

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. EF-2006-0278; Union Electric Company, dba AmerenUE

From: Greg Meyer, Auditing Department
David Murray, Financial Analysis Department

/s/ Greg Meyer/ 2/17/06
Auditing Department/Date

/s/ Nathan Williams/ 2/17/06
General Counsel's Office/Date

/s/ David Murray/ 2/17/06
Financial Analysis Department/Date

SUBJECT: Staff Recommendation for **Approval** of Union Electric Company's Application 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 originally built by Duke Energy Audrain, LLC in 2000-2001 as part of a revenue bond project under Chapter 100, RSMo.

DATE: February 17, 2006

Union Electric Company d/b/a AmerenUE

1. **Type of Transaction:** Lease
2. **Proposed Date of Transaction:** Before the summer of 2006.
3. (a) **Statement of Purpose of the Transaction:** To assume a lease and related documents from NRG Audrain Generating, LLC to take advantage of the tax benefits of an existing Chapter 100 financing arrangement with Audrain County. Further, in its Motion for Expedited Treatment AmerenUE states it needs additional generating capacity to have a prudent level of reserve capacity for the summer of 2006. According to its Application, AmerenUE is seeking authorization for lease of a generating facility that has a nameplate capacity of 640 MW.

(b) **The Staff deems this purpose reasonable.**
4. **Copies of completed, but not executed, instruments defining terms of the proposed transaction are attached to the Application.**
5. **The Staff reviewed a certified copy of the resolution of the directors of AmerenUE authorizing the proposed transaction.**

6. **As presented by AmerenUE, this transaction will have no effect on AmerenUE's debt, bonded or otherwise, or on its issued stock.**
7. **The Commission's Fee Schedule does not apply to this transaction.**
8. **As presented by AmerenUE, Section 393.200 RSMo does not require a five-year capitalization expenditure schedule for this transaction.**
9. **The Staff recommends the Application be approved with conditions (see below).**

HISTORY:

On December 27, 2005 Union Electric Company, d/b/a AmerenUE, filed an Application with the Missouri Public Service Commission, seeking authority 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. The lease agreement is part of a Chapter 100 financing arrangement. The Chapter 100 financing arrangement was completed pursuant to Sections 100.010 to 100.200, RSMo 2000. AmerenUE filed the Application pursuant to Sections 393.180 and 393.200, RSMo 2000 and Commission Rule 4 CSR 240-2.060. In response the Commission established Case No. EF-2006-0278.

On December 30, 2005 the Commission issued its ORDER ESTABLISHING INTERVENTION PERIOD, SETTING PREHEARING CONFERENCE AND DIRECTING FILING in this case. In that order the Commission directed its Data Center and Information Office to give proper notice of the case; set an intervention date of January 13, 2006; set a prehearing conference for 10:00 a.m. on January 19, 2006; and directed its Staff to file a recommendation in the case by February 17, 2006. The Missouri Joint Municipal Electric Utility Commission (MJMEUC) filed an application to intervene on January 16, 2006. The Commission denied MJMEUC's application on February 2, 2006.

AMERENUE'S REQUEST:

On December 8, 2005 AmerenUE entered into an Asset Purchase and Sale Agreement with NRG Audrain Holding, LLC (NRG Holding) and NRG Audrain Generating, LLC (NRG Generating) by which AmerenUE will acquire, subject to the satisfaction of certain conditions precedent, the assets, including the rights of NRG Generating as lessee under the lease with Audrain County, comprising what is generally referred to as the NRG Audrain Facility located in Audrain County, Missouri. The NRG Audrain Facility consists of eight (8) GE 7001EA natural gas-fired combustion turbine units having a combined nameplate capacity of 640 MW together with associated realty and equipment and other personalty. AmerenUE is not asking for permission from the Commission to acquire the NRG Audrain Facility nor is it asking for approval of the issuance of short-term debt in the amount of \$115 million needed to acquire the property. AmerenUE's requested relief is limited

to the assumption of the lease and other necessary related documents that NRG Generating currently has with Audrain County.

