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August 2, 1999

BY FACSIMILE AND BY FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman Building, Fifth Floor
301 West High Street
Jefferson City, MO 65101

Re: Reply Comment of the Missouri Industrial Energy Consumers
Docket Nos. EX-99-442, GX-99-444 and GX-99-445

Dear Mr. Roberts:

Enclosed for filing with the Commission are an original and fourteen (14) copies of the Reply Comments of the Missouri Industrial Energy Consumers ("MIEC") in the above-referenced dockets.

Please "file-stamp" the additional copy and mail it back to me in the enclosed, self-addressed stamped envelope. Thank you for your assistance in bringing this filing to the attention of the Commission, and please call me if you have any questions.

Very truly yours,

Diane Schmidt

Diana M. Schmidt

DMS/dv

Attachments

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Proposed Rule on Affiliate Transactions	)	Docket Nos. EX-99-442, GX-99-444
	)	and GX-99-445

Reply Comments of the Missouri Industrial Energy Consumers on the Proposed Rule Regarding Electric Utility Affiliate Transactions

The Missouri Industrial Energy Consumers (MIEC)[1] appreciates the opportunity to file these reply comments concerning the above-captioned rule on Affiliate Transactions for electric utilities.

MIEC has reviewed the changes to the proposed rules, and accompanying comments, submitted by the Office of Public Counsel (OPC), Ameren Corporation/Union Electric Company (Ameren/UE), Enron and the Edison Electric Institute (EEI). In addition, MIEC has reviewed the comments submitted by the Staff of the Missouri Public Service Commission, the Empire District Electric Company and by Kansas City Power & Light Company.[2] The Staff submitted comments which generally supported the proposed rules.

In this reply, MIEC will respond to the initial comments offered by OPC, Ameren/UE, Enron and EEI.

Response to Initial Comments of OPC

OPC has done a comprehensive job of analyzing the proposed comments, both for what they contain, and for what they do not contain. OPC is to be commended for its extensive treatment of the issue, particularly with respect to those matters not formally addressed by the proposed rule.

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[1] Participating MIEC member companies include: ALCOA Foil Products, Anheuser-Busch Companies, Inc., The Boeing Company, Ford Motor Company, General Motors Corporation, HBE Inc., Holnam, Inc., Hussmann Refrigeration, ISP Minerals, Inc., Mallinckrodt, Inc., M.E.M.C. Electronic Materials, Inc., Monsanto Company, Procter & Gamble Manufacturing Company, and Ralston Purina Company.

[2] MIEC obtained these comments and proposals either from the Commission files, or directly from the filing parties.

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In general, MIEC finds that it is in agreement with the policies endorsed by OPC, and with most of OPC's changes to the proposed rule. Like OPC, MIEC emphasizes the need for the rules to consider the existing market power of the utilities, and to address, through the rule, the types of conduct that are acceptable, and which are not acceptable.

Our comments below are directed to OPC's recommended modifications to the Commission's proposed rules, as they appear at Pages 1 through 8 of Attachment 1 to OPC's initial comments.

1. **Corporate Support**

MIEC generally agrees with the approach taken by OPC with respect to the provision of corporate support among affiliated entities. However, MIEC disagrees with one of the services that is included in allowable corporate support. In Section (1) Definitions, Subsection (D) includes "legal services" among the corporate support services that may be shared among affiliates. This is repeated in Section (2) (H) (3). MIEC is concerned that certain legal services may involve issues of corporate structure, purchases and sales of goods or services, strategic planning, regulatory issues, lobbying, and other matters that should not be shared between the regulated electric utility and affiliates operating in the competitive market. Either "legal services" should be stricken from the list of corporate support services that may be shared, or the kind of legal services that may be provided on a shared basis must be restricted to those not involving the areas noted above.

2. **Use of Name or Logo**

Section (2) (C) deals with the use by affiliates of the name or logo of the regulated electrical corporation. OPC's preferred approach is to flatly prohibit affiliates from utilizing the same name, trademark or logo of the regulated electric utility. However, OPC offers an alternative provision which would permit the use of the name, trademark or logo, but under certain restricted conditions, and on specified terms. MIEC believes that the alternative provision is more reasonable, and if enforced, would provide sufficient safeguards.

Response to Initial Comments of Ameren/UE

Ameren/UE offered extensive comments. The central theme of its comments, however, is that it is unique among Missouri utilities because of the status of Ameren as a holding company subject to PUHCA regulations, and that the Securities and Exchange Commission (SEC) has jurisdiction over inter-corporate transactions. Ameren/UE's comments extensively review the merger of CIPS and UE to form Ameren, the approvals which were given, and how the various elements of the corporation interrelate. As support for the contention that it should be treated differently than other Missouri utilities, Ameren/UE quotes with approval from the Order of the Illinois Commerce Commission which approved the cost allocation agreements for the restructured organization.

