, the Ameren shareholders will expect a fair return on their investment so as to not dilute the value of their current holdings." Please answer the following questions regarding the above quote:

- a) Provide a copy of all documents created by UE or its agents, or CIPSCO or its agents, which indicate that Ameren shareholders may not receive a "fair return on their investment" unless the Company receives all of its "merger investment" and one-half of the merger savings prior to sharing of the remaining savings with ratepayers. If no such documents exist, please provide a statement to that effect.
- b) Provide a copy of all documents possessed by UE or its agents, or CIPSCO or its agents, which indicate that Ameren shareholders may not receive a "fair return on their investment" unless the Company receives all of its "merger investment" and one-half of the merger savings prior to sharing of the remaining savings with ratepayers. (Item b is requesting copies of all documents relating to the subject that were not created by UE or its agents, or CIPSCO or its agents). If no such documents exist, please provide a statement to that effect.
- c) Provide a copy of all documents that UE or its agents, or CIPSCO or its agents, provided to UE or CIPSCO shareholders prior to shareholder votes on the proposed merger that may have led some shareholders to expect state regulators to provide for recovery of the merger premium from ratepayers with 100% certainty. If no such documents exist, please provide a statement to that effect.
- d) Provide a copy of all documents created by UE or its agents, or CIPSCO or its agents, that contain descriptions or analyses of the potential dilution of the value of current shareholder holdings as a result of the merger. If no such documents exist, please provide a statement to that effect.
- e) Provide a copy of all documents possessed by UE or its agents, or CIPSCO or its agents, that contain descriptions or analyses of the potential dilution of the value of current shareholder holdings as a result of the merger. (Item e is requesting copies of all documents relating to the subject that were not created by UE or its agents, or CIPSCO or its agents). If no such documents exist, please provide a statement to that effect.

REQUESTED BY:

Ryan Kind *RIC*

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 8, 1996

INFORMATION PROVIDED: \_\_\_\_\_  
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DATE RECEIVED: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

TITLE \_\_\_\_\_

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 13, 1996

INFORMATION REQUESTED: At line 1 on page 9 of Mr. Warner L. Baxter's Direct Testimony, he states:

The amounts proposed to be included in Union Electric's retail electric cost of service for 1997 and 1998 are \$16.4 million and \$17.3 million respectively. However, Union Electric will not add these amounts to depreciation and amortization expense in its "Earnings Report" for the twelve months ending June 30, 1997, and June 30, 1998, respectively. This is because Schedule 10 to Mr. Rainwater's testimony reflects an annualized amortization and allocation of the total merger investment and one-half of the net merger savings to cost of service, and assuming that the merger is consummated at the end of 1996, the cost of service amounts added to depreciation and amortization expense for the twelve months ending June 30, 1997, and June 30, 1998, must be modified. Instead, Union Electric will add approximately \$8.2 million (one-half of the \$16.4 million amount reflected in Schedule 10 for 1997) to depreciation and amortization expense in the "Earnings Report" for the twelve months ending June 30, 1997, and \$16.8 million (the remaining \$8.2 million balance related to 1997 plus one-half of the \$17.3 million amount reflected in Schedule 10 for 1998) for the twelve months ending June 30, 1998.

Provide specific references (document name, page number, paragraph, and sentence) to each portion of the Commission's Report and Order or the Stipulation and Agreement in Case No. ER-95-411 that would allow UE to "add approximately \$8.2 million (one-half of the \$16.4 million amount reflected in Schedule 10 for 1997) to depreciation and amortization expense in the 'Earnings Report' for the twelve months ending June 30, 1997, and \$16.8 million (the remaining \$8.2 million balance related to 1997 plus one-half of the \$17.3 million amount reflected in Schedule 10 for 1998) for the twelve months ending June 30, 1998."

REQUESTED BY: Ryan Kind

(continued)

No. 542

UNION ELECTRIC COMPANY  
CASE NO. EM-96-149

PUBLIC COUNSEL DATA REQUEST

REQUESTED FROM: Jim Cook

DATE REQUESTED: March 13, 1996

INFORMATION PROVIDED: \_\_\_\_\_  
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DATE RECEIVED: \_\_\_\_\_ SIGNED BY: \_\_\_\_\_

TITLE \_\_\_\_\_

**Union Electric Company  
Case: EM-96-149**

**Office of the Public Counsel Data Request**

Requested From: Jim Cook

Date Requested: 20 March 1996

**Information Requested:** Rainwater-Direct, Schedule 7 shows Pre- and Post-merger transaction costs associated with the UE/CIPSCO merger. Please provide a breakdown of the post-merger transaction costs (\$19,137,000) by year, based ONLY on when those costs are estimated to be incurred. If a year-by-year breakdown is not available, please explain how the costs were estimated and accurately quantified if their timing is unknown.

Requested By: Mark Burdette

Phone: 573/751-1305

Fax: 573/751-5562

Information Provided: \_\_\_\_\_  
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Date Received: \_\_\_\_\_

Signed By: \_\_\_\_\_

Title: \_\_\_\_\_

**Union Electric Company  
Case: EM-96-149**

**Office of the Public Counsel Data Request**

Requested From: Jim Cook

Date Requested: 21 March 1996

**Information Requested:** Referencing the August 8, 1995 Arch Company - Presentation to the Board of Directors by Goldman, Sachs & Co.:

a) Page 30, in the "Assumptions" box, states "(50% after-tax to shareholders)". Does this analysis assume recovery of the company's claimed \$232M merger premium? Please specify all costs or savings included in the analysis as well as the mechanism for returning "50% after-tax to shareholders."

b) Page 32, same question as a) above.

Please provide all analyses and work papers supporting the information presented on pages 30 and 32.

Also, please include any other analyses or work papers prepared by UE, CIPSCO or an agent of either, concerning earnings per share estimates for each company. This information should include specific quantitative details (costs included, savings, inclusion of premium, etc.) on how the EPS estimates were calculated.

Requested By: Mark Burdette

Phone: 573/751-1305

Fax: 573/751-5562

Information Provided: \_\_\_\_\_  
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Date Received: \_\_\_\_\_

Signed By: \_\_\_\_\_

Title: \_\_\_\_\_