Martha S. Hogerty
Public Counsel

State of Missouri

Bob Holden
Governor

Office of the Public Counsel
Governor Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: http://www.mo-opc.org
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

October 29, 2001

FILED[3]
OCT 2 9 2001
Missouri Public
Service Commission

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Union Electric
Case No. EO-2001-684

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL (both Proprietary and Non-Proprietary versions)** and **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE OFFICE OF THE PUBLIC COUNSEL.** Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a AmerenUE for an Order Authorizing It to Withdraw from the Midwest ISO to Participate in the Alliance RTO	))))))	Case No. EO-2001-684

INITIAL BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

I. INTRODUCTION

This case is profoundly important and will have far reaching effects on all electric consumers in the state of Missouri. The Office of the Public Counsel (Public Counsel) believes that if Union Electric Company d/b/a AmerenUE's (AmerenUE's) is permitted to withdraw from the Midwest ISO ("MISO") and is permitted to join the Alliance Regional Transmission Organization[1] ("Alliance RTO" or "ARTO"), there would be a detrimental impact upon the regulated rates of AmerenUE. The development of independent, and thus truly competitive, wholesale markets would also be detrimentally impacted throughout Missouri. This brief will discuss the evidence of these detriments.

The Missouri Public Service Commission (Commission) should protect Missouri consumers from malfunctioning wholesale electric markets by denying AmerenUE's belatedly filed Application in this case.

[1] Despite the name used by this organization, the Alliance RTO has not yet been properly determined to be an RTO by the FERC.

48

II. HISTORY

When Union Electric Company and CIPSCO Incorporated filed an application with the Commission to merge on November 7, 1995, the concepts of "regional transmission organizations" (RTOs) and "independent service operators (ISOs) were relatively new.[2] In that merger case, Public Counsel and other parties presented evidence showing the detrimental vertical market power that would be generated from combining the transmission assets of these two large electric companies. After hearing considerable evidence regarding the threat of market power from the merger and its threat to a competitive wholesale market, the Commission decided to only approve the merger conditioned upon a commitment from the merged entity to participate in a region ISO:

> The Commission finds there are sufficient facts in evidence to be concerned about the potential increase in market power from the proposed merger. The merger could have a significant adverse impact on the degree of competition within UE's Missouri service territory due to limited transfer capability for imported power, as well as the disincentive caused by pancaked transmission rates. **In order to eliminate pancaked transmission rates, Ameren would need to belong to a regional transmission group having a region-wide transmission rate.**
>
> To address the vertical market power concern that Ameren could use its transmission system to restrict competition from other generation, the regional transmission group should be an entity that will **independently** operate the transmission systems of the vertically integrated utilities within the region. While the Commission agrees that UE and Ameren should not participate in an ISO at "any cost" to the Missouri ratepayers, now is the time for UE to take into account the impact that vertical market power could have on the requirements market under retail competition. **Therefore, the Commission approves the merger upon the condition that UE shall participate in a regional ISO that eliminates pancaked transmission rates and that is consistent with the ISO guidelines set out in FERC Order 888.** Such an ISO proposal could be formed in conjunction with the current efforts by UE and other regional utilities to establish a Midwest ISO or be organized by the merged company with membership open to other regional utilities. While the Commission understands that joining an ISO at "any cost" would be unwise, **the participation by UE and Ameren in an ISO is**

[2] Counsel for AmerenUE notes that, for purposes of this proceeding, the terms "RTO" and "ISO" essentially refer to the same thing. (Tr. 16).

a prudent, necessary condition to assure that the merger is not detrimental to the public interest. [Emphasis added.]

Case No. EM-96-149, Report and Order, issued on February 21, 1997, pp. 15-16.

Among the conditions to which Union Electric Company was required to consent, the Commission ordered the following:

> If the Midwest ISO proposal is not filed before the FERC by December 31, 1997, then by March 31, 1998 UE shall file with this Commission a plan for establishing an **independent** entity charged with the operation, pricing and planning of its transmission system. This plan shall be developed **in cooperation with Staff and the Office of the Public Counsel**, shall provide for the formation and expansion of this independent entity to include other utilities, and shall be filed with the FERC . . .
>
> Id. pp. 20-21.

