Exhibit No.:	
Issues:	Staff "Conditions"; Other Staff and OPC Issues
Witness:	Donald E. Brandt
Type of Exhibit:	Supplemental Testimony
Sponsoring Party:	Union Electric Company
Case No.:	EM-96-149

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EM-96-149

SUPPLEMENTAL TESTIMONY

OF

DONALD E. BRANDT

<u>DENOTES HIGHLY CONFIDENTIAL INFORMATION</u>

ST. LOUIS, MISSOURI
JUNE 3, 1996

Exhibit No. 17
Date 9-5-96 Case No. EM-96-149
Reporter KF

BEFORE THE PUBLIC SERVICE COMMISSION
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

AFFIDAVIT OF DONALD E. BRANDT

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

Donald E. Brandt, being first duly sworn on his oath, states:

1. My name is Donald E. Brandt. I work in the City of St. Louis, Missouri, and I am Senior Vice President, Finance & Corporate Services of Union Electric Company.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony consisting of pages 1 through 37, inclusive, all of which testimony 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.

Donald E. Brandt

Subscribed and sworn to before me this 1ST day of June, 1996.

Notary Public

PATRICIA A. NUOFFER
Notary Public – Notary Seal
STATE OF MISSOURI
St. Louis City
My Commission Expires: April 23, 1998

SURREBUTTAL TESTIMONY

OF

DONALD E. BRANDT

UNION ELECTRIC COMPANY
Docket No. EM-96-149

Q. Please state your name and address.

A. My name is Donald E. Brandt and my business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103.

Q. Are you the same Donald E. Brandt who previously filed direct testimony in this proceeding?

A. Yes, I am.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to rebut portions of testimony of the Commission Staff and the Office of Public Counsel (OPC). My testimony will be organized as follows:

Q. Prior to addressing specific portions of that testimony, do you have a general response to the testimony of the Staff and other parties, concerning the proposed merger?

A. Yes. After reviewing all of the testimony in this case, including the Company's Surrebuttal Testimony, I believe that the Commission can and should approve the merger proposed in this filing. It is clear that this merger will be beneficial to customers of Union Electric and CIPS, as well as beneficial to the shareholders of both companies; the Company's sharing proposal is both fair and reasonable and should also be approved. Also, as noted below, the Company is willing to accept most of the conditions recommended by the Staff for approval of the merger.

I. "CONDITIONS" RECOMMENDED BY THE STAFF

Q. Staff witness, Mr. Jay W. Moore, included a Schedule 19 as part of his testimony, which lists 21 "Necessary Conditions in Order for the Staff to Recommend Approval of the Merger of Union Electric Company and CIPSCO Incorporated." What is the Company's response to those conditions?

A. I will address each condition separately. I have also attached Schedule 1, which is an expansion of Mr. Moore's Schedule 19, to include in summary fashion, UE's response to each of the listed conditions.

1. "Replace UE's Ratemaking Proposal with Staff's."

Q. What is the Company's response to Staff's ratemaking proposal?

A. While the Company acknowledges that the Staff has agreed that "it is good policy to allow shareholders the opportunity for retention of benefits from mergers and acquisitions ...," the Company is concerned that the Staff's proposal will not allow for any meaningful opportunity for UE's merger costs to be recovered and for benefits to be made available to shareholders.

Q. Please explain why Staff's proposal concerns the Company.

A. As I mentioned above, the Staff's proposal will not allow shareholders to be treated fairly; that is, it does not adequately provide for recovery of the costs or allow for an equitable sharing of the benefits associated with the merger. Other witnesses, particularly Mr. Birdsong, will address several of these concerns.

One of our major concerns is that Staff's proposal is only applicable through June 30, 1998. They recommend that all merger savings flow to either stockholders or customers, based upon our current experimental alternative regulatory plan (ARP) but with some adjustments to recognize transaction and implementation costs. While the portion of Staff's recommendation which utilizes the ARP is acceptable to the Company, our concern is that the ARP is scheduled to expire June 30, 1998. Staff is not recommending extension of the ARP past that date; neither is Staff recommending a ratemaking plan which will become effective upon expiration of the ARP.

Reimbursement of a small portion of merger related costs and potentially sharing merger savings only through June 30, 1998 does not provide sufficient assurance that shareholders will ultimately be treated fairly. Before completing the merger, we need greater assurance that shareholders will be treated more fairly than Staff's proposal provides. UE, therefore, proposes that after Staff has had the opportunity to evaluate the first full year of the ARP which ends on June 30, 1996, and, provided that no major obstacles are uncovered, the ARP be extended for an additional five-year period. Absent this extension of the ARP, the Company continues to support its original proposal.

The Company is also concerned that Staff is recommending that shareholders not be reimbursed for transaction costs expensed in 1995 for book purposes. This issue is addressed in Mr. Baxter's testimony.

2. "No Direct Recovery of 'Merger Premium'"

Q. Staff witness Mr. Hyneman recommends that there should be no recovery of the merger premium in rates. Do you agree with his conclusion and analysis?

