

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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5 TRANSCRIPT OF PROCEEDINGS

6 On-The-Record Proceeding

7 November 28, 2011

8 Jefferson City, Missouri

9 Volume 1

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13 In The Matter Of The Application Of)
14 Union Electric Company d/b/a Ameren) File No.
15 Missouri For Authority To Sell And) EO-2012-0146
16 Repurchase Coal And Lease Property)

17

18 HAROLD STEARLEY, Presiding

19 DEPUTY CHIEF REGULATORY LAW JUDGE

20 KEVIN D. GUNN, Chairman,

21 JEFF DAVIS,

22 TERRY M. JARRETT,

23 ROBERT S. KENNEY,

24 COMMISSIONERS

25

REPORTED BY:

26 Jennifer Leibach, CCR No. 1108

27 TIGER COURT REPORTING, LLC

A P P E A R A N C E S

TOM BYRNE, Attorney at Law
1901 Chouteau Avenue
St. Louis, Missouri 63103
314.554.2514

FOR: Ameren Missouri

LISA LANGENECKERT, Attorney at Law
Sandberg Phoenix & von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, Missouri 63101
314.446.4238

FOR: Barnes-Jewish Hospital

JAMES M. FISCHER, Attorney at Law
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, Missouri 65101
573.636.6758

FOR: Kansas City Power & Light Company
KCPL Greater Missouri Operations Company

EDWARD F. DOWNEY, Attorney at Law
Bryan Cave
221 Bolivar Street, Suite 101
Jefferson City, Missouri 65102
573.556.6622

FOR: MIEC

JOHN BORGMEYER, Legal Counsel
STEVEN DOTTHEIM, Legal Counsel
Public Service Commission
200 Madison Street
P.O. Box 309
Jefferson City, MO 65102
573.751.6514

FOR: The Staff of the Missouri Public Service Commission

LEWIS MILLS

Office of Public Counsel
200 Madison Street
P.O. Box 2230
Jefferson City, MO 65102

FOR: Office of Public Counsel and the Public

1 PROCEEDINGS

2 JUDGE STEARLEY: Good morning. It is Monday,
3 November 28, 2011. The Commission has set this time for an
4 on-the-recording in File Number EO-2012-0146, which is
5 captioned as In The Matter Of The Application Of Union
6 Electric Company doing business as Ameren Missouri for
7 Authority To Sell And Repurchase Coal And Leased Property.

8 My name is Harold Stearley and I'm the
9 regulatory law judge presiding over today's proceeding, and
10 we will begin by taking entries of appearance, starting with
11 Union Electric Company.

12 MR. BYRNE: Thank you, Your Honor. My name's
13 Tom Byrne. I'm appearing on behalf of Union Electric Company
14 doing business as Ameren Missouri. My address is 1901
15 Chouteau Avenue, St. Louis, Missouri 63103.

16 JUDGE STEARLEY: All right. Thank you,
17 Mr. Byrne. For our intervenors, Missouri Industrial Energy
18 Consumers.

19 MR. DOWNEY: Good morning, Judge. Edward F.
20 Downey, attorney with Bryan Cave, 221 Bolivar Street, Suite
21 101, Jefferson City, Missouri 65102.

22 THE COURT: Thank you, Mr. Downey. For
23 Barnes-Jewish Hospital.

24 MS. LANGENECKERT: Good morning, Judge. Lisa
25 Langeneckert for the law firm of Sandberg Phoenix & von

1 Gontard appearing on behalf of Barnes-Jewish Hospital, 600
2 Washington Avenue, 15th Floor, St. Louis, Missouri 63101.

3 JUDGE STEARLEY: Thank you, Ms. Langeneckert.
4 For the Office of the Public Counsel.

5 MR. MILLS: On behalf of the Office of the
6 Public Counsel and the Public, my name is Lewis Mills. My
7 address is Post Office Box 2230, Jefferson City, Missouri
8 65102.

