



Commissioners
ROBERT M. CLAYTON III
Chairman
CONNIE MURRAY
JEFF DAVIS
TERRY JARRETT
KEVIN GUNN

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director
DANA K. JOYCE
Director, Administration and
Regulatory Policy
ROBERT SCHALLENBERG
Director, Utility Services
NATELLE DIETRICH
Director, Utility Operations
COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge
KEVIN A. THOMPSON
General Counsel

January 14, 2009

Mr. Don Willis, General Manager
Hannibal Board of Public Works
#3 Industrial Drive
Hannibal, MO 63401

Re: City of Hannibal/AmerenUE/MISO Congestions Charges

Dear Mr. Willis:

Thank you very much for bringing to my attention the billing difficulties the Hannibal Board of Public Works (BPW) has faced in recent months with AmerenUE¹ related to congestion charges from the Midwest Independent Transmission System Operator (MISO). It is my understanding that billing errors have caused an increase in unexpected expenses to the Board of more than \$400,000, which is a significant expense. While the Missouri Public Service Commission (PSC) does not regulate wholesale power contracts such as the bilateral agreement between AmerenUE and the BPW, the PSC does have a regular working relationship with the MISO, AmerenUE and, generally, has a degree of knowledge of Missouri wholesale power markets. Following your comments in the October 10, 2008, *Hannibal Courier-Post* news article, suggesting a need for a PSC review of this dispute, I have asked the PSC staff to examine the documents associated with the dispute and provide any assistance possible. This letter is the result of that investigation and analysis.

The PSC staff and I have compiled the following documents:

- *Hannibal Courier-Post* news articles of October 9, 2008, and December 5, 2008 (Attachments 1 and 2);
- Service Agreement (SA) between AmerenUE and the Hannibal BPW dated January 27, 1998 (Attachment 3);
- Memorandum of Understanding dated March 29, 2006 (MOU) (Attachment 4);

¹ In the course of this analysis, AmerenUE refers to the regulated utility formerly known as Union Electric and presently known as AmerenUE. This entity is a wholly-owned subsidiary of Ameren Corporation and it is the only subsidiary that is regulated by the Missouri Public Service Commission. Ameren Corporation also owns other divisions known as Illinois Power (IP), Central Illinois Power Service (CIPS), Central Illinois Light Company (CILCO), Ameren Energy Marketing (AEM) and other affiliates.

January 14, 2009

Page 2

- Letter addressed to Tom Voss, President of AmerenUE and to Graham Edwards, President of MISO, dated October 15, 2008 (Attachments 5 and 6);
- AmerenUE response from Tom Voss dated November 5, 2008 (Attachment 7); and
- MISO responses from Graham Edwards dated October 29, 2008 and November 10, 2008 (Attachment 8 and 9).

Following a review of these documents and other related resources, the staff has found the following information.

The BPW entered into a series of contracts with AmerenUE, where AmerenUE would deliver “electric power and energy” to electrical customers in Hannibal. The contract in dispute, which is referred to as a “Service Agreement” (SA) dated January 1998, effectively makes AmerenUE the “sole supplier of electric power requirements” to the Hannibal BPW. The contract, which was valid from January 1, 1998, to December 31, 2008, replaced a prior power contract signed on October 4, 1988 (and amended December 20, 1989). Hannibal’s obligation under the SA was to provide forecasts for its power needs to AmerenUE, and would purchase power using AmerenUE’s “Market Based Rate Power Sales Tariff,” filed with the Federal Energy Regulatory Commission (FERC). Rates paid by the BPW did not include charges for “delivery of power and energy over [AmerenUE’s] transmission and distribution system,” which were “to be arranged for separately in accordance with the provisions of the applicable open access transmission tariff” pursuant to section 7. The SA, in section 7(b), contemplated the possibility of AmerenUE joining an “Independent Service Operator” or ISO.

