

Schedule No.:
Issues: Joint Dispatch Agreement
System Support Agreement
Transmission Issues
Market Power Issues
Gas-related Issues
Witness: Maureen A. Borkowski
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Union Electric Co.
Case No.: EM-96-149

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-96-149

SURREBUTTAL TESTIMONY

OF

MAUREEN A. BORKOWSKI

**St. Louis, Missouri
June 3, 1996**

1
2
3
4
5
6
7
8

**SURREBUTTAL TESTIMONY
OF
MAUREEN A. BORKOWSKI**

9
10
11
12

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

13
14

Q. Please state your name and business address.

15
16
17
18

**A. My name is Maureen A. Borkowski and my business address is
1901 Chouteau Avenue, St. Louis, Missouri 63103.**

19
20
21

**Q. Are you the same Maureen A. Borkowski who previously
submitted testimony in this proceeding?**

22
23

A. Yes, I am.

24
25

Q. What is the purpose of your Surrebuttal Testimony?

26
27
28
29
30
31
32

**A. The purpose of my Surrebuttal Testimony is to address issues
raised by the MPSC Staff, the Public Counsel, the Missouri Industrial Energy
Consumers, and TRIGEN-St. Louis Energy Corp., specifically with regard to the
Joint Dispatch Agreement (JDA) and the estimation of joint dispatch savings, the
System Support Agreement (SSA), transmission system access and operation,
competition and market power, and gas-related merger issues.**

33
34

JOINT DISPATCH AGREEMENT AND JOINT DISPATCH SAVINGS

35
36
37
38

**Q. Can you provide a list of witnesses who addressed the JDA
and joint dispatch savings in their testimonies and summarize their
conclusions?**

39
40

A. Yes. Staff witness Daniel I. Beck addresses the JDA and

Surrebuttal Testimony of
Maureen A. Borkowski

1 concludes that the principles embodied in the JDA and the After-the-Fact
2 Resource Allocation contained therein are generally agreeable to Staff and,
3 presuming sufficient data are maintained for Commission audit and the JDA
4 principles properly applied, will result in a reasonable allocation of costs to each
5 utility. Mr. Beck recommends five conditions for approval of the JDA.

6 Staff witness Tom Y. Lin evaluated the joint dispatch savings calculated
7 by UE and performed his own calculation of joint dispatch savings. Staff witness
8 David W. Elliott developed purchased power prices and energy quantities for
9 use by Mr. Lin. Mr. Lin calculated joint dispatch savings of \$91 million versus
10 the \$74 million estimated by UE. Mr. Lin concluded that, although the numerical
11 values of joint dispatch savings are different, the conclusions are identical: the
12 JDA would result in significant fuel cost savings.

13 Missouri Industrial Energy Consumers (MIEC) witness Maurice Brubaker
14 testified that the UE joint dispatch analysis is incomplete based on its omission
15 of interchange purchase and sales data and concludes that the effect is to
16 overstate the joint dispatch savings. Public Counsel witness Ryan Kind also
17 questions the joint dispatch savings estimation, citing Mr. Brubaker's Illinois
18 Commerce Commission testimony regarding interchange energy, and concludes
19 that the savings may be underestimated. Mr. Kind also testifies that no capacity
20 deferral savings are included in merger savings estimate.

21 **Q. Please respond to Mr. Beck's testimony regarding the JDA.**

22 **A.** Mr. Beck is generally supportive of the Joint Dispatch Agreement
23 and the associated After-the-Fact Resource Allocation method described

Surrebuttal Testimony of
Maureen A. Borkowski

1 therein. I will therefore address only his five conditions for approval of the JDA
2 included in his Schedule 1.

3 UE (and Ameren) have no objection to items 1, 2 and 5, requiring access
4 to data, records and employees. The Company does not object to including in
5 the JDA (or the SSA as noted on Schedule 1) a requirement to submit any
6 proposed change, amendment, modification or supplement to the agreement to
7 the Commission for approval. The Company does object to including further
8 language (the second sentence of Item 3) which appears to give the
9 Commission substantial jurisdiction where none exists today. The language
10 would apparently allow the Commission to, in a new or future proceeding,
11 renege on approvals it had previously given to changes in the JDA, which were
12 subsequently filed and accepted by FERC, with no available recourse to the
13 Company. Further, the suggested language may leave the Company in the
14 untenable position of being subject to an order from this Commission regarding
15 changes to the JDA (or imposing specific terms and conditions on such
16 changes) which is inconsistent or perhaps in direct conflict with a FERC order
17 relating to the JDA. The Company believes that the condition to submit
18 proposed changes to this Commission for approval is sufficient to mitigate
19 Mr. Beck's and the Commission's concern on this matter without placing the
20 Company in an unnecessary regulatory dilemma.

21 Item 4 of Mr. Beck's conditions creates substantial concern for the
22 Company. The language included in this item appears to require the inclusion of
23 a regulatory "supremacy" clause in every wholesale energy or transmission

Surrebuttal Testimony of
Maureen A. Borkowski

1 agreement entered into by UE, CIPS, Ameren or any other affiliate whether or
2 not these agreements are between the affiliates. This would include all existing
3 interchange or transmission agreements that either UE or CIPS has with other
4 unaffiliated parties (e.g., UE and Kansas City Power & Light or CIPS and
5 Commonwealth Edison). This condition would grant the Commission extremely
6 broad authority where such authority does not exist today. The Commission's
7 existing authority relative to such agreements is not affected by the merger and,
8 therefore, no changes are required due to the merger.

