

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

In the Matter of the Application of Union Electric)	
Company, Doing Business as AmerenUE, for an)	
Order Authorizing the Sale, Transfer and Assign-)	
ment of Certain Assets, Real Estate, Leased)	Case No. EO-2004-0108
Property, Easements and Contractual Agreements)	
to Central Illinois Public Service Company, Doing)	
Business as AmerenCIPS, and, in Connection)	
Therewith, Certain Other Related Transactions.)	

OFFICE OF THE PUBLIC COUNSEL’S POSITION STATEMENTS

COMES now the Office of the Public Counsel (Public Counsel) and for its Position Statements on the List of Issues jointly proposed by Public Counsel and Staff of the Commission (Staff), states as follows:

I. General

A. “No Detriment To The Public” Standard for this Case

AmerenUE - To approve a transfer of assets under Section 393.190, the Commission must determine the proposed transfer is not detrimental to the public interest. AmerenUE bears the burden of proof to show that the transfer meets the “not detrimental to the public interest” standard. Has AmerenUE presented evidence in this case sufficient to satisfy the not detrimental to the public interest standard?

OPC Position: No, AmerenUE has not met the burden to prove that the proposed transfer is not detrimental to the public. AmerenUE’s evidence does not support its contention in the Application that the proposed transfer is the least cost resource option. AmerenUE has not issued a new RFP for resource options to discover all available options and AmerenUE has not presented evidence in this case to demonstrate that it performed an adequate analysis of known existing resource options.

AmerenUE - Section 393.190 does not require a showing of benefit on account of the transfer. If the public utility makes a prima facie showing of no detriment, opponents of the transfer are required to go forward with compelling evidence of

a direct and present detriment that is likely to occur in order to rebut the utility's prima facie case. Have Staff and Public Counsel produced such compelling evidence?

OPC Position: AmerenUE misstates the law in this Issue. Staff and Public Counsel have met their burden of production to show that serious detriments would occur if the proposed transfer is approved. AmerenUE has failed to make a prima facie showing of no detriment and has failed to meet its burden to adequately rebut the detriments raised by Staff and Public Counsel.

AmerenUE - Section 393.190's purpose is to ensure the continuation of adequate service to the public served by the utility. AmerenUE contends that there is nothing about the proposed transfer that has any negative effect on its ability to provide adequate service. Will there be a negative effect on AmerenUE's ability to provide adequate service that causes the transfer to fail the not detrimental standard?

OPC Position: AmerenUE's contention that the transfer will not impact its ability to provide adequate service to the public ignores the detriment created by transferring transmission facilities to AmerenCIPS that will be necessary to deliver power from AmerenUE's Illinois generation plants to AmerenUE's Missouri customers. Furthermore, this issue does not sufficiently state Section 393.190's purpose, because the Missouri Supreme Court has clarified that applications made under this law must take into account the consideration of future ratemaking impacts. State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3rd 732 (Mo. Banc 2003).

AmerenUE - Staff/OPC allege that AmerenUE costs or liabilities due to the transfer may increase future rates. AmerenUE is in a rate moratorium through June 30, 2006, AmerenUE's costs and revenues unrelated to the transfer are not at issue, and an increase in rates is not a per se detriment. Is there compelling evidence of a likely direct and present detriment due to these costs and liabilities that causes the transfer to fail the not detrimental standard?

OPC Position: Staff and Public Counsel have shown that cost and liabilities related to the proposed transfer would be detrimental to the public in the calculation of rate in the context of AmerenUE's next rate proceeding. AmerenUE has failed meet its burden to adequately rebut these detriments.

Staff/OPC - AmerenUE must present evidence to the Commission to show that its proposed transaction is not detrimental to the public. Cost increases and reliability issues arising from the proposed transaction constitute detriments to the public. Has AmerenUE presented adequate evidence in its evidentiary filings and the hearings for the Commission to find that the proposed transaction will not

cause costs increases and reliability issues to AmerenUE's Missouri electric and/or natural gas customers?