On March 29, 2006, the BPW and AmerenUE entered into another agreement, entitled a Memorandum of Understanding (MOU) as a supplement to the SA following AmerenUE’s decision to join the MISO. By joining the MISO, AmerenUE placed its transmission assets under the control of the MISO and new transmission charges, including congestion charges, stemming from that relationship were a part of the newly negotiated MOU. It is unclear from the SA whether or not the BPW was required to renegotiate its relationship with AmerenUE after AmerenUE became a member of the MISO. In the MOU, the parties agreed that the BPW would pay a “load-ratio share” of the congestion charges assessed by the MISO to AmerenUE. A “load-ratio share” would be determined by BPW’s percentage of total AmerenUE native load, where native load is the load AmerenUE has an obligation to serve both as a retail and wholesale supplier of power. If Hannibal received 1% of AmerenUE’s native load, under the MOU, Hannibal would pay 1% of the total congestion charges MISO charged to AmerenUE.

The MISO is a Regional Transmission Organization (RTO), authorized by the Federal Energy Regulatory Commission (FERC) in 2001. In theory, RTOs, including the MISO, are supposed to benefit customers by improving reliability, by increasing efficiencies in the use of generation resources and improving regional planning. According to the MISO’s website, the purpose of the Midwest ISO or MISO is:

Balancing an increasing demand for electricity against an aging electric transmission infrastructure requires a commitment to protecting reliability, an independent eye to maintain equal treatment and fair access to the transmission

system, and a strong desire to seek cost-effective ways to improve the way energy is delivered.²

AmerenUE's decision to join the MISO was approved by the PSC in Case No. EO-2003-0271 and then later reauthorized in Case No. EO-2008-0134. Each of these cases approving AmerenUE's participation in the MISO were resolved through Stipulations and Agreements, which were either unanimous agreements or were agreements in which no party objected. It is my understanding that no Missouri municipal utilities or other Missouri wholesale power purchasers participated in either of these cases.

In September and October of 2008, AmerenUE informed the BPW via written correspondence that AmerenUE had undercharged Hannibal for its share of the congestion charges from the period of January 1, 2007, through July 11, 2008 (billing period). AmerenUE explained that the undercharges occurred because of an error in its method of calculating the congestion charges. I do not have the data to compare the various years of transmission or congestion charges before and after AmerenUE joined the MISO.

These facts lead to the following conclusions:

In analyzing the SA and MOU entered into by the parties, it appears that AmerenUE has billed the BPW for charges authorized under the contracts. Further, it appears that the charges are in line with Section 6.1 of the MOU that mandates

For all energy deliveries made during the Load Transfer Period, [Ameren]UE shall allocate to [the BPW], through a corresponding charge or credit on the [Ameren]UE Invoice, [the BPW's] load-ratio share of the day-ahead congestion charges assessed to [Ameren]UE by the Midwest ISO. [The BPW] shall pay [Ameren]UE for such day-ahead congestion charges in accordance with the terms and conditions of the SA. For purposes of clarity, during the term of the FTR Pooling Agreement, the congestion charges allocated to [the BPW] pursuant to this Section 6.1 shall be used for FTR revenue allocation purposes under the FTR Pooling Agreement.

The staff reviewed the level of charges raised in AmerenUE's follow-up correspondence and has found no error in billing. The contracts appear to require the BPW to pay those charges and there is no proof or allegation that the charges have not been compiled properly, although the full amount of the charges was reported twenty months after the start of the billing period. Unfortunately, while AmerenUE is entirely responsible for the billing error, the contracts authorize such late "corrections" to bills. There is no question that the charges were a complete surprise to the BPW and there is no evidence that the BPW did anything wrong.

² Found at <http://www.midwestmarket.org/page/Value+Proposition>

January 14, 2009

Page 4

The staff also reviewed AmerenUE's obligations under the contracts and assessed whether or not AmerenUE has complied with its end of the bargain. While the BPW has the obligation to pay the billed charges, AmerenUE also has various obligations in how it incurs the charges and in how it bills them to the BPW. For example, Section 7(e) of the SA is entitled, "Ameren's designation of Resources," which reads

In designating resources to be used to provide service to [the BPW] under this Agreement, [AmerenUE] shall not discriminate against [the BPW] in any fashion. Specifically, [AmerenUE] shall not designate resources for the provision of service to [the BPW] under this Agreement so as to disproportionately expose [the BPW] to increased charges for transmission and/or auxiliary services, as compared with other customers in Missouri purchasing firm retail or wholesale service from the [AmerenUE] or its affiliates.