A. No, I do not. Mr. Birdsong addresses this issue in more detail in his Surrebuttal Testimony. In addition, however, it is important to note that in order to achieve this merger, it was mandatory that a merger premium be paid to CIPSCO

shareholders. Of all the utility mergers which have been announced or completed in the last few years, not one involving two parties of the size differential between UE and CIPSCO was announced without a merger premium. I disagree with Staff witness Mr. Featherstone that UE believed it had to pay a merger premium "since UE wanted to maintain control of the merged company," including selecting staff positions and the corporate headquarters. At the time of the merger announcement, UE's assets were 3.7 times that of CIPSCO, revenues were 2.4 times, and the market value of UE's common stock was 3.6 times that of CIPSCO. With such a size differential, UE shareholders would be in control of the merged entity. The merger premium was necessary to induce CIPSCO shareholders to relinquish control of their company. This is not the same as Mr. Featherstone's inaccurate conjecture that the premium was only offered so UE could maintain control.

I also wish to reiterate that Union Electric is requesting an opportunity for its shareholders to be reimbursed for the merger premium costs which they incur in order that the merger might be consummated and result ultimately in billions of dollars of savings which will be passed on to customers. Even though the Company believes that it is preferable to recognize this cost explicitly in a regulatory plan, the Company is not opposed to reimbursing its shareholders from merger savings in another manner. One method by which this may be done is to share net merger savings approximately

50%/50% between customers and shareholders, with the shareholders' portion grossed up for income taxes.

3. "20 Year Amortization of Actual Transaction Costs and Actual 'Costs to Achieve'"

Q. What is the Company's response to this condition?

A. The Company and Public Counsel believe that a 10 year amortization is more appropriate. Messrs. Baxter and Birdsong address this issue in their Surrebuttal Testimony.

4. "Filing of Updated General Services Agreement with Opportunity for Staff Review"

Q. What is the Company's response to this condition?

A. The Company will file a new General Services Agreement by June 21, 1996, and the Staff will have an opportunity to review the new Agreement. Mr. Baxter addresses this issue in his Surrebuttal Testimony.

5. "UE Acceptance of Changes to Joint Dispatch Agreement"

Q. What is the Company's response to this condition?

A. The Company is willing to accept most of the Staff's conditions regarding the Joint Dispatch Agreement but has concerns about a few of them. Ms. Borkowski addresses these issues in her Surrebuttal Testimony.

6. "Orders and Decisions on Affiliated Transactions"

7. "Ameren or UE Will Not Seek to Overturn this Commission's Orders and Decisions Regarding Electric Production"

8. "Ameren or UE Will Not Seek to Overturn this Commission's Orders and Decisions Regarding Gas Supply, Storage and/or Transportation Services"

9. "Pre-Approval of Affiliated Transactions (Optional and Not Endorsed by Staff)"

Q. What is the Company's response to these conditions?

A. Conditions 6 through 9 all concern the Commission's jurisdiction. This issue is addressed in the testimony of various Staff witnesses and in the "Comments of Staff Counsel," which was filed with that testimony. The Company will file a response (Legal Memorandum) to the "Comments" on or before June 7, pursuant to the order of the Hearing Examiner. That filing will address the legal aspects of this issue and further set forth the Company's position. However, I would like to address certain implications and practical concerns that these conditions raise. Rather than attempt to address

these issues specifically as they are raised by the various Staff witnesses, I will address them in a more consolidated manner, as they were presented in the Staff's "Comments".

Q. Is it true that the "Holding Company" corporate structure will result in a transfer of some operations from Union Electric to Ameren Services Company?

A. Yes. A significant portion of the savings to be realized in this merger will be brought about by the consolidation of duplicate activities. Many of these activities will be performed by Ameren Services. It is apparently true that this will bring some functions currently regulated by this Commission under the authority of the Securities and Exchange Commission. It should be noted that this corporate structure was not chosen in order to divest the Missouri Public Service Commission of any jurisdiction it currently has over the operations of Union Electric Company. The reasons UE chose the holding company structure were addressed by Mr. Rainwater in his Direct Testimony.

Q. At various points in its "Comments," the Staff expresses its concern about the jurisdictional implications of the holding company structure and suggests specific Commission actions or Company agreements that should occur to address these concerns. What is your response to those suggestions?

A. There are five suggestions contained in the "Comments." I will address each one separately.

(1) At the bottom of page 3 of its "Comments," the Staff states, "The MoPSC must ensure that it has the ability to access information concerning these transactions and make adjustments in UE's rates for transactions which are deemed to be unjust, unreasonable, imprudent, and/or otherwise adverse to ratepayers." "These transactions" refers to activities performed by Ameren Services for other Ameren subsidiaries and affiliates. The Company will commit to allow the MoPSC and its staff to have access to information concerning these transactions. The Company will not object to access because of corporate structure, because the information may be kept in Illinois, or that the information is in the custody of an Ameren subsidiary or affiliate.