OPC Position: No, AmerenUE has not met the burden to prove that the proposed transfer is not detrimental to the public. AmerenUE's evidence does not support its contention in the Application that the proposed transfer is the least cost resource option. AmerenUE also fails to adequately rebut evidence of a detriment created by the potential decline in reliability associated with transferring transmission facilities to AmerenCIPS that will be necessary to deliver power from AmerenUE's Illinois generation plants to AmerenUE's Missouri customers.

Staff/OPC - The Missouri Supreme Court decision in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003) requires that the Commission, when determining whether to authorize transactions pursuant to Section 393.190.1 RSMo. 2000, consider and decide all necessary and essential issues, such as was the transaction at arm's-length and are the costs reasonable, and the fact that a relevant and critical issue could be addressed in a subsequent ratemaking case does not relieve the Commission of the duty of deciding the issue. In part, due to the rate moratorium resulting from the settlement of the Staff's excess earning/revenues complaint case against AmerenUE, AmerenUE contends that the matters raised by the Staff regarding the rate effects of the proposed transfer are not within the bounds of the not detrimental to the public standard. Has AmerenUE failed to meet its burden of proof by not addressing, or not adequately addressing, relevant and critical issues that have ratemaking consequences, but may not have immediate rate consequences because of the rate moratorium?

OPC Position: AmerenUE has failed to meet its burden of proof to show that the proposed transfer is not detrimental to the public, particularly as it has been clarified in the recent Missouri Supreme Court decision regarding issues that are necessary and essential to a Section 393.190 detriment review.

B. Scope of the Application

AmerenUE - AmerenUE requests authority to transfer the assets listed on a fixed asset listing showing the assets as of December 31, 2003, including changes due to normal additions or retirements from December 31, 2003 through the closing date. Staff objects to giving permission to transfer anything not on the list. Is the not detrimental standard met by allowing AmerenUE to transfer assets added or deleted due to normal additions or retirement?

OPC Position: Public Counsel supports the position of Staff on this issue.

Staff/OPC- AmerenUE in its Application requests authority to transfer assets that AmerenUE has not identified in its application, direct testimony or surrebuttal testimony. It is not possible to determine if an asset transfer is detrimental to the public when the asset has not been identified. Should the Commission approve the transfer of unspecified assets as requested in AmerenUE's application?

OPC Position: Public Counsel supports the position of Staff on this issue.

C. Affiliate Transaction Rules

AmerenUE - The Commission has affiliate transaction rules. Staff contends that the proposed transfer is a transaction between AmerenUE and an affiliated company that is subject to the affiliate transaction rules, while AmerenUE contends that the transaction is not subject to the rules. Is the proposed Metro East transfer subject to the Commission's affiliate transaction rules and, if so, should AmerenUE be granted a waiver or variance from compliance with the affiliate transaction rules?

OPC Position: The proposed transfer is subject to the Commission's Affiliate Transaction Rules and it would not be in the best interest of its regulated customers to grant a waiver or variance.

AmerenUE - Staff expresses concerns about the transfer price for the assets to be paid by AmerenCIPS to AmerenUE. The electric and gas distribution assets in Illinois to be transferred by AmerenUE have never been included in AmerenUE's Missouri cost of service. Is there sufficient compelling evidence of a likely direct and present detriment to Missouri ratepayers due to the transfer price sufficient to render the transfer detrimental to the public interest?

OPC Position: Public Counsel supports the Staff on this issue.

Staff/OPC - The Commission has affiliate transaction rules regarding transactions between affiliates. The Metro East transfer is a transaction between AmerenUE and an affiliated company. Is the proposed Metro East transfer, including the proposed change to the JDA contained in Mr. Voytas' surrebuttal testimony, consistent with the Commission's affiliate transaction rules, or, in the alternative, should the Metro East transfer be granted a waiver from compliance with the Commission's affiliate transaction rules?

