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April 14, 2004

Judge Kevin Thompson
Regulatory Law Judge
Missouri Public Service Commission
PO Box 360
Jefferson City MO 65102

FILED

APR 26 2004

**RE: Case No. EO-2004-0108
Late-Filed Exhibit No. 70**

Missouri Public
Service Commission

Dear Judge Thompson:

Please find attached three (3) copies of the Office of the Public Counsel's Response to the Commission Staff's Recommended List of Conditions which was filed as a pleading today. At the evidentiary hearing, Exhibit No. 70 was reserved for this document to be a late-filed exhibit.

Thank you for your attention to this matter.

Respectfully submitted,


John B. Coffman
Public Counsel

JBC:jb

Late-Filed exhibit no. 70
Date 4-26-04 Case No. EO-2004-0108
Reporter _____

**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.)	

PUBLIC COUNSEL'S RESPONSE TO
STAFF'S LIST OF CONDITIONS

COMES now the Office of the Public Counsel (Public Counsel) and submits its Response to the "Staff's List of Conditions Necessary for Staff Recommendation that the Commission Approve Ameren's Proposed Metro East Transfer" ("Staff's List of Conditions"), filed on April 6, 2004.

Union Electric Company d/b/a AmerenUE ("AmerenUE" or "Company") has failed to prove that its proposed Metro East transfer is "not detrimental" to the public, and thus Public Counsel's primary recommendation in this case is that the Commission reject the relief requested in Company's Application. Without a new request for proposal (RFP) along with a proper analysis by Company to provide an assurance that the proposed transfer is indeed the "least cost option" available to address Company's future load, the burden of proof required for an application filed under §393.190 RSMo 2000 has not been met, as it has recently been clarified by the Missouri Supreme Court in AG Processing, Inc. v. Public Service Commission, 120 S.W.3d 732 (Mo banc 2003).

Although the Staff's List of Conditions is designed to mitigate many of the detriments identified by Staff and Public Counsel, the proposed Metro East transfer would still be overall detrimental to the public without additional conditions. Therefore, Public Counsel suggests additional conditions that would be necessary and essential to any order approving the proposed transfer.

RFP Condition

As an alternative to rejecting the Application, Public Counsel recommends that the Commission issue a condition precedent to its approval of the proposed Metro East transfer, requiring Company to issue an RFP for proposals to meet its future load so that all viable alternatives to the transfer could be discovered, followed by a proper side-by-side comparison of all available resource options. All parties to this Case would be allowed sufficient time to provide input into the structuring of the RFP process and to analyze all responses to this RFP. If, based upon Company's analysis of the RFP responses and after comments from Public Counsel, Staff and any other party to this case, the Commission ultimately determines that the proposed transfer is the least cost option available, then the Company would be allowed to proceed with the transfer (subject to any other appropriate conditions issued by the Commission).

Alternative Conditions to Mitigate Detriments Associated With a Failure to Analyze All Resource Options.

In the context of the issue entitled "Least Cost Analysis" during the evidentiary hearing, numerous detriments were demonstrated by the Commission's Staff (Staff) and Public Counsel. The magnitude of these detriments relate to the high risk of increased future rates due to the acquisition

of additional capacity for AmerenUE's Missouri customers through the Metro East transfer without a proper analysis to determine the least cost resource available.¹ One of the alternative resource options not examined by Company is the potential to continue to receive the capacity and related energy that Company is entitled to receive from the Electric Energy, Inc. (EEI) Joppa Coal Plant subsequent to December 31, 2005. There are additional known existing resource options, including the acquisition of existing gas-fired plants, which were not included in Company's "least cost analysis".

If the Commission chooses to approve the proposed Metro East transfer, despite the numerous detriments identified by Staff and Public Counsel, then Public Counsel recommends that the Commission issue its approval subject to two additional conditions that would at least partially mitigate these detriments:

(a.) Public Counsel suggests that any approval be conditioned upon a Company agreement to continue receiving the capacity and related energy from the generating facilities owned by EEI and to which Company is entitled to receive pursuant to the EEI Bylaws. This condition would require Company to agree to commit itself to avoid being "frozen out" from receiving the 40% of capacity and output to which it is presently entitled by directing its representative members who serve on the EEI Board of Directors to take no action that could reasonably result in decisions to restrict Company's entitlement to receive this

¹ As the Commission has recently acknowledged, the risk of future rate increases must not be ignored in a application filed under §393.190 RSMo 2000. The Commission has acknowledged that, in such cases, it should examine the risk of potential rate increases, which would have the tendency to be injurious to the public welfare. See Aquila, Inc., Case No. EF-2003-0465, Report and Order issued on February 24, 2004, pps. 6-7.

capacity and output. (If the Commission includes this condition in its conditional approval of the proposed Metro East transfer, then the last paragraph in section 9 of Staff's List of Conditions would not be needed to address detriments pertaining to Ameren's exclusion of the EEI Joppa plant from its least cost analysis.)

(b.) Any approval should also be conditioned upon an agreement by Company that it make its best efforts to sell, under long-term contracts of one year or more, any capacity in excess of the Mid-America Interconnected Network (MAIN) recommended reserve requirement, currently 14.12%. In years when its excess capacity exceeds the recommended MAIN reserve requirement by 40MW or more, such sales shall be conducted through an RFP coordinated with the Staff and Public Counsel. UE would further agree to provide information relating to such sales to the Staff and to Public Counsel, along with updates on this subject through any resource planning briefings.

