

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 21, 1999**

CASE NO: EA-2000-37

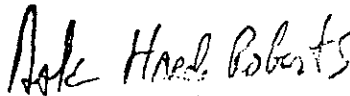
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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 21st day of October, 1999.

In the Matter of the Application of Union)
Electric Company, d/b/a AmerenUE, for) **Case No. EA-2000-37**
Approval of the Transfer of Generating)
Assets by an Affiliate to Another Affiliate.)

ORDER DENYING INTERVENTION

On July 21, 1999, Union Electric Company, doing business as AmerenUE (UE), filed its application for findings by the Commission under 15 U.S.C. § 79z-5a(c), the Public Utilities Holding Company Act (PUHCA), relating to Exempt Wholesale Generators. UE seeks these findings in connection with a proposed restructuring of its Illinois-based affiliate, AmerenCIPS. According to UE's application, that restructuring proposes the transfer of all generating assets currently owned by AmerenCIPS, and associated liabilities, to a new affiliate to be known as Genco. UE asserts that all of the generating assets involved are located in Illinois and none are located in Missouri. UE requested that the Commission make these findings within 90 days of the date of filing.

On July 26, 1999, the Commission issued its Order Directing Notice. That Order directed notice to the County Commission of every county within UE's service areas, to members of the General Assembly representing UE's service areas, and to the newspapers which serve

UE's service areas as listed in the newspaper directory of the current Official Manual of the State of Missouri. The Order also established a period of twenty days within which applications to intervene would be accepted. That period expired on August 16, 1999.

On October 8, 1999, the Missouri Industrial Energy Consumers (MIEC) filed their Application to Intervene Out of Time. MIEC states that it should be permitted to intervene because its members are all large customers of UE and their interest herein, consequently, is different from that of the general public. MIEC further states that good cause exists, such as excuses its tardy application, in that its counsel only recently became aware of this case. MIEC asserts that its intervention herein would not prejudice any party.

On October 14, 1999, UE filed its Objection to MIEC's Application to Intervene Out of Time. UE contends that MIEC has failed to show good cause such as would excuse its tardy application. UE further contends that permitting MIEC to intervene at this juncture would indeed prejudice UE because UE has reached a favorable settlement with the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC).

Commission Rule 4 CSR 240-2.075 governs intervention. Rule 4 CSR 240-2.075(4)(D) provides that untimely applications to intervene may be granted for good cause shown. Rule 4 CSR 240-2.075(2) requires the intervention applicant to state its interest in the proceeding, its reason for intervening, and whether or not the applicant supports the relief sought. Rule 4 CSR 240-2.075(3) requires an intervention applicant that is an association to list its members in an appendix to

the application to intervene. Finally, Rule 4 CSR 240-2.075(4) lists grounds upon which intervention will be granted: (A) that the intervention applicant has an interest different from that of the general public; (B) that the intervention applicant is a municipality or political subdivision; or (C) that granting intervention would serve the public interest.

Intervention is the process whereby a stranger becomes a full participant in a legal action. Ballmer v. Ballmer, 923 S.W.2d 365, 368 (Mo. App., W.D. 1996). The Commission's rules, like the civil rules, distinguish between those with a right to intervene and those with a mere desire to intervene. Due process requires that any person with a life, liberty or property interest that will be affected by the outcome of a legal matter be permitted to intervene upon timely application. See U.S. Constitution, Amendment XIV; Missouri Constitution, Article I, Section 10 (1945). Such persons have a right to intervene; however, even persons with a right to intervene must exercise that right in good time and in accordance with established procedures. *Supra*, 923 S.W.2d at 368.

Does MIEC have a right to intervene herein? MIEC's application states that its members have an interest different from that of the general public in that they are all large customers of UE. They seek intervention because UE's filing in this case "may impact their rates for electricity and the terms and conditions of their electric service." In Ballmer, *supra*, an insurance company sought to intervene in a "friendly" lawsuit wherein a father sued his son for the wrongful death of another son in an automobile accident. The

insurance company sought to intervene to prevent its insured from confessing judgment. Intervention was denied because the insurer lacked an interest in the case: "As to whether State Farm has an 'interest' in the underlying action, this court has stated that 'the liability of an insurer as a potential indemnitor of the judgment debtor does not constitute a direct interest in such a judgment as to implicate intervention as a matter of right.'" *Id.* (citations omitted).

Likewise, the Commission considers that the possibility that this matter may impact the rates, terms and conditions under which MIEC's members receive electric service is not a sufficiently direct interest to create a right of intervention. Any rate increase by UE or change in the terms and conditions under which UE renders service will require additional filings with this Commission. MIEC's members will have ample opportunity to participate in any such actions.

MIEC also contends that granting their intervention "would serve the public interest by assisting the development of a more complete record for decision by the Commission." This contention is similar to permissive intervention under the civil rules. An economic interest, such as MIEC claims, will support permissive intervention. See Meyer v. Meyer, 842 S.W.2d 184, 188 (Mo. App., E.D. 1992). However, permissive intervention is, by its nature, discretionary. *Id.* MIEC's interest is remote and MIEC does not assert any certainty that the interests of its members will be harmed by the outcome of this case. The present parties have reached agreement and a settlement is imminent. Permitting MIEC to intervene at this juncture

will certainly harm the present parties by delaying the resolution of this case, while providing no real protection to MIEC's members. Upon consideration of all of the circumstances and the arguments of the parties, the Commission will deny MIEC's application to intervene.

IT IS THEREFORE ORDERED:

1. That the Application to Intervene Out of Time filed by the Missouri Industrial Energy Consumers on October 8, 1999, is denied.
2. That this order shall become effective on November 2, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur
Schemenauer, C., absent

Thompson, Deputy Chief Regulatory Law Judge.

: Atty/Secy:

Thompson Hope

10-18
Date Circulated

EA-2000-37
CASE NO.

JK
Lumpe, Chair

JK
Crumpton, Commissioner

JK
Murray, Commissioner

JK
Schemenauer, Commissioner

JK
Drafiel, Vice-Chair

10-21
Agenda Date

JK

Action taken:

4-0 AS

Must Vote Not Later Than

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,

Missouri, this 21st day of October, 1999.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge