

Exhibit No.:  
Issues: Joint Dispatch  
Agreement;  
Resource Planning  
Witness: Craig D. Nelson  
Sponsoring Party: Union Electric  
Type of Exhibit: Rebuttal Testimony  
Case No.: EC-2002-1  
Date Testimony Prepared: May 10, 2002

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO. EC-2002-1**

**REBUTTAL TESTIMONY**

**OF**

**CRAIG D. NELSON**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY  
d/b/a AmerenUE**

**\*\* DENOTES HIGHLY CONFIDENTIAL INFORMATION \*\***

St. Louis, Missouri  
May, 2002

Exhibit No. 159  
Date 7/11/02 Case No. EC-2002-1  
Reporter TL

**NHC**

Exhibit No.:  
Issues: Joint Dispatch  
Agreement;  
Resource Planning  
Witness: Craig D. Nelson  
Sponsoring Party: Union Electric  
Type of Exhibit: Rebuttal Testimony  
Case No.: EC-2002-1  
Date Testimony Prepared: May 10, 2002

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO. EC-2002-1**

**REBUTTAL TESTIMONY**

**OF**

**CRAIG D. NELSON**

**ON**

**BEHALF OF**

**UNION ELECTRIC COMPANY  
d/b/a AmerenUE**

**\*\* DENOTES HIGHLY CONFIDENTIAL INFORMATION \*\***

**St. Louis, Missouri  
May, 2002**

**NHC**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THE JOINT DISPATCH AGREEMENT.....	4
	A. Overview .....	4
	B. Background on the JDA .....	5
	C. Staff's March 1 Testimony on the JDA .....	13
III.	REGULATORY UNCERTAINTY CONCERNING RESOURCE PLANNING.....	17
	A. Overview .....	17
	B. Background on Resource Planning.....	18
	C. The Company's Future Generation-Related Needs .....	20
IV.	CONCLUSION.....	24

## LIST OF ATTACHMENTS

Appendix A -- Executive Summary

Schedule 1 -- UE-CIPSCO Merger Order and Stipulation (Case No. EM-96-149)

Schedule 2 -- Genco Order and Stipulation (Case No. EA-2000-37)

Schedule 3 -- AmerenUE Forecast of Peak Demands (Highly Confidential)



1           **Q.     Please describe your qualifications.**

2           A.     I worked for Arthur Andersen & Co. from 1977 to 1979 when I joined  
3     Central Illinois Public Service Company as a Tax Accountant. In 1979 I was promoted to  
4     Income Tax Supervisor. I served in various tax and accounting positions until 1985 when  
5     I was appointed Assistant Treasurer. In 1989, I became Treasurer and Assistant  
6     Secretary, a position I held for seven years. In 1996, I was elected Vice President of  
7     Corporate Services. After Union Electric and CIPSCO merged, I was named Vice  
8     President, Merger Coordination for Ameren Services effective December 31, 1997. In  
9     1998, I assumed the additional responsibility of Vice President of Regulatory Planning.  
10    Effective June 1, 1999, I was appointed to my current position - Vice President,  
11    Corporate Planning.

12           **Q.     Please describe your duties and responsibilities as Vice President,**  
13    **Corporate Planing.**

14           A.     My duties and responsibilities include strategic and business planning,  
15    corporate development, corporate analysis and regulatory functions.

16           **Q.     What is the purpose of your testimony?**

17           A.     The purpose of my testimony is to respond to Commission Staff (Staff)  
18    witness Dr. Michael Proctor concerning the Joint Dispatch Agreement (JDA). I will also  
19    respond to Dr. Proctor on the issue of regulatory uncertainty. His testimony creates  
20    uncertainty for AmerenUE regarding the investment which the Company needs to make  
21    to reliably serve its customers and the regulatory treatment as to such investment. In the  
22    course of doing so, I will explain AmerenUE's resource planning process and also  
23    discuss how AmerenUE intends to meet its future generation capacity needs. In addition,

1 as part of my testimony, I have prepared an **Executive Summary** attached hereto as  
2 Appendix A.

3 **Q. Please summarize the conclusions reached in your testimony.**

4 A. The following are among the significant conclusions reached in my  
5 testimony:

6 1. Dr. Proctor has improperly changed the terms of the JDA without  
7 having obtained any regulatory approvals from the FERC or state commissions and in a  
8 way which discriminates against the parties to the JDA. Approved contracts should be  
9 followed and honored, not ignored. The Commission should therefore not accept the  
10 \$3.7 million adjustment which he proposed.

11 2. Through his testimony, Dr. Proctor creates regulatory uncertainty  
12 in the Company's effort to provide generation service to reliably serve its customers. As  
13 discussed below, AmerenUE has a strong need to add generating resources but the  
14 resource planning process will become more problematic and risky if the Commission  
15 adopts the recommendations of Dr. Proctor. His recommendations employ hindsight  
16 attacks on approved agreements such as the JDA and the power agreement for 2001  
17 between AmerenUE and Ameren Energy Marketing Company (AEM). Such hindsight  
18 attacks should not be allowed or they will create uncertainty as to the regulatory  
19 treatment to be afforded to the Company's resource planning decisions.

20 3. Through a comprehensive resource planning process, AmerenUE  
21 has identified a capacity shortfall in future years. Without additional resources,  
22 AmerenUE's generating capacity will fall short of meeting its customers' peak demand  
23 and providing an adequate reserve margin.

1                   4.       AmerenUE's strategy calls for additional generation capability  
2   achieved through a combination of power purchases, generation additions and upgrades  
3   to existing generation facilities.

4   **II.    THE JOINT DISPATCH AGREEMENT**

5                   A.    Overview

6  
7       **Q.    What has Dr. Proctor recommended regarding the JDA?**

8           A.    He contended that the JDA is deficient and that its terms should not be  
9   followed in setting revenue requirements for AmerenUE's Missouri retail customers. In  
10   particular, he contended that the JDA was not giving AmerenUE a fair share of the profits  
11   from off system sales. Based on this contention, he has recommended a net adjustment  
12   of \$3.7 million in additional revenues to AmerenUE from off system sales. (p. 15,  
13   Schedule 1-2)

14                   He also contended that the JDA was inappropriate in how it priced  
15   transfers of energy from one company to another. In particular, he contended that it is  
16   inappropriate for the JDA to exclude the opportunity cost of foregone sales to the short  
17   term wholesale electricity market in the price of such energy transfers. (p. 7) However,  
18   he did not recommend any adjustment for this at present.

19       **Q.    What is your overall response to Dr. Proctor's recommendations?**

20           A.    I strongly disagree with them. In recommending adjustments to the JDA  
21   for retail revenue requirements purposes, Dr. Proctor has unilaterally changed the terms  
22   of the contract based on what he believes is appropriate. As a result, Dr. Proctor has  
23   ignored Staff's recommendations in a prior case that any proposed changes to the JDA  
24   should first be submitted to the Commission and to the Federal Energy Regulatory

1 Commission (FERC) for approval. The Commission should reject his recommendations  
2 and should honor the JDA unless and until it has been changed by all appropriate  
3 regulatory agencies. The Commission should also reject the \$3.7 million in additional  
4 revenues to AmerenUE from wholesale sales which Dr. Proctor proposed for retail rate  
5 making purposes.

6 **B. Background on the JDA**

7 **Q. Please describe the JDA and the parties to it.**

8 A. The JDA is an agreement between AmerenUE and Ameren Energy  
9 Generating Company (AEG) which allocates to them the costs and benefits of jointly  
10 dispatching their generation in an economic manner as if they were one system.

11 AmerenCIPS is also a party to the JDA but only for transmission  
12 purposes, not for generation purposes. In addition to allocating generating costs and  
13 benefits to AmerenUE and AEG, the JDA allocates transmission revenues between  
14 AmerenUE and AmerenCIPS from the use of their transmission systems by customers  
15 under the Ameren Open Access Transmission Tariff, as authorized by the FERC.

16 Prior to the creation of AEG in May of 2000, CIPS was a party to the JDA  
17 for generation purposes as well. However, in May of that year CIPS transferred its  
18 generating units to AEG and AEG took over CIPS' role as the generating party to the  
19 JDA along with UE. Thus, the JDA was amended in 2000, with the necessary regulatory  
20 approvals, to reflect the transfer of the CIPS generating units to AEG.

21 **Q. Please describe further what the JDA does.**

22 A. The JDA sets forth the conditions by which AmerenUE and AEG jointly  
23 dispatch their generating units, and also their power purchases from other systems, to



1 meet the joint load of all of AmerenUE's and AEG's customers. This means that the  
2 generating units of AmerenUE and AEG are dispatched without regard to which  
3 company owns the units, but rather on the basis of which unit or competitive purchase  
4 option (known as "Off-System Purchases") offers the lowest incremental cost for the next  
5 increment of load. This ensures that each company will have lower energy costs through  
6 joint dispatch than they would have operating separately.

7 **Q. Please discuss the history behind the JDA.**

8 A. The JDA began with the merger of AmerenUE and CIPSCO. In  
9 regulatory proceedings before the Missouri Public Service Commission (Commission)  
10 and other regulatory agencies, AmerenUE and AmerenCIPS proposed to enter into the  
11 JDA as a way of obtaining merger savings. As I discuss below, the JDA has in fact  
12 resulted in savings to AmerenUE since December 31, 1997 when the UE-CIPSCO  
13 merger took effect.

14 UE witness Maureen Borkowski submitted testimony to the Commission  
15 in Case No. EM-96-149 in which she identified \$74 million in savings from the JDA over  
16 a ten year period (1997-2006) through reduced energy costs on the UE and CIPS systems.  
17 (p. 5) UE and CIPS submitted similar testimony and positions to the FERC, the  
18 Securities and Exchange Commission (SEC) and also to the Illinois Commerce  
19 Commission (ICC) in support of the requests made to those agencies to approve the  
20 merger of UE and CIPSCO.

21 After UE and CIPSCO had obtained approvals from the Commission and  
22 the other agencies listed above, the two entities merged to become Ameren Corporation  
23 (Ameren) as of December 31, 1997. The JDA commenced on that date.

1           **Q.     Please discuss the merger proceeding before the Commission insofar**  
2           **as it related to the JDA.**

3           A.     The JDA was one of the important ways for AmerenUE and CIPSCO to  
4           obtain merger related savings. As referenced above, the Company presented evidence in  
5           Case No. EM-96-149 estimating \$74 million of merger savings due to the JDA over a ten  
6           year period. Prior to the merger, AmerenUE and AmerenCIPS operated separate control  
7           areas. After the merger, AmerenUE and AmerenCIPS would operate as a single control  
8           area. Ms. Borkowski generally explained the reason for the savings as follows:

9                     The operation of a single control area will ensure that  
10                    the companies will capture the maximum economic  
11                    benefit of joint dispatch and the efficiency that joint  
12                    operation provides. The generating units will be  
13                    dispatched without regard to which company owns the  
14                    units, but rather, on the basis of which unit or  
15                    competitive purchase option, offers the lowest  
16                    incremental cost for the next increment of load. Each  
17                    company will, therefore, have lower energy costs  
18                    through joint dispatch than they would have operating  
19                    separately. (p. 7)

20  
21           **Q.     Did Staff submit any testimony in Case No. EM-96-149?**

22  
23           A.     Yes. Staff witness Tom Lin submitted testimony estimating that the  
24           savings from the JDA would be approximately \$91 million over the same ten year period.  
25           (p. 10) Staff witness Dan Beck also submitted testimony on this topic. Mr. Beck  
26           discussed how the JDA would assign costs, benefits, and revenues to AmerenUE and  
27           AmerenCIPS through a process called "After-the-Fact-Resource Allocation". This is  
28           defined in the JDA as the method for assigning the generating resources of AmerenUE  
29           and AmerenCIPS and their Off-System Purchases to each Party's Load Requirements and  
30           to their Off-System Sales. (Section 1.01; Beck testimony, p. 18) Mr. Beck then pointed

1 out that it was important to understand that the goal of the After-the-Fact Resource  
2 Allocation is to determine the revenue adjustments associated with the terms "System  
3 Energy Transfer" and "Off-System Sales Margin". (p. 18) These terms are defined as  
4 follows:

5 System Energy Transfer shall mean the transfer of  
6 electric energy from one Party's Generating Resources  
7 to the other Generating Party to serve the Other  
8 Generating Party's Load Requirements. (Section 1.20)

9  
10 Off-System Sales Margin shall mean the difference  
11 between the energy revenue collected from Off-System  
12 Sales and the energy cost of providing such sales,  
13 assigned by the After-the-Fact-Resource Allocation.  
14

15 I would note that in his testimony Dr. Proctor referred to the margin  
16 discussed above as profit, or profit margin, to be allocated between AmerenUE and AEG.

17 **Q. Does the JDA indicate how a System Energy Transfer is priced?**

18 A. Yes, it is priced at incremental costs. In particular, Service Schedule A to  
19 the JDA provides as follows: "Charges for System Energy Transfer shall be the  
20 Incremental Cost of the Generating Resources supplying the energy." (Paragraph A3—  
21 Compensation) Section 1.10 provides a definition of Incremental costs as being costs  
22 incurred to serve an incremental amount of energy, and then lists several kinds of costs as  
23 examples.

