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December 27, 2005

FILED²

DEC 27 2005

Missouri Public
Service Commission

Ms. Colleen Dale, Secretary
Missouri Public Service Commission
Governor Office Building
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102

Re: In re: Application of Union Electric Company – NRG Audrain Facility

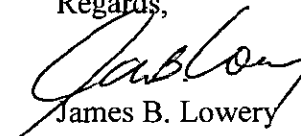
Dear Ms. Dale:

Submitted with this letter are an original and eight copies of Union Electric Company d/b/a AmerenUE's Application and Motion for Expedited Treatment relating to a request for approval of a financing arrangement relating to the NRG Audrain combustion turbine facility located in Audrain County, Missouri. An original and eight copies of a Motion for Protective Order are also being submitted concurrently herewith. One of the exhibits to the Application, Exhibit HC-1, is submitted as a highly confidential document, as provided for in the Motion for Protective Order.

The Application requests that a deadline to intervene be set within 15 days after its filing, that a prehearing conference be held within 10 days after that, and that Staff be directed to file a recommendation on or before February 17, 2006. We have discussed these matters with Staff and Staff concurs in the February 17 date.

Should you have any questions about this filing, please contact me at the telephone number listed above or via email at lowery@smithlewis.com. Thank you for your assistance with these filings.

Regards,



James B. Lowery

c: General Counsel's Office, Office of the Public Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²

DEC 27 2005

Missouri Public
Service Commission

Application of Union Electric Company)
d/b/a AmerenUE for an order authorizing Applicant)
(if and to the extent the transaction described)
herein would constitute the issuance of an)
evidence of indebtedness by Applicant under)
Sections 393.180 and 393.200, RSMo))
to execute, deliver and perform the)
agreements and instruments necessary to assume)
a lease and related documents pertaining to the)
NRG Audrain combustion turbine generator)
facility owned by Audrain County, Missouri which)
was constructed as part of a revenue bond)
project under Chapter 100, RSMo.)

APPLICATION AND MOTION FOR EXPEDITED TREATMENT

COMES NOW Union Electric Company d/b/a AmerenUE (the "Applicant"), and pursuant to 4 CSR 240-2.060, hereby makes application to the Missouri Public Service Commission (the "Commission") requesting the Commission's order authorizing Applicant (if and to the extent the transaction described herein would constitute the issuance of an evidence of indebtedness by Applicant under Sections 393.180 and 393.200, RSMo) to execute, deliver and perform the agreements and instruments necessary to assume a lease and related documents pertaining to the NRG Audrain combustion turbine generator ("CTG") facility owned by Audrain County, Missouri which was constructed as part of a revenue bond project under Chapter 100, RSMo, and further requesting expedited treatment of its Application pursuant to 4 CSR 240-2.080(16). In support thereof, Applicant states as follows:

1. Applicant is a Missouri corporation doing business under the fictitious name of AmerenUE, in good standing in all respects, with its principal office and place of business located at 1901 Chouteau Avenue, St. Louis, Missouri 63103. Applicant is engaged in providing

electric and gas utility services in portions of Missouri as a public utility under the jurisdiction of the Commission. There is already on file with the Commission a certified copy of Applicant's Certificate of Corporate Good Standing (*see MPSC Case No. EF-2003-0514*), and Applicant's Fictitious Name Registration as filed with the Missouri Secretary of State's Office (*see MPSC Case No. GO-98-486*), and said documents are incorporated herein by reference and made a part hereof for all purposes.

2. Communications with regard to this Application should be directed to:

Thomas M. Byrne
Managing Associate General Counsel
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149
St. Louis, MO 63166-6149
314-554-2514
314-554-4014 (fax)
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and

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Other than cases that have been docketed at the Commission, Applicant has no pending actions or final unsatisfied judgments or decisions against it from any state or federal court or agency within the past three (3) years which involve customer service or rates. Applicant has no annual report or assessment fees that are overdue.