The condition imposed by the Commission proved to be extremely foresighted, as ISO/RTO issues are now viewed as an essential part of a sound energy policy. Even at the time of the merger case, the Commission recognized that AmerenUE should be participating in an *independent* transmission organization. Furthermore, the Commission made it clear that the terms of such participation should be worked out with the Staff of the Commission (Staff) and the Public Counsel.

This merger condition led to AmerenUE's filing in Case No. EO-98-413, a request to participate in the MISO, which was filed on March 30, 1998. The parties reached a settlement in that case, agreeing that AmerenUE should be authorized to participate in the MISO subject to several conditions. On May 13, 1999, those conditions were approved by the Commission in its Order Granting Intervention and Approving Stipulation and Agreement. The Stipulation and Agreement includes the following condition:

> In the event that AmerenUE seeks to withdraw from its participation in the Midwest ISO pursuant to Article Five or Article Seven of the Midwest ISO Agreement, the Company shall file a Notice of Withdrawal with the Commission,

and with any other applicable regulatory agency, and such withdrawal shall become effective when the Commission, and such other agencies, approve or accept such Notice or have otherwise allowed it to become effective.

Ibid., Paragraph 11, pp. 3-4.

This condition was intended to ensure that the Commission would continue to have authority over AmerenUE's ISO/RTO participation. AmerenUE's behavior over the past year, however, has not been consistent with respect for the Commission's authority and its vital interest in AmerenUE's ISO/RTO participation.

In late October 2000, and after months of planning, AmerenUE made its final decision to withdraw its participation from the MISO. (Tr. 155). Also see Attachment 1 to this brief. On November 9, 2000, Ameren Services Company, on behalf of AmerenUE, supplied written notice to the MISO of its intent to withdraw participation. (Whitely Direct, Exh. 1, p. 5).

On January 16, 2001, AmerenUE filed a request with the Federal Energy Regulatory Commission (FERC) for authority to withdraw from the MISO, in Case No. ER01-966-000. (Tr. 83).

On January 23, 2001, Public Counsel contacted AmerenUE by e-mail, asking when AmerenUE was expecting to request permission from the Missouri Commission for the authority to withdraw from the MISO. (Tr. 84).

On May 8, 2001, after a settlement negotiation process, the FERC approved AmerenUE's withdrawal from the MISO as part of an agreement between several parties, including the MISO and the ARTO. This settlement included agreeing to certain terms and conditions contained in the Inter-RTO Cooperation Agreement (IRCA). (Exh. 1, p. 7). On May 15, 2001, and pursuant to settlement, Ameren Corporation sent an exit fee payment to the MISO, totaling $18 million (AmerenUE's share of this exit fee is approximately $12.5 million). (Ex. 1, p. 19; Tr. 90). In

return, MISO issued a letter to Ameren Corporation stating that the withdrawal had become effective.

It was not until June 11, 2001 that AmerenUE filed the Application that initiated this case, Case No. EO-2001-684. In its Application, AmerenUE asks for permission to withdraw from the MISO "in order to participate in the Alliance RTO." Ibid., pp. 13-14. Although it does not appear that AmerenUE recognizes the Commission's authority to approve or deny participation in a new RTO, it has asked the Commission to approve its Application in this case "as soon as reasonably possible" because of the Alliance RTO's plans to be operational by December 15, 2001.[3]

III. STANDARD OF REVIEW

AmerenUE is not legally permitted to join the Alliance RTO without a Commission order granting it the authority to do so pursuant to Section 393.190.1 RSMo. 2000. Furthermore, AmerenUE is not legally permitted to withdraw from the MISO unless the Commission allows it to do so, pursuant to its Order Granting Intervention and Approving Stipulation and Agreement in Case No. EO-98-413.

The Commission's jurisdiction and authority to grant permission for AmerenUE to switch its RTO participation is derived from state law. Section 393.190.1 RSMo. 2000, states as follows:

> No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of . . . the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public . . .

[3] Public Counsel believes that the Commission should be deliberate in reaching a proper determination in this case, recognizing that any urgency expressed by AmerenUE is the result of the tardy filing of AmerenUE's Application. Furthermore, serious doubts exist about the ARTO's capability to become operational by December 15, 2001.

