

**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) **File No. EO-2011-0128**
Transmission System to the Midwest)
Independent Transmission System Operator, Inc.)

STAFF’S REPLY BRIEF

It appears to the Staff that no party to this case has suggested that Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) should not be authorized to continue to participate in the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”), but rather they disagree as to the conditions under which continued participation should be allowed. As set out in detail in the Staff’s Initial Brief, the Staff believes Ameren Missouri’s continued participation in the Midwest ISO, under the terms and conditions of the November 17, 2011 *Non-unanimous Stipulation and Agreement*, is not detrimental to the public interest, and such continued participation by Ameren Missouri should be approved by the Commission.¹ The Staff will not reargue herein the points addressed in the Staff’s Initial Brief, but will respond to the alternate / modified conditions for Ameren Missouri’s continued participation in the Midwest ISO raised by other parties to this case in their Initial Post-Hearing Briefs.

How daunting in many respects this proceeding has been, and still is, can be seen by the Initial Post-Hearing Briefs of certain parties, not just those parties that filed objections to the *Non-Unanimous Stipulation and Agreement* (the Office of the Public Counsel (“Public Counsel”)

¹ Again, as addressed in detail in the Staff’s Initial Brief, the Staff refers the Commission to the requirements set out in *State ex rel. Fischer v. Public Serv. Com’n*, 645 S.W.2d 39 (Mo.App. W.D. 1982).

and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), but also the Missouri Industrial Energy Consumers, Inc. (“MIEC”). The first Joint Issues And Witness List, Order Of Opening Statements And Order Of Cross-Examination (“Joint List Of Issues”) in this proceeding was filed on November 14, 2011. The positions of some parties have changed because of the filing of the *Non-unanimous Stipulation and Agreement* on November 17, 2011 and the positions of some parties have changed because of their understanding of the issues. Nonetheless, one would have thought that the framing / identifying of the issues would have reached an end point by the filing of the Second Revised List of Issues and Order of Cross-Examination and First Revised Witness List and Order of Opening Statements (“Joint Revised Second List of Issues”) on January 25, 2012 for the evidentiary hearings on February 9-10, 2012. That has not been the case. The Initial Post-Hearing Briefs of these Parties give some indication of:

- (1) what actual issues have been and are before this Commission
 - (a) framed and now pursued, some on a timely and others on an untimely basis (Public Counsel and MJMEUC);
 - (b) framed at one stage, but later abandoned, some on a timely and others on an untimely basis (Public Counsel);
 - (c) framed at one stage, abandoned at a subsequent stage, and now argued in the alternative if the Commission does not approve the *Non-unanimous Stipulation and Agreement* (MIEC), and
- (2) what issues, are not necessarily before this Commission,
 - (a) but are, or had been, sought to be addressed (Public Counsel and MJMEUC).

The Staff would also note that the Commission’s July 1, 2011 Order Establishing Procedural Schedule states at page 2, Ordered 2.(A): “The Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.”

As late as the filing of Initial Post-Hearing Briefs, certain parties have raised new matters, including first-time alternate language for the *Non-unanimous Stipulation and Agreement*. Because the Commission will likely want to address these matters, the Staff will attempt to identify these items for the Commission and note why each is inappropriate regardless of how untimely they were raised. As already noted, on January 25, 2012, the Parties filed with the Commission a Joint Revised Second List of Issues. Six issues are listed. (Issues 1 through 4 and Issue 6 are issues that are also in the Suggested Revised List of Issues filed by the signatories to the *Non-unanimous Stipulation and Agreement* filed on November 17, 2011, the day the *Non-unanimous Stipulation and Agreement* was filed.) The January 25, 2012 Joint Revised Second List of Issues states on page 2 that all Parties agree that Issues 1 through 4 and Issue 6 should be resolved by the Commission. Also on page 2, the January 25, 2012 Joint Revised Second List of Issues states that Public Counsel contends that the Commission should resolve Issue 5, and Ameren Missouri, Staff, Midwest ISO, and MIEC do not agree with Public Counsel that Issue 5 should be an issue in this proceeding.