9 JUDGE STEARLEY: Thank you, Mr. Mills. And
10 for the Staff of the Missouri Public Service Commission.

11 MR. BORGMEYER: Good morning, Judge. My name
12 is John Borgmeyer, with me is Steven Dottheim, appearing for
13 the Staff of the Missouri Public Service Commission,
14 P.O. Box 360, Jefferson City, Missouri 61502.

15 JUDGE STEARLEY: Thank you, Mr. Borgmeyer.
16 Initially, I must remind you-all to please turn off any cell
17 phones, BlackBerries or other electronic devices. They do
18 have a tendency to interfere with our recording and our web
19 casting.

20 Are there any preliminary matters we should --
21 whoop.

22 MR. FISCHER: Judge, I should probably enter
23 an appearance on behalf of Kansas City Power & Light Company.

24 JUDGE STEARLEY: My apologies, I skipped over
25 you, Mr. Fischer.

1 MR. FISCHER: Not a problem at all, Judge. On
2 behalf of Kansas City Power & Light Company and KCP&L Greater
3 Missouri Operations Company, let the record reflect the
4 appearance of James M. Fischer, and my contact information is
5 on the written entry. Thank you.

6 JUDGE STEARLEY: All right. Thank you,
7 Mr. Fischer. And I always count on the parties to correct me
8 whenever I'm making an error or skipping over somebody, so.

9 Are there any preliminary matters that we can
10 take up at this time? I know Ameren Missouri has two
11 witnesses, Mr. Mark Birk and Mr. Robert Neff. Did any of the
12 intervenors bring subject matter experts that intended to
13 offer any comments or anything to the Commission today?

14 MS. LANGENECKERT: No, Judge.

15 JUDGE STEARLEY: All right. Seeing none.
16 Then we will begin with opening statements then.

17 MR. BYRNE: Judge, just as a preliminary
18 matter, as we spoke, I think what I would like to do is put
19 our -- my witnesses on the stand and then they have a
20 PowerPoint presentation that we've set up, and hopefully that
21 will help elucidate the transaction here.

22 JUDGE STEARLEY: Okay. Would you like to do
23 that prior to opening statements?

24 MR. BYRNE: No, no, opening first.

25 JUDGE STEARLEY: We will go ahead and do some

1 brief openings and then make your witnesses available with
2 the PowerPoint. Okay. Beginning with you, Mr. Byrne.

3 MR. BYRNE: May it please the Commission. I'm
4 Tom Byrne and I represent Ameren Missouri. I'd like to start
5 by thanking the Commission for scheduling this on-the-record
6 proceeding on such short notice at our request. I know that
7 your calendars are full and particularly around the holidays,
8 it's difficult to find hearing dates, but I'm hopeful that
9 today will prove to be a good investment of time for all of
10 us, and ultimately for Ameren Missouri's customers.

11 Ameren Missouri is here today and it filed its
12 application in this proceeding because it has an unusual and
13 valuable opportunity made possible by Section 45 of the
14 Internal Revenue Code, and contracts that the company has
15 entered into with Buffington Partners, LLC, which is an
16 affiliate of Coal Emission Reduction Technologies, LLC, also
17 known as CERT. This opportunity would permit the company to
18 have the coal at its Rush Island plant refined to
19 significantly reduce harmful emissions at no cost to
20 customers and at the same time reduce operations and
21 maintenance costs at the plant in both the short-term and the
22 long-term.

23 Here's how it works. In order to encourage
24 reductions of emissions from the burning of coal, Section 45
25 of the Internal Revenue Code provides tax benefits to any

1 party who can refine coal so that it meets specified
2 reductions in mercury and nitrogen oxide, or NOx, emissions.
3 The required reductions in emissions are significant. The
4 reduction in mercury emissions must be at least 40 percent
5 and the reduction in NOx emissions must be at least 25
6 percent.

7 The party who refines the coal must be
8 different from the party who burns the coal. Therefore,
9 Ameren Missouri would not be eligible to refine its own coal
10 for this purpose. And in order for the refiner to qualify
11 for the tax benefit, the refining process must be operational
12 before the end of calendar year 2011. However, once a
13 facility is qualified by becoming operational in 2011, the
14 tax benefits can last up to ten years.

