

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Union Electric Company d/b/a
AmerenUE
and
NRG Audrain Generating, LLC

Docket Nos. EC06-55-000

**MOTION TO INTERVENE AND PROTEST OF THE
MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

Pursuant to Commission Rules 211, 212 and 214, 18 C.F.R. §§ 385.211, 385.212 and 385.214, and the Commission's January 10, 2006 Notice of Filing,¹ the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") moves to intervene in the above-captioned proceeding and protests AmerenUE's proposed acquisition of NRG Audrain Generating, LLC's ("NRG") interest in a 640 MW natural-gas-fired generating plant and associated interconnection facilities located in Audrain County, Missouri. Ameren's proposed purchase from NRG is one of three merchant plant purchases Ameren has pending before the Commission. The other two, Ameren's proposed purchases from affiliates of Aquila, Inc. of their Raccoon Creek and Goose Creek generating facilities in southern Illinois, are pending in Docket Nos. EC06-56-000 and ER06-410-000. MJMEUC filed a motion to intervene and protest in the Aquila proceeding on January 23, 2006. MJMEUC protests Ameren's acquisition from NRG (and protested the Aquila plant acquisitions) not because it necessarily opposes Ameren's

¹ While the noticed section 203 application contains an Appendix A analysis, which the Commission has said should give rise to a 60-day notice period, *Transactions Subject to FPA Section 203*, Docket No. RM05-34, 113 F.E.R.C. ¶ 61,315, P 194 (Dec. 23, 2005), in this case the Commission provided only 32 days to respond to the Applicants' filing, departing from its 60-day policy without explanation.

acquisition of generation that it says it needs. Rather, MJMEUC protests because the Applicants' Appendix A analysis ignores transmission constraints in the Ameren region that are harming the ability of utilities such as MJMEUC to utilize economic long-term and short-term power supply and that, if properly accounted for, would cause Ameren to fail the Commission's competitive screens, indicating competitive harms that the Commission is obligated to remedy.² MJMEUC wants to see these transmission problems fixed and offers its assistance in making that happen. Therefore, MJMEUC urges the Commission to convene a technical conference to address these issues.

I. STATEMENT OF ISSUES

1. Whether the Commission should grant MJMEUC's motion to intervene under Commission Rule 214, 18 C.F.R. § 385.214, where MJMEUC has a clear interest in this proceeding which no other party can represent and its participation is in the public interest?
2. Whether the Commission should adhere to its policy and precedent of requiring that transmission constraints be taken into account in defining relevant geographic markets in the Appendix A analysis filed by section 203 applicants? *Exelon Corp. and Pub. Serv. Enter. Corp., Inc.*, 112 F.E.R.C. ¶ 61,011, PP 12, 17, 122 (2005); *Duke Energy Corp. and Cinergy Corp.*, 113 F.E.R.C. ¶ 61,297, P 24 & n.5 (2005); 18 C.F.R. § 33.3(c)(8).
3. Whether Applicants should have analyzed and included information regarding transmission constraints affecting the Ameren control area, which the Commission has previously taken into consideration (*Ameren Energy Generating Co.*, 108 F.E.R.C. ¶ 61,081 (2004)) and are evidenced by MISO transmission planning documents, as part of the Appendix A analysis of Ameren's proposed acquisition of the Audrain County, Raccoon Creek, and Goose Creek generating facilities, consistent with Commission precedent identified in Issue #2?
4. Whether a properly performed Appendix A analysis that considers transmission constraints and the effect on market concentration from Ameren's proposed acquisitions of approximately 1300 MW of capacity would show screen violations when Ameren's prior acquisition of a much smaller amount of capacity also showed

² Applicants have submitted virtually identical Appendix A analyses for the Aquila and NRG transactions.

screen violations for Ameren control areas? *Ameren Corp., et al.*, 108 F.E.R.C. ¶ 61,094, P 27 (2004).

