

**MAY 02 2003**

Case No.: EO-2003-0271

May 2, 2003

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

In re: Application of Union Electric Company     )  
for Authority to Participate in the Midwest     )  
ISO through a Contractual Relationship     )  
with GridAmerica     )

**Case No. EO-2003-0271**

**AFFIDAVIT OF RYAN KIND**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

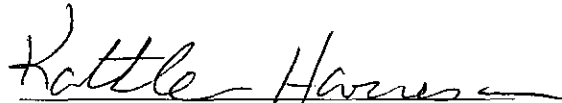
Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 45 and Attachments RK-1 through RK-3.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Ryan Kind

Subscribed and sworn to me this 2<sup>nd</sup> day of May 2003.

**KATHLEEN HARRISON**  
Notary Public - State of Missouri  
County of Cole  
My Commission Expires Jan. 31, 2006

  
\_\_\_\_\_  
Kathleen Harrison  
Notary Public

My commission expires January 31, 2006.

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**REBUTTAL TESTIMONY**

**OF**

**RYAN KIND**

**UNION ELECTRIC COMPANY D/B/A AMERENUE**

**CASE NO. EO-2003-0271**

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. Ryan Kind, Chief Energy Economist, Office of the Public Counsel (Public Counsel or  
3 OPC), P.O. Box 7800, Jefferson City, Missouri 65102.

4 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.**

5 A. I have a B.S.B.A. in Economics and a MA. in Economics from the University of  
6 Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as  
7 a Teaching Assistant with the Department of Economics, and taught classes in  
8 Introductory Economics, and Money and Banking, in which I served as a Lab Instructor  
9 for Discussion Sections.

10 My previous work experience includes three and one-half years of employment with the  
11 Missouri Division of Transportation as a Financial Analyst. My responsibilities at the  
12 Division of Transportation included preparing transportation rate proposals and testimony  
13 for rate cases involving various segments of the trucking industry. I have been employed  
14 as an economist at the Office of the Public Counsel (Public Counsel or OPC) since April  
15 1991.

16 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

1 A. Yes, prior to this case I submitted written testimony in numerous gas rate cases, several  
2 electric rate design cases and rate cases, as well as other miscellaneous gas, water,  
3 electric, and telephone cases.

4 **Q. HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR**  
5 **LEGISLATIVE BODIES ON THE SUBJECT OF UTILITY RESTRUCTURING?**

6 A. Yes, I have provided comments and testimony to the Federal Energy Regulatory  
7 Commission (FERC), the Missouri House of Representatives Utility Regulation  
8 Committee, the Missouri Senate's Commerce & Environment Committee and the  
9 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

10 **Q. HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS,**  
11 **COMMITTEES, OR OTHER GROUPS THAT HAVE ADRESSED UTILITY RESTRUCTURING**  
12 **ISSUES?**

13 A. Yes. I was a member of the Missouri Public Service Commission's (the Commission's)  
14 Stranded Cost Working Group and participated extensively in the Commission's Market  
15 Structure Work Group. I am currently a member of the Missouri Department of Natural  
16 Resources Weatherization Policy Advisory Committee, the Operating Committee and the  
17 Standards Authorization Committee of the North American Electric Reliability Council  
18 (NERC), and the National Association of State Consumer Advocates (NASUCA)  
19 Electricity Committee. I have served as the public consumer group representative to the  
20 Midwest ISO's (MISO's) Advisory Committee. Prior to serving two years on the MISO  
21 advisory committee, I participated in some of the workshops and committees that worked  
22 on the formation of the MISO during 1996 and 1997. During the early 1990s, I served as  
23 a Staff Liaison to the Energy and Transportation Task Force of the President's Council on  
24 Sustainable Development.

**I. SUMMARY AND OVERVIEW**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. I will provide information to the Commission and make recommendations regarding the request of Union Electric Company d/b/a AmerenUE (UE or AmerenUE) for approval of its application to participate in the MISO through a contractual relationship with Grid America.

**Q. PLEASE SUMMARIZE PUBLIC COUNSEL'S RECOMMENDATION REGARDING UE'S REQUEST FOR APPROVAL TO PARTICIPATE IN THE MISO THROUGH A CONTRACTUAL RELATIONSHIP WITH GRID AMERICA.**

A. UE's request should not be approved because the Company's participation in MISO through a contractual relationship with Grid America would be detrimental to the public interest for a number of reasons. OPC's counsel will detail additional legal concerns regarding limitations on the ability of the Missouri PSC to relinquish regulation over the transmission operations of an electrical corporation.

**Q. PLEASE OUTLINE THE REASONS WHY OPC BELIEVES APPROVAL OF THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST.**

A. Some of the most important reasons why approval of the application would be detrimental to the public interest relate to the loss of Missouri PSC jurisdiction over transmission that occurs when a transmission owning utility joins and begins taking service from a FERC approved RTO. Loss of Missouri PSC jurisdiction is likely to lead to the following detriments:

- 1) **Upward pressure on the level of bundled rates** charged to Missouri retail customers due to the FERC requirement that all load must take service under the RTO tariff, including native load still being served on unbundled retail rates in states such as Missouri without retail competition. This detriment became even greater when FERC issued its Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR) in July 2002 (Docket No. RM01-12) and its transmission incentive pricing policy in January, 2003 (Docket No. PL03-1).
- 2) **Loss of native load priority** for use of the Ameren's transmission system.
- 3) **FERC's SMD policies** regarding non-price terms and conditions of service could be imposed on UE's Missouri customers due to UE's participation in the MISO.

Additional detriments associated with the approval of this application that are not directly related to the loss of Missouri PSC jurisdiction over transmission include:

- 1) The decreased effectiveness and efficiency resulting from the **poorly configured two-tier RTO** proposed in this application.
- 2) UE asserts that much of the purported benefit that would be associated with permitting the Company to participate in the MISO through a relationship with Grid America stems from the Grid America's purported ability to retain transmission revenues that would be lost if UE participated in the MISO directly as a transmission owning member. This **purported lost revenues retention benefit is purely speculative** at this time, however, since the FERC has not yet acted on the GridAmerica lost revenue proposal that was made in FERC Docket No. ER03-580.

1           3)    The unproven for profit Independent Transmission Company (ITC) **business**  
2               **model that GridAmerica will utilize has no track record of providing**  
3               **benefits** to electric consumers in the United States.

4           4)    The risk that **UE may assert that the FERC and Commission's decisions to**  
5               **allow its participation in an ITC (e.g. Grid America) or its participation in**  
6               **an RTO (e.g. MISO) constitutes "a significant change in federal or state**  
7               **utility laws or regulations"** that would release AmerenUE from its obligations  
8               under Section 3 of the Stipulation and Agreement in Case No. EC-2002-1 to not  
9               file a general rate increase case before January 1, 2006.

10          5)    Increased risk that UE will seek to benefit its shareholders by **divesting its**  
11               **transmission** assets pursuant to the arrangements set forth in the GridAmerica  
12               Master Agreement.

13          **Q.    HAS THE MISSOURI COMMISSION EVER GRANTED APPROVAL FOR A UTILITY TO JOIN A**  
14               **REGIONAL TRANSMISSION ORGANIZATION (RTO)?**

15          A.    No. The Commission granted UE permission to join an Independent System Operator  
16               (ISO) for a limited period of time (six years) in Case No. EO-98-413 but it has never  
17               made a decision about whether it would be detrimental to the public interest for a utility  
18               to join an RTO. UE filed an application to join an RTO in Case No. EO-2001-684 but it  
19               withdrew its application before the Commission ever made a determination on the merits  
20               of that application. Other Missouri utilities have filed applications to join an RTO but the  
21               Missouri Commission has never granted approval to this type of application.

22          **Q.    WOULD COMMISSION APPROVAL FOR ONE OF ITS UTILITIES TO JOIN AN RTO HAVE**  
23               **DIFFERENT AND GREATER IMPACTS ON CONSUMERS THAN GRANTING APPROVAL TO**  
24               **JOIN AN ISO?**



1 A. Yes. The consequences associated with allowing a utility to join (or participate in) an  
2 RTO are much greater than the consequences associated with allowing a utility to join an  
3 ISO. Two of the greatest differences are that granting permission for a utility to join an  
4 RTO will result in:

- 5 1) An immediate transfer of all of Commission ratemaking jurisdiction over  
6 transmission costs to the FERC, and  
7 2) The loss of native load's priority for using the Ameren transmission system.

8 **Q. WHY SHOULD THE COMMISSION BE CONCERNED ABOUT AMEREN SEEKING IMPLICIT**  
9 **APPROVAL THROUGH THIS APPLICATION FOR UE TO PARTICIPATE IN AN RTO WHEN**  
10 **UE'S APPLICATION JUST STATES THAT IT IS SEEKING PERMISSION TO PARTICIPATE IN**  
11 **THE MIDWEST ISO THROUGH A CONTRACTUAL ARRANGEMENT WITH GRID AMERICA?**

12 A. The name of the MISO has never been changed to reflect its status as a FERC approved  
13 RTO. When the Midwest ISO became a FERC approved RTO on December 20, 2001, it  
14 retained its original name. However, the MISO has already begun operations as an RTO  
15 and is subject to the FERC rules for RTOs set forth in FERC Order No. 2000 (Order  
16 2000).

17 **Q. SHOULD THE COMMISSION ALSO BE CONCERNED THAT IF IT APPROVES THIS**  
18 **APPLICATION, IT IS ALSO PROVIDING APPROVAL FOR UE TO BE SUBJECT TO**  
19 **WHATEVER RULES RESULT FROM THE FERC'S DECISION IN ITS SMD NOPR?**

20 A. Yes. The MISO is already developing "market rules" that closely resemble the market  
21 rules set forth in the SMD NOPR. Furthermore, on February 19, 2003, Ameren and its  
22 Grid America partners filed a revised Appendix I agreement with FERC which states in  
23 Section 13.1.2 that:

GridAmerica will implement any necessary modification to its operations to support Midwest ISO's locational margin pricing and other aspects of standard market design on a unified, region-wide market basis.