3. Applicant has entered into an Asset Purchase and Sale Agreement with NRG Audrain Holding, LLC ("NRG Holding")¹ and NRG Audrain Generating LLC² ("NRG Generating") dated December 8, 2006, by which Applicant will acquire, subject to the satisfaction of certain conditions precedent, the assets, including the rights of NRG Generating as lessee under the Lease (as hereinafter defined), comprising what is generally referred to as the NRG Audrain Facility located in Audrain County, Missouri (the "Asset Purchase Transaction"). A copy of the Asset Purchase and Sale Agreement, marked as a Highly Confidential document, is submitted contemporaneously herewith and is incorporated herein by this reference as Exhibit HC-1. The NRG Audrain Facility consists of eight (8) GE 7001EA natural gas fired CTG units with a combined nameplate capacity of 640 megawatts ("MW"), together with associated land, equipment and other improvements. The NRG Audrain Facility was constructed commencing in 2000 as part of a Chapter 100 Industrial Revenue Bond project (the "Chapter 100 Transaction") approved by Audrain County, Missouri (the "County") pursuant to Sections 100.010 to 100.200, RSMo (the "Act"). The Act authorizes municipalities and counties to issue revenue bonds to promote economic development. The revenue bonds are used to construct facilities, such as the NRG Audrain Facility, which will be owned by the municipality or county at issue and leased back to the company developing and operating the facility, pursuant to a long-term lease which calls for the lessee to operate and maintain the facilities and to pay rent in an amount equal to the amount of principal and interest due on the revenue bonds, as and when such principal and interest is due on the bonds. The bonds, issued by the county or municipality, are often owned and held by the operating lessee.

¹ NRG Holding owns 100% of the issued and outstanding membership interests of NRG Generating.

² NRG Audrain Generating LLC is a Delaware limited liability company and was formerly known as Duke Energy Audrain, LLC. The name of the entity was changed to NRG Audrain Generating LLC by a Certificate of Amendment to its Certificate of Formation filed with the Delaware Secretary of State on May 11, 2001.

4. As is typical in such arrangements, pursuant to the Act and a Trust Indenture dated as of April 15, 2000 between the County and a corporate trustee (Commerce Bank, N.A.), the County issued a single taxable industrial revenue bond in the maximum aggregate principal amount of Two Hundred Seventy Million and no/100 Dollars (\$270,000,000) (the "Bond") to finance the purchase and construction of the NRG Audrain Facility on land conveyed by NRG Generating to the County. (The actual amount of bond issuance was \$239,930,497.11) The County therefore owns the NRG Audrain Facility, which includes approximately 100 acres of land and the CTGs situated on such acreage. Such property has consequently been exempt from ad valorem property taxes.³ The County leased the NRG Audrain Facility back to NRG Generating pursuant to a Lease Agreement as of April 15, 2000 (the "Lease"). NRG Generating also purchased the Bond. The Asset Purchase Transaction calls for Applicant to assume NRG Generating's (the lessee's) rights and obligations under the Lease and to also acquire all of NRG Generating's right, title and interest in and to the Bond. Copies of the Trust Indenture and the Lease are attached hereto and incorporated herein by this reference as Exhibits 2 and 3, respectively.

5. The Trust Indenture provides for the specific terms of the Bond, including a final maturity of December 1, 2023 and an interest rate of 10% per annum. The Trust Indenture