ANALYSIS OF TRANSACTION:

Under the proposed transaction, AmerenUE will replace the current lessee in a lease with Audrain County. Although Audrain County will hold legal title, the lease will allow AmerenUE to operate and control the NRG facility as if it holds legal title. The lease requires the lessee to make the lease payments to Audrain County; however, Audrain County is obligated to make matching bond payments to the bondholder. As part of the proposed transaction AmerenUE will become the bondholder. The lease payments and bond payments offset each other for no net revenue impact on either AmerenUE or Audrain County. Consequently, the Chapter 100 financing arrangement is not executed to procure additional funds and the payments that AmerenUE makes on the lease does not result in any cash outflow.

AmerenUE can acquire title to the NRG facility at any time before the expiration of the lease term by paying the nominal sum of \$55,000, plus some other costs. If it does so, the only economic impact to AmerenUE is that it will lose the property tax savings it would have realized over the remaining life of the bond.

AmerenUE will record the Chapter 100 arrangement as a liability (Capital Lease Obligation) on its books in the amount of \$240 million. Because AmerenUE is buying the NRG facility from NRG Holding and NRG Generating (collectively NRG) and NRG bought the facility from Duke Energy Audrain, LLC, it is difficult to ascertain whether \$240 million is the original cost. However, because this liability is supported by AmerenUE's investment in the bond issued by Audrain County and the payments made on this bond are based solely on the capital lease payments made to Audrain County by AmerenUE, the measurement of this amount is immaterial from both a ratemaking and a creditworthiness standpoint.

If AmerenUE were to sell its interest in the bond to a third party, AmerenUE could be raising additional funds for use in its operations. The cost of these funds would depend on AmerenUE's sale price for the remaining bond payments. If AmerenUE were to execute such a transaction, then this cost could be considered in AmerenUE's cost of capital for ratemaking purposes. Although the Staff understands AmerenUE does not intend to sell the bond for additional funds, the Staff believes it would be appropriate to condition approval of this transaction to ensure this does not occur without Commission approval.

The \$115 million AmerenUE plans to pay for this asset is the only economic consideration AmerenUE is providing. AmerenUE states these funds will initially be provided through short-term debt then, eventually, through long-term capital. The economic consideration of \$115 million is the value for the generating plant that would be recorded under AmerenUE's Property and Plant accounts if this transaction closes.

AmerenUE asserts this transaction is in the public interest due to the property tax savings AmerenUE will realize—approximately \$2.0 million annually. If these annual property tax savings continue through the end of the lease term (December 31, 2021), the total savings will amount to approximately \$31.5 million. The transaction was and is a benefit to Audrain County, as it has received annual grant payments of \$350,000 for the last four years and will receive an annual grant payment of \$350,000 for 2006. After 2006, the annual payments increase each year by the percentage increase in the consumer price index during the preceding year, not to exceed 3% per annum.

If the Chapter 100 financing of the NRG facility is ever held to be illegal, AmerenUE may simply unwind the Chapter 100 financing and forego the annual property tax savings of about \$2 million. To the extent that this advantage is reflected in future rates, it would be realized by ratepayers. However, if it is discontinued, then this could be an additional cost of service to AmerenUE.

KEY DIFFERENCES FROM PREVIOUS CHAPTER 100 CASES:

This Application is different from AmerenUE's request in Case No. EO-2003-0035, *In the Matter of the Application of UNION ELECTRIC COMPANY d/b/a AmerenUE for an order authorizing Applicant to convey and lease back from the City of Bowling Green, Missouri certain real property improvements and to execute and perform the necessary agreements under Section 100.010 through 100.200 RSMo. for the purpose of constructing Applicant's electric generating facility in Bowling Green, Missouri* (Bowling Green). Here AmerenUE has never owned any of the property that is in the NRG Audrain combustion turbine generator facility nor did it build the facility. In the Bowling Green case, AmerenUE built and owned the generating facility, and requested Commission permission to transfer the facility to the City of Bowling Green and then lease it back. Therefore, in the Bowling Green case, in addition to requesting relief pursuant to Section 393.180 and 393.200, RSMo, AmerenUE requested relief pursuant to Section 393.190, RSMo. Section 393.190 was applicable because, as part of the transaction AmerenUE was to transfer part of its franchise, works or system necessary or useful in the performance of its duties to the public. The transfer was necessary in order to effectuate the tax advantages allowable under Chapter 100, RSMo.