GridAmerica stated on page 7 of its February 19, 2003 transmittal letter to the FERC that it made this change to its Appendix I agreement because:

The Commission [FERC] stated that it expected GridAmerica to implement any necessary modifications to its operations to support the Midwest ISO's locational marginal pricing and other aspects of SMD on a unified, region-wide market basis. The Applicants have revised Section 13.1.2 of the Appendix I Agreement **to obligate GridAmerica to do so.** (emphasis added)

**Q. HAS THIS COMMISSION MADE ANY PREVIOUS STATEMENTS ABOUT ITS VIEWS ON THE POSSIBLE LOSS OF STATE JURISDICTION RESULTING FROM FERC'S INITIATIVES TO RESTRUCTURE THE ELECTRIC INDUSTRY?**

A. Yes. I have noticed two instances where this Commission filed pleadings at FERC expressing its concerns about the possible loss of state jurisdiction over transmission matters. The Commission's most recent expression of this concern came in its initial comments that were filed in the FERC SMD NOPR docket (Docket No. RM01-12) on November 15, 2002. In those comments, the Commission stated that:

The FERC should find that bundled load remains under state jurisdiction for the determination of cost of service for transmission. (Page 1)

\*\*\*

**It is of grave concern to the Missouri Commission that in this SMD NOPR the FERC is requiring bundled load to be served under a regional transmission tariff** that should have been designed for the purpose of facilitating wholesale transactions of electricity, and should not be applied to the pricing of transmission for retail transactions of electricity. (emphasis added) (Page 3)

The Commission also stated jurisdictional concerns in a earlier filing that it made in a FERC MISO docket (Docket No. ER-98-1438) on March 16, 1998. In its Notice of

Intervention and Request for Hearing of the Missouri Public Service Commission, the Commission stated that:

With regard to **the condition that all load must be priced on the Midwest ISO rate after the six-year transition period, the Midwest ISO's filing raises the issue whether the state public service commissions retain their jurisdictional authority to determine the transmission cost of service for retail customers**, as long as those customers have no choice of alternative supply of generation and, thus, continue to be served by the incumbent utility under bundled regulated rates. In this regard, it can be argued that the Midwest ISO's proposal that all load be priced on its transmission rate at a specific future time is in conflict with state jurisdictional authority to set retail rates for the incumbent utility's bundled rate customers who have no choice of alternative supply of generation. (emphasis added) (Pages 5,6)

\*\*\*

It can be argued that as long as retail load has not been given choice, the states retain jurisdiction over the transmission cost of service, and outside of wholesale transactions entered into by the incumbent utility on behalf of bundled retain load, **the bundled load should not be forced onto the Midwest ISO tariff.** (emphasis added) (page 7)

The Missouri Commission also noted on page 7 of this same FERC filing that "moreover, the MoPSC retains authority under state law to approve any transfer of control over transmission facilities which the instant filing contemplates."

**Q. DID EITHER UE'S APPLICATION OR ITS DIRECT TESTIMONY ADDRESS THE POSSIBLE LOSS OF STATE JURISDICTION OVER THE COMPANY'S TRANSMISSION RATES AND OPERATIONS?**

A. No. UE's application and direct testimony failed to address this very important subject. UE did not mention that: (1) it would be required to take service under the MISO tariff just to use its own transmission system to serve its native load in Missouri or (2) that its native load customers would no longer enjoy the priority access to the Ameren transmission system for providing service to its native load that exists today.



Rebuttal Testimony of  
Ryan Kind

1 A. \*\*

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Q. \*\*

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A. \*\*

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Q. **AT THE TIME UE FILED ITS APPLICATION IN THIS CASE IT ALSO FILED A MOTION FOR  
15 EXPEDITED TREATMENT. WHAT WAS THE BASIS OF ITS REQUEST FOR EXPEDITED  
16 TREATMENT?**

17

A. UE filed its application on February 5, 2003 and asked to have its application approved  
18 "if possible by April 15, 2003 but in any event on or before May1, 2003." The basis for  
19 expedited treatment that UE cited in paragraph 38 of its application was that:

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If an order approving this Application is not obtained within said time-  
frame, it will not be possible for GridAmerica to become operational  
until after the Summer of 2003. *Delaying the operation of GridAmerica*  
will deprive the entire Midwest of the operational synergies that will  
accrue from the GridAmerica companies' participation in the Midwest  
ISO thorough GridAmerica.

1       **Q.     DOES PUBLIC COUNSEL BELIEVE THAT THE COMMISSION SHOULD FEEL PRESSURED**  
2       **TO ACT ON THE APPLICATION IN ORDER TO AVOID THE PURPORTED HARM OF**  
3       **DEPRIVING “THE ENTIRE MIDWEST OF THE OPERATIONAL SYNERGIES THAT WILL**  
4       **ACCRUE FROM THE GRIDAMERICA COMPANIES’ PARTICIPATION IN THE MIDWEST ISO**  
5       **THOROUGH GRIDAMERICA?”**

6       A.    No. We hold quite the opposite belief. The consequences of approving this application  
7       could be so vast and far reaching for Missouri utility customers that the Commission  
8       should take all the time needed to be extra careful to ensure that the restructuring of the  
9       Missouri electric industry associated with the pending application is not harmful to  
10      Missouri ratepayers. If the Commission’s careful consideration of this application leads it  
11      to a delay in making a final determination of the merits of the application in order to see  
12      how the current FERC dockets for the GridAmerica transactions (Docket Nos. ER02-  
13      2233, EC04-14, and ER03-580), the SMD NOPR (Docket No. RM01-12) and the  
14      proposed transmission incentive pricing proposals (PL03-1) are finally resolved by the  
15      FERC, Public Counsel believes such a delay would be entirely appropriate. Given the  
16      huge ramifications this application would have, given these five pending FERC dockets,  
17      OPC would be highly concerned to see this application approved before the outcome of  
18      these dockets is final.

19      In addition, given the highly complex nature of this case, Public Counsel would not be  
20      surprised if the Commission determines that additional information is needed before it  
21      can make a determination of the legal and policy issues involved in this case. Public  
22      Counsel would note that we are aware of RTO cases that are pending before the state  
23      commissions in Arkansas and Louisiana where those Commissions set forth requirements  
24      for a rigorous cost benefit analysis of various RTO options (including maintaining the  
25      status quo) that must be performed by the applicants before the cases are heard in those  
26      states.

OPC is concerned that \*\*

\*\*

## **II. REVIEW OF COMMISSION AND FERC DEVELOPMENTS THAT PRECEDED THE FILING OF THIS APPLICATION**

**Q. HAVE YOU PREPARED A CHRONOLOGY OF MISSOURI COMMISSION AND FERC  
ACTIVITIES RELATED TO THIS APPLICATION IN AN EFFORT TO HELP PUT THIS  
APPLICATION IN A HISTORICAL CONTEXT?**

**A.** Yes. I believe that a thorough assessment of the Missouri and Federal regulatory activities related to this application is crucial to making an informed determination about whether or not granting UE permission to join an RTO is detrimental to the public interest. Circumstances have changed drastically (and are expected to continue to change drastically) since this Commission took its initial actions in 1997 and 1999 related to UE's participation in a ISO. The chronology that I prepared can be found in Attachment RK-2 of this testimony.

### **II.A Changed Circumstances Since the Commission First Addressed UE Joining an ISO**

**Q. PLEASE PROVIDE A GENERAL DESCRIPTION OF THE CHANGE IN CIRCUSTANCES THAT  
HAS OCCURRED SINCE THE TIME WHEN, IN EARLY 1997, THE COMMISSION FIRST  
ADDRESSED THE SUBJECT OF UE JOINING AN ISO IN THE UE/CIPS MERGER CASE  
(CASE NO. EM-96-149).**

1 A. The environment in which the Commission reviewed UE's merger proposal in Case No.  
2 EM-96-149 was characterized by:

- 3 1) The widespread assumption that retail electric competition (also referred to as  
4 direct access) would come to Missouri in the near future as Missouri followed  
5 other states in choosing retail competition or was mandated to do so by the  
6 federal government.
- 7 2) FERC was implementing Order No. 888 (Order 888) by encouraging the  
8 development of ISOs in a manner which did **not preempt** the ratemaking  
9 jurisdiction of state utility regulators.
- 10 3) The dramatically adverse rate impacts on customers in other states with retail  
11 competition had not yet occurred.
- 12 4) The bad experience with major electric retail and wholesale competitors (e.g.  
13 Enron) manipulating markets and otherwise harming the shareholders, customers,  
14 and employees associated with these companies had not yet occurred.
- 15 5) The bad experiences with the state and federal regulators failing to oversee new  
16 competitive electric wholesale and retail markets in a competent manner had not  
17 yet occurred.

18 Today's environment in which the Commission is reviewing UE's proposal to participate  
19 in the MISO through a contractual relationship with Grid America is characterized by:

- 20 1) It is no longer widely assumed that retail electric competition (also referred to as  
21 direct access) will come to Missouri in the near future either as a result of actions  
22 taken by the Missouri Legislature or Congressional mandate.



- 1           2)   FERC is implementing Order 2000 by encouraging transmission owners to  
2           **voluntarily** decide to join an RTO. Once a transmission owner becomes a  
3           member of an operational RTO, FERC requires the transmission owner to take  
4           service under the RTO tariff, even when a transmission owning utility is using its  
5           own transmission system to provide load to its native load customers taking  
6           service under bundled retail rates.
- 7           3)   Customers in a large number of states with retail competition have suffered from  
8           adverse rate impacts resulting from restructuring. In addition, the promised  
9           benefits of retail competition (substantial retail rate reductions from competition  
10          and increased value to consumers from the offering of innovative products) have  
11          largely failed to materialize.
- 12          4)   Bad experiences with major electric retail and wholesale competitors (e.g. Enron)  
13          manipulating markets and otherwise harming the shareholders, customers, and  
14          employees associated with these companies have been widely publicized due to  
15          FERC and California investigations and national press coverage.
- 16          5)   The FERC has been widely criticized for failing to properly oversee new  
17          competitive wholesale markets and protect consumers in a competent manner.  
18          The agency and some of its own staff members have even acknowledged serious  
19          shortcomings in its performance.

20       **II.B   MO PSC Case No. EM-96-149 Where UE Was Required to Join an ISO**

21       **Q.    PLEASE DISCUSS THOSE PORTIONS OF THE COMMISSION'S FEBRUARY 21, 1997**  
22       **ORDER IN CASE NO. EM-96-149 RELATED TO UE'S PARTICIPATION IN AN**  
23       **INDEPENDENT SYSTEM OPERATOR (ISO).**

1 A. The Commission stated on page 16 of the order that:

2 While the Commission agrees that UE and Ameren should not participate  
3 in an ISO at "any cost" to the Missouri ratepayers, now is the time for  
4 UE to take into account the impact that vertical market power could have  
5 on the requirements market under retail competition. Therefore, the  
6 Commission approves the merger upon the condition that UE shall  
7 participate in a regional ISO that eliminates pancaked transmission rates  
8 and that is consistent with the ISO guidelines set out in FERC Order 888.