³ As also described in ¶ 12 of this Application below, the Asset Purchase and Sale Agreement acknowledges the October 4, 2005 decision of the Western District Court of Appeals in *StopAquila.Org v. City of Peculiar, Missouri*, Case No. WD 65000, Missouri Court of Appeals – Western District. . The Western District's *StopAquila.Org* decision declared invalid a Chapter 100 industrial revenue bond project for an electrical generating facility. The *StopAquila.Org* decision is currently the subject of an Application for Transfer filed with the Missouri Supreme Court by the City of Peculiar, Missouri on December 7, 2005 (Case No. SC87302). Under the Asset Purchase and Sale Agreement, NRG Generating, as seller, will retain liability for payment of property taxes accruing prior to the closing date, including such property taxes which would arise out of the invalidation of the Chapter 100 Transaction as of the initial date thereof, April 15, 2000, based upon the *StopAquila.Org* decision. The Asset Purchase and Sale Agreement contemplates preservation of the benefits of the Chapter 100 Transaction and will allow Applicant and its ratepayers to realize the cost savings associated with the property tax exemption for the NRG Audrain Facility, but as more fully discussed below, preserves the right of Applicant to own and operate the NRG Audrain Facility as a generating resource to serve Applicant's bundled retail load in the event the property tax exemption is lost as a result of the application of the Western District's decision, or otherwise.

specifies the terms and details of the Bond and contains various provisions, covenants and agreements to protect the security of the bondholder (currently NRG Generating, but after assumption of the Lease, Applicant), including the following: (a) pledging and assigning the rents, revenues and receipts of the County derived from the NRG Audrain Facility to secure the payment of the Bond; (b) describing the redemption provisions and other features of the Bond; (c) setting forth the form of the Bond; (d) establishing various funds and accounts to handle the proceeds of the Bond and revenues from the NRG Audrain Facility and setting forth covenants regarding the administration and investment of such funds and accounts by the trustee bank; (e) setting forth the duties of the trustee bank; (f) defining events of default and provisions for enforcing the rights and remedies of the bondholder in such events; and (g) restricting the issuance of additional bonds and the terms upon which the same may be issued and secured. The Bond is a special limited obligation of the County payable solely from the rental payments to be made by NRG Generating (and, from and after assumption of the Lease, by Applicant) pursuant to the Lease. The Bond is also secured by the lien of a Deed of Trust and Security Agreement dated as of April 15, 2000 (a copy of which is attached hereto and incorporated herein by this reference as Exhibit 4) granted by the County encumbering the NRG Audrain Facility. The interest on the Bond is subject to federal and state income taxes.

6. As contemplated by the Act, the County owns fee title to the NRG Audrain Facility and leases the same to NRG Generating, and as noted above, it has therefore been exempt from ad valorem real and personal property taxes and would remain exempt from such taxes during the term of the Lease, subject to the lessee's obligation to make certain grant payments in lieu of taxes to certain taxing districts. Consequently, the County and NRG Generating entered into a Grant Agreement dated as of April 15, 2000, which would also be assumed by Applicant as part of the Asset Purchase Transaction, which requires the payment of

grants to local taxing authorities as specified therein in lieu of the payment of property taxes.

The grants total \$350,000 per year during the first five years following completion of the NRG Audrain Facility, in September of 2001, with the annual payments to increase starting in year six by the percent increase in the consumer price index during the preceding year (with the increases to be capped at three percent (3%) per year). A copy of the Grant Agreement is attached hereto and incorporated herein by this reference as Exhibit 5.

7. The Lease term shall expire no later than the final maturity of the Bond and is a net lease, with the lessee being responsible for rental payments on December 1 of each lease year in an amount sufficient to pay annually the debt service on the Bond, equal to approximately \$23,993,049 per year. The lessee is responsible to maintain, insure, operate and pay any taxes related to the NRG Audrain Facility. During the term of the Lease, the lessee: (a) will be responsible to operate and control the NRG Audrain Facility; (b) has the right, at its own expense, to make certain additions, modifications or improvements to the NRG Audrain Facility; (c) may assign its interests under the Lease or sublease the NRG Audrain Facility; (d) covenants to maintain its corporate existence during the term of the Bond; (e) agrees to indemnify the County for certain liability the County might incur as a result of its participation in these arrangements; and (f) agrees to purchase the NRG Audrain Facility at the end of the Lease term. Applicant, who will become the lessee under the Lease, will record the Lease as a capital lease on its accounting books.

