

**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

**INITIAL POST-HEARING BRIEF OF
MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

Midwest Independent Transmission System Operator, Inc. ("MISO"), pursuant to the Commission's Notice Regarding Briefing Schedule of February 10, 2012, states the following as its Initial Post-hearing Brief:

The overriding issue in this case is whether Ameren Missouri's continued participation in MISO under terms of the November 17, 2011 Non-Unanimous Stipulation and Agreement ("Stipulation") is not detrimental to the public interest. The pre-filed testimony admitted into the record, as well as the live testimony at the evidentiary hearing on February 9-10, 2012, shows that Ameren Missouri's continued participation in MISO is overwhelmingly in the public interest.

The Stipulation was agreed to by Ameren Missouri and Staff, as well as by the Missouri Industrial Energy Consumers ("MIEC") and by MISO. It was not opposed by either The Empire District Electric Co.¹ ("Empire") or Southwest Power Pool ("SPP").

The Stipulation is opposed only by the Office of the Public Counsel ("OPC") and by the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"). Their concerns relate entirely to issues that are not pertinent to whether Ameren Missouri's membership in MISO is in

¹ Empire did not offer testimony that it prefiled from Empire employee Bary Warren and from SPP's Lanny Nickel. See Tr. 81. Therefore, none of the issues raised by those witnesses is in evidence or otherwise before the Commission.

the public interest. Their objections are peripheral to this central issue, and are either hypothetical or remote.

Section 10(b) of the Stipulation allows any party to request the Commission to investigate a material event that poses a substantial risk that is detrimental to the public. The Commission, of course, is free to investigate or inquire at any time. Given these protections, the Commission should approve this Stipulation and permit Ameren Missouri to continue its MISO membership through May of 2016.

I. Public Interest.

Neither OPC nor MJMEUC disputed Ameren Missouri's testimony that approximately \$105 million of net benefits would accrue to Ameren Missouri during the years 2012-2014 if its participation in MISO continued. See Arora Direct Testimony, Ex. 1 at 3; Arora Surrebuttal Testimony, Ex. 2 at 2; Arora Supp. Surrebuttal Testimony, Ex. 3 at 2. The Stipulation also provides, consistent with the Commission's earlier approvals, that Ameren's participation in MISO will be granted through a specific point in time, May 31, 2016.

Ameren Missouri has agreed to prepare and file an additional, comprehensive cost/benefit study by November 15, 2015. Such study will address Ameren Missouri's continuing participation in MISO and the impact of MISO's resource adequacy construct, as it then exists, as well as the option of participating in SPP and any impacts from the Entergy's operating utilities joining MISO, assuming this occurs. See Ameren Missouri's Supplemental Statement of Position at 1 (Jan. 27, 2012).² The Stipulation will also be binding upon Ameren Transmission Company. Id. at 2.

² Ameren Missouri agreed to consider items for analysis that MJMEUC might suggest, although the modeling of the study would be under Ameren Missouri's management. See Tr. 96.

Because Ameren Missouri seeks to continue the transfer of functional operational control over its transmission assets to MISO, the relevant statute is Section 393.190.³ The Missouri Supreme Court has stated that approval under this provision requires a showing that such a transfer is not detrimental to the public. See State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 735 (Mo. en banc 2003); State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. en banc 1934).

In applying this test, the Commission has stated: “Determining what is in the interest of the public is a balancing process. In making such a determination, the total interests of the public served must be assessed.” In re KCP&L Greater Missouri Operations Co., 2009 WL 762539 at *10, No. EA-2009-0118 (2009). There the Commission stated:

Individual rights are subservient to the rights of the public. The “public interest” necessarily must include the interests of both the ratepaying public and the investing public; however, as noted, the rights of individual groups are subservient to the rights of the public in general. [Id. at * 10.]

In balancing the advantages or disadvantages of a particular proposal, the Commission must survey the universe of interests. “This means that some of the public may suffer adverse consequences for the total public interest.” See In re Sho-Me Power Corp., 1993 WL 719 871, No. EO-93-259 at *9 (1993). In the Sho-Me case, the Commission observed that 72% of Sho-Me’s members favored a plan to convert the utility from a Chapter 393 regulated electric company to a Chapter 394 rural electric cooperative. The opponents of the plan, which was approved by the Commission, represented approximately 4% of the total retail customers of Sho-Me. Id. at * 9-11.

