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April 18, 1996

FILED

APR 19 1996

VIA FACSIMILE & FEDERAL EXPRESS MAIL

MISSOURI  
PUBLIC SERVICE COMMISSION

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

**Re: Response of Union Electric Company to the Office of  
Public Counsel's Second Motion to Compel  
MPSC Docket No. EM 96-149**

Dear Mr. Rauch:

Enclosed please find an original and fourteen (14) copies of the *Response of Union Electric Company to the Office of Public Counsel's Second Motion to Compel* in the above-referenced matter.

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

Thank you.

Yours very truly,

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

Joseph H. Raybuck  
Attorney

Enclosure(s)

cc: Mr. Joe Derque, Hearing Examiner (By Facsimile)  
Service List

FILED

APR 19 1996

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

MISSOURI  
PUBLIC SERVICE COMMISSION

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. )

Docket No. EM-96-149

RESPONSE OF UNION ELECTRIC COMPANY TO THE  
OFFICE OF PUBLIC COUNSEL'S SECOND MOTION TO COMPEL

COMES NOW, Union Electric Company (UE or Company), and pursuant to 4 CSR 240-2.080(12), responds as follows to the Second Motion to Compel (Motion) filed by the Office of the Public Counsel (Public Counsel) on April 16, 1996.

1. UE incorporates herein by reference its Response to the Motion to Compel of the Office of the Public Counsel as filed with the Commission on April 12, 1996, a copy of which is attached hereto as Exhibit A.

2. In its Motion, the Public Counsel seeks an Order compelling UE to immediately furnish responses to "past due" data requests (DRs). In particular, Public Counsel lists 40 DRs that are "overdue." As of the date of this filing, only 13 of the 40 DRs listed are still outstanding. Of these 13 outstanding DRs, 12 are only 22 days overdue.

3. In its Motion, Public Counsel reiterates the need to obtain the information contained in UE's responses to the

outstanding data requests in order to prepare its rebuttal testimony. It must be noted that Public Counsel has chosen to issue approximately 28 data requests so late in this proceeding that responses are not due until five or seven days (at the earliest) before their testimony is due. This hardly gives Public Counsel a sufficient amount of time to accurately incorporate this information into its testimony. If Public Counsel's "need" is so great, it should have issued most of its data requests earlier. Therefore, the Company repeats that it is highly inappropriate for the Public Counsel to issue so many data requests at the last minute, knowing the Company is already inundated with requests from Public Counsel and others, and then complain that they may not receive responses in a timely manner.

3. Contrary to Public Counsel's allegation in Paragraph 4 of their Motion, UE has offered valid reasons for not following the Commission's discovery rule. UE directs Public Counsel to Paragraphs 3 through 6 of Exhibit A. The large number of data requests received by UE from Public Counsel, as well as from all other parties to this proceeding, and the voluminous information which is sought thereby, has prevented UE from responding to the Public Counsel's data requests within the twenty-day time frame contemplated by the Commission's Rule. The Company has in the past and will continue to attempt to respond to Public Counsel's data requests in a timely manner.

WHEREFORE, UE requests that the Commission dispose of the Second Motion to Compel of the Office of the Public Counsel in a manner consistent with this response.

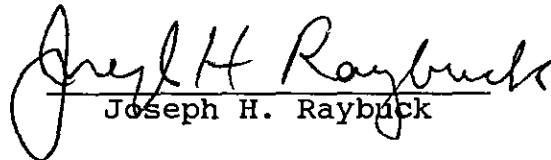
Respectfully submitted,

  
Joseph H. Raybuck (MBE# 31241)

Attorney for  
Union Electric Company  
P.O. Box 149 (M/C 1310  
St. Louis, MO 63166  
(314) 554-2976  
(314) 554-4014 (fax)

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 April, 1996.

