

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 28th day  
of February, 2006.

Application of Union Electric Company d/b/a AmerenUE )	
for an Order Authorizing Applicant (if and to the Extent )	
the Transaction Described Herein Would Constitute the )	
Issuance of an Evidence of Indebtedness by Applicant )	
under Sections 393.180 and 393.200, RSMo) to Execute, )	
Deliver and Perform the Agreements and Instruments )	<b><u>Case No. EF-2006-0278</u></b>
Necessary to Assume a Lease and Related Documents )	
Pertaining to the NRG Audrain Combustion Turbine )	
Generator Facility Owned by Audrain County, Missouri, )	
Which Was Constructed as Part of a Revenue Bond )	
Project under Chapter 100, RSMo. )	

**ORDER GRANTING APPLICATION**

Issue Date: February 28, 2006

Effective Date: March 10, 2006

This order grants the application filed by Union Electric Company, d/b/a AmerenUE, and allows AmerenUE to assume a leasehold interest in Audrain County's NRG Audrain Facility.

**The Application**

On December 27, 2005, Union Electric Company, d/b/a AmerenUE, asked for permission to assume a lease that NRG Audrain Generating LLC holds in Audrain County's NRG Audrain Facility. AmerenUE has entered into an Asset Purchase and Sale Agreement with Audrain Holding, LLC and NRG Audrain Generating LLC. That contract would

allow AmerenUE to acquire the rights and obligations that NRG Generating currently holds in the NRG Audrain Facility under a lease with Audrain County, Missouri.

The NRG Audrain Facility consists of eight GE 7001EA natural-gas-fired combustion turbine generating units with a combined nameplate capacity of 640 megawatts, along with approximately 100 acres of land, equipment, and other improvements. Audrain County owns the facility, and leased it to NRG Generating as part of a Chapter 100 financing arrangement, which allows NRG Generating, or any other lessee, to operate that facility without being responsible for *ad valorem* property taxes.<sup>1</sup>

According to AmerenUE, assuming the lease might be evidence of indebtedness, and therefore, AmerenUE must have Commission authority under Sections 393.180 and 393.200 before closing the transaction. AmerenUE states that it needs the additional capacity that the NRG Audrain Facility would supply to meet a prudent level of reserves for the summer of 2006.

### **Staff Recommendation**

The Staff of the Commission filed its Recommendation on February 17. Staff stated it has not encountered a transaction such as this before, and that because Section 393.200 does not state a standard that the Commission should use, the Commission should use the least onerous standard, which is “not detrimental to the public interest.”

Staff states that the proposed transaction would not be detrimental to the public interest. In fact, Staff states that the transaction would be in the public interest because of

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<sup>1</sup> According to Staff, the lessee of the NRG Audrain Facility makes lease payments to Audrain County, and Audrain County makes matching bond payments to the bondholder, which is the lessee. Thus, the payments offset each other, and no cash outflow occurs.

the approximately \$2 million in annual property tax savings that AmerenUE would realize, which could be passed on to AmerenUE customers in the form of lower rates. Staff further differentiated this case from two other recent Chapter 100 cases.

In Case No. EO-2003-0035, AmerenUE asked the Commission for authority to enter into a Chapter 100 financing arrangement with the City of Bowling Green. In that case, Section 393.190 applied, because AmerenUE owned the generating facility and wanted to sell it to Bowling Green. In the instant case, AmerenUE does not own the NRG Audrain Facility, and therefore cannot dispose of any of its franchise, works, or system with the proposed transaction.

Also, Staff mentioned Case No. EO-2005-0156, in which Aquila, Inc., sought permission to enter into a Chapter 100 financing arrangement with the City of Peculiar. Staff is satisfied that none of the issues surrounding Aquila's South Harper case are present in this case because of AmerenUE's answers to data requests, as well as the fact that the NRG Audrain Facility has operated without controversy since 2001.

Because Staff believes the proposed transaction would not be detrimental to the public interest, Staff recommends that the Commission grant the application subject to certain conditions. In its application, AmerenUE consented to the first five of these conditions. Because Staff proposed additional conditions, the Commission ordered AmerenUE to respond to Staff's Recommendation. AmerenUE responded on February 22 and stated that it accepted Staff's additional conditions.

The Commission has reviewed the parties' verified pleadings. The Commission finds that the transaction AmerenUE proposes would not be detrimental to the public interest, and will therefore approve the transaction, subject to the above conditions.

**IT IS ORDERED THAT:**

1. The application filed by Union Electric Company, d/b/a AmerenUE, is granted, subject to the following conditions:

- A. Union Electric Company, d/b/a AmerenUE, shall continue to record the land and improvements (combustion turbines) that are the subject of this transaction as a regulatory asset on its books similar to other utility property that it owns;
- B. Union Electric Company, d/b/a AmerenUE, shall record the investment described above in accordance with the Uniform System of Accounts as adopted by this Commission for record-keeping purposes;
- C. Union Electric Company, d/b/a AmerenUE, shall depreciate the combustion turbines at the annual rate of 4%, which reflects a twenty-five year useful life. This is AmerenUE's present rate for Account No. 344 Other Production Plant – Generators;
- D. Union Electric Company, d/b/a AmerenUE, shall book each annual grant payment to operating expense during the remaining term of the Grant Agreement, as each annual grant payment is made;
- E. No ratemaking determination is being made by the Commission in this proceeding and no party to this case has acquiesced to any present or future ratemaking treatment as it relates to this transaction. The ratemaking treatment of this transaction may be addressed in Union Electric Company, d/b/a AmerenUE's next rate case or the Staff's next earnings complaint case, but no ratemaking treatment is being sought by Union Electric Company, d/b/a AmerenUE, in this proceeding;
- F. Union Electric Company, d/b/a AmerenUE, shall seek and obtain Commission approval before it transfers any of the rights it holds pursuant to the lease where such rights are necessary or useful in the provision of regulated utility service, including the right to purchase the facility at the end of the lease;
- G. Union Electric Company, d/b/a AmerenUE, shall not sell its rights to the Bond Purchase Agreement acquired through its acquisition of the Audrain Facility without Commission approval.

2. The Commission authorizes Union Electric Company, d/b/a AmerenUE, to execute, deliver and perform the agreements and instruments necessary to assume a

lease pertaining to the NRG Audrain combustion turbine generator facility owned by Audrain County, Missouri, which was constructed as part of a revenue bond project under Chapter 100, RSMo.

3. This order shall become effective on March 10, 2006.
4. This case may be closed on March 11, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., concurs, with separate  
concurring opinion attached.  
Murray, Gaw, Clayton, and Appling, CC.,  
concur.

Pridgin, Regulatory Law Judge