



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
SHEILA LUMPE
STEVE GAW

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

September 28, 2001

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. EO-2001-684

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S STATEMENT OF POSITIONS**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Steven Dottheim
Chief Deputy General Counsel
(573) 751-7489
(573) 751-9285 (Fax)

SD:ccl
Enclosure
cc: Counsel of Record

FILED²
SEP 28 2001
Missouri Public
Service Commission

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

FILED²
SEP 28 2001
Missouri Public
Service Commission

In the Matter of the Application of Union)
Electric Company d/b/a AmerenUE for an)
Order Authorizing It to Withdraw from)
the Midwest ISO to Participate in the)
Alliance RTO)
)

Case No. EO-2001-684

STAFF'S STATEMENT OF POSITIONS

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and respectfully states that its positions on the issues identified in the List Of Issues, Order Of Witnesses And Order Of Cross-Examination are as follows:

1. Should UE's application for permission to withdraw from the Midwest ISO ("MISO") to join the Alliance RTO ("ARTO") be approved? Issues to be considered in making this determination include, but may not be limited to, the following:
 - a. Will the not-for-profit governance structure of the MISO or the for-profit structure of the ARTO be of greater benefit to the public interest?

Staff Position: The not-for-profit governance structure for the MISO is of greater benefit to the public interest.

- b. Is UE's retention of transmission revenues from ARTO rates, based on the rate design set out in the Settlement Agreement between the MISO and ARTO, of benefit to Missouri customers?

Staff Position: Because the level of transmission revenues compared to what would be collected under MISO is not known, and the increase in generation costs from a higher transmission rate are not known, it is impossible to determine the net benefits to Missouri customers from ARTO rates, based on the rate design set out in the Settlement Agreement between the MISO and ARTO.

- c. Will "seams" between MISO and ARTO continue to affect Missouri transmission customers through payments of pancaked transmission rates?

Staff Position: Because it is unclear at this time whether or not the rate design and Inter-RTO Cooperation Agreement (IRCA) from the Settlement Agreement will apply to entities not joining the MISO or ARTO by February 28, 2001, it is possible that this seam may result in a pancaked transmission rate for Missouri transmission customers other than UtiliCorp and AmerenUE. (UtiliCorp joined the MISO before February 28, 2001 and AmerenUE which was a member of

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the MISO before February 28, 2001 gave notice of its withdrawing from the MISO to join the ARTO before February 28, 2001.)

- d. Has the fact that ARTO has yet to establish an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board allowed the ARTO transmission owners to influence RTO formation decisions such that those decisions are, or may be, harmful to the public interest, and if so, can this be corrected without imposing delays and additional costs?

Staff Position: The continuing failure of the ARTO to set up an independent Board of Directors and a stakeholder advisory committee to provide advice to this Board has allowed the ARTO transmission owners to exert undue influence on RTO formation decisions that will be harmful to the public interest. This situation can be corrected with the immediate installation of a permanent, independent Board of Directors that is receiving recommendations from a Stakeholder Advisory Committee. Whether or not the delay by the ARTO in establishing a permanent, independent Board of Directors will result in delaying the implementation of ARTO and impose additional costs on the formation of ARTO is yet to be determined.

- e. Has the fact that ARTO has yet to establish an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board allowed the ARTO transmission owners to avoid compliance with the requirements of FERC Order No. 2000 or other FERC orders, and if so, can this be corrected without imposing delays and additional costs?

Staff Position: The FERC, in its Order on RTO Filing in Docket Nos. RT01-99-000 *et al.*, July 12, 2001 stated: "We further direct that from the date of this order an independent board be established to make all business decisions for the RTO. Until final RTO approval is granted, a stakeholder advisory committee should advise the independent board." To date, the ARTO has not complied with this directive. Whether or not the delay by the ARTO in establishing a permanent, independent Board of Directors will result in delaying the implementation of ARTO and impose additional costs on the formation of ARTO is yet to be determined.

- f. Can ratepayers be harmed by provisions of the ARTO agreements that provide for future transfers of transmission assets at market value?

Staff Position: Anytime there is a transfer of utility assets, whether at book value or market value, there is the potential for detriment to the public. This is why it is important for the Commission to assert jurisdiction over any such transfer. The Staff contends that the Commission has jurisdiction over such transfers.

- g. Was UE's exit fee payment to the MISO a prudent regulatory expense?