> without having first secured from the commission an order authorizing it to do so. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void . . . .

AmereneUE's plans to join the Alliance RTO as a participating member, involves a transfer of control over its transmission assets that triggers this statute. The language of §393.190 suggests that the General Assembly intended the Commission to review any possible transaction which would significantly alter the control an electrical corporation has over any part its system which is necessary or useful in meeting its obligations to the public.

The June 11, 2001 Application that AmerenUE filed in this case states, "AmerenUE will be required to execute an operating agreement with the Alliance RTO that will allow the Alliance RTO to control and operate the transmission assets of the AmerenUE in accordance with the operating agreement." (Paragraph 41, p. 12). AmerenUE witness David A. Whiteley explained that the assets that would be transferred would consist of transmission lines and substations that make up its "networked transmission facilities of higher voltage, generally 100 KV and above." (Tr. 65). Mr. Whiteley acknowledged that its transmission facilities are necessary to the provision of retail electric service to its Missouri customers. (Tr. 61-62).

In analyzing whether the Commission has the jurisdiction and authority to approve or deny RTO membership, it should be noted that its statutory powers are intended to be broad enough to protect consumers. These powers include all powers expressly laid out in statute as well as implied powers that are necessary and proper to carry out its statutory obligations. Sections 386.040 and 386.250(7) RSMo. 2000.

The standard of review under Section 393.190, as interpreted by the Missouri Supreme Court, is that the transaction shall be approved if it can be proved that the transaction can be found to be "not detrimental to the public." State ex rel. City of St. Louis v. Public Service

Commission, 73 S.W.2d 393, 400 (Mo. banc 1934). The burden of proof is borne by AmerenUE as the applicant in this matter and as the party asking to withdraw from the ISO which the Commission has previously approved for AmerenUE. Section 386.430 RSMo. 2000; 4 CSR 240-2.110(5)(A). Therefore, AmerenUE bears the burden of proving in this case that its proposal to switch RTOs would not be detrimental to the public interest.

At a minimum, the members of the "public" that the Commission must protect in this case include the ratepaying customers of AmerenUE; however, the public that would be detrimentally impacted by AmerenUE switching RTOs is much broader, including electric consumers throughout Missouri and the Midwest region. (Ex. 5, p. 23). If AmerenUE cannot prove with competent and substantial evidence that its participation in the Alliance RTO (based upon its currently proposed structure) would produce no detriments for the public, the Application must be denied.

AmerenUE acknowledges that it is obligated to seek Commission approval to withdraw from the MISO, pursuant to the commitment it made in the Stipulation and Agreement approved by the Commission in Case No. EO-98-413. (Tr. 91). However, it now claims that the Commission has conceded that AmerenUE's withdrawal from the MISO is in the public interest and is estopped from denying the Application because the Commission did not object to the FERC finding that such withdrawal was in the public interest. This claim is outrageous. Clearly, AmerenUE made a binding commitment in Case No. EO-98-413 to affirmatively request approval from the Commission. The standard that the Commission should use in determining whether AmerenUE should be permitted to withdraw from the MISO under this binding commitment is whether the withdrawal would be in the public interest.

It was not the Commission's obligation to affirmatively take action to prevent AmerenUE from violating a Commission order. Furthermore, if the Commission determines in the course of this proceeding that AmerenUE violated the Commission's Order Granting Intervention and Approving Stipulation and Agreement in Case No. EO-98-413, then it may ask its General Counsel to seek penalties of up to $2,000 for each day that the filing of the Application in this case was delayed. Section 386.570.1 and 386.570.2 RSMo. 2000.

IV. ARGUMENT

A. AmerenUE's participation in the Alliance RTO would be a detriment to the public interest because the Alliance RTO has a lack of independent governance and other problems which would harm competitive wholesale markets.