OPC Position: The transfer as proposed in the Application and supporting direct testimony is not consistent with the requirements in those rules nor are the terms of the Application as modified by the proposed change to the JDA contained in Mr. Voytas' surrebuttal testimony. Furthermore, AmerenUE has not shown that a waiver or variance would be the best interest of its regulated customers.

II. Specific Purported Detriments Based on AmerenUE's Economic Study

A. Issues Addressed in AmerenUE Study Filed in Direct Testimony

1. Margin On Sales Of Excess Capacity And Energy

OPC - Ameren's witness, Mr. Voytas, determined the revenue requirements of a no Metro East transfer scenario and a Metro East transfer scenario in his analysis of the economics of the proposed transaction. Did those scenarios include appropriate assumptions about the total margin on sales of any excess capacity and energy that would be enabled by the change in capacity balances under each scenario? If the assumptions for one or both scenarios were inappropriate, did UE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: AmerenUE failed to meet its burden in this case in that Mr. Voytas' scenarios did not include appropriate assumptions regarding the total margin on sales of excess capacity and energy that would be enabled by the change in capacity balances under each scenario.

2. Cost Of New Gas Fired Generation Capacity

OPC - AmerenUE's witness, Mr. Voytas, determined the revenue requirements of a no Metro East transfer scenario in his analysis of the economics of the proposed transaction. Was the revenue requirement associated with the no Metro East transfer scenario significantly overstated because Mr. Voytas assumed that the new gas fired generation capacity that AmerenUE would acquire would cost \$471/kW? If so, did AmerenUE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: AmerenUE failed to meet its burden of proof in this case in that the revenue requirement associated with the Metro East transfer was significantly overstated because Mr. Voytas assumed that the new gas fired generation capacity that AmerenUE would acquire would cost \$471/kW. The rebuttal testimony of Mr. Kind addresses this issue at pps. 38-39 where he explains that \$390/kW would be a more appropriate cost.

3. Cost Of Complying With Environmental Regulations

OPC - AmerenUE's witness, Mr. Voytas, determined the revenue requirements of a Metro East transfer scenario in his analysis of the economics of the proposed transaction. Was the revenue requirement associated with the Metro East transfer scenario significantly understated because Mr. Voytas assumed that the cost of complying with environmental regulations (SO₂, mercury, CO₂, etc.)

would remain unchanged over the 25 year time horizon of the analysis? If so, did AmerenUE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: AmerenUE failed to meet its burden of proof in this case in that Mr. Voytas assumed that the cost of complying with environmental regulations (SO₂, mercury, CO₂, etc.) would remain unchanged over the 25 year time horizon of the analysis.

4. Revenues From Off-System Sales Of Energy From Combustion Turbines

Staff - AmerenUE's witness, Mr. Voytas, determined the revenue requirements of a no Metro East transfer scenario in his analysis of the economics of the proposed transaction. This scenario includes an assumption regarding the amount of revenues AmerenUE will receive from the generation that it would build without the proposed Metro East transfer. Is this assumption utilized by Mr. Voytas appropriate?

OPC Position: Public Counsel supports Staff on this issue.

5. Accounting Based Approach

Staff - AmerenUE's witness, Mr. Voytas, used an accounting based approach to conduct his analysis of the economic impacts of the proposed Metro East transfer. This approach does not use forecasted budget and load growth information. Is the accounting based approach a reasonable basis for evaluating the economic impacts of the Metro East transfer on AmerenUE's Missouri electric and/or natural gas customers?

OPC Position: Public Counsel supports Staff on this issue.

6. AmerenUE's Need For Combustion Turbine Capacity

[illegible]

OPC Position: Public Counsel supports Staff on this issue.