5. Whether the Commission must require Applicants to address the increases in concentration associated with Ameren's acquisition of approximately 1300 MW of capacity, including by remedying the transmission constraints that narrow the geographic market? *Okl. Gas & Elec. and NRG McClain LLC*, 105 F.E.R.C. ¶ 61,297 (2003), *order approving settlement*, 108 F.E.R.C. ¶ 61,004 (2004).
6. Whether the Commission should convene a technical conference that examines transmission constraints affecting the Ameren control areas in order to develop remedies that alleviate the constraints, including through participation in transmission expansion by transmission dependent utilities? *Promoting Transmission Investment through Pricing Reform*, Docket No. RM06-4-000, 113 F.E.R.C. ¶ 61,182, PP 59-63 (2005).

II. MOTION TO INTERVENE

A. *Communications*

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B. *MJMEUC's Interest In This Proceeding*

MJMEUC is a joint action agency and a political subdivision of the State of Missouri authorized by legislation to construct, operate and maintain jointly owned transmission and generation facilities for the production and transmission of electric power for its members, to purchase and sell electric power and energy, and to enter into

agreements with any person for transmission of electric power. It is organized on a statewide basis to promote efficient wheeling, pooling, generation and transmission arrangements to meet the power and energy requirements of municipal utilities in the state. MJMEUC has 58 municipal utility members. In addition, Citizens Electric Corporation, a rural electric corporation having a peak load (2005) of more than 220 MW and providing retail electric service to nearly 26,000 member-customers in southeastern Missouri, is an Advisory Member of MJMEUC. Together, MJMEUC's members serve some 347,000 retail customers, with a combined load of 2,100 MW. MJMEUC has members on the transmission systems of all of the major utilities currently doing business in Missouri, including Ameren. MJMEUC member and associate member load dependent on the AmerenUE transmission system amounts to over 400 MW.

Since January 1, 2000, pursuant to its authority under state law, MJMEUC has been administering a power pool formed by some of its members. The Missouri Public Energy Pool #1 ("MoPEP") currently has 26 members, whose 2005 summer peak loads were approximately 365 MW. MoPEP is the full-requirements supplier for its members, and meets their capacity and energy requirements through generating and purchased-power resources contributed by the pool members, and through additional resources arranged for by MoPEP. Four of MoPEP's members, with load totaling more than 120 MW,³ as well as a number of MoPEP's resources, are located on the Ameren transmission system.

³ A fifth Ameren-area pool member will begin taking full-requirements service from MoPEP in 2007.

MJMEUC (in its capacity as representative of its members located on the Ameren transmission system, and as the operator of MoPEP) has a direct interest in the outcome of this proceeding. MJMEUC's interests will not be adequately protected by any other participant in this proceeding, and its intervention is in the public interest. MJMEUC therefore respectfully submits that it should be granted leave to intervene in this proceeding.

III. PROTEST

A. *The Commission Still Requires an Assessment of Transmission Constraints and Their Impact on Geographic Markets as Part of Appendix A Analyses*

The Applicants' Appendix A analysis, performed by Dr. Rodney Frame, used the MISO footprint as the relevant geographic (and only destination) market. According to Dr. Frame:

The Audrain Facility, along with the Aquila Facilities and most of the generation capacity owned by Ameren and its affiliates, is located in the MISO footprint. MISO is a FERC-recognized RTO that has a centralized unit commitment and dispatch process. Accordingly, because that is where the overlap of generation facilities occurs, I have applied the DPT test to a geographic market consisting of the MISO footprint. The MISO footprint was one of the geographic markets examined by the Commission in its recent order approving the merger of Duke Energy Corporation and Cinergy Corp. See the Commission's December 20, 2005 Order Authorizing Merger in Docket No. EC05-103-000 (Duke-Cinergy Merger Order), at P. 83.

