

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 1st
day of May, 1990.

In the matter of the application of Arkansas Power & Light)
Company for an order authorizing the sale and transfer of)
certain assets and, in connection therewith, certain other) Case No. EM-90-12
related transactions; alternatively, for an order declining)
jurisdiction.)
)

ORDER APPROVING SALE

On July 19, 1989, Arkansas Power & Light Company (AP&L) filed an applica-
tion with the Commission seeking an order authorizing it to sell its ownership
interests in Independence Steam Electric Station Unit 2 (ISES 2), a steam generating
plant located near Newark, Arkansas, and its ownership interests in Ritchie Steam
Electric Station Unit 2 (Ritchie 2), a steam generating plant located near Helena,
Arkansas, and certain other properties more fully described in AP&L's application.
AP&L seeks authority to sell these properties to an, as yet, unnamed subsidiary of
its parent corporation, Entergy Corporation. Entergy Corporation was formerly known
as Middle South Utilities, Inc. The unnamed subsidiary is presently designated
NEWCO. In the alternative, AP&L seeks an order of this Commission declining juris-
diction of this proposed transaction.

On November 9, 1989, the Commission gave notice of the proposed sale. On
January 11, 1990, and again on February 28, 1990, the Commission granted its Staff
extensions of time in which to request a hearing on the matters at issue in this
case. On April 18, 1990, the Commission's Staff (Staff) filed a recommendation that
the Commission hold this docket in abeyance pending the possible sale of AP&L's
retail electric properties in Missouri to Union Electric Company (UE). In the
alternative Staff recommends that the Commission hold hearings on the propriety of

the proposed sale. Staff states such a hearing cannot be scheduled before November 1990 due to the Commission's current hearing schedule.

By pleading filed April 20, 1990, AP&L opposes Staff's recommendation and requests that its application be immediately approved by this Commission or, in the alternative, that the Commission decline jurisdiction. By pleading filed April 26, 1990, the Office of the Public Counsel (Public Counsel) requested that, if the Commission determined not to hold hearings in this matter, the Commission impose the same conditions upon this sale as those imposed by the Arkansas Public Service Commission (APSC). Public Counsel argues that the Commission has jurisdiction to decide this matter. AP&L filed a response to Public Counsel indicating it could accept approval under the same conditions as required by the APSC.

AP&L states that it relied upon Staff's representation that Staff's recommendation to the Commission concerning approval of this application would be based upon the decision of the APSC. The APSC has considered the proposed sale and has held hearings, and issued its decision April 2, 1990. AP&L further states that Staff had every opportunity in the nine months since this application was filed to investigate and analyze this application. AP&L states that for Staff to require time to analyze the proposed sale now, after the APSC has made its decision, will result in an unconscionable delay in approving the application amounting to a denial of constitutional due process.

AP&L requests the Commission approve the application without hearing given that the APSC has approved this same sale and given the fact that there is no evidence of any detrimental effect upon AP&L's customers in Missouri. AP&L points out that it has been losing approximately \$2 million per month since December 6, 1989, and desires to close this sale as soon as possible. AP&L further notes that the sale of its Missouri assets to UE is not anticipated to be consummated before the end of 1990, and the Commission should not require AP&L to suffer the economic consequences during this time.

In addition, AP&L asserts that the Commission does not have jurisdiction over the sale of these plants since these plants are not reflected in the rates paid by AP&L's Missouri customers and, therefore, these assets are not necessary or useful in rendering service to AP&L's Missouri customers. Section 393.190, R.S.Mo. 1986, requires the Commission's approval for disposal of assets only if the assets are considered necessary or useful in the performance of a utility's duties to its customers in this state.

Finally, AP&L argues that even assuming the Commission has jurisdiction of this sale, the sale can only be disapproved by the Commission if the Commission finds that the sale would be detrimental to the public interest. AP&L asserts that there is no evidence that the proposed sale is detrimental to the public interest.

AP&L contends that the proposed transaction is not detrimental to the public interest in that AP&L will realize proceeds from the proposed sale of approximately \$171 million which will be used to retire higher cost capital resulting in savings to its customers and no reduced level of service. In addition, AP&L notes that its sale of 31.5 percent of its entitlement to the capacity and energy associated with ISES 2 to MP&L terminated its five-year life on December 6, 1989. Termination of this arrangement will cost AP&L approximately \$26 million annually. In order to avoid filing a general rate increase to reflect these costs associated with ISES 2, AP&L proposes this sale and transfer of all of its 31.5 percent undivided ownership interest in ISES 2.

