

October 1, 2001

**VIA HAND DELIVERY**

**FILED<sup>3</sup>**

**OCT - 1 2001**

**Missouri Public  
Service Commission**



Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
Jefferson City, MO 65101

Re: 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

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are an original and eight (8) copies of AmerenUE's Statement of Positions.

Please kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed, self-addressed, stamped envelope.

Sincerely,

*David B. Hennen/sh*

David B. Hennen  
Associate General Counsel

DBH:rd

Enclosures

cc: Parties of Record

FILED<sup>3</sup>

OCT - 1 2001

Missouri Public  
Service Commission

**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                     )     Case No. EO-2001-684  
Midwest ISO to Participate in the Alliance RTO                     )

**MOTION TO MAKE LATE FILING OF UNION ELECTRIC'S POSITION STATEMENTS**

COMES NOW Union Electric Company d/b/a AmerenUE ("Company") and pursuant to 4 CSR 240-2.050(3)(B), respectfully requests the Missouri Public Service Commission ("Commission") to accept Company's late filing of its Position Statements in this case, and in support thereof states the following:

1. Pursuant to the Commission's Order Adopting Procedural Schedule, issued August 15, 2001, UE was to file its Position Statements on the List Of Issues, Order Of Witnesses And Order Of Cross-Examination ("List Of Issues") by September 28, 2001.
2. Unfortunately, the process of compiling the List of Issues proved more complicated than anticipated, and as a result, the task was not completed until September 28.
3. Because UE had not received the filed version of the List Of Issues prior to the deadline for filing UE's Position Statements on the List Of Issues, UE could not comply with the deadline imposed by the Commission in the Procedural Schedule.

WHEREFORE, for the foregoing reasons, Union Electric Company d/b/a AmerenUE hereby requests that the Commission accept the late filing of its Position Statements in this case.

Respectfully submitted,

UNION ELECTRIC COMPANY  
D/b/a AmerenUE

By: David Hennen/sh  
David Hennen, MBE #46776  
Associate General Counsel  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149  
314-554-4673  
314-554-4014 (fax)  
dhennen@ameren.com

Dated: October 1, 2001

**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 )	Case No. EO-2001-684
Alliance RTO )	
)	

**UNION ELECTRIC'S STATEMENT OF POSITIONS**

**COMES NOW** Union Electric Company d/b/a AmerenUE ("Company" or "UE") and respectfully states that its positions on the issues identified in the List Of Issues, Order Of Witnesses And Order Of Cross-Examination are as follows:

1. Should UE's application for permission to withdraw from the Midwest ISO ("MISO") to join the Alliance RTO ("ARTO") be approved? Issues to be considered in making this determination include, but may not be limited to, the following:
    - a. Will the not-for-profit governance structure of the MISO or the for-profit structure of the ARTO be of greater benefit to the public interest?
- UE Position:** The for-profit governance structure of the ARTO will be equal to or of greater benefit to the public interest than the not-for-profit MISO governance structure.
- b. Is UE's retention of transmission revenues from ARTO rates, based on the rate design set out in the Settlement Agreement between the MISO and ARTO, of benefit to Missouri customers?

**UE Position:** Because the ARTO rate design will allow UE to retain transmission revenues from all users of UE's transmission system, a substantially smaller portion of the UE transmission system revenue requirement will be allocated to UE's bundled customers, which will result in lower rates for UE's bundled customers. This is a direct benefit to Missouri customers.

- c. Will "seams" between MISO and ARTO continue to affect Missouri transmission customers through payments of pancaked transmission rates?

**UE Position:** At the time the FERC approved the Settlement Agreement, there was already a seam that existed in Missouri between MISO and the Southwest Power Pool ("SPP"). UE's withdrawal from MISO to join the ARTO did not affect this seam between MISO and SPP nor did it create an additional seam between the MISO and ARTO. The Settlement Agreement created the ARTO-MISO super-region effectively eliminating the seam between MISO and ARTO.

- d. Has the fact that ARTO has yet to establish an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board allowed the ARTO transmission owners to influence RTO formation decisions such that those decisions are, or may be, harmful to the public interest, and if so, can this be corrected without imposing delays and additional costs?

**UE Position:** Even though an independent Board of Directors or a stakeholder advisory committee to provide advice to this Board has not been put in place, there is no evidence that the ARTO would have evolved any differently had such groups been in place. Moreover, all of the decisions made by ARTO to date have been incorporated in FERC filings, which are subject to intervention and protests by those entities that would make up the stakeholder advisory committee.

- e. Has the fact that ARTO has yet to establish an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board allowed the ARTO transmission owners to avoid compliance with the requirements of FERC Order No. 2000 or other FERC orders, and if so, can this be corrected without imposing delays and additional costs?