Frame Affidavit ¶ 20; *see also* Application at 11. While the MISO footprint was *one* of the relevant geographic markets examined in *Duke/Cinergy*, it was not the only one. Contrary to Ameren's position, the Commission still requires that Appendix A analyses be based upon geographic markets consistent with Commission policy.

In the *Duke/Cinergy* case, Dr. William Hieronymus identified as one of the relevant geographic markets for his Appendix A analysis the “MISO Submarket,” which included all of MISO but excluded the Louisville Gas & Electric control area, the Wisconsin-Upper Michigan System, Iowa, and Minnesota. *Duke Energy Corp. and Cinergy Corp.*, 113 F.E.R.C. ¶ 61,297, P 24 & n.5 (2005). According to Dr. Hieronymus’s affidavit:

In analyzing RTO markets, the Commission historically has taken into consideration transmission constraints into subareas that may define narrower relevant markets. I adopted this approach in my determination of the relevant markets to consider within the MISO-PJM footprint. Thus, in addition to analyzing MISO as a relevant geographic market, I considered two other relevant geographic markets based upon my review of relevant data, discussed below. Exhibit J-5 provides information on transmission constraints that were used to define these markets.

The first market, which is the MISO submarket consists of MISO, excluding WUMS, as well as Iowa, Minnesota and LG&E. The constraints into WUMS are well documented. In order to be conservative, I excluded these additional areas that are often constrained away from the portion of MISO in which Cinergy is located.

Exhibit J-1 at 31-32, Application, Docket No. EC05-103-000. The Commission accepted Dr. Hieronymus’s analysis. *Duke/Cinergy*, 113 F.E.R.C. ¶ 61,297 at P 70.

Similarly, in *Exelon Corporation and Public Service Enterprise Corporation, Inc.*, the Commission adopted and analyzed several sub-markets within the PJM RTO footprint, namely, PJM East and Northern PSEG. 112 F.E.R.C. ¶ 61,011, PP 12, 17, 122 (2005). With respect to the latter, the Commission said:

We are not convinced by Applicants’ argument that Northern New Jersey is not a relevant geographic market. As noted by the PHI Companies and others, there are times

when transmission constraints bind, leaving Northern New Jersey isolated from the rest of PJM-East.

Id. at P 122.

As the foregoing examples show, in the section 203 context transmission constraints continue to define smaller geographic markets. Further, the Commission's regulations setting forth requirements for the Appendix A analysis specifically require information regarding transmission constraints.

(c) The horizontal Competitive Analysis Screen must be completed using the following steps:

(8) *Transmission Constraints.*

(i) For each existing transmission facility that affects supplies to the destination markets and that has been constrained during the most recent two years or is expected to be constrained within the planning horizon, the applicant must provide the following information:

(A) Name of all paths, interfaces, or facilities affected by the constraint;

(B) Locations of the constraint and all paths, interfaces, or facilities affected by the constraint;

(C) Hours of the year when the transmission constraint is binding; and

(D) The system conditions under which the constraint is binding.

18 C.F.R. § 33.3(c)(8). In adopting the regulations the Commission explained:

The Commission also agrees with FTC's point regarding the effect of transmission constraints on the scope of geographic markets. We believe that the market analysis adopted here captures this effect, because the use of different load levels in defining relevant products narrows the scope of relevant geographic markets by constraining transmission where appropriate. Thus, *markets analyzed during peak load levels are often smaller because transmission lines are full at those load levels.*

Order No. 642, *Revised Filing Requirements Under Part 33 of the Commission's*

Regulations, 65 Fed. Reg. 70,983, 70,992 (Nov. 28, 2000), *reprinted in* [1996-2000 Regs.

Preambles] F.E.R.C. Stat. & Regs. ¶ 31,111, at 31,885 (2000) (emphasis added); 65 Fed. Reg. 71,014 (2000). However, Dr. Frame's analysis takes no transmission constraints into account, even though it focuses on peak-load conditions.