The manner in which the Commission decides this case will impact the future of electric wholesale markets in Missouri and beyond. (Tr. 207-208). It is fairly common knowledge that consumers of Missouri's regulated electric utilities are becoming increasingly reliant upon the wholesale electric markets. Some Missouri regulated utilities have chosen to become more heavily dependent on wholesale markets to provide for their future capacity needs. (Exh. 5, p. 5). For example, several years ago, UtiliCorp United, Inc. used a competitive bidding process to obtain the power supplies that were needed to serve some of its load. Last spring, AmerenUE relied on a competitive bidding process to meet its peaking needs for this summer. Id. Two of Missouri's investor owned utilities are currently in the middle of a competitive bidding process to obtain power supplies needed over the next 2-10 years. Id. In a "guest column" that appeared in the May 6, 2001 edition of the Joplin Globe, Ameren's senior vice president – Energy Supply Services, Paul Agathen, stated that the Genco bills supported by Ameren last year were

necessary because "Missouri's state-regulated utilities have no plans to build new electric generating plants." Id.

There is already an indication that Missouri consumers are at risk from the price gouging of suppliers, as competitive markets falter as a result of transmission constraints. When AmerenUE looked to competitive markets last spring to provide peaking supplies for this summer, it found that many of the suppliers that bid to provide power were unable to procure the transmission service necessary to deliver the power to or within AmerenUE's system. (Exh. 5, p. 6). Because of this, AmerenUE had to rely primarily on the "competitive" offer of its unregulated marketing affiliate to obtain necessary power supplies for this summer. Id.

The type of ISO or RTO in which AmerenUE is allowed to participate will determine the level and quality of competition in the wholesale market for electricity, and ultimately effect the level of rates paid by retail electric customers. If AmerenUE is permitted to switch its participation from the MISO to the Alliance RTO (as it is currently proposed), then wholesale electric markets in this area will suffer a loss of independence. (Ex. 5, pp. 18-23). It is this loss of independence that would cause the greatest detriment to the public if the Commission approves the Application. (Tr. 198).

There has been broad dissatisfaction among state public utility commissions and other stakeholders with the lack of independent governance at the ARTO. On June 18, 2001, eight state commission filed a pleading in FERC Docket Numbers ER99-3144-009, EC99-8-009 and RT01-88-001 where they made the following statement on page 17:

> The State Commissions wish to be clear. Our dissatisfaction with the progress toward independence is not a simple gripe or wish. The Alliance Companies' failure to take steps to establish a measure of pre-operational independence for the RTO is an issue of non-compliance with their own promises and the Commission's directives and is within the Commission's authority to remedy in this proceeding.

(Exerpted in Exh. 5, p. 19).

On page 22 of the same document, the eight state commissions expressed views on the ARTO transmission owner" decision to transfer control of the RTO formation process to an entity called the BridgeCo as follows:

> Second, BridgeCo cannot stake claim to independence. BridgeCo is a creature of the Alliance Companies, dependant on them for resources. It is the State Commission's understanding that BridgeCo's new CEO was hired by the Alliance Companies, and its staff are on loan from the Alliance Companies. This is not a recipe for independence.
>
> (Exerpted in Exh. 5, p. 19).

The Alliance RTO has since proposed that a company called National Grid take over as director or "managing member" of the RTO if and when it is allowed to become operational. The ability of National Grid to be independent is questionable. It is an international owner and operator of electric facilities. (Tr. 86). Even if National Grid divests its utility holdings, it will not be permitted to act as an independent director, according to a letter of intent and term sheet that would bind National Grid to crucial protocols as they are currently proposed and that do not promote a vigorous wholesale market. (Tr. 199-200). National Grid would not be permitted to exercise independence by proposing protocols that differ from those already filed or operating under different protocols even if the FERC orders the Alliance RTO to change protocols:

> A direct or indirect wholly-owned subsidiary of National Grid Group plc ("NGG") will serve as managing member of Alliance LLC. Such NGG subsidiary is referred to herein as the "NGG Manager/Operator" or as the "managing member." The managing member will direct the business and affairs of Alliance LLC pursuant to an LLC agreement. Alliance LLC shall adhere to the protocols filed with FERC, including a pricing protocol, operating protocol, planning protocol and revenue distribution protocol.
>
> (Term Sheet: National Gird – Alliance RTO, Exh. 11, p. 1).

