

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

In the matter of the Application of Union)
Electric Company (d/b/a AmerenUE) for)
an order to authorizing the sale, transfer)
and assignment of certain Assets, Real)
Estate, Leased Property, Easements and)
Contractual Agreements to Central Illinois)
Public Service Company (d/b/a AmerenCIPS))
and, in connection therewith, certain other)
related transactions.)

Case No. EO-2004-0108

**STAFF'S LIST OF CONDITIONS NECESSARY FOR
STAFF RECOMMENDATION THAT THE COMMISSION
APPROVE AMEREN'S PROPOSED METRO EAST TRANSFER**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the directive of the Missouri Public Service Commission (Commission) for the Staff to prepare a list of conditions upon which the Staff would recommend the Commission approve the Union Electric Company, d/b/a/ AmerenUE (AmerenUE) proposed Metro East transfer. This document is the Staff's response to that directive.

There is a significant risk of detriment from the AmerenUE proposed Metro East transfer. The significance of the risk relates to two factors. First, regardless of the results of the transfer, except pursuant to some judicial determination, it is highly unlikely that the transaction could be reversed once it is implemented. The Metro East transfer is not an agreement with a renewal provision that contemplates either a continuation of the transfer if the signatories are amenable, or termination if the signatories are not satisfied with the outcome of the transfer. Second, several of the key elements of the proposed transfer lack sufficient detail or any information for a meaningful review of how AmerenUE will operate in a post-Metro East transfer environment. In

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this context, the Staff remains unable to calculate the likely level of risk of detriment to Missouri ratepayers contained in the proposed transfer because of the lack of detail presented in AmerenUE's direct and surrebuttal filings. Areas missing in entirety from AmerenUE's case, such as the effect of the proposed transfer on AmerenUE's Missouri retail natural gas operations and AmerenUE's Missouri retail transmission cost of service, raise the specter of the outcome in *State ex rel AG Processing, Inc. v. Missouri Public Serv. Commn*, 120 S.W.3d 732 (Mo. banc 2003).

Given this lack of detail, even aside from the Missouri Supreme Court's decision in the *AGP* case, the Staff is truly wary of recommending approval without Commission adoption of all of the conditions set out below. The Staff expedited its review of the proposed Metro East transfer, relying upon conference calls, followed by Staff Data Requests, to conduct discovery of AmerenUE, rather than more formal discovery, such as transcribed interviews or depositions, to provide the information that was missing from AmerenUE's direct case. The Staff hoped this expedited process would provide the detailed information necessary for it to make its recommendations, based upon an appropriate level of analysis, and for the Commission to determine whether the proposed Metro East transfer is not detrimental to the public.

The Staff developed general recommendations and conditions over the course of its audit of AmerenUE's proposed Metro East transfer. In various instances, the Staff provides more detailed conditions below in response to the Commission's directive on April 1, 2004. Also, not all of the conditions set out below are reflected in the Staff's rebuttal or cross-surrebuttal testimony filed on January 30, 2004 and March 1, 2004, respectively. In those instances where the condition set out below is not reflected in Staff testimony, the Staff witness who would address questions respecting the condition is indicated. The conditions that follow represent the

Staff's best effort to fashion safeguards to all of the detrimental aspects of AmerenUE's proposed Metro East transfer as it presently stands before the Commission. These conditions are being provided on the basis of the Staff's understanding that the Commission is interested in a list of conditions not limited to the conditions proposed by the Staff in its rebuttal or cross-surrebuttal testimony which was filed on January 30, 2004, prior to the February 9, 2004 prehearing conference, AmerenUE's filing of its surrebuttal testimony on March 1, 2004 and any discovery or discussions after the filing of rebuttal and surrebuttal testimony on January 30, 2004 and March 1, 2004, respectively.

