

October 14, 1999

**VIA Hand Delivery**

**FILED**

**OCT 14 1999**

**Missouri Public  
Service Commission**



Mr. Dale Hardy Roberts  
Executive Secretary  
Missouri Public Service Commission  
301 West High Street, 7-N  
Jefferson City, MO 65101

Re: Case No. EA-2000-37 - Application of Union Electric Company,  
d/b/a Ameren UE, for Approval of the Transfer of Generating  
Assets by an Affiliate to Another Affiliate

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company d/b/a AmerenUE are an original and fourteen (14) copies of Objection To Application of MIEC For Leave To Intervene Out Of Time.

Kindly acknowledge receipt of this filing by stamping as filed a copy of this letter and returning it to the undersigned in the enclosed envelope.

Your prompt attention to this matter is appreciated.

Sincerely,

*William J. Niehoff /sh*

William J. Niehoff  
Attorney-At-Law

WJN:rd  
enclosures

cc: John B. Coffman, Office of Public Counsel  
Dennis L. Frey, Missouri Public Service Commission

STATE OF MISSOURI  
MISSOURI PUBLIC SERVICE COMMISSION

FILED

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Missouri Public  
Service Commission

In the matter of the Application of )  
Union Electric Company, d/b/a AmerenUE, )  
For approval of the transfer of generating )  
Assets by an affiliate to another )  
Affiliate. )

Case No. EA-2000-37

**OBJECTION TO APPLICATION OF MIEC  
FOR LEAVE TO INTERVENE OUT OF TIME**

COMES NOW Union Electric Company (d/b/a AmerenUE), by counsel, and submits its strong objection to the attempt by the Missouri Industrial Energy Consumers ("MIEC") to intervene in this case long after the appropriate time to do so had passed; after the parties have expended significant time in negotiations, resolved all outstanding issues and achieved an agreed to resolution of this matter; and, where the MIEC have completely failed to state any proper justification for intervening in the Application. In support of this Objection, AmerenUE further states:

**Factual Background and Request for Expedited Treatment**

1. On July 19, 1999, AmerenUE filed its Application for Findings pursuant to 15 U.S.C.A. §79z-5a ("Application") together with a Motion for Expedited Treatment. These filings were made as part of a process to restructure operations of AmerenCIPS, an affiliate of AmerenUE, in order to comply with the 1997 law that deregulated electric generation in Illinois. Specifically, the Missouri Application sought, pursuant to Federal law, to have the Missouri Public Service Commission to make three findings necessary for the transfer of AmerenCIPS generation assets and liabilities to an Exempt Wholesale Generator ("EWG"). These findings are

that the proposed transfer of AmerenCIPS generating assets and liabilities would benefit customers, is in the public interest and will not violate any provision of Missouri law.

2. In its Motion for Expedited Treatment, AmerenUE requested final resolution within 90 days and noted that:

“the pace of change and restructuring in the Illinois energy market has greatly accelerated. On July 8, 1999, the Commission issued its order in a proceeding with Illinois Power (“IP”) pursuant to Section 16-111(g) approving the transfer of generating assets to a new wholesale subsidiary of IP. Also, pending before the Commission is the request by Commonwealth Edison Company (“ComEd”) to transfer its fossil fuel generating plants to Edison Mission. The Hearing Examiners issued a proposed order on July 14, 1999 recommending approval of the ComEd transfer. A final determination with regard to this transfer is expected by mid-August 1999. Likewise, the pace of merger activity has increased. A number of Illinois utilities have entered into strategic combinations within the last two years and, within the last month, IP announced a merger with Dynegy, a company that has as its majority investor Chevron, a very large diversified energy company. Considering the above, Ameren seeks to conclude the restructuring discussed herein as quickly as possible to compete with the new entities that are entering the Illinois market.

3. In point of fact, the pace of change has only accelerated in Illinois. The transfer of Illinois Power’s generation assets, previously approved by the Illinois Commerce Commission (“ICC”) has now been also approved by the Federal Energy Regulatory Commission, completing all regulatory approvals needed for that transaction. Likewise, the transfer of Commonwealth Edison fossil generating assets referenced above has been approved by the ICC. Furthermore, on October 1, 1999, the Illinois electric generation industry opened to competition. Finally, on October 12, 1999, the Illinois Commerce Commission issued its Order approving the transfer of AmerenCIPS’ generation assets and liabilities to the Genco.

4. On July 26, 1999, the Commission issued its Order Directing Notice in which it acknowledged AmerenUE’s request for EWG findings and its request for expedited treatment.

5. The July 26, 1999 Commission Order stated:

That any party wishing to intervene, request a hearing, or to file comments in this matter shall file an application, or shall file their written comments, no later than August 16, 1999....

(Order, p. 2)(emphasis supplied).

6. On September 14, 1999, the Commission issued a Order setting a prehearing conference and requiring the filing of a procedural schedule.

7. On September 20, 1999, the Commission conducted its prehearing conference and the parties announced that significant discovery and negotiation had been undertaken and that settlement of all issues was likely.

8. Also on September 20, 1999, Diana Schmidt, counsel for the MIEC, wrote a letter to William J. Niehoff, counsel for AmerenUE, requesting a copy of the Missouri Application in this matter. (See, Exhibit A, attached hereto).

9. On September 22, 1999, AmerenUE sent a copy of the Missouri Application to Diana Schmidt. (See, Exhibit B, attached hereto).