9 At the time the Commission ordered UE to join an ISO it was obviously quite concerned  
10 about the effects that the UE/CIPS merger could have on the development of retail  
11 competition in a manner that would not be harmful to Missouri electric consumers. In  
12 fact, the Commission was so concerned that it imposed the ISO participation condition on  
13 UE, in addition to all of the other conditions that the parties had agreed upon in the  
14 Stipulation and Agreement.

15 I believe that when the Commission imposed this additional condition, it was trying to  
16 fulfill its responsibilities to protect consumers from future adverse effects of increased  
17 market power resulting from the merger of UE and CIPS in the event that retail  
18 competition became authorized in Missouri. On page 11 of its order, the Commission  
19 stated that "market power might be of greatest concern to Missouri customers if full retail  
20 competition were authorized." By acting to require UE to pursue joining an ISO, the  
21 Commission appears to have disagreed with a statement from UE witness Don Brandt  
22 who is quoted on page 11 of the February 21, 1997 order as stating that "the time to  
23 address potential market power problems associated with deregulation and customer  
24 choice is when the decision is made to go down that path, not now."

25 **Q. DID MR. BRANDT'S STATEMENT ABOUT THE PROPER TIME TO ADDRESS MARKET**  
26 **POWER PROBLEMS ARISE FROM A BELIEF THAT UE HELD IN 1996 THAT RETAIL**  
27 **DEREGULATION WAS UNLIKELY TO OCCUR?**

1 A. No. My rebuttal testimony in Case No. EM-96-149 addressed the views that UE held in  
2 1996 regarding the likelihood of retail competition. At line 16 on page eight of that  
3 testimony, I stated that:

4 in response to an OPC DR regarding UE's appraisal of the likelihood of  
5 retail competition in Missouri, UE stated that it "has adopted a must  
6 assume approach to the direct retail competition issue." A video that UE  
7 produced for its employees entitled *Competing for the Future* is another  
8 indication of UE's concern about its ability to compete in a more  
9 competitive energy industry. The introductory portion of this video has a  
10 large picture of a phony *St. Louis Post Dispatch* headline from the future  
11 that reads "**Shocking...Missouri Opens Electric Market to**  
12 **Competition.**"

13 **II.C MO PSC Case No. EO-98-413 Where UE Was Authorized to Participate in**  
14 **the MISO for the Six Year Transition Period**

15 **Q. PLEASE DISCUSS THE ACTIONS THAT THE COMMISSION TOOK IN CASE NO. EO-98-**  
16 **413.**

17 A. In this case, UE sought to join an Independent System Operator (ISO) called the Midwest  
18 Independent System Operator (Midwest ISO or MISO) which would operate in a manner  
19 consistent with the ISO guidelines in FERC Order 888. UE's application was filed with  
20 the Commission on March 30, 1998 and the FERC gave conditional approval to the  
21 MISO on September 16, 1998. The parties were able to agree on a resolution of the issues  
22 in this case by entering into a Stipulation and Agreement dated April 22, 1999. No  
23 testimony was filed in this case, nor was a hearing held and the Commission issued an  
24 order approving the Stipulation and Agreement that became effective on May 25, 1999.

25 **Q. PLEASE DESCRIBE THE STIPULATION AND AGREEMENT THAT WAS APPROVED BY THE**  
26 **COMMISSION IN THIS CASE.**

27 A. The major provisions of the agreement were:

- 1 • UE was permitted to join the MISO for a **six year transition period** as that
- 2 period was defined in the MISO tariff at that time.
- 3 • At least six months prior to the end of the transition period, UE was required to
- 4 file with the Commission a request to join on a permanent basis the MISO,
- 5 another ISO, or some appropriate regional transmission entity.
- 6 • If UE sought to withdraw from the MISO, then it was required to make a filing
- 7 with the Commission.
- 8 • In addition, the stipulation contained other provisions intended to clarify how the
- 9 MISO would address congestion pricing, "an equitable resolution of the post-
- 10 transition application of the MISO tariff to bundled retail load," and incentives for
- 11 the efficient location of generation and transmission enhancements within the
- 12 MISO footprint.

13 **Q. EARLIER IN THIS TESTIMONY, YOU LISTED FIVE CHARACTERISTICS OF THE**

14 **ENVIRONMENT IN WHICH THE COMMISSION REVIEWED UE'S MERGER PROPOSAL IN**

15 **CASE NO. EM-96-149. HAD ANY OF THESE CHARACTERISTICS CHANGED**

16 **SUBSTANTIALLY BETWEEN THE DATE THAT THE COMMISSION ISSUED ITS FINAL ORDER**

17 **IN CASE NO. EM-96-149 AND THE DATE THAT THE COMMISSION ISSUED ITS ORDER**

18 **APPROVING THE STIPULATION AND AGREEMENT IN CASE NO. EO-98-413?**

19 A. No. None of those five characteristics had changed substantially between February 21,

20 1997 and May 13, 1999. The FERC's attempt to exert jurisdiction over a transmission

21 owner using its own transmission system to provide bundled service in states without

22 retail competition began on the exact same day that the Commission issued its order in

23 Case No. EO-98-413. The FERC issued its Notice of Proposed Rulemaking (NOPR) in

Docket No. RM-99-2 on May 13, 1999. This NOPR led to the issuance of Order No. 2000 on December 20, 1999.

**II.D MO PSC RTO Approval Cases That Preceded This Case**

**Q. PLEASE BRIEFLY DISCUSS THE REQUESTS MADE BY MISSOURI ELECTRIC UTILITIES FOR COMMISSION APPROVAL TO JOIN AN RTO THAT PRECEDED THIS CASE.**

A. Several Missouri utilities (UE, Empire District Electric Company, and Aquila) have filed applications for approval to join an RTO. However, none of these cases ever proceeded to the point where the Commission made a determination as to whether it would be detrimental to the public interest to allow a regulated Missouri electric utility to transfer functional control of its assets to an RTO. All of these utility applications to join an RTO were ultimately withdrawn by the applicants for various reasons.

**Q. SO, IT APPEARS THAT THE COMMISSION HAS NEVER GRANTED APPROVAL FOR A MISSOURI UTILITY TO TRANSFER FUNCTIONAL CONTROL OF ITS ASSETS TO AN RTO, IS THAT CORRECT?**

A. Yes, that is correct. UE is the only Missouri utility that has been granted permission by the Commission to transfer functional control of its transmission assets to another entity. (an ISO, not an RTO) At the time UE was granted permission to transfer functional control of its transmission assets to the Midwest ISO, the Midwest ISO was an ISO that had been granted conditional approval from FERC to operate as an ISO. At the time the Commission granted approval for UE to join the MISO, there was no such thing as a Regional Transmission Operator (RTO). The RTO concept was defined by FERC when it issued Order 2000 approximately six months after UE was granted approval to join an ISO.

1       **Q.     YOU SAID THAT UE IS THE ONLY MISSOURI UTILITY THAT WAS EVER GRANTED**  
2       **PERMISSION TO TRANSFER FUNCTIONAL CONTROL OF ITS ASSETS TO ANOTHER**  
3       **ENTITY. DID UE EVER ALLOW THE MIDWEST ISO TO EXERCISE FUNCTIONAL**  
4       **CONTROL OVER ITS TRANSMISSION ASSETS?**

5       A.    No. UE withdrew from the MISO prior to the time when the MISO began exercising  
6       functional control over the transmission assets of its transmission owner members.  
7       Ameren provided written notice to the MISO that it was withdrawing on November 9,  
8       2000 and on May 18, 2001, Ameren paid an \$18 million exit fee to the MISO. A couple  
9       weeks after Ameren paid an exit fee to the MISO, UE filed an application with the  
10      Commission seeking approval to withdraw from the MISO. The MISO became a FERC  
11      approved RTO about six months later, on December 20, 2001 and began providing  
12      transmission service on February 21, 2002.

13      **II.E   FERC Activities - Order 888 and Order 888-A**

14      **Q.     YOU NOTED EARLIER THAT ORDER 888 WAS ISSUED BY THE FERC PRIOR TO THE**  
15      **COMMISSION'S ORDER IN THE UE/CIPS MERGER CASE REQUIRING UE TO JOIN AN**  
16      **ISO AND CASE NO. EO-98-413 WHERE UE WAS GRANTED PERMISSION TO JOIN THE**  
17      **MISO FOR A LIMITED SIX YEAR TIME PERIOD. EXACTLY WHEN WAS ORDER 888**  
18      **ISSUED BY THE FERC?**

19      A.    Order 888 was issued on April 24, 1996, about six months after UE filed its application  
20      to merge with CIPS on November 7, 1995 and almost a year before the Commission's  
21      final Report and Order in the merger case became effective on March 4, 1996.

22      **Q.     DID THE FERC ISSUE ANY ORDERS CLARIFYING HOW IT INTENDED ISOS TO PROVIDE**  
23      **TRANSMISSION SERVICE TO BUNDLED LOAD PURSUANT TO ORDER 888?**

1 A. Yes. After Order 888 was issued, FERC issued Order 888-A on March 4, 1997 in Docket  
2 Nos. RM95-8-001 and RM94-7-002. In this order, the FERC reheard some of the issues  
3 decided in Order 888 and clarified that Order 888 did not require transmission owners to  
4 take service under the ISO tariff "for the transmission of power that is purchased on  
5 behalf of bundled retail customers." The pertinent portion of Order No. 888-A (pp. 122-  
6 123) which clarified this issue is quoted below:

7 Commission Conclusion

8 Several parties have noted on rehearing that there is conflicting  
9 language among the Final Rule, Order No. 889 and the pro forma tariff  
10 as to whether and to what extent the transmission provider must take  
11 service for "wholesale purchases" under its own tariff. As discussed  
12 below, we clarify that a transmission provider does not have to "take  
13 service" under its own tariff for the transmission of power that is  
14 purchased on behalf of bundled retail customers.