24 **Q. Did the pricing of a System Energy Transfer change when the JDA**  
25 **was amended in 2000?**

26 A. No. There were no changes made to Schedule A, and so incremental costs  
27 would still apply.

1           **Q.     Does the JDA indicate how the Off-System Sales Margin would be**  
2           **allocated between AmerenUE and AEG?**

3           A.     Yes. The Off-System Sales Margin is allocated to AmerenUE and to AEG  
4           based on their relative "Load Requirements". This is defined in Section 1.11 as the  
5           "demand and energy which each Generating Party is obligated to serve pursuant to  
6           service territory commitments and requirements agreements". Service Schedule B sets  
7           forth the formula for calculating, and then distributing to AmerenUE and AEG, the Off-  
8           System Sales Margin. (Paragraph B3—Distribution Formula)

9           **Q.     Did the formula for distributing the Off-System Sales Margin change**  
10          **when the JDA was amended in 2000?**

11          A.     No it did not. Paragraph B3 of Service Schedule B maintained the  
12          formula set forth in the original JDA under which the distribution ratio for the Off-  
13          System Sales Margin for each Generating Party would be each party's "Net Output  
14          divided by the sum of the Parties' Net Output". Net Output is defined in Section 1.12 as  
15          "each Generating Party's monthly total of the energy delivered for Load Requirements".

16          **Q.     Turning your attention back to the merger proceeding before the**  
17          **Missouri Commission, what concerns if any did the Staff express about the JDA?**

18          A.     Mr. Beck stated that although Staff agreed with many of the principles  
19          contained in the JDA, Staff was concerned "that these are only principles and ultimately  
20          do not guarantee prudence or fairness for UE's customers". (p. 25) He therefore  
21          recommended several conditions "which the Commission should require for approval of  
22          the JDA". (p. 25) None of these conditions related to the System Energy Transfer or to  
23          the Off-System Sales Margin. Later, through negotiations UE and Staff were able to

1 address Mr. Beck's recommendations and reflect them, with some modifications, in a  
2 Unanimous Stipulation and Agreement (Merger Stipulation) dated July 12, 1996. The  
3 Merger Stipulation recommended that the Commission approve the UE-CIPSCO merger  
4 as UE had proposed it except where noted in the Merger Stipulation. (p. 1) Attached as  
5 Schedule 1 to my testimony is a copy of the Merger Stipulation together with the  
6 Commission's order of February 21, 1997 approving it.

7 **Q. Was the JDA approved by the other regulatory agencies which**  
8 **reviewed the merger?**

9 A. Yes, in particular by the FERC, the ICC and the SEC.

10 **Q. Please discuss what has happened with the JDA since the merger**  
11 **began.**

12 A. The JDA has been modified to reflect the transfer of CIPS' generating  
13 units to AEG as contemplated under, and encouraged by, Illinois' restructuring  
14 legislation.

15 **Q. Please explain the Illinois legislation.**

16 A. In December of 1997 Illinois adopted legislation designed to deregulate  
17 the generation portion of the electric utility business by phasing in retail competition for  
18 electricity and retail choice of suppliers. The legislation also was designed to allow for a  
19 restructuring of the electric utility industry in response to such competition. In particular,  
20 the legislation allowed electric utilities to transfer their generating units to an affiliate in  
21 order to allow them to become more effective competitors in the developing marketplace,  
22 and to allow the utilities to focus on their regulated businesses.

1                   In July of 1999 CIPS and UE made filings with the ICC, FERC and with  
2   this Commission to obtain the regulatory approvals needed for the transfer of CIPS'  
3   generating units to an affiliate. As part of that filing, CIPS and UE proposed changes to  
4   the JDA to substitute AEG for CIPS as a generating party and to make other minor  
5   changes to reflect the transfer of the CIPS generating units.

6           **Q.     Please discuss the proceeding before the Commission.**

7           A.     On July 29, 1999 UE filed a request for findings by the Commission to  
8   authorize the transfer of the CIPS generating units to an affiliate designated at the time as  
9   "Genco", which was later named AEG. (Case No. EA-2000-37) After extensive  
10   discussions and negotiations, the Company entered into a Unanimous Stipulation and  
11   Agreement (Genco Stipulation) with Staff and the Office of the Public Counsel (OPC).  
12   The Genco Stipulation was later approved by the Commission in an order dated January  
13   13, 2000. Attached as Schedule 2 to my testimony is the Order of January 13, 2000 and  
14   the Genco Stipulation which the Commission approved.

15          **Q.     Were you involved in this proceeding?**

16          A.     Yes. I was directly involved in this proceeding and the Company's filings  
17   were made under my supervision and direction.

18          **Q.     Did the Genco Stipulation address the JDA?**

19          A.     Yes. The Genco Stipulation addressed the JDA as follows (at pp. 9-10):

20                   AmerenUE agrees that all substantive proposed changes  
21                   to the JDA between AmerenUE, AmerenCIPS and  
22                   Genco shall be submitted to the Missouri Commission  
23                   for approval. Non-substantive changes to the JDA do  
24                   not need Missouri Commission authorization, but all  
25                   proposed changes to the JDA must be submitted to the  
26                   Staff and the OPC for their determination whether the  
27                   proposed changes are substantive. Proposed changes to

1           the JDA which either the Staff or the OPC deem to be  
2           substantive must be submitted to the Commission for  
3           approval. .... AmerenUE's filing with the  
4           Commission for Commission approval shall occur prior  
5           to or concurrent with AmerenUE's analogous filing for  
6           approval with the FERC, which FERC filing shall  
7           include notification that approval of the Missouri  
8           Commission has been obtained or is being sought  
9           contemporaneously. ....  
10

11           **Q.     What is your understanding of the language quoted above?**

12           A.     I believe that the language is clear in requiring AmerenUE to submit for  
13           approval by the Commission all substantive changes to the JDA at about the same time  
14           the Company would file for approval with the FERC. The Staff and OPC has the right to  
15           determine what changes were substantive.

16           **Q.     Was it your understanding that this language allowed either the Staff**  
17           **or the OPC to ignore or change the JDA without the need for any regulatory**  
18           **approval?**

19           A.     No.

20           **Q.     As a matter of policy and fairness, do you believe that the Staff should**  
21           **be allowed to ignore or change the JDA absent obtaining regulatory approval for**  
22           **those items?**

23           A.     Absolutely not. Parties should not be encouraged to disregard an  
24           approved contract. Contracts should be followed until they terminate according to their  
25           terms or until they are changed after all regulatory approvals are obtained.

26           **Q.     Putting aside questions of policy and fairness, do you believe there is**  
27           **merit to Dr. Proctor's contentions that the JDA is deficient in its treatment of the**  
28           **Off-System Sales Margin and in its treatment of System Energy Transfers?**

1           A.     No I do not. I address this in the next section in the course of discussing  
2 Dr. Proctor's specific contentions.

3                   **C.     Staff's March 1, 2002 Testimony on the JDA**

4           **Q.     Please discuss your understanding of Dr. Proctor's testimony**  
5 **concerning the Allocation of the Off-System Sales Margin under the JDA.**

6           A.     As discussed above, Service Schedule B provides that the Off-System  
7 Sales Margin is allocated to AmerenUE and to AEG based on their relative Load  
8 Requirements. In his testimony, Dr. Proctor contended that using Load Requirements to  
9 allocate profits from Off-System Sales is not a just and reasonable allocation method. In  
10 his view, allocating profits from such sales in proportion to Load Requirements makes  
11 sense only when the energy dispatched from the resources of each company are balanced  
12 relative to its Load Requirements. In his opinion, an imbalanced situation currently  
13 exists with the JDA. (pp. 9-10) Instead of using Load Requirements, he would allocate  
14 the Off-System Sales Margin based on the "Resource Output" of each Generating Party.

15           **Q.     What is your response to Dr. Proctor's contentions?**

16           A.     I disagree with them for several reasons. First, as a matter of procedure,  
17 his contentions are inconsistent with Staff's prior review of the JDA in the Merger and  
18 Genco proceedings. On both of those occasions, the FERC and other agencies approved  
19 the JDA and implicitly found that the use of Load Requirements was a just and  
20 reasonable method for allocating the Off-System Sales Margin. Staff should not be  
21 allowed now to ignore a portion of the contract that it reviewed without objection on two  
22 prior occasions in proceedings before the Commission and the FERC.



1                   At his deposition on April 17, Dr. Proctor indicated that he was mistaken  
2 about the definition of "Net Output" in Service Schedule B, and that he realized in the  
3 fall of 2001 that it did not mean Resource Output, as he used that term in his testimony.  
4 (Deposition at pp. 64-5) This mistake is unfortunate, but it should not support a  
5 recommendation that would harm the Company, especially given the Staff's earlier  
6 opportunities to object to the JDA.

7                   Also, as a matter of procedure and substance, Staff witness Dan Beck in  
8 his testimony in the Merger proceeding found the allocation methods in the JDA to be  
9 reasonable. In particular, he specifically reviewed the proposed "After-the-Fact Resource  
10 Allocation" process set forth in the JDA, and the costs, benefits, and revenues that are  
11 allocated through this process. This included the allocation of the benefits and revenues  
12 from the Off-System Sales Margin, which he specifically mentioned as follows:

13                   [I]t is important to understand that the goal of this  
14 After-the-Fact Resource Allocation process is to  
15 determine the revenue adjustments associated with the  
16 terms System Energy Transfer and Off-System Sales  
17 Margin. (p. 18)  
18

19 Mr. Beck specifically concluded that the After-the-Fact Resource Allocation process as  
20 outlined in the JDA provided for a reasonable allocation, provided that 1) generation is  
21 simply dispatched based on incremental cost, 2) assuming that all costs are prudently  
22 incurred, and 3) assuming that the After-the-Fact principles of the JDA were followed.  
23 (p. 19) AmerenUE has followed Mr. Beck's 3 conditions in a manner consistent with his  
24 testimony. As Mr. Beck acknowledged, no utility is dispatched simply on an incremental  
25 cost basis. Instead, it is constrained by transmission and generating conditions such as  
26 minimum loading requirements, unit startup costs and transmission voltage support.

1 (p. 21) Thus, the Staff concluded in the merger proceeding that the allocation of the Off-  
2 System Sales Margin in the JDA was reasonable. To treat the JDA otherwise in the  
3 present case is clearly a hindsight attack by Staff. This hindsight change of position is  
4 harmful to AmerenUE.

5 **Q. Please discuss your understanding of Dr. Proctor's testimony**  
6 **concerning the pricing of System Energy Transfers.**

7 A. Dr. Proctor recommended that a System Energy Transfer be priced so as  
8 to include the opportunity cost of foregone sales to the short-term wholesale electricity  
9 market, so that, ideally, both transfers from AmerenUE to AEG and transfers from AEG  
10 to AmerenUE would be at market prices. (March 1 Testimony, p. 7; Deposition, p. 66)  
11 However, as he acknowledged, it is difficult to do so now since an hourly transparent  
12 market for electricity does not yet exist. As a result, in the interim, he did not  
13 recommend any changes to Service Schedule A, which prices a System Energy Transfer  
14 at the seller's incremental cost. (Deposition, pp. 68, 77 ) If and when an hourly  
15 transparent market evolves, however, he would apparently recommend a change to  
16 Schedule A assuming that the JDA was still in existence.

17 **Q. What is your response to Dr. Proctor's recommendations on the**  
18 **System Energy Transfer?**

19 A. I disagree with them. As stated before, as a matter of procedure and  
20 fairness, I believe that the JDA should be followed until either it terminates or changes  
21 are made to it with the approval of all applicable regulators.

22 Second, I believe that the use of incremental costs has been, and will  
23 continue to be, an appropriate way to price the System Energy Transfers. It creates

1 benefits to AmerenUE in that it allows AmerenUE to buy energy from AEG at  
2 incremental cost. It therefore gives AmerenUE a hedge against market prices when they  
3 are higher than incremental costs. As Dr. Proctor acknowledged at his deposition, this  
4 benefits AmerenUE when AEG's incremental costs are lower than market prices.  
5 (pp. 36-38)

6 **Q. Has the JDA as currently written produced benefits for AmerenUE**  
7 **and its customers?**

8 A. Yes. Since January of 1998, AmerenUE and its customers have benefited  
9 from the JDA in several ways. As discussed above, the JDA allows AmerenUE to obtain  
10 energy at incremental costs from AEG through a System Energy Transfer. When market  
11 prices are high, this benefits AmerenUE and allows it to hedge and protect itself against  
12 the market. Also, as Dr. Proctor acknowledged at his deposition, the JDA has benefited  
13 AmerenUE in terms of fuel cost savings and savings on Unit Commitment costs.  
14 (pp. 18-21) According to Staff witness Bender's analysis, the JDA has produced benefits  
15 to AmerenUE of around \$3-4 million per year. (Proctor deposition, pp. 29-30)

16 Further, the JDA has allowed Ameren to have one trading organization,  
17 instead of two separate trading organizations. Under the JDA, AmerenUE and AEG  
18 employ an Agent to coordinate the joint dispatch and Off-System Sales and Purchases.  
19 (JDA, Articles IV and V) That agent is Ameren Energy (AE). The JDA therefore allows  
20 AmerenUE to have one trading organization (AE) act for both AmerenUE and AEG, and  
21 avoids the need for AmerenUE to have its own separate trading organization with  
22 additional costs resulting from staffing a redundant organization. This was a potential for  
23 inefficiency which the Staff was concerned about in the Genco proceeding. (See Genco

1 Stipulation, p. 11) The JDA has therefore benefited AmerenUE by allowing it to avoid  
2 incurring costs for a separate trading organization.

3 As a result, I recommend that the Commission allow the JDA to continue  
4 as written unless and until changes to it are proposed to, and accepted by, all applicable  
5 regulatory agencies including the FERC.

