BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company for Authority To Continue the Transfer of Functional Control of Its Transmission System to the Midwest Independent Transmission System Operator, Inc.	))))))	Case No. EO-2011-0128

MISSOURI INDUSTRIAL ENERGY CONSUMERS' POST-HEARING BRIEF

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System to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

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Comes now the Missouri Industrial Energy Consumers ("MIEC") and respectfully submits its Post-Hearing Brief.

INTRODUCTION

The MIEC, along with the Commission's staff ("Staff"), Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and the Midwest Independent Transmission System Operator, Inc., ("MISO"), have entered into a Non-Unanimous Stipulation and Agreement in this case. Consistent with that negotiated agreement, it is the MIEC's position that the Commission should approve Ameren Missouri's continued participation in the MISO, under the terms and conditions set out in the Non-Unanimous Stipulation and Agreement, and find that such participation is not detrimental to the public interest.

Under the Commission's rules, however, any non-unanimous stipulation is "considered to be merely a position of the signatory parties to the stipulated position, except no party shall be bound by it. All issues shall remain for determination after hearing." 4 CSR 240-2.115(D). For this reason, the MIEC has entered the Rebuttal Testimony of its expert witness, James R. Dauphinais of Brubaker & Associates, Inc., into the record of this case. In the event the Commission rejects the position set out in the Non-Unanimous Stipulation and Agreement, the MIEC respectfully submits that, in the alternative, the Commission should grant Ameren Missouri's application for continued participation in the MISO under the conditions recommended by Mr. Dauphinais in his testimony. Those conditions are explained in detail below.

I. In the event the Commission rejects the Non-Unanimous Stipulation and Agreement, the Commission should condition Ameren Missouri's continued participation in the MISO on the requirement that Ameren Missouri construct and own all transmission projects in its certificated retail territory.

As Mr. Dauphinais explained in his testimony, the MIEC's principal concern with respect to Ameren Missouri's continued participation in the MISO is the potential for an "end run" around the Commission's jurisdiction with respect to the transmission costs included in Ameren Missouri's bundled retail rates.[1] This issue came to light as a result of filings by Ameren Services Company (an affiliate of Ameren Missouri) with the Federal Energy Regulatory Commission ("FERC") in 2010.[2] The FERC filings disclosed that Ameren Corporation had formed a wholly owned subsidiary, ATX, for the purpose of enhancing access to credit for Ameren Corporation's transmission business, and to provide business focus on transmission.[3] In the filings, Ameren Services requested approval of various transmission infrastructure investment rate incentives for its affiliates, including ATX. The FERC subsequently issued an order in which it granted Ameren Services' request to include 100% of Construction Work in Progress ("CWIP") in rate base, along with abandoned plant recovery, a hypothetical capital structure, recovery of pre-commercial operational expenses, and the ability to assign these incentives to affiliates.[4]

This development creates the possibility that transmission costs paid by Ameren Missouri's ratepayers, as a part of Ameren Missouri's bundled retail electric rates, could be subject to FERC ratemaking, rather than ratemaking by this Commission. If an affiliate of Ameren Missouri (such as ATX) constructs new transmission facilities in Ameren Missouri's

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[1] Dauphinais Rebuttal at p. 2, ll. 8-10; p. 5, 3.
[2] *Id.* at p. 5, ll. 3-8.
[3] *Id.* at p. 5, ll. 17-20.
[4] *Id.* at p. 5, l. 21 to p. 6, l. 3, *citing Ameren Services Company*, 135 FERC ¶ 61,142 (2011).

service territory, a portion of the costs associated with the new facilities will be allocated to Ameren Missouri by MISO through regional transmission cost allocation. Those costs will be subject to FERC ratemaking—including the return on equity, transmission rate incentive and other ratemaking policies of the FERC. As Mr. Dauphinais summarized, “Thus, through the use of transmission affiliates, Ameren Missouri’s parent, Ameren Corporation, could potentially make an ‘end-run’ around the ratemaking authority of this Commission in order to receive more favorable cost recover under FERC transmission ratemaking authority.”[5]

The Non-unanimous Stipulation and Agreement addresses this issue in the conditions for Ameren Missouri’s continued participation in MISO set out in Paragraphs 10 c. and 10 j. Mr. Dauphinais’ testimony provides an alternative that would protect Ameren Missouri ratepayers from the potentially adverse consequences of FERC ratemaking. His proposal is for the Commission to impose the following condition on Ameren Missouri’s continued participation in the MISO:

> Ameren Missouri shall construct and own any and all transmission projects proposed for Ameren Missouri’s certificated retail service territory, unless Ameren Missouri requests and receives approval from the Commission for an entity other than Ameren Missouri to pursue, in part or in whole, construction and/or ownership of the proposed project(s), which entity shall have a certificate of convenience and necessity issued by the Missouri Public Service Commission for the proposed project(s).[6]

As noted in the Second Statement of Positions of the Office of the Public Counsel, due to FERC’s Order 1000, it is not entirely clear whether the Commission may impose this condition.[7] To avoid this uncertainty, the MIEC agrees with the Office of Public Counsel’s recommendation that this condition be modified to read as follows:

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5 *Id.* at p. 6, ll. 17-20.
6 *Id.* at p. 2, ll. 21-28.
7 Second Statement of Positions of the Office of the Public Counsel at p. 2.

> Ameren Missouri shall make diligent efforts to construct and own any and all transmission projects proposed for Ameren Missouri's certificated retail service territory.[8]

In the event this Commission rejects the Non-unanimous Stipulation and Agreement, and specifically the protections for consumers set out in Paragraphs 10 c. and 10 j. of that document, then this condition should be included in any order of this Commission approving Ameren Missouri continued participation in the MISO. Such a condition is essential to protect the Commission's jurisdiction over the transmission cost component of Ameren Missouri's bundled retail electric rates.

II. In the event the Commission rejects the Non-Unanimous Stipulation and Agreement, the Commission should impose conditions on Ameren Missouri's continued participation in the MISO that will ensure that MIEC and the other stakeholders will have substantive input regarding additional analysis of the impact of Ameren Missouri's continued participation in the MISO (or some other RTO) beyond the period of participation approved by the Commission in this case.

Mr. Dauphinais' testimony also highlights the importance of the participation of the MIEC and other stakeholders in the analysis that will be developed with respect to Ameren Missouri's participation in the MISO (or some other RTO) in the future.[9] This issue is addressed in Paragraph 10 b. of the Non-Unanimous Stipulation and Agreement. It was also addressed in the Paragraph 16 of the original application filed by Ameren Missouri in this case.[10] In the event the Commission rejects the Non-Unanimous Stipulation and Agreement, then it should require Ameren Missouri to allow meaningful participation by stakeholders (including the MIEC, Staff and OPC) in the development of this analysis as a condition of Ameren Missouri's continued participation in the MISO.

[8] *Id.*
[9] *Id.* at p. 4, ll. 7-29.
[10] *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been transmitted by electronic mail this 9th day of March 2012, to all parties on the Commission's service list in this case.

__________*s/ Diana Vuylsteke*________