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December 6, 1996

VIA FEDERAL EXPRESS

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:

Today, Union Electric Company hand-delivered an original and fourteen (14) copies of its Response to the Market Power Testimony Filed by the Commission Staff and Office of Public Counsel. The filing letter and signature page of the response were fax copies.

For your convenience, enclosed are non-faxed copies to be inserted into the copies that were filed today.

Sincerely,

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

Joseph H. Raybuck  
Attorney

JHR/bb  
Enclosure(s)

FILED

DEC 6 - 1996

MISSOURI  
PUBLIC SERVICE COMMISSION

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December 6, 1996

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 Response to the Market Power Testimony Filed by the Commission Staff and Office of Public Counsel.

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,

Joseph H. Raybuck  
Attorney

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

FILED  
~~REDACTED~~  
MISSOURI  
PUBLIC SERVICE COMMISSION

FILED  
DEC 6 - 1996  
MISSOURI  
PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

DEC 6 - 1996

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. )

MISSOURI  
PUBLIC SERVICE COMMISSION

Docket No. EM-96-149

**RESPONSE OF UNION ELECTRIC COMPANY  
TO THE MARKET POWER TESTIMONY  
FILED BY THE COMMISSION STAFF AND OFFICE OF PUBLIC COUNSEL**

COMES NOW, Union Electric Company (UE or Company) and responds as follows to the testimony on market power by Dr. John W. Wilson, filed on behalf of the Commission Staff (Staff), and by Dr. Richard Rosen, filed on behalf of the Office of Public Counsel (OPC).

1. The overall and most significant conclusion which should be drawn is that Staff, OPC, and UE continue to support the Stipulation and Agreement (Stipulation) signed in July which is pending before this Commission. As the Commission will recall, the Stipulation recommends that the Commission approve the merger, subject to the conditions and modifications set forth in the Stipulation.

2. UE disagrees with many of the analyses, conclusions, and recommendations contained in the testimonies of Dr. Wilson and Dr. Rosen. However, the Commission now has a significant amount of information before it addressing the questions set forth in its September 25 Order. As the Company indicated in its own testimony filed November 1, it is certainly appropriate for the Commission to be informed about market power issues and how Missouri utilities

may fit into the new competitive environment. (See Additional Direct Testimony of Donald E. Brandt, p. 2)

3. In light of the continued support of the parties for the Stipulation, UE does not believe it would be useful to burden the record and to extend the length of this proceeding by filing rebuttal testimony disputing the points set forth in the testimonies of Dr. Wilson and Dr. Rosen. Thus, the Company will not request an opportunity to file such rebuttal testimony.

In any case, the Company's testimony filed November 1 explains its positions on why there are no market power issues which the Commission needs to address in this proceeding. To repeat one of our basic points: if and when the electric utility 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 contemplated by 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 measures might be necessary. But it need not do so now. (See Additional Direct Testimony of Rodney Frame, pp. 18-20; Additional Direct Testimony of Brandt, pp. 3-4)

4. Finally, the Company would like to note the relevant findings of two recent orders relating to the UE-CIPSCO merger which have occurred since the issuance of the Commission's September 25 Order. First, in its October 16 Order setting certain limited issues for hearing, the Federal Energy Regulatory Commission (FERC) concluded that the analysis which UE and Central

Illinois Public Service Company (CIPS) submitted on the competitive effects of the proposed merger "is basically consistent with the method the [FERC] has used in prior cases". (p. 18) The method which FERC referred to is contained in the Department of Justice and Federal Trade Commission's *Horizontal Merger Guidelines* dated April 2, 1992. With the exception of FERC's concerns about certain very limited transmission constraints which have occurred on the UE system, that Commission essentially agreed with the Companies' market power analysis that the merger would not create or increase market power in relevant markets.

UE and CIPS since have filed additional testimony at FERC addressing the very limited constraints about which FERC expressed concern in its October order. That testimony, among other things, quantifies the very few hours when those constraints actually have been binding (i.e., only 40 hours during the last three years). It also discusses transmission upgrades now being implemented to eliminate the constraints, and indicates that, using traditional antitrust tests, the merger does not present any concern about the exercise of market power even during the very few hours when the constraints do bind. Therefore, the FERC's expressed concerns about market power have now been fully addressed.

Second, on November 7, the Hearing Examiner in the Illinois merger proceeding issued his Proposed Order recommending that the merger be approved. (Docket No. 95-0551) The matter is now pending before the Illinois Commerce Commission. Since no party has opposed the Hearing Examiner's recommendation that the merger

be approved, UE expects that the Illinois Commission will issue an order approving the merger in due course.

These two orders confirm that the Stipulation pending before this Commission is reasonable and that the Commission should approve it. They also confirm that this merger presents no market power issues which the Commission needs to address at this time.

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

Respectfully submitted,  
UNION ELECTRIC COMPANY

By James J. Cook  
James J. Cook, MBE #22697  
Joseph H. Raybuck, MBE #31241

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 1996, a copy of the foregoing was served upon All Parties of Record.

Joseph H. Raybuck  
Joseph H. Raybuck

**MISSOURI PUBLIC SERVICE COMMISSION  
Case No. EM-96-149  
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