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October 1, 2001

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

RE: Union Electric
Case No. EO-2001-684

FILED³
OCT - 1 2001
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **PUBLIC COUNSEL'S POSITION STATEMENTS** and **MOTION FOR LEAVE TO FILE OUT OF TIME**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

John B. Coffman
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
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

PUBLIC COUNSEL'S POSITION STATEMENTS

COMES NOW the Office of the Public Counsel ("Public Counsel") and provides its
Position Statements on the List of Issues as follows:

1. Should UE's application for permission to withdraw from the Midwest ISO ("MISO") to
join the Alliance RTO ("ARTO") be approved?

Public Counsel's Position: The Application should be denied.

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?

Public Counsel's Position: The not-for-profit structure of the MISO appears to be of
greater benefit to the public interest. The MISO's not-for-profit structure has
facilitated the timely creation of an independent board of directors and allowed for
substantive stakeholder input early in the ISO/RTO formation process.

The ARTO has continued to delay the creation of an independent board of directors
or any other independent entity to oversee the formation of the ARTO as it seeks to put
a "for profit" structure in place. As this delay has continued, the ARTO has continued
to make business decisions affecting the market structure even though the ARTO is
composed of transmission owners whose main business interests are in competitive
generation and power marketing.

- 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?

Public Counsel's Position: No. It is not certain that this revenue retention will benefit Missouri customers for at least three reasons.

First, in UE's Answer to the current earnings Complaint (Case No. EC-2002-1), numerous legal and constitutional challenges are made to the Commission's authority to set its rates based on cost of service, threatening the ability of the Commission to pass these benefits on to consumers.

Second, UE has drafted and supported restructuring legislation over the last two years that could remove the Commission's authority to set bundled rates which reflect Ameren's transmission service costs and revenues.

Third, even if UE fails to prevent its rates from being lowered to reflect its cost of service (including an increasing amount of transmission revenues), no testimony has been filed showing that this benefit would outweigh the detriments to Missouri customers from the adverse impacts in competitive wholesale electric markets that will occur if UE participates in the ARTO instead of the MISO.

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

Public Counsel's Position: Yes, at this time, there are a number of Missouri investor owned utilities, municipal utilities, and electric cooperatives that are unable to take advantage of the rate design from the IRCA and the Settlement Agreement involving the MISO and ARTO transmission owners. These entities will be paying pancaked transmission rates for transactions that cross the seam between the MISO and the ARTO.

Even for those Missouri utilities (AmerenUE and UtiliCorp United, Inc.) that can take advantage of this rate design, there is no assurance that the IRCA and Settlement Agreement is being implemented in a manner that would allow the creation of seamless markets that have compatible market designs and procedures for transmission planning, year two congestion management, and facilitating the creation of balancing markets.

- 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?

Public Counsel's Position: Yes, the ARTO has continued to postpone setting up an independent entity to manage the formation of the RTO formation process. In addition, it has failed to respond to stakeholder's pleas for it to set up a stakeholder advisory committee and to put a permanent and independent board in place to which this committee can provide input. It would be detrimental to the public interest to allow

UE to join the ARTO, because it has continued to make business decisions affecting the market structure without an independent entity managing its formation and operations.

Forming an RTO without a permanent independent Board of Directors and without the opportunity for stakeholders to have meaningful input is obviously beneficial to the interests of transmission owners and their affiliates although harmful to the public interest. The magnitude of costs and delays that would be necessary to remedy deficiencies in the ARTO created by the ARTO formation process has not been quantified. The magnitude of additional costs that could be paid by Missouri consumers in the future as a result of 1) additional seams and 2) an RTO in place that does not perform as well as the MISO in creating efficient markets over a broad geographical area has not been quantified. However, the recent financial harm to electricity customers in California provides some indication of the additional costs that might be borne by consumers if wholesale markets are structured in a manner that encourages volatility and market manipulation.

- 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?

Public Counsel's Position: Yes. The ARTO's continuing failure to set up an independent entity to oversee the RTO formation process and a stakeholder advisory committee has allowed the ARTO transmission owners to continue to "call the shots" regarding steps that need to be taken to comply with FERC Order 2000 and FERC orders regarding ARTO compliance. The very slow process of complying with FERC Order 2000 and other FERC orders would be much less likely to have occurred if ultimate decision making authority for actions to achieve compliance was not limited to a small group of transmission owners with unregulated interests in power generation and power marketing.

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

Public Counsel's Position: Yes, the agreements that the ARTO transmission owners have negotiated with National Grid, the proposed Alliance Transco managing owner, allow ARTO transmission owners to transfer transmission assets at market value. If future transmission rates are based on the market value of transmission assets instead of being based on the net book value of those assets, then Missouri consumers will pay higher prices for use of the transmission grid through the payment of higher bundled rates for state regulated electric service or through the payment of higher rates for the generation and transmission portion of wholesale power rates or unbundled retail electric rates. When assets are included in rate base at a market value that exceeds the previous level of book value for the same assets, then consumers are essentially forced to pay again for the recovery of rate-based transmission costs which had already been recovered once before.

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

Public Counsel's Position: No, the risk that this exit fee could be charged to consumers is not outweighed by any benefit to consumers that would result from UE's withdrawal from the MISO.

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 and are providing non-pancaked transmission service within the ARTO-MISO super-region by December 15, 2001.

Public Counsel Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then Public Counsel supports these conditions but does have some concern about having a hearing on December 12, 2001 and making a determination of these issues by December 15, 2001.

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.

Public Counsel Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then Public Counsel supports 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt this condition.

- 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt this condition.

- 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt this condition.

- 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt 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.

Public Counsel's Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then it should adopt this condition.

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.

Public Counsel Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then Public Counsel supports this condition.

- 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.

Public Counsel Position: No conditions could mitigate the harm to the public if UE is permitted to withdraw from the MISO and is allowed to join the ARTO. However, if the Commission approves the Application, then Public Counsel supports this condition.

Legal Issues

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

Public Counsel's Position: With regard to UE's obligation to initiate this case under the Stipulation and Agreement in Case No. EO-98-413, the Commission would have to determine that UE's withdrawal from the MISO would be *in the public interest* before it could approve the Application in this case.

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?

Public Counsel's Position: Yes, Section 393.190.1 RSMo. 2000 requires Commission authorization as a precondition to UE withdrawing from the MISO and joining the Alliance RTO.

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?

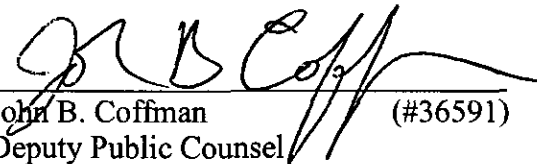
Public Counsel's Position: No.

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?

Public Counsel's Position: Yes, UE failed to timely file a Notice of Withdrawal pursuant to the Commission's Report and Order approving the Stipulation and Agreement in Case No. EO-98-413. Pursuant to that order, such withdrawal can become effective only after a Notice of Withdrawal is filed and the Commission approves, accepts, or otherwise allows such withdrawal to become effective.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 1st day of October 2001:

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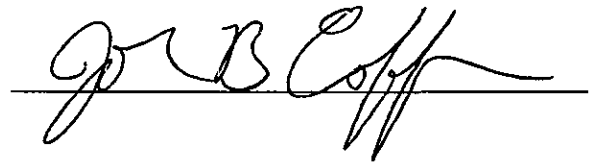
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A handwritten signature in black ink, appearing to read "David B. Hennen", is written over a horizontal line.