AP&L is an Arkansas corporation authorized to conduct business in the state of Missouri with its principal office and place of business located at 425 West Capitol Avenue, Post Office Box 551, Little Rock, Arkansas 72203. AP&L is engaged in the business of generating, transmitting and distributing electric power and energy, principally in Arkansas and Missouri.

Pursuant to Section 393.190, the Commission has the authority to authorize an electric corporation to sell the whole or any part of its system necessary and

useful in the performance of its duties to the public provided the Commission finds that such sale is not detrimental to the public interest. *State ex rel. City of St. Louis v. PSC*, 73 S.W.2d 393, 400 (Mo. banc 1934); *State ex rel. Martigney Creek Sewer Company v. PSC*, 537 S.W.2d 388, 399 (Mo. banc 1970); *State ex rel. Fee Fée Trunk Sewer, Inc. v. City*, 596 S.W.2d 466, 468 (Mo. App. 1980).

There is no doubt that the Commission has jurisdiction over this matter. The Commission does not believe, though, that a hearing should be set. The APSC has conducted hearings and issued an order approving the sale with certain conditions. The Commission does not believe a duplication of the APSC's efforts would be productive and finds that the conditions placed on the sale by the APSC are reasonable protection for Missouri ratepayers.

A delay in this case until the sale of AP&L's Missouri operations to UE is not a reasonable alternative. The sale to UE may or may not be consummated as projected and it is clear AP&L will suffer economic hardship each month the sale of ISES 2 and Ritchie 2 is delayed. In addition, the proceeds from the sale of ISES 2 and Ritchie 2 will be used to retire some of AP&L's higher cost capital.

The Commission finds that this sale is not detrimental to the public interest. All indications are that no public detriment will occur from the sale, especially with the conditions established by the APSC and adopted by the Commission in this order.

The conditions established by the APSC, as modified for Missouri operations, are as follows.

1. That this Commission specifically defers a decision on what premium, if any, above book value should be demanded by AP&L for the ISES 2 and Ritchie 2 plants and how any premium is shared by ratepayers.
2. That the purchasers of ISES 2 and Ritchie 2 are prohibited from selling electricity at retail or wholesale in the state of Missouri. This condition shall be made a part of the sale agreement.

3. That AP&L shall enter into a "hold harmless" agreement which will last 15 years and remain in effect regardless of whether or not AP&L's Missouri retail distribution facilities are sold to UE.

4. That AP&L agrees to not seek a general rate increase prior to December 31, 1991.

Missouri ratepayers will best be served by approval of the proposed sale so that AP&L can proceed with the sale of its Missouri operations to UE. Under the conditions adopted in this order, AP&L cannot seek rate relief for any revenue deficiency until December 31, 1991. Any ratemaking treatment of the sale will be deferred until a later proceeding. These conditions provide sufficient protection to Missouri ratepayers. The Commission will therefore approve the sale of ISES 2 and Ritchie 2 as proposed.

It is, therefore,

ORDERED: 1. That Arkansas Power & Light Company is authorized hereby, contingent upon the conditions set forth in this order, to sell and transfer to NEWCO a 31.5 percent undivided ownership interest in Independence Steam Electric Station Unit 2 and a 15.75 percent undivided ownership interest as tenant in common in certain land and common facilities as well as a 15.75 percent undivided interest in certain leases, mine facilities and mine equipment, all as more particularly described in the Independence Unit 2 sale agreement attached to Arkansas Power & Light Company's application, and to sell and transfer to NEWCO a 100 percent ownership interest in Ritchie Steam Electric Station Unit 2 and an undivided interest in certain common facilities all as more particularly described in the Ritchie Unit 2 agreement attached to Arkansas Power & Light Company's application.

ORDERED: 2. That Arkansas Power & Light Company is authorized hereby to enter into, execute and perform in accordance with the terms of all documents reasonably necessary to the performance of the transactions as authorized in Ordered 1.

ORDERED: 3. That nothing in this order shall be considered as a finding by the Commission of the reasonableness of any expenditures herein involved, or of the value for ratemaking purposes of the properties herein involved, or as an acquiescence in the value placed upon said properties by Arkansas Power & Light Company or its successors in interest. Furthermore, the Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding.

ORDERED: 4. That this Report and Order shall become effective on the 11th day of May, 1990.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
McClure and Letsch-Roderique, CC.,
Concur.