8. The lessee has the option, at any time during the term of the Lease, at the expiration of the Lease term or if there is an early termination of the Grant Agreement, to terminate the Lease and the subsequent tax abatement benefits, and take fee title to the NRG Audrain Facility back by purchasing the County's interest in the NRG Audrain Facility, upon returning the outstanding Bond or providing for the payment of the principal and interest on the

Bond, and paying accrued trustee fees, accrued Grant payments, and a nominal amount to the County.

9. The Bond which was issued by the County evidences the obligation⁴ of the County to the bondholder, which will become Applicant. Because the rent payments under the Lease are the sole source of revenues of the County to pay principal and interest on the Bond, it might be argued that the Lease constitutes an “evidence of indebtedness” of the lessee (which will become Applicant) under Sections 393.180 and 393.200, RSMo. In this regard, Applicant states that no capital will be raised as a result of Applicant’s assumption of the current lessee’s obligations under the Lease as the rent payments to be made by Applicant to the County after its assumption of the Lease will in turn be paid to Applicant by the County, through the bond trustee, in Applicant’s capacity as the bondholder. In fact, the Lease and the bond trust indenture allow for an offset of the lessee’s right to bond payments against its rent obligation, and for tender of bonds to the trustee in lieu of payment of cash rent. The Chapter 100 incentive, as contemplated by the Act, is designed to provide economic development benefits to the County while providing tax benefits to the lessee due to the ad valorem property tax exemption described in ¶ 6 of this Application above. The County’s ownership of the NRG Audrain Facility during the remaining term of the Bond and the Lease is expected to result in net property tax savings to Applicant of approximately \$2 million annually.

10. Even though it is not clear that Applicant is issuing an evidence of indebtedness within the meaning of Sections 393.180 and 393.200, RSMo, because of the unique nature of this Asset Purchase Transaction, Applicant seeks the Commission’s authorization, if and to the extent the same may be required, under Sections 393.180 and 393.200, RSMo. In this regard,

⁴ As previously noted, the indebtedness is not a general obligation of the County, but rather, is a special obligation payable solely out of the rents, receipts and revenues received by the County from the NRG Audrain Facility.

Applicant would note that this Application, with respect to the Chapter 100 issues and issues relating to Sections 393.180 and 393.200, RSMo, is substantially identical to the application approved by the Commission in Case No. EO-2003-0035 relating to Applicant's Peno Creek CTG facility located in Bowling Green, Missouri. The key difference between this Application and the application approved in Case No. EO-2003-0035 is that the Commission elected to exercise its jurisdiction over the Peno Creek CTG transaction under Section 393.190.1, RSMo, on the basis that the transfer of the Peno Creek CTGs to the City of Bowling Green involved a transfer of a part of Applicant's franchise, works or system necessary or useful in the performance of its duties to the public. In view of the similarity of this Application and the Peno Creek CTG facility application relating to the Chapter 100 issues, Applicant states that it is willing to agree to the conditions imposed by the Commission in Case No. EO-2003-0035, which are as follows:

- a. Applicant will continue to record the land and improvements (CTGs) that are the subject of this transaction as a regulated asset on its books similar to other utility property that it owns.
- b. Applicant will record the investment described above in accordance with the Uniform System of Accounts as adopted by this Commission for record keeping purposes.
- c. Applicant will depreciate the CTGs at the annual rate of 4%, which reflects a twenty-five year useful life. This is the present rate for Account No. 344 Other Production Plant – Generators.
- d. Applicant will book each \$350,000⁵ annual grant payment to operating expense during the twenty-year period, as each annual grant payment is made.
- e. No party to this case shall be deemed to have acquiesced to any present or future ratemaking treatment as it relates to this transaction. The ratemaking treatment of this transaction may be addressed in Applicant's next rate case or the Staff's next earnings complaint case, but no

⁵ As escalated pursuant to the Grant Agreement as described in ¶ 6 of this Application above.

ratemaking treatment is being sought by Applicant in this proceeding. The Commission's Order should reflect that no ratemaking determination is being made by the Commission in this proceeding.