Comments on Staff's List of Conditions

Any approval of the proposed Metro East transfer should also be conditioned upon each of the conditions detailed on pps. 3-14 of the August 6, 2003 Staff List of Conditions. These proposed conditions would mitigate many of the detriments identified by Staff and Public Counsel in this case. Public Counsel's reasons for supporting the conditions that the Staff conditions are explained below:

1. **No Ratemaking Determinations.** As the Staff indicates in its List of Conditions, AmerenUE's Application appears

to seek relief that could be interpreted as constituting ratemaking determinations. Public Counsel believes that any Commission order providing approval of AmerenUE's application should clearly state that all ratemaking determinations related to this application are preserved for future Commission ratemaking proceedings.

2. **Joint Dispatch Agreement.** If the application is approved without changes to the JDA, the cost and revenue allocations resulting from the JDA will clearly be more harmful to Missouri ratepayers than through the current allocations. Transferring load to AEG/AEM will cause a decrease in the margins from off-system sales that are allocated to Missouri ratepayers even though there will be no change in the manner that generation resources funded by Missouri customers are dispatched. In addition, after the transfer, the AmerenUE Illinois load would still be served by low cost energy provided by AmerenUE's base load generation resources. So Missouri customers would be foregoing a greater amount of margins from off system sales as an increasing amount of energy is transferred to AEG/AEM.

3. **Liabilities and Costs.** It is very important to ensure that Missouri customers do not experience upward pressure on rates after the transfer due to the assignment of additional liabilities to Missouri customers because Company failed to quantify this impact in its flawed least cost analysis (which was purported to compare the proposed transfer to building new CTGs). Public Counsel believes a proper least cost analysis demonstrates that the transfer is not the least cost option and any further cost increases due to the proposed assignment of liabilities will impose further detriments on AmerenUE's Missouri customers if the transfer is approved.

4. **SO2 Allowances.** As the evidence in this case shows, 63% of the purported cost advantage of the transfer relative

to building new CTGs arises from AmerenUE's normalization of annual SO2 revenues to a level that the Company admits is **not sustainable** over the 25-year period included in the Company's least cost study. Not only did the Company make normalization adjustments increasing the projected SO2 sales levels in its study to unsustainable levels, the Company is actually making sales at a non-sustainable level and has plans to continue doing so for the next few years. Without the Staff's proposed conditions, AmerenUE's Missouri customers will be at risk for 98% (instead of the current 92% exposure) of large increases in future SO2 compliance costs. In addition, Missouri customers would be exposing themselves to cost recovery of 98% of AmerenUE's generation resources (including future SO2 compliance costs) based upon a flawed least cost study. It would be more economical to continue relying on 92% of AmerenUE's existing generation resources plus the less costly generation resources that AmerenUE will add to its generation portfolio if the transfer is not approved.

5. **Identification of Assets.** Public Counsel understands that this issue has been settled.

6. **Natural Gas Issues.** This is another area of costs that the Company did not incorporate in its flawed least cost study. Given that a proper least cost study would show that other options are more economical than the proposed transfer, it is important that AmerenUE's Missouri customers be protected from any further upward pressure on rates due to the issues that the Staff has identified in this area.

7. **Affiliate Transaction Rules.** Public Counsel believes that the Commission should only grant a variance (as described by the Staff) from its electric and gas affiliate transaction rules if all of the conditions recommended by both Staff and Public Counsel are directed by the Commission. Such a variance requires

a determination from this Commission that "compliance with the standards would not be in the best interest of regulated customers." Public Counsel believes that the Commission cannot properly make such a determination unless it conditions any approval of the proposed transfer on all of the conditions that have been recommended by both the Staff and OPC.

8. **Nuclear Decommissioning Fund.** This is another area of costs that the Company did not incorporate in its flawed least cost study. Given that a proper least cost study would show that other options are more economical than the proposed transfer, it is important that AmerenUE's Missouri customers be protected from any further upward pressure on rates due to the issues that the Staff has identified in this area.

9. **Transmission.** As stated in the Rebuttal testimony of Public Counsel witness Ryan Kind, any approval of the proposed transfer should be conditioned on AmerenUE's agreement to hold its Missouri ratepayers harmless from any adverse rate or reliability impacts resulting from a portion of AmerenUE's generation portfolio no longer being directly connected to Missouri via transmission assets that are owned and operated by AmerenUE. Public Counsel believes that the Staff's proposed conditions in this area would satisfy the concerns in this area.

10. **Access to Books, Records, Employees and Officers.** Public Counsel experienced substantial difficulties gaining access to information from Ameren and its affiliates that is relevant to this case. The Staff's proposed condition is necessary to ensure that AmerenUE and its holding company, Ameren Corporation, do not raise additional barriers to the effective regulation of Missouri's largest regulated energy monopoly.

WHEREFORE, Public Counsel respectfully recommends that the Commission issue no order approving the proposed transfer without the Staff's List of Conditions, as supplemented by Public Counsel's additional recommended conditions.

Respectfully submitted,
OFFICE OF THE Public Counsel

/s/ John B. Coffman

By: 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 14th day of April 2004:

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