(2) On page 6 of its "Comments," the Staff asserts that "UE must commit that it will not claim that SEC review of affiliate agreements under PUHCA in any way displaces this Commission's review of UE's affiliate agreements." In MPSC Case No. OO-96-329, the Commission is reviewing the appropriate level of oversight which should be exercised concerning agreements among affiliates. The Company agrees that it will abide by the rules and regulations finally approved in that docket, or subsequent docket on this issue. It would not be fair to hold Union Electric or Ameren Corporation to a greater standard than other utilities under the jurisdiction of the Commission. UE will not claim exemption from these rules because of Ameren's

corporate structure. To the extent that these rules affect the matter addressed in the previous section (1), the Company's position is the same as I have just described.

(3) On pages 6 and 7 of the "Comments," the Staff addresses the General Services Agreement. The Company agrees that the Commission shall have the right to approve the final Agreement and all allocation methods contained in it.

(4) On page 7, the Staff recommends that the Commission's approval of the merger be "conditioned on the FERC and SEC approval of UE's commitments to the MOPSC." This recommendation will be addressed in the Company's Legal Memorandum, mentioned above.

(5) On page 10 of the "Comments," the Staff addresses the Joint Dispatch Agreement and System Support Agreement. The Company agrees that it will submit to MoPSC jurisdiction as to those agreements. It will also agree to submit all changes to those agreements to the Commission for approval. The Company's Legal Memorandum will address in more detail the recommendation concerning FERC approval of the MoPSC conditions.

Q. Can you summarize the Company's position concerning the "jurisdiction" issues raised by the Staff?

A. Yes. The Company has agreed that Ameren Corporation and its subsidiaries and affiliates will continue to be subject to MoPSC jurisdiction after the merger to the same extent that Union Electric Company and its subsidiaries and

affiliates are subject to MoPSC jurisdiction now. It is the Company's intent that, to the greatest extent possible, the MoPSC not lose any jurisdiction because of this merger, or the resulting corporate structure. However, the Company does not believe that it is appropriate for the Commission to be granted more jurisdiction over Ameren Corporation and its subsidiaries and affiliates than the Commission would have over Union Electric and its subsidiaries and affiliates, or other utilities in Missouri, merely because of the merger. The Company is concerned that this additional jurisdiction would be the result of the complete adoption of the Staff's conditions concerning jurisdiction.

10. "Access to Ameren's and Ameren Affiliates' and Subsidiaries' Books and Records"

Q. What is the Company's response to this Condition?

A. Several Staff witnesses include a paragraph in their testimony which states that the Commission may have access to, and require without subpoena the production of all accounts, books, contracts, records, documents, memoranda, papers of Ameren Corporation. Consistent with the discussion of jurisdiction above, the Company agrees that the Commission and its Staff will be given the right to inspect all such books and records, whether or not those documents involve regulated or non-regulated matters.

11. "Ameren and Ameren Affiliates and Subsidiaries to Provide Answers and Access to Officers and Employees"

Q. What is the Company's response to this condition?

A. Several Staff witnesses include a paragraph in their testimony which states that the Commission may require answers, and/or appearances of officers or employees of Ameren Corporation and any affiliate or subsidiary, without subpoena to answer questions.

The Company agrees that the officers and employees of Ameren Corporation and all of its subsidiaries and affiliates will be available to the Commission to the same extent and under the same limitations as Union Electric Company's officers and employees are currently available, under the provisions of state law or Commission regulations. In other words, neither Ameren Corporation, nor any of its affiliates will claim that its officers or employees are exempt from any of the Commission's lawful requests for information and/or appearances merely because of the corporate structure of Ameren Corporation.

To the extent that answers and/or appearances concern transactions involving a non-regulated entity of Ameren, no objection will be raised that the information sought concerns a non-regulated matter.

These issues are further addressed in the Legal Memorandum to be filed on or before June 7, by the Company.

12. "Maintain Current Discovery Practices"

Q. What is the Company's response to this condition?

A. On page 56 of his Rebuttal Testimony, Staff witness Oligschlaeger expresses his concern that the "cooperative relationship that has generally typified UE-Staff dealings in the past relating to discovery matters" not be "negatively impact[ed]" by the merger. Mr. Oligschlaeger then suggests the following condition:

> Ameren, UE and all Ameren subsidiaries affiliates (sic) shall cooperate with the Commission and its Staff in matters of discovery and continue the current practices of UE related to discovery, including timeliness and responsiveness of data request responses and signing and dating data request responses by those responsible for said responses.

The Company agrees to this condition. UE and the Staff have generally enjoyed cordial relations and we see no reason why that should change.

13. "Accounting and Other Controls for Cost Allocations and Transfer Pricing."

Q. What is the Company's response to this condition?

A. The Company agrees to this condition and Mr. Baxter addresses this condition in his Supplemental Direct Testimony.

14. "Ameren and UE Acceptance of Language Contained in Stipulation and Agreement from Case No. GR-93-106"

Q. What is the Company's response to this condition?

A. The Company agrees to accept the language contained in the Stipulation reached in Case No. GR-93-106. Ms. Borkowski addresses this condition in her Surrebuttal Testimony.

