

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

OCT - 1 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

**STATEMENT OF POSITIONS OF THE**

**MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

COMES NOW the Missouri Joint Municipal Electric Utility Commission ("MJMEUC")  
and respectfully states its positions on the issues identified in the List of Issues, Order of  
Witnesses, and Order of Cross-Examination as follows:

**LIST OF ISSUES**

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?

**MJMEUC Position:** Based on the status of the ARTO formation to date, MJMEUC  
believes the not-for-profit structure of the MISO will be of greater public benefit than the  
for-profit structure of the ARTO.

- 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?

**MJMEUC Position:** At this time, MJMEUC has no position on this issue.

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

**MJMEUC Position:** The withdrawal of AmerenUE from the MISO to join the ARTO creates an additional seam in Missouri in addition to those that already exist among the MISO, the Southwest Power Pool that is currently in the process of forming a regional transmission organization, and the transmission system owned and operated by Associated Electric Cooperatives, Inc. that is not part of any regional transmission activity. The creation of an additional seam in Missouri worsens the situation for transmission customers of AmerenUE who were not members of either the MISO or the ARTO as of February 28, 2001, because these customers would have to pay pancaked transmission rates for any transactions between the two regions, in addition to any other pancaked transmission charges that they would have to pay to "drive into" or "drive out of" the MISO/ARTO region.

- 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?

**MJMEUC Position:** The fact that the ARTO has not yet established an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board gives ARTO transmission owners the ability and the incentive to influence RTO formation decisions that may or may not be harmful to the public interest, given the ARTO's December 15, 2001 deadline. Decisions affecting ARTO formation need to be ongoing if the December 15 operational deadline has to be met. The absence of an independent Board of Directors and Stakeholder Advisory Committee making those decisions means that either ARTO transmission owners are making the decisions, or that no decisions affecting on RTO formation have been made since the FERC July 12 Order stating that the ARTO must put in place a Board advised by a Stakeholder Advisory Committee immediately.

MJMEUC is unable to offer any suggestions as to how this situation can be corrected without imposing additional delays beyond the December 15, 2001 deadline or additional costs to the members of the ARTO.

- 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?

**MJMEUC Position:** The fact that the ARTO has not yet established an independent Board of Directors and a Stakeholder Advisory Committee to provide advice to this Board means that the ARTO is not in compliance with either FERC Order 2000 or with the FERC's July 12, 2001 ORDER ON RTO FILING. As a result of the ARTO's lack of compliance with the minimum RTO characteristic of independence set out in FERC

Order 2000, the FERC, on July 12, 2001, only conditionally approved the ARTO as a regional transmission organization and stated that:

“... We ...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...”

As of this writing, the ARTO is not in compliance with either of these orders.

MJMEUC is unable to offer any suggestions as to how this situation can be corrected without imposing additional delays beyond the December 15, 2001 deadline or additional costs to the members of the ARTO.

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

**MJMEUC Position:** At this time, MJMEUC has no position on this issue.

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

**MJMEUC Position:** Although MJMEUC has concerns about the potential for AmerenUE to try to recover this expense from its transmission customers, it nevertheless recognizes that this issue is more appropriately raised in the context of a rate case or complaint case involving AmerenUE.

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 start-up 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 IRCA<sup>1</sup> and are providing non-pancaked transmission service within the ARTO-MISO super-region by December 15, 2001.

**MJMEUC Position:** Although MJMEUC is opposed to AmerenUE's withdrawal from the MISO to join the ARTO, MJMEUC believes that if the Commission decides to grant the application, then at a minimum, the ARTO should function as a FERC approved RTO. MJMEUC believes that the Staff's preliminary conditions are necessary for Commission approval of the application.

2) 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.

b) 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.

**MJMEUC Position:** At this time, MJMEUC takes no position on these conditions.

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.

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.

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.

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<sup>1</sup> 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)

**MJMEUC Position:** Although MJMEUC is opposed to AmerenUE's withdrawal from the MISO to join the ARTO, MJMEUC believes that if the Commission decides to grant the application, then at a minimum, the ARTO should function as a FERC approved RTO. MJMEUC believes that OPC's conditions 1, 2 and 3 are necessary to assure that the ARTO is in compliance with FERC orders and supports these conditions for Commission approval of the application.

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.

**MJMEUC Position:** At this time, MJMEUC has no position on this issue.

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.

**MJMEUC Position:** MJMEUC 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.

**MJMEUC Position:** Although MJMEUC has concerns about the potential for AmerenUE to try to recover this expense from its transmission customers, it nevertheless recognizes that this issue is more appropriately raised in the context of a rate case or complaint case involving AmerenUE.

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.

**MJMEUC Position:** At this time, MJMEUC has no position on this issue.

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.

**MJMEUC Position:** MJMEUC agrees with this condition.

### Legal Issues

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

**MJMEUC Position:** At a minimum, AmerenUE must show why granting of the application would not be detrimental to the public interest.

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?

**MJMEUC Position:** Yes. The Commission has jurisdiction. Section 393.190.1 of Missouri Revised Statutes, in part, reads:

"No gas corporation, electric corporation, water corporation or sewer corporation shall hereafter assign, lease, transfer, mortgage or otherwise dispose of, or encumber the whole or any part of its franchise, works, or system necessary or useful in the performance of its duties to the public nor by any means, direct or indirect, merge or consolidate such works or system, or franchise, or any part thereof, with any corporation, person or public utility, without having first secured from the Commission an order authorizing it to do so."

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?

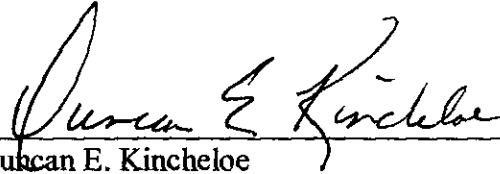
**MJMEUC Position:** Of course not. For one thing, there was no need for the Commission to object to such a finding already made by FERC because of the condition in the Stipulation and Agreement in Case No. EO-98-413 that required UE to get Commission authorization to withdraw from the MISO.

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?

**MJMEUC Position:** At this time, MJMEUC has no position on this issue.

Respectfully submitted,

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**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 1st day of October 2001.

