

**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 STATEMENT OF POSITION

COMES NOW The Empire District Electric Company (Empire), and, as its Statement of Position, states as follows to the Missouri Public Service Commission’s (Commission):

- 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?*

Empire Position: In reaching its decision as to whether the requested permission is detrimental to the public interest, Empire believes the Commission should consider the detriments Union Electric Company d/b/a Ameren Missouri’s continued membership in the Midwest Independent Transmission System Operator, Inc. (MISO) will have on Empire’s customers, as well as other Missouri electrical customers, as a result of Ameren Missouri’s participation in MISO’s market operations and its transmission interconnection involvement in Entergy’s proposed integration into MISO, the MISO/Southwest Power Pool (SPP) joint operating agreement (JOA) and congestion management protocols (CMP) today, and after the integration of Entergy Arkansas, the other Entergy operating companies, and possibly Cleco Corporation, into MISO. Empire believes these impacts/detriments will continue to exist and are likely to increase until addressed through a mutually agreed to modification of the JOA between MISO and SPP and treatment of

Empire's Plum Point transmission service agreement.

Bary K. Warren Surrebuttal - All

Lanny Nickell Surrebuttal - All

2. *What constitutes proving "not detrimental to the public interest" in File No. EO-2011-0128?*
 - (a) *What "public" is the appropriate public?*
 - (b) *What "interest" is the appropriate interest?*
 - (c) *How is "not detrimental" measured?*

Empire Position: The "not detrimental" standard is derived from *State ex rel. St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. 1934). Therein, the Missouri Supreme Court found that "A property owner should be allowed to sell his property unless it would be detrimental to the public." *Id.*

Empire would suggest that the following interpretation of the standard would be reasonable:

- a) Generally, the "public" is the interest of the State of Missouri. This being said, the persons actually constituting the relevant (or appropriate) "public" for this standard will depend upon the nature of the individual case. Here, because of the nature of the involved regional transmission organization, Empire believes the "public" at issue extends beyond Ameren Missouri's individual customer base to other electric customers in the State of Missouri that may be impacted.
- b) The public's interest appears to be rooted in safe and adequate service at just and reasonable rates. *See In the Matter of the Application of Union Electric Company*, 13 Mo. P.S.C. 3d 266, 293, Mo.P.S.C. Case No. EO-2004-0108 (February 10, 2005). Depending upon the nature of a particular case, this interest may manifest itself in questions concerning financial, service, operational, and environmental matters, among others.

c) Generally, “not detrimental” should be determined by netting benefits and detriments, along with any conditions that may be imposed to mitigate detrimental impacts. This exercise is not purely mathematical, but rather may require a more subjective weighing of factors. *See In the Matter of the Application of Union Electric Company*, 13 Mo. P.S.C. 3d 266, 293, Mo.P.S.C. Case No. EO-2004-0108 (February 10, 2005) (“ . . . it requires the Commission to consider this risk together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public.”)

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?*

Empire Position: Empire takes no position as to this issue at this time.

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?*

Empire Position: Empire takes no position as to this issue at this time.

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?*

Empire Position: Empire takes no position as to this issue at this time.

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

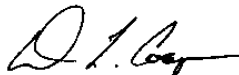
Empire Position: Empire takes no position as to this issue at this time.

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?*

Empire Position: Empire takes no position as to this issue at this time.

WHEREFORE, Empire prays that the Commission consider the above positions 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 November 17, 2011, to the following:

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