

In the Matter of the Application of Union Electric Company for a Certificate of Public Convenience and Necessity authorizing it to construct, install, own, operate, control, manage and maintain electric plant, as defined in § 386.020(14), RSMo, to provide electric service in a portion of New Madrid County, Missouri, as an extension of its existing certified area.

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Case No. EA-2005-0180

4. In paragraph number 4 of his affidavit, Dr. Proctor addresses AmerenUE's electric capacity needs for 2005 and 2006. In doing so, he comments as follows on the significance of the termination during this period of one of the Company's purchased power agreements:

It should be noted that the significant difference between the results for 2005 and 2006 are due to the termination of the purchased power contract between AmerenUE and Electric Energy, Inc. (EEInc., which is also referred to as the Joppa power plant or "Joppa" because it is located in Joppa, Illinois) for 405 MW of power from the Joppa power plant.

5. Dr. Proctor is correct that the EEInc. contract, or Joppa contract, terminates at the end of 2005. However, it is unclear why he contends that this is significant. I would first note that Dr. Proctor was adamant in his Metro East testimony that the EEInc. contract was not relevant to that case. The Commission agreed as follows in its Order approving the Metro East Transfer:

Proctor specifically disagreed with Kind's conclusion that the capacity freed by the transfer would be unnecessary if the EEInc contract were renewed and stated that renewal of that contract would permit UE to delay the addition of new capacity by only a year. Proctor stated that renewal of the EEInc contract should not be a condition for approval of the Metro East transfer.

The Commission finds Proctor's testimony on this point to be more credible than Kind's. The record shows that the Joppa output will not be available after the end of 2005 and that UE is replacing that capacity with CTGs at Venice. Thus, as Proctor testified, the proposed Metro East transfer is unrelated to the Joppa contract. A simple count of the MWs involved support Proctor's conclusion that UE would soon need additional capacity *even if the Joppa contract were renewed*.

(Order of October 6, 2004 at pp. 21-22, emphasis added)

6. As a result, although Dr. Proctor is correct in pointing out that the Joppa contract will terminate at the end of 2005, by his earlier testimony in the Metro East case, and by the Commission's own finding, that termination had no significance or relevance in the Metro East case. Further, the above shows that both Dr. Proctor and the Commission agreed in the Metro

East case that AmerenUE would need additional generating capacity even if the Joppa contract did not terminate. Consequently, I find it puzzling at best why Dr. Proctor would now note the significance of the termination of the Joppa contract. In my view, it is not consistent with his earlier testimony that this contract should have no relevance to the Metro East case.

7. In paragraph numbers 5 and 6 of his affidavit, Dr. Proctor claims that AmerenUE does in fact have sufficient capacity to provide electric service for its existing Native Load, including its Metro East customers in Illinois, as well as the Noranda Load, in time to meet a fifteen percent reserve margin for the summers of 2005 and 2006. In doing so, he discusses the “Ameren joint power system” and references the Joint Dispatch Agreement (JDA) used for the dispatch of generation owned by AmerenUE and by Ameren Energy Generating Company (AEG) for their native loads. He then concludes as follows in paragraph 6:

Thus, if the Metro East Transfer is completed, the Metro East Load will be treated as the load of AmerenCIPS, and, therefore, as AEG Native Load, rather than as AmerenUE Native Load, *and there is sufficient generation capacity jointly owned by, or under contract to, AmerenUE and AEG to serve their joint Native Loads including the Metro East Load, as well as the Noranda Load, for the summers of 2005 and 2006.*

(emphasis added)

8. Dr. Proctor’s conclusion that there is sufficient capacity available to AmerenUE is not only incorrect but also at odds with his prior testimony in other cases as to the proper treatment of the JDA. First, as discussed above in paragraph 6, it should be beyond dispute that AmerenUE on a stand alone basis does *not* have sufficient capacity to serve Noranda if the Metro East Transfer does not occur. This is also shown in the attachment to my Direct testimony filed in this case as to AmerenUE’s capacity position. (HC Exhibit RAV-1) As set forth in that exhibit, if AmerenUE does not transfer the Metro East service area and does not obtain the

Pinckneyville & Kinmundy units, AmerenUE will be short by over ** ** for the Summer of 2005, an amount greater than that required to serve Noranda.