³ All statutory references are to the Missouri Revised Statutes (2000), as amended.

In the present proceeding, the evidence from Ameren Missouri is clear that its residential customers -- which exceed 1 million⁴ -- would be benefited by the Stipulation. Neither OPC nor MJMEUC have indicated what specific members of the public would be harmed by the approval of the Stipulation. Indeed, while MJMEUC has opposed the Stipulation, certain of its members likely do not favor the position it has taken in this case since, for example, the City of Columbia is already a member of MISO. See MISO 2010 Annual Report at 20.

II. Opponents of the Stipulation.

None of the reasons offered by OPC or MJMEUC are sufficient to warrant disapproval of the Stipulation.

A. OPC Objections.

OPC's witness Ryan Kind recommended that the Commission only approve the Stipulation if two conditions were imposed.

The first condition requires Ameren Missouri to construct all transmission projects within its service territory unless Ameren Missouri receives approval from the Commission for another entity to build such projects and to possess a certificate of convenience and necessity. While MISO takes no position with regard to this condition, it is clear that issues raised by this condition are not relevant to Ameren Missouri maintaining its membership in MISO. The Commission continues to have full regulatory authority over the operations of Ameren Missouri, and approval of the Stipulation in this case will not diminish that authority one bit.

OPC's second condition recommends that Ameren Missouri be required to have its own representative participate in MISO Transmission Owners Committee business and participate in other MISO stakeholder groups, separate and apart from representatives on behalf of Ameren Services Company or Ameren Corporation.

⁴ See 2012 PSC Annual Report at 30.

Mr. Kind acknowledged that the MISO Transmission Owners Agreement provides: “A public utility holding company system shall be treated as a single Owner for purposes of this Agreement.” See Art. One, Section I(P), Midwest ISO Agreement, Rate Schedule 01, MISO FERC Electric Tariff (“MISO Agreement”). However, contrary to his recollection that this is a relatively new provision,⁵ the definition of “Owner” in the Transmission Owners Agreement has not changed since it was first filed by MISO in November 2000 after FERC’s orders approving the formation of MISO. See Ex. A, Definitions of “Owner” (original tariff filed November 20, 2000 and current tariff as of July 31, 2010). See also Midwest Indep. Trans. System Operator, Inc., 84 FERC ¶61,231 (1998) (“MISO”), Order on Motion for Reconsideration, 85 FERC ¶61,250 (1998), Order on Rehearing, 85 FERC ¶61,372 (1998), Order on Compliance, 87 FERC ¶61,085 (1999).

In response to Commissioner Kenney’s questions regarding how the voting structure could be changed in light of MISO’s FERC-approved tariff, Mr. Kind had no solution: “I really see it as almost an unsolvable issue” (Tr.263). He admitted that it was “difficult to answer that question” and that even the guidance offered by the Arkansas Public Service Commission in a different context has “not been tried yet to see if that’s workable.” See Tr. 252.⁶

Given this Commission’s authority over Ameren Missouri, there is no need for it to impose conditions relating to the voting process at MISO, which is a carefully constructed arrangement that balances the votes of Transmission Owner Members with those of non-Transmission Owner Members and non-Member stakeholders. Moreover, the philosophical

⁵ See Tr. 253.

⁶ As was explained to the Commission at the hearing, the Arkansas Public Service Commission clarified that its previous statement regarding MISO Transmission Owner voting rights and Entergy Arkansas, Inc. having its own vote was only “guidance.” See In re Entergy Arkansas, Inc., Order No. 56 at 1, Docket No. 10-011-U (Ark. P.S.C., Dec. 6, 2011).

cornerstone of MISO is that it is an independent organization, chartered as a Delaware non-stock, not-for-profit corporation which operates “exclusively for the promotion of social welfare, in furtherance of the public policy reflected in the Order of the FERC approving this Agreement and FERC Order No. 888.” See MISO, 84 FERC ¶61,231 at 62,139 & n.6; Art. Two, § I(A)(2), MISO Agreement.⁷

While MISO listens carefully to all of its Members, whether they own transmission assets or not, as well as important non-Member stakeholders such as the Office of the Public Counsel, other public advocacy groups, and state regulatory authorities like this Commission, the final decisions are made by an impartial, independent Board of Directors, upon the recommendation of MISO management. See MISO, 84 FERC ¶61,231 at 62,147-48 & n.63, 62,152-53 (noting “independent and impartial search” for “non-partial” directors who have no direct financial interest in Members, their affiliates or Users of the transmission system).

