

**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.)
File No. EO-2011-0128

**STAFF’S STATEMENT OF POSITIONS IN RESPONSE TO SECOND
REVISED LIST OF ISSUES AND ORDER OF CROSS-EXAMINATION AND
FIRST REVISED WITNESS LIST AND ORDER OF OPENING STATEMENTS**

COMES NOW, the Staff of the Missouri Public Service Commission (“Staff”), by and through the undersigned counsel of the Staff Counsel Department of the Missouri Public Service Commission (“Commission”) and submits *Staff’s Statement of Positions In Response To Second Revised List Of Issues And Order Of Cross-Examination And First Revised Witness List And Order Of Opening Statements*.

LIST OF ISSUES AND STAFF RESPONSES

1. *Is an extension of the term of the Commission’s permission for Ameren Missouri to transfer functional control of Ameren Missouri’s transmission system to the Midwest ISO, on the terms and conditions set out in the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011, not detrimental to the public interest?*

Ans: Yes, authorization for Ameren Missouri to continue to participate in the Midwest ISO, until May 31, 2016, under this and the other terms and conditions of the Non-unanimous Stipulation and Agreement filed on November 17, 2011 is not detrimental to the public interest and should be approved by the Commission. Staff witness Adam C. McKinnie’s Second Supplemental Rebuttal Testimony at pages 4 - 6 provides information regarding Staff’s support for the Non-unanimous Stipulation and Agreement entered into by Staff, Ameren Missouri, Midwest ISO, and Missouri Industrial Energy Consumers (“MIEC”), in particular as it differs from Stipulation and Agreements in prior cases where AmerenUE applied to participate or to continue to participate in the Midwest ISO. Since the Non-unanimous Stipulation and Agreement is opposed by the Office of Public Counsel (“OPC”) and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), the Non-unanimous Stipulation and Agreement constitutes a change in position of the signatory parties. On January 18, 2012, OPC filed the Supplemental Rebuttal Testimony of Ryan Kind respecting

the Non-unanimous Stipulation and Agreement. Staff witness Mr. McKinnie is preparing Surrebuttal Testimony in response to Mr. Kind's Supplemental Rebuttal Testimony.

2. What constitutes proving "not detrimental to the public interest" in File No. EO-2011-0128?

- (a) What "public" is the appropriate public?
- (b) What "interest" is the appropriate interest?
- (c) How is "not detrimental" measured?

Ans: Staff agrees with the statements made by the Commission regarding the "not detrimental to the public interest" standard in various Commission cases. In an Aquila, Inc. application to participate in the Midwest ISO case, *In the Matter of the Application of Aquila, Inc., d/b/a Aquila Networks - MPS and Aquila Networks - L&P for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc.*, Case No. EO-2008-0046, Report and Order, pp. 16 - 17 (Oct. 9, 2008), the Commission stated:

Conclusions of Law

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6. Clearly, "not detrimental to the public interest" is the standard by which this Commission must weigh Aquila proposal to transfer control of its transmission system to Midwest ISO.

7. In deciding whether a proposed transaction is "not detrimental to the public interest", the Commission must consider and decide all the necessary and essential issues.⁵³

8. One necessary and essential issue the Commission must consider is the lost opportunity cost associated with allowing Aquila to join Midwest ISO instead of Southwest Power Pool.

9. When alternatives with economic impacts are presented, an evaluation of the detriments of a particular alternative to the public interest must include consideration of the opportunity cost of not pursuing any available alternatives. There do not appear to be any Missouri state court cases directly announcing this principle, but it is a well-established aspect of Federal administrative law.⁵⁴

10. Missouri's Western District Court of Appeals has recently held that the Commission is not limited to narrowly considering the possible benefits of a presented alternative when other alternatives are also important. *In Environmental Utilities, LLC v. Public Service Commission*,⁵⁵ the court upheld the Commission's rejection of a proposed sale of a part of the sewer system of a troubled utility, because, while there were benefits to those customers who would be served by the

purchaser, the benefits of the sale of the entire system would be greater, and would be lost if the incomplete transaction were allowed to proceed.

11. Obviously, if Aquila transfers its transmission system to Midwest ISO and joins that RTO, it cannot join Southwest Power Pool's RTO. Foregoing greater financial benefits that could be obtained from joining Southwest Power Pool to instead accept lesser financial benefits from joining Midwest ISO is a potential detriment to the public that the Commission must consider.

⁵³ *State ex rel. AG Processing, Inc. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003).

⁵⁴ *For example see, Victor Broadcasting v. FCC*, 722 F.2d 756 (DC Cir. 1983).

⁵⁵ 219 S.W.3d 256 (Mo. App. W.D. 2007).