In the market-based rate ("MBR") context, the Commission has allowed RTO footprints to be treated as single geographic markets for purposes of performing the Commission's Pivotal Supplier and Market Share Screens. *See, e.g., Ameren Energy, Inc., et al.*, 110 F.E.R.C. ¶ 61,408, PP 21-29 (2005). However, the Commission has not imported its MBR practice into the section 203 context, nor should it. RTO mitigation is designed to address market power issues that arise from the creation of organized markets and is not designed to cope with all market power issues. For example, RTO mitigation does not cover bilateral markets. The Commission should not push onto the backs of RTO market monitors market power issues that arise in the context of section 203 transactions. The market monitors already have their hands full with RTO market issues. Further, RTO market monitors are creatures of Section 205 rate filings, not section 203 approvals, and so have not developed mitigation measures tailored to the particular market power concerns that a merger or acquisition may pose.

Just as important, the Commission has an independent responsibility and opportunity to address market power issues in the context of section 203 applications. The Commission has "the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to §§ 202 and 203, and under like directives contained in §§ 205, 206, and 207." *Gulf States Utils. Co. v. FPC*, 411 U.S. 747, 758-59 (1973). Further, it is "a first line of

defense against those competitive practices that might later be the subject of antitrust proceedings.” *Id.* at 760. The Commission itself has recognized that:

[It] must decide at the time of a section 203 application whether an acquisition will adversely affect competition or the public interest. Our responsibility under section 203 is to protect the public interest, and Congress intended us to take action *before* the disposition of facilities is consummated.

Ameren Generating Co., 108 F.E.R.C. ¶ 61,081, P 61 (2004) (emphasis in original).

In short, the Applicants are not allowed to assume the MISO footprint is the relevant geographic market for purposes of analyzing the Aquila and NRG transactions. The Commission’s policies and obligations require that transmission constraints be taken into consideration in the Appendix A analysis.

B. Transmission Constraint Evidence Indicates the Applicants Should Have Analyzed the Ameren Control Areas as a Separate Geographic Market

As discussed above, the Applicants did not file the required transmission constraint information. Further, the Commission has provided considerably less than the customary 60 days to respond to the Applicants’ Appendix A analyses. Nonetheless, MJMEUC has been able to marshal the following evidence that indicates that transmission constraints cause some or the entirety of the Ameren control areas to be separate geographic markets.

In Docket No. EC03-53, where AmerenUE sought authorization to purchase generation assets of its unregulated affiliate, Ameren Energy Generating Company, AmerenUE claimed that the affiliate purchase was necessitated by transmission constraints within and outside of the Ameren control area that precluded AmerenUE’s purchase of cheaper alternatives. Specifically, AmerenUE claimed that it could not

depend on deliveries of power from the NRG Audrain facility (ironically, the same plant it now seeks to acquire in the instant proceeding) within the Ameren control area due to constraints on Ameren's Bland-Franks line, a facility that Ameren described as "one of the most prominent constraints in the Midwest."⁴ These transmission constraints apparently remain relevant. In his Appendix A analysis in this case, Dr. Frame states that while the summer capacity of the Audrain facility is 640 MW, "only 578 MW has been determined by the Midwest Independent Transmission System Operator, Inc. (MISO) to be deliverable to load." Frame Affidavit at 2 n.1.⁵

Similarly, in Docket No. EC03-53 Ameren deemed undependable deliveries from (1) Aquila's Raccoon Creek Plant (another one of the facilities involved in the current transactions) due to constraints on Illinois Power's Coffeen-Roxford line, AmerenCIPS's Newton-Casey line, and local 138 kV facilities, and (2) Reliant's Aurora plant (a 950 MW plant that was placed in service in 2001, located in Illinois, in the ComEd control area) due to Reliant's inability to deliver firm power to the Ameren border. Ameren Brief at 64. The Commission itself accepted Ameren's representations when it authorized disposition of jurisdictional facilities associated with Ameren's acquisition of affiliated generating assets. *Ameren Energy Generating Co.*, 108 F.E.R.C. ¶ 61,081. There, the presiding judge concluded that "no improvements to AmerenUE's transmission infrastructure since ... August 2001 ... would make more viable those

⁴ Initial Brief of Ameren Energy Generating Company and Union Electric Company d/b/a AmerenUE, filed in Docket No. EC03-53, at 63 (Dec. 1, 2003) ("Ameren Brief").