Public Counsel Chief Utility Economist Ryan Kind has extensively studied issues affecting electric wholesale markets and has been providing input to several national entities regarding these issues. (Ex. 5, p. 2). He has compared the structure of the MISO to the proposed structure of the Alliance RTO and believes that AmerenUE's participation in the Alliance RTO would be far inferior for the public interest. (Ex. 5, p. 3). The factors of the Alliance RTO that would create a detriment to the public include a failure to adequately address congestion management, the inadequately provisions for balancing markets, as well as problems with its geographic size and boundaries. (Tr. 205-208). Not all Alliance RTO transmission owners are committed to a "common market design" for the MISO/ARTO region, rather they support using merely "compatible" congestion management systems. (Tr. 206). Having more than one market design for the wholesale electric markets in a simple regional market will be detrimental to the public.

B. AmerenUE's true motivations for proposing to switch RTOs differ from its stated rationales.

AmerenUE witness Whiteley asserts that four factors led to AmerenUE's decision to withdraw from the MISO. (Ex. 1, pp. 5-6). Internal documents obtained from AmerenUE suggest other factors were actually the principal drivers of this decision. (Ex. 5P, pp. 7-8 and Attachments RK-1 through RK-6). The first reason cited by Mr. Whiteley is his assertion that the continued viability of the Midwest ISO was extremely uncertain due to the announced withdrawals of IP and ComEd. (Exh. 1, p. 5). Based on Mr. Whiteley's statement about this reason, one would most likely surmise that Ameren gave no serious consideration to withdrawing from the MISO prior to learning the IP and ComEd were attempting to withdraw

for the MISO. **

** (Exh. 5P, pp. 8-9).

The second reason cited by Mr. Whiteley for the proposed RTO switch is his assertion that the transmission revenue distribution method of the ARTO was more favorable than the MISO method to Ameren. However, the transmission revenue distribution method of the ARTO was not approved by FERC at the time Ameren made its decision to withdraw. (Exh. 5, p. 9).

Furthermore, AmerenUE has taken steps in the past and may take further steps in the future to prevent a transmission revenue sharing method that is favorable to AmerenUE from also being favorable to AmerenUE's customers. The most recent step that AmerenUE has taken to avoid having its transmission revenues reflected in its bundled retail rates is the transmission rate filing that it recently made at the FERC as an ARTO member and not reflective of AmerenUE's increased transmission revenues. (Exh. 5, p. 9; Tr. 151-153). This rate filing proposes to keep AmerenUE's transmission rates basically unchanged. (Exh. 5, pp. 9-10).

Another recent action that AmerenUE has taken to avoid having its transmission revenues reflected in its bundled retail rates involves challenges to the legality of the current rate Complaint filed by the Commission Staff against the AmerenUE. In its Answer to the

Complaint, filed in Case No. EC-2002-1, on August 10, 2001, AmerenUE raised numerous legal and constitutional challenges to having its rates based on cost of service. Ibid., pp. 1-6.

The third reason for leaving the MISO that was cited by Mr. Whiteley is his assertion that AmerenUE had concerns that operational problems in Illinois could result with the departure of IP and ComEd. (Exh. 1, p. 6). as stated above, **

**

(Exh. 5P, p. 12).

The fourth reason cited by Mr. Whiteley is his assertion that the FERC Order 2000 formed the basis for the creation of other better RTO business models than the model used by the MISO. (Exh. 1, p. 6). I believe the other better RTO business model that Mr. Whiteley is referring to is the for profit transco model that is used by the Alliance. It is interesting to note that just a few short months from the proposed operational date of the ARTO, there is still no ARTO member that is willing to make a **binding commitment** to transfer ownership of its transmission assets to the ARTO. (Exh. 5, p. 12). Until such a transfer takes place, ARTO implement the for profit transco model that Ameren claims to prefer. Furthermore, one of the utilities that had committed to join the ARTO, DTE Energy Co., has recently decided to leave the ARTO and join the MISO, partly due to dissatisfaction with the manner in which the ARTO business model is being implemented. Id.

