

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

In the Matter of the Application of )  
Union Electric Company for Authority )  
To Continue the Transfer of )  
Functional Control of Its Transmission )  
System to the Midwest Independent )  
Transmission System Operator, Inc. )

Case No. EO-2011-0128

**PUBLIC COUNSEL'S MOTION TO CONTINUE HEARING  
AND REQUEST FOR EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and for its Motion to Continue Hearing and Request for Expedited Treatment states as follows:

1. On November 17, shortly after close of business, four of the eight parties to this case filed a Nonunanimous Stipulation and Agreement, along with a proposed restatement of the issues. Commission rule 4 CSR 240-2.115(2)(B), the non-signatory parties have seven days to file an objection.

2. Earlier in the week, perhaps in anticipation of the Thursday evening filing, the Staff cancelled the deposition of Ameren Missouri witness Borkowski without any advance notice to the parties. The withdrawal notice was filed the afternoon of the day before the deposition was scheduled. Although only the Staff had filed notice of the deposition, several other parties (including Public Counsel) had planned to participate and ask questions of Ms. Borkowski. In fact, Staff scheduled the deposition after consultation with Public Counsel (and perhaps other parties) to be sure that it was held at a time convenient for Public Counsel to participate and that there would be adequate time for questioning by Public Counsel. Public Counsel was relying on its participation in that deposition to prepare for hearing.

3. The signatory parties concede, by their filing of a proposed revised list of issues, that the Nonunanimous Stipulation and Agreement changes the issues presented in this case. Public Counsel also believes that the Nonunanimous Stipulation and Agreement changes the issues presented in this case, although not in the way that the signatory parties propose. In particular, paragraph 10.j. of the Nonunanimous Stipulation and Agreement appears to create new issues with respect to the Commission's jurisdiction over the transmission component of bundled retail rates. In previous approvals of Ameren Missouri's participation in the MISO, the Commission retained jurisdiction through the Service Agreement and FERC's explicit approval of it. Through paragraph 10.j., the Commission appears to be surrendering that jurisdiction, and in return is only getting a temporary ratemaking ability that operates only because Ameren Missouri has agreed to it. Moreover, the value of this temporary grant of ratemaking ability is unknown because it depends on the amount of transmission investment built in Missouri by Ameren Missouri affiliates during the period of the temporary grant, which is not likely to be significant.

4. The new issues raised by the Nonunanimous Stipulation and Agreement and the signatories' position on them have not been addressed in testimony, nor have these issues and positions been explored in discovery. Public Counsel needs some time to evaluate these new issues and to determine whether to accept them as a resolution of the case, or even as a resolution of some of the issues that were pending before the filing of the Nonunanimous Stipulation and Agreement.

5. At this point, Public Counsel is not even able to determine the positions of the signatory parties on the issues that all parties agreed to just four days ago in the Joint Issues and

Witness List, Order of Opening Statements and Order of Cross. The signatories, rather than responding to the agreed-to and filed issues list, unilaterally responded to a revised issues list that was not even filed until after close of business on the day that position statements were due.<sup>1</sup> The purpose of filing a list of issues is to ensure that parties have notice of the issues that will be tried and to allow the Commission to understand the universe of issues before the hearing commences. Neither of those goals can be met if the hearing commences as scheduled. Forcing parties to hearing before they have a chance to understand and explore the issues does not afford the parties a fair hearing.

6. Without revealing any privileged settlement discussions, the Commission should be aware that at least three of the non-signatory parties attempted during the day Thursday to modify the Nonunanimous Stipulation and Agreement so that some of the non-signatories might join. Perhaps because of the impending hearing, those attempts have failed, and indeed they might fail no matter how much time is available for discussion.

7. There is no urgent need to hold the hearing in this case during the week of November 21, 2011. The Stipulation and Agreement approved by the Commission in Case No. EO-2008-0134 authorized Ameren Missouri to participate in MISO through April 30, of 2012. The Commission will need to issue an order that becomes effective prior to April 30, of 2012

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<sup>1</sup> Arguably, the signatory parties have failed to comply with the order establishing procedural schedule in this case which provides:

B) The parties shall agree upon and Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. The list of issues should be detailed enough to inform the Commission of each issue that must be resolved. The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.

(C) Each party shall file a simple and concise statement summarizing its position on each disputed issue.

that authorizes Ameren Missouri to participate in MISO beyond April 30, of 2012. Such an order would need to be issued regardless of what the Commission decides in this case about (1) the terms and conditions of Ameren Missouri's continued participation in MISO or (2) the manner in which Ameren Missouri should end its participation in MISO and begin the transition process of becoming an Independent Coordinator of Transmission (ICT). Paragraph 20 of the Stipulation and Agreement in Case No. EO-2008-0134 sets forth the process for Ameren Missouri to withdraw from MISO as follows:

20. Withdrawal. If withdrawal from the Midwest ISO occurs under paragraphs 15 or 19 of this 2008 Stipulation, or if the permission contemplated hereby is not extended beyond April 30, 2012, AmerenUE will have to re-establish functional control of its transmission system as a transmission provider or, depending upon further orders of the MoPSC and the FERC, may have to transfer functional control of its transmission system to another entity. In either case, AmerenUE would have to give notice to the Midwest ISO of its withdrawal. Under Article Five of the Service Agreement, such notice shall not be effective before December 31 of the calendar year following the calendar year in which notice is given by AmerenUE to the Midwest ISO. In order for possible withdrawal from the Midwest ISO to occur no later than April 30, 2012, the Signatories agree that a decision with respect to AmerenUE's continued Midwest ISO participation would need to be issued by the MoPSC no later than October 31, 2011.