  
\_\_\_\_\_  
Joseph H. Raybuck

MISSOURI PUBLIC SERVICE COMMISSION  
Docket No. EM-96-149  
Service List  
Rev. April 18, 1996

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April 12, 1996

Via Fax & Hand-Delivery

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

Re: Response of Union Electric Company to the Motion to  
Compel of the Office of Public Counsel  
MPSC Docket No. EM 96-149

Dear Mr. Rauch:

Enclosed please find an original and fourteen (14) copies  
of the *Response of Union Electric Company* in the above-  
referenced matter.

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

Thank you.

Yours very truly,

*James J. Cook /JH*

James J. Cook  
Associate General Counsel

JJC:mas  
Enclosure(s)

cc: Service List

FILED  
APR 12 1996  
MISSOURI  
PUBLIC SERVICE COMMISSION

EXHIBIT A



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. )

Docket No. EM-96-149

RESPONSE OF UNION ELECTRIC COMPANY TO THE MOTION TO COMPEL  
OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW, Union Electric Company (UE or Company), and pursuant to 4 CSR 240-2.080(12), responds as follows to the Motion to Compel (Motion) filed by the Office of the Public Counsel (Public Counsel) on April 4.

1. In its Motion, the Public Counsel seeks an Order compelling UE (a) to immediately furnish responses to eight of its "past due" data requests, and (b) to answer all "outstanding" data requests in a timely manner within the twenty (20) day time frame set forth in the Commission's Rule on Practice and Procedure (4 CSR 240-2.090(2)).

2. UE has attempted in good faith to respond to all of the data requests of Public Counsel in a timely manner. However, because of the large number of these requests, and the voluminous information which they seek, UE has not always been able to respond to the Public Counsel's data requests within the twenty-day time frame contemplated by the Commission's Rule.

3. Since the creation of this docket to obtain approval of UE's merger with CIPSCO Incorporated, UE has received a total of 456 data requests. 167 of these requests have been submitted by the Public Counsel (and not 100 as set forth in paragraph number 5 of Public Counsel's Motion). In the proceeding before the Illinois Commerce Commission to obtain approval of the merger, UE and CIPSCO have received 279 data requests to date. Many of these requests (including those from Public Counsel) not only seek "data" but also request positions by UE and CIPSCO on various issues. As a result, UE must necessarily consult with CIPSCO and its outside attorneys before providing the requested information. This has made it difficult to always respond to the Public Counsel within the Commission's normal time frame.

With regard to all of the data requests submitted by the Public Counsel, it should also be noted that many (particularly the more recent requests) have two, three, four or more subparts. The requests usually also call for the Company to provide "separate responses to each of the following questions..." (emphasis in originals). Although some of these subparts do not require significant additional effort, others do. <sup>1</sup>

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<sup>1</sup> For example, the following is an excerpt from just one recent Public Counsel Data Request (No. 649):

- a) Does Mr. Kimmelman believe...?
- b) Provide a copy of the source documents from which...
- c) Provide a copy of all documents created by or for UE or CIPS that contain...
- d) Provide any facts or analyses that would support the statement that...
- e) Explain why...
- f) Does UE believe that it is unreasonable to expect...

4. In addition, it should be noted that the Company has refrained from objecting to requests that are arguably irrelevant. The Company has frankly concluded, so far, that it will take less time to respond to irrelevant requests, than to file objections and argue those objections before the Commission. However, responding to questions such as OPC DR No. 648 ("Please provide a copy of all documents created by or for UE that contain descriptions or analyses of the Appliance Warranty Program which UE intends to implement through its subsidiary, Union Electric Development Corporation [UEDC].") and 615 ("Please provide a copy of all UE documents containing descriptions and analyses of the new advertising campaign that UE initiated in 1996") takes time that could be more productively spent answering relevant requests, or working on other more worthwhile projects. <sup>2</sup>

5. UE has already answered most of the Public Counsel's data requests. To accommodate the Public Counsel as much as possible, UE has always submitted its responses either by expedited mail, by fax, or by hand delivery. As acknowledged in the Public Counsel's Motion, there are only eight data requests

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- g) Provide UE's definition of the term...
  - h) Why does...differ from...
  - i) Does UE believe that..."

