

**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.)	

**POST-HEARING REPLY BRIEF OF
MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.**

Midwest Independent Transmission System Operator, Inc. (“MISO”), pursuant to the Commission’s Notice Regarding Briefing Schedule of February 10, 2012, states the following as its Post-Hearing Reply Brief:

The initial post-hearing briefs filed by the Office of the Public Counsel (“OPC”) and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) failed to provide any persuasive reason why this Commission should not approve the Non-Unanimous Stipulation and Agreement (“Stipulation”). All of their objections relate to possible future events and hypothetical developments, not to any existing cause for concern.

Because Missouri law requires the Commission to determine at this time whether the continuation of Ameren Missouri’s MISO membership and its transfer of functional operational control to MISO “is detrimental to the public,” the Stipulation should be approved. See State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 737 (Mo. en banc 2003).

I. Public Interest.

OPC and MJMEUC propose to rewrite Section 10(a) of the Stipulation which allows any party to request that the Commission investigate a material event that poses a substantial risk that continued participation in MISO has become detrimental to the public interest.¹

¹ Section 10(a) was erroneously referred to as Section 10(b) in the second paragraph of page 2 in MISO’s Initial Post-Hearing Brief.

A stakeholder must, therefore, describe a material event, not an immaterial one, that is presenting a substantial risk, not an insubstantial one. Both OPC and MJMEUC agree that the event posing the risk must be material. See OPC Initial Brief at 11; MJMEUC Initial Brief at 2. However, they both seek to dilute the requirement that the event “presents a substantial risk” that continued participation by Ameren Missouri in MISO has become detrimental to the public interest.

MJMEUC seeks to eliminate any requirement that a stakeholder show a “substantial risk” or any risk at all. It argues that a stakeholder should only have to demonstrate that such an event “would cause” continued participation in MISO “to become detrimental to the public interest.” See MJMEUC Initial Brief at 2.

While OPC does not suggest eliminating the “substantial risk” language, it also proposes to delete the requirement that a material event must have caused continued participation in MISO to become detrimental to the public interest, and to substitute a condition of “may cause substantial harm to Ameren Missouri’s ratepayers.” See OPC Initial Brief at 11.

However, Section 10(a) sensibly requires that a stakeholder articulate a reason that is sufficiently meaningful and in existence before requesting that the Commission to initiate an investigation.

The Stipulation also makes clear that “nothing . . . is intended to impinge or restrict in any manner the exercise by the MoPSC of any statutory right, including the right to access information or any statutory obligation.” See § 16, Stipulation at 13. Consequently, the Commission’s authority to ensure that electrical corporations like Ameren Missouri “shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and

in all respects just and reasonable” under Section 393.130.1.² Similarly, the power of the Commission to conduct investigations pursuant to its general supervisory jurisdiction over electrical corporations regarding “furnishing or transmitting electricity,” as set forth in Section 393.140, is not diminished.

Because the provisions of the Stipulation properly call for a showing of a material harm that is presenting a substantial risk that Ameren Missouri’s continued participation in MISO is detrimental to the public interest, Section 10(a) is just and reasonable, and requires no modification.

II. OPC Objection: Ameren Missouri Voting Rights at MISO.

OPC also objects to the Stipulation because it fails to require what OPC calls “separate representation” for Ameren Missouri. It calls for Ameren Missouri to “seek to represent itself at MISO, rather than continue to be represented by Ameren Services.” See OPC Initial Brief at 11-14.

OPC appears to be requesting that the Commission disapprove the Stipulation because it fails to address this issue or approve the Stipulation only if it directs Ameren Missouri take steps to redraft the MISO Transmission Owners Agreement to provide Ameren Missouri with special rights not granted to other MISO transmission owning members.

OPC claims that Ameren Missouri’s interests differ from those of its owner and parent company Ameren Corporation, Ameren Services Company, or other Ameren affiliates. However, OPC has identified no particular problem or any particular decision made by any Ameren representative that has caused harm to Ameren Missouri ratepayers. OPC has also identified no specific or imminent future harm to Ameren Missouri ratepayers if the Stipulation is approved.

² All citations are to the Missouri Revised Statutes (2000), as amended.

The provisions of Section 10(e) continue the protections that have been afforded to Ameren Missouri ratepayers under previous stipulations that were approved by the Commission. This provision continues the Agreement for the Provision of Transmission Service to Bundled Retail Load (known as the “Service Agreement”) which was approved by the Commission when it first authorized Ameren Missouri to join MISO. See In re Union Electric Co., Order Approving Stipulation and Agreement, No. EO-2003-0271 (Feb. 9, 2004) at 2. The Service Agreement was also approved by the Federal Energy Regulatory Commission, which action then permitted the 2004 Stipulation to go into effect. See Order Accepting Service Agreement for Filing, Midwest Indep. Transmission System Operator, Inc. and Ameren Services Co., 106 FERC ¶ 61,293 (Mar. 25, 2004), Order Granting Motion for Clarification, 107 FERC ¶ 61,167 (May 13, 2004).

Moreover, the stakeholder voting issues raised by OPC have existed ever since Ameren Corporation established affiliated companies after the Commission granted Union Electric Company authority to form a holding company. In re Union Elec. Co., No. EM-96-149 (Feb. 21, 1997). OPC has cited no specific example of prejudice to Ameren Missouri’s ratepayers since that permission was first granted over 15 years ago. OPC has similarly given no reason why the Commission’s statutory powers and its rules are not sufficient to address a proposal or transaction by another Ameren company that threatens to harm Ameren Missouri ratepayers.

Finally, the MISO stakeholder process, as conducted through the Advisory Committee and its various subcommittees and working groups, is intended to be a forum for MISO members and others to be informed of MISO’s activities, and for them to present information and advice to MISO and its independent Board of Directors. It was not intended to govern the actions of

MISO. While certain rights are reserved to the transmission owners,³ the MISO Transmission Owners Agreement explicitly states that “neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the Midwest ISO.” See MISO Transmission Owners Agreement, Art. Two, § 6(A)(1), attached as Ex. 1 at p. 3.

Given the protections afforded to Ameren Missouri customers under the previous orders of the Commission, there is no reason to impose further conditions regarding stakeholder voting at MISO, particularly in light of the carefully balanced governance structure established by the MISO Transmission Owners Agreement.

III. MJMEUC Objections: Capacity Markets.

MJMEUC continues to raise concerns regarding MISO’s proposed resource adequacy requirement filing in FERC Docket No. ER11-4081. However, since FERC has not issued an order in that proceeding, there is no basis for the Commission to take action regarding MJMEUC’s concerns which are hypothetical in nature at this time.

At the evidentiary hearing MJMEUC’s witness James F. Wilson expressed no objections to MISO’s proposed capacity market proposal. (Tr. 210). This was consistent with his pre-filed testimony. See Ex. 17, Wilson Rebuttal Testimony at 29.

Neither Mr. Wilson nor MJMEUC’s other witness Marlin Vrbas addressed any of the specific concerns that MJMEUC raised in its post-hearing brief. Indeed, there is no evidence in the record that Mr. Wilson, Mr. Vrbas, or any other MJMEUC representative participated in the stakeholder process that preceded the filing of MISO’s resource adequacy proposal.

With regard to the potential issues that MJMEUC raised regarding the units in other states, MISO Vice President of Operations Richard Doying noted that if Ameren Missouri were

³ See, e.g., MISO Transmission Owners Agreement, Art. Two, § IX(C)(6) (revenue distribution), § IX(C)(7) (Federal Power Act Section 205 filing rights).

to build Capacity Resources in a different Load Resource Zone than its customers, and if congestion limited Ameren Missouri's ability to deliver such resources to its customers, "it appear[ed] unlikely that Ameren Missouri would be subject to any Zonal Delivery Charge exposure." See Ex. 15, Doying Surrebuttal Testimony at 12, lines 18-19. Mr. Doying also testified that there were "Grandmother Agreement" arrangements and hedging proposals in the proposed MISO resource adequacy proposal that will provide load serving entities (LSEs) like MJMEUC and its members with financial protections. Id. at 9. Therefore, to the extent that MJMEUC has interests in power plants that are located in Arkansas or Illinois, MISO has proposed methods by which MJMEUC and its members can protect their interests and assure the reliable, efficient and economical delivery of electricity. See Tr. 219.

Finally, as Mr. Doying stated in prefiled testimony and at the evidentiary hearing, MISO's opt-out and self-scheduling provisions will permit LSEs to use an alternative approach that will allow them to bypass the planning resource auction contained in the MISO proposal. See Tr. 227, Ex. 15, R. Doying Surrebuttal Testimony at 9, 13.

IV. Conclusion.

No witness has disputed the benefits that Ameren Missouri has shown will accrue to its customers as a result of continuing its MISO membership. MJMEUC's Mr. Wilson conceded that he had not analyzed or evaluated the benefits of Ameren Missouri continuing its participation in MISO. (Tr. 198).

The only objections presented to the Commission were based on what might happen in the future, and the Stipulation itself provides stakeholders with an avenue to raise concerns that are significant.

Given the absence of any evidence showing that there is any detriment to the public interest in the broadest sense if Ameren Missouri's membership in MISO is continued, the Commission should promptly approve the Non-Unanimous Stipulation and Agreement.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was e-mailed on March 23, 2012 to the persons on the Commission's service list in this case.

/s/ Karl Zobrist

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5. Voting. At all meetings of Members, the Chairman, or such other person as may be designated by the Board, shall preside. Each Member shall be entitled to one vote, and Members may vote by proxy. Twenty-five percent (25%) of the Members, or their proxies, shall constitute a quorum for the purpose of any such meeting. The Board shall review from time to time the quorum requirements. Except where it is otherwise provided in this Agreement, a vote of a majority of the Members represented and voting at the meeting shall control.

