

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

**PUBLIC COUNSEL’S RESPONSE TO
ORDER DIRECTING THE PARTIES TO ANSWER CERTAIN QUESTIONS**

COMES NOW the Office of the Public Counsel for its Response to Order Directing the Parties to Answer Certain Questions issued on June 1, 2011, states as follows:

The Commission’s questions directed to the parties generally are set forth in italics below. Public Counsel’s response to the questions follows each question.

1. *Can Missouri’s Electric Utility Resource Planning Process currently defined in 4 CSR 240-20.010 through 20.080 be preserved if MISO’s Resource Adequacy Enhancements Proposal is implemented? If the answer requires qualification, please state them.*

Public Counsel cannot answer this question with any degree of certainty. At the on-the-record presentation by MISO held on May 18, 2011, representatives of MISO and Ameren assured the Commission that it can be preserved. Public Counsel has no information to believe otherwise.

2. *Assuming MISO moves to a long-term capacity market (3 to 5 years), what qualifications or prerequisites will MISO place on Load Serving Entities (LSEs) in order for them to be able to fully “self schedule” or “opt out” of Resource Adequacy requirements in the forthcoming MISO Resource Adequacy Enhancements Proposal?*

Public Counsel has no information responsive to this question.

3. *Are MISO, Ameren Missouri and the other parties in this proceeding willing to make Ameren Missouri’s continued participation in MISO contingent on Ameren Missouri’s continued participation and compliance with the Missouri Public Service Commission’s Electricity*

Utility Resource Planning Process or any succeeding rules?

Public Counsel believes that it is very important that Missouri regulated utilities continue to comply with Missouri's resource planning rules. Nonetheless, it is possible to imagine a scenario in which continued participation in MISO could have some impact on Ameren Missouri's ability to completely comply with the resource planning rules and still have Ameren Missouri's continued participation in MISO be beneficial to Missouri customers. The Commission could make any impairment in Ameren Missouri's ability to comply with Missouri resource planning rules a "trigger" for re-examining Ameren Missouri's continued participation in MISO.

4. *Would it be appropriate for the Commission to make Ameren Missouri's participation in MISO expressly contingent on MISO's willingness to waive any exit fees as a result of the Missouri Public Service Commission making a determination that Ameren Missouri or any successor's compliance with the Electric Utility Resource Planning Process and the Missouri Public Service Commission has been abrogated, changed or made irrelevant in any way or for any reason related to Ameren Missouri's compliance with the Electric Utility Resource Planning Process?*

The updated cost-benefit analysis in this case shows significant net benefits for customers from Ameren Missouri's participation in MISO. If MISO is unwilling to affirmatively waive exit fees, and the Commission denies Ameren Missouri's application in this case, customers would forego those benefits. Before the Commission makes such a ruling, it should order additional cost benefit analyses that also analyze the cost to Missouri customers of any reasonably foreseeable impairment in Ameren Missouri's ability to comply with Missouri resource planning rules.

5. *Will Ameren Missouri and MISO guarantee that Ameren Missouri's ratepayers and other Load Serving Entities (LSEs) located inside the Ameren Missouri transmission footprint will be held harmless if LSEs in MISO are not able to fully "self schedule" or "opt out" in order*

to meet their Resource Adequacy requirements in the forthcoming MISO Resource Adequacy Enhancements Proposal? See Attachment #1.

Public Counsel cannot answer this question.

6. *If Ameren Missouri and MISO cannot make the foregoing guarantee, would it be appropriate for the Commission to make its approval of Ameren Missouri's continued participation in MISO contingent on MISO's willingness to waive exit fees if Ameren Missouri loses the ability to self-schedule and opt out of the capacity market?*

See answer to question 4. In addition, the Commission should look at the combined impact of the issues raised by questions 4 and 6 compared to an updated assessment of benefits from MISO participation.

7. *When MISO determines that new transmission needs to be built in Ameren Missouri's territory (such as the multi-value projects or MVPs), who has the right of first refusal to build that project? Would Ameren Transmission Company (ATC) have any right to construct transmission projects in Missouri "but for" Ameren Missouri's membership in MISO?*

Public Counsel's understanding is that the right of first refusal is offered to the Ameren family of companies, and that MISO makes no distinction as to (and has no interest in) whether that right is exercised by Ameren Missouri or ATX. This arrangement is apparently due to Ameren Missouri's contractual arrangement with Ameren Services as the agent for or representative of Ameren Missouri at MISO. The fact that MISO views the Ameren family of companies as one entity raises questions about the reasonableness of Ameren Missouri's delegation of its authority at MISO to Ameren Services.

8. *What criteria, if any, does Ameren Missouri use to determine whether or not it will build a transmission project itself or allow ATC to construct it? Please describe and provide the statutory/regulatory support for Ameren Missouri's authority to transfer or waive its right to construct MISO transmission projects and then allow ATC construct those projects. Where*

Ameren Missouri either implicitly or explicitly consents to ATC constructing a transmission project in Missouri, do the Missouri Public Service Commission's affiliate transaction rules found in 4 CSR 240-20.15 apply? How can Ameren Missouri and MISO guarantee that Missouri consumers are best served by allowing ATC to construct the projects in Missouri and not bidding the projects out?