9 The significance of the word "respecting" included in Item 4 is noteworthy.
10 Similar language proposed by Staff witnesses Michael J. Wallis,
11 and included in Staff's Legal Memorandum uses the word "respecting". This
12 appears to be designed to apply to agreements with unaffiliated companies.

13 Further, even if the language in Item 4 is clarified to apply only to
14 agreements between the affiliated interests, the language is so onerous and
15 punitive that the Company cannot accept it as written. The Legal Memorandum
16 to be filed by the Company on or before June 7 will address this issue in more
17 detail. However, relative to the JDA, such language would leave UE and CIPS
18 in the untenable position of conducting joint dispatch under a JDA which it
19 believes to be approved, but left with the uncertainty of some future
20 determination by the Commission as to the "recovery, disallowance, deferral, or
21 ratemaking treatment of any expense, charge, cost or allocation incurred,"
22 (Schedule 1) again with no recourse should such determination seem
23 inequitable. UE would have no reasonable assurance of cost recovery for

Surrebuttal Testimony of
Maureen A. Borkowski

1 expenses incurred under the JDA. The Company believes that the conditions in
2 Item 3, for submitting any proposed change to the JDA to the Commission for
3 approval, and in Item 5, for submission of data, afford adequate opportunity for
4 the Commission to maintain its jurisdiction over dispatch related costs and
5 ensure proper cost assignment.

6 **Q. Mr. Beck states that though the Staff agrees with many of the**
7 **principles of the JDA, they are only principles and do not guarantee**
8 **prudence or fairness for UE's customers. Do you agree?**

9 **A. No, I do not. While the After-the-Fact Resource Allocation**
10 **discussion in the JDA refers to "principles," it is clear from a reading of these**
11 **"principles" that they are extremely detailed and, in fact, form the basis for an**
12 **algorithm to actually perform the allocation. In fact, this very description was**
13 **provided to the engineers responsible for developing the necessary computer**
14 **software to perform the allocation. While the software itself does not currently**
15 **exist, the "principles" are sufficiently detailed to ensure prudence and fairness.**

16 **Q. Can you describe the analysis conducted by Staff witness**
17 **Mr. Lin?**

18 **A. Yes. Mr. Lin uses the production costing model, REAL TIME, to**
19 **simulate the UE and CIPS system separately and then as a combined system.**
20 **He then computed joint dispatch savings of \$91 million based on the difference**
21 **in cost between the sum of the separate system modeling and the combined**
22 **system modeling.**

Surrebuttal Testimony of
Maureen A. Borkowski

1 **Q. Is the analysis conducted by Mr. Lin similar to that conducted**
2 **by the Company?**

3 A. The analysis is similar in that both Mr. Lin and the Company
4 estimated the savings by comparing production costs of the separate systems to
5 the combined system. Mr. Lin, however, used a more detailed hourly production
6 cost model. (The Company used MIDAS, which is a resource planning tool
7 which includes monthly production costing capability.) Mr. Lin also used current
8 production costing input data, based on UE's and CIPS' most recent fuel
9 budgets. He also included more detail in his purchased power assumptions
10 (data provided by Staff witness David W. Elliott), addressing a concern raised by
11 Mr. Brubaker.

12 **Q. What would you conclude from Mr. Lin's analysis?**

13 A. While I have not had the opportunity to review Mr. Lin's data files
14 in detail, I agree with Mr. Lin's conclusion that Staff's and UE's results are
15 consistent. The JDA will result in tens of millions of dollars in fuel cost savings.

16 **Q. Does Mr. Lin have any other conclusions?**

17 A. Mr. Lin suggests that two conditions be imposed on UE/Ameren.
18 First, that UE/Ameren annually submit historical hourly generation, purchase
19 power and interchange sales data to the Commission in electronic format. UE is
20 willing to comply with this condition with the exception that the hourly purchased
21 power and interchange data does not currently exist in electronic format. We
22 expect it to be available once the centralized control center completes
23 modifications to the energy management computer system to accommodate joint

Surrebuttal Testimony of
Maureen A. Borkowski

1 dispatch. Hard copy data could be provided until such time as the modifications
2 are complete. We are willing to accept the second condition for access to
3 records and employees.

4 **Q. MIEC witness Mr. Brubaker and Public Counsel witness**
5 **Mr. Kind also raised issues regarding joint dispatch savings. Can you**
6 **respond to these issues?**

7 **A. Yes.** As I noted in my summary above, Messrs. Brubaker and Kind
8 both note a lack of completeness in the Company's modeling of interchange
9 energy. Oddly, they reach divergent conclusions: Mr. Brubaker contends that
10 the incompleteness tends to overstate the savings, while Mr. Kind argues that
11 savings may be underestimated.

12 **Q. Is there any data to support these claims?**

13 **A. Neither Messrs. Brubaker nor Kind provided any specific data to**
14 **support their conclusions.** In fact, it is very difficult to develop precise data for
15 interchange purchases and sales due to the opportunity-driven nature of these
16 transactions. The Company develops such data for budgeting purposes, but
17 there is substantial uncertainty about the future amount and prices of
18 interchange energy. However, Staff witness Mr. Elliott projected purchased
19 power energy amounts and prices using UE and CIPS budget data and historical
20 values. As I noted earlier, this data was used in Mr. Lin's analysis. As Mr. Lin's
21 resulting production cost savings were similar to the Company's estimate, I see
22 no basis to concluding that savings were overstated due to a lack of interchange
23 purchase data.

