

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

Application of Union Electric Company)	
d/b/a AmerenUE for an order authorizing Applicant)	
(if and to the extent the transaction described)	
herein would constitute the issuance of an)	
evidence of indebtedness by Applicant under)	
Sections 393.180 and 393.200, RSMo))	Case No. EF-2006-0278
to execute, deliver and perform the)	
agreements and instruments necessary to assume)	
a lease and related documents pertaining to the)	
NRG Audrain combustion turbine generator)	
facility owned by Audrain County, Missouri which)	
was constructed as part of a revenue bond)	
project under Chapter 100, RSMo.)	

**RESPONSE IN OPPOSITION TO APPLICATION FOR INTERVENTION OF
MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

COMES NOW Union Electric Company d/b/a AmerenUE (the “Company” or “AmerenUE”), and responds in opposition to the Application for Intervention filed herein by the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) on January 16, 2006 as follows:

1. This is a *financing* case, filed for the sole purpose of obtaining, if and to the extent approval is required,¹ Commission approval of the assumption by the Company of a lease with Audrain County, Missouri of a generating plant entered into in

¹ Because no new debt is being issued there is a question about whether or not AmerenUE’s assumption of the lease requires Commission approval under either or both of Sections 393.180 or 393.200, RSMo. AmerenUE is not creating any liens that would require approval under Section 393.180, and is not itself issuing any debt, but as discussed below, the lease will be treated as a capital lease on AmerenUE’s books and will have a minor effect on AmerenUE’s capital structure. Indeed, it slightly increases the ratio of debt to equity on AmerenUE’s books and consequently results in the use by AmerenUE of slightly more, low-cost debt financing, which would tend to lower rates. Because of the capital nature of the lease, AmerenUE has filed the instant Application.

2000 as part of an existing Chapter 100² revenue bond project. The sole purpose of assuming the existing lease (as opposed to simply buying the combustion turbine generators (“CTGs”) located on the leased property outright) is to realize for the Company and, in turn, the Company’s ratepayers, property tax savings of approximately \$2 million annually over the remaining lease term, which runs for approximately the next 15 years.

2. The Company could have elected simply to purchase the CTGs outright, in which event the property tax savings associated with the Chapter 100 financing arrangement would not have been available to the Company and its ratepayers. Had the Company done so, no permission would have been required of this Commission because the CTGs are located within AmerenUE’s existing certificated service territory.³

3. Consequently, the only issue pending before the Commission in this case is whether to approve the financing under Section 393.200. When exercising its authority under Section 393.200, the Commission must simply issue an order showing, “in the opinion of the Commission, the money, property or labor to be procured or paid for by the issuance of such . . . evidence of indebtedness is or has been reasonably required for the purposes specified in the order.” As the Company’s Application provides, the evidence of indebtedness (the lease with the County to be assumed by AmerenUE) was entered into to gain the ad valorem tax exemption that applies to the CTGs as a result of the Chapter 100 arrangement. The Commission therefore need only find that the bond

² Sections 100.010 to 100.200, RSMo. All references to RSMo. are to the Revised Statutes of Missouri (2000), unless otherwise noted.

³ Though far beyond the scope of this Response, AmerenUE would note that none of the issues relating to the need for a “specific” certificate or local zoning approvals as presented with respect to Aquila’s South Harper plant exist in this case. Audrain County is not a non-charter first class county (it is a third class county), and the specific statutory language upon which the Aquila South Harper decision in WD Case No. 64985 is based does not therefore apply here. Moreover, Audrain County has no county planning and zoning ordinance in any event, and this plant is already constructed and is in place.

was reasonably required for that purpose, a conclusion that the Company respectfully submits is obvious and that the proposed intervenor, MJMEUC, surely does not contest.