15 CERT is the licensee of a refinement process
16 called Chem-Mod, which can be used to treat the coal at
17 Ameren Missouri's Rush Island plant to meet the requirements
18 of Section 45 of the Internal Revenue Code. Ameren Missouri
19 has entered into a series of agreements with CERT's
20 affiliate, Buffington Partners, all of which are attached to
21 the pre-filed direct testimony of Ameren Missouri witness
22 Robert Neff. These agreements provide for Ameren Missouri to
23 sell Rush Island plant coal to Buffington Partners, for
24 Buffington Partners to refine the coal at the plant, and then
25 resell the coal back to Ameren Missouri at the same price

1 that it purchased the coal.

2 In connection with these agreements,
3 Buffington Partners will initially buy a small portion of the
4 existing coal inventory at the Rush Island plant, but it will
5 thereafter continually buy and sell coal used at the Rush
6 Island plant during the ten-year term of the contracts.

7 The operations and maintenance costs of the
8 plant will be reduced in several ways under the contracts.
9 First, Buffington Partners will pay a monthly charge to lease
10 a small amount of space at the plant site needed for its
11 facilities. Second, Buffington Partners will pay Ameren
12 Missouri a per ton whole handling and licensing fee for all
13 refined coal that is burned. Both of these revenue streams
14 will offset O & M costs at the plant.

15 In addition, the company anticipates that if
16 the Chem-Mod process does, in fact, reduce mercury and NOx
17 emissions, future environmental compliance costs at the plant
18 will also be reduced. The benefits of these reduced O & M
19 costs will flow through to customers beginning with our next
20 rate case, which we expect to file in the first half of 2012.
21 And in fact, later today, we will be filing a 60-day notice
22 for our next rate case under the Commission's ex parte rules.

23 We filed this application because two aspects
24 of the transaction require Commission approval and the
25 contracts are all contingent upon Ameren Missouri timely

1 obtaining the needed Commission approvals. Specifically
2 under 393.190.1 of the Missouri statutes, the Commission must
3 approve Ameren Missouri's sale of the coal to Buffington
4 Partners and the lease of the small portion of the Rush
5 Island plant site to Buffington Partners.

6 The Commission must approve these transactions
7 if they are not detrimental to the public interest, a
8 standard that we believe is clearly met here. Not only are
9 these transaction not detrimental to the public interest,
10 they will result in material benefits to the public in the
11 form of cleaner air and lower plant operating costs, which
12 will ultimately translate into lower rates for the customers.
13 We are requesting approval of this application as soon as
14 possible but in no event later than December 20th to ensure
15 that Buffington Partners can qualify for the tax benefits and
16 that the transaction can go forward.

17 On Wednesday, the Commission Staff filed its
18 recommendation to approve this application subject to four
19 conditions. Ameren Missouri has reviewed the four conditions
20 and we are agreeable to all four of them. Today, both of the
21 Ameren Missouri witnesses who submitted pre-filed testimony
22 are here, Bob Neff and Mark Birk. Following whatever opening
23 statements there are, we will swear in the witnesses and
24 present their testimony. And then as I said before, they
25 also have a short PowerPoint presentation that hopefully will

1 clarify this transaction for the Commission and the other
2 parties.

3 And following the presentation, Mr. Birk and
4 Mr. Neff will be available to answer any questions. We also
5 have personnel from Ameren Missouri's tax department if there
6 are tax questions and there are also some representatives of
7 the counterparty to this transaction that are here today,
8 specifically Jeff Green and Leah Schaatt from Buffington
9 Partners are here, and Terry Friddle from Pathfinder Capital,
10 which is affiliated with CERT is also here in case anyone has
11 any questions for them.

12 Thank you.

13 JUDGE STEARLEY: Thank you, Mr. Byrne. Are
14 there any questions from the bench for Mr. Byrne?

15 COMMISSIONER GUNN: I just have a couple quick
16 questions. So does both Ameren Missouri as well as the
17 refiner receive tax benefits from this?