15. "UE to Continue to Provide Monthly Surveillance Reports"

Q. What is the Company's response to this condition?

A. The Company agrees to this condition and Mr. Baxter addresses this condition in his Surrebuttal Testimony.

16. "Quarterly Provision of Allocation Information"

Q. What is the Company's response to this condition?

A. The Company agrees to this condition and Mr. Baxter addresses this condition in this Surrebuttal Testimony.

17. "Maintain Payroll Records on Merger Related Activities Separately"

Q. What is the Company's response to this condition?

A. Staff witness Mr. Imhoff states that UE should be ordered to "maintain merger related payroll costs separately and on a prospective basis beginning January 1, 1996." The Company believes that this requirement is inappropriate and unnecessary. Mr. Baxter will address this condition in his Surrebuttal Testimony.

18. "Electronic Format of Data Required under 4 CSR 240-20.080"

Q. What is the Company's response to this condition?

A. The Company agrees to this condition. Ms. Borkowski will address this condition in her Surrebuttal Testimony.

19. "Electronic Format for After-the-Fact Resource Allocation Data"

Q. What is the Company's response to this condition?

A. The Company agrees to this condition. Ms. Borkowski will address this condition in her Surrebuttal Testimony.

20. "Ameren to Provide Information Needed to Estimate Differentiated Required ROE"

Q. What is the Company's response to this condition?

A. The Company agrees to this condition and Mr. Baxter addresses this condition in his Surrebuttal Testimony.

21. "Prevention of Diversion of UE Management Talent"

Q. What is the Company's response to this condition?

A. Staff witness Mr. Oligschlaeger expresses a concern that Missouri customers may "lose the benefit of UE's management and operations experience and expertise if personnel are transferred to other" affiliates. In response to that concern, Mr. Oligschlaeger recommends that the Commission condition its approval of the merger on the condition that Ameren and UE "avoid a diversion of management and operations talent..." He further asks that the Commission require an annual report "identifying nonclerical personnel transferred from UE to any of Ameren's other businesses."

Q. Does the Company intend any significant reassignment of management or operations personnel to affiliates?

A. No. While it is possible that both regulated and non-regulated affiliates may be formed in the future, the Company has no significant activity currently planned along those lines. Moreover, there can be no doubt that, even if such affiliates are created in the future, the main business of Ameren Corporation is and will be the

provision of electric and natural gas service. The Company has no incentive to divert talent from its core business.

The Company objects to the requirement of an annual report as an unnecessary burden and inappropriate intrusion into the management of the Company. Every year there are many non-clerical personnel changes that occur within UE, as with any large corporation. There are retirements, re-assignments, re-organizations and other activities that cause personnel to change responsibilities. As an example, a manager in one operating department may be reassigned to another operating department in order to increase his or her management experience. Clearly, the first department has lost the experience and skill of the departing manager. However, such changes are not made unless competent replacements are available. The same will be true of potential reassignments to affiliates within Ameren Corporation.

The Company asks that this condition not be required by the Commission.

II. OTHER POINTS RAISED BY STAFF

Q. Mr. Featherstone stated that "it appears that this merger is about size -- about being a larger utility." Is his conjecture correct?

A. No, it is not. The only support for Mr. Featherstone's conjecture is a quote by NatWest Securities analyst Ed Tirello. Mr. Tirello states that "size is

becoming of increasing importance and that critical mass for a utility distribution company will be 1-2 million customers." (Featherstone, p. 9)

I suggest that it is more relevant to rely on the Company's reasons for the merger than on an analyst's. However, even if one wants to rely on Mr. Tirello's statement, UE already is well within his range of 1-2 million customers.

There is no need for Mr. Featherstone to speculate on the reason for this proposed merger. We are very direct about why UE is a party to this proposed merger – primarily, because there are cost synergies which can be achieved in no other way than through this merger. All other reasons the Company has given for the merger (which were listed and explained in the Joint Proxy Statement) are secondary in importance.

Q. There is much discussion in Staff and OPC testimony about what was said to the investment community concerning the merger premium and its recovery in rates. Who is the chief spokesperson for Union Electric in its communications with the investment community?

A. I am.

Q. Mr. Featherstone claims that neither UE nor CIPS disclosed to the investment community any plans to seek rate recovery for the merger premium, and that the Company's regulatory proposal was a "subsequent strategy by UE and CIPSCO to retain a greater portion of the merger savings for shareholders

than initially envisioned." There are also several references in both Staff and OPC testimony that only a 50/50 sharing of savings was envisioned by the Company at the time the merger was approved by the Boards and announced publicly. Are the Staff and OPC accurate in their appraisal of this issue?

A. No, they are not. As stated in my "interview" with Staff and OPC, "it wasn't the company's or my opinion" [that a 50/50 sharing of the savings was adequate to keep shareholders whole]. (Tr. 79) Furthet, in my "interview" response to a question from Mr. Kind that assumed "UE's position had changed", I stated, "I think your characterization [about] the new position is wrong, because there never was any other UE position". (Tr. 81)

Unfortunately, Staff did not include any of my discussion about this issue.