10. On October 13, 1999, the parties reached agreement on all outstanding issues and agreed to stipulated resolution of this case which recommends the approval of AmerenUE's Application.

**The Proposed Intervention is Untimely and Inadequate and Should be Denied**

11. There is no question but that the Application for Leave to Intervene is untimely. The Commission established August 16, 1999 as the intervention date and gave appropriate notice of this fact. As noted previously, AmerenUE requested that this matter be considered within 90 days. Even so, the MIEC took no action to attempt to become a party to this case until October 7, 1999, some 80 days after the Application was filed.

12. Missouri law requires that an Application to Intervene Out of Time can only be granted upon “a showing of good cause.” 4 CSR 240-2.075 (4)(D). The only attempt to satisfy this requirement set out in the Application to Intervene Out of Time is the wholly inadequate and unsupported claim that “[t]he MIEC’s counsel only recently became aware of Union Electric Company’s filing in this case.” (Application to Intervene Out of Time, par. 4). Moreover, even this allegation is contradicted by the record. In fact, counsel for the MIEC knew of the Application at least by September 20, 1999, the date that she wrote and requested a copy of the AmerenUE filing. In spite of this knowledge, MIEC failed to take any further action to exercise what it believed to be its rights until more than two weeks had passed and during which time the parties in this case reached agreement on all outstanding issues and achieved a stipulated resolution to the matter.

13. The MIEC have failed to present any justification, much less good cause, for sleeping on alleged rights and in making this late filing. Further evidence of this fact is contained in the very brief motion to intervene which failed to consider or discuss substantial materials already in possession of the MIEC either in support of its Application or in determining whether it would oppose or support the transaction. For example, AmerenUE’s initial Application consisted of over 16 pages containing a detailed description of the purpose, mechanics and benefits to Missouri ratepayers presented by this transfer. The failure to address any of this information in the late-filed Application clearly demonstrates that the MIEC are unprepared to participate in this action in good faith or on a timely basis. These facts provide ample reason to deny the Late Filed Application.

**Ameren Would be Prejudiced if Intervention were Permitted at this Late Date**

14. The Application for Leave to Intervene Out of Time makes the further unsupported allegation that no party would be prejudiced by the MIEC's untimely intervention. This statement is simply untrue. Significant work and negotiations have been undertaken and agreement reached on all issues with the proper parties to this action. Permitting unrestricted intervention could only undo this result and completely derail progress made to date.

15. A delay of this magnitude would be particularly egregious since AmerenUE has made clear from the very start that it believes that time is of the essence in concluding this transaction. The scant, boiler-plate allegations contained in the page and one-half late filed Application are wholly inadequate to rebut the obvious prejudice to AmerenUE and its affiliates.

WHEREFORE, considering the above, AmerenUE respectfully requests that the Commission enter its Order as described denying the untimely Motion for Leave to Intervene.

Respectfully submitted,

UNION ELECTRIC COMPANY

William J. Niehoff /sh  
William J. Niehoff, MBE#36448  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149  
St. Louis, Missouri 63166-6149  
(314) 554-2514 (voice)  
(314) 554-4014 (fax)

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above pleading has been served on parties of record and the MIEC by first-class mail this 14<sup>th</sup> day of October, 1999.

William J. Niehoff

**BRYAN CAVE LLP**

WASHINGTON, D.C.  
NEW YORK, NEW YORK  
KANSAS CITY, MISSOURI  
OVERLAND PARK, KANSAS  
PHOENIX, ARIZONA  
SANTA MONICA, CALIFORNIA  
IRVINE, CALIFORNIA

ONE METROPOLITAN SQUARE, SUITE 3600  
ST. LOUIS, MISSOURI 63102-2750  
(314) 259-2000  
FACSIMILE: (314) 259-2020

LONDON, ENGLAND  
RIYADH, SAUDI ARABIA  
KUWAIT CITY, KUWAIT  
ABU DHABI, UNITED ARAB EMIRATES  
DUBAI, UNITED ARAB EMIRATES  
HONG KONG  
ASSOCIATED OFFICE IN  
SHANGHAI, PEOPLE'S REPUBLIC OF CHINA

DIANA M. SCHMIDT

DIRECT DIAL NUMBER  
(314) 259-2543

INTERNET ADDRESS  
DMSCHMIDT@BRYANCAVELLP.COM

September 20, 1999

Mr. William Niehoff  
AmerenUE  
One Ameren Plaza  
1901 Chouteau Ave.  
P.O. Box 66149  
St. Louis, Mo 63166-6149

RE: Missouri Public Service Commission, Case No. EA-2000-37

Dear Bill:

Could you send me a copy of your application in the above-referenced case? Thanks for your help.

Very truly yours,



Diana M. Schmidt

DMS:dv



One Ameren Plaza  
1901 Chouteau Avenue  
PO Box 66149  
St. Louis, MO 63166-0149  
314.621.3222

(314) 554-2514  
(314) 554-4014

September 22, 1999



Ms. Diana M. Schmidt  
Bryan Cave LLP  
One Metropolitan Square, Suite 3600  
St. Louis, Missouri 63102-2750

Re: Missouri Public Service Commission, Case No. EA-2000-37

Dear Diana:

As you requested, please find enclosed the Application of AmerenUE as filed with the Missouri Public Service Commission in the above-referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "WJN", is written over the typed name.

William J. Nichoff  
Attorney-at-Law

WJN:rld  
Enclosures