

**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

---

**MISSOURI INDUSTRIAL ENERGY CONSUMERS' REPLY BRIEF**

---

Diana Vuylsteke, #42419  
BRYAN CAVE, LLP  
One Metropolitan Square, Suite 3600  
St. Louis, Missouri 63102  
Telephone: (314) 259-2543  
Facsimile: (314) 259-2020  
[dmvuylsteke@bryancave.com](mailto:dmvuylsteke@bryancave.com)

Carole L. Iles, #33821  
BRYAN CAVE, LLP  
221 Bolivar Street, Suite 101  
Jefferson City, MO 65101  
Telephone: (573) 556-6620  
Facsimile: (573) 556-6630  
[carole.iles@bryancave.com](mailto:carole.iles@bryancave.com)

**Attorneys for the  
Missouri Industrial Energy Consumers**

March 23, 2012

**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	)	Case No. EO-2011-0128
Functional Control of Its Transmission	)	
System to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

**MISSOURI INDUSTRIAL ENERGY CONSUMERS' REPLY BRIEF**

Comes now the Missouri Industrial Energy Consumers (“MIEC”) and respectfully submits its Reply Brief.

**INTRODUCTION**

As explained in the MIEC’s opening brief, the MIEC is a party to the Non-Unanimous Stipulation and Agreement in this case. Consistent with that negotiated agreement, it is the MIEC’s position that the Commission should approve the continued transfer of functional control of the transmission system of Union Electric Company, d/b/a Ameren Missouri (“Ameren Missouri”) to the Midwest Independent Transmission System Operator, Inc. (“MISO”), under the terms and conditions set out in the Non-Unanimous Stipulation and Agreement, and find that such participation is not detrimental to the public interest.

In the event the Commission rejects the Non-unanimous Stipulation and Agreement, the MIEC submits that the Commission’s order should impose conditions on the transfer of Ameren Missouri’s transmission assets aimed at preserving this Commission’s jurisdiction over the transmission component of Ameren Missouri’s bundled retail rates. Contrary to the assertions in Ameren Missouri’s Initial Post Hearing Brief, the Commission can and should impose such conditions in this case if the Commission rejects the Non-unanimous Stipulation and Agreement.

**I. The Commission has the authority to condition Ameren Missouri’s continued participation in the MISO on the conditions that will preserve the Commission’s jurisdiction over the transmission component of Ameren Missouri’s retail rates.**

A transfer of property by Ameren Missouri must be approved by the Commission under Section 393.190.1.<sup>1</sup> The standard to be applied in determining whether to grant this approval is “whether or not the [transfer] would be ‘detrimental to the public.’”<sup>2</sup> Ameren Missouri asserts that under this standard, the Commission cannot impose conditions on its transfer of assets to the MISO unless those conditions relate to a detriment that (a) “would occur because of the transfer and not because of something else,” and that (b) is both a “direct and present detriment.”<sup>3</sup> This narrow view of the Commission’s jurisdiction and standard of approval in this case is not supported by law.

The Missouri Supreme Court’s decision in *AG Processing* demonstrates that, contrary to Ameren Missouri’s assertions, it is *not* necessary for an issue to pose a “direct and present detriment” to the public in order to be considered by the Commission. Nor is the Commission limited to considering potential detriments caused solely by the transfer of property at issue. In *AG Processing*, the court reversed a decision of the Commission approving a merger of two utility companies on the grounds that the Commission had failed to consider the reasonableness of a \$92,000,000 acquisition premium included in the merger agreement. Specifically, the Commission erred when it found that taking this issue into account would be “prejudging a

---

<sup>1</sup> All statutory citations are to the Revised Statutes of Missouri (2000), as amended, unless otherwise noted.

<sup>2</sup> *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732, 735 (Mo. banc 2003) citing *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 400 (Mo. banc 1934).

<sup>3</sup> Initial Post-Hearing Brief of Ameren Missouri at p.18.

ratemaking factor outside a ratemaking case.”<sup>4</sup> The court acknowledged that the ratemaking impact of the acquisition premium was something that the Commission “may be unable to speculate about.”<sup>5</sup> Nonetheless, the court found that the Commission should have considered the reasonableness of the payment in “evaluating whether the proposed merger would be detrimental to the public.”<sup>6</sup> In so ruling the court acknowledged that the Commission could not evaluate the *actual* detriment to the public—that is, the future ratemaking impact of the \$92,000,000 acquisition premium. Nevertheless, considering the reasonableness of this payment was both “necessary and essential” to the Commission’s decision, and the failure to do so was grounds for reversal.<sup>7</sup>

Similarly in the instant case, it may not be possible for the Commission to quantify the precise ratemaking impact of Ameren Missouri’s decisions concerning construction of future transmission projects. Nevertheless, the ownership of those projects is relevant to the issues before the Commission and should be considered in this proceeding. Mr. Dauphinais’ testimony demonstrates that there is clearly a potential for higher costs associated with transmission facilities that are constructed and owned by Ameren Missouri affiliates that are not regulated by this Commission.<sup>8</sup> Specifically, his testimony explains that “[e]ven without transmission rate incentives approved by FERC, for every \$1 billion of transmission investment Ameren makes in Missouri that is allocable to Ameren Missouri’s retail customers, recovery on FERC’s current

---

<sup>4</sup> 120 S.W.3d at 736.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Dauphinais Rebuttal at p. 5, l. 13 to p. 7 l. 10.

capital structure and ROE for Ameren would increase Ameren Missouri's annual revenue requirement by approximately \$25 million versus recovery under the Commission's current capital structure and ROE for Ameren Missouri. Thus, this issue could have a major impact on the retail rates of Ameren Missouri's customers"<sup>9</sup>

The Non-Unanimous Stipulation and Agreement imposes conditions on Ameren Missouri's continued transfer of assets to the MISO that address the potential for increased costs associated with the transmission component of Ameren Missouri's bundled retail rates. As Office of Public counsel notes in its brief, similar conditions have been included in the non-unanimous stipulation and agreements presented in prior cases and Ameren Missouri has acknowledged the importance of protecting ratepayers by preserving the Commission's jurisdiction over the transmission component of bundled retail rates.<sup>10</sup>

For these reasons, in the event the Commission rejects the Non-unanimous Stipulation and Agreement in this case, it can and should impose conditions on Ameren Missouri's continued transfer of assets to the MISO designed to preserve the Commission's jurisdiction over the transmission component of Ameren Missouri's bundled retail rates. Specifically, this should include the condition that:

Ameren Missouri shall make diligent efforts to construct and own any and all transmission projects proposed for Ameren Missouri's certificated retail service territory.<sup>11</sup>

Such a condition is essential to protect consumers from the adverse impact that would result from the Commission's loss of jurisdiction over the transmission cost component of Ameren

---

<sup>9</sup> *Id.* at p. 7, ll. 4-10, and Schedule JRD-1.

<sup>10</sup> Initial Post-Hearing Brief of Office of Public Counsel at p. 4.

<sup>11</sup> Second Statement of Positions of the Office of the Public Counsel at p. 2.

