

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

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

1997 Mo. PSC LEXIS 1; 176 P.U.R.4th 201; 6 Mo. P.S.C. 3d 28

February 21, 1997

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

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

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

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

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

Robert C. Johnson, **Diana M. Schmdit**, and **Michael R. Annis**, Peper, Martin, Jensen, Maichel and Hetlage, 720 Olive Street, [*2] 24th Floor, St. Louis, Missouri 63101, for: Anheuser-Busch, Inc., Barnes and Jewish Hospitals, Chrysler Corporation, Emerson Electric Company, Hussmann Refrigeration, Lincoln Industrial, MEMC Electronic Materials, Mallinckrodt, Inc., McDonnell Douglas Corporation, Monsanto Company, and The Doe Run Company (the Missouri Industrial Energy Consumers).

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

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

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

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

Daryl R. Hylton, Assistant Attorney General, and **Michelle Smith**, Assistant Attorney General, Office of the Attorney General, Post Office Box 899, Jefferson City, Missouri 65102, [*3] for the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, Attorney General.

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

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KCP Exhibit No. 55
Case No(s) EM-2007-6374
Date 4-23-08 Rptr KF

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

PANEL: [*1] McClure, Kincheloe, CC., Zobrist, Chm., Crumpton, Drainer, CC.

OPINION: REPORT AND ORDER

ADMINISTRATIVE LAW JUDGE: Joseph A. Derque, III.

Procedural History

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

UE is a Missouri corporation engaged in the provision of energy services to [*4] the public in the state of Missouri and regulated by the Commission as a public utility. CIPSCO is an Illinois corporation and the parent corporation of its wholly owned subsidiary, Central Illinois Public Service Company (CIPS). CIPS is engaged in the business of providing energy services in the state of Illinois and, as such, is a regulated public utility in that state.

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

In addition to the Staff of the Commission (Staff), UE, and the Office of the Public Counsel (OPC), the following parties were also granted intervention: the Missouri Industrial Energy Consumers (MIEC) n1; Laclede Gas Company (LGC); The Empire District Electric Company (EDE); Locals 2, 309, 702 and 1455 of the International Brotherhood of Electrical Workers, [*5] AFL-CIO (Unions); Kansas City Power & Light Company (KCPL); the State of Missouri ex rel. The Attorney General (State); Missouri Gas Energy, a division of Southern Union Company (MGE); Trigen-St. Louis Energy Corporation (Trigen); Illinois Power Company (IP); and UtiliCorp United Inc. (UtiliCorp).

n1 The MIEC is composed of the following: Anheuser-Busch, Inc., Barnes and Jewish Hospitals, Chrysler Corporation, Emerson Electric Company, Hussmann Refrigeration, Lincoln Industrial, MEMC Electronic Materials, Mallinckrodt, Inc., McDonnell Douglas Corporation, Monsanto Company, and The Doe Run Company.

Findings of Fact

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

A. Stipulation And Agreement

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

Various intervenors did not sign the proposed Stipulation And Agreement. [*6] Those parties were given the opportunity to exercise their due process right to compel an evidentiary hearing, but all chose not to do so. Those parties who are not signatories to the agreement are LGC, MIEC, IP, and the Unions. All have stated in filed documents that, while not signatories to the agreement, none wish to litigate any issue and none are opposed to Commission approval of the proposed stipulation. The Commission, therefore, in accordance with rule 4 CSR 240-2.115, will treat the Stipulation And Agreement as a unanimous stipulation and agreement.

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

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

12. Staff Rights

If requested by the Commission, the Staff shall have the right to submit to the Commission [*62] a memorandum explaining its rationale for entering into this Stipulation And Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever [*63] oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

13. No Acquiescence

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

14. Negotiated Settlement

This Stipulation And Agreement represents a negotiated settlement. Except [*64] as specified herein, the signatories to this Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding, (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same, or should the merger with CIPSCO not be consummated.

15. Provisions Are Interdependent

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

16. Prepared Testimony

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

Union Electric Company:

Charles W. Mueller (Direct Testimony)

Donald E. Brandt [*65] (Direct and Surrebuttal Testimonies)

Thomas J. Flaherty (Direct and Surrebuttal Testimonies)

Warner L. Baxter (Direct, Supplemental Direct, Second Supplemental Direct, Surrebuttal and Supplemental Surrebuttal Testimonies)

Douglas W. Kimmelman (Direct Testimony)

Maureen A. Borkowski (Direct, Supplemental Direct and Surrebuttal Testimonies)

Jerre E. Birdsong (Direct and Surrebuttal Testimonies)

Gary L. Rainwater (Direct and Surrebuttal Testimonies)

Craig D. Nelson (Surrebuttal Testimony)

James A. Reid (Surrebuttal Testimony)

Commission Staff:

Daniel I. Beck (Rebuttal and Supplemental Rebuttal Testimonies)

David W. Elliott (Rebuttal Testimony)

Cary G. Featherstone (Rebuttal Testimony)

Charles R. Hyneman (Rebuttal Testimony)

Thomas M. Imhoff (Rebuttal Testimony)

Tom Y. Lin (Rebuttal Testimony)

Jay W. Moore (Rebuttal Testimony)

Mark L. Oligschlaeger (Rebuttal Testimony)

James D. Schwieterman (Rebuttal and Supplemental Rebuttal Testimonies)

Michael J. Wallis (Rebuttal Testimony)

Office of Public Counsel:

Russell W. Trippensee (Rebuttal Testimony)

Mark Burdette (Rebuttal Testimony)

Ryan Kind (Rebuttal and Cross-Surrebuttal [*66] Testimonies)

Missouri Industrial Energy Consumers:

Maurice Brubaker (Direct Testimony)

17. Waive Rights to Cross Examination, etc.

In the event the Commission accepts the specific terms of this Stipulation And Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo. 1994; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1994. This waiver applies only to a Commission Report And Order issued in this proceeding, and does not apply