6 **III. REGULATORY UNCERTAINTY CONCERNING RESOURCE**  
7 **PLANNING**

8  
9 **A. Overview**

10  
11 **Q. Please discuss the impact of Staff's recommendations on the**  
12 **Company's resource planning process.**

13 A. The Staff's recommendations in its March 1 testimony introduce a  
14 considerable amount of uncertainty concerning the future regulatory treatment of  
15 AmerenUE's resource planning process and the decisions resulting from that process. As  
16 I discuss below, the Company must make significant investments in generation  
17 infrastructure over the next ten years in order to execute its resource plan and provide  
18 reliable service to its customers. However, before the Company makes such investments  
19 it must have some reasonable expectation that prudently incurred expenses will be  
20 reflected in its rates to customers. Staff recommendations from Dr. Proctor which ignore  
21 portions of approved contracts, such as the JDA and the AEM-UE power contract for the  
22 summer of 2001, create uncertainty for the Company which undermines the resource  
23 planning process and inhibits the Company's ability to confidently provide for  
24 customers' needs.<sup>1</sup> In particular, there is uncertainty whether the Commission will  
25 ultimately adopt proposals which do not honor approved contracts. This frustrates the

1 ability of the Company to make a decision based on what it believes to be the appropriate  
2 criteria at the time the decision is made. All of this makes it more problematic and  
3 introduces unnecessary additional risk for the Company in providing reliable service to  
4 its customers. As a result, this increased uncertainty compromises the resource planning  
5 process and harms both the Company and its customers. Further, Staff's recommended  
6 \$3.7 million adjustment to the JDA is punitive in taking away necessary cash resources  
7 from the Company.

8 In the testimony which follows, I discuss the Company's generation  
9 related resource planning needs and the process generally required to satisfy such needs.

10 **B. Background on Resource Planning**

11  
12 **Q. What is resource planning?**

13 A. The resource planning process identifies future system requirements and  
14 develops a flexible resource strategy to meet those requirements. Through its resource  
15 planning, AmerenUE seeks to develop a plan that provides its customers with highly  
16 reliable generation service at the lowest possible cost.

17 **Q. Please describe the process.**

18 A. The resource planning process for a vertically integrated electric utility  
19 such as AmerenUE begins with the identification of resource needs. The Company must  
20 forecast load, and identify the capacity required to meet it. It must then screen supply  
21 and demand options to determine the least costly manner of doing so. AmerenUE  
22 performs integrated resource planning modeling on various combinations of options, and  
23 also performs uncertainty analysis on the various scenarios. This process yields a

---

<sup>1</sup> In addition to the JDA, Dr. Proctor would also ignore the approvals given to the AEM-UE contract for summer 2001. This is addressed in the Rebuttal Testimony of AmerenUE witness Voytas.

1 recommended plan that has been tested for many variables and can adapt to many  
2 potential scenarios. Finally, to ensure that we recommend the most economic plan, we  
3 select the alternatives which minimize the present value of revenue requirements.

4 **Q. What is the AmerenUE Forecast of Peak Demands and System**  
5 **Capability at Time of Peak and what are its major components?**

6 A. The AmerenUE Forecast of Peak Demands and System Capability at Time  
7 of Peak is one input used during the resource planning process. Schedule 3, attached to  
8 my testimony, provides the outlook for AmerenUE's peak demand and peak system  
9 capability for the ten-year period from 2002 -2011. The major components of the forecast  
10 are the demand at time of the system peak, installed generation capability, reserve  
11 margins, existing purchases and new construction/unidentified purchases. Schedule 3  
12 contains information that the Company views as Highly Confidential, consisting of market  
13 specific information about the Company's resource planning needs and its ability to sell  
14 power in the marketplace. If this information were disclosed to the public it would  
15 compromise the Company's ability to buy or sell electricity at reasonable prices, and  
16 therefore would be harmful to Missouri retail customers.

17 **Q. How is demand at time of system peak forecasted?**

18 A. In forecasting future demand AmerenUE considers a variety of historical  
19 and economic variables relating to the use of electricity in its service territory. Variables  
20 include monthly econometric data, hourly weather data, and historical hourly load data.  
21 The starting point for the 10-year peak demand forecast is the weather normalized peak  
22 demand of the current year. Weather-normalized peak demand removes undue weather  
23 influences in the historical observations and assumes normal weather patterns in the

1 forecast period. The methodology for determining the weather normalized peak demand  
2 for the current year is specified by Mid-America Interconnected Network (MAIN) Guide  
3 No. 4.

4 **Q. What is installed generation capability and how is it determined for**  
5 **the forecast of system capability at time of peak from 2002 - 2011?**

6 A. AmerenUE's total installed generation capability is determined by totaling  
7 the capability of all generation facilities owned by AmerenUE including nuclear, fossil  
8 steam, combustion turbine, diesel generation, hydro plant and pumped storage along with  
9 approved generation upgrades and additions to AmerenUE's capability through the ten-  
10 year period. This total is then reduced by installed station service (electricity used to  
11 operate the plant). The result is AmerenUE's installed generation capacity.

12 **C. The Company's Future Generation Related Needs**

13 **Q. What generation upgrades or additions are planned for AmerenUE?**

14 A. The following discussion includes Highly Confidential information. As  
15 discussed above regarding Schedule 3, the disclosure of this information would be  
16 harmful to the Company and its customers by compromising the Company's ability to  
17 buy and sell electricity at reasonable prices.

18 As explained in Garry L. Randolph's rebuttal testimony, AmerenUE will  
19 be adding **\*\* \_\_\_\_ \*\*** megawatts ("MW") of generation capability through upgrades and  
20 additions by 2006. Units at the Callaway, Labadie, Rush Island, Osage, Keokuk,  
21 Meramec, Sioux and Venice generating facilities are scheduled for upgrades totaling  
22 **\*\* \_\_\_\_ \*\*** MWs. Gas-fired combustion turbine generators are currently under construction

**NHC**

1 at Venice and Peno Creek. When completed in June 2002, these units will add \*\* \_\_\_\_ \*\*  
2 MWs to AmerenUE's generating capability.

3 **Q. Does AmerenUE have sufficient generation capability to meet**  
4 **customer demand and provide the appropriate planning reserve margin?**

5 A. No. AmerenUE forecasts shortfalls starting at \*\* \_\_\_\_ \*\* MWs in 2003 and  
6 reaching \*\* \_\_\_\_ \*\* MWs by 2011. In fact, in 2001 and 2002 AmerenUE had to purchase  
7 additional capability in the market to meet customer demand. The forecast shows that in  
8 order to provide for its Missouri and Illinois customers and maintain the necessary  
9 \*\* \_\_\_\_ \*\*% reserve through 2011, AmerenUE must secure additional power and energy  
10 supplies beyond its current generation capacity. The forecast shortfalls will have to be  
11 met by the purchase of power and energy at market prices, the addition of new  
12 AmerenUE generation capacity, the upgrade of existing facilities or some combination  
13 thereof.

14 **Q. How does AmerenUE determine the appropriate combination of**  
15 **purchases, upgrades and new generation capacity additions necessary to meet**  
16 **generating capacity needs?**

17 A. AmerenUE periodically conducts an Asset Mix Optimization Study to  
18 determine the least expensive way of meeting its generating capacity needs. AmerenUE  
19 is now in the process of conducting an Asset Mix Optimization Study to provide  
20 AmerenUE's load for the years 2003 through 2011.

21 **Q. What are the major assumptions used in the Asset Mix Optimization**  
22 **Study?**

23 A. The major assumptions used in the Asset Mix Optimization Study are:

**NHC**



1                   1.       The JDA will remain in place for the duration of the study period.

2                   2.       Ameren Energy Resources' (AER) generating portfolio will remain  
3 as it is today for the duration of the study. In addition, AER will make capacity  
4 and energy sales going forward to maintain an \*\* \_\_\*\*% reserve margin in all  
5 years of the study.

6                   3.       AmerenUE's capacity needs to maintain an \*\* \_\_\*\*% reserve  
7 margin are \*\* \_\_\*\* MWs in 2003 growing to \*\* \_\_\*\* MWs in 2011.

8                   4.       AmerenUE can acquire its required capacity through capacity  
9 purchases, by building or purchasing generating facilities, by upgrading existing  
10 facilities or some combination of the three. The build options include a variety of  
11 generation technologies including coal, simple cycle combustion turbines,  
12 combined cycle combustion turbines and nuclear. AmerenUE also focuses on  
13 customer demand reduction initiatives to reduce the amount new generation  
14 needed to meet customer loads.

15                   5.       AmerenUE can import up to \*\* \_\_\*\* MWs of capacity and  
16 energy with transmission upgrades totaling approximately \$\*\* \_\_\*\* million. The  
17 next \*\* \_\_\*\* MWs of import capability will require an additional \$\*\* \_\_\*\*  
18 million of transmission upgrades since more expensive modifications are  
19 necessary.

20           **Q.       What model is Ameren using for the Asset Mix Optimization Study?**

21           A.       Ameren is conducting the Asset Mix Optimization Study with a resource  
22 planning model called the Multi-Objective Integrated Decision Analysis System  
23 (MIDAS). The model was developed by M.S. Gerber & Associates and initially was

**NHC**

1 released in 1987. MIDAS has become an industry standard has been used in numerous  
2 regulatory proceedings throughout the country. The model analyzes the financial impacts  
3 of various resource combinations to meet AmerenUE's specific load requirements

4 **Q. What are the results of the Asset Mix Optimization Study?**

5 A. The study is not yet complete. However, preliminary results show the  
6 appropriate generation mix to include \*\* \_\_\_\_ \*\* MWs of capacity purchases along with  
7 the purchase and/or construction of a combination of combined cycle and simple cycle  
8 combustion turbine generating facilities.

9 **Q. What role does transmission play in determining the least expensive**  
10 **alternatives for AmerenUE?**

11 A. The lack of available transmission capacity limits AmerenUE's ability to  
12 purchase power from other power producers when it is not capable of generating  
13 sufficient electricity for its customers.

14 **Q. How does AmerenUE plan to meet future generation needs?**

15 A. AmerenUE intends to meet future generation needs through a combination  
16 of purchased power and energy, the addition of new generation capacity, and the  
17 upgrading of existing facilities.

18 **Q. How is AmerenUE increasing its generation capacity?**

19 A. As explained earlier, AmerenUE is adding \*\* \_\_\_\_ \*\* MWs of generation  
20 capability through upgrades and additions by 2006. This includes \*\* \_\_\_\_ \*\* MWs in  
21 upgrades and \*\* \_\_\_\_ \*\* MWs of new generation. Also, Mr. Voytas in his Rebuttal  
22 testimony discusses how the Company has purchased power in 2001 and 2002 to meet  
23 customer needs.

**NHC**

1     **IV.    CONCLUSION**

2           **Q.    Please summarize the impact of the resource planning process on**  
3     **AmerenUE's ability to meet its customers' electricity needs.**

4           A.    The resource planning process is essential in determining the future needs  
5     of AmerenUE's customers and in crafting a plan to meet those needs. Without proper  
6     planning the reliability of the future electricity supply would be threatened. The nation,  
7     Missouri and AmerenUE all face a difficult challenge in ensuring an adequate, reliable,  
8     secure and economically viable source of electricity for the future. Planning to meet that  
9     need is essential.

10           The resource planning process enables AmerenUE to factor in many  
11     variables that may impact future generation capability. Generation capability must be  
12     provided at the lowest possible cost. However, lowest possible cost includes evaluations  
13     of many factors, particularly when AmerenUE must purchase power from another utility  
14     or wholesale entity. In planning for future generation capability, AmerenUE must  
15     evaluate potential sources of purchased power for availability, reliability, level of  
16     exposure to market prices acceptable to AmerenUE's customers and, after  
17     September 11th, for security issues related to energy supply. The recent bankruptcy  
18     filing of Enron also underscores the critical importance of evaluating the credit  
19     worthiness of potential vendors. The results of the resource planning process moreover  
20     emphasize the need for adequate reserve margins to ensure the reliability of the power  
21     supply.

22           AmerenUE's resource planning process conducts a thorough evaluation to  
23     develop a comprehensive strategy to meet its customers' energy needs and expectations

1 for the future. The resulting strategy calls for additional generation capability achieved  
2 through a combination of resources including customer demand reduction initiatives,  
3 power purchases, new generation additions and upgrades to existing generation facilities.

4 **Q. Please summarize how regulatory uncertainty compromises and**  
5 **complicates the resource planning process.**

6 A. When a utility makes a decision about a new resource, the reasonableness  
7 of that decision should be determined based on the conditions at the time the decision  
8 was made. At his deposition, Dr. Proctor acknowledged that this is the appropriate  
9 standard of review. He further acknowledged that hindsight review would not be  
10 appropriate. (Deposition, pp. 167-168)

11 However, Dr. Proctor's recommendations on the JDA and the AEM-UE  
12 power contract for 2001 constitute improper hindsight attacks on these approved  
13 agreements. If allowed by the Commission, this after the fact review would compromise  
14 the Company's resource planning process and complicate it substantially. In particular, it  
15 frustrates the ability of the Company to make decisions based on what it believes to be  
16 the appropriate criteria at the time the decision is made. This regulatory uncertainty  
17 makes it more difficult for the Company to discharge its resource planning decisions in  
18 an efficient and reasonable way for its customers. The Commission should therefore  
19 reject any hindsight review of such decisions, as Staff has done through the testimony of  
20 Dr. Proctor.