CONDITIONS

1. **No Ratemaking Determinations.** The Staff recommends that, should the Commission approve AmerenUE's proposed Metro East transfer, the Commission should make clear that Commission approval does not constitute approval of the specific items "a" to "m" in the prayer for relief, or "wherefore clause," of AmerenUE's Application. Some of the items comprising "a" to "m" constitute ratemaking determinations, and despite AmerenUE's protestations that it is not seeking any ratemaking determinations from the Commission, the Staff requests that the Commission make clear in its Report And Order that it is reserving all ratemaking determinations until future ratemaking proceedings.

2. **Joint Dispatch Agreement.**

A. **Amendment of JDA.** Prior to closing the Metro East transfer, Ameren shall modify/amend the JDA so that 1) the profits from short term sales will be allocated to AmerenUE and Ameren Energy Generating Company (AEG or Genco) based upon relative energy outputs from their generating plants and purchased power contracts, rather than based on their relative loads as presently provided for in the JDA, and 2) AmerenUE will not experience

any lost opportunities for off-system sales of energy because of the pricing of energy transferred to AEM from AmerenUE, to serve the former AmerenUE Illinois load transferred to AmerenCIPS, i.e., energy transferred to serve such load shall be transferred at market price rather than at incremental cost as presently provided for in the JDA. These modifications/amendments to the JDA shall be filed with the Commission and served on all parties. (These conditions are contained in general in the rebuttal testimony of Staff witness Michael S. Proctor. The surrebuttal testimony of AmerenUE witness Craig D. Nelson states that, should the Commission as a condition to approval of the proposed Metro East transfer order AmerenUE to amend the JDA to provide that profits from off-system power sales be allocated AmerenUE based upon generating output and not based on load, AmerenUE is prepared to use its best efforts to so amend the JDA.)

The parties to this case shall use their best efforts for a ninety-day period following the close of the Metro East transfer to develop a further modified JDA that eliminates the other current economic detriments of the JDA to AmerenUE and provides for a fair sharing of any remaining economic benefits arising from the joint dispatch of the AmerenUE and AEG generating units. In the event that the parties cannot reach agreement on a further modified JDA, then AmerenUE will give notice necessary to terminate its participation in the JDA and the unresolved matters will be brought to the Commission for resolution. The JDA will be modified as decided by the Commission if Ameren can accept and effectuate such modifications. If Ameren cannot accept or effectuate such modifications, then AmerenUE will terminate its participation in the JDA. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness, but the surrebuttal testimony of AmerenUE witness Craig D. Nelson states that, should the Commission order AmerenUE to study with the Staff and the

Office of the Public Counsel (Public Counsel) alternatives to the present transfer pricing terms of the JDA, AmerenUE would be agreeable to such a condition to Commission approval of the proposed transfer – Michael S. Proctor is the Staff witness on this condition.)

3. Liabilities and Costs.

In General. Currently, the costs associated with certain AmerenUE liabilities are allocated between AmerenUE's Missouri retail load, AmerenUE's Illinois retail load, and AmerenUE's wholesale load. After the Metro East transfer, AmerenUE will have no Illinois retail load. Costs and liabilities formerly assigned to Illinois retail customers will either be assigned to AmerenCIPS or remain with AmerenUE. Any costs or liabilities that would have been assigned to the Illinois operations prior to the transfer, that, after transfer, remain with AmerenUE, benefit AmerenCIPS to the detriment of AmerenUE's Missouri operations.

Costs and liabilities relevant to the questions of potential detriment from the Metro East transfer fall into the following two categories: 1) Costs and liabilities formerly assigned to Illinois retail customers that remain with AmerenUE; and 2) Costs and liabilities that were allocated between Illinois operations and Missouri operations prior to the closing of the Metro East transfer that remain with AmerenUE. Conditions for each category of costs and liability are provided below.

