

**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

**POST-HEARING BRIEF OF THE MISSOURI JOINT  
MUNICIPAL ELECTRIC UTILITY COMMISSION**

MJMEUC would like to thank the Commission for their interest regarding the impact of Ameren Missouri's participation in MISO on municipals within the state of Missouri. While MISO has many benefits, the implementation of an involuntary forward capacity market will not be one of those benefits to Missouri. It is the decision of the Commission as to whether Ameren Missouri is again granted authority for a limited transfer of its transmission assets to MISO, upon what conditions such authority is premised, and upon what conditions or events that transfer becomes detrimental to the public interest.

**I. Shortcomings of the Proposed Stipulation**

Ameren Missouri is requesting through the offered non-unanimous stipulation and agreement for limited authority to transfer transmission assets to MISO. Some of the conditions include that the transfer be approved for only a set number of years, that a cost-benefit study be performed to determine the value of staying in MISO versus other alternatives, and that an

aggrieved party can file a complaint with the Commission if ‘material changes’ occur within MISO.<sup>1</sup>

If the Commission finds that there is no detriment to the public interest for Ameren Missouri staying in MISO, and allows continued conditioned participation within MISO, MJMEUC would suggest that the language in paragraphs of 10(a) and 10(b) of the non-unanimous stipulation be modified.

#### **A. Paragraph 10(a)**

MJMEUC would ask that paragraph 10(a) be modified. The current language is as follows:

- a. Material Change. Notwithstanding the extended period of authority for Midwest ISO participation provided for in paragraph 9 of this 2011 Stipulation, a Stakeholder may request that the MoPSC initiate a docket (or the MoPSC may do so on its own motion) prior to November 15, 2015, to investigate whether a material event occurring after this docket is of such a magnitude that it presents a substantial risk that continued participation in the Midwest ISO on the terms and conditions contained herein has become detrimental to the public interest.

We would respectfully submit that more appropriate language would be as follows:

- a. Material Change. Notwithstanding the extended period of authority for Midwest ISO participation provided for in paragraph 9 of this 2011 Stipulation, a Stakeholder may request that the MoPSC initiate a docket (or the MoPSC may do so on its own motion) prior to November 15, 2015, to investigate whether a material event occurring after this docket ~~is of such a magnitude that it presents a substantial risk that~~ *would cause* continued participation in the Midwest ISO on the terms and conditions contained herein ~~has~~ *to* become detrimental to the public interest.

To include the language as written in the stipulation would expand upon the judicial standard set for transfers of utility property, that such transfers not be detrimental to the public interest.<sup>2</sup> By expanding the scope of the language to include standards of ‘substantial risk’ and ‘magnitude’ of potential harm, paragraph 10(a) of the proposed stipulation would raise the bar of the actual

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<sup>1</sup> Paragraph 10(a) of Non-Unanimous Stipulation and Agreement.

<sup>2</sup> See State ex rel. City of St. Louis v. Public Service Commission of Missouri, 335 Mo. 448, 73 S.W.2d 393, 395 (Mo. banc 1934).

standard of ‘detrimental to the public interest.’ We would submit that removing these words leads to a cleaner and more easily decipherable standard, both for the affected parties and the Commission.

We would also emphasize that the language should be clear enough to all parties that actual harm would not have to occur before a party could ask for Ameren Missouri’s continued participation in MISO to be studied. For instance, if the FERC approved a change to the Resource Adequacy Requirements tariff that removed ‘opt-out’ provisions from the tariff as advocated by Ameren<sup>3</sup>, MJMEUC would want to be able to alert the Commission to the change so that the Commission could begin an analysis of whether the change would cause Ameren’s continued participation in MISO to be detrimental to the public interest, rather than waiting for implementation of the tariff.