21 **Q. Does this conclude your testimony?**

22 A. Yes it does.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service  
Commission, )

Complainant, )

vs. )

Case No. EC-2002-1

Union Electric Company, d/b/a )

AmerenUE, )

Respondent. )

**AFFIDAVIT OF CRAIG D. NELSON**

STATE OF MISSOURI )

) ss

CITY OF ST. LOUIS )

Craig D. Nelson, being first duly sworn on his oath, states:

1. My name is Craig D. Nelson. I work in St. Louis, Missouri and I am employed by Ameren as Vice President Corporate Planning.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Union Electric Company d/b/a AmerenUE consisting of 25 pages, Appendix A and Schedules 1 through 3, all of which has been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

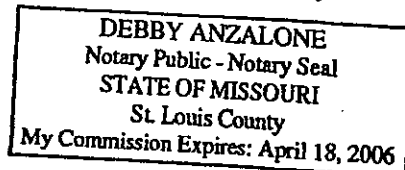


Craig D. Nelson

Subscribed and sworn to before me this 3<sup>rd</sup> day of May, 2002.

  
Notary Public

My commission expires:



## EXECUTIVE SUMMARY

**Craig D. Nelson**

*Vice President -- Corporate Planning of Ameren Services,  
responsible for strategic and business planning, corporate  
development, corporate analysis and regulatory functions*

Staff witness Michael Proctor's testimony concerning the Joint Dispatch Agreement (JDA) and AmerenUE's resource planning process creates significant uncertainty for AmerenUE regarding the billions of dollars in investment needed to provide electric generation to reliably serve our customers. The proposed regulatory treatment to be given to such investments is brought into serious question.

Regarding the JDA, Staff has improperly changed the terms of this Commission approved agreement. Staff has not obtained any regulatory approvals from federal or state commissions for these changes. Approved contracts should be followed and honored, not ignored. Further, Staff's testimony is inconsistent with Staff's acceptance of the JDA in two earlier proceedings before the Commission, involving the UE-CIPSCO merger and the proceeding to transfer generating units of AmerenCIPS to a new Generating Company. The effect of Dr. Proctor's testimony is to presume \$3.7 million in additional revenues to AmerenUE from wholesale sales. The Commission should reject this proposal because it improperly ignores the existing allocation of wholesale sales to UE under the JDA as previously approved by the FERC and by this Commission.

Regarding the resource planning process, AmerenUE has a strong need to add generating resources in the coming years. Without such additional resources, the

Company's generating capacity will fall short of meeting its customers' peak demand and an adequate reserve margin. In response to those customer needs, AmerenUE's strategy calls for additional generation capability achieved through a combination of resources, including power purchases, generation additions and upgrades to existing generation facilities. However, the resource planning process will become very problematic and unnecessarily risky if the Commission adopts Staff's recommendations regarding the JDA and the AEM-UE power agreement for the summer of 2001. Staff's hindsight attacks on these two agreements should not be allowed. They will create heightened regulatory uncertainty that will make it extremely difficult for the Company to make resource planning decisions in an efficient and reasonable way for its customers.

**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 ) Case No. EM-96-149  
Agreements to Central Illinois Public Service )  
Company; and (3) in Connection Therewith, Certain )  
Other Related Transactions. )

---

**REPORT AND ORDER**

---

**Issue Date:** February 21, 1997

**Effective Date:** March 4, 1997

**SCHEDULE 1-1**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100

**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 ) Case No. EM-96-149  
Agreements to Central Illinois Public Service )  
Company; and (3) in Connection Therewith, Certain )  
Other Related Transactions. )  
)

**APPEARANCES**

James J. Cook, Associate General Counsel, Joseph H. Raybuck, Attorney, and William J. Niehoff, Attorney, Union Electric Company, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Richard W. French, French & Stewart Law Offices, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Trigen-St. Louis Energy Corporation.

Sondra B. Morgan and James C. Swearngen, Brydon, Swearngen & England, P.C., Post Office Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102, for The Empire District Electric Company and UtiliCorp United Inc.

Sondra B. Morgan and Gary W. Duffy, Brydon, Swearngen & England, P.C., Post Office Box 456, 312 East Capitol Avenue, Jefferson City, Missouri 65102, for Missouri Gas Energy, a division of Southern Union Company.

Thomas M. Byrne, Associate Counsel, Laclede Gas Company, 720 Olive Street, St. Louis, Missouri 63101, for Laclede Gas Company.

Robert C. Johnson, Diana M. Schmidt, and Michael R. Annis, Peper, Martin, Jensen, Maichel and Hetlage, 720 Olive Street, 24th Floor, St. Louis, Missouri 63101, for: Anheuser-Busch, Inc., Barnes and Jewish Hospitals, Chrysler Corporation, Emerson Electric Company, Hussmann Refrigeration, Lincoln Industrial, MEMC Electronic Materials, Mallinckrodt, Inc., McDonnell Douglas Corporation, Monsanto Company, and The Doe Run Company (the Missouri Industrial Energy Consumers).

James M. Fischer, Attorney at Law, 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101,

and

William G. Riggins, Staff Attorney, Kansas City Power & Light Company, 1201 Walnut Street, Post Office Box 418679, Kansas City, Missouri 64141, for Kansas City Power & Light Company.

Paul S. DeFord, Lathrop & Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108, for Illinois Power Company.

Marilyn S. Teitelbaum, Schuchat, Cook & Werner, 1221 Locust Street, Second Floor, St. Louis, Missouri 63103, for Local 2, Local 309, Local 702 and Local 1455, International Brotherhood of Electrical Workers, AFL-CIO.

Daryl R. Hylton, Assistant Attorney General, and Michelle Smith, Assistant Attorney General, Office of the Attorney General, Post Office Box 899, Jefferson City, Missouri 65102, for the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, Attorney General.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Steven Dottheim, Acting General Counsel, Roger W. Steiner, Assistant General Counsel, and Aisha Ginwalla, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

#### ADMINISTRATIVE

LAW JUDGE: Joseph A. Derque, III.

### REPORT AND ORDER

#### Procedural History

On November 7, 1995, Union Electric Company (UE) filed an application with the Missouri Public Service Commission (Commission) requesting an order from the Commission authorizing certain merger transactions, the transfer of certain assets, real estate, leased property, easements and contractual agreements, and authorizing certain other transactions, all to effectuate a proposed merger between UE and CIPSCO Incorporated (CIPSCO).

UE is a Missouri corporation engaged in the provision of energy services to the public in the state of Missouri and regulated by the Commission as a public utility. CIPSCO is an Illinois corporation and the parent corporation of its wholly owned subsidiary, Central Illinois Public

Service Company (CIPS). CIPS is engaged in the business of providing energy services in the state of Illinois and, as such, is a regulated public utility in that state.

In addition, two other corporations have been formed for the purpose of facilitating the proposed merger, those being Arch Merger, Inc. (Arch) and Ameren Corporation (Ameren). The corporate structure resulting from the proposed merger will include Ameren as a federally regulated utility holding company, with UE as a Missouri subsidiary operating company and CIPS and CIPSCO as other subsidiaries. The merger transactions are intended to result in a tax-free exchange.

In addition to the Staff of the Commission (Staff), UE, and the Office of the Public Counsel (OPC), the following parties were also granted intervention: the Missouri Industrial Energy Consumers (MIEC)<sup>1</sup>; Laclede Gas Company (LGC); The Empire District Electric Company (EDE); Locals 2, 309, 702 and 1455 of the International Brotherhood of Electrical Workers, AFL-CIO (Unions); Kansas City Power & Light Company (KCPL); the State of Missouri ex rel. The Attorney General (State); Missouri Gas Energy, a division of Southern Union Company (MGE); Trigen-St. Louis Energy Corporation (Trigen); Illinois Power Company (IP); and UtiliCorp United Inc. (UtiliCorp).

---

<sup>1</sup>The MIEC is composed of the following: Anheuser-Busch, Inc., Barnes and Jewish Hospitals, Chrysler Corporation, Emerson Electric Company, Hussmann Refrigeration, Lincoln Industrial, MEMC Electronic Materials, Mallinckrodt, Inc., McDonnell Douglas Corporation, Monsanto Company, and The Doe Run Company.

## **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

### **A. Stipulation And Agreement**

On July 12, 1996, a Stipulation And Agreement was filed purporting to settle all issues raised by the parties and seeking Commission approval of the proposed transaction. This Stipulation And Agreement is appended to this Report And Order as Attachment 1 and incorporated herein by reference.

Various intervenors did not sign the proposed Stipulation And Agreement. Those parties were given the opportunity to exercise their due process right to compel an evidentiary hearing, but all chose not to do so. Those parties who are not signatories to the agreement are LGC, MIEC, IP, and the Unions. All have stated in filed documents that, while not signatories to the agreement, none wish to litigate any issue and none are opposed to Commission approval of the proposed stipulation. The Commission, therefore, in accordance with rule 4 CSR 240-2.115, will treat the Stipulation And Agreement as a unanimous stipulation and agreement.

The Stipulation And Agreement contains the following terms and conditions. In setting out this summary it is not the intent of the Commission to alter any terms and conditions therein.

The Stipulation And Agreement specifies that the proposed merger, as specified in the merger agreement, filed with the original application on November 7, 1995, should be approved by the Commission as not

detrimental to the public interest, subject to the conditions and modifications as set out in the remainder of the Stipulation And Agreement.

UE has agreed that it will not seek to recover the asserted merger premium of \$232 million in rates in any Missouri proceeding. The merger premium represents the portion of the purchase price that exceeds the current book value of the acquired company's assets or market value of the acquired company's stock. UE will, however, retain the right to state, in any future proceedings, alleged benefits of the merger. UE will forgo any additional specific adjustments to cost of service related to the merger savings or any claim to merger savings other than the adjustments to cost of service and claims to merger savings resulting from the Commission's approval of the Stipulation And Agreement or the benefits and savings which would occur through regular ratemaking treatment or the current Experimental Alternative Regulation Plan (ARP) or the new Experimental Alternative Regulation Plan (EARP) effective July 1, 1998, pursuant to the Stipulation And Agreement.

Actual prudent and reasonable merger transaction and transition costs (estimated to be \$71.5 million) shall be amortized over ten years beginning the date the merger closes. The annual amortization of merger transaction and transition costs will be the lesser of: (1) the Missouri jurisdictional portion of the total Ameren amount of \$7.2 million; or (2) the Missouri jurisdictional portion of the total Ameren unamortized amount of actual merger transaction and transition costs incurred to date. No rate base treatment of the unamortized costs will be included in the determination of rate base for any regulatory purposes in Missouri.

UE commits that it will propose and file with the Commission an experimental retail wheeling pilot program for 100 MW of electric power,

to be available to all major classes of Missouri retail electric customers, as soon as practical, but no later than March 1, 1997.<sup>2</sup> The commitment to file such a pilot program for Commission consideration and determination covered by this provision is made by UE alone. Prior to filing its proposal with the Commission, UE will seek substantive input from Missouri retail electric customers, Staff, OPC and others.

The parties concur that earnings monitoring in Case No. EO-96-14 will result in a general change in rates charged and revenues collected after August 31, 1998. The change in revenues collected will be equal to the average annual total revenues credited to customers during the three ARP years ending June 30, 1998, adjusted to reflect normal weather. Any rate reduction shall be spread within and among revenue classes on the basis of the Commission decision in Case No. EO-96-15, which is the UE customer class cost of service and comprehensive rate design docket created as a result of Case No. ER-95-411. In the event that a Commission decision has not been reached in Case No. EO-96-15, the parties will jointly or severally propose to the Commission a basis or bases on which a rate reduction may be spread on an interim basis within and among the classes pending issuance of the Commission's decision in Case No. EO-96-15.

UE will make a good faith effort to provide the earnings report for the final Sharing Period in Case No. ER-95-411 in time to implement this rate reduction on September 1, 1998. In the event the earnings data is not available, or in the event the review process of the earnings data or the weather normalization review process does not allow for a September 1, 1998 effective date, the following will occur: An additional

---

<sup>2</sup> The Commission will entertain a motion to modify the above date in order to ensure that UE has the opportunity to receive "substantive input" from the parties and others.

credit, equal to the excess revenues billed between September 1, 1998 and the effective date of the rate reduction, will be made. Said credit will be made at the same time and pursuant to the same procedures as the Sharing Credits in Case Nos. ER-95-411 and EO-96-14. If no Sharing Credits are to be made for the third Sharing Period in Case Nos. ER-95-411 and EO-96-14, the excess revenue credit will be made as expeditiously as possible.

UE shall file tariff sheets for Commission approval consistent with this section.

The EARP will be instituted July 1, 1998 at the end of the ARP created in Case No. ER-95-411. In its Report And Order approving this Stipulation And Agreement, the Commission shall create a new docket to facilitate the EARP (EARP Docket). All signatories to the Stipulation And Agreement shall be made parties to the EARP Docket, as intervenors or as a matter of right, as will the parties to Case No. EO-96-14 who are not parties to Case No. EM-96-149, without the necessity of taking further action.

The following sharing grid is to be utilized as part of the EARP:

Earnings Level (Missouri Retail Electric Operations)	Sharing Level UE	Sharing Level Customer
1. Up to and including 12.61% Return on Equity (ROE)	100%	0%
2. That portion of earnings greater than 12.61% up to and including 14.00% ROE	50%	50%
3. That portion of earnings greater than 14.00% up to and including 16.00% ROE	10%	90%
4. That portion of earnings greater than 16.00% ROE	0%	100%

The EARP will be in effect for a full three-year period.



In the event UE files an electric rate increase case, any Sharing Credits due for the current or prior Sharing Period will remain the obligation of UE, and the EARP shall terminate at the conclusion of the then current Sharing Period.