Q. On pages 36 and 37 of Mr. Featherstone's rebuttal testimony, he asserts that a 50/50 sharing of savings plan was presented to the Union Electric Board by Goldman Sachs and he includes an excerpt from Mr. Rainwater's "interview" with Staff and OPC to buttress his assertion. Is Mr. Featherstone's assertion appropriate?

A. No, it is not.

First, Mr. Featherstone, as well as other Staff and OPC witnesses, has made the erroneous assumption that the Goldman Sachs' presentation to the UE Board was for the purpose of communicating to the Board a planned regulatory strategy

and/or likely regulatory treatment of the merger. Second, in utilizing Mr. Rainwater's "interview" on this subject, Mr. Featherstone has made the erroneous assumption that Mr. Rainwater was familiar with and understood the purpose of the Goldman Sachs' presentation to the Board.

Goldman Sachs' role throughout the merger negotiation process, up to and including that firm's presentations to the UE Board, was limited to acting as UE's financial advisor and to rendering to UE's Board a "fairness opinion" relative to the stock "exchange ratios". The 50/50 assumption utilized by Goldman Sachs was just that – an assumption; one of many assumptions utilized by Goldman Sachs in rendering its "fairness opinion". No individual from UE had any input whatsoever into Goldman Sachs' choice or use of that 50/50 assumption.

As is summarized in the Joint Proxy Statement, Goldman Sachs performed **eight** different types of analyses in connection with rendering their "fairness opinion". Just **one** of these **eight** types of analyses, (Pro Forma Combination Analysis) incorporated the 50/50 sharing of savings assumption.

I would characterize Goldman Sachs' 50/50 assumption as nothing more than a "rule of thumb" that they utilize in evaluating the "fairness" of stock "exchange ratios". Further, I want to call attention to the following statement included in the Joint Proxy Statement (p. 40) relative to the Goldman Sachs'

analyses and the estimates utilized by Goldman Sachs in performing such analyses:

> The analyses were prepared solely for the purposes of Goldman Sachs providing their opinion to the Union Electric Board as to the fairness of the Union Electric Ratio, in light of the CIPSCO ratio, to holders of Union Electric Common Stock and do not purport to be appraisals or necessarily reflect the prices at which businesses or securities actually may be sold, which are inherently subject to uncertainty. **Any estimates incorporated in the analyses performed by Goldman Sachs are not necessarily indicative of actual past or future values or results, which may be significantly more or less favorable than any such estimates.** (emphasis added)

Goldman Sachs is a highly respected, expert investment banking firm. They are not experts, and they do not purport to be experts in the area of rate regulation or regulatory strategy. Further, UE management did not rely in any way upon Goldman Sachs to develop a regulatory strategy, nor communicate such a strategy to the UE Board. **I can state unequivocally that the Goldman Sachs' 50/50 assumption was not presented as, nor was it accepted by UE's President and CEO Mr. Mueller, any member of UE's Board or me, as a planned regulatory strategy or as an expected regulatory treatment.**

Regarding Mr. Featherstone's use of an excerpt from Mr. Rainwater's "interview" to buttress his assertion that a 50/50 sharing of savings plan was presented to the UE Board by Goldman Sachs, the first "interview" question included by Mr. Featherstone, is a question posed by Mr. Kind of OPC. Mr. Kind

asked Mr. Rainwater if he was familiar with the Goldman Sachs' analysis of earnings per share that utilized the 50/50 assumption. Mr. Rainwater's response was, "I recall it yes. I wouldn't say that I'm familiar with it." I find it incredible that Mr. Featherstone would rely on a witness's comments on a presentation after the witness essentially said he was not "familiar with it."

Mr. Rainwater's role in the merger negotiation process was to work with his counterparts at CIPSCO and with Deloitte & Touche to develop the estimate of merger savings. Mr. Rainwater's sole purpose in attending both the August 8, 1995 and August 11, 1995 UE Board meetings was to present the merger savings estimates to the UE Board. Mr. Rainwater had no substantive interaction with representatives from Goldman Sachs at any time during the merger negotiation process. Further, Mr. Rainwater's area of expertise is not in dealing with investment bankers, in negotiating merger "exchange ratios", or in understanding the process by which an investment banking firm renders a "fairness opinion".

To the extent that the interview with Mr. Rainwater confused this matter, I apologize to the Commission. However, I have little empathy for Mr. Featherstone when he chooses to ignore statements made by UE's chief financial officer while relying on statements made by Mr. Rainwater who quite frankly and up front admitted that he was not familiar with the subject matter.

Q. Do you understand the point behind the Staff's assertion that premium recovery was not disclosed initially?

A. The Staff may think that this proves that the Company believes it is not necessary to recover the merger premium for the merger to make economic sense. In fact, it is not necessary that the ratemaking treatment specifically designate a particular part of the recovery as "merger premium". We have always anticipated a plan which would be fair, which means a plan that would allow for recovery of the costs to accomplish the merger, as well as a sharing of the savings. Obviously, the costs include, and have always included, the premium. That recovery can be called virtually anything the Commission prefers. However, the Commission should not assume because the exact nature of the Company's regulatory proposal was not delineated to the Board or the investment community, that the Company made a subsequent decision to increase its requested recovery.