15 **In a situation in which a transmission provider purchases**  
16 **power on behalf of its retail native load customers, the Commission**  
17 **does not have jurisdiction over the transmission of the purchased**  
18 **power to the bundled retail customers insofar as the transmission**  
19 **takes place over such transmission provider's facilities, and**  
20 **therefore the pro forma tariff does not have to be used for such**  
21 **transmission.** Moreover, we recognize that purchases made collectively  
22 on behalf of native load cannot necessarily be identified as going to any  
23 particular customer. However, the Commission does have jurisdiction  
24 over transmission service associated with sales to any person for resale,  
25 and such transmission must be taken under the transmission provider's  
26 pro forma tariff. (Footnotes excluded) (Emphasis added)

27 **II.F FERC Activities - Order 2000 and Later Orders Applying the Principles of**  
28 **Order 2000 to Specific RTO Applications**

29 **Q. WHAT PROMPTED FERC TO DECIDE THAT ORDER 888 NEEDED TO BE**  
30 **SUPPLEMENTED BY THE MORE PRESCRIPTIVE AND BROAD RULES INCLUDED IN ORDER**  
31 **2000?**

32 Several years after FERC issued Orders 888 and 888-A, it concluded that Order 888 was  
33 not sufficient to overcome the challenges that is believed the electric industry was facing

1 as it transitioned towards the increased reliance on competitive wholesale and retail  
2 markets that the FERC wanted to encourage. As a result of that conclusion, the FERC  
3 opened Docket No. RM99-2 which culminated in the issuance of Order 2000. In that  
4 order, the FERC asserted that it needed to take further actions to promote the  
5 development of competitive markets because of continuing problems in the areas of : (1)  
6 engineering and economic inefficiencies and (2) continuing opportunities for  
7 discrimination. After determining that these continuing problems existed, the FERC  
8 decided that a new entity, Regional Transmission Organizations (RTOs) could overcome  
9 these problems and provide additional benefits. Once FERC decided to create RTOs it  
10 proceeded to detail the functions and characteristics that RTOs would need to possess in  
11 order to be approved by FERC.

12 FERC decided that one of the key RTO functions was the Tariff Administration and  
13 Design function. The Commission determined in Order 2000 that all load which uses  
14 RTO controlled transmission facilities must take service under the RTO's tariff. This  
15 was a major departure from Order 888 where transmission owning utilities were not  
16 required to take service under the ISO tariff in order to use their own transmission system  
17 to serve their native load customers on bundled retail rates in states that had not chosen  
18 retail competition. Due to this departure from the Order 888 framework, FERC began to  
19 see extensive opposition from states that had not chosen retail access and did not want the  
20 FERC to assert they had jurisdiction over the transmission portion of the bundled service  
21 provided by vertically integrated utilities. This opposition was especially strong in the  
22 Southern and Western regions of the U.S.

23 After FERC issued Order 2000, it issued a series of orders clarifying how Order 2000  
24 would apply to serving bundled load in specific RTOs that were either in the  
25 development stage, close to receiving RTO approval from the FERC, or approved by the  
26 FERC as an RTO. Many of these orders are listed in the chronology in Attachment RK-2.



1       **Q.     PLEASE LIST THE MAJOR FERC ORDERS THAT YOU ARE AWARE OF WHICH CLARIFIED**  
2       **HOW ORDER 2000 WOULD APPLY TO SERVING BUNDLED LOAD IN SPECIFIC RTOs.**

3       A.     The major FERC orders which I believe the Commission should take into consideration  
4       as it considers the ratemaking preemption issues in this application are:

- 5             •     Order Provisionally Granting RTO Status [to GridSouth], Docket No. RT01-74,  
6                 Issued March 14, 2001 (p. 39)
- 7             •     OPINION NO. 453, Docket No. ER98-1438, Issued October 11, 2001 (pp. 7-8)
- 8             •     OPINION NO. 453-A, Docket No. ER98-1438, Issued on February 13, 2002 (p.  
9                 10)
- 10            •     ORDER ON REMAND, Docket No. ER98-1438, Issued February 24, 2003 (pp.  
11                13-14)

12       The first order listed above is from a GridSouth docket and the next three orders in the  
13       list were all from Midwest ISO dockets. Those pages most relevant to the issue of serving  
14       native load under the RTO tariff are indicated in the list above and quotes from those  
15       pages appear in the Questions and Answers below. The GridSouth order is included  
16       because it was referenced by the FERC in subsequent Midwest ISO orders since it was  
17       one of the bases listed in later Midwest ISO documents for requiring all load, even the  
18       bundled load of transmission owning RTO members, to take service under the RTO  
19       tariff.

20       **Q.     PLEASE CONTINUE BY EXPLAINING THE FERC'S DETERMINATIONS REGARDING**  
21       **SERVING BUNDLED LOAD IN THE GRIDSOUTH ORDER LISTED ABOVE.**

1 A. The transmission owners in GridSouth forced the FERC to declare where it stands on  
2 whether bundled load could be excluded from the applicability of an RTO's tariff. They  
3 did this by filing a proposal at FERC which excluded this load from the RTO's tariff,  
4 even though the FERC had already issued Order 2000 which appeared to indicate that the  
5 FERC would require all load to take service under the RTO tariff. The FERC basically  
6 told the Grid South transmission owners that you cannot exclude your own native load  
7 customers from the RTO tariff because this is not consistent with our decision in Order  
8 2000. The relevant portion (p. 39) of the GridSouth FERC Order is quoted below:

9 b. Discussion related to bundled retail load and  
10 grandfathered contracts

11 GridSouth will have control of all transmission facilities and will  
12 therefore be the sole provider of transmission service in its region.  
13 While GridSouth Applicants are correct that Order No. 2000 does not  
14 require that retail rates be unbundled, it does require that Applicants and  
15 other TOA [Transmission Operating Agreement] Participants needing to  
16 meet their retail load be placed completely under the GridSouth OATT.  
17 In so doing, GridSouth will not assess TOA participants for those  
18 GridSouth charges which are based on TOA participants' own revenue  
19 requirement. As a result, Applicants have ensured that the charges  
20 assessed by GridSouth for TOA participants' use of the grid to meet their  
21 bundled retail load are no different than the transmission component of  
22 their bundled retail rates. **Arrangements for TOA participants to**  
23 **compensate GridSouth for their use of GridSouth's facilities must be**  
24 **accomplished not by waiver, but by contract between GridSouth (the**  
25 **transmission provider) and TOA participants who are now the**  
26 **transmission customers.** Accordingly, GridSouth is required to modify  
27 its proposal and codifying its pricing to TOA participants. We will  
28 require that GridSouth Applicants make conforming changes to the  
29 GridSouth OATT as needed (e.g., Section 2.09 of TOA and Section 34 of  
30 the OATT). (Emphasis added)

31 **Q. PLEASE CONTINUE BY EXPLAINING THE FERC'S DETERMINATIONS REGARDING**  
32 **SERVING BUNDLED LOAD IN THE OPINION NO. 453 ORDER LISTED ABOVE.**

33 A. In this order, the FERC began applying the Order 2000 rules to the MISO which had  
34 been created under the guidance that the FERC gave in Order 888. This meant that the  
35 FERC declared that what was once an appropriate way to treat bundled native load "in

1 the context of an ISO” was no longer acceptable to FERC after it had changed the rules  
2 of the game in Order 2000.

3 In Opinion No. 453, the FERC directed the MISO to “revise the Midwest ISO  
4 Agreement and Tariff, as necessary, to place and provide all load under the Midwest  
5 ISO’s Tariff. The FERC essentially threw away one of the major foundations of the  
6 Midwest ISO framework that had been worked out by transmission owners and  
7 stakeholders (and previously approved by FERC) because it did not coincide with the  
8 FERC’s latest vision for restructuring electric markets. The relevant portion (pp. 7-8) of  
9 Opinion No. 453 is quoted below:

10 Discussion

11 The Commission will affirm the presiding judge’s finding that  
12 the Midwest ISO Cost Adder must include all existing bundled retail  
13 load and any grandfathered wholesale load. We agree with the presiding  
14 judge that all users of the grid operated by the Midwest ISO will benefit  
15 from the Midwest ISO’s operational and planning responsibilities for the  
16 Midwest ISO transmission system, as well as increased grid reliability of  
17 the transmission system. Therefore, to ensure that loads will properly  
18 bear a fair share of the Midwest ISO’s costs, all long-term firm, bundled  
19 retail, and grandfathered load should be included in the divisor in  
20 developing the Cost Adder.

21 The above discussion, moreover, highlights a more fundamental  
22 problem in the proposed design and operation of the Midwest ISO. The  
23 Midwest ISO’s origin dates back to January 15, 1998, when it filed with  
24 the Commission in Docket Nos. EC98-24-000 and ER98-1438-000 for  
25 Commission approval of the Midwest ISO Tariff and Midwest ISO  
26 Agreement. In that Agreement, the Midwest ISO proposed to not place  
27 existing bundled retail load and any grandfathered wholesale load under  
28 the Midwest ISO’s Tariff for at least a six year transition period. **In the**  
29 **context of an ISO, the Commission accepted the Midwest ISO’s**  
30 **proposal in its September 16 Order. Now, however, the Commission**  
31 **must review its proposal in the context of Order No. 2000.** (Emphasis  
32 added)

33 As we explained in Southern, Order No. 2000 and section  
34 35.34(k) of the Commission regulations require that an RTO be the only  
35 provider of transmission services over the facilities under its control.  
36 Section 35.34(k)(l)(i) provides that:

The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnects.