Based upon a review of hundreds of internal AmerenUE documents, it appears that the principal factors that drove the decision to leave the MISO were actually different than those

reasons cited by Mr. Whiteley. Id. One of the most important factors Ameren considered in deciding to switch RTOs was the impact that its choice of an RTO would have on the **future earnings prospects of its unregulated power marketing business and its unregulated generation assets.** Id. **

** (Exh. 5P, p. 14).

One motivating factor for Ameren was the impact that its choice of an RTO would have on the Company's flexibility to divest its transmission assets at a later date to a transco at market value. Ameren was also motivated by its desire to maintain as much control as possible over transmission assets. One would expect that a vertically integrated utility would want to maintain control of "bottleneck facilities" when this control may allow them to enhance the future financial outcomes from their affiliated unregulated businesses (e.g. power marketing and non-regulated generation) that rely on access to these "bottleneck facilities" to engage in competitive unregulated business opportunities. (Exh. 5, p. 16). Also, on page 4 of Attachment RK-2 to Exhibit 5, Ameren's senior management informs its Board of Directors that its investigation of alternative to the MISO was prompted in part by Ameren's objective to "minimize the loss of control over assets." Id. Finally, Ameren was also motivated by the impact that its choice of an RTO would have on the degree to which the RTOs governance would allow transmission owners to exert influence over RTO policies (including transmission expansion plans) during and after the formation of the RTO. (Exh. 5, p. 17-18).

C. The for-profit structure of the Alliance RTO would be detrimental to the public interest.

The not-for-profit structure of the MISO appears to be of greater benefit to the public interest than the for-profit structure of the Alliance RTO. The MISO's not-for-profit structure has facilitated the timely creation of an independent board of directors and allowed for substantive stakeholder input early in the ISO/RTO formation process. (Exh. 5, p. 17).

The ARTO has continued to delay the creation of an independent board of directors or any other independent entity to oversee the formation of the ARTO as it seeks to put a "for profit" structure in place. As this delay has continued, the ARTO has continued to make business decisions affecting the market structure even though the ARTO is composed of transmission owners whose main business interests are in competitive generation and power marketing. (Exh. 5, p. 18).

Staff witness Proctor explained this concern well at the evidentiary hearing:

> My concern is the following, and here is what I struggle with: I view the RTO much in the same way that I view the New York Stock Exchange, that they are there to facilitate markets. That is their function. That is their purpose. And I think in principle the FERC agrees. That is what they are to do. If at any point the New York Stock Exchange was even suspected of taking a position in the stock market, the market would lose total confidence in that – in the New York Stock Exchange.
>
> I have a fundamental problem with making that entity a for-profit entity where it -- it may take a position in the market. (Tr. 175).

D. No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should order certain conditions:

At a minimum, the Commission approval of the pending application should not occur until:

- The FERC determines that the ARTO is in sufficient compliance with FERC Order 2000 prior to the proposed ARTO start-up date on December 15, 2001.

- The FERC determines that the ARTO is in sufficient compliance with the IRCA [Inter-RTO cooperation Agreement between the Alliance Companies and the Midwest ISO, § 2.17 ("*Early Ending of Inter-RTO Transition Period*"), approved by the Commission in *Illinois Power Co.*, 95 FERC ¶ 61,183 (2001)] provisions agreed to in the settlement that provided for Ameren's withdrawal from the MISO, prior to the proposed ARTO start-up date on December 15, 2001.

- The FERC determines that the ARTO's outstanding compliance issues with FERC orders including: (1) proposal of an acceptable Business Plan for achieving independence, (2) development of an independent market monitoring plan, (3) revising its proposal for a stakeholder advisory process, and (4) revisions to the Operating Protocol, the Planning Protocol, and the Pricing Protocol have been adequately satisfied prior to the proposed ARTO start-up date on December 15, 2001.

- AmerenUE and its parent, Ameren Corporation, agree to hold all Missouri ratepayers harmless from any adverse rate effects that could result from the transfer of its transmission assets to the Alliance Transco or some other entity at market value.

- AmerenUE and its parent, Ameren Corporation, agree that it will hold all Missouri ratepayers harmless from, and never seek recovery, either directly or indirectly, of the $18 million exit fee that Ameren paid to the MISO.

E. There is simply no excuse for AmerenUE not requesting permission from the Commission to withdraw from the MISO prior to or simultaneous with its filing at FERC.