III. OFFICE OF PUBLIC COUNSEL ISSUES

A. OPC Recommendations and Conditions

Q. What is the Company's response to the recommendations and conditions listed by the OPC?

A. OPC witness Mr. Kind lists two recommendations or reasons why OPC finds the merger, "as proposed by UE", to be detrimental. The first concern is that the Company's sharing proposal will shift the risk associated with the merger to ratepayers. Mr. Birdsong has addressed this concern in his Surrebuttal Testimony.

The second concern is the loss of commission jurisdiction. I have already addressed this issue in response to the Staff's "Conditions".

Q. The OPC lists two conditions under which the Commission could approve the merger. What are those conditions and what is the Company's response?

A. The first condition is that the Company's sharing proposal be rejected. However, the OPC agrees that recovery of reasonable transaction and transition costs over a ten year period is appropriate. Again, Mr. Birdsong addressed the Company's sharing proposal in his Surrebuttal Testimony and I have also addressed it in response to Staff's "Conditions".

The second condition is that UE voluntarily commit to be bound by state commission action, not claim federal preemption, and to agree to make the books, records and employees of the holding company and subsidiaries reasonably available. I have previously addressed these points, as well.

Q. Can you summarize your response to the OPC's recommendations and conditions?

A. Yes. The Company has agreed with virtually all of the concerns raised by Staff and OPC on the jurisdiction and access issues. The Company has shown that its sharing plan is a fair and reasonable one and should be adopted. However, the Company has also indicated a willingness to consider and has suggested alternative methods of recovery. Therefore, no real issues remain which would prevent the Commission from approving this merger.

B. Other Points Raised by OPC

1. Experimental Alternative Regulatory Plan

Q. OPC witness Trippensee expresses a concern that the Company was contemplating the merger prior to the stipulation being signed in the Experimental Alternative Regulatory Plan ("ARP"). Will you respond to his concern?

A. This "concern" expressed by Mr. Trippensee (Trippensee, p. 6), and escalated into an allegation of bad faith on the part of UE in Mr. Kind's testimony (Kind, p. 5), is totally without merit. I am surprised and disappointed that the OPC believes that it is necessary to make such groundless allegations particularly since they participated in the negotiations that resulted in the ARP and well know when that agreement was reached.

Discussions about the ARP began in late 1994 and continued into early 1995. At least as early as February 28, 1995, Mr. Mills of the OPC Staff was receiving copies of correspondence between the Staff and UE on various proposals. On March 10,1995, UE, the Staff and OPC met and agreed to the sharing grid that appears in the Stipulation, along with the $30 million one-time credit and the $30 million annual rate reduction. By March 22, 1995, the Stipulation and Agreement, in almost final form, had been approved by OPC and Staff and transmitted to UE for approval. Only minor changes and the working out of details, such as the method of distributing credits, occurred after that date.

The lunch meeting between Messrs. Greenwalt and Mueller, where Mr. Greenwalt first suggested a possible merger between CIPS and UE, occurred on June 19, 1995. This was a week after the ARP Stipulation and Agreement was signed, and three months after UE, the Staff and OPC had reached agreement on the principles of the ARP. No one at UE knew about the possibility of a merger when the ARP was negotiated, agreed to, or signed.

Q. Mr. Trippensee assumes that the Company "knew about the possibility of a merger" prior to June 12 because of a Goldman Sachs presentation made to Union Electric on June 15. (Trippensee, p. 9) Is his assumption true?

A. No, it is not.

The June 15, 1995 presentation by Goldman Sachs was part of a marketing effort initiated and presented by Mr. Doug Kimmelman of Goldman Sachs. I had unexpectedly run into Mr. Kimmelman in a hotel lobby in New York in May, 1995. He asked me if he could make a presentation to Mr. Mueller and me to inform us about Goldman Sachs' expertise in the area of merger and acquisitions advisory work. We arranged for him to come to St. Louis on June 15 to make his presentation.

I have attached my response to a follow-up data request from Mr. Kind further explaining this meeting. (see attached Schedule 2)

Q. Have others provided information to OPC about when merger discussions were initiated?

A. Yes. Mr. Mueller testified about it at page 6 of his Direct Testimony. Mr. Greenwalt responded to questions about the initial contacts in his interview with the Staff and OPC, on February 29, 1996 (copy of relevant pages are attached as Schedule 3.) Mr. Mueller also responded to questions about this in his interview on February 13, 1996. (relevant pages are attached as Schedule 4.) It is disturbing that Mr. Trippensee and Mr. Kind failed to include any of these interview transcripts, or even any reference to them in their testimony. Apparently, since these statements by the participants did not coincide with OPC's preferred view, they were ignored.

I was the lead negotiator for UE in the discussions with Staff and OPC on the Stipulation and Agreement. I can state categorically that UE was not contemplating a merger with CIPS or any other utility when we negotiated the Stipulation.