B. Issues Omitted in AmerenUE Study Filed in Direct Testimony but Addressed in AmerenUE's Surrebuttal Testimony

1. Joint Dispatch Agreement (JDA)

AmerenUE - Staff has proposed that any approval be conditioned on requiring two amendments to the JDA citing what it believes are inequitable financial impacts. AmerenUE contends that amendments to the JDA are beyond the scope of the present case. Is there compelling evidence of a likely direct and present detriment if either or both of the amendments to the JDA recommended by Staff are not required?

OPC Position: AmerenUE has not met its burden of proof that the proposed transfer would be not detrimental to the public without the two amendments to the JDA as proposed by Staff. Public Counsel witness Mr. Kind addresses the JDA on pps. 29 and 42-43.

Staff - AmerenUE engages in power transactions with its Ameren affiliates, e.g., Ameren Energy Generating, on a daily basis to meet their load requirements and sell excess energy. The Joint Dispatch Agreement (JDA) designates how costs and revenues from these transactions are to be assigned to AmerenUE. Should the proper form of the JDA be decided at the time the Commission decides the proposed Metro East transfer?

OPC Position: Public Counsel supports the position of Staff.

Staff - AmerenUE direct testimony filed by Mr. Voytas, shows the economic benefit to Missouri's electric customers from the proposed Metro East transfer. Mr. Voytas' analysis was revised in his surrebuttal testimony to reflect a change in the Joint Dispatch Agreement (JDA) that increases the economic benefit of the proposed Metro East transfer. Is the impact of the proposed JDA change which is part of the economic analysis in Mr. Voytas' surrebuttal testimony a proper component to include in the analysis of the economic consequences of the Metro East transfer on AmerenUE's Missouri electric customers?

OPC Position: Public Counsel supports Staff on this issue.

2. Callaway Decommissioning Fund

Staff - AmerenUE's witness, Mr. Voytas, did not include the impacts of the Callaway Decommissioning Fund in his analysis of the economic impact of the proposed Metro East transfer. The economic impacts of the proposed Metro East transfer on the Callaway Decommissioning Fund are addressed in the testimony of Ameren witness Kevin L. Redhage. Does consideration of the

economic impacts of the Metro East transfer on the Callaway Decommissioning Fund change the results of Mr. Voytas' analysis?

OPC Position: Public Counsel supports Staff on this issue.

AmerenUE - AmerenUE asks approval to transfer the Illinois portion of nuclear decommissioning liability to Missouri, and asks permission to fund the decommissioning trust fund with AmerenUE's existing Missouri contribution (\$6,214,184) only. Staff contends that AmerenUE should be required to continue to fund the \$272,554 formerly funded by Illinois customers. Is there compelling evidence of a likely direct and present detriment if AmerenUE is not required to continue to fund the \$272,554 formerly attributed to its Illinois service territory?

OPC Position: Public Counsel supports Staff on this issue.

Staff - AmerenUE is receiving \$272,554 in rates from its Illinois electric customers to fund these customers' portion of the Callaway nuclear unit's decommissioning liability. AmerenUE will cease adding this amount annually to the Callaway Decommissioning Fund if the proposed Metro East transfer is approved because AmerenUE will not have Metro East customers from whom it will be collecting these funds. Is it detrimental to the public, i.e., AmerenUE's Missouri electric customers, for AmerenCIPS to collect monies for nuclear decommissioning and not deposit these funds in the AmerenUE decommissioning fund while AmerenUE transfers to its Missouri electric customers the liability for Callaway decommissioning costs?

OPC Position: Public Counsel supports Staff on this issue.

3. Ameren Services Company Support Services

Staff - Ameren Services Company (AMS) provides support services to its affiliate, AmerenUE. The surrebuttal testimony of Mr. Weiss provides AmerenUE's analysis of the economic impact of these costs on the Metro East transfer. Is Mr. Weiss's analysis adequate to find that the costs of the AMS support services will not negatively impact the results of Mr. Voytas' study of the economic impacts of the Metro East Transfer on Missouri electric customers or Missouri natural gas customers?

OPC Position: Public Counsel supports Staff on this issue.