A. Costs and liabilities formerly assigned to AmerenUE Illinois retail customers that remain with AmerenUE are detrimental to AmerenUE Missouri retail customers.

i. Direct Costs and Liabilities. To eliminate the detriment to AmerenUE and its Missouri ratepayers, all liabilities that relate 100% to AmerenUE's Illinois business shall be transferred to AmerenCIPS effective as of the closing. Any costs or liabilities arising from events or activities occurring after the closing that relate to the AmerenUE's Illinois business

shall be the sole responsibility of AmerenCIPS. The actual amounts to be transferred shall be as reflected in the updated balance sheet prepared as of the last day of the month preceding the month of closing, as provided for above. (This condition is generally contained in the rebuttal testimony of Janis E. Fischer.)

B. Costs and Liabilities allocated between AmerenUE Illinois and AmerenUE Missouri operations.

i. AmerenUE shall identify all liabilities reflected on the balance sheet, and all costs reflected on the income statement, to be prepared as of the end of the month preceding the Metro East transfer closing, that would be subject to allocation to AmerenUE's Illinois Business. All of these costs and liabilities shall be identified and quantified as to the amount that would be assigned to AmerenUE's Illinois Business as of the closing. Included in this category are the Ameren Services costs that have been agreed upon by the Staff and AmerenUE, as contained in the settlement of this issue filed as Exhibit 33. (This condition is generally contained in the rebuttal testimony of Greg R. Meyer.)

AmerenUE shall either transfer these costs and liabilities to Ameren CIPS or shall maintain on its books and records the separate identity and amount of any cost or liability that was previously allocated to AmerenUE's Illinois Business until such time as it can demonstrate that it has reduced the cost or liability below the amount that would have been assigned to AmerenUE's Illinois Business absent the transfer. AmerenUE may also discontinue this reporting requirement upon a finding by the Commission that the Metro East transfer has generated savings that equal or exceed the amount of costs that were previously allocated to AmerenUE's Illinois Business absent the transfer. This effort shall include a total true-up of provisions/reserves included in account 228, Accumulated Provisions and account 253, Other

Deferred Credits. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness – Janis E. Fischer is the Staff witness on this condition.)

ii. Pre-close generation related costs. AmerenUE shall not seek rate recovery of 8% of any generation related liabilities, including, without limitation: employee-related costs, litigation costs, products liabilities, environmental capital costs or expenses at its generation plants used to serve Illinois customers or any other environmental cost incurred that was caused by generation related events or activities prior to the closing of the Metro East transfer. (This condition is contained in the rebuttal testimony of Staff witness Greg R. Meyer.)

iii. Post-close generation-related costs or liabilities. These are costs or liabilities that arise from generation-related events or activities that occur on or after the closing date of the transfer. These liabilities shall be the responsibility of AmerenUE, as the owner of the generation, unless specifically noted otherwise. AmerenUE's responsibility relative to these costs and liabilities shall include its best efforts to maximize contributions to offset these costs and liabilities from entities other than AmerenUE that receive the benefit of the power from these generation assets. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness – Greg R. Meyer is the Staff witness on this condition.)

iv. Pre-close natural gas related costs or liabilities. AmerenUE will not seek rate recovery of any costs that would, absent the Metro East transfer, be allocated to Illinois natural gas customers, of any natural gas related liabilities including, without limitation: employee related costs, litigation costs, products liabilities, environmental capital costs, or expenses at its manufactured gas plants used to serve Illinois customers, or any other environmental cost incurred that was caused by natural gas related events or activities prior to the closing of the

Metro East transfer. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness – Janice E. Fischer is the Staff witness on this condition.)

The Commission's Report and Order in this case shall not diminish any party's rights to dispute the inclusion of the remaining amount of these costs in a subsequent proceeding based on the propriety of these costs being charged to ratepayers by virtue of any aspect of the costs, other than that an amount should be assigned to the transferred Illinois Business.