Q. What about the status of the merger when the Stipulation was presented to the Commission on July 19, 1995?

A. Mr. Kind pursued that in my "interview" with him and Staff on March 28, 1996. I have attached several pages from that "interview" which, although not always very artfully worded, expresses many of the concerns we had about this question. Please refer to Schedule 5 attached to this testimony for those pages of the transcript.

Q. Can you summarize why the Company did not volunteer any information about the merger at that hearing?

A. Yes. The most important fact is that UE and CIPS had just begun serious discussions. It was far from clear that there would be any agreement. The two companies had just begun hiring investment bankers, attorneys and Deloitte & Touche. Therefore, there was no merger to inform anyone about.

Q. Why would it have been such a problem to tell the Commissioners or the parties that discussions were going on that might result in a merger, and therefore, we should perhaps delay the hearing on the ARP?

A. That just could not have been done. We were advised by our attorneys that significant penalties could result if word leaked out about the possibility of a

merger. We had to go to extraordinary lengths to ensure that as few people as possible were informed about the discussions and negotiations. I believe that, at the time of the hearing, less than a dozen people at UE knew about the discussions with CIPSCO.

In addition to the securities regulations, there are very good practical reasons why these discussions had to be kept in extreme secrecy. As I mentioned in the "interview" (Tr. pp. 74-75), if word had leaked out, the price of CIPSCO stock would have increased dramatically, and that would have seriously complicated the negotiations. The premium would have gone up simultaneously and, in all likelihood, the deal would have been killed. With no merger, there would be no savings to share with anyone.

To have informed the Commissioners and attorneys for the other parties would also have meant that Commission and OPC Staff members would have been informed, as well as virtually all of the parties themselves. Bringing this many people into our confidence would have been impossible and just could not have been done.

Q. In the transcript of your "interview" with the Staff and OPC, Mr. Kind suggests that you could have just advised "the other parties or the commission that something unusual was in the works, and we really would like to just defer consideration of this alternative regulation for a while ..." Why didn't you do that?

A. That suggestion is really very impractical and quite amazing coming from Mr. Kind. It is obvious that he does not even believe our sworn testimony, so there is no reason to believe he would have agreed to merely go away for awhile while we concluded our "unusual" matter. It should be recalled that the ARP Stipulation and Agreement included a substantial rate reduction. It is not reasonable to believe that Staff or OPC would have agreed to an indefinite continuation of that matter without a thorough briefing on the "unusual" matter.

In addition, I was advised by counsel that we could not have spoken privately to the Commissioners about the matter without violating ex parte rules. Therefore, we were in a situation that precluded our telling anyone about the matter at the time of the hearing.

Q. Has the announcement of the merger and transition planning affected the operation of the ARP?

A. No, it has not. To assure that merger related expenses were not included in the first year's determination of the Company's rate of return, which might have caused a problem in calculating a possible credit, the Company booked those expenses below the line. Unfortunately, the Staff has now taken the position that this action precludes the recovery of those expenses as part of the merger regulatory plan. Mr. Baxter addresses this issue in more detail, but it is unfortunate that this affirmative action on our part to keep the merger from affecting the first year of the ARP is now

being turned against the Company, with the possible loss of recovery of those otherwise prudent expenses.

In addition, the merger will have little effect on the ARP as it now stands because the merger is not likely to be consummated until sometime near the end of the second year or during the third and final year of the experimental plan.

Q. Going back to the June 15 presentation by Goldman Sachs, Mr. Kind suggests that a statement in the document used by Mr. Kimmelman in that presentation proves that UE initiated the merger discussions. Do you know to what he is referring?

A. Yes. Mr. Mueller's lunch meeting with Mr. Greenwalt, where Mr. Greenwalt first brought up the subject of a possible merger, was held on Monday, June 19, 1995. Mr. Kimmelman's presentation was the previous Thursday, four days before the lunch meeting. ** _____
_____
_____
_____
_____.**

Q. Is it your testimony that the presentation by Mr. Kimmelman and the meeting between Mr. Greenwalt and Mr. Mueller was just a coincidence?

A. Yes, it is. However, it is not as surprising as it appears to be to Mr. Kind. It would not be unusual for an investment banking firm like Goldman Sachs to approach an electric utility about possible merger opportunities. It was also no secret in the investment community that UE and CIPS would be a likely match. Therefore, it did not surprise me that Mr. Kimmelman asked to meet with us and **_____ _____ _____**

In addition, I can testify that as the chief financial officer of Union Electric Company, I have participated in virtually every strategic planning meeting of any consequence and attended every UE Board of Directors' meeting over the last several years. At no time prior to the June 19 lunch meeting were there any serious plans made for a merger with CIPS. When Mr. Mueller returned from his meeting with Mr. Greenwalt and informed me of their discussion, he and I both expressed our surprise that a merger had been suggested.

Q. Why is it so important who initiated the discussions of this merger?

A. It isn't important. The only reason we have had to address this issue at such length is that the OPC has devoted such a significant portion of their testimony claiming that UE initiated the merger discussions and, therefore, allegedly hoodwinked the Commission and other parties when the ARP was negotiated and approved.

