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May 22, 1997

Honorable John D. Dingell  
Committee on Commerce  
U.S. House of Representatives  
Rayburn House Office Building, Room 2125  
Washington, D.C. 20515-6115

Dear Congressman Dingell:

Enclosed is the Missouri Public Service Commission's response to the House Commerce Committee Survey which I received from you on April 10, 1997.

If you have any questions concerning our responses, please contact me or Commission staff members Steve Dottheim or Eve Lissik at the phone numbers provided in the survey.

If the Committee issues any future reports or inquiries, please favor all of our commissioners with copies.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karl Zobrist". The signature is fluid and cursive, written over a light background.

Karl Zobrist  
Chair

enclosure

cc: Ms. Sue Sheridan  
Minority Counsel

**House Commerce Committee Questions  
Concerning Retail Competition in  
the Electricity Industry**

**Missouri Public Service  
Commission Responses**

1. Has your Commission or State Legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

Response:

Neither the Missouri Public Service Commission (PSC) nor the Missouri General Assembly has adopted retail competition as yet. Current Missouri law prohibits the Missouri PSC from ordering a change of suppliers on the basis of a rate differential and, therefore, appears to prohibit retail competition.

The Missouri PSC has created a task force to focus on issues of particular concern to Missouri, and to shape the course of the debate on electric restructuring as it advances in Missouri. See In re Commission Inquiry into Retail Electric Competition, Case No. EW-97-245. (Copy attached as Appendix A.)

The Missouri General Assembly is also proposing to investigate retail electric competition pursuant to Senate Concurrent Resolution No. 7 and House Concurrent Resolution No. 4.

The Missouri PSC recently approved an Electric Transitional Aggregation Experiment filed by Missouri Public Service (MPS), a division of UtiliCorp United Inc. In re Missouri Public Service's Tariff Designed to Introduce Electric Transitional Aggregation Experiment, Case No. ET-97-209 (Mo. P.S.C., Jan. 31, 1997). Initially, this tariff will permit an aggregated group of 23 McDonald's restaurants in MPS's certificated service area to purchase power not generated by the utility and have it delivered over MPS's transmission and distribution lines. (Copy attached as Appendix B.)

As part of the merger of Union Electric Company (UE) with CIPSCO Inc. (the holding company for Central Illinois Public Service Co.), UE has agreed to propose a 100-megawatt "retail wheeling" pilot program. UE's agreement to submit such a proposal was approved by the Missouri PSC when it issued its Report And Order approving the merger. In re Application of Union Elec. Co. For an Order Authorizing Certain Merger Transactions, Case No. EM-96-149 (Mo. P.S.C., Feb. 21, 1997).

Also, the Missouri PSC has recently opened a docket to explore the possibility of retail competition for the residential ratepayers of Empire District Electric Company. This docket will also allow industrial customers (ICI Explosives, USA, and Praxair, Inc.) a pilot open access program for 16 MW of load. In re Competitive Market Research Project and Pilot Open Access Program for The Empire District Elec. Co., Case No. EO-97-491 (Mo. P.S.C., May 13, 1997).

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2. Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?

**Response:**

The Missouri PSC has not requested or recommended any type of Congressional action concerning retail competition. The Missouri PSC is not aware that the Governor or the General Assembly has asked Congress to take any action.

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3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?

Response:

The Missouri PSC believes that it currently has sufficient authority to resolve stranded cost issues. Although not literally the same matter, the Missouri PSC has made excess capacity adjustments in the past. In re Kansas City Power & Light Co., 75 PUR4th 1, 122-26, 115-22 (Mo. P.S.C. 1986). The Missouri PSC's authority to make an excess capacity adjustment has been upheld. State ex rel. Valley Sewage Co. v. Public Serv. Comm'n, 515 S.W.2d 845 (Mo.App. 1974).

Even though the Missouri PSC believes that it currently has sufficient authority to resolve stranded cost issues, Congressional legislation clearly stating that the Federal Energy Regulatory Commission (FERC) does not have jurisdiction over retail stranded costs would be beneficial.

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4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?