C. Limited Liability. All persons dealing with, or having any claim against, any Director, Officer, agent, or employee of the Midwest ISO acting on behalf of the Midwest ISO shall look only to the Midwest ISO for the payment of any debt, claim, damage, judgment, or decree of the Midwest ISO, or of any money or thing that may become due or payable in any way by the Midwest ISO, whether founded on contract or tort, and the Members shall not be personally or individually liable for any such debt, claim, damage, judgment, or decree.

VI. External Committees.

A. Advisory Committee.

1. At all times there shall exist an Advisory Committee to the Board consisting of a total of twenty-three representatives from the following stakeholder groups chosen as follows: (i) three (3) representatives of Owners, with one (1) seat assigned to an Owner who was a member of the Mid-Continent Area Power Pool ("MAPP") as of March 1, 2000; (ii) three (3) representatives of municipal and cooperative electric utilities and transmission-dependent utilities, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000; (iii) three (3) representatives of independent power producers (hereinafter "IPPs") and exempt wholesale generators (hereinafter "EWGs"), with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region

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(as it existed on March 1, 2000); (iv) three (3) representatives of power marketers and brokers, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (v) three (3) representatives of eligible end-use customers, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (vi) three (3) representatives of state regulatory authorities, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (vii) two (2) representatives of public consumer groups, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); (viii) two representatives of environmental and other stakeholder groups, with one (1) seat assigned to a Member of this group who was a member of MAPP as of March 1, 2000, or who is actively involved in the MAPP region (as it existed on March 1, 2000); and (ix) one (1) representative of Members who, being legally unable to transfer operational control to the Midwest ISO, have entered into coordination or agency agreements with the Midwest ISO (“Coordination Members”). The Board may revise or expand the stakeholder groups as circumstances and industry structures change. The Board shall be responsible for facilitating meetings of the Advisory Committee, which shall be held at least quarterly. At such quarterly meetings, the Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President) and at least two (2) other members of the Board shall meet with the Advisory Committee. Upon request of the Advisory Committee, Board members and the Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President) shall use their best efforts to attend other Advisory Committee meetings.

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The Advisory Committee shall be a forum for its members to be apprised of the Midwest ISO's activities and to provide information and advice to the Board on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, but neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the Midwest ISO. Nothing in this Agreement shall prohibit a corporate or other entity from participating in more than one stakeholder group provided it meets the approved eligibility criteria. The reports of the Advisory Committee and any minority reports shall be presented by the Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President) to the Board. The Board shall determine how and when it shall consider and respond to such reports. The Chief Executive Officer (or if the Board chooses not to elect the Chief Executive Officer, the President) shall inform the Advisory Committee of any Board determination(s) with respect to such report.

2. Members of the Advisory Committee shall be selected in the following manner:

- a. The Owners' representatives on the Advisory Committee shall be selected in accordance with Article Two, Section VI, Paragraph B of this Agreement.
- b. The representatives of municipal and cooperative electric utilities and transmission-dependent utilities, IPPs and EWGs, power marketers and brokers, eligible end-use customers, and Coordination Members on the Advisory Committee shall be chosen by the Members belonging to such groups. Such Member groups shall propose to the Board their own methods of eligibility and voting. Approval by the Board of such procedures shall not be unreasonably withheld.

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c. The representatives of state regulatory authorities on the Advisory Committee shall be chosen by the state public service commissions which regulate the retail electric or distribution rates of the Owners who are signatories to this Agreement.

d. The representatives of public consumer groups and environmental and other stakeholder groups on the Advisory Committee shall be chosen by recognized consumer, environmental, and other stakeholder organizations having an interest in the activities of the Midwest ISO. The Board shall certify the organizations eligible to participate in the selection of such representatives to the Advisory Committee. Such certification shall not unreasonably be withheld. The groups so certified shall propose to the Board their own methods of eligibility and voting. Approval of such procedures shall not unreasonably be withheld.

e. Meetings of the constituent stakeholder groups represented on the Advisory Committee need not be open to the public.

B. Owners' Committee. An Owners' Committee shall exist throughout the period of this Agreement. The Owners' Committee shall consist of one (1) person representing each of the Owners who are signatories to this Agreement. The Owners' Committee shall meet at its discretion to exercise the authority granted to the Owners as a group under this Agreement pursuant to Article Two, Section IX, Paragraph C of this Agreement. The Owners' Committee shall select three (3) representatives to serve on the Advisory Committee established pursuant to Article Two, Section VI, Paragraph A of this Agreement.

VII. Open Meetings.

A. In General. Except as provided herein, all meetings of the Board, all meetings of committees (also sometimes referred to herein as "internal committees") and working groups of the

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