⁵ MJMEUC understands that Ameren has underway transmission upgrades that would help to address the Bland-Franks constraint. It is not known whether the Audrain output restriction used by Dr. Frame reflects the effect of the upgrades. In any event, relieving the Bland-Franks constraint would presumably mean that the Audrain capacity is in the same geographic market as the rest of Ameren's capacity.

options that had been excluded due to transmission concerns.” *Id.* at P 18. The Commission did not disturb the judge’s findings. *Id.* at PP 34-35.

The problematic nature of the transmission constraints affecting the Ameren system are demonstrated as well by the Midwest ISO Transmission Expansion Plan 2005. The portions of the Plan addressing the MAIN region of MISO, Tables 6.2-2 and 6.2-3, show Phase 1 and Phase 2 study results and projects that address limiting conditions. Nearly 100% of the listed projects involve one of the Ameren control areas.⁶ While Ameren is one of the largest systems in MAIN, it is not the only system.

MJMEUC anticipates that Ameren will respond that the Commission is aware of these constraints but nonetheless has not found that they provided a basis to reject Ameren’s recent acquisitions or its MBR re-authorization. However, those prior cases should not prevent the Commission from taking account of the transmission constraints here. When Ameren acquired Illinois Power, the Appendix A analysis showed screen violations for which Ameren proposed mitigation, which the Commission accepted as a merger condition. *Ameren Corp., et al.*, 108 F.E.R.C. ¶ 61,094, PP 27, 49 (2004). When Ameren acquired the assets of its affiliated merchant generators, the issue of an increase in concentration was not important, because Ameren was already deemed to control its affiliate’s generation. *Ameren Energy*, 108 F.E.R.C. ¶ 61,081 at P 15. Finally, when the Commission considered Ameren’s MBR authority, it applied its policy to treat the MISO footprint as the relevant geographic market for purposes of running the Pivotal Supplier

⁶ The Plan is available at http://www.midwestmarket.org/publish/Document/3e2d0_106c60936d4_-751a0a48324a/MTEP05_Report_061605.pdf?action=download&_property=Attachment (last viewed January 20, 2006).

and Market Share Screens. *Ameren Energy, Inc., et al.*, 110 F.E.R.C. ¶ 61,408 at PP 21-

29. As discussed above, that result is not justified here.⁷

Moreover, Ameren has effectively conceded before the Missouri Public Service Commission (“MoPSC”) that transmission constraints are relevant to the pending transactions:⁸

[T]he proper forum to address any issues relating to the overall adequacy of Missouri’s transmission system, or relating to how the MISO dispatch of generators (including the MISO’s dispatch of the CTGs [combustion turbine generators] at issue here) within its footprint affects the transmission system, is at the Federal Energy Regulatory Commission (“FERC”) or at the MISO itself. In this regard, AmerenUE has pending at the FERC an application involving transfer of the Audrain CTGs in which comments may be filed by MJMEUC on or before January 30, 2006.