4. SO2 Allowances. The Commission should take into its consideration of AmerenUE's proposed Metro East transfer that the least cost analysis performed by AmerenUE does not include the possible impacts of AmerenUE's current SO2 marketing strategies and that any Commission approval of the proposed Metro East transfer be conditioned on requiring that 1) Ameren compensate AmerenUE for any liability due to Ameren's SO2 trading activity, or 2) AmerenCIPS contribute, in a share equal to the Illinois customers' current 12-Month Coincident Peak Demand Allocation Factor, any future cost of SO2 compliance that results from Ameren's current SO2 sales and trading activity. (These conditions are contained in the cross-surrebuttal testimony of Staff witness Richard J. Campbell.)

The Commission should open a case for an investigation within 60 days of its Report And Order in the instant case to examine the issue of whether Ameren has sold SO2 allowances without: 1) Commission authority, and 2) proper safeguards to protect AmerenUE from affiliate abuse. The Staff should be directed to file the results of its investigation no later than six months after the opening of the case. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness - Richard J. Campbell is the Staff witness on this condition.) The Commission should adopt the condition that AmerenUE shall not seek recovery of 8% of any environmental capital expenditure or expense at its generation plants or other cost incurred

caused by events or activities prior to the closing of the Metro East transfer. (This condition is related to the "Liabilities and Costs" issues – Greg R. Meyer is the Staff witness on this condition.)

5. **Identification of Assets.** See the Asset Transfer List Settlement document, which will be offered as an exhibit in the evidentiary proceeding, and see the 13.8kv Switchgear At Venice Plant Settlement, which is Exhibit 60 in the evidentiary proceeding.

6. **Natural Gas Issues.** Upon closing the Metro East transfer, AmerenUE will retain all contractual rights under the NGPL contract, including the 530 Dth of capacity for Fisk/Lutesville. Fisk/Lutesville will continue to receive the current discount rate until expiration in October 2006 for the shared NGPL transportation contract with Alton LDC. The 8,000 Dth of capacity for the Alton, Illinois gas utility will be released to AmerenCIPS. When the NGPL contract is renegotiated in 2006, the 530 Dth firm transportation needed for AmerenUE's Fisk/Lutesville, Missouri gas utility, the 8,000 Dth firm transportation needed for AmerenCIPS' Alton, Illinois gas utility and the 10,000 Dth firm transportation needed for AmerenCIPS' other Illinois gas utility will be renegotiated with NGPL at the same time in order to utilize the combined leverage of all Ameren Corporation affiliates in negotiating with NGPL. Furthermore, AmerenUE agrees that when the NGPL firm transportation contract for Fisk/Lutesville is due for renewal, AmerenUE will renegotiate the firm transportation contracts with NGPL in such a manner that Fisk/Lutesville receives the same discount as the AmerenCIPS Alton, Illinois gas utility. After expiration of the contract, Fisk/Lutesville will pay rates that are no greater than Alton LDC NGPL transportation contract rates.

Ameren will hold AmerenUE and its electric customers harmless from any changes to transportation, supply, and storage arrangements that result from supplying AmerenUE on a

"stand-alone" (without the traditional Alton system resources) basis including the Venice and Meramec generating units. (This issue was generally addressed in the rebuttal testimony of Staff witness David Sommerer. AmerenUE witness James Massman indicated that Ameren Services would be able to provide equivalent service at no greater cost to Missouri ratepayers).

7. **Affiliate Transaction Rules.** The Commission should grant a waiver from its electric and gas affiliate transaction rules for the proposed Metro East transfer if all of these conditions are directed by the Commission. Any waiver granted from the affiliate transaction rules should specifically note that the access-to-records requirements contained in the Commission's affiliate transaction rules are not waived. The waiver granted by the Commission should apply only to the asymmetrical pricing provisions. (This condition is contained in the rebuttal testimony of Staff witness Janis E. Fischer.)