Staff Position: This is a matter for ratemaking determination in a ratemaking proceeding, i.e., either in a rate increase case or complaint rate decrease case in which UE seeks recovery of the exit fee. It should not be an issue in this case, which is not a ratemaking proceeding. Nonetheless, the Staff is not opposed to UE agreeing to not seek recovery of this cost from its

Missouri retail customers as a condition to it obtaining approval from the Commission to withdraw from the MISO and join the ARTO.

2. If the Commission decides to approve the Company's request to withdraw from the MISO and to join the ARTO, which (if any) of the following conditions should be required?

a. Staff's Conditions

1. Preliminary Conditions:

- a) No transfer from MISO to ARTO before additional evidence of December 15, 2001 startup is filed (December 5, 2001), with follow-up hearing (December 12, 2001).
- b) No transfer unless ARTO is approved by FERC as operational by December 15, 2001.
- c) No transfer unless ARTO has FERC-approved permanent independent Board of Directors in place and a Stakeholder Advisory Committee making recommendations to that Board by December 15, 2001.
- d) No transfer unless the ARTO and MISO have implemented the IRCA¹ and are providing non-pancaked transmission service within the ARTO-MISO super-region by December 15, 2001.

Staff Position: The Staff supports these initial conditions because the Commission need not approve the transfer from MISO to ARTO until such time that it is clear that ARTO will be able to function as a FERC approved RTO.

1) Subsequent Conditions: If the preliminary conditions are met, then the Commission should attach the following conditions to its approval of the requested transfer:

- a) No transfer unless UE agrees to withdraw from the Alliance if the FERC orders a single RTO in the Midwest, and to take whatever actions are necessary to participate in the single RTO.

Staff Position: If the Commission approves the transfer from MISO to ARTO and subsequently, for whatever reason, the FERC orders a single Midwest RTO, there are no substantive reasons given in evidence in this case for UE to remain in the Alliance. UE should participate in the single Midwest RTO.

- a) No transfer unless UE agrees to withdraw from the ARTO if ARTO is granted a PBR incentive to take a position in the energy market.

Staff Position: It is critical to the integrity of the ARTO that it not be perceived by energy market participants as having any incentive for taking a position in the energy markets.

¹ Inter-RTO Cooperation Agreement between the Alliance Companies and the Midwest ISO, § 2.17 ("*Early Ending of Inter-RTO Transition Period*"), approved by the Commission in *Illinois Power Co.*, 95 FERC ¶ 61,183 (2001).

b. Other Conditions (OPC)

- 1) The application should not be approved unless the FERC determines that the ARTO is in sufficient compliance with FERC Order No. 2000 prior to the proposed ARTO start-up date on December 15, 2001.

Staff Position: The Staff supports this condition, as being a necessary requirement. In order for the ARTO to be operational by the startup date of December 15, 2001, the FERC must determine that the ARTO is in sufficient compliance with FERC Order No. 2000.

- 2) The application should not be approved unless the FERC determines that the ARTO is in sufficient compliance with the IRCA provisions agreed to in the settlement that provided for Ameren's withdrawal from the MISO, prior to the proposed ARTO start-up date on December 15, 2001.

Staff Position: The Staff supports this condition, as being a necessary requirement. In order for the ARTO to be operational by the startup date of December 15, 2001, the FERC must determine that the ARTO is in sufficient compliance with the IRCA provisions agreed to in the Settlement Agreement.

- 3) The application should not be approved unless the FERC determines that the ARTO's outstanding compliance issues with FERC orders have been adequately satisfied prior to the proposed ARTO start-up date on December 15, 2001. These outstanding compliance issues include the following: (1) proposal of an acceptable Business Plan for achieving independence, (2) development of an independent market monitoring plan, (3) revising its proposal for a stakeholder advisory process, and (4) revisions to the Operating Protocol, the Planning Protocol, and the Pricing Protocol.

Staff Position: The Staff supports this condition, as being a necessary requirement. In order for the ARTO to be operational by the startup date of December 15, 2001, the FERC must determine that the ARTO's outstanding compliance issues with FERC orders have been adequately satisfied.

- 4) The application should not be approved unless UE and its parent, Ameren Corporation, agree to hold all Missouri ratepayers harmless from any adverse rate effects that could result from the transfer of its transmission assets to the Alliance Transco or some other entity at market value.