Given this scrupulously balanced and independent corporate governance model, OPC has offered no convincing reason why conditions should be imposed in this case to change those operations.

B. MJMEUC Objections.

All of the concerns voiced by MJMEUC relate to what the Federal Energy Regulatory Commission might do with regard to MISO’s resource adequacy requirement filing submitted on July 20, 2011 in Docket No. ER-11-4081. As of this date, FERC has not issued any ruling. When FERC does issue an order, it is likely to be the subject of multiple requests for rehearing which will undoubtedly influence FERC’s final order.

⁷ MISO is a tax-exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code. See Ex. B.

MJMEUC's concerns relate to MISO's proposal for a one-year capacity market and a fear that the MISO proposal will be rejected in favor of a market that is similar to the one operated by PJM Interconnection LLC ("PJM"). As MJMEUC's counsel properly conceded in response to Commissioner Jarrett's question, there is no basis today for the Commission to determine that some future FERC order in a MISO case constitutes a detriment to the public interest in this proceeding.⁸

MJMEUC presented two witnesses who raised concerns regarding the PJM capacity markets. Significantly, both Marlin Vrbas and James F. Wilson had no objections to the MISO resource adequacy proposal. Mr. Wilson stated that MISO's capacity construct "as proposed, it's fairly benign." (Tr. 210). He elaborated:

It has the ... minimum offer price rule provision [which] has a lot of features that would really limit it to cases where somebody really is trying to manipulate the market, unlike in PJM. You have the self-supply and the very flexible opt-out. So you have provisions that make it very benign and I don't, you know, see it very problematic. [Tr. 210]

Mr. Wilson acknowledged in his prefiled testimony that MISO's proposed minimum offer price rule was much more reasonable than PJM's. See Ex. 17, Wilson Rebuttal Testimony at 29.

Mr. Vrbas stated that "MJMEUC is concerned that, over time, the increased revenues which Ameren expects to receive with the initiation of a PJM-style capacity market in MISO will come at the expense of MJMEUC and other [load serving entities], including Ameren Missouri and its customers." See Ex. 16, Vrbas Rebuttal Testimony at 5. His solution to this hypothetical problem is for the Commission to adopt a plan to review MISO's capacity construct (presumably

⁸ Commissioner Jarrett: "But as it stands today, and FERC not having even approved the proposed capacity construct or [resource] adequacy construct, ... would that be a basis by itself to make a determination that it's detrimental to the public interest?"

Mr. Healy: "I don't believe so, no." [Tr. 79].

once FERC finally acts) and to conduct periodic reviews of its impact on load serving entities (“LSEs”). Id. at 6, 16. Given this Commission’s active participation in MISO affairs, its seat on the MISO Advisory Committee, and its leadership in the Organization of MISO States, Inc., as well as its authority over Ameren Missouri under state law, there is no need for further conditions to be imposed in this proceeding.

It should be noted that neither Mr. Wilson nor any other witness on behalf of MJMEUC has filed comments or testimony at FERC in opposition to MISO’s proposal. (Tr. 213).

In his prefiled testimony, MISO’s Vice President of Operations Richard Doying responded to the MJMEUC witnesses, noting how MISO’s proposal is very different from the “Eastern-style” capacity markets of PJM and other such organizations. He described the extensive Self-Scheduling and Opt-Out Provisions which permit LSEs to avoid participation in the planning resource auction. See Ex. 15, Doying Surrebuttal Testimony at 9. MISO’s capacity market is proposed for 12-to-14 months, which provides parties with much greater flexibility in choosing how to meet resource adequacy requirements, and which is much different from the three-year PJM capacity market. Id. Additionally there are “grandmother agreements” and hedging provisions in the MISO proposal that will provide LSE’s with financial protections. Id.

Most significantly, the MISO proposal respects the integrated resource planning protocols of the states in which MISO members reside. Id. at 14. As Mr. Doying stated at the hearing, under MISO’s proposal the “primary responsibility for resource adequacy in the MISO region” will continue to lie with “the state commissions who ultimately [are] responsible for ensuring that there is capacity resource [and] demand response resources that are available to meet load.” (Tr. 223-24).