**The Commission therefore directs Midwest ISO to revise its Midwest ISO Agreement and Tariff as necessary, to place and provide all load under the Midwest ISO's Tariff.** Further, the Commission intends to initiate a rulemaking proceeding on market design and market structure to translate the RTO functions into concrete protocols that RTOs will follow in providing transmission services and administering or monitoring certain energy markets and the decisions we make here will be subject to that rulemaking. (Footnotes excluded) (Emphasis added) (October 11, 2001)

**Q. PLEASE CONTINUE BY EXPLAINING THE FERC'S DETERMINATIONS REGARDING SERVING BUNDLED LOAD IN THE OPINION NO. 453-A ORDER LISTED ABOVE.**

A. In this order, the FERC held its ground regarding the new position that it staked out in Opinion 453 where is required revisions to previously approved provisions for a six year transition period. The relevant portion (p. 10) of Opinion No. 453 is quoted below:

Conclusion

We will deny rehearing on this issue but grant clarification. Opinion No. 453 did not provide that bundled retail customers and grandfathered agreement customers should be directly assessed the Cost Adder. Rather, Opinion No. 453 directed that all load relying on facilities under the Midwest ISO's control be placed and provided under the Midwest ISO Tariff so that the Midwest ISO will meet the RTO requirement that it be the only provider of transmission service over the facilities under its control. Making sure that Midwest ISO satisfies this requirement remains an important goal for this Commission. Accordingly, we clarify that to the extent that certain transmission-owning members of the Midwest ISO serve bundled retail or grandfathered load, those transmission-owning members will have to take transmission service under the Midwest ISO Tariff for their use of the Midwest ISO transmission system to serve bundled load and grandfathered agreement customers. Because the existing agreements already provide for recovery of the costs of serving the bundled retail and grandfathered customers, these transmission-owning members will be

1 exempt, during the transition period, from rates under the Midwest ISO  
2 Tariff for services provided pursuant to the existing agreements, except  
3 the Cost Adder, which, consistent with the discussion above, will  
4 reimburse the Midwest ISO for the services it performs that benefit all  
5 users of the grid (e.g., unified scheduling and ATC calculation, and  
6 regional planning). (Footnote excluded) (February , 13, 2002)

7 Readers of the above quote should be careful to note that the FERC's statement in the  
8 above quote that "these transmission-owning members will be exempt, during the  
9 transition period, from rates under the Midwest ISO" did not relieve bundled load from  
10 taking service under the MISO tariff. As the next order quoted below will clarify, the  
11 FERC was not backing down from its position that bundled load must take service under  
12 the tariff, it was just trying to clarify that bundled load would not need to take service  
13 during the transition period at the same rates which are applicable to all other  
14 transmission users. As the quote below clarifies, FERC was trying to assure transmission  
15 owners that it may not require them to take service at rates applicable to everyone else  
16 since this could exceed the level of transmission revenues that transmission owners were  
17 recovering from native load customers under bundled retail rates. Transmission owners  
18 had pointed out to FERC that many of them were operating under temporary rate freezes  
19 as a result of state legislation initiating retail competition or operating under rate case  
20 moratoriums agreed upon in state rate case or merger dockets.

21 **Q. PLEASE CONTINUE BY EXPLAINING THE FERC'S DETERMINATIONS REGARDING**  
22 **SERVING BUNDLED LOAD IN THE ORDER ON REMAND LISTED ABOVE.**

23 A. In the ORDER ON REMAND, the Commission again reiterated that Order 2000 requires  
24 that all load served by the transmission facilities controlled by the MISO must take  
25 service under the MISO tariff. The additional clarification that appeared in this order was  
26 the description of the specific mechanics by which transmission owners may be able to  
27 take service under the MISO tariff under a contract rate that reflects precisely the level of  
28 costs currently being recovered by transmission owners from native load customers

1 taking service under bundled retail rates. This mechanism is described in paragraph 25 of  
2 the order which is included in the quote below:

3 **D. Did Opinion Nos. 453 and 453-A exercise jurisdiction**  
4 **over the bundled retail rates?**

5 23. We continue to hold that we did not exercise jurisdiction over  
6 bundled retail load when we ordered Midwest ISO to place all bundled  
7 retail load under the Midwest ISO Tariff. The terms and conditions of  
8 the service agreements that serve bundled retail load have not been  
9 modified. See Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at  
10 31,375. During the transition period, the retail rates also are not directly  
11 affected by the bundled retail load being placed under the Midwest ISO  
12 Tariff.

13 24. As we stated in GridSouth, Order No. 2000 did not require that  
14 bundled retail rates, i.e., the bundled price for electric energy delivered to  
15 retail customers, be unbundled. However, **as in GridSouth, the**  
16 **Midwest ISO TOs are no longer the transmission providers.**  
17 **Midwest ISO is the sole provider of transmission service and the**  
18 **TOs must take all transmission services, including transmission used**  
19 **to deliver power to bundled retail customers, from Midwest ISO. As**  
20 **a result, the rates, terms and conditions of transmission service**  
21 **purchased by the TOs from Midwest ISO in order to serve their**  
22 **bundled retail customers must be on file with the Commission.** This  
23 reflects the simple reality that Midwest ISO provides all transmission  
24 service and must be compensated, as would any transmission provider.  
25 (Emphasis added)

26 25. The price that the Midwest ISO TOs pay to the RTO becomes  
27 their cost for the transmission used to deliver the energy they sell at  
28 retail. These TOs are free to seek a rate from Midwest ISO for the  
29 transmission purchased to deliver energy to bundled retail customers  
30 equal to the transmission component of the bundled retail rates set by  
31 their state commissions. Thus, under this approach, the rate set for  
32 transmission in interstate commerce to be re-sold to retail customers as  
33 part of bundled retail service would be the same rate set by the states for  
34 the transmission component of bundled retail sales. **As we stated in**  
35 **GridSouth, this must be accomplished by contract between Midwest**  
36 **ISO and the TOs. Service agreements reflecting such proposed rates**  
37 **must be filed with the Commission** and be consistent with the Federal  
38 Power Act. This approach would not prohibit Midwest ISO from  
39 permitting the state-approved rate for service to TOs, so long as Midwest  
40 ISO followed the Order No. 888 pro forma tariff requirement with  
41 respect to discounts. (Footnotes excluded) (Emphasis added) (February  
42 24, 2003)

Those readers who have already had the opportunity to review the white paper entitled “Wholesale Power Market Platform” that was issued on April 28, 2003 in the FERC’s SMD docket may realize that they have recently read language very similar to what appears above in paragraph number 24. That is because almost identical language appears in the third paragraph on page 5 of Appendix A to the White Paper.

The FERC’s SMD docket and UE’s failure to propose to take advantage of even the minimal ratepayer protections that the FERC offers in paragraph number 24 are discussed further later in this testimony. It should be noted that even taking advantage of this mechanism which FERC indicates it **may** approve in an RTO tariff filing, still concedes ratemaking authority to FERC because this mechanism is something that FERC has the discretion to offer when it chooses or withdraw when it chooses since FERC has the ultimate ratemaking jurisdiction once a state commission has allowed a utility to join an RTO and transfer functional control over its transmission facilities to the RTO.

## **II.G FERC Activities – The SMD NOPR and the Transmission Incentives Pricing Proposal**

**Q. LET’S TURN NOW TO A DISCUSSION OF THE FERC’S LATEST INITIATIVES WHERE IT IS PURSUING POLICIES THAT IT HOPES WILL HELP FOSTER BETTER OUTCOMES FROM COMPETITIVE ELECTRIC MARKETS. PLEASE BRIEFLY DISCUSS THE FERC’S NOTICE OF PROPOSED RULEMAKING (NOPR) IN THE DOCKET WHERE IT IS PROPOSING TO IMPLEMENT A NEW STANDARD MARKET DESIGN (SMD).**

**A.** The FERC issued its SMD NOPR on July 31, 2002. This proposal to radically restructure the entire U.S. electric industry has received praise from some stakeholders, condemnation from some, and mixed reviews from many others. The Missouri Commission submitted some of the strongest criticism that I have seen from the

Commission for some aspects of the SMD NOPR. In particular, the Commission expressed its “grave concern...that in this SMD NOPR the FERC is requiring bundled load to be served under a regional transmission tariff.” (Commission Initial Comments, page 3, Docket No. RM01-12)

As the above analysis of how FERC has applied the Order 2000 RTO guidelines to the MISO RTO indicates, this same issue that the Commission expressed “grave concern” about regarding the SMD NOPR would occur to UE if it is permitted to join the MISO RTO. In fact, not only would UE be required to take transmission service for its bundled load under the MISO’s regional transmission tariff, UE would also be subjected to all other aspects of the SMD NOPR that are ultimately approved by the FERC.

**Q. WHY WOULD UE ALSO BE SUBJECTED TO ALL OTHER ASPECTS OF THE SMD NOPR THAT ARE ULTIMATELY APPROVED BY THE FERC, IF THE COMMISSION PERMITS UE TO PARTICIPATE IN THE MISO THROUGH A CONTRACTUAL ARRANGEMENT WITH GRIDAMERICA?**

A. As I noted earlier in this testimony, on February 19, 2003, Ameren and its Grid America partners filed a revised Appendix I agreement with FERC which states in Section 13.1.2 that:

GridAmerica will implement any necessary modification to its operations to support Midwest ISO’s locational margin pricing and other aspects of standard market design on a unified, region-wide market basis.

**Q. NEXT, PLEASE DISCUSS THE FERC’S OTHER NEW INITIATIVE, THE TRANSMISSION INCENTIVES PRICING PROPOSAL, AND THE IMPACT THAT IT MAY ULTIMATELY HAVE ON THE PUBLIC INTEREST IF UE’S APPLICATION TO JOIN BOTH THE PARTICIPATE IN THE MISO RTO THROUGH AN ARRANGEMENT WITH THE GRIDAMERICA ITC.**



1 A. On January 15, 2003, the FERC proposed a new transmission incentive pricing policy in  
2 Docket No. PL03-1. The full name of the proposal is the "Proposed Pricing Policy for  
3 Efficient Operation and Expansion of Transmission Grid" (Proposed Policy Statement).

4 The FERC summarized its proposal as follows:

5 Under this proposed policy: (1) any entity that transfers operational  
6 control of transmission facilities to a Commission-approved RTO would  
7 qualify for an incentive adder of 50 basis points on its return on equity  
8 (ROE) for all such facilities transferred; (2) ITCs that participate in  
9 RTOs and meet the independent ownership requirement (discussed  
10 below) would qualify for an additional incentive equivalent to 150 basis  
11 points applied to the book value of facilities at the time of divestiture;  
12 and (3) we also propose a generic ROE-based incentive equal to 100  
13 basis points for investment in new transmission facilities which are found  
14 appropriate pursuant to an RTO planning process. (Proposed Policy  
15 Statement, page 2)

16 It should be pointed out that the incentives described above are potentially cumulative,  
17 not alternatives. Therefore, existing transmission assets could potentially get a 200 basis  
18 point boost on ROE from the new policy **and** new transmission could get a 300 basis  
19 point boost on ROE.