4. MJMEUC's request to intervene is an improper attempt to expand the scope of this case beyond any statutory authority the Commission has with respect to the pending Application. MJMEUC asserts that it and its member municipalities "are directly affected by power flow from AmerenUE generators on the AmerenUE transmission system and thus may be adversely affected by a final order in this matter." Application for Intervention at ¶ 4. That assertion is not only incorrect, but even if it were correct, it is *irrelevant to this financing case* and fails to support MJMEUC's proposed intervention.

5. As explained in detail in the Affidavit of Mr. Edward C. Pfeiffer, attached hereto and incorporated herein by this reference as Exhibit A, MJMEUC's assertion is incorrect and reflects a fundamental misunderstanding of how generators, including the generating units covered by the lease to be assumed by AmerenUE, are dispatched when those generators are within the footprint of a regional transmission operator ("RTO"), in this case, the Midwest Independent Transmission System Operator, Inc. ("MISO").

6. In summary, Mr. Pfeiffer's Affidavit demonstrates the following: (a) the generating plant at issue (consisting of eight CTG units to be leased from Audrain County by AmerenUE by assuming the existing lease) is already built and in-service; (b) it is already connected to AmerenUE's transmission system and is already within MISO's footprint; (c) the MISO has already included the plant for purposes of allocating transmission capacity within the MISO's footprint; (d) the MISO already includes the plant in its security constrained economic dispatch within the MISO's footprint; (e) the

transmission capacity allocated to these CTGs, the operation of the transmission system, and the dispatch of the units is consequently *completely unaffected* by AmerenUE's assumption of the Chapter 100 lease. Indeed, Mr. Pfeiffer's Affidavit demonstrates that who holds title to the units, who the lessee of the units is, who owns the land, or who operates the units themselves has no effect on transmission capacity, dispatch of the units, or power flows on the transmission system. The MISO will dispatch the units if and when MISO's security constrained dispatch order indicates that the units should be dispatched and the transmission system will react to that dispatch in the same way, regardless of the identity of the owner, operator or lessee.

7. Commission Rule 4 CSR 240-2.075 governs applications to intervene.⁴ As the Commission has stated, "intervention is the process whereby a stranger becomes a full participant in a legal action." *Order Denying Intervention*, Case No. EA-2000-37 (Oct. 21, 1999) (citing *Ballmer v. Ballmer*, 923 S.W.2d 365, 368 (Mo. App. W.D. 1996)). Subsection (4) of the Rule provides that the Commission "*may* on application permit any person to intervene . . ." upon a showing by the person seeking intervention that:

- "(A) the proposed intervenor has an interest which is different from that of the general public *and* which may be adversely affected by a final order arising from the case; or
 - (B) granting the proposed intervention would serve the public interest."
- (emphasis added).

8. MJMEUC bears the burden to establish that it meets this Commission's requirements for intervention, and to convince this Commission that it should exercise its

⁴ See also Section 386.420, which only permits intervention by "persons . . . the commission may allow to intervene . . .".

discretion to allow MJMEUC to intervene. *See, e.g., Augspurger v. MFA Oil Co.*, 940 S.W.2d 934, 937 (Mo. App. W.D. 1997) (discussing the corollary intervention rule contained in the Missouri Rules of Civil Procedure). As already demonstrated, the entire premise of MJMEUC's attempt to fit within subsection (4)(A) of the Commission's Intervention Rule is incorrect. It is not possible that a Commission order *approving this financing arrangement* could adversely affect MJMEUC. Perhaps MJMEUC may disagree with how the MISO dispatches the units, but that has nothing to do with this financing case. With regard to subsection (4)(B) of the Intervention Rule, allowing MJMEUC to inject its "concerns" (which the Company submits have no merit in any event) about the adequacy of the transmission system into this case, concerns which are totally beyond the proper scope of this financing case, cannot possibly serve the public interest. In fact, MJMEUC's intervention contravenes the public interest for the reasons discussed below. Consequently, MJMEUC has failed to carry its burden.