**UE Position:** In accordance with FERC order, the ARTO has filed at FERC the selection of National Grid as the independent managing member of the ARTO. The ARTO is also participating in an Alternative Dispute Resolution process under the direction of FERC to formalize the establishment of a stakeholder advisory committee. To be in compliance with FERC Order No. 2000, ARTO does not need to in compliance with all of the requirements set forth in FERC Order No. 2000 until December 15, 2001, or its date of operation. Moreover, the ARTO remains committed to a December 15, 2001 start-up date.

- f. Can ratepayers be harmed by provisions of the ARTO agreements that provide for future transfers of transmission assets at market value?

**UE Position:** UE intends to be a non-divesting transmission owner participant in the ARTO. The mere existence of provisions in the ARTO agreements that provide the ARTO with the first right of refusal to purchase UE's assets at market value have absolutely no impact on ratepayers. However, if at some point in the future, UE decides to sell or contribute its transmission assets to

the ARTO or to some other third party, it will seek whatever approvals are necessary in accordance with Missouri and Federal law.

g. Was UE's exit fee payment to the MISO a prudent regulatory expense?

**UE Position:** While UE is not seeking recovery of the exit fee it paid to MISO in this proceeding, UE firmly believes that its decision to withdraw from MISO to participate in the ARTO is beneficial to Missouri ratepayers.

2. If the Commission decides to approve the Company's request to withdraw from the MISO and to join the ARTO, which (if any) of the following conditions should be required?

a. Staff's Conditions

1. Preliminary Conditions:

a) No transfer from MISO to ARTO before additional evidence of December 15, 2001 startup is filed (December 5, 2001), with follow-up hearing (December 12, 2001).

**UE Position:** UE does not oppose conditioning its withdrawal from MISO on evidence that ARTO is approved by FERC as operational. UE is willing to provide the Commission with appropriate evidence to make them aware of such a decision by FERC. UE does not believe that an additional hearing would be necessary to provide the Commission with a report on the ARTO's operational status.

b) No transfer unless ARTO is approved by FERC as operational by December 15, 2001.

**UE Position:** UE would support this condition if it were to state: "No transfer *until* ARTO is approved by FERC as operational." Otherwise, UE does not support this condition.

c) No transfer unless ARTO has FERC-approved permanent independent Board of Directors in place and a Stakeholder Advisory Committee making recommendations to that Board by December 15, 2001.

**UE Position:** UE would support a condition that prohibits UE's withdrawal until the ARTO has a FERC-approved independent Board of Directors in place and a Stakeholder Advisory Committee making recommendations to that Board. Otherwise, UE does not support this condition.

d) No transfer unless the ARTO and MISO have implemented the IRCA<sup>1</sup> and are providing non-pancaked transmission service within the ARTO-MISO super-region by December 15, 2001.

---

<sup>1</sup> 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).

**UE Position:** UE would support this condition if it were to state: "No transfer *until* the ARTO and MISO have implemented the IRCA<sup>1</sup> and are providing non-pancaked transmission service within the ARTO-MISO super-region." Otherwise, UE does not support this condition.

- 1) Subsequent Conditions: If the preliminary conditions are met, then the Commission should attach the following conditions to its approval of the requested transfer:
  - a) No transfer unless UE agrees to withdraw from the Alliance if the FERC orders a single RTO in the Midwest, and to take whatever actions are necessary to participate in the single RTO.

**UE Position:** If FERC orders a single RTO in the Midwest, UE would agree to take whatever actions are necessary to participate in that RTO, including withdrawing from the ARTO if required by FERC.

- b) No transfer unless UE agrees to withdraw from the ARTO if ARTO is granted a PBR incentive to take a position in the energy market.

**UE Position:** UE's withdrawal from ARTO will be subject to FERC approval. If in the unlikely event ARTO is granted a PBR incentive by FERC to take a position in the energy market, by virtue of its approval by FERC, such a PBR incentive will have been determined to be in the public interest. Therefore, UE objects to this condition because it requires UE to withdraw from ARTO as a result of a FERC order that has been determined by FERC to be in the public interest. The FERC would not approve such a withdrawal request.

b. Other Conditions (OPC)

- 1) The application should not be approved unless the FERC determines that the ARTO is in sufficient compliance with FERC Order No. 2000 prior to the proposed ARTO start-up date on December 15, 2001.

**UE Position:** UE would support this condition if it were to state: "The application should not be approved *until* the FERC determines that the ARTO is in sufficient compliance with FERC Order No. 2000." Otherwise, UE does not support this condition.

- 2) The application should not be approved unless the FERC determines that the ARTO is in sufficient compliance with the IRCA 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.

**UE Position:** UE would support this condition if it were to state: "The application should not be approved *until* the FERC determines that the ARTO is in sufficient compliance with the IRCA

provisions agreed to in the FERC approved Settlement Agreement." Otherwise, UE does not support this condition.

