

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

Application of Union Electric Company)
d/b/a AmerenUE for an Order Authorizing)
Applicant (If and to the Extent the)
Transaction Described Herein Would)
Constitute the Issuance of an Evidence of)
Indebtedness by Applicant under Sections)
393.180 and 393.200 RSMo) 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 Constructed)
as Part of a Revenue Bond Project under)
Chapter 100, RSMo.)

Case No. EF-2006-0278

**STAFF RECOMMENDATION TO APPROVE
AMERENUE'S APPLICATION SUBJECT TO CONDITIONS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation to conditionally authorize Union Electric Company, d/b/a AmerenUE 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 of the Revised Statutes of Missouri states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends the Missouri Public Service Commission conditionally approve the Application of Union Electric Company, d/b/a AmerenUE for an Order authorizing it 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.

2. The NRG Audrain combustion turbine generator facility consists of eight natural gas-fired combustion turbine generating units having a combined nameplate capacity of 640 MW and associated real and personal property. NRG Generating LLC is leasing the facility from Audrain County as part of a Chapter 100 arrangement, and NRG Generating LLC holds the bond Audrain County issued in connection with the Chapter 100 arrangement. Essentially NRG Generating LLC has all of the ownership incidents of the facility, except legal title. By not having legal title to the facility, NRG Generating LLC avoids property taxes, making payments-in-lieu-of-taxes instead.

3. AmerenUE is proposing to replace NRG Generating LLC as the lessee and bondholder in the existing Chapter 100 arrangement.

4. In its application, AmerenUE states it seeks Commission authorization for the proposed transaction pursuant to Sections 393.180 and 393.200 RSMo 2000, and Commission Rule 4 CSR 240-2.060. Section 393.200 RSMo 2000 does not expressly provide a standard of review for this transaction.

5. Given that the Staff has not encountered the fact pattern in this case before—where the applicant is seeking authority to replace a lessee and bondholder in an existing Chapter 100 RSMo financing arrangement to preserve the property tax advantages of that arrangement—and the lack of an explicit standard in the statute that requires the applicant to obtain that authority from the Commission, section 393.200.1, the Staff chose apply a standard the

Commission typically applies and that the Staff views to be one of the least demanding for an applicant to satisfy—the standard of “not detrimental to the public interest.”¹

6. In its Report and Order issued February 24, 2004 in the case *In the Matter of the Application of Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber Its Utility Franchise, Works or System in Order to Secure Revised Bank Financing Arrangements*, Case No. EF-2003-0465, the Commission stated, at page six, “The Commission has already concluded that it should approve Aquila’s request if doing so would not be detrimental to the public interest.”² (footnote 10 in original) The Commission, on page six of the Report and Order, further stated, “The Commission concludes a detriment to the public interest includes a risk of harm to ratepayers.” And in the context of that case the Commission concluded on page seven of the Report and Order, “The detriment to the public interest is the unreasonable risk of harm to Missouri ratepayers compared to the minimal benefit Aquila would receive.”

7. As indicated in its recommendation, the Staff reviewed information obtained from AmerenUE, including information about (1) the process Audrain County followed in adopting an Ordinance to allow for the Chapter 100 arrangement; (2) whether there were zoning requirements for the facility site; (3) any existing challenges or potential challenges to the citing of the facility; and (4) liens currently attached to the facility and whether they will remain if AmerenUE closes the transaction. Based on its review of that information, the Staff found no issues such as those Aquila, Inc. has encountered with respect to its South Harper combustion turbine generating facility.

8. Based on its review, the Staff recommends the Commission approve AmerenUE’s application, subject to the following conditions:

¹ See *State ex rel. City of St. Louis v. Public Serv. Comm’n*, 73 S.W.2d 393 (Mo. banc 1934) and *State ex rel. Fee Free Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980).

² See *Order Denying Motion for Summary Disposition* (issued October 9, 2003)(Gaw, C., concurring).

- A. 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 that it owns;
- B. AmerenUE shall record the investment described above in accordance with the Uniform System of Accounts as adopted by this Commission for record keeping purposes.
- C. 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.
- D. 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.
- E. 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..
- F. 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.
- G. AmerenUE shall not sell its rights to the Bond Purchase Agreement acquired through its acquisition of the Audrain Facility without Commission approval.

9. Union Electric Company is current in filing an annual report and paying the PSC assessment.

10. With its application AmerenUE seeks expedited treatment stating it “needs additional generating capacity to meet a prudent level of reserves for the summer of 2006.” AmerenUE requests the Commission grant it the relief it requests in its application by March 12, 2006. As noted above the NRG Audrain combustion turbine generator facility presently has eight natural gas-fired combustion turbine generating units that have a combined nameplate capacity of 640 MW.