4. Transfer of Liabilities

Staff - AmerenUE will transfer liabilities to AmerenCIPS as a result of the Metro East transfer. These liabilities are addressed in the surrebuttal testimony of Mr. Getz. Is AmerenUE proposing to transfer an adequate level of liabilities to AmerenCIPS so that the liability transfer will not have a negative impact on the

results of Mr. Voytas' study of the economic impact of the Metro East transfer on Missouri electric and/or natural gas customers?

OPC Position: Public Counsel supports Staff on this issue.

5. Study Of Economic Impact On Natural Gas Customers Of Transfer

Staff - AmerenUE did not perform a study of the economic impacts of the Metro East transfer on its Missouri natural gas customers similar to the study performed by Mr. Voytas for AmerenUE's Missouri electric customers. AmerenUE filed the surrebuttal testimony of Mr. Massmann to address natural gas issues raised by the proposed Metro East transfer. Is Mr. Massmann's surrebuttal testimony adequate for the Commission to find that the Metro East transfer will not have a detrimental economic impact on AmerenUE's Missouri natural gas and/or electric customers, i.e., not be detrimental to the public?

OPC Position: Public Counsel supports Staff on this issue.

6. Other Known Existing Resource Options

OPC - AmerenUE's witness, Mr. Voytas, determined the revenue requirements of a no Metro East transfer scenario in his analysis of the economics of the proposed transaction. Is there a substantial possibility that the revenue requirement associated with the no Metro East transfer scenario is overstated because this scenario did not consider other known existing resource options that may have resulted in lower revenue requirements? If so, did AmerenUE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: AmerenUE failed to meet its burden of proof in this case because the Company did not present evidence demonstrating that it performed qualitative and quantitative analysis of other known existing resource options. Furthermore, there is a substantial possibility that the revenue requirement associated with the no Metro East transfer scenario is overstated in that AmerenUE did not consider other known existing resource options in the quantitative analysis of this scenario. Public Counsel witness Mr. Kind addresses this issue on pps. 35-38 and Attachment 3 of his rebuttal testimony.

7. RFP Regarding Other Resource Options

OPC - AmerenUE's witness, Mr. Voytas, determined the revenue requirements of a no Metro East transfer scenario in his analysis of the economics of the proposed transaction. Is there a substantial possibility that the revenue requirement associated with the no Metro East transfer scenario is overstated because AmerenUE did not issue a new RFP to discover other resource options

that may have resulted in lower revenue requirements? If so, did AmerenUE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: AmerenUE failed to meet its burden of proof in this case because the Company did not issue a new RFP to discover other resource options that may have resulted in lower revenue requirements. Furthermore, there is a substantial possibility that the revenue requirement associated with the “no Metro East transfer” scenario is overstated in that other resource options that would have been discovered by issuing a new RFP were not included in the quantitative analysis. Public Counsel witness Mr. Kind addresses this issue on pps. 35-38 and Attachment 3 of his rebuttal testimony.

III. Purported Detriments Excluded from AmerenUE’s Economic Study that AmerenUE Contends Should Not Be Included or Were Not Addressed in AmerenUE’s Surrebuttal.

A. Transmission Plant

Staff – AmerenUE’s witness, Mr. Voytas, did not include the impacts of the transfer of transmission plant in his analysis of the economics of the Metro East transfer. The cost-of-service impacts of the transfer of transmission plant were not addressed in the surrebuttal testimony of AmerenUE witnesses. Given this lack of evidence on the cost-of-service impacts of the transfer of transmission plant in the proposed Metro East Transfer, is there sufficient information to make a determination on the overall economics of the proposed Metro East transfer?

OPC Position: Public Counsel supports the Staff on this issue.

B. Transmission Service and Costs

AmerenUE - Staff (and OPC) recommend any approval be conditioned on Ameren Corporation’s agreement to hold AmerenUE harmless from any detrimental transmission service or cost issues caused by the transfer. AmerenUE contends that the transfer has no effect on transmission service or costs. Has the not detrimental standard been met without requiring the hold harmless conditions recommended by Staff and OPC without such a hold harmless condition?