9. It is not AmerenUE's burden to demonstrate that MJMEUC's intervention contravenes the public interest, but AmerenUE believes that to be the case for at least two reasons. First, MJMEUC either misapprehends the nature of a financing case or perhaps desires to use this financing case in an attempt to gain some leverage or advantage, for itself and for its members, relating to transmission access or transmission costs that has nothing to do with approval of a financing for a regulated public utility. The Company addresses this first issue in more detail below starting with paragraph 10 of this Response. Second, AmerenUE intends to use the generating capacity obtained by assuming the subject lease to meet its required capacity reserve margin for the summer of 2006. As the Commission no doubt understands, it is critical to the reliability of the

entire system that a proper planning reserve margin be maintained at all times, particularly during the peak summer months. MJMEUC's intervention could delay this proceeding and jeopardize AmerenUE's acquisition of that capacity. Any delay caused by MJMEUC's intervention could result in a termination of the Asset Purchase and Sale Agreement by which AmerenUE is assuming the Chapter 100 lease and a loss of the ability to gain the tax advantages for the Company and for ratepayers resulting from the Company's assumption of the lease and the Chapter 100 financing arrangements.⁵

10. This is not the first time MJMEUC has used its expression of “concerns” about the adequacy of the transmission system in a Commission case involving AmerenUE to support its request for intervention. MJMEUC has now twice lodged these general Missouri transmission system adequacy concerns in Commission cases. MJMEUC has lodged these concerns with this Commission despite the fact that the proper forum to address any issues relating to the overall adequacy of Missouri’s transmission system, or relating to how the MISO dispatch of generators (including the MISO’s dispatch of the CTGs at issue here) within its footprint affects the transmission system, is at the Federal Energy Regulatory Commission (“FERC”) or at the MISO itself. In this regard, AmerenUE has pending at the FERC an application involving transfer of the Audrain CTGs in which comments may be filed by MJMEUC on or before January 30, 2006.⁶

⁵ If the transaction has not closed by ** _____ **, the seller, NRG, can terminate the contract which would deprive AmerenUE of the right to gain the tax advantages discussed above and in the Company's Application. MJMEUC may assert that its intervention would not delay or unduly delay these proceedings. Any such assertion is entirely beyond the point. MJMEUC has failed to meet even the most minimally applied standards for intervention and simply has no business in this case.

⁶ See *Union Electric Company d/b/a AmerenUE and NRG Audrain Generating, LLC*, FERC Docket No. EC06-56-000 “Notice of Filing” issued January 10, 2006.

11. In the Company's certificate of convenience and necessity case filed in late 2004 relating to the Company's service to Noranda Aluminum, Inc. ("Noranda"),⁷ MJMEUC sought intervention asserting that some of its members are "dependent on transmission service provided over facilities owned by Union Electric Company and may be affected by a final order in this matter." MJMEUC's Motion to Intervene, Case No. EA-2005-0180, ¶ 2. Note the remarkable similarity between that assertion and the assertion made in this case in the subject Application for Intervention.

12. AmerenUE and Noranda opposed MJMEUC's intervention in the Noranda case, arguing in part that the proper forum for MJMEUC's "concerns" was at the FERC. Although the Commission granted MJMEUC's intervention request in that certificate case (the scope of which is far different from a financing case, as here) MJMEUC in effect later conceded the very point AmerenUE and Noranda had made and MJMEUC withdrew its intervention. In doing so, MJMEUC advised the Commission that it was withdrawing its intervention because "it now appears MJMEUC's immediate Noranda-related transmission concerns will be examined at FERC." MJMEUC's Motion to Withdraw, Case No. EA-2005-0180, ¶ 7. Moreover, MJMEUC asserted that "[i]n Missouri, the transmission system has become more congested because the growth in electricity demand and investment in generation facilities have not been matched with concomitant investment in transmission facilities," and indicated that MJMEUC believed a general investigatory docket at the Commission was warranted. *Id.* MJMEUC asserted that it intended to file a motion seeking to establish such a docket. *Id.*

⁷ Commission Case No. EA-2005-0180.