Correctly, Ameren/UE note that this Commission is not bound by the actions of the Illinois Commerce Commission. Curiously, Ameren/UE does not bother to reference the Report and Order of the Missouri Public Service Commission in Case No. EM-96-149, issued February 21, 1997, which approved the merger under certain conditions, or the Stipulation and Agreement among UE and other signatories which was adopted by the Commission and included as Attachment 1 to the Commission's Order. Section 8 of the Stipulation and Agreement addresses "State Jurisdictional Issues." Section 8(d) specifically addresses contracts required to be filed with the SEC. The agreement is as follows:

> "Contracts Required to be Filed with the SEC. All contracts, agreements or arrangements, including any amendments thereto, of any kind between UE and any affiliate, associate, holding, mutual service, or subsidiary company within the same holding company system, as these terms are defined in 15 U.S.C. § 79b, as subsequently amended, required to be filed with and/or approved by the Securities and Exchange Commission ("SEC") pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a contract, agreement, arrangement or transaction with any affiliate, associate, holding, mutual service or subsidiary company on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract,

arrangement, agreement or allocation method which was filed with or approved by the SEC."

Section 8(e) is a similar provision with respect to electric contracts required to be filed with the FERC, and Section 8(f) deals with gas contracts required to be filed with the FERC.

Section 8(g) reserves the right of the Commission to make determinations concerning appropriate ratemaking treatment for affiliate transactions. In particular, UE agreed as follows:

> "No Pre-Approval of Affiliated Transactions. No pre-approval of affiliated transactions will be required, but all filings with the SEC or FERC for affiliated transactions will be provided to the Commission and the OPC. The Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a later ratemaking proceeding or a proceeding respecting any alternative regulation plan."

Sections 8(h) and 8(i) are Contingent Jurisdictional Stipulations which are designed to provide the Missouri Commission with rights similar to what it obtains in the Stipulation in the event that a court order otherwise interferes with the Commission's authority.

It is obvious that UE is bound by these conditions, and that there is no basis for claiming that just because something has been approved by the SEC or the FERC the debate is over. Clearly, this Commission was concerned about loss of regulatory control and the ability to approve or disapprove cost recovery, and UE was willing to agree not to contest the Commission's authority in these areas in return for approval of the merger. UE should not now be allowed to assert positions contrary to those to which it agreed in order to secure merger approval.

To the extent that the specific language of the affiliate transaction rule works a hardship on UE, or would produce a result which would be detrimental to the Consumer, UE can utilize Section (9), the "Variances"[3] provision of the rule.

[3] This is Section (10) in OPC's modified rule.

Response to Initial Comments of Enron

MIEC supports most of the rule changes proposed by Enron. However, Enron appears to have narrowed the application of the affiliate transaction rule so that it would apply only to transactions involving competitive affiliates. MIEC disagrees. The affiliate transaction rule must also apply to affiliates (such as service companies), which are not competitive, but are providing services to more than one regulated enterprise, and/or to competitive operations.

Response to Initial Comments of EEI

EEI argues that the proposed rules would burden utilities' affiliates and undermine competitition, increasing costs and leading to increased prices for consumers. It agues that the Commission should actually encourage affiliate transactions, but that the proposed rules discourages them.

Affiliate transactions can either increase costs or lower costs, but even where they decrease costs, there is no assurance that those decreased costs would benefit utility customers. Only in a fully competitive market will lower costs surely lead to lower prices for consumers. We are far from having competition in Missouri, and the major utilities in Missouri oppose competition. Thus, the Commission should reject EEI's position that affiliate transactions should be encouraged on the basis that they create "economies of scope".

Regulatory Oversight

In initial comments, MIEC proposed certain procedures for purposes of regulatory oversight. These were intended to address not only the filing of compliance plans to demonstrate how a utility would intend to ensure that it was properly applying the rules, but also to allow for periodic audits. For convenience, MIEC's two suggestions are repeated here:

- No later than 90 days following the adoption of the final rule, each regulated electrical corporation should file a compliance plan demonstrating how it is implementing procedures that will ensure compliance with the rule. The compliance plan will be subject to comment by participants in this proceeding.

- No later than the end of the first full fiscal year of each utility following the adoption of the final rule, an audit should be conducted, by an independent auditor, of the utility's operations during that fiscal year. The purpose of the audit is to verify compliance with the rule. The audit shall be conducted at shareholder expense and shall be filed with the Commission. Notice of the availability of the audit shall be given to all other participants in this proceeding.

The compliance filing noted above is another avenue which UE could utilize to explain why it should be treated differently, and why its proposals produce a better result for consumers than does strict application of the proposed rule.

Conclusion

MIEC appreciates the opportunity to provide these reply comments. The matter of affiliate transactions is extremely important, and must be addressed not only to prevent the inappropriate subsidy of competitive operations by customers of the regulated entity, but also to ensure that other participants in the market are treated fairly so that true competitive markets can develop. The incumbent utilities, which currently possess 100% market power are employing a two-track strategy. First, they are resisting efforts which would allow customers to have a choice of their generation supplier, and second, they are learning how to operate in the competitive market. As one example, note that Ameren/UE and Ameren/CIPS are subject to a retail competitive electricity market in Illinois. They have been participating in legislative and regulatory matters, designing rates, and plotting strategies to deal with a competitive market. Competition becomes a reality in Illinois on **October 1, 1999**, barely three months from now! It is essential that the rules for affiliate transactions and conduct be set in place now, otherwise utilities will have won the game before it starts.

Respectfully Submitted,

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