Staff Position: The Staff does not believe that this condition would be necessary if UE were not challenging the Commission's jurisdiction regarding the transfer of control of UE's transmission assets. The Staff contends that under existing Missouri statutes UE must obtain Commission approval for transferring transmission assets under, at a minimum, a not detrimental to the public interest standard, whether it is transferring control or ownership of those assets. The Staff is not opposed to this condition.

- 5) The application should not be approved unless UE and its parent, Ameren Corporation, agree not to transfer ownership of its transmission assets or otherwise dispose of those assets, regardless of any future changes in state law, unless such ownership transfers or other disposition are approved by this Commission.

Staff Position: The Staff agrees with this condition.

- 6) The application should not be approved unless UE and its parent, Ameren Corporation, agree that it will hold all Missouri ratepayers harmless from, and never seek recovery, either directly or indirectly, of the \$18 million exit fee that Ameren paid to the MISO.

Staff Position: This is a matter for ratemaking determination in a ratemaking proceeding, i.e., either in a rate increase case or complaint rate decrease case in which UE seeks recovery of the exit fee. It should not be an issue in this case, which is not a ratemaking proceeding. Nonetheless, the Staff is not opposed to UE agreeing to not seek recovery of this cost from its Missouri retail customers as a condition to it obtaining approval from the Commission to withdraw from the MISO and join the ARTO.

c. Other conditions (MIEC)

- 1) No transfer unless UE agrees to return to MISO if ARTO does not meet FERC startup requirements by December 31, 2002.

Staff Position: The Staff agrees with the intent of this condition, but adds that the FERC may order a single RTO for the Midwest region that is not MISO, and the condition should be modified to read: "In the event the FERC has not ordered a single RTO for the Midwest region and the ARTO has not met FERC startup requirements by December 31, 2002, then UE agrees to return to MISO."

- 2) No transfer unless UE agrees to abide by the terms and conditions of the Stipulation And Agreement in Case No. EO-98-413, as if the ARTO was the MISO.

Staff Position: The Staff agrees with this condition subject to limiting UE's agreement to complying with the terms and conditions of the Stipulation And Agreement in Case No. EO-98-413, as if the ARTO was the MISO, to the transition period applying to the initial rate design in the Settlement Agreement, i.e., the period through December 31, 2004.

Legal Issues

1. What is the appropriate standard for the Commission to use in deciding this case?

Staff Position: The appropriate standard for the Commission to apply to granting authority to UE leaving the MISO and granting authority for UE to join the ARTO is, at a minimum, the not detrimental to the public standard.

2. Independent of the Stipulation And Agreement in Case No. EO-98-413, is the Commission's authorization necessary for UE to withdraw from the MISO and join the Alliance?

Staff Position: Yes. The Commission has jurisdiction under Sections 393.190.1, 386.040 and 386.250(7) RSMo. 2000.

3. Has the Commission conceded that UE's withdrawal from MISO is in the public interest by failing to object to such a finding already made by FERC?


Staff Position: No. In addition, see Staff response to item 4, below.

4. Did UE violate the Stipulation and Agreement in Case No. EO-98-413 by failing to file with the Commission a notice of withdrawal at the same time the notice was filed at the FERC on January 16, 2001?

Staff Position: If UE is contending that this Commission conceded that UE's withdrawal from MISO is in the public interest by not objecting to such a finding at the FERC, then, among other things, in order for UE to have been in good faith compliance with the Stipulation And Agreement which it signed in Case No. EO-98-413, UE should have filed a notice of withdrawal with this Commission at the same time that it filed such notice with the FERC on January 16, 2001.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Dennis L. Frey
Associate General Counsel
Missouri Bar No. 44697

Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8700 (Telephone)
(573) 751-9285 (Fax)
e-mail: dfrey03@mail.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 28th day of September 2001.

_____

Service List for
Case No. EO-2001-684
Verified: September 26, 2001 (ccl)

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Robin E. Fulton
Schnapp, Fulton, Fall, McNamara & Silvey
135 E. Main St., P.O. Box 151
Fredericktown, MO 63645-0151

Robert C. Johnson
Lisa C. Langeneckert
Law Office of Robert C. Johnson
720 Olive Street, Suite 2400
St. Louis, MO 63101

David B. Hennen
Ameren Services Company
1901 Chouteau
PO Box 66149 (MC 1310)
St. Louis, MO 63166-6149

Diana M. Vulysteke
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102

Duncan Kincheloe
Attorney at Law
2407 W. Ash
Columbia, MO 65203