11. As the Staff noted in its response to the Commission's Order directing the Staff to take a position on the Missouri Joint Municipal Electric Utility Commission's (MJMEUC) application to intervene, on December 28, 2005, the day after it filed its application in the instant case, AmerenUE and NRG Audrain Generating, LLC filed a joint Application at the Federal Energy Regulatory Commission pursuant to Section 203 of the Federal Power Act (FPA) and Part 33 of the regulations of the FERC requesting the FERC to issue an Order no later than February 27, 2006 approving, without condition, the sale by NRG Audrain to AmerenUE of NRG's interest in a 640 MW (summer capacity) simple-cycle, natural gas-fired peaking power generation facility and associated interconnection facilities located in Audrain County Missouri. AmerenUE stated the transaction fully satisfies the requirements of the FERC's Merger Policy Statement and Order No. 642, which states that transactions subject to FERC jurisdiction must have no adverse effect on competition, rates, or regulation. The FERC Docket No. for the AmerenUE and NRG Audrain filing is EC06-55-000.

On December 28, 2005 AmerenUE and Aquila, Inc. filed a similar application at the FERC regarding AmerenUE's proposed acquisition from Aquila Piatt County, MEP Flora and Aquila Merchant Services of the gas-fired, six-unit, 510 MW Goose Creek generating facility and the gas-fired, four-unit, 340 MW Racoon Creek generating facility, both located in Southern Illinois.

On January 30, 2006, MJMEUC filed in FERC Docket No. EC06-55-000 a Motion To Intervene And Protest. In this filing MJMEUC stated at pages 1-2, in part, as follows:

. . . MJMEUC protests Ameren's acquisition from NRG (and protested the Aquila plant acquisitions) not because it necessarily opposes Ameren's acquisition of generation that it says it needs. Rather, MJMEUC protests because the Applicants' Appendix A analysis ignores transmission constraints in the Ameren region that are harming the ability of utilities such as MJMEUC to utilize economic long-term power supply and that, if properly accounted for, would

cause Ameren to fail the Commission's competitive screens, indicating competitive harms that the Commission [FERC] is obligated to remedy.³ MJMEUC wants to see these transmission problems fixed and offers its assistance in making that happen. Therefore, MJMEUC urges the Commission [FERC] to convene a technical conference to address these issues.

MJMEUC repeats in its filing, at page 14, that it "is not interested in preventing Ameren from acquiring generation that it says it needs, assuming the acquisitions are properly conditioned." Regarding the technical conference that MJMEUC urges the FERC to hold, MJMEUC, at page 15 of its filing, states:

. . . the goal of the technical conference should not be rejection of Ameren's acquisitions but instead addressing the transmission constraints that adversely impact competitive conditions. Such an outcome would be consistent with prior cases where the Commission [FERC] has accepted transmission expansion as a remedy to increases in concentration associated with generation acquisitions. [Footnote omitted.]

At pages 9-10 of its January 30, 2006 filing at the FERC, MJMEUC relates AmerenUE's position in FERC Docket No. EC03-53 that the NRG Audrain facility could not serve as a capacity resource until transmission constraints limiting its usefulness were relieved:

In Docket No. EC03-53, where AmerenUE sought authorization to purchase generation assets of its unregulated affiliate, Ameren Energy Generating Company, AmerenUE claimed that the affiliate purchase was necessitated by transmission constraints within and outside of the Ameren control area that precluded AmerenUE's purchase of cheaper alternatives. Specifically, AmerenUE claimed that it could not depend on deliveries of power from the NRG Audrain facility (ironically, the same plant it now seeks to acquire in the instant proceeding) within the Ameren control area due to constraints on Ameren's Bland-Franks line, a facility that Ameren described as "one of the most prominent constraints in the Midwest." The transmission constraints apparently remain relevant. In his Appendix A analysis in this case, Dr. Frame states that while the summer capacity of the Audrain facility is 640 MW, "only 578 MW has been determined by the Midwest Independent Transmission System Operator, Inc. (MISO) to be deliverable to load." Frame Affidavit at 2 n.1.

³ Applicants have submitted virtually identical Appendix A analyses for the Aquila and NRG transactions.

Regarding the prior FERC docket, EC03-53-000, the Staff notes the Response Of Ameren Energy Generating Company And Union Electric Company d/b/a AmerenUE To Answer Of NRG Companies filed on April 14, 2003 in FERC Docket No. EC03-53-000:

AmerenUE, in January 2002, submitted an application in Case No. EO-2002-351 to the MoPSC to construct the 345 kV Callaway-Franks line the addition of which would resolve the loading issues associated with the Bland-Franks line that limit the Audrain County Facility's usefulness. However, this application has been strenuously opposed by local property owners and is still pending before the MoPSC, where the timing and nature of the MoPSC action is uncertain.

Moreover, even if the application were approved by the MoPSC today, and was not the subject to any further challenge, it is unlikely that the Callaway-Franks line could be constructed and placed in service before sometime in 2005 or 2006. Thus, while the Audrain County Facility could conceivably acquire value for AmerenUE in the future, it clearly cannot be counted on to meet AmerenUE's capacity needs before then, and certainly not by summer of 2003, as NRG seeks to imply.

This Commission issued a Report And Order in Case No. EO-2002-351, on August 1, 2003, granting AmerenUE a certificate of convenience and necessity, with conditions, respecting the Callaway-Franks transmission line.

WHEREFORE, the Staff recommends that the Commission issue an order that authorizes Union Electric Company d/b/a AmerenUE to, subject to the conditions set forth above, 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.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 17th day of February 2006.

/s/ Nathan Williams