In the event any signatory to the Stipulation And Agreement files a rate reduction case, any Sharing Credits due for the current or prior Sharing Period will remain the obligation of UE, and the parties to that case will recommend to the Commission whether the EARP should remain in effect as currently structured, be modified or terminated.

Upon any termination of the EARP pursuant to the foregoing, the signatories will have no further obligation under this section.

Monitoring of the EARP will be based on UE supplying to Staff and OPC, on a timely basis, the reports and data identified in the Stipulation And Agreement. These reports and data must be provided as part of the EARP. Staff, OPC and the other signatories participating in the monitoring of the EARP may follow up with data requests, meetings and interviews, as required, to which UE will respond on a timely basis. UE will not be required to develop any new reports, but information presently being recorded and maintained by UE may be requested.

The sharing of earnings in excess of 12.61 percent, as contemplated in the sharing grid set out above, is to be accomplished by the granting of a credit to UE's Missouri retail electric customers by applying credits to customers' bills in the same manner as applied in Case No. ER-95-411, and as set forth in the Stipulation And Agreement.

In the final year of the EARP, UE, Staff, OPC and other signatories to the Stipulation And Agreement shall meet to review the monitoring reports and additional information required to be provided. By

February 1, 2001, UE, Staff and OPC will file and other signatories may file their recommendations with the Commission as to whether the EARP should be continued as is, continued with changes, or discontinued. The rates resulting from the Stipulation And Agreement will continue in effect after the three-year EARP period until UE's rates are changed as a result of a rate increase case, a rate reduction case, or other appropriate Commission action.

UE and its prospective holding company, Ameren, agree to make available to the Commission, at reasonable times and places, all books and records and employees and officers of Ameren, UE and any affiliate or subsidiary of Ameren as provided under applicable law and Commission rules; provided, that Ameren, UE and any affiliate or subsidiary of Ameren shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel are not subject to Commission jurisdiction by operation of the Public Utility Holding Company Act of 1935 (PUHCA).

UE, Ameren and any affiliate or subsidiary thereof agree to continue voluntary and cooperative discovery practices.

UE, Ameren and each of its affiliates and subsidiaries shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission and to protect against cross-subsidization of non-UE Ameren businesses by UE's retail customers.

UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallow-

ance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a contract, agreement, arrangement or transaction with any affiliate, associate, holding, mutual service or subsidiary company on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the Securities and Exchange Commission (SEC) or was incurred pursuant to a contract, arrangement, agreement or allocation method which was filed with or approved by the SEC. This provision is also applied to both gas and electric contracts filed with the Federal Energy Regulatory Commission (FERC).

No preapproval of affiliated transactions will be required, but all filings with the SEC or FERC for affiliated transactions will be provided to the Commission and the OPC. The Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a later ratemaking proceeding or a proceeding respecting any alternative regulation plan.

Finally, the parties have agreed to a proposed system support agreement between UE and CIPS for a term of ten years. This agreement allows UE to transfer its current Illinois customers to CIPS, and provides for the transfer of electric power and capacity to CIPS for the ten-year period. This is capacity and energy currently used to supply UE's Illinois customers. The Stipulation And Agreement provides that the Commission has the authority to allocate energy and capacity addressed in the system support agreement in future ratemaking proceedings.

## **B. Market Power Issues**

In its September 25, 1996 order, the Commission requested additional testimony regarding the potential harm to the public interest from any increase in market power which may be created by the approval of the merger. Because market power might be of greatest concern to Missouri customers if full retail competition were authorized, the Commission specifically requested that the parties include retail competition as a scenario in their analysis.

In response to this request, UE witness Rodney Frame stated that because retail competition will require changes to existing institutions that will affect how markets should be analyzed, it is neither reasonable nor advisable to address the implications of market power until these more fundamental issues are addressed. UE witness Maureen A. Borkowski stated that UE's transmission system was designed so that its power plants would serve its native load. Therefore, the import capability into the St. Louis area is limited by the capacity of its own transmission system. Further, Ms. Borkowski stated that these limits only become important to retail competition, and it would be premature to deal with such a scenario now. Mr. Frame believed that market power problems are likely to require more scrutiny when generation supplies are deregulated and individual retail customers can shop among alternative suppliers. UE witness Donald E. Brandt stated that the time to address potential market power problems associated with deregulation and retail customer choice is when the decision is made to go down that path, not now. Further, Mr. Brandt stated that any market power which UE or Ameren possesses in the retail market is currently mitigated by the regulatory oversight of the Commission.

OPC stated that the Commission is correct in its concern for the potential harm to the public interest from an increase in market power from the merger, especially under the assumption of retail competition. OPC's witness Dr. Richard A. Rosen recommended that the Commission require UE to analyze carefully and thoroughly whether the ability of the merged utilities to exercise market power under retail competition is likely to be greater than the ability of either individual utility. If there is a significant increase in market power resulting from the merger, the Commission should identify and implement all appropriate measures to mitigate the market power. OPC takes the position that the applicants for the merger have the responsibility to analyze market power, and that the Commission should require the companies to perform such an analysis as a condition for approving the merger. OPC does not argue that such a study must be completed prior to the Commission giving approval of the merger. Instead, it believes that if market power proves to be a problem, appropriate measures are available to mitigate market power, and the Commission should mandate such measures prior to implementation of retail competition.

In his testimony, Staff's witness Dr. John W. Wilson presented an analysis of market power under retail competition. He defined the relevant market to be requirements power for both wholesale and retail customers served in the joint service territories of UE and CIPS. Two scenarios were considered: with and without pancaked transmission rates. With pancaked transmission rates, Dr. Wilson found that Ameren would have a price advantage over any competitors having to pay an additional transmission charge, and would therefore have significant market power. Without pancaked transmission rates, the relevant geographic market was found to

be limited by the nonsimultaneous first contingency total transfer capability into the Eastern Missouri (EMO) and South Central Illinois (SCILL) subregions of the Mid-America Interconnected Network (MAIN). Taking these transmission constraints into account, Dr. Wilson performed a concentration analysis to measure the likelihood of the merged firm exercising market power and found significant increases in concentration that exceeded the "safe harbor" limits established in the Department of Justice/Federal Trade Commission Merger Guidelines ("Guidelines"). Dr. Wilson then examined other factors, as suggested by the Guidelines, including: (1) the potential of the merger to give rise to anticompetitive effects; (2) entry conditions; (3) efficiencies; and (4) whether one of the firms is likely to exit the market because of financial stress. He found that the merger was likely to enhance the anticompetitive behavior associated with markets that are characterized as oligopolistic (few competitors with each recognizing that its own competitive conduct will significantly affect the other competitors), and will likely elicit defensive responses that allow dominant firms to exercise price leadership. With Ameren having just under 35 percent of the share of total capacity in the relevant market, Dr. Wilson expressed concern that the merged firm may find it profitable to increase price and reduce output below pre-merger levels because "the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales" (Guidelines § 2.22). Market dominance was also seen as a potential barrier to entry for new firms. Most significant was the potential for vertical market power (the ability to exert market power in one or more horizontal markets as a result of the monopoly control of an essential element in a vertical chain of horizontal markets) based on Ameren's control of the transmission

system required to serve the requirements markets for generation within UE's and CIPS's service territories.

While Dr. Wilson recommended against approval of the merger, the Staff continues to support the Stipulation And Agreement, as do UE and OPC. However, Dr. Wilson has made several recommendations regarding mitigation of market power should the Commission approve the merger. These include: (1) Ameren turning over the operation of its transmission system to an Independent System Operator (ISO) with a region-wide "postage-stamp" transmission rate; (2) divestiture of generation resources to reduce barriers to entry that arise from vertical integration; (3) introduction of retail access in Ameren's service territory to stimulate entry into retail generation sales; and (4) denial of stranded cost recovery by the merged entity to assure that any merger savings will be used to offset any above-market, uneconomic cost for generation.

UE witnesses Mr. Brandt and Ms. Borkowski stated that requiring it to eliminate pancaking or to participate in an ISO would be unnecessary, inappropriate and premature. For example, UE witness Rodney Frame argued that requiring UE to join an ISO could produce adverse consequences for UE's native load customers due to cost shifting of a \$42 million increase in transmission costs. Mr. Frame also cited FERC's Order 889, which sets forth a code of conduct and which requires that transmission owners participate in an Open Access Same-Time Information System (OASIS) for handling any concerns for the exercise of vertical market power in the markets that exist today. Thus, UE argues that the Commission should not require it to participate in an ISO until the terms of participation are known, and should also delay any consideration of the impact on retail markets until retail competition becomes a reality.

Dr. Wilson stated that the purpose for turning the operation of the transmission system over to an ISO is to alleviate the concern that, as the owner of both transmission and generation, the vertically integrated utility would be able to use the transmission system to "depress competition in generation markets." Dr. Wilson further pointed out that if an ISO is not established in a fully independent manner, vertically integrated owners of generation and transmission could have influence over who becomes and remains as the ISO operator, in which case nonowner generation rivals may not receive equal consideration.

Dr. Rosen stated that while FERC Order 888 recognizes transmission access and pricing as core requirements to deal with potential vertical market power abuse, the FERC also identified regional ISOs as an important measure for mitigating potential vertical market power. Dr. Rosen summarized the FERC guidelines which specify that an ISO: "1) have no financial interest in the economic performance of any market power participant; 2) should have control over the operation of interconnected transmission facilities within its region; 3) should identify constraints on the system and be able to take operational action to relieve those constraints within the trading rules; and 4) should make transmission system information publicly available to all suppliers on a timely basis." In addition, Dr. Rosen noted that the FERC identified expansion of transfer capability by enlarging transmission capacity as a mitigation measure for vertical market power, but recognized that utilities must obtain approvals for such expansion from state and local authorities under applicable laws.

The Commission finds there are sufficient facts in evidence to be concerned about the potential increase in market power from the proposed merger. The merger could have a significant adverse impact on the degree



of competition within UE's Missouri service territory due to limited transfer capability for imported power, as well as the disincentives caused by pancaked transmission rates. In order to eliminate pancaked transmission rates, Ameren would need to belong to a regional transmission group having a region-wide transmission rate. To address the vertical market power concern that Ameren could use its transmission system to restrict competition from other generation, the regional transmission group should be an entity that will independently operate the transmission systems of the vertically integrated utilities within the region. While the Commission agrees that UE and Ameren should not participate in an ISO at "any cost" to the Missouri ratepayers, now is the time for UE to take into account the impact that vertical market power could have on the requirements market under retail competition. Therefore, the Commission approves the merger upon the condition that UE shall participate in a regional ISO that eliminates pancaked transmission rates and that is consistent with the ISO guidelines set out in FERC Order 888. Such an ISO proposal could be formed in conjunction with the current efforts by UE and other regional utilities to establish a Midwest ISO or be organized by the merged company with membership open to other regional utilities. While the Commission understands that joining an ISO at "any cost" would be unwise, the participation by UE and Ameren in an ISO is a prudent, necessary condition to assure that the merger is not detrimental to the public interest.

The Commission also finds that the concerns expressed by OPC regarding horizontal market power are valid. Such market power can take place at any level of the production chain as a consequence of there being a very small number of competing sellers and significant barriers to entry.

Specifically, Dr. Richard A. Rosen expressed concern about horizontal market power for the generation end of the production chain, as well as in the retail merchant (demand-side aggregator) markets. Dr. Rosen expressed concern that alternative generators might find it difficult to enter certain submarkets for electricity such as the base load, long term market for capacity and energy, or areas where transmission constraints and strategically located generation facilities combine to form local "load pockets." In the retail merchant markets, Dr. Rosen believes that new aggregators would find it difficult to compete with the incumbent utility because of lack of name recognition.

In order to deal with this potential for horizontal market power, Dr. Rosen proposed a two-part analysis: (1) theoretical and empirical characterizations of the market; and (2) simulations of the particular electricity market under consideration. In both, the unique characteristics of electricity markets in at least the nine submarkets (base, cycling and peaking by short, medium and long term) should be examined. In the first analysis, Dr. Rosen suggested that a more sophisticated version of the Herfindahl-Hirschman Index (HHI) be developed. In the second analysis, Dr. Rosen recommended that the simulations include real data from various utilities in a proposed ISO, and that various gaming scenarios and bidding strategies be analyzed.

The Commission finds that there are sufficient facts in evidence for it to be concerned about horizontal market power for both generation and aggregation. The Commission also finds that these concerns are in part related to the merger of the two companies, but are also related to conditions that should be considered before implementing retail competition. OPC's proposal balances these two relationships. Therefore, the

Commission will require UE and interested parties to assess the potential ability of the merged companies to exercise vertical and especially horizontal market power in price deregulated retail generation markets. Based on this analysis, if the market power under retail competition proves to be a problem, then the Commission will consider taking appropriate action to mitigate market power prior to establishing statewide retail competition. Because the level of detail and development of a study of horizontal market power will require significant effort and time, the Commission will require UE to undertake this study with the participation of Staff and OPC, with a completion date of January 1, 1998. This study need not be submitted before the merger is completed.

Therefore, the Commission finds the proposed Stipulation And Agreement to be reasonable and in the public interest if it is modified to include the conditions which the Commission requires to mitigate market power.

As set out in the Stipulation, after review of both the testimony filed in this matter and the proposed merger agreement of November 7, 1995, the Commission also finds the proposed merger, as modified and subject to the conditions of the attached Stipulation And Agreement, to not be detrimental to the public interest. Therefore, the Commission will approve the proposed Stipulation And Agreement as set out in Attachment 1 and the resulting merger transaction, and order UE to file tariffs in accordance therewith.