Mr. Doying emphasized that MISO’s resource adequacy mechanism under Module E today, as well as the MISO proposal as filed at FERC, complements and “doesn’t replace” the

states' system of integrated resource planning. *Id.* at 224. Consequently, this Commission's jurisdiction over Ameren Missouri or any other LSE subject to its authority under Chapter 22 (Electric Utility Resource Planning) of its regulations remains fully intact.

MISO's resource adequacy construct was developed with its membership in mind, most of whom do business in states like Missouri that traditionally regulate vertically-integrated utilities. *See* Ex. 15, Doying Surrebuttal Testimony at 10. Since MISO's resource adequacy proposal was designed to satisfy these members and other stakeholders, and to allow greater flexibility than exists in the capacity markets of other regional transmission organizations, this Commission should await the outcome of any FERC determinations regarding these proposals and the refinements that are sure to follow FERC's initial order.

Finally, while Mr. Wilson testified in his prefiled rebuttal on what resource adequacy concepts he would "expect" MISO stakeholders to "push for" (Tr. 27-29), during cross-examination he conceded he had personally never participated in the MISO stakeholder process. He could not name the most senior stakeholder group at MISO (Tr. 191-92), which is the Advisory Committee. Mr. Wilson also admitted that he had never attended a meeting of the Supply Adequacy Working Group that was tasked with gathering stakeholder opinion regarding these resource adequacy issues, and that he had never submitted comments on behalf of MJMEUC or any of its members to that group. (Tr. 192).

Because all of the concerns raised by MJMEUC and its witnesses relate to what might happen in the future, there is no sufficient reason to impose conditions at this time with regard to Ameren Missouri continuing its membership in MISO.

III. Conclusion.

The overwhelming weight of the evidence presented in prefiled testimony, as well as at the hearing demonstrate that it is in the public interest for Ameren Missouri to remain a member

of MISO. Any issues relating to what FERC may order in the pending resource adequacy case concerning MISO capacity markets, the voting and corporate governance structure of stakeholders at MISO, or Ameren Transmission Company's future plans should have little weight in the public interest balancing test which this Commission must apply. The framework that was developed in 2004 when the Commission first approved a stipulation authorizing Ameren Missouri to transfer functional control to MISO remains in place. The benefits of Ameren Missouri's membership remain unchallenged, and a future cost/benefit analysis assessing Ameren Missouri's decision to continue in MISO will provide the Commission with the information it needs.

Given the many positive attributes of Ameren Missouri's membership in MISO, as recounted in the testimony of Mr. Arora and Mr. Doying, among others, the Stipulation should be approved as submitted and without any additional conditions.

Respectfully submitted,

/s/ Karl Zobrist

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System Operator, Inc.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was e-mailed on March 9, 2012 to the persons on the Commission's service list in this case.

/s/ Karl Zobrist
Attorney for Midwest Independent Transmission
System Operator, Inc.

Article One

H. Non-transferred Transmission Facilities. The booked transmission facilities not identified in Appendix H to this Agreement which are the subject of the Agency Agreement.

I. Owner. A utility or other entity which owns, operates, or controls facilities for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven-factor (7-factor) test of the FERC set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC) and which is a signatory to this Agreement. A public utility holding company system shall be treated as a single Owner for purposes of this Agreement. Each Owner shall pay the applicable membership fees and become a Member. Any termination of a utility's or entity's status as an Owner shall be determined pursuant to this Agreement.

J. Transfer Date. The date established pursuant to Article Two, Section X, Paragraph B of this Agreement.

K. Transmission Tariff. The transmission tariff on file with the FERC under which the Midwest ISO will offer transmission service, or any successor tariff.

L. Transmission System. The transmission facilities of the Owners which are committed to the operation of the Midwest ISO by this Agreement. These facilities shall include (i) all networked transmission facilities above 100 kilovolts (hereinafter "kV"); and (ii) all networked transformers where the two (2) highest voltages qualify under the voltage criteria of item (i) above. The facilities may also include other facilities that the Midwest

as required herein. Such person or entity shall be a Member during the period covered by the applicable membership fees unless earlier terminated pursuant to this Agreement.

L. Midwest ISO Balancing Authority Area. Version: 0.0.0 Effective: 7/31/2010

The collection of generation, transmission, and loads within the metered boundaries of the Midwest ISO. The Midwest ISO Balancing Authority Area consists of the transmission system, load and generation resources interconnected to the Midwest ISO Transmission System, as defined under the Tariff, that: (i) function as a centrally coordinated system and (ii) operate subject to the single set of dispatch instructions determined and issued by the Midwest ISO.

