

**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

POSITION STATEMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

COMES NOW the Office of the Public Counsel and for its Statements of Positions on the agreed upon and filed list of issues states as follows:

1. *Is an extension of the term of the Commission's permission for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO, on the terms and conditions outlined starting at page 19, line 16 through page 21, line 2 of the Surrebuttal Testimony of Ajay Arora filed in this docket on November 1, 2011, not detrimental to the public interest?*

No, not without additional conditions.

2. *What constitutes proving "not detrimental to the public interest" in File No. EO-2011-0128?*

(a) What "public" is the appropriate public?

Primarily the retail ratepayers of Ameren Missouri, but consideration must also be given to any impacts on Missouri citizens who are not Ameren Missouri customers.

(b) What "interest" is the appropriate interest?

Interest in this context is very broad, and encompasses direct financial impacts on Missouri ratepayers as well as intangibles like the value of preserving the Commission's jurisdiction over the transmission component of bundled retail rates.

(c) How is "not detrimental" measured?

"Not detrimental" does not simply mean \$1 more benefit than cost. It also requires that the Commission examine all quantifiable and hard-to-quantify costs and benefits (including those that may extend into the indefinite future), and impose all reasonable conditions to protect and preserve the public interest.

3. *May the Commission impose the conditions on such a transfer that are reflected at page 7, lines 15 – 22 of the Rebuttal Testimony of James R. Dauphinais (which is also supported by OPC)? If so, should the Commission do so?*

Yes, for the reasons set forth in Mr. Dauphinais' testimony and in the rebuttal testimony of OPC witness Kind at page 9, line 20, through page 13, line 9, although given FERC's Order 1000, the condition may need to be modified by adding the underlined qualifier and

deleting the closing clause: “UE shall make diligent efforts to construct and own any and all transmission projects proposed for UE’s certificated retail service territory, unless UE requests and receives approval from the Commission for an entity other than UE to pursue, in part or in whole, construction and/or ownership of the proposed project(s), which entity shall have a certificate of convenience and necessity issued by the Missouri Public Service Commission for the proposed project(s).”

4. *May the Commission impose the conditions on such a transfer that are reflected at page 17, lines 1 – 3 of the Rebuttal Testimony of Ryan Kind? If so, should the Commission do so?*

Yes, for the reasons set forth in Mr. Kind’s testimony at page 14, line 9 through page 17, line 5 and page 18, lines 4-8, where Mr. Kind states “UE shall cease having Ameren Services represent it at MISO and instead have its own representative actively participating in the MISO Transmission Owners Committee and as needed in other MISO stakeholder groups in order to make sure that the interests of UE and its customers are effectively communicated and pursued at MISO.” The Arkansas Commission recently took a similar approach in Docket No. 10-011-U, Order No. 54, issued October 28, 2011.¹ The Arkansas Commission required, among other similar conditions: “Participation as an independent, separate member on a single entity basis from the OpCos [other Entergy operating companies] or any other entity, including signing the TOA [Transmission Owners Agreement] on its own and, if needed, seeking a waiver from FERC or any other necessary regulatory body to allow EAI [Entergy Arkansas] to join an RTO on a separate basis, and remain a member on a separate basis from the OpCos....”

5. *Can the Commission condition Ameren Missouri’s participation in MISO on the application of the existing terms and conditions applied to Ameren Missouri transmission assets (e.g, Section 5.3 of the Service Agreement and paragraphs (b) through (h) of the Ameren Missouri Verified Application in File No. EO-2011-0128) to any affiliate to which Ameren Missouri seeks to transfer transmission assets? If so, should the Commission do so as recommended at page 22, lines 3-27 of the Rebuttal Testimony of Adam C. McKinnie?*

Yes, for the reasons set forth in Mr. McKinnie’s testimony.

6. *Is an affiliate of Ameren Missouri required to obtain a certificate of convenience and necessity (CCN) (as described in RSMo 393.170 and 393.190.1) from the Commission before constructing, owning, and operating certain transmission facilities in the state of Missouri as is the opinion of the Staff Counsel’s Office as noted at page 21, lines 3-6 of the Rebuttal Testimony of Adam C. McKinnie? Can the Commission condition the granting of such a CCN on the application of the existing terms and conditions that are applied to Ameren Missouri transmission assets (e.g, Section 5.3 of the Service Agreement and paragraphs (b) through (h) of the Ameren Missouri Verified Application in File No. EO-2011-0128)? If so, should the*

¹ http://www.apscservices.info/pdf/10/10-011-u_655_1.pdf

Commission do so, as recommended at page 22, lines 3-8 of the Rebuttal Testimony of Adam C. McKinnie?

Yes, for the reasons set forth in Mr. McKinnie's testimony.

7. *If the Commission agrees that such extension of the term for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO should be granted on the terms outlined at page 19, line 19 to page 21, line 2 of Ajay Arora's surrebuttal testimony, should the conditions as proposed by Marlin Vrbas in his testimony, pp. 13-16, be required of Ameren Missouri before any continued transfer of authority is granted? What continuing opportunities and mechanisms for re-examining Ameren Missouri's participation in MISO, if any, should be granted to the parties in this case?*

The Commission should, as a condition of its approval, allow any Stakeholder to 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 significant change has occurred or may occur, which is of such a magnitude that it presents or may present a substantial risk that continued participation in the Midwest ISO on the terms and conditions contained herein has become or may become detrimental to the public interest.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 17th day of November 2011:

/s/ Lewis R. Mills, Jr.