#### **B. Paragraph 10(b)**

Under 10(b)(a) of the proposed stipulation, MJM EUC would request substantive input regarding the development of the specific methodology, inputs, outputs and other features of the cost-benefit analysis that will examine whether Ameren Missouri should remain in MISO, or consider other options. The non-unanimous stipulation, as drafted, does allow MJMEUC ‘tentative analysis’, at Ameren Missouri’s discretion, but offers no ability to see how the proposed modeling will be constructed, or any real opportunity to offer suggestions. Ultimately, performing the calculations is Ameren’s responsibility, but a more co-operative approach between the parties will likely lead to more wide-spread acceptance of any results. MJMEUC does not request access to the actual data referenced in 10(b)(c)(i). As Mr. Arora testified in the hearing, Ameren does not object to such an arrangement.<sup>4</sup>

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<sup>3</sup> Transcript 103:5-17; 117:12-23

<sup>4</sup> Id 95:17-96:12

## **II. Risks of MISO's Proposed Resource Adequacy Requirement Tariff**

As Mr. Arora testified, capacity in the existing capacity market in MISO is cheap, and available to entities that need to purchase it.<sup>5</sup> In fact, the existing market is stable enough that Ameren Missouri was able to quantify the value of the existing capacity market as a benefit to Ameren Missouri of approximately \$5 million for the study period.<sup>6</sup> While no party is debating that Ameren Missouri is currently long on capacity, it is important to note that Ameren's assumption of being long is at least partially based on Meramec being in operation, and obtaining the targets in their current MEEIA filing.<sup>7</sup> Even that assumption is not immune to changes due to environmental regulations. Due to changes in federal regulations, or pending court actions being decided in EPA's favor, Ameren Missouri could face pressure to retire generators, and that could change its market position from a seller to a buyer well within the time being considered for a current grant of authority.

Mr. Arora also stated that if MISO were to become more like PJM, it would benefit capacity customers by giving additional price transparency.<sup>8</sup> However, the signal to build new generation only occurs when energy and/or capacity prices reach high-water marks. As Mr. Wilson explained, FERC's policy with the MOPR (minimum offer price rule) is to encourage capacity prices to stay high in order to incentivize new generation, but it also can artificially raise prices, as new generators looking to enter the market may be rationally willing to offer below the MOPR price floor but not be able to.<sup>9</sup> This has led to the logical conclusion of many, including MJMEUC, to suspect that FERC will modify MISO's proposed MOPR to make it more strict and uniform in application. Additionally, as testified to by Mr. Vrbas and Mr. Wilson, the MISO

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<sup>5</sup> Id 97:19-23

<sup>6</sup> Id 97:7-18

<sup>7</sup> Id 105:5-13

<sup>8</sup> Id 101:24-102:7; Rebuttal Testimony of James Wilson, 27:5-22

<sup>9</sup> Transcript 211:5-213:8

capacity market easily could result in price volatility, particularly if additional generation is retired.<sup>10</sup> This expectation may lead FERC to modify MISO's proposed MOPR in order to ensure higher capacity prices, so that in FERC's thinking, additional generation will then be built to follow the prices. As evidenced by Mr. Wilson, such a concept is fundamentally flawed in that instead generators take stop-gap action in order to capitalize on high capacity prices, but those actions do not lead to decreases in capacity prices.<sup>11</sup>

Locational capacity charges are also an issue for MJMEUC. While it is unfortunate that FERC has decided to make this a policy issue, it does create a long-term problem for MJMEUC. MJMEUC has two generators at Prairie State in Illinois, and one generator at Plum Point in Arkansas that may soon be in MISO. Given that MISO can re-define capacity zone boundaries, it makes little sense for MJMEUC to develop new long-term strategies based on the proposed zonal boundaries. While the actual impact of these zones will not be known until the capacity import limits and applicable zonal deliverability charges are known, it appears to be a rather artificial cost that will be borne by those whose generation happens to be declared to be in the wrong spot on the map. While the 'grandmothering' provision of the proposed resource adequacy requirement tariff addresses this problem, it too is subject to the whims of FERC, as well as future erosion.<sup>12</sup>

Tariffs in MISO continue to evolve and change.<sup>13</sup> Ameren has already made filings at FERC requesting that the proposed resource adequacy tariff be changed, and during the hearing Ameren also stated a preference for changes consistent with the desire of Ameren for a PJM style

