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June 3, 1996

**VIA FEDERAL EXPRESS**

Mr. David L. Rauch  
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. Rauch:

Enclosed for filing on behalf of Union Electric Company in the above matter is an original and fourteen (14) copies of its Response to OPC's Third Motion to Compel.

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,

A handwritten signature in black ink, appearing to read "WJN".

William J. Niehoff  
Attorney

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

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

MISSOURI PUBLIC SERVICE COMMISSION  
Docket No. EM-96-149  
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Rev. June 3, 1996

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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

FILED  
JUN 4 - 1996  
MISSOURI  
PUBLIC SERVICE COMMISSION

RESPONSE OF UNION ELECTRIC COMPANY TO THE  
OFFICE OF PUBLIC COUNSEL'S THIRD 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 Third Motion to Compel ("Motion") filed by the Office of the Public Counsel ("OPC") on May 29, 1996:

The OPC has filed a motion to compel responses to three data requests, described more fully below. UE, while it still cannot discern any relevance to information sought by DR 671, will waive its objection and provide responses as soon as time permits. The two remaining data requests (Nos. 675 and 676) seek a large volume of material about Union Electric's automated meter reading system ("AMR") which is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible evidence in this proceeding. As such the objections to this discovery should be sustained.

APPLICABLE LAW

Missouri Public Service Commission Rules permit use of data requests as a means for discovery. 4 CSR §240-2.090. Under Missouri law, discovery may be had regarding matters which are

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relevant or reasonably calculated to lead to the discovery of relevant evidence. MRCP 56.01(b)(1). This by no means authorizes use of data requests to obtain irrelevant information or to harass or burden an opposing party. In State ex rel. Kroger Company v. Craig, 329 S.W.2d 804, 806 (Mo.App. 1959) the court noted that discovery was never "designed or intended for untrammelled use as a factual dragnet for unlimited employment in far-flung fishing expeditions." Id.; see also, State ex rel. Anheuser v. Nolan, 692 S.W.2d 325 (Mo.App. 1985). Even a cursory review of DRs 675 and 676 reveals that they exceed the proper scope of discovery in Missouri, and thus, the objections should be sustained.

#### DATA REQUESTS

In the course of this proceeding, Union Electric has responded to over 500 separate data requests and has produced many thousands of pages of documents. Union Electric has fully cooperated and has exercised the benefit of the doubt in favor of producing information even where it had reasonable questions the regarding relevance of material sought. Nonetheless, materials requested in data requests 675 and 676 are so clearly irrelevant and burdensome that Union Electric has been compelled to object, and for the first time in this case, request the Commission to provide relief from oppressive discovery.<sup>1</sup>

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<sup>1</sup> Union Electric has objected to only five of the over 500 data requests it received. Of these, OPC has agreed that objections to two data requests were well-taken and UE has agreed to answer one other.

The particular data requests seek "copies of all documents" pertaining to the costs and benefits of installing a new automatic meter reading system. (Data Requests 675, 676). OPC readily admits that the merger does not implicate issues pertaining to automatic meter reading. (Motion, par. 5). However it claims that it needs this information in order to determine "whether UE's analysis of merger costs and benefits is consistent with its analysis of the costs and benefits of other long-term investments." (Motion, par. 5). There is no reason that Union Electric should be burdened with producing a large volume of material which concerns an admittedly unrelated program, particularly when other more direct ways exist to conduct discovery regarding the point alleged to be important. For example, OPC could have issued a data request asking whether UE uses the same analysis for the merger as for other investment programs, and if not, why not. Such an approach would go far to alleviate unnecessary hardship and expense faced by UE in responding to discovery.

Moreover, the justification cited by OPC in seeking this information does not support its request. OPC alleges that both "the merger and the AMR system are expected to lower costs and enhance revenues...". (Motion, p. 3). However, OPC cited to an article in an employee newspaper discussing the AMR system, stating that it would permit utilities to "eliminate estimated meter reads while making it possible for the company to develop enhanced services...". (Motion, p. 3, n. 1). "Eliminating

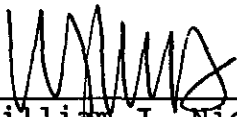
estimated meter reads" and developing "enhanced services" are not the equivalents of "reducing costs" and "enhancing revenues". Discovery regarding the first will not necessarily lead to enlightenment regarding the second.

Finally, even if differences existed in the manner in which a company evaluated savings from a merger compared to savings from investment in plant and equipment, it is doubtful that this would be meaningful. There is almost no similarity between a merger and investment in plant and equipment. For example, the two situations are vastly different in the methods that cost savings would be realized as well as the complexity of each project. In short, there appears to be little useful information that could be obtained in comparing the AMR program to a merger. Accordingly, objections filed by Union Electric should be sustained.

WHEREFORE, for the reasons set forth above, Union Electric Company respectfully requests the Commission to issue its order sustaining its objections to data requests 675 and 676.

Respectfully submitted,

UNION ELECTRIC COMPANY

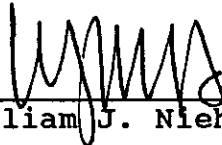


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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served to the parties of record via first class U.S. mail on this 30 day of June, 1996.

  
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William J. Niehoff