

**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	)	Case No. EO-2011-0128
Functional Control of Its Transmission	)	
System to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

**REPLY BRIEF OF THE MISSOURI JOINT  
MUNICIPAL ELECTRIC UTILITY COMMISSION**

MJMEUC would like to briefly address the arguments and factual mistakes in the Ameren Missouri and MISO post-hearing briefs.

**I. MJMEUC’s FERC Pleadings Regarding MISO’s Forward Capacity Market Tariff**

Both Ameren Missouri and MISO make the rather bizarre claims in their post-hearing briefs that MJMEUC has not made their concerns known to FERC.<sup>1</sup> MJMEUC, as part of the Midwest TDU pleading, filed extensive pleadings regarding the dangers and shortfalls of the proposed mandatory forward capacity market as filed by MISO. Not only did MJMEUC file pleadings in the FERC docket, Ameren Missouri and MISO were both served with those pleadings.<sup>2</sup> Indeed, MJMEUC, through the Midwest TDU coalition, has been one of the most active parties in FERC docket ER11-4081. Additionally, anyone could have easily ascertained the same from FERC’s public website, where such pleadings are on repository for anyone who cares to view them.<sup>3</sup>

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<sup>1</sup> UE Post Hearing Brief at p. 24, MISO Post Hearing Brief at p. 8

<sup>2</sup> See FERC Docket ER11-4081, *Motion to Intervene and Protest of Midwest TDUS*.

<sup>3</sup> Midwest TDUs, of which MJMEUC is listed on the filing sheet and on all pleadings, filed their 73 page intervention and protest on September 15, 2011, and included significant detail regarding MJMEUC’s concerns, as well as a certificate of service showing it was served to all parties on FERC’s service list for this docket. We have followed up with extensive responses to the Capacity Supplier’s group (i.e. Ameren Energy Resources) and to the Independent Market Monitor (IMM)(filed 10-4-2011), and MISO (filed 10-31-2011).

## **II. Uniformity of MJMEUC Membership**

As for the statement by MISO that some of MJMEUC's members likely did not favor our position in this litigation, such statement is simply false speculation.<sup>4</sup> MISO failed to cite any testimony or document for this statement, and would likely be surprised to know that MJMEUC members uniformly oppose the involuntary forward capacity market proposed by MISO, including the City of Columbia.<sup>5</sup> MISO has failed to grasp that increased volatility in market prices is not something that municipalities desire, even those that are long on capacity.

## **III. Improper Argument Regarding Opening Statement**

While opening statements are instructive to finders of fact to understand the issues to be presented, it is long standing law in Missouri that they are not evidence and cannot be relied upon to reach a decision by the finder of fact.<sup>6</sup> Arguments that the Commission rely on MJMEUC's opening statement as evidence are improper, and such arguments should be disregarded. This is simply another attempt to divert the Commission's attention from Ameren Missouri's woeful lack of evidence as to whether a capacity market is not detrimental to the public interest. Regardless, MJMEUC's opening did not state anything new; whatever changes FERC makes to the proposed capacity market tariff, and the impacts of those changes are unknown. We can only look at recent FERC decisions to obtain an idea of how FERC will change the proposed tariff. As stated in previous testimonies and briefs, the burden is on Ameren Missouri, not the other parties, to convince the Commission that staying in MISO is not detrimental to the general public interest.<sup>7</sup> It is up to the Commission to determine whether the

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<sup>4</sup> MISO Post Hearing brief at p.4

<sup>5</sup> Columbia participated in the drafting and review of MJMEUC's testimony in this case, and there were no members of MJMEUC who opposed the position MJMEUC took in this hearing.

<sup>6</sup> See Hardwick vs. Kansas City Gas, 352 Mo. 986, 180 SW2d 670 (1944).

<sup>7</sup> See State ex rel. City of St. Louis v. Public Service Commission of Missouri, 335 Mo. 448, 73 S.W.2d 393, 395 (Mo. banc 1934).

evidence Ameren Missouri has submitted is sufficient to meet its evidentiary burden, or insufficient.

#### **IV. Conclusion**

It is interesting to note that nobody has attacked the testimony provided by MJMEUC for being inaccurate or based on faulty premises. Instead, the criticisms revolve around the fact that since FERC has not acted, the evidence provided by MJMEUC should be disregarded. No party to this case can state with absolute certainty state what changes FERC will make to the proposed capacity market tariff. If the Commission does approve Ameren Missouri's continued transfer of assets to MISO, sufficient safeguards should be installed to allow any party to come back to the Commission if it becomes apparent that detriment to the public interest will occur. This Commission has unique authority and is in a unique position to protect the public interest, and we would respectfully ask that this Commission exercise its authority in a manner to do so.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing reply brief was served by e-mailing a copy to all parties on the Commission's Service List this 23<sup>rd</sup> day of March, 2012.

/s/ Douglas L. Healy  
DOUGLAS L. HEALY