8. **Nuclear Decommissioning Fund.** At closing, the after-tax liquidation value of the Illinois jurisdictional sub-account, as of the last day of the month preceding the closing, will be reallocated to the Missouri retail and wholesale sub-accounts. The Callaway plant decommissioning cost previously allocated to Illinois ratepayers will be reallocated to Missouri ratepayers. The latest available 12-month Coincident Peak Demand Allocation Factors, adjusted for the elimination of the Illinois demands, shall be used to perform the reallocations. Until the effective date of the Commission Report And Order in AmerenUE's next triennial decommissioning fund review, which will commence with AmerenUE's filing of its decommissioning cost study update in September 2005, either 1) AmerenUE Missouri retail rates shall increase in the amount of \$272,554 annually to cover the decommissioning costs no longer being paid by AmerenUE's Illinois retail customers which have been transferred to AmerenCIPS, 2) AmerenCIPS shall fund the \$272,554 annual amount, or 3) Ameren

shareholders shall fund the \$272,554 annual amount. (This condition is contained in the rebuttal testimony of Staff witness Greg R. Meyer.) In event that the \$272,554 annual amount is ordered collected, it shall be paid into a non-tax qualified decommissioning fund, and such funds shall be transferred to the tax qualified fund when conditions allow such a transfer to take place. The total Missouri contribution will be redetermined to a level deemed appropriate as part of the triennial review required by 4 CSR 240-20.070, after AmerenUE files its latest decommissioning cost study update in September 2005 pursuant to Section 393.292 RSMo 2000 and 4 CSR 240-20.070. (Greg R. Meyer is the Staff witness.)

If the Commission approves the proposed Metro East transfer, the Commission should make no findings respecting AmerenUE's request that the Commission confirm the economic and financial input parameters used by AmerenUE in its "zone of reasonableness" analysis. While the Staff and AmerenUE use similar approaches to determine the adequacy of the funding level for the Ameren decommissioning trust fund, the Staff and AmerenUE have not agreed on the economic and financial parameters. In the past, the Commission has ruled only on the adequacy of the funding level and found that the costs of decommissioning the Callaway generating station are in AmerenUE's cost of service and are being recovered in current rates; the Commission has not made a finding regarding the different economic and financial input parameters used by AmerenUE and the Staff in their analyses regarding the funding level. The Staff further recommends that the Commission include in any Report And Order approving the proposed Metro East transfer that nothing in the Commission's Order shall be considered a finding by the Commission of the value of the transaction for ratemaking purposes, and that the Commission reserves the right to consider the ratemaking treatment to be afforded these

transactions and their results in cost of capital, in any later proceeding. (These conditions are contained in the rebuttal testimony of Staff witness Ronald L. Bible.)

9. **Transmission.** AmerenUE shall not transfer any transmission facilities from AmerenUE to AmerenCIPS until AmerenUE performs a study that shows that such a transfer will have no detrimental impact on AmerenUE's operations and revenue requirements (including changes in the allocation of transmission rate base, transmission expenses and transmission revenues). AmerenUE shall provide the Commission assurance that AmerenUE's bundled retail customers in Missouri will be held harmless from any detriment arising from such a transfer and from changes in methodology, for determining AmerenUE's revenue requirements, not used in the aforementioned study.

If Ameren elects, or is otherwise required, to split the single control area currently encompassing the transmission assets of AmerenUE and AmerenCIPS or modifies/amends the transmission terms of the JDA, AmerenUE agrees not to seek recovery from its remaining Missouri bundled retail ratepayers of any additional transmission charges due solely to the transfer of ownership of the transmission assets that were owned by AmerenUE in Illinois prior to the Metro East transfer that, as a result of the Metro East transfer, become owned by AmerenCIPS. The agreement provided for in the preceding sentence applies only to transmission charges associated with the current generating capacity at the Keokuk (Iowa), Pinckneyville (Illinois), Venice (Illinois) and Joppa (Illinois) generating plants. The Keokuk and Venice generating plants are owned by AmerenUE. The Pinckneyville generating plant is currently owned by AEG, but is expected to receive Federal Energy Regulatory Commission (FERC) authorization to be transferred to AmerenUE. The Joppa generating plant currently provides a portion of its capacity and energy to AmerenUE through a purchased power contract