M. NERC. Version: 0.0.0 Effective: 7/31/2010

North American Electric Reliability Corporation.

N. Non-owner Member. Version: 0.0.0 Effective: 7/31/2010

A Member which is not an Owner.

O. Non-transferred Transmission Facilities. Version: 0.0.0 Effective: 7/31/2010

The booked transmission facilities not identified in Appendix H to this Agreement which are the subject of the Agency Agreement.

P. Owner. Version: 0.0.0 Effective: 7/31/2010

A utility or other entity which owns, operates, or controls facilities for the transmission of electricity in interstate commerce (as determined by the Midwest ISO by applying the seven-factor (7-factor) test of the FERC set forth in FERC Order No. 888, 61 Fed. Reg. 21,540, 21,620 (1996), or any successor test adopted by the FERC) and which is a signatory to this Agreement. A public utility holding company system shall be treated as a single Owner for purposes of this Agreement. Each Owner shall pay the applicable membership fees and become a Member. Any termination of a utility's or entity's status as an Owner shall be determined pursuant to this Agreement.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: JAN 17 2001

Midwest Independent Transmission System
Operator, Inc.
c/o Karl Zobrist, Blackwell Sanders Peper Martin
2300 Main Street, Suite 1000
Kansas City, MO 64108

Employer Identification Number:
43-1827033
Internal Revenue Code:
501(c)(4)
Issuing Specialist:
Sadie Copeland ID# 50-09335
Toll Free Customer Service:
877-829-5500
Accounting Period Ending:
December 31
Form 990 Required:
Yes

Dear Applicant:

Based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in the section indicated above.

Please notify the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office if there is any change in your name, address, sources of support, purposes or method of operation. If you amend your organizational document or bylaws, please send a copy of the amendment to that office. The mailing address is: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

Unless specifically excepted, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) for each employee to whom you pay \$100 or more during the calendar year. Unless excepted, you are also liable for tax under the Federal Unemployment Tax Act for each employee to whom you pay \$50 or more during a calendar quarter if, during the current or preceding calendar year, you had at least one employee at any time in each of 20 calendar weeks or you paid wages of \$1,500 or more in any calendar quarter.

In the heading of this letter we have indicated whether you must file Form 990, *Return of Organization Exempt from Income Tax*. If "Yes" is indicated, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. If your gross receipts each year are not normally more than \$25,000, we ask that you establish that you are not required to file Form 990 by completing Part I of that Form for your first year. Thereafter, you will not be required to file a return until your gross receipts exceed the \$25,000 minimum. For guidance in determining if your gross receipts are "normally" not more than the \$25,000 limit, see the instructions for the Form 990. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. The maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000. This penalty may also be charged if a return is not complete, so please be

EXHIBIT B

Midwest Independent Transmission System Operator, Inc.

sure your return is complete before you file it. Form 990 should be filed with the Ogden Service Center, Ogden, UT 84201-0027.

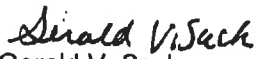
You are required to make your Form 990 available for public inspection for three years after the later of the due date of the return or the date the return is filed. You are also required to make available for public inspection your exemption application, any supporting documents, and this exemption letter. Copies of these documents must be provided to any individual upon written or in person request without charge other than reasonable fees for copying and postage. You may fulfill this requirement by placing these documents on the Internet. Penalties may be imposed for failure to comply with these requirements. Additional information is available in Publication 557, *Tax-Exempt Status for Your Organization*, or you may call our toll free number shown above.

You are not required to file federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T, *Exempt Organization Business Income Tax Return*. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code. Under section 6113, any fund-raising solicitation (including a solicitation for membership dues payment) you make must include an express statement (in a conspicuous and easily recognizable format) that contributions and gifts are not deductible as charitable contributions for federal income tax purposes. Section 6113 does not apply, however, if your annual gross receipts are normally \$100,000 or less, or if your solicitations are made to no more than ten persons during a calendar year. The law provides penalties for failure to comply with this requirement, unless the failure is due to reasonable cause.

Please use the employer identification number indicated in the heading of this letter on all returns you file and in all correspondence with the Internal Revenue Service. Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records. If you have any questions about this letter, or about filing requirements, excise, employment, or other federal taxes, please contact the Ohio TE/GE Customer Service office at 877-829-5500 (a toll free number) or correspond with that office using the address indicated above.

Sincerely,


Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4