Ameren’s pleading attempted to downplay the significance of this concession by suggesting that no such transmission impacts could properly be attributed to Ameren’s acquisition of the units: “MISO will dispatch the units if and when MISO’s security

⁷ Notably, in comments filed earlier this month in the Commission rulemaking docket on its market-based rate standards, the Federal Trade Commission criticized the Commission’s practice of allowing the RTO footprint to be treated as a single geographic market:

FERC may define the geographic market as an entire regional transmission organization (“RTO”) footprint despite the fact that transmission constraints within the RTO are likely to result in smaller, separate geographic markets during some periods of time – *i.e.*, temporal product markets – under a Merger Guidelines approach. As a result, the market shares of applicants as measured by FERC may be biased or arbitrary. As a remedy for this problem, we recommend that FERC improve the accuracy of market delineation by using a Merger Guidelines approach or, failing that, accept share calculations based on administratively convenient market delineations only if the market shares are not sensitive to a range of alternative geographic market definitions.

Comment of the Federal Trade Commission, Docket No. RM04-7-000, *Market-Based Rates for Public Utilities*, at n.17 (Jan. 18, 2006) available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=10930526>.

⁸ Response in Opposition to Application for Intervention of Missouri Joint Municipal Electric Utility Commission, at 6, in Public Service Commission of the State of Missouri Case No. EF-2006-0278 (Jan. 23, 2006).

constrained dispatch order indicates that the units should be dispatched and transmission will react to that dispatch in the same way, regardless of the identify of the owner, operator or lessee.”⁹ However, what Ameren’s statement ignores is that as an economic matter the “if and when” of Audrain County dispatch (not to mention Raccoon Creek and Goose Creek) will depend on the offers made by Ameren operating the newly acquired facilities as part of Ameren’s entire fleet of baseload, intermediate and peaking generation, which offers can and likely will vary from NRG’s. The competitive significance of such changed dispatch is relevant to the Commission’s analysis of the section 203 application.

Available evidence indicates that transmission constraints are a problem on the Ameren system. The Applicants should have reflected them in their Appendix A analysis.

C. A Properly Conducted Appendix A Analysis Would Likely Show Screen Violations

Because Ameren did not analyze geographic markets other than MISO nor provide information on transmission constraints, the record does not permit a direct re-calculation of the Appendix A screens to determine whether, if transmission constraints were properly considered, Ameren would pass the Delivered Price Test. However, based upon the record in the proceeding on Ameren’s acquisition of Illinois Power, it appears that the current transactions would produce screen violations.

The Ameren-Illinois Power transaction involved an increase of 203 MW of capacity under Ameren’s control. According to the Commission:

⁹ *Id.* at 4.

For the post-2005 scenario, Applicants report screen failures for EC in the Ameren control area for all seasons/load levels, for both the base case and ATC sensitivity case. For the base case, the Ameren market is highly concentrated for all season/load levels (HHI ranging from 3,251 to 3,799), with merger related-changes in HHI ranging from 117 to 143 HHI. Applicants also report screen failures for AEC in the Ameren market for the base case in off-peak for all seasons. For the ATC sensitivity case in the Ameren market, Applicants report screen failures for AEC in the summer and spring/fall off-peak, and all load levels in the winter.

Ameren Corp., et al., 108 F.E.R.C. ¶ 61,094 at P 27.¹⁰ To address these screen failures, Ameren offered to divest 125 MW of capacity, which the Commission accepted as part of its finding that the transaction did not harm competition. *Id.* at 49.

The current transactions involve nearly 1300 MW of capacity moving into Ameren's control (and over 1300 MW if the full 640 MW of Audrain's output is modeled).¹¹ Given that screen violations occurred in Ameren control areas where the increase in capacity was only 203 MW, an increase of over 6 times that amount is highly likely to produce even more serious screen violations. In the face of these violations, the Commission would have to insist on some kind of mitigation in order to approve the transactions.

D. The Commission Should Convene a Technical Conference to Develop a Record and a Remedy

As noted at the outset, MJMEUC is not interested in preventing Ameren from acquiring generation that it says it needs, assuming the acquisitions are properly

¹⁰ In that case the post-2005 scenario concerned the current time frame, *i.e.*, 2006.