Surrebuttal Testimony of
Maureen A. Borkowski

1 In regard to interchange sales, the impact of including sales in the
2 calculation of joint dispatch savings can only enhance the level of savings. The
3 combined number of 28 interconnected companies affords significant opportunity
4 for new transactions. No savings were estimated relating to the increased
5 numbers of interconnections due to the difficulty in projecting this market. I
6 believe, therefore, that as Mr. Kind suggests, joint dispatch savings estimates
7 are conservative. I would note that to the extent that more interchange sales are
8 made, the margin on these sales serves as a reduction to production cost for our
9 customers.

10 **Q. Mr. Brubaker mentions that the margin or "mark up" may be**
11 **less in the future due to the combined system's transmission tariff. Can**
12 **you explain?**

13 A. Mr. Brubaker's hypothetical example regarding "mark-up" is
14 correct. However, it is unfounded in the context of the UE and CIPS
15 transmission tariff. The tariff rate cap for both firm and non-firm service through
16 the combined system exceeds the "mark-up" which the companies would
17 typically charge today for sales. Therefore, there will be no negative impact on
18 the joint dispatch savings.

19 **Q. Mr. Kind also raises the issue that no capacity deferral**
20 **benefits are included in the joint dispatch savings or elsewhere in the**
21 **merger savings. Can you explain?**

22 A. It is important to recognize that joint dispatch is designed to cause

Surrebuttal Testimony of
Maureen A. Borkowski

1 no harm to either CIPS or UE customers. The principles in the JDA are
2 developed with this in mind. Staff witness Mr. Beck notes this on pages 19 and
3 25 of his testimony. If UE and CIPS were to include capacity deferral savings in
4 the joint dispatch arrangement, as Mr. Kind suggests, any savings that may
5 occur to UE customers are an equal and opposite cost to CIPS customers. To
6 the extent that CIPS would make any long-term capacity available to UE at no
7 cost or at any cost below a market price, CIPS customers would forego revenue
8 that would otherwise have been available from other opportunities. For this
9 reason, the Companies did not include capacity deferral savings in the joint
10 dispatch or merger savings.

11 **Q. What would you conclude about the joint dispatch savings**
12 **and the JDA?**

13 A. The Company is willing to agree to conditions 1, 2 and 5 as
14 proposed by Mr. Beck, condition 3 with modification, and suggests the
15 elimination of condition 4 as the jurisdictional issue it seeks to address is
16 covered by conditions 3 and 5. The Company is also willing to agree to
17 conditions 1 and 2 on page 9 of Mr. Lin's testimony. Further, Mr. Lin's analysis
18 supports the Company's position that substantial savings will accrue due to joint
19 dispatch, on the order of \$70 to \$100 million over a ten-year period. Therefore, I
20 conclude that the Joint Dispatch Agreement should be approved by the
21 Commission.

Surrebuttal Testimony of
Maureen A. Borkowski

1 UE has not conducted a complete analysis of the risks involved with the 10-Year
2 SSA. However, Mr. Beck states that he might waive these concerns if the
3 analysis of the 10-Year SSA indicates "overwhelming benefits" (p.10 of
4 Supplemental Rebuttal) to Missouri retail ratepayers.

5 **Q. Did Mr. Beck perform a review of UE's analysis of the 10-Year**
6 **versus 30-Year SSA?**

7 A. Yes, Mr. Beck confirms that, based on UE's analysis, "... the
8 Missouri jurisdiction will benefit from the 10-Year SSA plan by utilizing the
9 returned capacity instead of purchasing new combustion turbine (peaking)
10 capacity." (p.3 of Supplemental Rebuttal). The amount of this benefit is in the
11 range of \$30-50 million in Present Value of Revenue Requirements (PVRR)
12 through the year 2010.

13 **Q. Did Mr. Beck also perform his own analysis?**

14 A. Yes. Mr. Beck performed his own analysis using a 15 percent
15 planning reserve margin rather than the 18 percent planning reserve margin
16 used by UE.

17 **Q. Why did Mr. Beck use 15 percent instead of 18 percent?**

18 A. As Mr. Beck notes, UE uses a 15 percent reserve margin for short-
19 term planning. Our Ill-Mo Pool agreement requires that UE maintain a 15
20 percent reserve margin and this is consistent with short-term planning studies
21 conducted by the Mid-America Interconnected Network (MAIN), UE's regional
22 reliability council. However, for long-term planning, MAIN policy states that
23 members are urged to maintain a minimum reserve margin of 18 to 22 percent in

Surrebuttal Testimony of
Maureen A. Borkowski

1 planning for the addition of new capacity. Mr. Beck expressed concern "... about
2 committing to resources that will not be available for five to ten years..." (p.8 of
3 Supplemental Rebuttal) based on 18 percent, and therefore elected to use 15
4 percent.

5 **Q. Do you agree with Mr. Beck's position?**

6 A. Mr. Beck has some discussion of the reserve margin issue in his
7 Supplemental Rebuttal testimony. I do not agree with all of his discussion, but
8 for purposes of evaluating the SSA options, I will not challenge his use of
9 15 percent versus 18 percent. It should be noted that use of 18 percent would
10 greatly enhance any expected benefits of the 10-Year SSA, as the capacity
11 returning to the Missouri jurisdiction would be needed sooner than with a
12 15 percent reserve requirement.