When asked at the hearing about the timing of AmerenUE's filing of this case, AmerenUE witness Whiteley gave the following response:

> Q. Okay. And AmerenUE requested FERC permission to withdraw from the Midwest ISO on January 16, 2001?
> A. That's correct.
> Q. Okay. Why didn't AmerenUE request Commission - - permission from this Commission earlier in November or January?
> A. Well, there's a couple of issues. You have to consider the position that we were in in late 2000 in that the Midwest ISO did not look like it was a viable entity for us going forward. There had been two companies that had announced their withdrawals, and for us to start a proceeding in Missouri, which might take months, six months, nine months to resolve timing-wise did not seem like it was something that we could - - could tolerate, for one.
> And, for two, the issue that we have multiple jurisdictions, we have Illinois transmission assets as well, and FERC approval is required for bot of those and seem to be the key link in any of the approvals that we would be requiring. So it's a matter of timing as to which approvals you ask for first. (Tr. 83).

Apparently, AmerenUE couldn't "tolerate" complying with its past commitment to the Commission before the withdrawal was already approved by FERC because of a purported fear of a procedural delay. However, if AmerenUE had filed on January16, 2001, there would have been no need to rush the Commission now.

There is absolutely no reason that AmerenUE could not have filed simultaneously with both the FERC and the Missouri Public Service Commission. The merger proposed in 1995, for example, was filed simultaneously in both jurisdictions.

The five month delay in filing the Application in this case has actually allowed AmerenUE to now claim that the Commission cannot prevent the withdrawal. Mr. Whiteley stated, "I don't think it's reversible in the near term." However, despite the disregard for Commission authority, the Commission can still deny the Application - - and it should in order to protect the public.

V. CONCLUSION

AmerenUE's participation in the Alliance RTO would be a detriment to the public interest because the Alliance RTO has a lack of independent governance and other problems which would harm competitive wholesale markets. AmerenUE cannot prove that the Alliance RTO will be independent at this time. The FERC has already found that the MISO is in compliance with its independence criteria. The Commission should protect Missouri consumers by denying the Application as detrimental to the public interest.

The Commission should not simply defer to the authority of the FERC in RTO matters. This Commission's perspective and responsibility to protect Missouri consumers is different from FERC's national perspective. One has only to recall recent events in California to realize that FERC has not always been successful in protecting specific regions from dysfunctional wholesale electric markets.

AmerenUE's stated reasons for proposing a switch in its RTO participation are not entirely credible. Neither are its reasons for its delay in asking for Commission permission to

make the switch. In fact, the Commission should further consider pursuing penalties for AmerenUE's violation of the Commission's order in Case No. EO-98-413.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: _____

John B. Coffman (#36591)
Deputy Public Counsel
P. O. Box 7800
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 29th day of October 2001:

GENERAL COUNSEL
Missouri Public Service Commission
P O Box 360
Jefferson City MO 65102

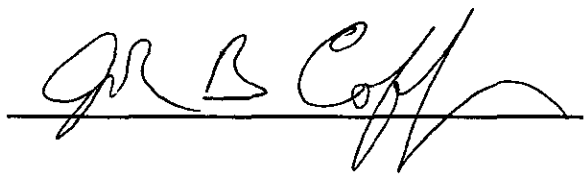
ROBIN E FULTON
Schnapp Fulton Fall McNamara & Silvey
135 E Main Street
P O Box 151
Fredericktown MO 63645-0151

ROBERT C JOHNSON
LISA C LANGENECKERT
Law Office of Robert C Johnson
720 Olive Street Suite 2400
St Louis MO 63101

DAVID B HENNEN
Ameren Services Company
1901 Chouteau
P O Box 66149 (MC 1310)
St Louis MO 63166-6149

DIANA M VUYLSTEKE
Bryan Cave LLP
One Metropolitan Square
211 North Broadway Suite 3600
St Louis MO 63102

DUNCAN KINCHELOE
Attorney at Law
2407 W Ash
Columbia MO 65203



ATTACHMENT 1
HAS BEEN DEEMED
"PROPRIETARY"
IN ITS ENTIRETY