11. Because this Application is submitted if and to the extent authorization is required under Sections 393.180 and 393.200, RSMo, Applicant is providing the following additional information pursuant to 4 CSR 240-2.060(6) and 4 CSR 240-3.120:

- a. Reference is made to the description of the Bond and the Lease and the purposes for which the Bond was issued set forth in ¶¶ 3 through 9 of this Application above (4 CSR 240-3.120(1)(A) and (B));
- b. Reference is made to the copies of the Lease and the Grant Agreement attached hereto as Exhibits 3 and 5, respectively, as well as the Trust Indenture and Deed of Trust and Security Agreement, described in ¶¶ 4 and 5 of this Application above, attached hereto as Exhibits 2 and 4, respectively (4 CSR 240-3.120(1)(C));
- c. Attached hereto and incorporated herein by this reference as Exhibit 6 is a certified copy of a resolution of the board of directors of Applicant authorizing the transaction which is the subject of this Application (4 CSR 240-3.120(1)(D));
- d. A balance sheet and income statement of Applicant as of September 30, 2005 (with adjustments showing the effects of Applicant's assumption of the lessee's rights and obligations under the Lease) are attached hereto and incorporated herein by this reference as Exhibit 7 (4 CSR 240-3.120(1)(E));
- e. The capitalization ratios of Applicant as of September 30, 2005 were: short-term debt – 5.7%; long-term debt and unamortized discount and premium 41.8%; preferred stock – 1.9%; and common equity – 50.5%. Giving effect to the financial transactions noted in Exhibit 7, the capitalization ratios as of September 30, 2005 would be: short-term debt – 7.3%; long-term debt and unamortized discount and premium 43.3%; preferred stock – 1.8%; and common equity – 47.6%.
- f. Because the proposed transaction will not result in any additional borrowings by Applicant, no fees would be required to be paid by Applicant pursuant to Section 386.300.2, RSMo. (4 CSR 240-3.120(1)(F)); and
- g. A five-year capitalization expenditure schedule is not being filed with this Application because, as explained in ¶ 9 of this Application above, Applicant is not raising any capital as part of the proposed transaction.

12. As noted in footnote 3 of this Application above, the Asset Purchase and Sale Agreement acknowledges the decision of the Missouri Court of Appeals – Western District, in the *StopAquila.Org* case, which is the subject of an Application for Transfer pending before the Missouri Supreme Court. Applicant states that the Western District’s decision is not binding on the Circuit Court of Audrain County, Missouri (which is located in the Eastern District of Missouri, where the NRG Audrain Generating Facility is located), that the Western District’s decision may not in any event apply to the NRG Audrain Generating Facility insofar as the decision was based upon the particular facts before the Court in that case, and that because an Application for Transfer to the Missouri Supreme Court is pending, the Western District’s decision may be modified or otherwise set aside. Consequently, Applicant intends to assume the Lease and the related Chapter 100 documents in order to realize for itself and its ratepayers the cost savings arising from the existing tax exemption enjoyed by the NRG Audrain Facility, while at the same time retaining the option to repurchase the Facility for a nominal sum and unwind the Chapter 100 Transaction if the Chapter 100 arrangement is later modified or invalidated in some respect.

Applicant also states that even if the NRG Audrain Facility were not structured with the Chapter 100 arrangement with the resulting cost savings related to the property tax exemption, Applicant would nevertheless purchase the NRG Audrain Facility outright with appropriately modified terms and conditions, so that it could become a generating resource to meet Applicant’s resource needs, including capacity needs for the Summer of 2006.