13 **Q. Do you agree with the results of Mr. Beck's analysis?**

14 A. No, I do not. In calculating the difference in PVRR for the 10-Year
15 and 30-Year SSA plans, Mr. Beck modified the UE capacity addition schedule to
16 achieve a 15 percent reserve margin. In doing so, he reduced the number of
17 combustion turbines (CTs) needed by the system, but allowed the unidentified
18 purchases in UE's 18 percent plan to remain. Mr. Beck erred in that he must
19 either eliminate the unidentified purchases from the plan or include in his
20 revenue requirement calculation some cost for these purchases. Eliminating the
21 purchases would result in unacceptably low reserve margins (roughly 100 MW
22 below the 15 percent target). By correcting this error, either by adding CTs to
23 replace the unidentified purchases or including a peaking capacity cost for these

Surrebuttal Testimony of
Maureen A. Borkowski

1 purchases, Mr. Beck's results change dramatically. Rather than resulting in a
2 \$30 million deficit, the 10-Year SSA results in a \$20 million benefit in PVRR
3 through the year 2010.

4 **Q. How does this correction alter Mr. Beck's conclusion?**

5 A. Mr. Beck indicated that had the analysis shown overwhelming
6 benefits to the Missouri ratepayers, he might waive his other concerns and
7 recommend approval of the 10-Year SSA. The analyses performed by Staff and
8 UE result in benefits estimated in the \$20-50 million range. I would suggest that
9 these benefits are substantial and, therefore, warrant approval.

10 **Q. Can you address Mr. Beck's other reasons for not**
11 **recommending approval?**

12 A. Yes. The three reasons related by Mr. Beck all involve practices
13 normally used in the Commission's review of electric resource plans. I do not
14 believe that the same practices are warranted here. The transfer of the UE
15 Illinois properties and the associated SSA is a one-time opportunity presented
16 by the proposed merger of UE and CIPS. If the 10-Year SSA is not approved,
17 the property transfer will not be made, and the Missouri ratepayers will have
18 forever foregone the opportunity for the savings presented here. That situation
19 is quite distinct from a resource planning decision to build a CT or implement
20 DSM or purchase capacity from an interconnected neighbor (although failure to
21 purchase capacity when offered can likewise result in a lost opportunity), which
22 decisions can be reevaluated year after year.

23 **Q. Mr. Beck mentions that a risk analysis should be performed.**

Surrebuttal Testimony of
Maureen A. Borkowski

1 **Can you comment?**

2 A. Mr. Beck's testimony includes some of the risk analysis he
3 suggests. He reviewed the sensitivity of the recommendation to CT prices and
4 concludes that CT prices will not go so low as to eliminate the benefits of the
5 10-Year SSA (p.5 of Supplemental Rebuttal).

6 **Q. Did Mr. Beck mention any other concerns about the 10-Year**
7 **SSA?**

8 A. In his Rebuttal Testimony, Mr. Beck mentioned three concerns
9 about the pricing of capacity and energy in the formula rates: nuclear
10 decommissioning costs, the determination of return on common equity and the
11 annual reconciliation of costs. In the case of nuclear decommissioning costs
12 and the annual reconciliation, UE will commit to add minor conforming language
13 to the SSA to clarify our intent and address Mr. Beck's concerns. The return on
14 common equity is fixed for the first five years, and UE would agree to submit any
15 proposed changes to the Commission for approval.

16 **Q. Did Mr. Beck have any other conditions, should the**
17 **Commission decide to approve the 10-Year SSA?**

18 A. Yes. He recommended that the first four conditions I discussed
19 regarding the Joint Dispatch Agreement be applied to SSA approval.

20 **Q. Do you agree with this?**

21 A. UE (and Ameren) have no objection to conditions 1 and 2. As I
22 discussed in my JDA testimony, the Company can accept the first sentence of

Surrebuttal Testimony of
Maureen A. Borkowski

1 condition 3. Consistent with my JDA testimony, the Company objects to the
2 second sentence of condition 3 and suggests that condition 4 be eliminated.
3 Since any proposed change to the SSA will be filed with the Commission for
4 approval, condition 4 is unnecessary. The Company's Legal Memorandum
5 address these issues in more detail.

6 **Q. Mr. Beck also discussed industry structure and stranded**
7 **investment in his Supplemental Rebuttal testimony. Can you comment?**

8 A. Mr. Beck suggests that PVRR is no longer the appropriate
9 mechanism for utility decision making due to changes in the industry. While we
10 all recognize that the industry is changing, business goes on. The Commission
11 has not rescinded the requirement for utilities to file 20-year resource plans
12 using PVRR nor rejected its tradition of embedded cost ratemaking due to
13 changes in the industry.

14 Mr. Beck also discusses stranded costs and recommends that the
15 Commission condition approval of the 10-Year SSA on holding Missouri
16 ratepayers harmless for any stranded generation costs. This recommendation
17 should be rejected. Mr. Beck seems to be suggesting that, although the 10-Year
18 SSA has expected benefits to the Missouri ratepayers of \$20-50 million, they
19 should have the right to all benefits, but be guaranteed complete insulation from
20 any cost. Further, it is completely premature to address stranded generation
21 costs, which may or may not exist at some date in the future, in this merger
22 docket. The Company recommends that any such determination of stranded
23 cost responsibility be left to such future date as such costs become relevant.