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

The applicant, Union Electric Company, is a public utility under the jurisdiction of the Commission, regulated generally by Chapter 393, RSMo 1994. Specifically, the proposed sale, transfer and assignment of certain rights, properties, and assets is controlled by Section 393.190(1), which states in part:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it to do so.

The Commission has found the Stipulation And Agreement, as set out in Attachment 1 hereto, to be just and reasonable, and will approve the Stipulation And Agreement. In addition, the Commission finds the proposed merger transaction, as reflected in the contractual agreement contained as a part of the Union Electric Company filing of November 7, 1995, and subject to the conditions and modifications as set out in the above Stipulation And Agreement, is not detrimental to the public interest.

The Commission further concludes that Union Electric Company should file tariffs in full compliance with the merger agreement, the Stipulation And Agreement, and this Report And Order.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation And Agreement, marked Attachment 1 to this Report And Order, will be approved by order of the Commission provided that Union Electric Company files a pleading in this docket within ten (10)

days of the date of issuance of this order consenting to the following conditions:

(a) No later than December 31, 1997, Union Electric Company shall file or join in the filing of a regional ISO proposal at the Federal Energy Regulatory Commission that eliminates pancaked transmission rates, that is consistent with the ISO guidelines set out in FERC Order 888, and that meets the following requirements:

- (1) If the ISO proposal filed at FERC is the result of the current efforts by UE and other utilities to establish a Midwest ISO, UE shall simultaneously file at this Commission a request for approval of its participation in the proposed ISO;
- (2) If the Midwest ISO proposal is filed at FERC and UE has chosen not to participate, then UE shall advise this Commission within thirty (30) days of the FERC filing why it is not participating in the Midwest ISO;
- (3) If the Midwest ISO proposal is not filed before the FERC by December 31, 1997, then by March 31, 1998 UE shall file with this Commission a plan for establishing an independent entity charged with the operation, pricing and planning of its transmission system. This plan shall be developed in cooperation with Staff and the Office of the Public Counsel, shall provide for the formation and expansion of this

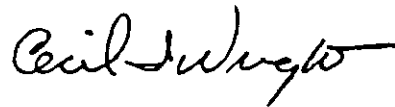
independent entity to include other utilities, and  
shall be filed with the FERC; and

(b) By January 1, 1998 and with the participation of Staff and the Office of Public Counsel, Union Electric Company shall file with this Commission a report that assesses the potential ability of the merged companies to exercise vertical and especially horizontal market power in price deregulated retail generation.

2. That, with the consent of the parties, the testimony of Union Electric Company witnesses Rodney Frame, Maureen A. Borkowski and Donald E. Brandt; Office of the Public Counsel witness Dr. Richard A. Rosen; and the Commission Staff witness Dr. John W. Wilson is hereby entered into evidence and made a part of the record in this proceeding.

3. That this Report And Order shall become effective on March 4, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

McClure and Kincheloe, CC., concur;  
Zobrist, Chm., Crumpton and Drainer,  
CC., concur, with concurring opinions  
to follow.

Dated at Jefferson City, Missouri,  
on this 21st day of February, 1997.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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

---

STIPULATION AND AGREEMENT

---

Dated: July 12, 1996

SCHEDULE 1-23



## TABLE OF CONTENTS

1.	Approval of the Merger . . . . .	1
2.	Merger Premium . . . . .	2
3.	Merger Benefits and Savings . . . . .	2
4.	Transaction and Transition Costs . . . . .	2
5.	Retail Wheeling Experiment . . . . .	3
6.	Rate Reduction . . . . .	5
7.	New Experimental Alternative Regulation Plan (New Plan) .	7
8.	State Jurisdictional Issues . . . . .	22
a.	Access to Books, Records and Personnel . . . . .	22
b.	Voluntary and Cooperative Discovery Practices . . . . .	23
c.	Accounting Controls . . . . .	23
d.	Contracts Required to be Filed with the SEC . . . . .	24
e.	Electric Contracts Required to be Filed with the FERC . . . . .	25
f.	Gas Contracts Required to be Filed with the FERC . . . . .	26
g.	No Pre-Approval of Affiliated Transactions . . . . .	27
h.	Contingent Jurisdictional Stipulation -- FERC . . . . .	27
i.	Contingent Jurisdictional Stipulation -- SEC . . . . .	28
9.	Staff Conditions To Which UE Has Agreed . . . . .	29
10.	System Support Agreement . . . . .	33
11.	Commission Rights . . . . .	34
12.	Staff Rights . . . . .	34
13.	No Acquiescence . . . . .	36
14.	Negotiated Settlement . . . . .	36
15.	Provisions Are Interdependent . . . . .	37

16. Prepared Testimony . . . . .	37
17. Waive Rights to Cross Examination, etc. . . . .	38
18. Operative Dates . . . . .	39

Attachment A: PROCEDURES TO DETERMINE RATE REDUCTION

Attachment B: PROCEDURES FOR SHARING CREDITS FROM THE NEW  
THREE-YEAR EXPERIMENTAL ALTERNATIVE REGULATION  
PLAN

Attachment C: RECONCILIATION PROCEDURE

Attachment D: CONTINGENT JURISDICTIONAL STIPULATION -- SEC AND  
FERC

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, ) Case No. EM-96-149  
leased property, easements and )  
contractual agreements to Central )  
Illinois Public Service Company; )  
and (3) in connection therewith, )  
certain other related transactions. )

STIPULATION AND AGREEMENT

As a result of discussions among the parties to Case No. EM-96-149, the signatories hereby submit to the Missouri Public Service Commission ("Commission") for its consideration and approval the following, including actions to be taken by Union Electric Company ("UE") and the other signatories in settlement of the above styled case:

1. Approval of the Merger

The signatories agree that the Commission should approve the merger as requested in UE's filing dated November 7, 1995, on the basis that, subject to the conditions and modifications set forth below, said merger is not detrimental to the public interest.

## **2. Merger Premium**

UE shall not seek to recover the amount of any asserted merger premium in rates in any Missouri proceeding. UE has identified this amount as \$232 million.

## **3. Merger Benefits and Savings**

UE shall retain the right to state, in future proceedings, alleged benefits of the merger but UE commits to forego any additional specific adjustments to cost of service related to the merger savings or any claim to merger savings other than the adjustments to cost of service and claims to merger savings resulting from the Commission's approval of this document or the benefits and savings which would occur through regular ratemaking treatment or the current Experimental Alternative Regulation Plan ("ARP") or the new Experimental Alternative Regulation Plan ("the New Plan") effective July 1, 1998 pursuant to this document.

## **4. Transaction and Transition Costs**

Actual prudent and reasonable merger transaction and transition costs (estimated to be \$71.5 million, which reflects the total Ameren Corporation ("Ameren") estimated merger costs presented to the Commission Staff ("Staff") and Office of the Public Counsel ("OPC") in the UE/CIPSCO, Inc. Merger Implementation Plan, less executive severance pay of \$1.6 million,

but including costs incurred in 1995) shall be amortized over ten years beginning the date the merger closes. The annual amortization of merger transaction and transition costs will be the lesser of: (1) the Missouri jurisdictional portion of the total Ameren amount of \$7.2 million; or (2) the Missouri jurisdictional portion of the total Ameren unamortized amount of actual merger transaction and transition costs incurred to date. No rate base treatment of the unamortized costs will be included in the determination of rate base for any regulatory purposes in Missouri.

#### **5. Retail Wheeling Experiment**

As a result of settlement negotiations, UE commits that it will propose and file with the Commission an experimental retail wheeling pilot program for 100 MW of electric power, to be available to all major classes of Missouri retail electric customers, as soon as practical, but no later than March 1, 1997. The commitment to file such a pilot program for Commission consideration and determination covered by this provision is made by UE alone. Prior to filing its proposal with the Commission, UE will seek substantive input from Missouri retail electric customers, Staff, OPC and others (including, but not limited to, Trigen - St. Louis Energy Corp. and Missouri Retailers Association). If permitted by the Commission's Order, UE shall

implement the retail wheeling pilot program as approved by the Commission so as to allow power purchase transactions to commence within sixty (60) days of the effective date of the Commission's Order or as soon as practicable thereafter, but in no event before the merger closes (except with the consent of UE and the approval of the Commission).

The commitment covered by this provision should not be construed as concurrence or acquiescence by the signatories in the specifics of the retail wheeling pilot program which will be filed by UE, the details of which are to be determined by UE based in part on a consideration of the substantive input referred to above. The non-objection of signatories to UE's commitment to file a retail wheeling pilot program should not be construed as a waiver of the signatories' right to contest the proposed retail wheeling pilot program before the Commission; nor are the signatories precluded from seeking a writ of review, appealing a Commission Order or pursuing any other appropriate legal remedy. The signatories agree not to attempt to enjoin the Commission from considering and issuing an Order respecting UE's proposal. UE commits not to appeal the Commission's Order establishing a retail wheeling pilot program unless said Order is significantly different from the UE filing and UE is materially and adversely affected

thereby. Furthermore, Commission approval of the instant Stipulation And Agreement containing this provision is not intended by the signatories to be read as a Commission pronouncement of any sort respecting retail wheeling either in general, as public policy, or in specific, as a regulatory mechanism.

If such a retail wheeling pilot program is instituted, matters which affect the calculation of where UE falls on the "Sharing Grid" of the ARP or the New Plan may arise which will need to be resolved by agreement of the signatories to this Stipulation And Agreement, or by the Commission if agreement cannot be reached.

A signatory to this Stipulation And Agreement shall be made a party in the retail wheeling pilot program proceeding, as a matter of right, if it so requests.

#### 6. Rate Reduction

Earnings monitoring in Case No. EO-96-14 will result in a general change in rates charged and revenues collected after August 31, 1998. The change in revenues collected will be equal to the average annual total revenues credited to customers during the three ARP years ending June 30, 1998, adjusted to reflect normal weather. The procedures to determine the adjustment to the annual credits for the three years comprising the ARP are set forth in Attachment A appended hereto. Any rate reduction shall be spread

within and among revenue classes on the basis of the Commission decision in Case No. EO-96-15, which is the UE customer class cost of service and comprehensive rate design docket created as a result of Case No. ER-95-411. In the event that a Commission decision has not been reached in Case No. EO-96-15, the parties will jointly or severally propose to the Commission a basis or bases on which a rate reduction may be spread on an interim basis within and among the classes pending issuance of the Commission's decision in Case No. EO-96-15.

UE will make a good faith effort to provide the earnings report for the final sharing period in Case No. ER-95-411 in time to implement this rate reduction on September 1, 1998. In the event the earnings data is not available, or in the event the review process of the earnings data or the weather normalization review process does not allow for a September 1, 1998 effective date, the following will occur: An additional credit, equal to the excess revenues billed between September 1, 1998 and the effective date of the rate reduction, will be made. Said credit will be made at the same time and pursuant to the same procedures as the Sharing Credits in Case Nos. ER-95-411 and EO-96-14. If no Sharing Credits are to be made for the third Sharing Period in Case Nos. ER-95-411



and EO-96-14, the excess revenue credit will be made as expeditiously as possible.

UE shall file tariff sheets for Commission approval consistent with this Section.

**7. New Experimental Alternative Regulation Plan (New Plan)**

- a. The New Plan will be instituted July 1, 1998 at the end of the ARP created in Case No. ER-95-411. In its Report And Order approving this Stipulation And Agreement, the Commission shall create a new docket to facilitate the New Plan ("New Plan Docket"). All signatories to this Stipulation And Agreement shall be made parties to the New Plan Docket, as intervenors or as a matter of right, as will the parties to Case No. EO-96-14 who are not parties to Case No. EM-96-149, without the necessity of taking further action. (There are three such parties: (1) Asarco Inc. and the Doe Run Co.; (2) Cominco American; and (3) Missouri Retailers Association.)

- b. The following Sharing Grid is to be utilized as part of the New Plan:

Earnings Level (Missouri Retail Electric Operations)	Sharing Level	Sharing Level
	UE	Customer
1. Up to and including 12.61% Return on Equity (ROE)	100%	0%
2. That portion of earnings greater than 12.61% up to and including 14.00% ROE	50%	50%
3. That portion of earnings greater than 14.00% up to and including 16.00% ROE	10%	90%
4. That portion of earnings greater than 16.00% ROE	0%	100%

- c. The New Plan will be in effect for a full three year period. For purposes of this New Plan, there shall be three (3) "Sharing Periods." The first Sharing Period shall be from July 1, 1998 through June 30, 1999; the second, from July 1, 1999 through June 30, 2000; and the third, from July 1, 2000 through June 30, 2001. UE may not file an electric rate increase case, and Staff, OPC and other signatories may not file, encourage or assist others to file a rate reduction case through June 30, 2001, unless:

- i. UE's return on common equity falls below 10.00% for a twelve month Sharing Period (calculated as indicated in Attachment C appended hereto); or
- ii. An event occurs which would have a major effect on UE, such as, an act of God, a significant change in the federal or state tax laws, a significant change in federal or state utility law or regulation (but not including the retail wheeling pilot project described in Section 5), or an extended outage or shutdown of a major generating unit(s).

In the event UE files an electric rate increase case, any sharing credits due for the current or prior Sharing Period will remain the obligation of UE, and the New Plan shall terminate at the conclusion of the then current Sharing Period.

In the event any signatory files a rate reduction case, any sharing credits due for the current or prior Sharing Period will remain the obligation of UE, and the parties to that case will recommend to the Commission whether the New Plan should remain in effect as currently structured, be modified or terminated.