- 3) The application should not be approved unless the FERC determines that the ARTO's outstanding compliance issues with FERC orders have been adequately satisfied prior to the proposed ARTO start-up date on December 15, 2001. These outstanding compliance issues include the following: (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.

**UE Position:** UE opposes the condition as stated above because it is unclear and unnecessary. The FERC will not approve the ARTO unless it is in compliance with all the FERC requirements set forth in FERC Order No. 2000. If FERC approves the ARTO to become operational, that should be all that is necessary for this Commission to approve UE's application.

- 4) The application should not be approved unless UE 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.

**UE Position:** UE opposes this condition. UE does not intend to contribute or divest its assets to the ARTO at this time, but if it should at some time in the future, UE agrees to seek all approvals that are necessary in accordance with Federal and State law.

- 5) The application should not be approved unless UE and its parent, Ameren Corporation, agree not to transfer ownership of its transmission assets or otherwise dispose of those assets, regardless of any future changes in state law, unless such ownership transfers or other disposition are approved by this Commission.

**UE Position:** UE opposes this condition as an improper extension of Commission authority. UE will seek whatever approvals are necessary at the time of such ownership transfer in accordance with State and Federal law.

- 6) The application should not be approved unless UE 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.

**UE Position:** UE opposes this condition since UE is not seeking recovery in this proceeding of the exit fee it paid to MISO.

c. Other conditions (MIEC)



- 1) No transfer unless UE agrees to return to MISO if ARTO does not meet FERC startup requirements by December 31, 2002.

**UE Position:** UE believes that the December 31, 2002 deadline is reasonable. However, if FERC orders a single RTO for the Midwest region that is not MISO, the condition would improperly require UE to return to MISO, which may not exist.

- 2) No transfer unless UE agrees to abide by the terms and conditions of the Stipulation And Agreement in Case No. EO-98-413, as if the ARTO was the MISO.

**UE Position:** UE opposes this condition since many of the conditions contained in the Stipulation And Agreement are not relevant to UE's participation in the ARTO.

#### Legal Issues

1. What is the appropriate standard for the Commission to use in deciding this case?

**UE Position:** The standard the Commission should apply to any request that is within its jurisdiction, and for which the Commission has not otherwise been estopped or preempted by acting or failing to act during a proceeding at a federal jurisdiction, should be to grant the request if it is not detrimental to the public.

2. Independent of the Stipulation And Agreement in Case No. EO-98-413, is the Commission's authorization necessary for UE to withdraw from the MISO and join the Alliance?

**UE Position:** The Commission's authority for approving UE's withdrawal from MISO to participate in the ARTO is derived solely from the Stipulation And Agreement in Case No. EO-98-413.

3. Has the Commission conceded that UE's withdrawal from MISO is in the public interest by failing to object to such a finding already made by FERC?

**UE Position:** By participating in the proceeding at FERC to determine whether UE's withdrawal from MISO was in the public interest, and failing to object to the finding made by FERC in the Settlement Agreement that UE's withdrawal from MISO to participate in the ARTO is in the public interest, the Commission is now estopped from asserting that such withdrawal is not in the public interest in this proceeding.

4. Did UE violate the Stipulation And Agreement in Case No. EO-98-413 by failing to file with the Commission a notice of withdrawal at the same time the notice was filed at the FERC on January 16, 2001?

**UE Position:** UE did not violate the Stipulation And Agreement in Case No. EO-98-413 since there is no requirement in the Stipulation And Agreement that requires UE to file its Notice of withdrawal simultaneous with its filing at FERC. Moreover, if the FERC would have rejected UE's withdrawal from MISO, there would have been no need to make such a filing at the Commission.

Respectfully submitted,

UNION ELECTRIC COMPANY  
D/b/a AmerenUE

By: David Hennen / sh  
David Hennen, MBE #46776  
Associate General Counsel  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149  
314-554-4673  
314-554-4014 (fax)  
dhennen@ameren.com

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed via Federal Express or hand-delivered to all counsel of record this 1<sup>st</sup> day of October 2001:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Diana M. Vuylsteke  
Bryan Cave LLP  
One Metropolitan Square  
211 North Broadway, Suite 3600  
St. Louis, MO 63102-2750

Duncan E. Kincheloe  
Missouri Public Utility Alliance  
2407 W. Ash  
Columbia, MO 65203-0045

Lisa C. Langeneckert  
Law Office of Robert C. Johnson  
720 Olive Street, Suite 2400  
St. Louis, MO 63101

Robin E. Fulton  
Schnapp, Fulton, Fall, Silvey &  
Reid, L.L.C.  
135 East Main Street  
P.O. Box 151  
Fredericktown, MO 63645-0151

David B. Hennen/sh