Since the October 31, 2011 date for a Commission decision that would require Ameren Missouri to withdraw from MISO by April 30, 2012 has already passed, the current deadline for a Commission decision in this case is April 30, 2012. Although Public Counsel is not suggesting such a lengthy delay, the Commission could hold a hearing in this case as late as the middle of March, 2012 and still have one month to make its decision in this case with an effective date that is 10 days after the decision date and prior to the April 30, of 2012 deadline.

8. Public Counsel requests expedited treatment of this request. Pursuant to 4 CSR 240-2.080(15)(A), Public Counsel asks the Commission to rule on this request no later than close

of business Friday, November 18. Pursuant to 4 CSR 240-2.080(15)(B), Public Counsel states that the harm that will be avoided is: 1) that parties will not be forced to go to hearing one business day after new and changed issues have been interjected into the case and several parties have significantly changed their positions on what the issues are and what their positions are; and 2) that parties (other than Public Counsel) will not incur the expense of bringing in out-of-town witnesses while issues and positions are still unclear. Pursuant to that same subsection, Public Counsel states that the benefits that will accrue are that: 1) the non-signatory parties will have the time set forth in rule 4 CSR 240-2.115(2)(B) to determine whether to oppose or not oppose the Nonunanimous Stipulation and Agreement; 2) the non-signatory parties will have adequate time to understand the new and changed issues and the new positions of the signatory parties before hearing; 3) Public Counsel will be able to reschedule the deposition of Ameren Missouri witness Borkowski that was abruptly cancelled; 4) the parties will have an opportunity to meet and discuss the implications of the new and changed issues (and what those issues truly are) and the new positions of the signatory parties and determine the appropriate procedure and schedule to address those issues; and 5) the parties will be able to discuss and attempt to agree upon a single list of issues to present to the Commission before the hearing commences. Pursuant to 4 CSR 240-2.080(15)(C), Public Counsel states that this pleading was filed as soon as possible after the Nonunanimous Stipulation and Agreement and the proposed revised list of issues were filed.

WHEREFORE Public Counsel respectfully requests that the Commission continue the evidentiary hearing set for November 21 and 22, 2011, and instead set a prehearing conference for the parties to meet and discuss the appropriate procedure and schedule to resolve this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_

Lewis R. Mills, Jr. (#35275)

Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-4857

(573) 751-5562 FAX

[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 18th day of November 2011:

**Missouri Public Service Commission**

Steve Dottheim  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
Steve.Dottheim@psc.mo.gov

**Missouri Public Service Commission**

Office General Counsel  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

**Southwest Power Pool, Inc.**

David C Linton  
424 Summer Top Lane  
Fenton, MO 63026  
djlinton@charter.net

**Union Electric Company**

James B Lowery  
111 South Ninth St., Suite 200  
P.O. Box 918  
Columbia, MO 65205-0918  
lowery@smithlewis.com

**Union Electric Company**

Thomas M Byrne  
1901 Chouteau Avenue  
P.O. Box 66149 (MC 1310)  
St. Louis, MO 63166-6149  
AmerenMOService@ameren.com

**Union Electric Company**

Wendy Tatro  
1901 Chouteau Avenue  
St. Louis, MO 63166-6149  
AmerenMOService@ameren.com

**Empire District Electric Company, The**  
Dean L Cooper  
312 East Capitol  
P.O. Box 456  
Jefferson City, MO 65102  
dcooper@brydonlaw.com

**Midwest Independent Transmission System Operator, Inc.**  
Matthew R Dorsett  
7200 City Center Drive  
P.O. Box 4202  
Carmel, IN 46082-4202  
mdorsett@misoenergy.org

**Midwest Independent Transmission System Operator, Inc.**  
Lisa A Gilbreath  
4520 Main, Suite 1100  
Kansas City, MO 64111  
lisa.gilbreath@snrdenton.com

**Midwest Independent Transmission System Operator, Inc.**  
Karl Zobrist  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
karl.zobrist@snrdenton.com

**Missouri Industrial Energy Consumers**  
Diana M Vuylsteke  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102  
dmvuylsteke@bryancave.com

**Missouri Joint Municipal Electric Utility Commission**  
Douglas Healy  
939 Boonville Suite A  
Springfield, MO 65802  
doug@healylawoffices.com

**/s/ Lewis R. Mills, Jr.**

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