13. It turns out that satisfying MJMEUC's alleged concerns about how service to Noranda might affect the transmission system were apparently entirely, or at least predominantly, financial not operational. In order to serve Noranda, AmerenUE needed FERC approval of an amendment of its Interchange Agreement with Associated Electric Cooperative, Inc. ("AECI") because Noranda is directly connected to AECI's transmission system. In addition to intervening in the Noranda case at this Commission, MJMEUC protested AmerenUE's filing at the FERC. *See* FERC Docket No. ER05-485. Docket No. ER05-485 is the FERC docket referred to by MJMEUC in its Motion to Withdraw as the docket where MJMEUC's transmission adequacy related concerns would be addressed. AmerenUE reached a resolution of MJMEUC's protest at the FERC as reflected in a Settlement Agreement reached between AmerenUE, its affiliate Central Illinois Public Service Company d/b/a AmerenCIPS, and MJMEUC. In summary, the Settlement Agreement provides that MJMEUC will drop its "transmission adequacy concerns" (and withdraw its protest at FERC) about the Noranda service in exchange for *financial* commitments from these Ameren companies relating to transmission upgrades in Illinois necessitated by MJMEUC's proposed participation as a part owner of the proposed Prairie State mine-mouth coal-fired generating plant to be built in Southern Illinois. About this same time other *financial* concerns raised by MJMEUC, also having nothing to do with the service to Noranda, were resolved pursuant to a second Settlement Agreement filed with FERC in another unrelated FERC Case (Case No. ER04-1252-000).

14. In summary, MJMEUC's concerns about the adequacy of the transmission system, even if, *arguendo*, those concerns were valid, have no place in this financing

case. AmerenUE questions whether MJMEUC is attempting to intervene in this financing case, using these same alleged transmission adequacy related concerns, in an attempt to gain some kind of leverage or advantage over AmerenUE with respect to other concessions MJMEUC may desire to obtain from AmerenUE. Or, perhaps MJMEUC simply fails to understand the limited nature of a financing case, or did not carefully review the Company's Application leading MJMEUC to misunderstand the issues in this case and the limited nature of the relief sought by the Company. Regardless, operational issues about the transmission system, or other concessions MJMEUC may desire regarding the transmission system, whatever they may be, are obviously wholly unrelated to the assumption of the Chapter 100 lease relating to CTGs located in Audrain County, Missouri.

15. MJMEUC's Application for Intervention is deficient in another respect as well. The Commission's rule on intervention requires those who seek to intervene to "state whether the proposed intervenor supports or opposes *the relief sought* or that the proposed intervenor is unsure of the position it will take" 4 CSR 240-2.075(2). MJMEUC's Application states that it is "unsure of the position it will take *on the various* issues that may arise in the instant proceeding." Application for Intervention, ¶ 5. MJMEUC's statement fails to comply with the Commission's rule. The rule does not require that MJMEUC state a position on the "various issues" that may arise. Rather, it requires MJMEUC to state a position on the *relief* sought. The only relief sought in this case is authorization of the financing represented by the Chapter 100 transaction (i.e. essentially assumption of the lease and execution of related documents) so that the tax benefits can accrue to the Company and to ratepayers. Indeed, the Company prays that

the Commission impose certain conditions reflected in ¶10 of the Company's Application, including a condition that expressly provides that the ratemaking treatment of the transaction is not to be addressed in this financing case. In any event, MJMEUC's members are wholesale customers whose rates do not depend on this Commission's action in this case.

In short, MJMEUC should either be able to state that it supports the *relief sought* (and the resulting tax benefits), that it opposes the *relief sought*, or that it does not care. Indeed, the last position is the only reasonable position MJMEUC could take in this case given that approval of this financing has nothing to do with transmission service to its members, and has nothing to do with rates for MJMEUC⁸, including its members. For this additional reason, MJMEUC's intervention request should be denied.

WHEREFORE, AmerenUE respectfully requests this Commission to exercise its discretion to enter its order denying MJMEUC's Application for Intervention, and for such other and further relief deemed proper under the circumstances.