Second, Dr. Proctor is wrong in stating that there is sufficient capacity when AmerenUE is viewed as a part of what he called the “Ameren joint system.” Dr. Proctor appears to be stating that AmerenUE can either purchase or simply acquire for free any spare capacity that AEG has. In the first place, there is no spare capacity in a sufficient amount to serve Noranda for the summer of 2005. In my present position I am familiar with the existing capacity positions of AmerenUE and AEG. The Ameren joint system simply does not have sufficient capacity for the summer of 2005 to serve both the Metro East load and the Noranda load and is, on the “joint system” basis referenced by Dr. Proctor, short by ** **. Second, even if there were sufficient capacity, it is not appropriate for AmerenUE to acquire this without fair compensation to AEG, as Dr. Proctor may be suggesting. Alternatively, if he is suggesting that AmerenUE could enter into a contract with AEG to acquire such spare capacity—which again, simply does not exist—for fair compensation that is problematic also in the eyes of the Federal Energy Regulatory Commission (FERC). I discuss these points in more detail below.

9. Dr. Proctor’s position regarding the JDA and intercompany transfers of energy and/or capacity has been expressed in numerous regulatory forums and resource planning meetings with AmerenUE. In his January affidavit, Dr. Proctor appears to set forth a new and different perspective. Dr. Proctor’s earlier position on capacity transfers in the context of the JDA was clearly stated in his direct testimony in Case No. EC-2002-1. Refer to Dr. Proctor’s question and answer on page 3 of his direct testimony in that case:

Q. What is your recommendation regarding UE meeting it’s capacity reserve requirement for the summer of 2001?

A. The current Ameren JDA has no explicit pricing for capacity transfers between UE and AEG/AEM as may be necessary for each entity to meet a

minimum capacity reserve requirement....As will be explained further in my direct testimony, the lack of such conditions, along with an implicit Ameren policy to build new generation capacity in AEG rather than in UE, leads to the possibility of affiliate abuse. Affiliate abuse occurs when such policies place the regulated company (UE), in situations where in order to have adequate capacity, it must purchase capacity and energy from the unregulated affiliate (AEG) or its marketing agent (AEM) at market prices, that are higher than what would otherwise be the regulated cost of that same capacity and energy. Because this situation of paying market price when it is higher than cost occurs for the capacity purchased by UE for June 2001 through May 2002, I am recommending that the cost of capacity purchases made by UE to meet its reserve requirements for its summer 2001 peak be replaced with the cost of building, operating and maintaining combustion turbines identical to those brought on line in 2001 by AEG at Columbia, Missouri and Pinckneyville, Illinois.

(emphasis added)

In other words, Dr. Proctor was concerned about affiliate abuse arising from a situation where AmerenUE had in effect no choice but to purchase power from an affiliate in order to meet its needs. In response, he was proposing that AmerenUE buy from AEG at the lower of cost or market. I would also note that Dr. Proctor correctly pointed out that the JDA “has no explicit pricing for capacity transfers between UE and AEG/AEM as may be necessary for each entity to meet a minimum capacity reserve requirement”. In fact, the JDA does not provide at all for the transfer of capacity between AmerenUE and AEG. Instead, it only provides for the transfer of energy at incremental cost. Any transfer of energy under the JDA would not satisfy AmerenUE’s capacity requirements to meet a minimum reserve margin.

10. Compare and/or contrast Dr. Proctor’s position expressed in Case No. EC-2002-1, with the position in his affidavit on capacity transfers between AmerenUE and AEG via the JDA. In his current affidavit, Dr. Proctor appears to be stating that if AmerenUE needs capacity and AEG has it, AmerenUE should just take it. Dr. Proctor fails to address any discussion of the price, if any, at which AmerenUE should take AEG’s capacity. It therefore appears as if Dr. Proctor is suggesting that AmerenUE acquire such power at no cost at all. If that is what he is implying, that clearly would not be reasonable.