Public Counsel cannot answer this question, but has great interest in ensuring that any approval granted in this case does not allow Ameren to make an end run around the protections established in the Service Agreement by having ATX construct transmission projects that otherwise would have been constructed by Ameren Missouri.

9. *Please describe ATC's [sic] right to use eminent domain in Missouri and provide both statutes and case law in support of your position. Are the parties willing to make Ameren Missouri's MISO membership contingent on Ameren and MISO agreeing to allow the Commission to approve any transmission projects to be constructed in Ameren Missouri's service territory prior to their being built? If the answer to the preceding question is no, why not?*

Public Counsel does not believe that ATX has any right to use eminent domain at this point. If the Commission grants ATX a certificate of convenience and necessity, the answer would of course change. Public Counsel would be willing to have Ameren Missouri's continued participation contingent on Ameren Missouri and MISO agreeing to the Commission's approval of transmission projects. The Service Agreement provides that Ameren Missouri will not construct transmission in Missouri that is not necessary to support Ameren Missouri's resource plans without Commission approval. This protection was adequate until Ameren created ATX, which is not regulated by the Missouri Commission and that could proceed with Missouri projects because they are part of the Ameren family of companies, which MISO sees as one entity.

16. *Are there any other questions the Commission should be asking, but has failed to ask?*

Yes. See the following list of questions. Some of these questions may have some overlap with the questions asked by the Commission in its June 1 Order Directing the Parties to Answer Certain Questions.

1. Please explain the process that AMMO would go through if it decided to build: A) a RECB I Project; B) a RECB II project; C) an MVP project.
2. Please explain the process that ATX would go through if it decided to build: A) a RECB I Project; B) a RECB II project; C) an MVP project.
3. A. Does AMMO have a “right of first refusal” to build projects that are in or interconnect with AMMO’s service territory? B. Does AMMO have any sort of superior claim (to ATX in particular or to other prospective transmission builders) to build projects that are in or interconnect with AMMO’s service territory? C. Please explain how AMMO exercises or waives any such rights or claims.
4. A. Does AMMO have a Cost Allocation Manual that explains how transactions between AMMO and ATX are structured and booked? B. Does AMMO believe that the Missouri Affiliate Transaction Rules apply to transactions between AMMO and ATX? C. Does AMMO believe that the Missouri Affiliate Transaction Rules apply to payments that AMMO makes pursuant to tariffs which inure to the benefit of ATX?
5. Please provide a complete example of how the costs of constructing an MVP or a RECB II project would be booked and eventually recovered from AMMO’s Missouri ratepayers if AMMO built the MVP project.
6. A. Please provide a complete example of how the costs of constructing an MVP or a RECB II project would be booked and eventually recovered from AMMO’s Missouri ratepayers if ATX built the MVP project. B. Would there be additional costs (such as FERC incentive

rates, CWIP, ongoing transmission rates) that would not be recovered from Missouri ratepayers if AMMO built the same project?

7. A. Does AMMO agree that its role in MISO should be to maximize the ratio of benefits to Missouri ratepayers from AMMO's participation in MISO to the cost to Missouri ratepayers of AMMO's participation in MISO? B. If not, what is AMMO's role? C. If so, what does AMMO do to maximize that ratio? D. In what ways will ATX help maximize that ratio? E. In what ways will it hinder?

8. In the ATX filing, Ameren indicated the traditional Ameren operating companies would continue to build RECB I (reliability) projects as well as those not eligible for regional cost sharing. If non-RECB I transmission projects that are subject to regional cost sharing and whose costs are predominantly allocated to Ameren Missouri projects are built by Ameren's transmission affiliates rather than Ameren Missouri, an effective end run of the service agreement and MOPSC regulation of the transmission component of bundled retail rates could occur. What assurance do we have that the operation of ATX will not lessen the benefits in the service agreement?

9. A. What regulatory checks are in place to prevent transmission builders from overbuilding? B. How do concerned state commissions or consumer representatives challenge the need for particular projects, or the scale of particular projects? C. What incentives do transmission builders have to accurately estimate the costs of projects? D. What incentives do transmission builders have to bring projects in on time and on budget?

10. Should the Commission require Ameren Missouri to construct and own all transmission projects proposed for Ameren Missouri's territory unless Ameren Missouri requests and receives approval from the Commission for an entity other than Ameren Missouri to pursue construction and/or ownership of the proposed projects?

11. Why has Ameren Missouri chosen to permit Ameren Services to serve as its agent to represents Ameren Missouri's interests at MISO as a MISO transmission owner instead of having those interests represented directly by representatives of Ameren Missouri.

12. Ameren has claimed that there are substantial benefits to Missouri customers by having ATX as a separate entity building transmission projects. Has Ameren Missouri done any quantitative analysis to support these claims?

13. Are there reasonable conditions that the Commission can place on its approval of Ameren Missouri's continued participation in MISO that will reduce risks or provide benefits to Ameren Missouri's customers?

WHEREFORE, Public Counsel respectfully submits this response to the June 1 Order Directing the Parties to Answer Certain Questions.

Respectfully submitted,

OFFICE OF THE Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been emailed to parties of record this 16th day of June 2011.

/s/ Lewis R. Mills, Jr.