1 **TRANSMISSION SYSTEM ACCESS & OPERATION**

2 **Q. Several witnesses referenced transmission access and**
3 **transmission system operations issues in their rebuttal testimony. Can**
4 **you summarize their testimony?**

5 **A. Yes. TRIGEN witness Scott A. Spiewak describes his client's**
6 **desire and actions seeking transmission service from Union Electric. He**
7 **recommends that the Commission explore whether the public interest demands**
8 **that UE and CIPS turn over their transmission assets to an independent system**
9 **operator (ISO). Public Counsel witness Mr. Kind expresses concern about the**
10 **possibility of UE and CIPS using their transmission ownership to hinder**
11 **competition in the electric utility industry. Staff witness Mark L. Oligschlaeger**
12 **discussed transmission rate "pancaking" and ISO's. He made no**
13 **recommendations on these issues.**

14 **Q. Can you respond to Mr. Spiewak?**

15 **A. Yes. Mr. Spiewak's major concern is that his client, TRIGEN, has**
16 **sought firm transmission service from Union Electric "for six months" in order to**
17 **deliver 57 MW of generation from the Ashley Power Plant (a former UE facility)**
18 **to UE's interconnections with CIPS, with flexible non-firm service to other**
19 **interconnections. UE provided Mr. Spiewak with an unexecuted agreement for**
20 **such service on May 1, 1996. Therefore, his transmission concern has been**
21 **resolved.**

22 **Q. Why did it take so long to provide the agreement?**

Surrebuttal Testimony of
Maureen A. Borkowski

1 A. Mr. Spiewak's original request asked for 57 MW of network
2 service, both on a firm and non-firm basis and point-to-point service, firm and
3 non-firm, from Ashley Plant (1 Ashley Place) to UE's points of connection with
4 CIPS and with six other entities with whom UE has no interconnection
5 agreement. UE was understandably confused by this perplexing request,
6 especially since our proposed merger had just been announced, and we
7 intended to shortly file a combined system open-access tariff which we expected
8 to be available to meet TRIGEN's needs. Further, UE and TRIGEN were
9 currently involved in active litigation regarding a 50-year power agreement which
10 UE and TRIGEN's predecessor, Thermal Resources, had entered into at the
11 time that UE sold the Ashley Plant. This agreement required all steam-
12 generated electrical energy from the Ashley Plant to be sold to UE, which would
13 have made TRIGEN's transmission service request for delivery to other parties a
14 violation of the power agreement. UE asked on several occasions to meet with
15 Mr. Spiewak and/or other TRIGEN representatives to clarify these issues, but
16 Mr. Spiewak steadfastly ignored our attempts to schedule even a conference
17 call. At one point in the exchange of correspondence, UE believed that TRIGEN
18 had allowed its request to languish. (Mr. Spiewak sent information by facsimile
19 which no one at UE has a record of receiving.)

20 Finally, on February 23, 1996, UE and TRIGEN reached a settlement
21 agreement on the termination of the power agreement which was the subject of
22 the litigation. TRIGEN subsequently performed the required actions under the
23 settlement, and on April 8, 1996 UE conducted its inspection of the Ashley

Surrebuttal Testimony of
Maureen A. Borkowski

1 facilities and the power contract was terminated. Once this threshold issue for
2 UE was no longer relevant, we tendered a transmission agreement to TRIGEN.

3 **Q. Do you believe that UE in any way abused its market power**
4 **through its treatment of TRIGEN's request or in any way demonstrated**
5 **"hostility toward the goal of robust competition" (p.10)?**

6 **A.** Absolutely not. Our actions were governed by two concerns: our
7 desire to enforce the existing power agreement and our request for clarification
8 from Mr. Spiewak to come to an understanding of what services he was
9 requesting.

10 **Q. Do you believe the Commission should take any action on**
11 **Mr. Spiewak's recommendation?**

12 **A.** No. I will discuss the ISO concept in more detail later, but in any
13 event, no action is required to address Mr. Spiewak's concern. I might add that
14 in the interim time between our earlier correspondence with Mr. Spiewak and our
15 settlement with TRIGEN, Mr. Spiewak filed on behalf of TRIGEN a Section 211
16 complaint under the Federal Power Act with the Federal Energy Regulatory
17 Commission (FERC) to compel UE to provide transmission service. Despite the
18 fact that UE has voluntarily provided a transmission agreement to Mr. Spiewak
19 as of May 1, this complaint docket is still open. Mr. Spiewak has all the
20 necessary recourse he may require at FERC.

21 **Q. Mr. Kind has concerns related to the proposed merger's effect**
22 **on competition. Can you address these concerns?**

Surrebuttal Testimony of
Maureen A. Borkowski

1 A. Yes. Mr. Kind expresses concern that, despite the combined
2 system open-access tariff, UE and CIPS may use their strategic location to limit
3 access and hinder competition. This concern is unfounded. Certainly, the
4 companies consider the increased number of transmission interconnections a
5 benefit of the merger. However, as I stated in my direct testimony (p.14), the
6 open-access tariff will enhance the interchange opportunities, not only for UE
7 and CIPS, but for other utilities and power marketers in the region. The same is
8 true for wholesale customers and, perhaps in the future, retail customers within
9 the combined UE and CIPS control area. They will now have access to a larger
10 number of potential suppliers for a single system rate.

11 **Q. Mr. Kind mentions that procedures for addressing bottlenecks**
12 **and determining cost allocations for new facilities need to be worked out.**
13 **Do you agree?**

14 A. The open-access tariff filing addresses these issues. The tariff
15 includes provisions for construction of new facilities to meet requests for service,
16 and FERC has established pricing policies for allocating the costs associated
17 with these facilities. Further, the recent FERC Order 888, requiring open-access
18 tariffs for all public utilities, includes these provisions as well.