<sup>2</sup> The Company is not suggesting that the OPC does not have a right to inquire about the proposed Appliance Warranty Program, but it certainly has virtually nothing to do with the proposed merger. Moreover, although the persons responsible for that program are not actively involved in merger-related activities, the internal administration of the request and answer must be handled by the same people that are attempting to process the hundreds of other requests in a timely manner.

for which responses are currently overdue. As of the date of the mailing of this Response, 3 of the 8 responses have been sent to Public Counsel and the remaining 5 should be answered by Monday, April 15, or Tuesday, April 16.

Thus, part (a) of the relief requested by the Public Counsel in its Motion is moot as to 3 out of the 8 "past due" data requests.

6. With regard to its "outstanding" data requests (that is, those for which the responses are not past the due date), it must be noted that the Public Counsel recently elected to submit at one time seventy data requests to UE (received on March 27), followed by an additional 35 within the next few days. The fact that so many of these requests were submitted at one time makes a response within 20 days by UE and CIPSCO extremely difficult, if not impossible.

Moreover, the Company must question the intent of the Public Counsel's waiting until March 27 to file 70 data requests at once (followed by an additional 35 sent between March 27 and April 5). Even assuming that the Company could respond to all of them within 20 days (which Public Counsel obviously believes to be unlikely), Public Counsel would only have two weeks to incorporate the responses from the 70 (and even less time for the later DR's) into its testimony, which is due on April 30. In addition, it should be noted that none of the 70 refer to a prior Data Request response that might have been unclear. However, 29 of those 70 refer directly and solely to the Company's Direct

Testimony, which the Public Counsel has had since early November. Almost every one of the remaining requests could also have been submitted earlier. Only a few would logically be submitted so late in the process (such as asking for an update on the merger transition process). Therefore, the Company suggests that it is highly inappropriate for the Public Counsel to wait until the last minute to submit such a large number of requests, knowing the Company is already inundated with requests from Public Counsel and others, and then complain that they may not receive responses in a timely manner.

7. UE submits that Public Counsel has not been prejudiced to date in the development of its rebuttal testimony, nor will it be in the future. In particular, the Public Counsel will have had almost six months to analyze UE's filing (from early November to the end of April), and to prepare a complete and informed response. Further, UE notes that Public Counsel has already had access to a large amount of information relating to the UE-CIPSCO merger by: (1) obtaining UE's responses to the data requests submitted by the Commission Staff; (2) inspecting voluminous and confidential information on UE's premises on numerous occasions over the last several months; and (3) obtaining other information informally from various UE and CIPSCO personnel on several occasions in St. Louis.

8. UE will continue to attempt to respond to the Public Counsel's data requests in a timely manner. In particular, UE will make every effort to respond to the 70 data requests

submitted on March 27 within 20 days, and will notify the Public Counsel as soon as possible if it does not expect to do so.

WHEREFORE, UE requests that the Commission dispose of the Public Counsel's Motion to Compel by concluding that it is (a) moot with regard to 3 out of the eight data requests set forth in paragraph number 6 of its Motion, (b) unnecessary as to the remaining 5 past due which UE has committed to answering as soon as possible, and (c) unnecessary with regard to data requests whose responses have not yet come due, since UE will continue to respond in good faith to such requests in a timely manner.

Respectfully submitted,



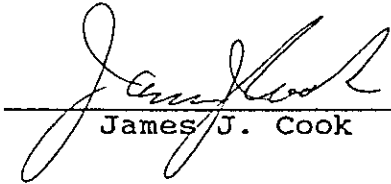
James J. Cook MBE# 22697

Attorney for  
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(314) 554-2237  
(314) 554-4014 (fax)

Dated: April 12, 1996

Certificate of Service

I, James J. Cook, 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 12th day of April, 1996.

  
James J. Cook