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<sup>10</sup> Rebuttal Testimony of Marlin Vrbas, 10:1-12; Rebuttal Testimony of James Wilson, 26:5-16; Transcript 203:11-205:12

<sup>11</sup> Transcript 208:24-210:13

<sup>12</sup> Rebuttal Testimony of Marlin Vrbas, 15:10-11;

<sup>13</sup> Transcript 93:9-22;

capacity market for MISO.<sup>14</sup> Meanwhile, MJMEUC, through the Midwest Transmission Dependent Utilities group (Midwest TDUs) has also made known at FERC its concerns with the proposed tariff. Many of those same concerns were conveyed to the Commission through the testimonies of Mr. Vrbas and Mr. Wilson. Given the number of new ideas that MISO is introducing to FERC, including some that have been previously rejected by FERC for other RTOs, it is not likely that the proposed tariff will be approved as filed.<sup>15</sup> Furthermore, no party has made any serious attempt to show to the Commission that MISO's tariff will not be immediately subject to modifications, whether or not the proposed tariff is adopted in whole. Indeed, part of MISO's job as an RTO is to respond to demands from stakeholders including Ameren Energy Marketing that are not necessarily motivated by what best serves the public interest in Missouri. Thus, as was the case with the development of MISO's proposed capacity tariff it is likely that MISO will continue to consider tariff changes that would be detrimental to the public interest in Missouri. Even MISO conceded in its filing letter at FERC that changes to the tariff are already being considered by MISO.<sup>16</sup>

### **Conclusion**

Ameren Missouri has no problem building needed capacity, and the voluntary capacity market provides cheap capacity for any entity needing short term capacity to meet MISO reliability requirements.<sup>17</sup> Staff witness McKinnie, MJMEUC witness Wilson, and OPC witness Kind all stated that there is no need or necessity for the type of capacity market MISO has submitted to FERC.<sup>18</sup> Capacity markets are vestiges of deregulation, and as Missouri has not

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<sup>14</sup> Id 113:10-14; 117:12-23; 278:15-282:25; Rebuttal Testimony of Marlin Vrbas, 7:6-10

<sup>15</sup> Transcript 194:2-195:22

<sup>16</sup> Rebuttal Testimony of Marlin Vrbas, 15:20-21

<sup>17</sup> Transcript 103:18-21, 97:19-23

<sup>18</sup> Id 168:21-169:13 ; 206:3-9; 246:6-15

followed suit to deregulate its utilities, Missouri should not seek to follow suit in this area.<sup>19</sup>

Even MISO recognizes that the Commission has a unique role among state regulators in terms of dictating the conditions on which Ameren Missouri participates in MISO.<sup>20</sup> While MJMEUC seeks no harm to Ameren Missouri or its ability to provide benefit to its customers, MJMEUC cannot sit by and submit its customers (and owners) to unnecessary wholesale market price volatility and risk.

MISO's proposed capacity tariff provides, at best, only hypothetical benefits for Ameren Missouri and only under certain assumptions. The proposal could open the door to the run-away capacity markets in other RTOs as discussed in Mr. Wilson's testimony. Other RTOs and states have the shields of being first-movers in respect to capacity markets; we in Missouri have knowledge from seeing what has occurred in other markets, and should not rush to join in on the carnage. With so little upside, and such a large down-side, MJMEUC respectfully requests that the Commission, if so inclined to continue Ameren Missouri's participation in MISO, do so on terms that would allow any party to seek review of that participation before harm actually occurs, as well as the other prayed for relief.

Respectfully Submitted,

By: /s/ Douglas L. Healy

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<sup>19</sup> Id 207:15-208:6

<sup>20</sup> Id 216:22-217:3

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing post-hearing brief was served by e-mailing a copy to all parties on the Commission's Service List this 9<sup>th</sup> day of March, 2012.

/s/ Douglas L. Healy

DOUGLAS L. HEALY