

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

FILED³

OCT 29 2001

In the Matter of the Application of Union)
Electric Company d/b/a AmerenUE for an)
Order Authorizing It to Withdraw from)
the Midwest ISO to Participate in the)
Alliance RTO)
)

Missouri Public
Service Commission
Case No. EO-2001-684

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Proposed Findings of Fact and Conclusions of Law states as follows:

FINDINGS OF FACT

1. In late October 2000, and after months of planning, AmerenUE made its final decision to withdraw its participation from the MISO. (Tr. 155).
2. On November 9, 2000, Ameren Services Company, on behalf of AmerenUE, supplied written notice to the MISO of its intent to withdraw participation. (Whitely Direct, Exh. 1, p. 5).
3. On January 16, 2001, AmerenUE filed a request with the Federal Energy Regulatory Commission (FERC) for authority to withdraw from the MISO, in Case No. ER01-966-000. (Tr. 83).
4. On January 23, 2001, Public Counsel contacted AmerenUE by e-mail, asking when AmerenUE was expecting to request permission from the Missouri Commission for the authority to withdraw from the MISO. (Tr. 84).

5. On May 8, 2001, after a settlement negotiation process, the FERC approved AmerenUE's withdrawal from the MISO as part of an agreement between several parties, including the MISO and the ARTO, and called the Inter-RTO Cooperation Agreement (IRCA). (Exh. 1, p. 7).
6. On May 15, 2001, and pursuant to settlement, Ameren Corporation sent an exit fee payment to the MISO, totaling \$18 million (AmerenUE share of this exit fee is approximately \$12.5 million). (Ex. 1, p. 19; Tr. 90).
7. On June 11, 2001, AmerenUE filed the Application that initiated this case.
8. The June 11, 2001 Application that AmerenUE filed in this case states, "AmerenUE will be required to execute an operating agreement with the Alliance RTO that will allow the Alliance RTO to control and operate the transmission assets of the AmerenUE in accordance with the operating agreement." (Paragraph 41, p. 12).
9. AmerenUE witness David A. Whiteley explained that the assets that would be transferred would consist of transmission lines and substations that make up its "networked transmission facilities of higher voltage, generally 100 KV and above." (Tr. 65).
10. Mr. Whiteley acknowledged that AmerenUE's transmission facilities are necessary to the provision of retail electric service to its Missouri customers. (Tr. 61-62).
11. AmerenUE's participation in the Alliance RTO would be a detriment to the public interest because the Alliance RTO has a lack of independent governance and other problems which would harm competitive wholesale markets.
12. The for-profit structure of the Alliance RTO would be detrimental to the public interest.

13. AmerenUE has failed to prove that the Alliance RTO can be independent at this time. The Commission must act to protect Missouri consumers by denying the Application, because the proposed switch in AmerenUE's participation from the MISO to the Alliance RTO would be detrimental to the public interest.

CONCLUSIONS OF LAW

1. AmerenUE is not legally permitted to join the Alliance RTO without a Commission order granting it the authority to do so pursuant to Section 393.190.1 RSMo. 2000. AmereneUE's plans to join the Alliance RTO as a participating member, involves a transfer of control over its transmission assets that triggers this statute. The language of §393.190 suggests that the General Assembly intended the Commission to review any possible transaction which would significantly alter the control an electrical corporation has over any part its system which is necessary or useful in meeting its obligations to the public.
2. In analyzing whether the Commission has the jurisdiction and authority to approve or deny RTO membership, it should be noted that its statutory powers are intended to be broad enough to protect consumers. These powers include all powers expressly laid out in statute as well as implied powers that are necessary and proper to carry out its statutory obligations. Sections 386.040 and 386.250(7) RSMo. 2000.
3. The standard of review under Section 393.190, as interpreted by the Missouri Supreme Court, is that the transaction shall be approved if it can be proved that the transaction can be found to be "not detrimental to the public." State ex rel. City of St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. banc 1934).

4. The burden of proof is borne by AmerenUE as the applicant in this matter and as the party asking to withdraw from the ISO which the Commission has previously approved for AmerenUE. Section 386.430 RSMo. 2000; 4 CSR 240-2.110(5)(A). Therefore, AmerenUE bears the burden of proving in this case that its proposal to switch RTOs would not be detrimental to the public interest.
5. AmerenUE could not prove with competent and substantial evidence that its participation in the Alliance RTO (based upon its currently proposed structure) would produce no detriments for the public, and thus the Application must be denied.
6. Furthermore, AmerenUE is not legally permitted to withdraw from the MISO unless the Commission allows it to do so, pursuant to its Order Granting Intervention and Approving Stipulation and Agreement in Case No. EO-98-413. AmerenUE acknowledges that it is obligated to seek Commission approval to withdraw from the MISO, pursuant to the commitment it made in the Stipulation and Agreement approved by the Commission in Case No. EO-98-413. (Tr. 91).
7. The Commission did not concede that AmerenUE's withdrawal from the MISO was in the public interest by not objecting to the FERC finding that such withdrawal was in the public interest. AmerenUE made a binding commitment in Case No. EO-98-413 to affirmatively request approval from the Commission.
8. Permitting AmerenUE to withdraw from the MISO under its binding commitment in Case No. EO-98-413 is not in the public interest.
9. AmerenUE violated the Commission's Order Granting Intervention and Approving Stipulation and Agreement in Case No. EO-98-413 by not seeking Commission approval at the same time it sought FERC approval to withdraw from the MISO on

January 16, 2001. Therefore, we hereby authorize the General Counsel to seek penalties of up to \$2,000 for each day that the filing of the Application in this case was delayed, pursuant to Sections 386.570.1 and 386.570.2 RSMo. 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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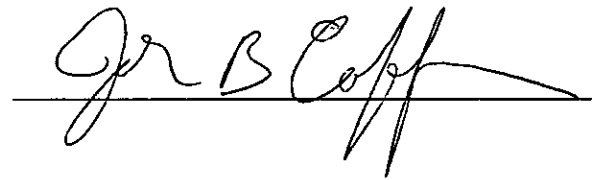
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A handwritten signature in cursive script, appearing to read "Jr B Coff", is written over a horizontal line.