19 I would also add that, while the combined system is well-interconnected,
20 its interconnections are not exclusive. Even without a regional grid-wide tariff, a
21 transmission customer can easily seek alternate paths to suppliers and/or
22 customers from utilities other than the merged company via those utilities' tariffs.

23 **Q. Mr. Oligschlaeger also mentioned a regional grid-wide tariff.**

Surrebuttal Testimony of
Maureen A. Borkowski

1 **Can you comment on his remarks?**

2 A. Yes. Mr. Oligschlaeger refers to the practice of "pancaking"
3 transmission rates and notes that the Commission has recommended that
4 regional transmission pricing methods be investigated. As he notes, the
5 combined system tariff of UE and CIPS will eliminate the pancaking effect that
6 would otherwise have occurred for transactions across the UE and CIPS
7 systems. He also notes that UE is participating in the development of the
8 Midwest ISO, which lists among its principles the development of a regional
9 transmission tariff. (I should add that CIPS is now also participating in the
10 Midwest ISO. This fact was not known to Mr. Oligschlaeger at the time his
11 testimony was submitted.)

12 **Q. Should the Commission require UE and CIPS to participate**
13 **either in an ISO or in a regional grid-wide tariff as a condition of the merger**
14 **approval?**

15 A. No. Such action would be unnecessary and premature. The
16 Midwest ISO is in the developmental phase. It would be unwise to require
17 participation in a group whose structure, requirements and obligations are so ill-
18 defined. No other ISO currently exists. Requiring participation in a regional
19 grid-wide tariff is fraught with the same problems: no appropriate region or tariff
20 has as yet been defined. Further, given FERC Order 888, which requires retail
21 customers who gain access to the competitive power markets to become eligible
22 customers for the same tariffs as wholesale customers, UE, CIPS and the
23 Commission must give serious consideration to the impact on remaining native

1 load customers before such participation could be contemplated. Mr.
2 Oligschlaeger expressed the Commission's desire for investigation of these
3 options. UE and CIPS are investigating the possibilities. Mr. Oligschlaeger did
4 not recommend any action or condition regarding these transmission issues. I
5 concur with this position.

6

7

COMPETITION AND MARKET POWER

8 **Q. Can you summarize the testimony submitted by other parties**
9 **regarding competition and market power issues?**

10 A. TRIGEN witness Mr. Spiewak charges UE with past and present
11 abuse of market power, based on his assessment of our response to TRIGEN's
12 request for transmission service and our Rider E tariff. Public Counsel witness
13 Mr. Kind expresses general concern over the possibility of transmission and
14 generation market power hindering competition. Staff witness Mr. Oligschlaeger
15 addresses market power in his discussion of transmission policy.

16 **Q. Can you respond to the issues raised regarding market**
17 **power?**

18 A. Yes. First of all, I agree with Mr. Oligschlaeger that "...since any
19 market power implications of the UE/CIPSCO transaction extend well beyond the
20 Missouri jurisdiction, it seems appropriate for FERC to be the primary forum for
21 the examination of these issues." (p.46). Nonetheless, Messrs. Spiewak's and
22 Kind's concerns are unwarranted. Mr. Spiewak's charges of market power

Surrebuttal Testimony of
Maureen A. Borkowski

1 abuse stem from his dissatisfaction with UE's response to TRIGEN's request for
2 transmission service and his dislike of Rider E. I have earlier responded to
3 Mr. Spiewak's contentions regarding the transmission request and Company
4 witness Richard J. Kovach addresses the Rider E issue in his Surrebuttal
5 Testimony. The only remaining issue of Mr. Spiewak's is UE's interpretation of
6 the requirement to provide transmission service to Qualifying Facilities. This
7 issue is irrelevant to this merger docket and no longer meaningful since UE has
8 offered an agreement for the requested service. (Note that the proffered
9 agreement includes the ancillary services requested by Mr. Spiewak.) The
10 Company testimony adequately demonstrates that UE has not shown "... past
11 abuse of market power...", does not have "... a stranglehold on transmission...",
12 has not shown "... a basic hostility toward the goal of robust competition..." and
13 has not sought "... to stifle competition." (All cites on p.10 of Mr. Spiewak's
14 Rebuttal.) Therefore, no remedy as sought by Mr. Spiewak from this
15 Commission is required.

16 Mr. Kind's concerns regarding possible transmission and generation
17 market power are exactly the issues which FERC addresses in its review of the
18 proposed merger. I have already addressed the transmission issues raised by
19 Mr. Kind. Regarding generation market power, Mr. Kind is concerned that
20 consolidation of UE and CIPS generating resources may result in a market
21 where the combined system can influence the market clearing price by having a
22 large amount of the region's low cost generating facilities under "single
23 ownership umbrella" (p.56). In the testimony filed by UE and CIPS at FERC,

Surrebuttal Testimony of
Maureen A. Borkowski

1 witness Rodney Frame (whose testimony is referenced by Mr. Kind at p.52)
2 analyzes the generation market power of the combined system and concludes
3 that, based on traditional market power measurements, generation market power
4 does not exist. By reviewing Mr. Kind's testimony (Schedule RK5-1), one can
5 see that the combined UE and CIPS system is surrounded by giants like
6 Commonwealth Edison, American Electric Power and Tennessee Valley
7 Authority as well as other smaller low-cost producers like CINergy, Kansas City
8 Power & Light and the Iowa Companies. Neither generation nor transmission
9 market power can be a valid concern.