Dated: January 23, 2006

Respectfully Submitted:

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**Attorneys for Union Electric Company
d/b/a AmerenUE**

⁸ Indeed, the Commission's order in this case would provide no ratemaking treatment of any kind, as discussed above.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, to the following parties on the 23rd day of January, 2006.

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/s/ James B. Lowery

James B. Lowery

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was constructed as part of a revenue bond)
project under Chapter 100, RSMo.)

Case No. EF-2006-0278

AFFIDAVIT OF EDWARD C. PFEIFFER

Edward C. Pfeiffer, being first duly sworn on his oath, states:

1. My name is Edward C. Pfeiffer. I am the Manager of the Electric Planning Department for Ameren Services Company. Ameren Services Company provides support and technical services to Union Electric Company d/b/a AmerenUE in connection with AmerenUE's electric transmission system, including acting on AmerenUE's behalf with respect to AmerenUE's participation in the Midwest Independent Transmission System Operator, Inc. ("MISO"). The MISO has functional control of the AmerenUE transmission system.

2. The Ameren Services Electric Planning Department works directly with the MISO on the following topics: generation connection requests, generation deliverability studies, regional transmission expansion studies, and long term transmission service request analysis. In addition, the Electric Planning Department also provides technical support on MISO activities related to the transmission implications

involved in day ahead and real time dispatch, congestion management, and the analysis of financial transmission rights.

3. My job duties require that I be familiar with all electric generating plants connected to the Ameren transmission system including the NRG Audrain combustion turbine generator plant (the “NRG Plant”) which AmerenUE proposes to lease from Audrain County, Missouri as part of the existing Chapter 100 financing arrangement originally entered into between NRG and the County. My familiarity with the NRG Plant includes knowledge of the units located at the plant site, knowledge relating to the connection of the plant to the transmission system in the area, knowledge of the status of the plant within the MISO, and knowledge relating to the transmission outlet capability from the plant.

4. The NRG Plant is constructed and is operational and in-service. It is directly connected to AmerenUE’s 345 kilovolt (“kV”) transmission system.

5. Through its connection to the AmerenUE transmission system, the NRG Plant is located within MISO’s footprint.

6. The MISO has determined, through an analysis conducted in accordance with the MISO’s tariff and business practices, that the NRG Plant is deliverable as a capacity resource to any load within the MISO footprint up to 574 megawatts (“MW”). As a result of this designation by the MISO, the NRG Plant may be used by AmerenUE (or any other load within the MISO) as a designated network resource under the MISO’s Transmission and Energy Markets Tariff (“TEM”) to meet the resource adequacy requirements of the TEM. Moreover, the MISO has already included the impact of the

NRG Plant in its transmission planning analysis for purposes of allocating transmission capacity within the MISO's footprint.

7. The MISO already includes the NRG Plant in its security constrained economic dispatch within the MISO's footprint.

8. Because of the facts contained in paragraphs 4 through 7 of this Affidavit, the transmission capacity allocated to the NRG Plant, the operation of the transmission system, and the dispatch of generators within the MISO footprint are completely unaffected by a change in the identity of the lessee under the existing Chapter 100 lease to be assumed by AmerenUE if approved by the Missouri Public Service Commission in this case.

9. Once a generating plant has been determined to be deliverable by the MISO, a change of title to a plant owned outright by a generator, or a change in the identity of the lessee of a leased plant, the identity of the landowner on whose land a plant is built, or the identity of the operator of a plant if different than the plant owner or lessee, has no impact on transmission capacity, dispatch, or power flows on the transmission system.

10. The MISO will dispatch the NRG Plant if and when the MISO's security constrained dispatch order indicates the units should be dispatched and the transmission system will react to that dispatch in the same way, regardless of the identity of the plant owner, operator, or lessee.

FURTHER AFFIANT SAYETH NOT.


Edward C. Pfeiffer

Subscribed and sworn to before me this 23rd day of January, 2006.

Annette Shaw
Notary Public