In the event that a significant change in federal or state utility law or regulation (but not including the retail wheeling pilot project described in Section 5) occurs, nothing herein shall prohibit any signatory from filing for Commission consideration a customer class cost of service and comprehensive rate design proposal, either as a part of or separate from a rate increase or rate reduction case; provided that any party may oppose such filing and shall not be deemed to have consented either to the establishment of a new docket to consider such request or to the proposals of the party making such request.

Upon any termination of the New Plan pursuant to the foregoing, the signatories will have no further obligation under this Section 7.

- d. Except as set out immediately above in Subsection c. and below in Subsection h. and Subsection i., UE's rates resulting from this Stipulation And Agreement will continue in effect throughout the three year New Plan period, and thereafter, until changed as a result of a rate increase case, a rate reduction case, or other

appropriate Commission action, for example, as contemplated by Subsection g. below.

- e. Monitoring of the New Plan will be based on UE supplying to Staff and OPC, on a timely basis, the reports and data identified below. These reports and data must be provided as part of the New Plan. Other signatories to this Stipulation And Agreement may also participate in the monitoring of the New Plan, and receive the reports and data, after executing appropriate documents assuring the confidential treatment of the information provided. Staff, OPC and the other signatories participating in the monitoring of the New Plan may follow up with data requests, meetings and interviews, as required, to which UE will respond on a timely basis. UE will not be required to develop any new reports, but information presently being recorded and maintained by UE may be requested. The reports and data that must be provided include the following:

- i. Annual operating and construction budgets and any updates/revisions with explanations/reasons for updates/revisions;

- ii. Monthly operating budgets and any updates/revisions with explanations/reasons for updates/revisions;
  - iii. Annually - explanation of significant variances between budgets and actual;
  - iv. Monthly Financial & Statistical (F&S) reports;
  - v. Directors reports;
  - vi. Current chart of accounts;
  - vii. Monthly surveillance reports;
  - viii. Quarterly reports/studies of rate of return on rate base including supporting workpapers;
  - ix. Annual summary of major accruals.
- f. The sharing of earnings in excess of 12.61%, as contemplated by the Sharing Grid set out above, is to be accomplished by the granting of a credit to UE's Missouri retail electric customers by applying credits to customers' bills in the same manner as applied in Case No. ER-95-411, and as set forth in Attachment B. A notice to customers explaining the Sharing Credits will accompany customers' bills on which the Sharing Credits will appear. UE will submit the proposed language for such notice to the Staff and the OPC for their review.

- i. The return on common equity for determination of "sharing" will be calculated by using the methodology set out in Attachment C, Reconciliation Procedure, appended hereto.
- ii. Staff, OPC and UE have conferred and determined what items, based on prior Commission Orders, should be excluded from the calculation of UE's return on equity. These items are identified in Attachment C.
- iii. The twelve month period used to determine credits will be the immediately preceding Sharing Period.
- iv. Within 90 days after the conclusion of a Sharing Period, a preliminary earnings report, along with a proposed "Sharing Report" will be submitted by UE. A final earnings report and proposed Sharing Report will be filed in the New Plan Docket within 105 days after the end of the Sharing Period. The final earnings report will provide the actual results of the Sharing Period to be examined.
- v. UE's earnings will be adjusted to normalize the effects of any sharing credits from the Sharing

Period which are reflected in the earnings for that period. Earnings will not be adjusted for the rate reduction described in "Section 6. Rate Reduction" of this Stipulation And Agreement.

vi. If Staff, OPC or other signatories find evidence that operating results have been manipulated to reduce amounts to be shared with customers or to misrepresent actual earnings or expenses, Staff, OPC or other signatories may file a complaint with the Commission requesting that a full investigation and hearing be conducted regarding said complaint. UE shall have the right to respond to such request and present facts and argument as to why an investigation is unwarranted.

vii. UE, Staff, OPC and other signatories reserve the right to bring issues which cannot be resolved by them, and which are related to the operation or implementation of the New Plan, to the Commission for resolution. Examples include disagreements as to the mechanics of calculating the monitoring report, alleged violations of the Stipulation And



Agreement, alleged manipulations of earnings results, or requests for information not previously maintained by UE. An allegation of manipulation could include significant variations in the level of expenses associated with any category of cost, where no reasonable explanation has been provided. The Commission will determine in the first instance whether a question of manipulation exists and whether that question should be heard by it.

- viii. Staff, OPC and other signatories have the right to present to the Commission concerns over any category of cost that has been included in UE's monitoring results and has not been included previously in any ratemaking proceeding.
- ix. Differences among UE, Staff, OPC and other signatories will be brought to the Commission's attention for guidance as early in the process as possible.
- x. A final report will be filed within 105 days after the Sharing Period (or the first business day thereafter). Signatory parties to this

Stipulation And Agreement will have thirty (30) days after a final report is filed to provide notice that there may be areas of disagreement not previously brought to the attention of the Commission that need to be resolved.

- g. In the final year of the New Plan, UE, Staff, OPC and other signatories to this Stipulation And Agreement shall meet to review the monitoring reports and additional information required to be provided. By February 1, 2001, UE, Staff and OPC will file, and other signatories may file their recommendations with the Commission as to whether the New Plan should be continued as is, continued with changes (including new rates, if recommended) or discontinued. Copies of the recommendations shall be served on all parties to UE's New Plan Docket. As previously noted herein, the rates resulting from this Stipulation And Agreement will continue in effect after the three year New Plan period until UE's rates are changed as a result of a rate increase case, a rate reduction case, or other appropriate Commission action.
- h. After July 1, 1998, any party may file with the Commission a request for consideration of changes in rate

design and/or other tariff provisions which it would be appropriate for the Commission to consider outside the context of a customer class cost of service and comprehensive rate design docket or a rate case; provided, however, that no change will result in any shift of revenues among classes before July 1, 2001; and provided further that if a request for consideration of changes in rate design and/or other tariff provisions is filed, any party may oppose such request and shall not be deemed to have consented to the establishment of a new docket to consider such request or to the proposals of the party making such request.

A change in rate design and/or other tariff provisions is not considered by the signatories to this Stipulation And Agreement as constituting a shift of revenues among customer classes if it will result in a customer or customers being charged lower rates but will not result in either (1) a major decrease in revenues to UE (respecting which UE is precluded by this section from recovering from other customers at any time while the New Plan is in effect) or (2) a significant reduction in the credits that would otherwise be available for

distribution. It may be argued by a signatory to this Stipulation And Agreement that the cumulative effect of multiple changes in rate design and/or other tariff provisions which results in either (1) a major decrease in revenues to UE (respecting which UE is precluded from recovering from other customers at any time while the New Plan is in effect), or (2) a significant reduction in credits that would otherwise be available for distribution, constitutes a shift of revenues among customer classes and, therefore, the proposed change(s) is precluded.

How revenues foregone by UE as a result of a change in rate design and/or other tariff provisions will be treated for purposes of the New Plan Reconciliation Procedure (Attachment C), which impacts the calculation of where UE falls on the Sharing Grid, will be determined on a case-by-case basis by agreement of the signatories to this Stipulation And Agreement, or by the Commission if agreement cannot be reached. Furthermore, such foregone revenues shall not be excluded from any calculation of UE's return on common equity for purposes of determining whether UE may file an electric rate

increase under the terms of this Stipulation And Agreement or increase its Missouri retail electric service rates to reflect a Commission Order authorizing an increase in UE's annual nuclear decommissioning expense/funding from its then current level.

This section is not intended to preclude presentation to the Commission and Commission resolution of disputes respecting the proper application of UE's tariffs; nor is this section intended to preclude presentation to the Commission and Commission resolution of a proposed major decrease in revenues to UE, and/or significant reduction in credits that would otherwise be available for distribution, requested as a result of a situation which will have a significant adverse impact on one or more of UE's customers and which, as a consequence, will also have a significant adverse impact on UE and its customers; provided that any party may oppose such request and shall not be deemed to have consented to the establishment of a new docket to consider such request or to the proposals of the party making such request.

- i. UE will file its cost of nuclear decommissioning study with the Commission as required by September 1, 1999. If the Commission Order in that proceeding results in a decrease in annual nuclear decommissioning expense/funding from its then current level, UE's Missouri retail electric service rates will not be changed to reflect the decrease in expense/funding. Instead, nuclear decommissioning expense/funding will be decreased (effective as of the date provided in the nuclear decommissioning cost Order) with the total difference, i.e., 100% of the pro-rated difference, between the lower expense/funding level and the then current level, being treated as a credit to each Sharing Period of the New Plan as provided for in Attachment C hereto. If no sharing occurs for a Sharing Period for which there is a decrease in the nuclear decommissioning expense/funding level, then the decrease in the nuclear decommissioning expense/funding for that Sharing Period will be carried over to the subsequent Sharing Period. Since the difference between the prospective lower expense/funding level and the then current level will be treated as a credit in each Sharing Period and the

difference will be carried over to the subsequent Sharing Period if no sharing occurs for the current Sharing Period, no decrease in the then current expense level will be reflected in the calculation of UE's ROE in determining sharing under the New Plan, pursuant to Attachment C.

If the Commission Order in the nuclear decommissioning proceeding results in an increase in expense/funding above its then current level, for purposes of determining the implementation of a rate increase only, the increased expense will be annualized in calculating UE's return on equity for the earliest possible Sharing Period for which a preliminary earnings/proposed sharing report has not yet been filed at the time of the issuance of the Commission Order in the nuclear decommissioning docket. If UE's return on common equity (ROE) on this basis is less than 10.00% (calculated as indicated in Attachment C appended hereto), then the increased expense will result in an increase in UE's Missouri retail electric service rates as allowed by Section 393.292 RSMo. 1994. If UE's ROE on the above basis exceeds 10.00%, then the increased

expense will not result in any increase in UE's Missouri retail electric service rates; however, the actual amount of increased expense (unannualized) will be reflected in the calculation of UE's ROE in determining sharing under the New Plan.

In any case, the Commission shall include language in its 1999 Callaway decommissioning case Report And Order substantially similar to that used in Case No. EO-94-81, specifically finding that the Callaway decommissioning costs are included in UE's then current cost of service and are reflected in its then current electric service rates for ratemaking purposes.

All signatories will be notified of UE's filing of its 1999 nuclear decommissioning cost case.

**8. State Jurisdictional Issues**

- a. Access to Books, Records and Personnel. UE and its prospective holding company, Ameren, agree to make available to the Commission, at reasonable times and places, all books and records and employees and officers of Ameren, UE and any affiliate or subsidiary of Ameren as provided under applicable law and Commission rules; provided, that Ameren, UE and any affiliate or subsidiary



of Ameren shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel are not subject to Commission jurisdiction by operation of the Public Utility Holding Company Act of 1935 ("PUHCA"). In the event that rules imposing any affiliate guidelines regarding access to books, records and personnel applicable to similarly situated electric utilities in Missouri are adopted, then UE, Ameren and each affiliate or subsidiary thereof shall become subject to the same rules as such other similarly situated electric utilities in lieu of this paragraph.

- b. Voluntary and Cooperative Discovery Practices. UE, Ameren and any affiliate or subsidiary thereof agree to continue voluntary and cooperative discovery practices.
- c. Accounting Controls. UE, Ameren and each of its affiliates and subsidiaries shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission and to protect against cross-subsidization of non-UE Ameren businesses by UE's retail

customers. In the event that rules imposing any affiliate guidelines regarding accounting controls applicable to similarly situated electric utilities in Missouri are adopted, then UE, Ameren and each affiliate or subsidiary thereof shall become subject to the same rules as such other similarly situated electric utilities in lieu of this paragraph.

- d. Contracts Required to be Filed with the SEC. All contracts, agreements or arrangements, including any amendments thereto, of any kind between UE and any affiliate, associate, holding, mutual service, or subsidiary company within the same holding company system, as these terms are defined in 15 U.S.C. § 79b, as subsequently amended, required to be filed with and/or approved by the Securities and Exchange Commission ("SEC") pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to

recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a contract, agreement, arrangement or transaction with any affiliate, associate, holding, mutual service or subsidiary company on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method which was filed with or approved by the SEC.

- e. Electric Contracts Required to be Filed with the FERC. All wholesale electric energy or transmission service contracts, tariffs, agreements or arrangements, including any amendments thereto, of any kind, including the Joint Dispatch Agreement, between UE and any Ameren subsidiary or affiliate required to be filed with and/or approved by the Federal Energy Regulatory Commission ("FERC"), pursuant to the Federal Power Act ("FPA"), as subsequently amended, shall be conditioned upon the following without modification or alteration: UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set aside, change or enjoin, whether

through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a wholesale electric energy or transmission service contract, agreement, arrangement or transaction on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the FERC, or was incurred pursuant to a contract, arrangement, agreement or allocation method which was filed with or approved by the FERC.

- f. Gas Contracts Required to be Filed with the FERC. All gas supply, storage and/or transportation service contracts, tariffs, agreements or arrangements, including any amendments thereto, of any kind between UE and any Ameren subsidiary or affiliate required to be filed with and/or approved by the FERC, pursuant to the Natural Gas Act ("NGA"), as subsequently amended, shall be conditioned upon the following without modification or alteration: UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set

aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a gas supply, storage and/or transportation service contract, agreement, arrangement or transaction on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the FERC or was incurred pursuant to a contract, arrangement, agreement or allocation method which was filed with or approved by the FERC.

- g. No Pre-Approval of Affiliated Transactions. No pre-approval of affiliated transactions will be required, but all filings with the SEC or FERC for affiliated transactions will be provided to the Commission and the OPC. The Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a later ratemaking proceeding or a proceeding respecting any alternative regulation plan.
- h. Contingent Jurisdictional Stipulation -- FERC. In the exclusive event that any court with jurisdiction over UE,

Ameren or any of its affiliates or subsidiaries issues an opinion or order which invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE on the basis that such expense, charge, cost, or allocation has itself been filed with or approved by the FERC, then the Contingent Jurisdictional Stipulation, attached hereto as Attachment D, shall apply to FERC filings according to its terms, at the option of the Commission.