11. Alternatively, Dr. Proctor may be implying that AmerenUE should simply enter into a contract with AEG for the capacity that would be needed for AmerenUE to meet a fifteen percent reserve margin for the 2005 and 2006 summer peak demands associated with Missouri Retail Load, Missouri Wholesale Load, Metro East Load and Noranda Load. In response, I can state from first hand experience that it is no easy matter to obtain FERC approval of a power related contract between affiliates. As explained in more detail in AmerenUE's pleading filed in the Metro East docket on January 6, 2005, it took the Company well over a year to obtain FERC approval for AmerenUE to acquire the Pinckneyville and Kinmundy generating units from AEG. I was a witness in that case on behalf of AmerenUE. I spent hundreds of hours preparing testimony, answering data requests and preparing for hearings in response to FERC policy that demands significant proof that affiliate transactions are reasonable and not harmful to the competitive wholesale market. As discussed in more detail in the Company's pleading prepared at the same time as my affidavit, there is a similar level of intense FERC scrutiny over affiliate transactions involving the sale of power (as opposed to the sale of generation related equipment, as was the case for Pinckneyville and Kinmundy). As a result, it is incorrect and very misleading for Dr. Proctor to contend that AmerenUE can easily address any capacity shortage by entering into a contract with AEG for the sale of capacity.

12. I would also note that Dr. Proctor contradicts his Metro East Cross-Surrebutal testimony in regards to whether the Kinmundy/Pinckneyville CTGs (worth 552 MW) should be included in AmerenUE's capacity position if the Metro East transfer does not occur. First, Dr. Proctor clearly states in footnote 2 in Appendix A to his affidavit that "owned generation capacity includes the CTG capacity at Kinmundy and Pinckneyville of 552 MW being transferred to AmerenUE". That is in stark contrast to his earlier assumption regarding

assumptions of no transfer of Pinckneyville and Kinmundy, no transfer of the Metro East load, and no Noranda load-- is set forth in HC Schedule RAV-1 attached to my direct testimony filed on December 20 in this case. To be clear I again state, so that there can be no doubt that AmerenUE does not have sufficient capacity to serve additional load of the magnitude of Noranda, AmerenUE's capacity shortfall: under the preceding set of assumptions, in 2005 AmerenUE would be over ** ** short (assuming a 15% planning reserve margin). In 2006, AmerenUE would be short by an even much wider margin, ** **.

14. Finally, in paragraph numbers 8 and 9, Dr. Proctor contends that AmerenUE should have included in both the Metro East and Noranda cases an economic analysis to evaluate the alternative for the Company servicing the Noranda load without the Metro East transfer occurring. He claims that this should have been included

if for no other reason, to demonstrate to the Commission that Ameren has not staged its sequence of filings of the Metro East Transfer Case and the Noranda Case in order to produce the best financial result for other Ameren companies at the expense of higher rates for Missouri retail ratepayers of AmerenUE.

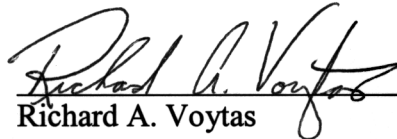
He goes on to contend that "Given that Noranda approached AmerenUE prior to March 2003, it certainly appears that there was sufficient time for AmerenUE to evaluate, as a viable alternative, continuing to serve the Metro East Load and also serving the Noranda Load."

15. Dr. Proctor's assumptions concerning what AmerenUE knew about Noranda and when AmerenUE knew it are simply wrong. I became aware that Noranda was discussing its power supply needs with various suppliers in the fourth quarter of 2003, and not in March of that year as Dr. Proctor contends. In the fourth quarter of 2003 I was preoccupied with the Metro East case, and this continued well into the next year. In particular, a large portion of my time, and that of my staff, was devoted to supporting the myriad of analyses, data requests, testimony, rebuttal testimony and hearings related to the Metro East transfer case from the fourth quarter of

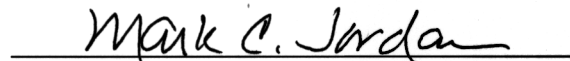
2003 through May 2004. It was not until June 2004 that my staff and I began to discuss the analysis to support the revenue requirements associated with AmerenUE serving the Noranda load.

This was after the conclusion of the hearings in the Metro East transfer case. Consequently, because of the requirements of the Metro East case, neither I nor anyone else on my staff was available to analyze the impact of AmerenUE serving Noranda under any scenario. Further, since we had assumed that the Metro East Transfer would occur, there was no point whatsoever from the Company's perspective in spending the considerable time necessary to analyze a scenario whereby AmerenUE would serve Noranda without the Metro East Transfer occurring.

Further Affiant Sayeth Not.


Richard A. Voytas

Subscribed and sworn to before me this 19th day of January, 2005.


Notary Public

My commission expires: 10-29-05

MARK C. JORDAN
Notary Public - State of Missouri
COUNTY OF COLE
My Commission Expires 10/29/2005