¹¹ As a general matter, the Commission should be concerned by the continuing trend of merchant plant acquisitions by vertically integrated utilities, including in cases where transmission constraints may have played a role in preventing the independent plant owners from marketing their output to a broader market.

conditioned. MJMEUC is concerned about the competitive harm indicated by available evidence and would like to address the underlying market conditions that contribute to that harm. Therefore, MJMEUC recommends the following steps.

First, because the Applicants have not provided the Commission with a proper Appendix A analysis, the Commission should require them to supplement the current filing, insisting that they include evidence on transmission constraints and properly incorporate them into the analysis. Rather than making the Applicants start the section 203 process from scratch, the Commission should establish an investigation and convene a technical conference. Prior to commencement of the technical conference, the Commission should require the applicants to file the required data and revised analysis.

Second, the technical conference itself should examine the transmission constraints and their effect on geographic markets and Ameren's generation market power. However, the goal of the technical conference should not be rejection of Ameren's acquisitions but instead addressing the transmission constraints that adversely impact competitive conditions. Such an outcome would be consistent with prior cases where the Commission has accepted transmission expansion as a remedy to increases in concentration associated with generation acquisitions.¹²

Finally, MJMEUC notes its desire to be part of the transmission solutions in the regions where it operates, including the Ameren system. MJMEUC appreciates the

¹² *Okla. Gas and Elec. and NRG McClain LLC*, 105 F.E.R.C. ¶ 61,297 (2003), *order approving settlement*, 108 F.E.R.C. ¶ 61,004 (2004); *see also Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, 61 Fed. Reg. 68,595, 68,601 (Dec. 30, 1996), *reprinted in* [1996–2000 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,044, at 30,121 (1996) (“*Merger Policy Statement*”). (“[A]n upfront, enforceable commitment to upgrade or expand transmission facilities might mitigate market power, because the constraint relieved by such an upgrade or expansion no longer would limit the scope of the relevant geographic market.”).

receptive comments in recent policy announcements and from Commissioners indicating support for municipal and cooperative investments in transmission.¹³ Such investments should be on a fully comparable basis, for example, one that allows transmission dependent utilities (“TDUs”) to achieve ownership rights in the combined transmission system up to their load ratio share through investment equalization on a net book basis, with the TDUs’ revenue requirement offsetting (and once it achieves parity, eliminating) the TDUs’ obligation to pay to use combined facilities. MJMEUC believes the current proceeding provides an opportunity for such policies to be advanced, in fulfillment of the Commission’s expansive new obligations to “exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load serving entities....” Section 217(b)(4), added to the FPA by Section 1233 of the Energy Policy Act of 2005. *See also* Section 219(b)(1), added by Section 1241 of the Energy Policy Act of 2005, directing the Commission to promote transmission investment “regardless of the ownership of the facilities.”

CONCLUSION

Ameren has not made a showing that its proposed acquisitions of the NRG Audrain plant (as well as the Aquila plants) are consistent with the public interest. In

¹³ *See, e.g.*, Promoting Transmission Investment through Pricing Reform, Docket No. RM06-4-000, 113 F.E.R.C. ¶ 61,182, PP 59-63 (2005); Federal Energy Regulatory Commission, 899th Open Meeting, Transcript at 18, Statement of Commissioner Brownell (“Our focus ought to be not so much on mergers, but on creating new opportunities that both associations have talked a lot about here, which is to allow them to participate with IOUs and with other partners, private equity partners, in developing infrastructure, which I think is a wonderful opportunity. I was thrilled that the munis and the coops expressed a desire to Entergy, for example, to help them rebuild the system. That could be a wonderful partnership.”) (Dec. 15, 2005).

order to address the competitive problems indicated by the acquisitions and the underlying transmission constraints that contribute to them, MJMEUC requests that the Commission establish a technical conference as set forth above.

Respectfully submitted,

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January 30, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of January, 2006, caused the foregoing document to be sent by electronic mail to all parties on the list compiled by the Secretary of the Commission in this proceeding.

/s/ Mark S. Hegedus

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