In an earlier, but still fairly recent, Commission case, *In the Matter of the Application of Union Electric Co., d/b/a AmerenUE for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, etc. to Central Illinois Public Service Co., d/b/a AmerenCIPS*, Case No. EO-2004-0108, Report and Order on Rehearing, 13 Mo.P.S.C.3d 266, 293 (Feb. 10, 2005) (“Metro East Case”), the Commission stated:

The Missouri Supreme Court did not announce a new standard for asset transfers in AG Processing, but rather restated the existing “not detrimental to the public” standard. In particular, the Court clarified the analytical use of the standard. What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. The AG Processing decision does not, as Public Counsel asserts, require the Commission to deny approval where a risk of future rate increases exists. Rather, it requires the Commission to consider this risk together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public. Approval should be based upon a finding of no net detriment. Likewise, contrary to UE's position, the AG Processing decision does not allow the Commission to defer issues with ratemaking impact to the next rate case. Such issues are not irrelevant or moot because UE is under a temporary rate freeze; the effects of the transfer will still exist when the rate freeze ends.

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.

Staff would also refer the Commission to: *State ex rel. Intercon Gas, Inc. v. Public Serv. Comm'n*, 848 S.W.2d 593 (Mo.App. W.D. 1993); *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo.banc 2003); *Re UtiliCorp United, Inc. and The Empire District Electric Co. for Authority to Merge*, Case No. EM-2000-369, Report and Order, 9 Mo.P.S.C.3d 512, 531-32, 537-39 (2000); *Re Union Electric Co. for Order Authorizing Certain Merger Transactions*, Case No. EM-96-149, Report and Order, 6 Mo.P.S.C.3d 28, 40-41 (1997); *Love 1979 Partners v. Public Serv. Comm'n*, 715 S.W.2d 482, 489-90 (Mo.banc 1986); Sections 386.610 and 393.130.1 RSMo. 2000.

3. *May the Commission impose the conditions on such a transfer that are reflected at page 12, lines 22 - 28 of the Rebuttal Testimony of Ryan Kind? If so, should the Commission do so?*

Ans: Staff does not support imposition by the Commission of the conditions that are reflected at page 12, lines 22 - 28 of the Rebuttal Testimony of Ryan Kind. As a signatory of the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011, it is the position of Staff that an extension of the term of the Commission's permission for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO on the terms and conditions set out in the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011 is not detrimental to the public interest.

4. *May the Commission impose the conditions on such a transfer that are reflected at page 17, lines 1 - 3 of the Rebuttal Testimony of Ryan Kind? If so, should the Commission do so?*

Ans: Staff does not support imposition by the Commission of the conditions that are reflected at page 17, lines 1 - 3 of the Rebuttal Testimony of Ryan Kind. As a signatory of the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011, it is the position of Staff that an extension of the term of the Commission's permission for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO on the terms and conditions set out in the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011 is not detrimental to the public interest.

5. *Can the Commission condition Ameren Missouri's participation in MISO on the application of the existing terms and conditions applied to Ameren Missouri transmission assets (e.g., Section 5.3 of the Service Agreement and paragraphs (b) through (h) at pages 9-14 of the Ameren Missouri Verified Application in File No. EO-2011-0128) to any affiliate to which Ameren Missouri seeks to transfer transmission assets? If so, should the Commission do so as recommended at page 22, lines 3-27 of the Rebuttal Testimony of Adam C. McKinnie?*

Ans: The *Second Revised List Of Issues And Order Of Cross-Examination And First Revised Witness List And Order Of Opening Statements* states that Staff does not agree with OPC that the above item should be listed as an issue in this proceeding. Staff witness Adam McKinnie's Second Supplemental Rebuttal Testimony at pages 4 - 6 provides information regarding Staff's support for the Non-unanimous Stipulation and Agreement entered into by Staff, Ameren Missouri, Midwest ISO, and MIEC and filed on November 17, 2011 in particular

as it differs from Stipulation and Agreements in prior AmerenUE application to participate in Midwest ISO cases. Since the Non-unanimous Stipulation and Agreement is opposed by OPC and MJMEUC, the Non-unanimous Stipulation and Agreement constitutes a change in position of the signatory parties. On January 18, 2012, OPC filed Supplemental Rebuttal Testimony of Ryan Kind respecting the Non-unanimous Stipulation and Agreement. Staff witness Mr. McKinnie is preparing Surrebuttal Testimony in response to Mr. Kind's Supplemental Rebuttal Testimony.

6. *If the Commission agrees that such extension of the term for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO should be granted on the terms outlined at page 19, line 19 to page 21, line 2 of Ajay Arora's Surrebuttal Testimony, should the conditions as proposed by Marlin Vrbas in his Rebuttal Testimony, pp. 13-16, be required of Ameren Missouri before any continued transfer of authority is granted? What continuing opportunities and mechanisms for re-examining Ameren Missouri's participation in MISO, if any, should be granted to the parties in this case?*

Ans: Staff does not support imposition by the Commission of the conditions that are reflected at pages 13 - 16 of the Rebuttal Testimony of Marlin Vrbas. As a signatory of the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011, it is the position of Staff that an extension of the term of the Commission's permission for Ameren Missouri to transfer functional control of Ameren Missouri's transmission system to the Midwest ISO on the terms and conditions set out in the Non-unanimous Stipulation and Agreement filed in this docket on November 17, 2011 is not detrimental to the public interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing of *Staff's Statement Of Positions In Response To Second Revised List Of Issues And Order Of Cross-Examination And First Revised Witness List And Order Of Opening Statements* was served via e-mail on counsel for all parties of record on this 27th day of January, 2012.

/s/ Steven Dottheim _____