In the instant case, AmerenUE does not request Commission permission to transfer any part of its franchise, works or system because Audrain County already has title to the NRG Audrain Facility. Under the proposed transaction, Audrain County will continue to hold legal title to the property. AmerenUE will assume the lease from NRG Generating and take over (i) the leasehold interest pursuant to the Chapter 100 Lease Agreement, (ii) the respective rights and obligations under the Chapter 100 Grant Agreement, and (iii) rights of NRG Generating under the Chapter 100 Bond. AmerenUE is requesting permission to assume the Chapter 100 Lease Agreement to the extent the lease constitutes an evidence of indebtedness pursuant to Sections 393.180 and 393.200, RSMo.

This Application also differs from Aquila's Application in Case No. EO-2005-0156, *In the Matter of the Application of Aquila, Inc. for Authority to Acquire, Sell and Lease Back Three Natural Gas-Fired Combustion Turbine Power Generation Units and Related Improvements to be Installed and Operated near the City of Peculiar, Missouri* (South Harper). Similar to the Bowling Green case, Aquila already owned the property it transferred to the City of Peculiar as part of the Chapter 100 financing. However, in the South Harper case, unlike the Bowling Green case: (1) Aquila was also seeking permission to acquire the natural gas-fired combustion turbine power generation units from its non-regulated affiliate, Aquila Equipment, LLC and (2) Aquila is not a Missouri corporation, whereas AmerenUE is. Of course, there are also the ongoing siting issues in the South Harper case that are beyond the scope of this application and recommendation. No siting issues have been raised in this case and the transaction involves a generating facility that was built by an entity this Commission does not regulate.

Although the relief AmerenUE requested in its Application is limited to the Chapter 100 financing arrangement, the Staff is sensitive to the recent issues that have surrounded the South Harper case. Consequently, Staff issued several data requests to determine if there are any lingering controversies associated with this property. Staff inquired about the following: (1) the original process that Audrain County went through to adopt an Ordinance to allow for this project; (2) any requirements to rezone the project site; (3) any knowledge of challenges or potential challenges to the original siting of this facility; and (4) any liens currently attached to the facility and whether these liens will continue after acquisition. AmerenUE's responses to the above data requests indicate there are no challenges by local jurisdictions or lienholders that would affect the NRG Audrain combustion turbine generator facility. Additionally, the Staff believes that the mere fact that this plant has been in service since 2001 without any known controversies is noteworthy.

It is Staff's understanding that even though the Asset Purchase and Sale Agreement has been completed, it has not been executed. ** _____

_____* Although this language uses the qualifier "if required", no party is asserting this Application is not required; although, AmerenUE only requests relief to the extent the Commission deems it is required.

OTHER ISSUES:

The Staff has verified AmerenUE has filed its annual report and is not delinquent on any assessment. The Budget and Fiscal Services Department has reviewed the circumstances in this financing case and concurs with AmerenUE that the fee schedule does not apply to this transaction because the only "new" financing associated with this transaction is the short-term debt of \$115 million. The Staff has reviewed this filing and advises the Commission the nameplate 640 MW of generation involved in this Application is being considered in the context of AmerenUE's current Integrated Resource Plan in Case No. EO-2006-0240. The Staff will address this generation as part of the Staff's responsive filing in that case due by April 4, 2006.

RECOMMENDED CONDITIONS:

Staff recommends the Commission approve AmerenUE's Application, with the following conditions:

1. AmerenUE shall continue to record the land and improvements (combustion turbines) that are the subject of this transaction as a regulatory asset on its books similar to other utility property it owns.
2. AmerenUE shall record the investment described above in accordance with the Uniform System of Accounts as adopted by this Commission for record keeping purposes.
3. AmerenUE shall depreciate the combustion turbines at the annual rate of 4%, which reflects a twenty-five year useful life. This is AmerenUE's present rate for Account No. 344 Other Production Plant – Generators.
4. AmerenUE shall book each annual grant payment to operating expense during the remaining term of the Grant Agreement, as each annual grant payment is made.
5. No ratemaking determination is being made by the Commission in this proceeding and no party to this case has acquiesced to any present or future ratemaking treatment as it relates to this transaction. The ratemaking treatment of this transaction may be addressed in AmerenUE's next rate case or the Staff's next earnings complaint case, but no ratemaking treatment is being sought by AmerenUE in this proceeding..
6. AmerenUE shall seek and obtain Commission approval before it transfers any of the rights it holds pursuant to the lease where such rights are necessary or useful in the provision of regulated utility service, including the right to purchase the facility at the end of the lease.
7. AmerenUE shall not sell its rights to the Bond Purchase Agreement acquired through its acquisition of the Audrain Facility without Commission approval.