10 No party has recommended a remedy to address market power (other
11 than the possibility of ISO participation which I have already addressed), and no
12 remedy is required.

13

14

GAS-RELATED ISSUES

15 **Q. Do you have any response to the rebuttal testimony of Staff**
16 **witness Michael J. Wallis?**

17 **A. Yes, I have comments regarding the three concerns expressed by**
18 **Mr. Wallis about the proposed merger and the five conditions which he**
19 **recommends that the Commission incorporate in its approval of the merger.**

20 **Q. What was the first concern mentioned by Mr. Wallis?**

21 **A. On pages 7 and 8 of his rebuttal testimony, Mr. Wallis states that**
22 **he is concerned with "the sharing methodology which will be used by the**
23 **combined UE/CIPSCO entity to distribute the gas merger savings to the**

Surrebuttal Testimony of
Maureen A. Borkowski

1 ratepayers of Missouri and Illinois.” In particular, he differentiates gas merger
2 savings from electric merger savings and notes the lack of any existing gas
3 savings sharing mechanism. Mr. Wallis testifies that the Staff, for the reasons
4 set out in the rebuttal testimony of Staff witness Mr. Oligschlaeger, will oppose a
5 gas savings sharing mechanism like that proposed for the electric merger
6 savings.

7 **Q. What are your comments regarding this first concern of**
8 **Mr. Wallis?**

9 **A.** As stated in our response to Staff Data Request No. 4 included on
10 page 8 of Mr. Wallis’ rebuttal testimony, UE does intend to share gas related
11 merger savings with its gas customers in a manner consistent with the sharing
12 proposed for electric customers. The reasons supporting such sharing are set
13 out in UE witness Rainwater’s direct testimony. However, as indicated in our
14 data request response and as noted by Mr. Wallis, UE’s current gas rate design,
15 including the PGA provisions, does not permit a sharing of gas related merger
16 savings. UE will address this issue in a separate filing after the merger is
17 completed.

18 **Q. What was Mr. Wallis’ second concern about the merger?**

19 **A.** Mr. Wallis describes his second concern as “the manner in which
20 Ameren Services Company (the affiliated service company which will perform the
21 gas procurement function for the combined UE/CIPSCO entity) will allocate gas
22 costs between Missouri and Illinois” (p. 7). He testifies (on pages 8 and 9 of his
23 rebuttal testimony) that it is critical for the Staff to make certain that as gas

Surrebuttal Testimony of
Maureen A. Borkowski

1 supplies are jointly dispatched and used by UE and CIPS customers, the
2 ratepayers of Missouri and Illinois will be allocated their fair share of the gas
3 costs. Mr. Wallis refers to our response to Staff Data Request No. 5020 that the
4 details of how gas costs will be allocated after the merger have not yet been
5 worked out.

6 **Q. Do you have comments concerning Mr. Wallis' second**
7 **concern?**

8 **A.** Yes, the Company recognizes the importance of ensuring that the
9 Staff has the ability to make certain that gas costs are fairly allocated to
10 ratepayers in Missouri and Illinois. While the details of the allocation have not
11 been determined, UE assures the Commission and its Staff that any allocation
12 methodology will be submitted for approval either as a part of the ACA audit
13 process as contemplated by Mr. Wallis (p. 10 of his rebuttal testimony) or
14 possibly in a separate proceeding.

15 **Q. Please describe the third concern testified to by Mr. Wallis.**

16 **A.** At pages 7, 9 and 10 of his rebuttal testimony, Mr. Wallis states
17 that he is concerned "whether or not the combined UE/CIPSCO entity will
18 participate in the futures market." He describes UE's current Commission-
19 approved pilot project entitled "Use of Financial Markets to Manage Gas Costs"
20 and refers to CIPS' current nonparticipation in the natural gas futures market.

21 **Q. What conclusion did Mr. Wallis reach with respect to the use**
22 **of natural gas futures after the merger?**

Surrebuttal Testimony of
Maureen A. Borkowski

1 A. He concluded that if the combined UE/CIPSCO entity does not
2 continue to use the futures market, Missouri ratepayers may not realize possible
3 savings to be derived from their use as price hedging tools. Mr. Wallis added
4 that a failure to use futures may be considered by the Commission Procurement
5 Analysis Staff as a basis for disallowing the recovery of gas costs in an ACA
6 proceeding.

7 **Q. Do you have any response to this final concern of Mr. Wallis**
8 **about the merger?**

9 A. Yes, I do. Just as UE has always been, the combined UE/CIPSCO
10 entity will be committed to considering every reasonable means of insuring the
11 lowest gas costs to its customers including the use of financial markets to
12 manage such costs. However, it must be recognized that the Company's
13 authority to use futures, including the nature and degree of such use, is unclear
14 beyond the termination of the pilot project in March 1997. The Commission in
15 approving the project expressly limited its duration to not exceed two years and
16 to date, it has issued no guidance as to the further use of futures by UE or by
17 Missouri gas utilities in general. With this uncertainty, I ask the Commission not
18 to accept Mr. Wallis' conclusion that a failure to use futures may be considered
19 grounds for gas cost recovery disallowances in ACA proceedings.