18 MR. BYRNE: No, only the refiner gets the tax
19 benefits.

20 COMMISSIONER GUNN: So there is no tax
21 benefits to Ameren, just the CERT and -- CERT's ability?

22 MR. BYRNE: Right, and -- right. Although
23 there's economic benefit because CERT pays us rental and --

24 COMMISSIONER GUNN: Sure, that was actually
25 one of my questions trying to figure out how they're making

1 money off the deal if they're paying you and they're -- and
2 the coal is basically a wash transaction.

3 MR. BYRNE: Yeah, it's the tax benefits.

4 COMMISSIONER GUNN: They get good tax
5 benefits. Okay. Thank you.

6 JUDGE STEARLEY: Okay. Thank you, Mr. Byrne.
7 Do any of the intervenors wish to make opening statements?

8 MR. FISCHER: Judge, on behalf of Kansas City
9 Power & Light and GMO, I just say we support Ameren's
10 application. But otherwise, I don't have any opening
11 statement.

12 JUDGE STEARLEY: All right. Public Counsel?

13 MR. MILLS: I have no opening this morning,
14 Judge.

15 JUDGE STEARLEY: All right. Staff of the
16 Commission?

17 MR. BORGMEYER: Just briefly.

18 May it please the Commission. My name is John
19 Borgmeyer with the Staff of the Missouri Public Service
20 Commission, and I just wanted to introduce Mr. Dan Beck.
21 He's the author of the Staff recommendation in this case.
22 And just real briefly, the Staff has reviewed the application
23 and other filings and recommends that the Commission approve
24 the application subject to four conditions.

25 First, the Order should indicate that no

1 rate-making decision is being made regarding the sale of the
2 coal or the lease of the property.

3 Number two: That no rate-making decision is
4 being made regarding the exclusion of the licensing and
5 handling fee that the company will collect from the fuel
6 adjustment clause. The company is not putting that through
7 the fuel adjustment clause and the Staff is just simply
8 making no rate-making decision regarding the licensing and
9 handling fees.

10 The agreements contain an option agreement for
11 the purchase of membership interests, which essentially
12 allows the company to get in the coal refinery business. And
13 the Staff would like an Order indicating that if the company
14 does exercise that option, that they make a presentation to
15 the Commission as soon as practicable after making that
16 decision, just explaining that they are going to exercise
17 that option.

18 And finally, the fourth condition is that if
19 Ameren decides to suspend or terminate or modify any of the
20 agreements that it's making with BP in this case, that it
21 notify the Commission as soon as practical after deciding to
22 terminate any of those agreements. Staff also recommends
23 that the Commission grant the company's request for expedited
24 treatment and grant the motion for waiver of the 60-day
25 notice of filing requirement.

1 JUDGE STEARLEY: All right. Thank you,
2 Mr. Borgmeyer.

3 JUDGE STEARLEY: Mr. Byrne, I'm just going to
4 swear your two witnesses in together here. Mr. Birk and
5 Mr. Neff, if you'd please raise your right hands.

6 (The witnesses were sworn.)

7 JUDGE STEARLEY: All right. Very well, you
8 may proceed. Do you wish to offer their pre-filed testimony
9 first?

10 MR. BYRNE: Yes. Do I need to -- I guess they
11 have an affidavit on them. Can I just offer it, or should
12 I --

13 JUDGE STEARLEY: You can just offer it unless
14 there's any changes to be made to it.

15 MR. BYRNE: All right. Well, I guess we need
16 to mark it. I'll have Mr. Neff's marked, and it's got an HC
17 and an NP version, so I'll mark that as Ameren Missouri 1.
18 Is that appropriate, Judge?

19 (AMEREN EXHIBIT NUMBERS 1-NP AND 1-HC WERE
20 MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

21 JUDGE STEARLEY: That's fine.

22 MR. BYRNE: And Mr. Birk's will be Ameren
23 Missouri 2-HC and NP. And Judge, I do have extra copies if
24 anyone needs any copies of their testimony.

25 JUDGE STEARLEY: Does anyone on the bench need

1 a copy of their testimony?