that expires, December 31, 2005. The Joppa generating plant is owned by Electric Energy Inc. (EEInc.); and AmerenUE owns 40% of EEInc. The generating capacity that is currently available to AmerenUE at each of these generating plants is 125 MWs at Keokuk, 75 MWs at Venice, 330 MWs at Pinckneyville and 405 MWs at Joppa. AmerenUE plans to replace the capacity currently provided from its contract at the Joppa plant with an additional 330 MWs of capacity to be located at Venice, when the AmerenUE contract for a portion of the Joppa purchased power expires on December 31, 2005.¹ AmerenUE will ensure that Keokuk at 125 MWs, Pinckneyville at 330 MWs, Venice at 75 MWs and Joppa at 405 MWs (until AmerenUE's contract for Joppa purchased power expires on December 31, 2005) shall remain network resources (or such comparable resource as are required by applicable authorities) to serve AmerenUE load so long as these generating plants are owned and operated by AmerenUE and remain in service. If AmerenUE is no longer served pursuant to a contract for purchased power from Joppa, AmerenUE will ensure that up to 480 MWs (75 MWs at Venice and 405 MWs formerly from Joppa) will be available from the Venice plant site as a network resource to serve AmerenUE's native load.

(The above conditions are contained in general in the rebuttal or cross-surrebuttal testimony of Staff witness Michael S. Proctor. The Staff has added specific details in response to the Commission's directive – Michael S. Proctor is the Staff witness.)

Commission approval to transfer AmerenUE-owned transmission facilities, currently connected to the Joppa generating plant, to AmerenCIPS does not diminish or otherwise affect whatever arguments any party may raise in a ratemaking proceeding with regard to

¹ Because Joppa is a base-load, coal-fired facility and the proposed capacity additions at Venice are peaking, gas-fired combustion turbines, the energy from these two facilities are not substitutes. However, for purposes of this proceeding, what the two facilities have in common is generation capacity that would not be directly connected to the AmerenUE transmission system subsequent to the Metro East transfer.

AmerenUE's/EEInc.'s/Ameren's decisions respecting the discontinuation of Joppa generation to serve AmerenUE's load after December 31, 2005. (This condition is not contained in the rebuttal or cross surrebuttal testimony of a Staff witness, but is covered in the "1. No Ratemaking Determinations" section above.)

The Commission should open a case within 60 days of its Report And Order in the instant case regarding AmerenUE's/EEInc.'s/Ameren's decision not to use the 405 MW of capacity from the Joppa generating plant to supply AmerenUE's load after December 31, 2005 and direct the Staff to conduct an investigation. The Staff should be directed to file a report with the Commission, no later than six months from the opening of the case providing the results of its investigation. (This condition is not contained in the rebuttal or cross-surrebuttal testimony of a Staff witness - Greg R. Meyer is the Staff witness on this condition.)

10. Access To Books, Records, Employees And Officers. AmerenUE shall make arrangements to ensure access at reasonable times and places to all books, records, employees, and officers of AmerenUE, Ameren and any affiliate or subsidiary of Ameren as required to verify compliance with Chapters 386 and 393. In order to ensure compliance with the Commission's Report And Order in the instant case respecting the issues addressed above, AmerenUE, Ameren and any affiliate or subsidiary of Ameren shall maintain books and records, and shall make available books, records, employees and officers without claims that the same are unavailable because of the Public Utility Holding Company Act of 1935 (PUHCA) or are records of an affiliate not within the control, custody or possession of AmerenUE. (These conditions do not appear in the rebuttal or cross-surrebuttal testimony of a Staff witness - Janis E. Fischer is the Staff witness on these conditions.)

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 6th day of April 2004.

/s/ Steven Dottheim