MOTION FOR EXPEDITED TREATMENT

13. Applicant needs additional generating capacity to meet a prudent level of reserves for the summer of 2006. Applicant has determined to obtain this needed capacity via the Asset Purchase Transaction. Therefore, Applicant respectfully requests that the Commission give this Application expedited treatment and issue its order granting the relief prayed for herein on or before 75 days from the date of this filing. Expediting this proceeding as requested herein will avoid the harm that could occur if Applicant is unable to obtain the NRG Audrain Facility to meet its Summer 2006 capacity reserve margin requirements, including the possibility that such capacity would have to be acquired at a higher cost or from resources that are otherwise less desirable. Conversely, expediting this Application allows Applicant to obtain a necessary resource needed to provide capacity. This Application was filed as soon as it reasonably could have been under the circumstances. Applicant just recently concluded the Asset Purchase and Sale Agreement which was necessary to proceed with this Application. Applicant hereby respectfully requests that the Commission immediately give notice of this case, that it set an intervention deadline of no later than 15 days after the date of the filing of this Application, that a prehearing conference be held within 10 days after the close of the intervention period, and that the Commission direct its Staff to file a recommendation with respect to this Application no later than February 17, 2006.

14. Filed concurrently herewith is a Motion for Protective Order which, among others things, would apply to Exhibit HC-1 submitted concurrently herewith as noted above and to any other Highly Confidential or Proprietary information provided in connection with this Application, as provided for by the protective order requested thereby.

15. Applicant further states that in light of its request for expedited treatment of this Application, as evidenced by the certificate of service appearing below, this Application has

been served via e-mail concurrently with its filing on the Commission's General Counsel and the Office of the Public Counsel, both of whom have been advised in advance of the filing of this Application.

WHEREFORE, for all of the foregoing reasons, Applicant respectfully requests the Commission to issue its order as follows:

- a. Granting expedited treatment of this Application;
- b. Granting Applicant's request that notice of this case be given immediately, that an intervention deadline be set no later than 15 days after the filing of this Application, that a prehearing conference be held within 10 days after the close of the intervention period, and that Staff be directed to file a recommendation with respect to this Application no later than February 17, 2006;
- c. Authorizing Applicant (if and to the extent the transaction described herein would constitute the issuance of an evidence of indebtedness by Applicant under Sections 393.180 and 393.200, RSMo) to execute, deliver and perform the agreements and instruments necessary to assume a lease and related documents pertaining to the NRG Audrain combustion turbine generator facility owned by Audrain County, Missouri which was constructed as part of a revenue bond project under Chapter 100, RSMo;
- d. imposing the conditions provided for in items a to e of ¶ 10 hereof;
- e. authorizing Applicant to do any and all other things incidental, necessary or appropriate to the performance of any and all acts specifically authorized in such order; and
- f. granting such other and further relief as the Commission may deem just and proper under the circumstances.

Dated: December 27, 2005.

Respectfully Submitted:

SMITH LEWIS, LLP



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**Attorneys for Union Electric Company d/b/a
AmerenUE**

VERIFICATION

STATE OF MISSOURI

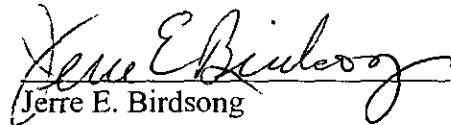
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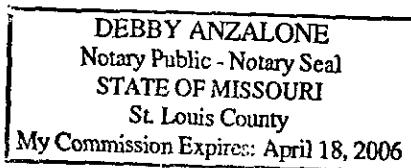
CITY OF ST. LOUIS

)

Jerre E. Birdsong, of lawful age, being duly sworn, deposes and says that he is Vice-President and Treasurer of Union Electric Company, that he is duly authorized and did sign the foregoing Application on behalf of Union Electric Company, that he has knowledge of the facts stated in the foregoing Application, and that said facts are true to the best of his knowledge, information and belief.


Jerre E. Birdsong

Subscribed and sworn to before me this 22nd day of Dec., 2005.



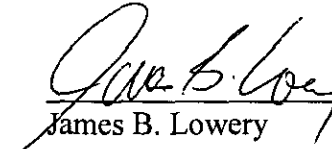


CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via hand delivery to the following parties on the 27th day of December, 2005.

Office of the General Counsel
Missouri Public Service Commission
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200 Madison Street, Suite 100
Jefferson City, MO 65101
gencounsel@psc.mo.gov

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James B. Lowery