20 The Commission submitted comments on this new policy proposal where it noted that:

21 Higher rates of return will result in increased transmission costs, but are  
22 not likely to increase RTO participation nor increase operational  
23 efficiency of the existing transmission system. (Page 1)

24 \*\*\*

25 The 100 basis point incentive for joining an RTO should be excluded  
26 from the final rule. If the 100 basis point incentive for joining an RTO is  
27 included, it should be limited to rates for wholesale transactions and  
28 should be specifically excluded from applying directly to bundled retail  
29 customers. (Page 19)

30 \*\*\*

31 The 150 basis point incentive for divesting transmission assets to a  
32 FERC approved ITC should be excluded from the final rule, and the  
33 decision to divest transmission should continue to be left to the approval  
34 of state commissions. (Page 19)

Public Counsel generally agrees with the sentiments expressed in the above Commission comments. We would note that at this point in time, the only certain way of ensuring that UE's Missouri retail ratepayers will not be forced to pay these incentives through their bundled rates is to deny UE's application to participate in the MISO RTO and the GridAmerica ITC. In other words, a Commission decision to approve UE's application at this time would be detrimental to the public interest because the approval of this application would create a significant risk that UE's customers future bundled rates would include costs associated with the incentive ROEs that FERC is proposing (and this Commission opposes) to allow for RTO and ITC participation. While the current FERC incentive proposal only grants ITC incentives for utilities that divest assets to an ITC, the final policy could be changed to offer ITC incentives just for turning functional control over to an ITC, as National Grid has proposed in its comments in the Proposed Policy Statement docket.

### III. ACTIVITIES IN OTHER STATES PERTAINING TO RTOS

**Q. PLEASE REVIEW SOME OF THE ACTIVITIES THAT ARE CURRENTLY TAKING PLACE IN OTHER STATES REGARDING UTILITY PROPOSALS TO JOIN RTOS. BEGIN YOUR DISCUSSION BY DESCRIBING THE ACTIVITIES AT OTHER STATE COMMISSIONS THAT ARE REVIEWING PROPOSALS FOR UTILITIES TO PARTICIPATE IN MISO THROUGH A CONTRACTUAL RELATIONSHIP WITH GRID AMERICA.**

**A.** Indiana is the only other state that is reviewing an application for a utility to participate in MISO through a contractual relationship with Grid America. I do not know the exact dates of their procedural schedule but I understand that it is fairly similar to the Missouri procedural schedule. The issues in Indiana may be different and narrower than the issues in Missouri since: (1) all three Indiana Commissioners recently signed a letter supporting the FERC's initiatives to restructure wholesale markets, (2) the Indiana Commission

1 permitted some Indiana utilities to join the MISO within the last couple years, and (3) the  
2 MISO is located in Indiana, close to the state capital.

3 **Q. HAVE ANY STATE LEGISLATURES PASSED LAWS RECENTLY REGARDING RTO**  
4 **PARTICIPATION BY THEIR IN-STATE UTILITIES?**

5 A. Yes. Within the last couple of months, the Virginia legislature following up on  
6 jurisdictional concerns expressed by the Virginia Commission and passed a law  
7 preventing their utilities from joining RTOs until after June 2004 and then only with  
8 permission of the Virginia Commission.

9 **Q. ARE YOU AWARE OF ANY OTHER STATE COMMISSIONS THAT CURRENTLY HAVE RTO**  
10 **PROCEEDINGS UNDER WAY?**

11 A. Yes. There are several proceedings taking place in Arkansas where the Arkansas  
12 Commission has required the utilities to prepare cost benefit studies for various RTO  
13 participation options.

14 There is also a proceeding under way in Louisiana where a utility, Entergy, has agreed in  
15 a Stipulation approved by the Louisiana Commission on September 18, 2002 that if it  
16 seeks to use an ITC/Transco structure to join an RTO, it will seek to overcome the  
17 presumption that an ITC/Transco structure is not in the public interest.

18 **Q. DO YOU HAVE ANYTHING ELSE TO ADD ABOUT RTO ISSUES BEING ADDRESSED ON**  
19 **OTHER STATES?**

20 A. Yes. In the state of Florida where the Florida Office of Public Counsel has appealed the  
21 Florida Public Service Commission's (FL PSC) order that approved most aspects of a  
22 proposal by three Florida electric utilities to transfer functional control of their

1 transmission assets to an RTO named GridFlorida. The bases of this appeal to the Florida  
2 Supreme Court includes the following grounds:

- 3 • The FL PSC exceeded its jurisdiction because “it cannot implement a fundamental  
4 change in the way electric utilities are regulated in Florida” by giving away  
5 jurisdiction over transmission operations unless and until the Florida Legislature  
6 amends the law.
- 7 • Florida utilities voluntarily chose to pursue membership in an RTO which would  
8 transfer much of the states jurisdiction over transmission assets to the FERC and  
9 such a transfer would have detrimental rate impacts on consumers that should not  
10 be permitted without a showing of comparable benefits.
- 11 • The Florida legislature has not adopted a policy supporting wholesale competition  
12 and the FL PSC may not make decisions to do so without direction from the  
13 Florida legislature.
- 14 • The Florida PSC mistakenly concluded that: (1) no transfer of jurisdiction to the  
15 FERC would occur unless it allowed the divestiture of transmission assets to a  
16 Transco and (2) it would not be transferring jurisdiction to the FERC by merely  
17 permitting Florida electric utilities to join a not for profit RTO.

18 This appeal is still pending before the Florida Supreme Court and Florida electric utilities  
19 cannot move forward with plans to join an RTO at this time due to a stay of the FL PSC’s  
20 order that would have permitted them to do so.

**IV. DETRIMENTS RELATED TO THE LOSS OF PSC JURISDICTION OVER  
UE'S TRANSMISSION OPERATIONS**

**Q. YOU PROVIDED AN EXTENSIVE DISCUSSION IN SECTION II.F OF HOW FERC HAS BEEN  
APPLYING THE ORDER 2000 GUIDELINES TO RTOs, EVEN RTOs LIKE THE MISO  
THAT WERE INITIALLY APPROVED UNDER ORDER 888 GUIDELINES THAT DID NOT  
REQUIRE UTILITIES TO TAKE SERVICE UNDER THE ISO TARIFF IN ORDER TO SERVE  
THEIR NATIVE LOAD CUSTOMERS IN STATES THAT DID NOT HAVE RETAIL  
COMPETITION. WHAT IS THE LINK BETWEEN REQUIRING A VERTICALLY INTEGRATED  
UTILITY TO TAKE TRANSMISSION SERVICE UNDER A FERC APPROVED RTO TARIFF TO  
SERVE NATIVE LOAD AND THE LOSS OF JURISDICTION OVER THE LEVEL OF  
TRANSMISSION COSTS THAT MUST BE REFLECTED IN BUNDLED RETAIL RATES?**

**A.** Counsel informs me that the link here is that an argument can be made that by allowing a utility to join an RTO where the utility is required to take all necessary transmission service from the RTO under a FERC approved rate or contract, the PSC would no longer be able to independently determine the transmission portion of a bundled rate revenue requirement in the traditional manner where it can consider the prudence of costs incurred and an appropriate return on transmission assets. Instead, it could be argued that, the Commission would be merely a conduit that passes through FERC jurisdictional transmission costs to Missouri retail ratepayers.

While FERC might attempt to argue that such an arrangement doesn't impair the ability of a state commission to set the total bundled retail rate at a level that the commission deems appropriate, it seems pretty clear that a state commission could be limited in its ability to set the bundled rate at a level that is might deem appropriate, were it not required to pass through costs that have been deemed prudent by FERC. Counsel has informed that the case law which may prevent the Commission from continuing to

1 exercise its traditional jurisdiction over the transmission portion of the revenue  
2 requirement from which bundled rates are derived is Naragansett Elect. Co. v. Burke,  
3 sometimes referred to as the “filed rate doctrine case.”

4 **IV.A Upward Pressure on Rates Likely Resulting From the Loss of State**  
5 **Jurisdiction**

6 **Q. WHY DOES OPC BELIEVE THAT A LOSS OF STATE JURISDICTION OVER THE**  
7 **TRANSMISSION PORTION OF THE TOTAL REVENUE REQUIREMENT FROM WHICH RATES**  
8 **ARE DERIVED COULD LEAD TO UPWARD PRESSURE ON RATES?**

9 A. Such upward pressure is likely to occur for a number of reasons including:

- 10 • The RTO tariffed rate or contract that will be applied to the transmission services  
11 that UE needs to take from the MISO RTO or the GridAmerica ITC.
- 12 • The transmission congestion charges that UE may be required to pay to the MISO  
13 RTO or the GridAmerica ITC.
- 14 • These RTO tariffed rates could include costs that the Commission might  
15 otherwise deem imprudent and disallow if it had the authority to do so.
- 16 • These RTO tariffed rates could be set based on higher rates of return than the  
17 Commission might deem proper if it had the authority to set the returns. This is  
18 even more likely due to the recent transmission pricing incentive policy that  
19 FERC has proposed.
- 20 • UE failed to take advantage of a mechanism suggested by FERC whereby a  
21 transmission owning member of an RTO could mitigate, at least temporarily,  
22 some of the harm to bundled service retail ratepayers resulting from the transfer of

jurisdiction over transmission costs from state commissions to the FERC. This mechanism was described by FERC in paragraph number 25 of the February 24, 2003 ORDER ON REMAND issued in Docket Number ER98-1438.

**Q. WHAT STEPS WOULD UE NEED TO TAKE IN ORDER TO USE THE RATEMAKING MECHANISM SUGGESTED BY FERC WHICH IS REFERENCED IN THE BULLET POINT IMMEDIATELY ABOVE THIS QUESTION?**

A. In order to use the method suggested by FERC for mitigating some of the harm associated with the likely transfer of jurisdiction from the Commission to the FERC, UE would need to take the following steps:

- 1) Take the initiative to begin a process of determining the level of transmission costs in UE's current bundled retail rates and the level of transmission costs in UE's future bundled retail rates which reflect the phase-in of rate reductions agreed upon in EC-2002-1.
- 2) Submit a rate filing to FERC proposing a wholesale contract between UE and the MISO and/or GridAmerica that would recover the transmission costs in UE's present and future bundled retail rates.
- 3) Obtain FERC approval prior to GridAmerica's start of operations when it begins offering transmission service under a FERC approved MISO RTO Tariff.

**Q. DOES UE'S APPLICATION OR TESTIMONY SPECIFY THE TRANSMISSION RATES OR CONTRACT PROVISIONS THAT WILL APPLY TO UE'S USE OF THE TRANSMISSION ASSETS UNDER THE FUNCTIONAL CONTROL OF THE MISO RTO OR THE GRIDAMERICA ITC?**

1 A. No. It appears that it would be impossible for UE to specify these rates or contract  
2 provisions since the GridAmerica rate proposal was only filed at FERC about 8 weeks  
3 ago. This filing occurred in Docket No. ER03-580 and the FERC has not yet made a  
4 determination on this rate filing. The filing attracted a large number of intervenes  
5 opposing various aspects of the proposed rates. The FERC issued an order in this docket  
6 a couple of days ago (April 30, 2003) where they stated that "we share many of the  
7 concerns that parties have expressed regarding the applicants' proposal." This is the case  
8 where UE is hoping to obtain the "lost revenue" recovery that it asserts may benefit  
9 Missouri consumers if the traditional Missouri ratemaking procedures continue to be used  
10 (see David Linton testimony, page 8) once UE begins participating in the MISO RTO and  
11 the GridAmerica ITC.

12 Public Counsel sent four Data Requests (DR Nos. 549 - 552) to UE in an attempt to  
13 determine if UE believed Missouri traditional ratemaking procedures would still apply if  
14 the Commission approved this application. UE objected to these DRs on the basis that  
15 "the information requested calls for a legal conclusion." Perhaps UE will be able to  
16 answer these questions in this case through its legal counsel.

17 OPC has no confidence that UE's customers will ever benefit from the "lost revenue  
18 recovery" that UE is seeking from FERC for the following reasons:

- 19 • The transition period over which GridAmerica is proposing to have a mechanism  
20 for collecting these "lost revenues" corresponds roughly to the time period  
21 remaining in the UE rate moratorium.
- 22 • There is no certainty that FERC will approve the "lost revenue" recovery rate  
23 design that GridAmerica has proposed in FERC Docket No. ER03-580.



- Even if FERC does approve the “lost revenue” recovery rate design that GridAmerica has proposed in FERC Docket No. ER03-580, there appears to be a significant risk that the Commission will lose the ratemaking jurisdiction over the transmission portion of the cost recovered through bundled retail rates. Without this jurisdiction, the Commission may just be a conduit for the costs associated with UE taking transmission service from the MISO RTO or the GridAmerica ITC. If this situation occurs, the benefits from any lost revenue recovery may accrue exclusively to Ameren’s shareholders.

#### **IV.B Loss of Native Load Priority for UE’s Use of the Ameren Transmission System**

**Q. PLEASE EXPLAIN WHY UE STILL ENJOYS THE BENEFITS OF THIS NATIVE LOAD PRIORITY TODAY.**

A. It is my understanding that UE customers still benefit today from having priority usage of the Ameren transmission grid as a result of a 1999 decision made by the Eighth Circuit Court of Appeal in Northern States Power Company v. Federal Energy Regulatory Commission. I believe that the congestion pricing proposals and congestion revenue rights (CRRs) proposals being made pursuant to Order 2000 and in anticipation of the SMD NOPR would set up systems where the native load priority would no longer exist, especially if CRRs are ultimately redistributed to transmission users through an auction. Again, its important to recall that GridAmerica has obligated itself in a FERC filing to implement the final SMD rule.

**IV.C Imposition of the Non-price Terms and Conditions of FERC's SMD Policies**

**Q. DOES GRIDAMERICA'S COMMITMENT TO FERC, DESCRIBED EARLIER IN YOUR TESTIMONY, TO IMPLEMENT FERC'S FINAL SMD RULE INCLUDE WHATEVER NON-PRICE TERMS AND CONDITIONS ARE CONTAINED IN FERC'S FINAL SMD RULE.**

**A.** Yes. The GridAmerica commitment to implement FERC's SMD rule was not limited to the transmission pricing aspects of the rule. The revised Appendix I agreement that GridAmerica filed at FERC on February 19, 2003 states in Section 13.1.2 that:

GridAmerica will implement any necessary modification to its operations to support Midwest ISO's locational margin pricing **and other aspects of standard market design** on a unified, region-wide market basis.  
(Emphasis added)

The above cited Appendix I agreement appears to obligate GridAmerica to implement all aspects of the FERC's yet to be determined SMD policies, not just the pricing provisions.

**V. ADDITIONAL DETRIMENTS NOT DIRECTLY RELATED TO THE LOSS OF MO PSC JURISDICTION**

**V.A. Detriments Associated With the Poorly Configured 2 Tier GridAmerica/MISO RTO Proposal**

**Q. DOES THE CURRENT GEOGRAPHIC CONFIGURATION OF GRIDAMERICA APPEAR TO BE THE TYPE OF CONFIGURATION THAT MIGHT LEND ITSELF TO AN EFFECTIVE AND EFFICIENT ITC OPERATION UNDER AN RTO UMBRELLA.**

**A.** No. This ITC has the same snake like appearance (See Attachment RK-3) that was present in UE's last proposal to join the Alliance RTO. The only major difference is that this snake has a big "head" represented by Ameren's transmission facilities. Its difficult

1 to imagine how an ITC might add rather than detract from the RTO's ability to perform  
2 the following functions:

- 3 1) System restoration through implementation of corrective actions in an outage  
4 event.
- 5 2) Load forecasting and compilation of forecast data for the individual GridAmerica  
6 utilities.
- 7 3) Coordination of scheduled transmission and generation outages.
- 8 4) Re-dispatch of generation for reliability purposes.
- 9 5) Coordinating response to power system disturbances within a single control area.
- 10 6) Transmission expansion planning within the GridAmerica footprint.
- 11 7) Monitoring GridAmerica facilities for parallel path flows and taking corrective  
12 actions.
- 13 8) Coordinating generation interconnection services within the GridAmerica  
14 footprint.

15 **Q. HOW COULD MISSOURI CONSUMERS BE ADVERSELY AFFECTED BY THE**  
16 **INEFFICIENCIES CREATED FROM HAVING GRIDAMERICA BECOME AN EXTRA LAYER**  
17 **BETWEEN THE TRANSMISSION OWNERS AND MISO?**

18 A. Consumers could be adversely affected by having to "pick up the tab" for the cost of  
19 GridAmerica performing services that: (1) are sometimes duplicative of services  
20 performed by the MISO, and (2) could be performed by the MISO at an incremental cost  
21 which is less than the cost of an additional entity performing the same services. The risk

1           that Missouri consumers might have no choice in paying for costs that are higher than  
2           they would be if the MISO performed all services instead of having GridAmerica  
3           perform certain services is heightened ratemaking jurisdiction issues discussed earlier in  
4           this testimony.

5           **V.B. UE's Purported "Lost Revenue" Benefit Is Purely Speculative At This Time**

6           **Q.     YOU ADDRESSED THIS SUBJECT EARLIER IN YOUR COMMENTS REGARDING THE**  
7           **GRIDAMERICA RATE PROPOSAL FILED AT FERC ABOUT 8 WEEKS AGO IN DOCKET**  
8           **NO. ER03-5. DO YOU HAVE ANYTHING TO ADD TO YOUR EARLIER TESTIMONY?**

9           A.     No, not at this time.

10          **V.C. Purported Benefits Associated With the For Profit ITC Business Model Are**  
11          **Purely Speculative At This Time**

12          **Q.     HAS UE PROVIDED ANY EVIDENCE TO SUPPORT THE ASSERTIONS ON PAGE 7 OF UE**  
13          **WITNESS WHITELEY'S TESTIMONY THAT A FOR PROFIT BUSINESS MODEL CAN LEAD TO**  
14          **MORE EFFICIENT TRANSMISSION OPERATIONS?**

15          A.     No. Furthermore, I am not aware of any evidence regarding for profit transmission  
16          company operations in the U. S. that which could support this assertion. I do not believe  
17          there have been any studies which documents benefits of using a for profit ITC business  
18          model in the U.S.

19          Mr. Whitely assets that GridAmerica will create an incentive plan in the future and that  
20          "the revenues generated by incentive arrangements" of such a plan would be shared with  
21          Ameren. This raises the question of whether these revenues that he references on page 8  
22          of his testimony will offset the transmission costs that UE ratepayers pay in bundled rates  
23          or flow exclusively to Ameren shareholders. Ratemaking jurisdictional issues would

1           need to be resolved to determine whether shareholders and/or ratepayers would receive  
2           the direct benefits of the “the revenues generated by incentive arrangements” referenced  
3           by Mr. Whiteley.

4           From reading Mr. Whiteley’s testimony, one might assume that the MISO has no  
5           incentive plan in place to help increase the efficiency of its operations. Its my  
6           understanding that the MISO has incentive compensation plans intended to increase the  
7           efficiency of its operations just as Ameren has incentive compensation plans that are  
8           intended to further its corporate objectives.

9           **V.D. Risk of UE Asserting That Approval ITC/RTO Participation Allows**  
10           **Termination of the Rate Moratorium**

11           **Q.     PLEASE EXPLAIN HOW UE MIGHT ASSERT THAT ITS PARTICIPATION IN THE**  
12           **GRIDAMERICA ITC OR MISO MIGHT ALLOW IT SEEK AN END TO THE RATE CASE**  
13           **MORATORIUM APPROVED BY THE COMMISSION IN CASE NO. EC-2002-1?**

14           A.     I will begin answering this question by stating that I had hoped this potential detriment  
15           would not be an issue in this case. When I sent Dave Whiteley of Ameren a data request  
16           on this subject I hoped that his response would assure me that there was no possible link  
17           between a Commission decision to approve this application and the early termination of  
18           the rate moratorium that UE could seek by asserting that its participation in an RTO or an  
19           ITC constituted “a significant change in federal or state utility laws or regulations.”  
20           Unfortunately, Mr. Whiteley’s response did not assure me that a decision by this  
21           Commission or the FERC to permit UE and Ameren to participate in GridAmerica and  
22           MISO will not prompt UE to seek an early termination of the rate moratorium approved  
23           by the Commission in Case No. EC-2002-1.

