

**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

**EMPIRE’S RESPONSE TO ORDER DIRECTING ANSWERS**

**COMES NOW** The Empire District Electric Company (Empire), and, in response to the Missouri Public Service Commission’s (Commission) Order Directing the Parties to Answer Certain Questions, states as follows:

On June 1, 2011, the Commission issued its Order Directing the Parties to Answer Certain Questions. Therein, the Commission directed “all the parties to provide written answers” to certain identified questions. Empire hereby provides its answers to those Commission questions.

*1. Can Missouri’s Electric Utility Resource Planning Process currently defined in 4 CSR 240-20.010 through 20.080 be preserved if MISO’s Resource Adequacy Enhancements Proposal is implemented? If the answer requires qualification, please state them.*

**Empire Response:** Based on The Empire District Electric Company’s (Empire) limited knowledge of MISO’s planned Resource Adequacy Enhancement process and recent white papers on the subject obtained by Empire, it appears that 4 CSR 240-20.010 can be preserved.

*2. Assuming MISO moves to a long-term capacity market (3 to 5 years), what qualifications or prerequisites will MISO place on Load Serving Entities (LSEs) in order for them to be able to fully “self schedule” or “opt out” of Resource Adequacy requirements in the forthcoming MISO Resource Adequacy*

*Enhancements Proposal?*

**Empire Response:** Such qualifications or prerequisites for a long-term capacity market within the MISO market area would be better addressed by MISO and/or Ameren Missouri.

*3. Are MISO, Ameren Missouri and the other parties in this proceeding willing to make Ameren Missouri's continued participation in MISO contingent on Ameren Missouri's continued participation and compliance with the Missouri Public Service Commission's Electricity Utility Resource Planning Process or any succeeding rules?*

**Empire Response:** Empire believes such conditions should be reasonable to the parties, however such conditions should be explicit and narrowed with respect to “succeeding rules”.

*4. Would it be appropriate for the Commission to make Ameren Missouri's participation in MISO expressly contingent on MISO's willingness to waive any exit fees as a result of the Missouri Public Service Commission making a determination that Ameren Missouri or any successor's compliance with the Electric Utility Resource Planning Process and the Missouri Public Service Commission has been abrogated, changed or made irrelevant in any way or for any reason related to Ameren Missouri's compliance with the Electric Utility Resource Planning Process?*

**Empire Response:** Empire does not have sufficient information related to the withdrawal or termination fee provisions of MISO members pursuant to MISO's FERC approved bylaws, membership agreement, and/or open access transmission tariff to answer this question.

*5. Will Ameren Missouri and MISO guarantee that Ameren Missouri's ratepayers and other Load Serving Entities (LSEs) located inside the Ameren*

*Missouri transmission footprint will be held harmless if LSEs in MISO are not able to fully “self schedule” or “opt out” in order to meet their Resource Adequacy requirements in the forthcoming MISO Resource Adequacy Enhancements Proposal? See Attachment #1.*

**Empire Response:** Empire believes this response should be better addressed by Ameren Missouri and MISO.

*6. If Ameren Missouri and MISO cannot make the foregoing guarantee, would it be appropriate for the Commission to make its approval of Ameren Missouri’s continued participation in MISO contingent on MISO’s willingness to waive exit fees if Ameren Missouri loses the ability to self-schedule and opt out of the capacity market?*

**Empire Response:** Empire believes this response would be better addressed by Ameren Missouri and MISO.

*7. When MISO determines that new transmission needs to be built in Ameren Missouri’s territory (such as the multi-value projects or MVPs), who has the right of first refusal to build that project?*

**Empire Response:** Empire believes this response should be addressed by MISO.

*Would Ameren Transmission Company (ATC) have any right to construct transmission projects in Missouri “but for” Ameren Missouri’s membership in MISO?*

**Empire Response:** Empire believes this response would be better addressed by Ameren Transmission Company and MISO.

*8. What criteria, if any, does Ameren Missouri use to determine whether or not it will build a transmission project itself or allow ATC to construct it? Please describe and provide the statutory/regulatory support for Ameren Missouri's authority to transfer or waive its right to construct MISO transmission projects and then allow ATC construct those projects.*

**Empire Response:** Empire believes this response should be addressed by Ameren Missouri.

*Where Ameren Missouri either implicitly or explicitly consents to ATC constructing a transmission project in Missouri, do the Missouri Public Service Commission's affiliate transaction rules found in 4 CSR 240-20.15 apply?*

**Empire Response:** As Ameren Transmission Company and Union Electric Company d/b/a Ameren Missouri both appear to be subsidiaries of Ameren Corporation, they are likely affiliated entities, as defined by Commission Rule 4 CSR 240-20.015(1)(A). However, there will only be an "affiliate transaction" if there is a "transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity . . . ." Commission Rule 4 CSR 240-20.015(1)(B). The question as to applicability of the rule would appear to rest not on Ameren Missouri's consent, but rather on whether Ameren Missouri will be receiving services from the affiliated entity or from some other entity (such as MISO).

*How can Ameren Missouri and MISO guarantee that Missouri consumers are best served by allowing ATC to construct the projects in Missouri and not bidding the projects out?*

**Empire Response:** Empire believes this response should be addressed by Ameren Missouri and MISO.

*9. Please describe ATC's right to use eminent domain in Missouri and provide both statutes and case law in support of your position.*

**Empire Response:** Empire believes this response should be better addressed by MISO.

*Are the parties willing to make Ameren Missouri's MISO membership contingent on Ameren and MISO agreeing to allow the Commission to approve any transmission projects to be constructed in Ameren Missouri's service territory prior to their being built? If the answer to the preceding question is no, why not?*

**Empire Response:** Empire does not believe it has the authority to make Ameren Missouri or MISO agree to this condition. Empire believes that any conditions would have to be agreed to by Ameren Missouri within the context of a stipulated resolution or imposed by the Commission as a result of a litigated case.

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*The Commission directed only MISO and Ameren Missouri to provide written answers to questions 11-15.*

\* \* \* \* \*

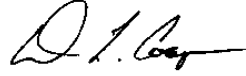
*16. Are there any other questions the Commission should be asking, but has failed to ask?*

**Empire Response:** Empire does not have any additional questions, at this time, for the Commission to ask of the parties.

**WHEREFORE,** Empire prays that the Commission consider the above responses and

issue such orders as the Commission deems appropriate.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on June 16, 2011, to the following:

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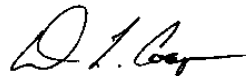
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