2 COMMISSIONER KENNEY: No, thank you.

3 JUDGE STEARLEY: Looks like we're all all
4 right here.

5 (AMEREN EXHIBIT NUMBERS 2-NP AND 2-HC WERE
6 MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)

7 MR. BYRNE: Then Your Honor, I would offer
8 Ameren Missouri 1-NP and HC and Exhibit 2-NP and HC.

9 THE COURT: All right. Any objections to the
10 offering of Exhibits 1 and 2? Hearing none, they shall be
11 received into the record.

12 (AMEREN EXHIBIT NUMBERS 1-NP, 1-HC, 2-NP AND
13 2-HC WERE RECEIVED INTO THE RECORD.)

14 MR. BYRNE: And then with Your Honor's
15 permission, maybe Mr. Birk and Mr. Neff could go through the
16 PowerPoint presentation.

17 JUDGE STEARLEY: Okay. And they can just
18 present from the podium, if they wish.

19 (REPORTERTMS NOTE: At this point, an in-camera
20 session was held, which is contained in Volume 2, pages 15 to
21 76 of the transcript.)

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1 JUDGE STEARLEY: All right. And Staff has
2 offered their recommendation as Exhibit 4. Are there any
3 objections to the offering of that exhibit?

4 MR. BORGMEYER: And Judge, the exhibit also
5 includes some -- a couple attachments that were HC, I just
6 wanted to clarify that.

7 JUDGE STEARLEY: Okay. We'll make the entire
8 exhibit HC and it shall be received into the record.
9 Actually, you know, on second thought, why don't we break
10 those two. We'll make your attachments Exhibit Number 5 and
11 make it HC.

12 MR. BORGMEYER: Okay.

13 JUDGE STEARLEY: Because your recommendation
14 is already in the EFIS file already as a public document, so
15 it will remain Exhibit 4, which is public, and the
16 attachments will be HC as Exhibit 5.

17 (STAFF EXHIBIT NUMBER 5-HC WAS MARKED FOR
18 IDENTIFICATION BY THE COURT REPORTER.)

19 (STAFF EXHIBIT NUMBERS 4 AND 5-HC WERE
20 RECEIVED INTO THE RECORD.)

21 JUDGE STEARLEY: All right. Mr. Byrne, would
22 you like to do any closing summation?

23 MR. BYRNE: No, thank you, Your Honor.

24 JUDGE STEARLEY: All right. Is there any
25 other party that would like to make any closing remark? All

1 right. Very well. You've got the briefing schedule: The
2 briefs as directed by the Commission will be due on Monday,
3 December 5th. Any of the parties to this proceeding which
4 wish to oppose the application must file an affirmative
5 statement declaring so no later than Wednesday, December 7th.

6 MS. LANGENECKERT: Only if we wish to oppose,
7 not either way, correct?

8 JUDGE STEARLEY: I'm sorry?

9 MS. LANGENECKERT: We only file if we wish to
10 oppose on December 7th?

11 JUDGE STEARLEY: Yes. You don't have to --
12 if -- I'm assuming if nothing is filed, you are in
13 non-opposition, so that's what the Commission will assume
14 when it takes this up.

15 All right. If there's nothing more, today's
16 on-the-record proceeding in File Number EO-2012-0146 is
17 hereby adjourned, and I thank you all very much.

18 (End of Proceedings.)
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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

) ss:

3 COUNTY OF GASCONADE)

4

5 I, JENNIFER L. LEIBACH, Registered Professional

6 Reporter, Certified Court Reporter, CCR #1108, and Certified

7 Realtime Reporter, the officer before whom the foregoing

8 matter was taken, do hereby certify that the witness/es whose

9 testimony appears in the foregoing matter was duly sworn;

10 that the testimony of said witness/es was taken by me to the

11 best of my ability and thereafter reduced to typewriting

12 under my direction; that I am neither counsel for, related

13 to, nor employed by any of the parties to the action in which

14 this matter was taken, and further that I am not a relative

15 or employee of any attorney or counsel employed by the

16 parties thereto, nor financially or otherwise interested in

17 the outcome of the action.

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20 Court Reporter

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