20 **Q. In his rebuttal testimony, Mr. Wallis also recommends that**
21 **certain conditions be made a part of any Commission decision approving**
22 **the merger. Are such conditions acceptable to Union Electric?**

Surrebuttal Testimony of
Maureen A. Borkowski

1 A. Three of the conditions are acceptable in the form recommended
2 by Mr. Wallis. The other two conditions are acceptable in principle, but not
3 specifically in the form that Mr. Wallis proposes. The Company's response to
4 these conditions will be further addressed (and, to the extent necessary,
5 clarified), in its Legal Memorandum to be filed on or about June 7, 1996.

6 **Q. Please identify the conditions which are acceptable to UE.**

7 A. Mr. Wallis, on page 11 of his rebuttal testimony, recommends that
8 Commission approval of the merger be conditioned upon Ameren Corporation's
9 and UE's acceptance of the provisions of the Stipulation and Agreement
10 approved by the Commission in Case No. GR-93-106, particularly the
11 documentation requirements set forth in Paragraph 4. On pages 12 and 13 of
12 his rebuttal testimony, Mr. Wallis recommends two additional conditions which
13 require our acknowledgment and agreement that (i) "the Commission may
14 access and require without subpoena the production of all accounts, books, ...
15 and officers and employees of Ameren Corporation and any affiliate or
16 subsidiary of Ameren Corporation" and (ii) "the Commission may require
17 answers, and/or the appearance of officers or employees of Ameren Corporation
18 and any affiliate or subsidiary of Ameren Corporation without subpoena to
19 provide answers to questions ...".

20 UE (and Ameren) find these conditions acceptable and commit to
21 continue the documentation of its gas purchasing decisions currently performed
22 by UE as well as the access to documents and employees presently provided.
23 The Company acknowledges the Staff's need for this access to adequate

Surrebuttal Testimony of
Maureen A. Borkowski

1 documentation and to personnel in order to evaluate the prudence of the gas
2 purchasing decisions. Please be assured that any decision to use an entity
3 other than UE to purchase gas for UE's Missouri gas distribution system will be
4 done solely in the interest of maximizing benefits from the merger and not to
5 avoid regulatory review by this Commission or its Staff.

6 **Q. What are UE's concerns regarding the other two conditions**
7 **recommended by Mr. Wallis?**

8 A. The remaining two conditions, discussed by Mr. Wallis on pages
9 12-14 of his rebuttal testimony, require UE and Ameren Corporation affiliates or
10 subsidiaries to include certain language in specified types of contracts that are
11 filed with and/or approved by the Federal Energy Regulatory Commission
12 (FERC) and the Securities and Exchange Commission (SEC). The stated
13 objective of this language is to prevent Ameren Corporation and UE from
14 asserting federal preemption to challenge the power of the Commission to make
15 adjustments to the affiliate transactions of UE.

16 In principle, we do not oppose the objective of these conditions. The
17 Company's use of an affiliate to engage in natural gas transactions is not being
18 proposed in order to escape the jurisdiction of this Commission, but is intended
19 only to maximize the merger benefits. We do, however, have problems with the
20 specific manner and detail recommended by Mr. Wallis for achieving the Staff's
21 objective, similar to the concerns discussed earlier with regard to Mr. Beck's
22 testimony.

23 **Q. Please discuss UE's problems with these two conditions.**

Surrebuttal Testimony of
Maureen A. Borkowski

1 A. Our problems will be addressed more fully in the Legal
2 Memorandum to be submitted on or before June 7 by counsel on behalf of UE. I
3 will only highlight some particular concerns that I have with respect to the Staff's
4 FERC-related preemption condition.

5 First, circumstances have occurred in the past where the federal
6 preemption doctrine has been applied to prevent the Commission from barring
7 recovery by gas utilities of FERC-approved charges. One prominent example
8 involved FERC-approved take-or-pay charges billed to gas utilities by their
9 interstate pipeline suppliers. Because similar situations will undoubtedly arise in
10 the future, the Staff's proposed condition should not be in a form which will
11 deprive UE of availing itself of the preemption doctrine merely because an
12 affiliate is used to engage in natural gas transactions.

13 Second, the Staff's proposed condition seemingly requires its FERC-
14 related preemption language to be included not only in gas supply, storage and
15 transportation contracts between UE and its affiliates but also in contracts with
16 non-affiliated third parties who provide such services. (We conclude this from
17 the use of the word "respecting" in reference to FERC agreements in contrast
18 with the use of "between" in the SEC-related agreements. See pages 12-13.) It
19 will be virtually impossible for the Company to comply with this condition with
20 respect to contracts with interstate pipelines for transportation and storage
21 services. The forms of these contracts are standardized and typically filed as a
22 part of the pipelines' FERC-approved tariffs. It will be extremely difficult to
23 obtain the required agreement of an interstate pipeline to include the Staff's

Surrebuttal Testimony of
Maureen A. Borkowski

1 language in these contracts in light of FERC requirements. Adding to this
2 difficulty is the fact that each portion of UE's distribution system is physically
3 captive to one interstate pipeline supplier which severely limits our negotiating
4 leverage.

5 My final concern about the Staff's recommended preemption conditions is
6 the additional cost which may be extracted by non-affiliated third parties as
7 consideration for their agreement with the Staff's proposed contract language.
8 Such cost may in the form of higher prices or contractual concessions which will
9 ultimately be borne by our ratepayers.

10

11

CONCLUSION

12 **Q. Does this conclude your Surrebuttal Testimony?**

13 **A. Yes, it does.**