OPC Position: No, AmerenUE has not met its burden of proving that the proposed transfer would not be detrimental to the public interest without the hold harmless conditions recommended by Staff and OPC. Public

Counsel witness Mr. Kind addresses this issue on p. 42 of his rebuttal testimony.

OPC/Staff - In his surrebuttal testimony, AmerenUE witness Mr. Edward C. Pfeiffer addresses the Staff's proposed hold harmless condition with respect to transmission service and transmission charges. In his rebuttal testimony, OPC witness Mr. Ryan Kind also proposed a hold harmless condition. Is a hold harmless condition still needed to ensure no future detriment to remaining AmerenUE customers from the proposed Metro East transfer? If so, did AmerenUE fail to meet its burden of proving that the transfer is not detrimental to the public interest?

OPC Position: No, AmerenUE has not met its burden of proving that the proposed transfer would not be detrimental to the public interest without the hold harmless conditions recommended by Staff and OPC. Public Counsel witness Mr. Kind addresses this issue on p. 42 of his rebuttal testimony.

OPC - AmerenUE already has generation facilities in Illinois and plans to acquire additional generation facilities in Illinois (the Pinckneyville and Kinmundy peaking plants). AmerenUE proposes to transfer ownership of all of its transmission facilities in Illinois to AmerenCIPS, except for the transmission towers along the east side of the Mississippi River, as part of the proposed transfer. If the Commission approves this application, should its approval be conditioned on AmerenUE's agreement to hold its Missouri ratepayers harmless from any adverse rate or reliability impacts that result from the Pinckneyville and Venice generating facilities no longer being directly connected to Missouri via transmission assets that are owned and operated by AmerenUE?

OPC Position: If the Commission approves the Application, despite Public Counsel's opposition, such approval should be conditioned on AmerenUE's agreement to hold its Missouri ratepayers harmless from any adverse rate or reliability impacts that result from the Pinckneyville and Venice generating facilities no longer being directly connected to Missouri via transmission assets that are owned and operated by AmerenUE. Public Counsel witness Mr. Kind references this issue on p. 42 of his rebuttal testimony.

C. AmerenUE's Contract with EEI

OPC - ** _____

Staff – **

D. AmerenUE's SO₂ Allowance Sales

OPC Position: Yes, the liability created by AmerenUE selling SO2 allowances outside Commission authority is not reflected in the economic analysis of the proposed transfer, Therefore, AmerenUE has not met its burden of proving that the proposed transfer is not detrimental to the public in that the revenue requirement associated with the Metro East transfer option does not reflect this liability.

Respectfully submitted,
OFFICE OF THE Public Counsel
/s/ John B. Coffman

By: _____
John B. Coffman (#36591)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-5560
(573) 751-5562 FAX
jcoffman@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 17th day of March 2004:

Steven R Sullivan
AmerenUE
1901 Chouteau Avenue
PO Box 66149 (MC 1310)
St Louis MO 63166
srsullivan@ameren.com

General Counsel
Missouri Public Service Commission
P O Box 360
Jefferson City MO 65102

Robert C Johnson
Blackwell Sanders Peper & Martin
720 Olive Street
Suite 2400
St Louis MO 63101
rjohnson@bspmlaw.com
Missouri Energy Group

Diana M Vuylsteke
Bryan Cave
211 N Broadway
Suite 3600
St Louis MO 63102-2750
dmvuylsteke@bryancave.com
MO Industrial Energy Consumers

Michael Rump
Kansas City Power & Light Company
1201 Walnut
Kansas City MO 64106
mike.rump@kcpl.com

James B Lowery
Smith Lewis LLP
111 S Ninth Street
Suite 200
PO Box 918
Columbia MO 65205
lowery@smithlewis.com

/s/ John B Coffman