Issue 5 refers to Staff witness Adam C. McKinnie's recommendations at page 22, lines 3-27 (and page 38, lines 29-33) of his Rebuttal Testimony respecting whether the terms and conditions which have applied to Ameren Missouri an Ameren Missouri affiliate which constructs, owns, and/or operates transmission when Ameren Missouri is the incumbent transmission provider. Issue 5 comprises former issues of Mr. McKinnie which were resolved, from the Staff's perspective, when the Staff entered into the *Non-unanimous Stipulation and Agreement* with Ameren Missouri, MIEC, and Midwest ISO. (Vol. 3, Tr. 133, Ins. 5-14, and Tr. 178, Ins. 4-9). In its January 27, 2010 Second Statement of Positions of the Office of the Public

Counsel (“Second Statement of Positions of Public Counsel”), Public Counsel’s response to Issue 5 was: “Yes, for the reasons set forth in Mr. McKinnie’s testimony.

Public Counsel’s Initial Post-Hearing Brief states at page 2, in the first sentence of the first paragraph and the first sentence of the second paragraph, that “Public Counsel proposes three additional (or modified) conditions” to the *Non-unanimous Stipulation and Agreement*, which “are necessary and appropriate in order to ensure that Ameren Missouri’s continued participation in MISO is not detrimental to the public interest.” Public Counsel changes, in its Initial Post-Hearing Brief, its positions from those stated in its January 27, 2012 Second Statement of Positions of Public Counsel. Public Counsel does not mention in its Initial Post-Hearing Brief, its very own Issue 5 from the January 25, 2012 Joint Revised Second List Of Issues.

I. Paragraph 10.a. of the *Non-unanimous Stipulation and Agreement*

First in regards to the Public Counsel’s Initial Post-Hearing Brief “three additional (or modified) conditions” proposal, Public Counsel recommends at pages 2 and pages 10-11 in its Initial Post-Hearing Brief changes to the language in paragraph 10.a. of the *Non-unanimous Stipulation and Agreement* even though (1) it proposed no such changes in Mr. Kind’s January 18, 2012 Supplemental Rebuttal Testimony (Exhibit No. 13), (2) it proposed no such changes in the January 25, 2012 Joint Revised Second List Of Issues, and (3) it proposed no such changes in its January 27, 2012 Second Statement of Positions of Public Counsel.

In the second sentence in paragraph 2 on page 2 of the Public Counsel’s Initial Post-Hearing Brief, Public Counsel states that the first of its proposed modifications is to paragraph 10.a. and “is a simple, commonsense tweak that really should never have generated such opposition from Ameren Missouri.” Public Counsel proposes the following “tweak” to

paragraph 10.a. indicated by adding the language in **bold face type** and deleting the language in [brackets]:

10.a. Material Change. Notwithstanding the extended period of authority for Midwest ISO participation provided for in paragraph 9 of this 2011 Stipulation, a Stakeholder may request that the MoPSC initiate a docket (or the MoPSC may do so on its own motion) prior to November 15, 2015, to investigate whether a material event occurring **or expected to occur** after this docket is of such a magnitude that it presents a substantial risk that continued participation in the Midwest ISO on the terms and conditions contained herein [has become detrimental to the public interest] **may cause substantial harm to Ameren Missouri's ratepayers**.

At page 2 of its Initial Post-Hearing Brief, the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") for the first time proposes alternative language for paragraph 10.a. of the *Non-unanimous Stipulation and Agreement*.² MJMEUC's proposed language is clearly different than the alternative language offered by Public Counsel. For comparison purposes, the Staff shows paragraph 10.a. from the *Non-unanimous Stipulation and Agreement* with MJMEUC's proposal displayed below. MJMEUC's proposal is indicated by adding the language in **bold face type** and deleting the language in [brackets]:

10. a. Material Change. Notwithstanding the extended period of authority for Midwest ISO participation provided for in paragraph 9 of this 2011 Stipulation, a Stakeholder may request that the MoPSC initiate a docket (or the MoPSC may do so on its own motion) prior to November 15, 2015, to investigate whether a material event occurring after this docket [is of such a magnitude that it presents a substantial risk] that **would cause** continued participation in the Midwest ISO on