The Staff concludes that, with the above conditions, approval of this Application would be in the public interest. This proposed transaction has the potential to result in both lowered rates to consumers and property tax savings to AmerenUE. Because it creates a benefit, although not immediately realized, to Missouri ratepayers served by AmerenUE, this transaction, with the conditions the Staff proposes, is in the public interest.

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

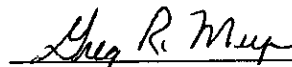
In the matter of Union Electric Co. d/b/a)
AmerenUE for an order authorizing applicant)
(if and to the extent the transaction described)
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related documents pertaining to the NRG)
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owned by Audrain County, Missouri which was)
constructed as part of a revenue bond project)
under Chapter 100, RSMo)

Case No. EF-2006-0278

AFFIDAVIT OF GREG R. MEYER

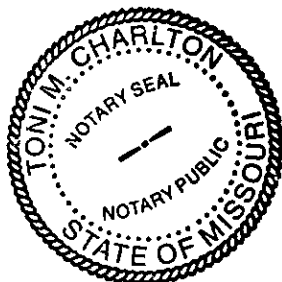
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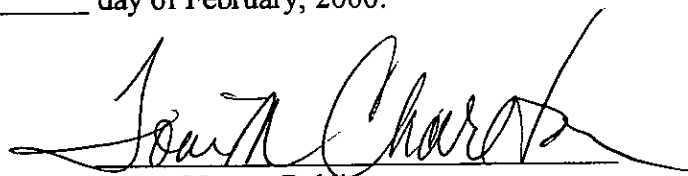
Greg R. Meyer, of lawful age, on oath states: that he has participated in the preparation of the foregoing written memorandum, consisting of 6 pages to be presented in the above case; that the information in the attached written memorandum was given by Union Electric Company, d/b/a AmerenUE; that he has knowledge of the matters set forth in such written memorandum; and that such matters are true to the best of his knowledge and belief.



Greg R. Meyer

Subscribed and sworn to before me this 17th day of February, 2006.





Notary Public
TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301

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

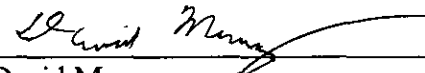
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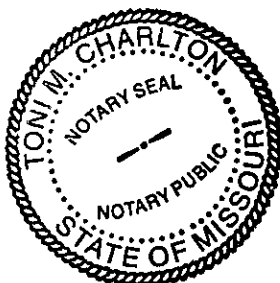
AFFIDAVIT OF DAVID MURRAY

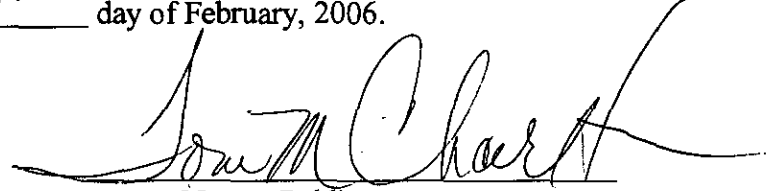
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David Murray, of lawful age, on oath states: that he has participated in the preparation of the foregoing written memorandum, consisting of 6 pages to be presented in the above case; that the information in the attached written memorandum was given by Union Electric Company, d/b/a AmerenUE; that he has knowledge of the matters set forth in such written memorandum; and that such matters are true to the best of his knowledge and belief.


David Murray

Subscribed and sworn to before me this 17th day of February, 2006.




Notary Public
TONI M. CHARLTON
Notary Public - State of Missouri
My Commission Expires December 28, 2008
Cole County
Commission #04474301