- i. Contingent Jurisdictional Stipulation -- SEC. In the exclusive event that any court with jurisdiction over UE, Ameren or any of its affiliates or subsidiaries issues an opinion or order which invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE on the basis that such expense, charge, cost, or allocation has itself been filed with or approved by the SEC, then the Contingent Jurisdictional Stipulation, attached hereto as Attachment D, shall apply to SEC filings according to its terms, at the option of the Commission.

Commitments covered by the provisions of this Section 8 should not be construed as concurrence or acquiescence by UtiliCorp United Inc., The Empire District Electric Company, Missouri Gas Energy, Kansas City Power & Light Company or Trigen - St. Louis Energy Corp. in any of these provisions.

**9. Staff Conditions To Which UE Has Agreed**

a. UE agrees to abide by the Stipulation And Agreement in Case No. GR-93-106, including, but not limited to, the following:

i. UE agrees it will meet with the Staff, at the Staff's request, prior to the commencement of the Staff's audit of each future UE Actual Cost Adjustment ("ACA") filing, to discuss the activities of UE during the applicable ACA period.

ii. UE agrees to prepare a written study or analysis of: (i) each material natural gas-related contract decision; and (ii) each major FERC decision materially affecting UE in proceedings of pipelines providing service to UE and final FERC regulations which materially affect UE. Subject to applicable legal privileges, UE agrees

to provide such document to the Staff upon its request during the applicable ACA audit.

- iii. UE agrees to continually monitor its participation before the FERC as a member of the Panhandle Customer Group and not join in Group activities in instances when, in UE's judgment, its interests are not adequately protected.
  - iv. The Staff may make evaluations of and propose adjustments to post-FERC Order 636 restructured services and related costs during the applicable ACA audit.
- b. UE shall continue to provide to the Staff monthly surveillance reports in the same format which is currently being utilized in submittals to the Staff (or in some other mutually agreeable format), so that the Staff can continue to monitor UE's Missouri jurisdictional electric and natural gas earnings levels.
- c. On a quarterly basis, Ameren and UE shall provide the Commission with a report detailing UE's proportionate share of Ameren: (i) total consolidated assets; (ii) total consolidated operating revenues; (iii) total



operating and maintenance expense; and (iv) total consolidated number of employees.

- d. The data associated with the hour-by-hour After-The-Fact Resource Allocation which will be performed pursuant to the Joint Dispatch Agreement will be archived in an electronic format and submitted to the Staff annually.
- e. The Commission shall have access to all financial information on all affiliates, subsidiaries or divisions, regulated or non-regulated, and any future utility or non-utility affiliate, subsidiary or division of Ameren or an Ameren affiliate, subsidiary or division, necessary to calculate an estimate of the stockholders' required return on equity (ROE) for Ameren on a consolidated basis and then a differentiated ROE for each affiliate, subsidiary or division, including UE, on a stand-alone basis.
- f. UE will provide the historical hourly generation data required by Commission rule 4 CSR 240-20.080 in electronic format accessible by a spreadsheet program. UE will provide the historical purchase power data and interchange sales data required by Commission rule 4 CSR 240-20.080 in hard copy until it is available in

electronic format accessible by a spreadsheet program.

UE expects by July 1, 1997 this purchase power data and interchange sales data to be available in electronic format accessible by a spreadsheet program when the centralized control center completes modifications to the energy management computer system to accommodate joint dispatch.

- g. UE agrees that respecting the General Services Agreement ("GSA"), the Staff and other proper parties, in the context of UE's general rate filings and/or alternative regulation plans, retain the right to bring concerns to the Commission and propose adjustments, if necessary, regarding the GSA's rate impact on Missouri customers, and the Commission retains jurisdiction to consider and adopt such adjustments. (See also Sections 8.d. and 8.g. above concerning state jurisdictional issues.)

#### 10. System Support Agreement

The signatories other than the Missouri Industrial Energy Consumers ("MIEC") agree that the 10-year System Support Agreement ("SSA"), as described in Ms. Maureen A. Borkowski's Supplemental Direct Testimony, pages 1 to 3, should be approved by the Commission pursuant to the following conditions.

First, the approval of the 10-year SSA shall not be construed as approval by the Commission or the signatories for the capacity and energy addressed in the 10-year SSA to be allocated to Missouri jurisdictional ratepayers.

Second, regarding the appropriateness of the future utilization of the capacity and energy addressed in the SSA for serving UE's Missouri customers:

- a. UE will undertake an integrated resource planning process at the appropriate time in the future to determine if the capacity and energy used to serve its then former Illinois customers should, in UE's judgment, serve the Missouri jurisdiction.
- b. In UE's ongoing consideration of purchase power opportunities for native system load that periodically become available, it will evaluate, on an equivalent basis, the costs and risks of: (i) purchase power

opportunities; (ii) energy and capacity that is no longer needed or will no longer be needed to serve UE's then former Illinois customers; and (iii) newly-constructed capacity.

c. UE will provide the results of and workpapers supporting the analysis performed pursuant to Subsections a. and b. above to the Staff, OPC and MIEC.

d. The Commission has the authority in any future ratemaking proceedings to allocate the capacity and energy addressed in the SSA.

#### 11. Commission Rights

Nothing in this Stipulation And Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation.

#### 12. Staff Rights

If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation And Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which

shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are

privileged or protected from disclosure pursuant to any Protective Order issued in this case.

13. No Acquiescence

None of the signatories to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Stipulation And Agreement, or for which provision is made in this Stipulation And Agreement.

14. Negotiated Settlement

This Stipulation And Agreement represents a negotiated settlement. Except as specified herein, the signatories to this Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding, (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation And Agreement in the instant proceeding, or in any way condition its

approval of same, or should the merger with CIPSCO not be consummated.

**15. Provisions Are Interdependent**

The provisions of this Stipulation And Agreement have resulted from negotiations among the signatories and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation And Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

**16. Prepared Testimony**

The prepared testimonies and schedules of the following witnesses shall be received into evidence without the necessity of these witnesses taking the witness stand:

Union Electric Company:

Charles W. Mueller (Direct Testimony)  
Donald E. Brandt (Direct and Surrebuttal Testimonies)  
Thomas J. Flaherty (Direct and Surrebuttal Testimonies)  
Warner L. Baxter (Direct, Supplemental Direct, Second Supplemental Direct, Surrebuttal and Supplemental Surrebuttal Testimonies)  
Douglas W. Kimmelman (Direct Testimony)  
Maureen A. Borkowski (Direct, Supplemental Direct and Surrebuttal Testimonies)  
Jerre E. Birdsong (Direct and Surrebuttal Testimonies)  
Gary L. Rainwater (Direct and Surrebuttal Testimonies)  
Craig D. Nelson (Surrebuttal Testimony)  
James A. Reid (Surrebuttal Testimony)

Commission Staff:

Daniel I. Beck (Rebuttal and Supplemental Rebuttal Testimonies)  
David W. Elliott (Rebuttal Testimony)  
Cary G. Featherstone (Rebuttal Testimony)  
Charles R. Hyneman (Rebuttal Testimony)  
Thomas M. Imhoff (Rebuttal Testimony)  
Tom Y. Lin (Rebuttal Testimony)  
Jay W. Moore (Rebuttal Testimony)  
Mark L. Oligschlaeger (Rebuttal Testimony)  
James D. Schwieterman (Rebuttal and Supplemental Rebuttal Testimonies)  
Michael J. Wallis (Rebuttal Testimony)

Office of Public Counsel:

Russell W. Trippensee (Rebuttal Testimony)  
Mark Burdette (Rebuttal Testimony)  
Ryan Kind (Rebuttal and Cross-Surrebuttal Testimonies)

Missouri Industrial Energy Consumers:

Maurice Brubaker (Direct Testimony)

**17. Waive Rights to Cross Examination, etc.**

In the event the Commission accepts the specific terms of this Stipulation And Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo. 1994; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1994. This waiver applies only to a



Commission Report And Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation And Agreement.

**18. Operative Dates**

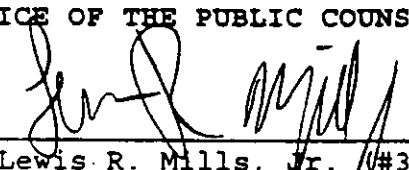
The following sections of this Stipulation And Agreement shall become operative upon approval of this agreement by the Commission: Sections 1-5 and 8-17.

The following sections shall become operative at the expiration of the ARP on June 30, 1998: Sections 6-7.

Respectfully submitted,

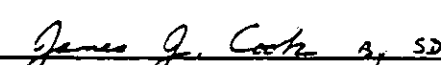
OFFICE OF THE PUBLIC COUNSEL

By

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

UNION ELECTRIC COMPANY/CIPSCO

By

  
James J. Cook (#22697)  
Associate General Counsel  
P. O. Box 149, MC 1310  
St. Louis, MO 63166  
(314) 554-2237

STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION

By Steven Dottheim  
Steven Dottheim (#29149)  
Deputy General Counsel  
Aisha Ginwalla (#41608)  
Roger W. Steiner (#39586)  
Assistant General Counsel  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-7489

TRIGEN-ST. LOUIS ENERGY CORP.

By Richard W. French By SD  
Richard W. French (#27356)  
French & Stewart  
1001 Cherry St., Suite 302  
Columbia, MO 65201  
(573) 499-0635

MISSOURI GAS ENERGY, A DIVISION  
OF SOUTHERN UNION COMPANY

By Gary W. Duffy By SD  
Gary W. Duffy (#24905)  
Brydon, Swearengen & England  
P.O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166

ANHEUSER-BUSCH, INC., ET AL.  
(MIEC)

By Robert C. Johnson By SD  
Robert C. Johnson (#15755)  
Michael R. Annis (#47374)  
Peper, Martin, et al.  
720 Olive Street, 24th Fl.  
St. Louis, MO 63101-2396  
(314) 421-3850

UTILICORP UNITED INC.  
THE EMPIRE DISTRICT ELECTRIC CO.

By James C. Swearengen By SD  
James C. Swearengen (#21510)  
Brydon, Swearengen & England  
P.O. Box 456  
Jefferson City, MO 65102  
(573) 635-7166

LACLEDE GAS COMPANY

Will not sign, and will not  
support or oppose -- letter  
By to follow. By SD  
Michael C. Pendergast (#31763)  
Laclede Gas Company  
720 Olive St., Room 1520  
St. Louis, MO 63101  
(314) 342-0532

STATE OF MISSOURI  
OFFICE OF ATTORNEY GENERAL

By Jeremiah W. Nixon  
Jeremiah W. Nixon  
Daryl R. Hylton (#35605)  
Office of Attorney General  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-1143

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCALS 702, 309, 1455, AND 2

Will not sign, and will not  
support or oppose -- see  
By letter this date. 8, SD  
Marilyn S. Teitelbaum (#26074)  
Schuchat, Cook & Werner  
1221 Locust St., 2nd Floor  
St. Louis, MO 63101  
(314) 621-2626

DATED: 7/12/96 SD

ILLINOIS POWER COMPANY

Will not sign, and will not  
support or oppose -- letter  
By to follow. 8, SD  
Paul S. DeFord (#29509)  
Lathrop & Gage  
2345 Grand Blvd., Suite 2500  
Kansas City, MO 64108  
(816) 460-5827

KANSAS CITY POWER & LIGHT CO.

By James M. Fischer  
James Fischer (#27543)  
Attorney at Law  
101 W. McCarty, Suite 215  
Jefferson City, MO 65101  
(573) 636-6758

JAMES K. COOK  
CHARLES A. WERNER  
CHRISTOPHER T. HEKTER  
MARILYN S. TEITELBAUM  
JAMES L. SINGER  
SALLY E. BARKER  
ARTHUR J. MARTIN  
THOMAS J. GRADY  
MARY M. LINDMARK  
KEVIN P. FAGAN  
ELLIOT M. UCHITELLE

LAW OFFICES

SCHUCHAT, COOK & WERNER

THE SHELL BUILDING, SECOND FLOOR  
1221 LOCUST STREET  
SAINT LOUIS, MISSOURI 63103-2364

314 621-2626  
FAX: 314 621-2378  
July 12, 1996

STANLEY R. SCHUCHAT  
(1939-79)

ARTHUR H. NISSENBAUM  
OF COUNSEL

MARSHAN K. STROMBERG  
OF COUNSEL

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

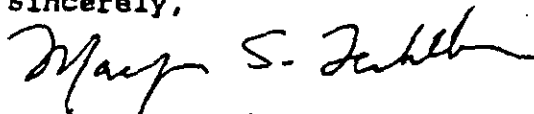
RE: Case No. EM-96-149

Dear Mr. Rauch:

Intervenors IBEW, Locals 702, 1455, 309 and 2 do not concur or acquiesce in the Stipulation and Agreement in the above mentioned case, but they are not in opposition to it either. Furthermore, they are not requesting a hearing.

I am enclosing 14 copies of this letter for distribution. If you have any questions, please contact me.

Sincerely,

  
Marilyn S. Teitelbaum

MST:jlh

Enclosures

cc: Parties of Record  
Judge Joseph Derque  
Steve Dottheim  
Mike Datillo, Local 1455  
Jim Berger, Local 309  
Dave White, Local 2  
Danny Miller, Local 702

67203.1

SCHEDULE 1-67