**Response:**

See the Response to Question 15(c), *infra*.

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5. Would any constitutional issues be raised by federal legislation:
- a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?
  - b. requiring states to conduct a proceeding on retail competition, reserving to the states the discretion not to adopt retail competition if they determine doing so would not be in the consumers' best interests?

**Response:**

- a. Such legislation raises serious constitutional questions under the Due Process, Commerce and Supremacy Clauses, and the Tenth Amendment. The Due Process Clause restricts Congress's right to impair contracts unless the action taken falls within the federal police power or some other paramount power.
- b. Such legislation would clearly raise fewer constitutional issues than Question 5(a) and, depending on its language, likely pass constitutional muster.

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6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather state action?

Response:

If state authority to manage the transition from traditional rate-of-return regulation to competition is not preserved, the foremost danger is a reduction in the reliability of the electric supply system. Today questions about system reliability are being raised in areas of the country where the price of power is considered reasonable. These concerns are due, in part, to factors such as nuclear plants that are off-line for refueling or other reasons, tree-cutting practices near transmission lines, or simple human error in monitoring transmission constraints. However, it is also clear that unprecedented sales of bulk power in the competitive wholesale market are also having an effect on reliability. Instant deregulation of the retail market could have an unintended harmful effect upon system safety and reliability.

In the transition to retail competition, efforts must also be made to preserve the benefits of environmental and social programs instituted by the various states. Similarly, states must be free to deal reasonably with "stranded" costs, where utility investments included in the rate base by regulators may not be entirely productive in a competitive market.

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7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.
- a. Are you aware of any study or analysis relevant to your State that supports this conclusion?
  - b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.

Response:

- a. The Missouri PSC is not aware if any such study or analysis. However, we would refer the Committee to In re Missouri Public Service's Tariff Designed to Introduce Electric Transitional Aggregation Experiment, Case No. ET-97-209 (Mo. P.S.C., Jan. 31, 1997), noted in the response to Question 1. There has been an increase in the filing of special contracts, which is probably caused by competition. The Missouri PSC has stated the following regarding special contracts:

The Commission concludes that where a unique class of customer takes service under a tariff which allows rates to be set by special contract, the contract and tariff are lawful where the terms and conditions of the contract are offered to similarly situated customers.

The Commission concludes further that flexible rates are lawful where, as here, the floor for each contract is established and all customers are subject to the same calculation of the rates to be charged under the special contract. . . . [A]s long as the marginal costs of providing the service are covered by the pricing in the special contract and provide some contribution to fixed costs, the utility's customers benefit from the customer remaining on the system. . . .

In re Special Contract filed by Kansas City Power & Light Co., Case No. EO-95-181, Order at 12 (Mo. P.S.C., Nov. 22, 1995).

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- b. The Missouri PSC has taken the position historically that class revenue requirements should reflect the cost of serving each class of customers, but the strict application of cost-of-service study results may not always present the most just or reasonable basis for establishing class revenue requirements. The Missouri PSC has further stated that:

In the instance where a cost of service study deemed by the Commission to be appropriate for use in establishing an electric utility's rate design indicates the need for significant relative increases in rates for particular customer classes in order to establish rates based on cost of service, the Commission concludes that gradual movement of class revenue requirements toward the cost of serving each class is a valid and reasonable approach in establishing a rate design. . . .

In re Arkansas Power & Light Co.'s Tariffs Increasing Rates For Electric Service, Case No. ER-81-364, 25 Mo. P.S.C. (N.S.) 101, 121 (1982). Accord, In re Kansas City Power & Light Co's Rate Design, Case No. EO-78-161, 25 Mo. P.S.C. (N.S.) 605, 630 (1983).

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8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.

Response:

Attached is a graph and annual summaries of electricity rates for the major customer classes by the Missouri PSC jurisdictional (investor-owned) utilities for the years 1990 through 1995. These utilities serve more than 70% of the entire electricity load in the state. The average costs of electricity were derived from kWh (kilowatt hour) sales supplied by Missouri PSC jurisdictional utilities to the Rates and Tariffs Section of the PSC's Energy Department.