2. Good Faith

Q. Both Messrs. Kind and Trippensee have made allegations that Union Electric Company and its officers and employees have not been dealing in good faith with the Commission and the OPC. Specifically, they suggest that the Company has withheld documents, been less than honest concerning who initiated merger discussions and when those discussions were initiated, and they claim that the Company was planning the merger when it entered into the Stipulation and Agreement establishing the ARP. Would you please respond?

A. It is not unusual for the Company and the OPC to have different opinions on issues. We understand the adversarial nature of regulation and the OPC's role in that process. However, it is disturbing that OPC witnesses in this case have chosen to devote so much of their testimony to vilifying the Company.

Mr. Trippensee accuses the Company of "creating phantom costs" and "contemplating the merger prior to the [ARP] stipulation being signed." (Trippensee Direct, p. 7, lines 17 - 20)

Even when discussing something UE is <u>not</u> proposing, Mr. Trippensee still found it necessary to use inflammatory language. He refers to the "alleged" costs and states that UE wouldn't "have the audacity to recommend a procedure that would result in such a blatant double dip." (p. 13, line 16)

In his concluding answer, Mr. Trippensee characterizes the Company's proposal as an "unsolicited deep grab into the ratepayers pockets." (p. 24, line 2) Mr. Kind repeats this phrase on page 5 of his testimony. While these quotes were attractive to newspaper reporters, they do not provide much assistance to the Commission in deciding the issues in this case.

Q. What about Mr. Kind's testimony?

A. In am particularly troubled by Mr. Kind's testimony, because it appears that he is incapable of believing that UE has done anything honorable in this matter.

Mr. Kind devotes virtually all of pages 9 through 36 of his testimony apparently attempting to discredit the Company. Mr. Kind tries to disprove the Company's stated reasons for the merger and the Company's testimony as to who initiated the merger discussions. In addition, he tries to show that the companies' boards of directors and shareholders never expected to recover the merger premium.

On page 36 of his testimony, Mr. Kind summarizes the point he was apparently trying to make in all of those pages:

> Q. Please summarize your findings from reviewing UE's responses to DRs that asked for copies of information that UE provided to shareholders prior to the December 20, 1995 shareholder meeting where the merger proposal was voted on.
>
> A. These materials noted the many near-term and long-term advantages that are expected to result from the merger. I did not discover any materials in relevant DR responses indicating these expected benefits were

dependent on shareholders retaining any specific portion of merger-related savings.

What is particularly unfortunate, is that Mr. Kind wasted his time dissecting board minutes, press releases, audio tape transcripts and confidential documents, trying to prove something with which we do not disagree. UE has never claimed that board members or shareholders were told that the benefits from the merger were dependent upon shareholders retaining any specific portion of merger-related savings.

The Company has always expected fair treatment from its regulators and it has expressed its opinion as what fair treatment means in this case. But it has never said that the merger benefits would not be realized unless shareholders retained a specific portion of savings. The question is one of fairness to the shareholders who have made the investment.

Q. Mr. Kind states that "certainly if UE had offered CIPSCO more seats on the Ameren Board of Directors or temporary holding of the Ameren CEO position, UE could have negotiated a stock exchange ratio different that (sic) the 1.03 ratio that was settled on." Do you agree?

A. No, I do not. As lead negotiator for Union Electric during the merger negotiations, I can say that the negotiations on the stock exchange ratios, and thus the resultant merger premium, reflected the parties' opinions on financial and economic matters only. There was no discussion, either directly or indirectly, that linked the stock

exchange ratios to board membership or officers' positions or the other matters suggested by Mr. Kind. Mr. Kind is merely speculating, and he is wrong.

Q. What about the rest of Mr. Kind's testimony?

A. From pages 36 - 58, Mr. Kind continues his attempt to discredit virtually every assertion made by UE concerning the savings to be realized and strategic benefits of the proposed merger. I will not take up the Commission's time responding to each of his allegations and misrepresentations. Suffice it to say that Mr. Kind's claims are all based on speculation, misinterpretation, or worse.

In the final section of Mr. Kind's testimony, he generally restates positions previously addressed by Mr. Trippensee or himself. I will not repeat my rebuttal to those points.

Q. Mr. Kind concludes with an apparent claim that the long-term strategic benefits from the merger should be sufficient to compensate shareholders for their investment. Do you agree with this assessment?

A. No, I do not. I also addressed this at some length in my interview with Staff and OPC. In summary, I stated that long-term strategic benefits are desirable and should be obtained where possible. However, I also stated that I do not believe that they can be quantified in any meaningful sense.

Q. In summary, what weight should the Commission give to the testimony offered by the OPC.

A. To the extent that OPC offers relevant arguments opposing the Company's proposal, the Commission should weigh those arguments appropriately. I believe that UE's positions are fair and reasonable and should be adopted. To the extent that the OPC has needlessly and groundlessly attached the Company's motives, good faith and integrity, I hope the Commission will ignore the unsubstantiated allegations and inflammatory language included in OPC's testimony.

Q. Does this conclude your Surrebuttal Testimony?

A. Yes, it does.