This section would be pertinent if Ameren's designation of resources (i.e., picking which power plants would provide power to BPW) caused BPW to incur a larger than necessary amount of congestion charges. However, as the BPW was paying the load-ratio share of *all* congestion charges charged to AmerenUE by MISO, AmerenUE's designation of resources would not cause the BPW to be "disproportionately exposed" to more congestion charges than other similarly situated customers. That is, all customers under a contract paying a load-ratio share of congestion charges who had the same load-ratio share would pay the same amount in congestion charges.

It is my understanding that there have been no allegations that AmerenUE discriminated against the BPW in any way in either the dispatch of resources or in allocation of congestion charges. If you believe there has been some discrimination or wrong-doing on the part of AmerenUE, please let me know.

In Section 7.1 of the MOU, the BPW also assigned to Ameren the right to utilize "Financial Transmission Rights" (FTRs) to hedge against the BPW's load-ratio share of congestion costs. Through this process, AmerenUE will "provide the same degree of congestion protection to [the BPW] as [Ameren]UE itself will obtain through its own selection of FTRs."

There has been no public comment about the quality of Ameren's performance in this hedging process. The documents provided suggest that FTRs were allocated in an appropriate manner to mitigate the congestion charges applied to the BPW. If you believe an inappropriate allocation of FTRs occurred, please let me know.

Lastly, the MOU authorizes annual November meetings to discuss allocation of costs and authorizes the use of a dispute resolution procedure. Section 1.2(i) of the MOU reads that

Each year:

(i) The Parties shall meet, if necessary, during November to discuss whether the allocation of costs set forth in Schedule B attached hereto remains appropriate, and if not the Parties shall agree on a new

January 14, 2009

Page 5

allocation and amend Schedule B accordingly. If the Parties cannot agree on the modifications to Schedule B, the Parties shall use the dispute resolution procedures in the SA to resolve the dispute,

While the above language allows the parties to amend Schedule B, it is not clear whether this provision would further allow the parties to amend the "load-ratio share" allocation found in section 6.1. Therefore, it is unclear whether Hannibal had recourse within the terms of the contract to dispute the propriety of the charges had they been billed accurately and in a timely manner by AmerenUE. However, had AmerenUE billed the congestion charges in a timely manner thereby revealing to BPW the true magnitude of those charges, it is possible that the BPW could have pressed earlier for a different allocation of congestion charges.

It is my understanding that the contracts in dispute, the SA and MOU, have expired and that a newly negotiated contract took effect on January 1, 2009. It is further my understanding that the language authorizing a "load-ratio share" of congestion charges in the older contracts has been eliminated in favor of a flat per megawatt charge. This negotiated position of the BPW will certainly lead to fewer surprises and more stability in rates.

While the PSC does not have direct regulatory authority over contracts such the agreement between the BPW and Ameren, I would urge you to contact me in the future, if you believe I can be of assistance. We each have a responsibility to insure that retail customer rates are "just and reasonable" and we can learn much from each other in meeting that goal, as well as in improving energy efficiency, tapping greener technologies and educating customers on how to reduce their energy bills. I would also urge the BPW to actively monitor or participate in cases that come before the PSC involving Ameren, AmerenUE or any other affiliate, where your interests are involved. The Commission needs to be made aware of how BPW customers are affected by its decisions such as whether Ameren should join the MISO. Whether through your state-wide association serving municipal utilities or through direct participation, it is my hope and request that the BPW participate in PSC cases so that the interests of Hannibal's customers are adequately represented.

Please advise if you have any questions or concerns regarding this letter.

Very truly yours,



Robert M. Clayton II, Chairman
Missouri PSC

Enclosure

Cc: City Council
City Manager
Mayor
Commissioners

January 14, 2009

Page 6

Graham Edwards, MISO
Tom Voss, AmerenUE