OPC DR No. 543 asked Mr. Whiteley the following:

Is there a possibility that AmerenUE will assert that its **participation in an ITC (e.g. Grid America) or its participation in an RTO (e.g. MISO) constitutes “a significant change in federal or state utility laws or regulations” that would release AmerenUE from its obligations under Section 3 of the Stipulation and Agreement in Case No. EC-2002-1** to not file a general rate increase case before January 1, 2006? If there is no possibility that that AmerenUE will assert that its participation in an ITC such as Grid America or its participation in an RTO constitutes “a significant change in federal or state utility laws or regulations” that releases AmerenUE from its obligations under Section 3 of the Stipulation and Agreement in Case No. EC-2002-1 to not file a general rate increase case before January 1, 2006, please provide a statement to that effect.

Mr. Whiteley’s response stated that:

AmerenUE will abide by the terms and conditions set forth in the Stipulation and Agreement in Case No. EC02002-1 and in the future make its determination of whether a release is appropriate based on the situation at that time.

**V.E. Participation in an ITC Will Increase Risk of Transmission Divestiture**

**Q. PLEASE EXPLAIN HOW THE APPROVAL OF THIS APPLICATION MIGHT INCREASE THE RISK THAT UE WILL SEEK TO DIVEST ITS TRANSMISSION ASSETS.**

A. On page 13 of the GridAmerica transmittal letter that accompanied its November 1, 2002 FERC filing in Docket No. ER02-2233 the GridAmerica Companies stated that:

Transmission owners will have a “put right” to contribute transmission facilities to GridAmerica in exchange for units in the Company having a value equal to the fair market value of the divested transmission facilities. **The put right is intended to encourage the divestiture of transmission assets to GridAmerica.** (emphasis added)

**Q. WOULD THE COMMISSION NEED TO APPROVE ANY DIVESTITURE OF UE’S TRANSMISSION ASSETS TO GRIDAMERICA.?**

1       A.     Under existing Missouri law, that would be necessary. However, the restructuring  
2             legislation that Ameren has promoted in prior legislative sessions has provided for  
3             divesting of transmission assets with no oversight from the Commission. If this provision  
4             was important enough for Ameren to have included consistently in the legislation that it  
5             supported, then it is safe to assume that Ameren desires the flexibility to divest its  
6             transmission assets without having any conditions imposed upon it that would interfere  
7             with gaining the maximum financial benefits for shareholders. These types of provisions  
8             don't just appear in proposed legislation by accident.

9             It is widely known that Ameren was the chief supporter and author of the Genco  
10            legislation (SB 455 and HB 676) that was proposed in a recent session of the Missouri  
11            Legislature. This provision of the proposed Genco bill that removed Commission  
12            jurisdiction over the divestiture of transmission was:

13                   4. Notwithstanding the requirements of sections 393.190, 393.200,  
14                   393.210, 393.240 and 393.250 or any other provision of sections 393.960  
15                   to 393.981, or chapter 386, RSMo, or this chapter 393, or any rule or  
16                   regulation of the commission that would require such approval, no  
17                   commission approval shall be required for the sale, assignment, lease or  
18                   other disposition, including but not limited to a transfer of control, of  
19                   transmission facilities by an electric utility to an affiliated or unaffiliated  
20                   regional transmission organization or similar entity that is subject to the  
21                   jurisdiction of the Federal Energy Regulatory Commission when such  
22                   sale, lease or other disposition has been approved by the Federal Energy  
23                   Regulatory Commission.

24       **Q.     HOW COULD RATEPAYERS BE HARMED BY THE DIVESTITURE OF GENERATION?**

25       A.     Ratepayers might be subjected to rates based on the market value of these transmission  
26             assets instead of the net book value. The ratemaking jurisdiction issues posed by this  
27             application heighten that risk. In addition, a divestiture could further weaken any  
28             jurisdiction that the Commission might retain over the transmission assets needed to  
29             provide safe and adequate service to UE's native load customers.

**VI. CONCLUSION**

**Q. PLEASE SUMMARIZE OPC'S VIEWS ON THE PENDING APPLICATION.**

A. A Commission's decision approving the application would result in profoundly detrimental and far reaching effects on the public interest. Public Counsel believes that both the future level of UE's rates for regulated bundled utility service and the Commission's jurisdiction over UE's transmission operations would be adversely impacted UE's application is approved. OPC also believes that due to the many uncertainties associated with this application, many of which are related to the three ongoing GridAmerica dockets at FERC and the FERC industry-wide dockets on SMD and transmission pricing incentives, make it impossible to determine that the approval of this application would not be detrimental to the public interest. We also caution against addressing these uncertainties by granting temporary approval or conditional approval because once UE begins to participate in an RTO and begins to take transmission service under an RTO tariff, it will be very difficult, if not impossible, to enforce conditions pertaining to ITC/RTO participation or to terminate UE's ITC/RTO participation. The pending application should be denied.

**Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes.



Attachment RK-1  
Pages 1-4  
Have been deemed  
“Highly Confidential”  
in their entirety.

## **Chronology of MO PSC and FERC Activities Related to the Application**

### **(MO PSC Activities Shown in *Italics*)**

**April 24, 1996** – FERC issues Order No. 888 Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities.

**February 21, 1997** – *Commission issues order approving UE/CIPS merger in Case No. EM-96-149 and orders UE to “file or join in the filing of a regional ISO proposal” at the FERC.*

**March 4, 1997**– FERC issues Order No. 888-A reaffirming its basic determinations in Order No. 888 and clarifying certain terms.

**March 16, 1998** – *Commission files intervention and request for hearing at FERC in Docket No. ER98-1438 raising several concerns including “whether the state public service commissions retain their jurisdictional authority to determine the transmission cost of service for retain customers as long as those customers...continue to be served by the incumbent utility under bundled rates.”*

**March 30, 1998** – *UE files application at Commission in Case No. EO-98-413 requesting authority to participate in the MISO.*

**September 16, 1998** – FERC issues order in Docket No. ER98-1438 conditionally authorizing establishment of the MISO and responding to the jurisdictional concern of the Missouri Commission by stating that it will revisit this issue in a “timely manner” and “provide the Missouri Commission and other interested parties the opportunity to raise any issues related to the post-transition period that remain unresolved.”

*May 13, 1999 – Commission issues order in Case No. EO-98-413 approving UE's application to participate in the MISO for the six year transition period subject to certain conditions.*

**May 13, 1999** – The FERC issues its Notice of Proposed Rulemaking (NOPR) in Docket No. RM-99-2, which led to the issuance of Order No. 2000 on December 20, 1999.

**November 26, 1999** – Initial decision issued in FERC Docket No. ER98-1438 regarding contested MISO issues.

**December 20, 1999** – FERC issues Order No. 2000 (Final Rule) in Docket No. RM99-2.

**November 9, 2000** – Ameren provided formal written notification to the MISO of the Company's intent to withdraw from the MISO.

**January 11, 2001** – Ameren signed an agreement to join the Alliance RTO.

**January 16, 2001** – Ameren filed an application with the Federal Energy Regulatory Commission (FERC) to withdraw from the MISO where it sought permission to withdraw immediately.

**March 14, 2001** – FERC issues order in Docket No. RT01-74 determining the extent to which the GridSouth RTO proposal complies with FERC Order No. 2000.

**May 8, 2001** – FERC approved a settlement agreement that provided FERC approval for Ameren to withdraw from the MISO and join the ARTO. Ameren still lacked the necessary Missouri PSC approval for the proposed withdrawal.

**May 15, 2001** – Ameren made an \$18 million "exit fee" payment to the MISO (\$12.5 million for UE and \$5.5 million for CIPS).

**June 8, 2001** – UE filed at the Missouri PSC an “Application of Union Electric Company for an Order Authorizing it to Withdraw From the Midwest ISO to Participate in the Alliance RTO.” This application initiated Case No. EO-2001-684.

**October 11, 2001** – FERC issues Opinion No. 453 in Docket No. ER98-1438 affirming in part and clarifying in part the Initial Decision issued by the Presiding Judge on November 26, 1999.

**December 20, 2001** – FERC granted RTO status to the MISO.

**February 1, 2002** – MISO begins providing transmission service and the six year MISO transition period begins.

**February 13, 2002** – FERC issues Opinion No. 453-A in Docket No. ER98-1438 granting in part rehearing and providing clarification of its decision Opinion No. 453.

**July 3, 2002** – Ameren and others filed agreements with FERC indicating their intent to form Grid America and participate in MISO through Grid America.

**July 31, 2002** – FERC issues Standard Market Design (SMD) Notice of Proposed Rulemaking (NOPR) in Docket No. RM-01-12.

**November 1, 2002** – Ameren and other GridAmerica companies filed additional agreements with FERC in Docket Nos. EC03-14 and ER02-2233 seeking FERC approval to form Grid America.

**November 14, 2002** – Commission issues order closing Case No. EO-2001-684 where UE had sought approval to join the Alliance RTO.

**November 15, 2002** – Commission submits comments in SMD NOPR in FERC Docket No. RM01-12 where it expresses “grave concern...that in this SMD NOPR that the FERC is requiring bundled retail load to be served under a regional transmission tariff.”

**January 15, 2003** – FERC issued proposed transmission incentive pricing policy in a Notice of Proposed Policy Statement (NOPPS) in Docket No. PL03-1.

**January 31, 2003** - Ameren and other GridAmerica companies filed an amendment to their November 1, 2002 filing with FERC in Docket Nos. EC03-14 and ER02-2233. The amendment includes the statement that “the Transfer will not deprive the Commission or any state of jurisdiction.”

**February 5, 2003** – *UE filed an application in Case No. EO-2003-271 at Commission for authority to participate in the MISO through a contractual relationship with Grid America.*

**February 24, 2003** – FERC issues Order on Remand in Docket No. ER98-1438 affirming, with modification, its decisions in Opinion Nos. 453 and 453-A.

**February 28, 2002** – MISO and GridAmerica companies filed proposed rate schedules at FERC in Docket No. ER03-580 that would be added to the MISO OATS tariff to accommodate the operation of GridAmerica in the MISO.

**March 12 2003** – FERC issues Order on Petition for Declaratory Order in Docket No. EL03-34 regarding the recovery of start-up costs for MISO’s market operations.

**May 2, 2003** – GridAmerica applications related to (1) the transfer of control of transmission facilities (FERC Docket Nos. EC03-14 and ER02-2233) and (2) transmission rates that would be added to the MISO OATS tariff to accommodate the operation of GridAmerica in the MISO (FERC Docket No. ER03-580) are awaiting final action by the FERC.

# GridAmerica