² Issue 7 in the November 14, 2011 Joint List of Issues is Issue 6 in the February 25, 2012 Joint Revised Second List of Issues. MJMEUC's Statement Of Position and Second Revised Statement Of Position responses to Issue 7 in the November 14, 2011 Joint List of Issues and Issue 6 in the February 25, 2012 Joint Revised Second List of Issues are identical:

MJMEUC supports the position of Mr. Vrbas, and states that any party to this case should be allowed the future opportunity to petition the MoPSC to open a docket to investigate an event that could cause continued participation in MISO by Ameren Missouri to be detrimental to the public interest.

the terms and conditions contained herein [has] to become detrimental to the public interest.

The proposals of the Public Counsel and MJMEUC for paragraph 10.a. are very different. For Public Counsel and/or MJMEUC to belatedly make an effort to reconcile their proposals, they will have to do so in their Reply Post-Hearing Briefs and then other parties will not have an opportunity to respond.

The Initial Post-Hearing Brief of MJMEUC in its criticism of the language of paragraph 10.a. appears to claim if there is a continuous, contemporaneous standard, or if parties set any continuous, contemporaneous standard it needs to be “not detrimental to the public interest.”

To include the language as written in the stipulation would expand upon the judicial standard set for transfers of utility property, that such transfers not be detrimental to the public interest.² By expanding the scope of the language to include standards of ‘substantial risk’ and ‘magnitude’ of potential harm, paragraph 10(a) of the proposed stipulation would raise the bar of the actual standard of ‘detrimental to the public interest.’ . . .

² See State ex rel. City of St. Louis v. Public Service Commission of Missouri, 335 Mo.448, 73 S.W.2d 393, 395 (Mo. banc 1934)

The standard set by case law for Section 393.190.1 is “not detrimental for the public interest.” Paragraph 10.a. of the *Non-unanimous Stipulation and Agreement* is not required as part of the *Non-unanimous Stipulation and Agreement* by statute or case law. Paragraph 10.a. is in the *Non-unanimous Stipulation and Agreement* because the signatory parties agreed to make it part of the *Non-unanimous Stipulation and Agreement*. Paragraph 10.a. does not involve a further transfer of the control of Ameren Missouri’s transmission facilities to the Midwest ISO, so paragraph 10.a does not involve a new application of Section 393.190.1. If the Commission adopted the *Non-unanimous Stipulation and Agreement* without paragraph 10.a., and a stakeholder wanted the Commission to initiate a docket prior to November 15, 2015 to investigate what is presently addressed in paragraph 10.a, the stakeholder would have to file a complaint under one or more of

the complaint sections of Chapters 386 and 393 RSMo. Section 393.190.1 would only be involved should Ameren Missouri file an application for further extension of Commission authority for Ameren Missouri to participate in an RTO / ISO or for authority for Ameren Missouri to operate as an independent coordinator of transmission (“ICT”). There is no statutory or case law continuous, contemporaneous burden of proof for Ameren Missouri to show that its transfer of functional control of its transmission system to the Midwest ISO is “not detrimental to the public interest.”

Public Counsel could have offered the modification to the language of paragraph 10.a., which it offers at page 10 of its Initial Post-Hearing Brief, in Ryan Kind’s January 18, 2012 Supplemental Rebuttal Testimony or in its January 27, 2012 Second Statement of Positions of Public Counsel, but it did not. In his Opening Statement at the evidentiary hearing on February 9, 2012, the Public Counsel stated in part as follows:

So in summary, the non-unanimous stipulation and agreement does not adequately protect the public interest. In order to adequately protect the public interest, the Commission should adopt the conditions described by Public Counsel witness Kind and in the statement of position filed by the Office of the Public Counsel.

(Vol. 3, Tr. 61, lns. 15-20).

It is not as if Mr. Kind did not make note of paragraph 10.a. of the *Non-unanimous Stipulation and Agreement* in his January 18, 2012 Supplemental Rebuttal Testimony. In fact at page 23 of his Supplemental Rebuttal Testimony, Mr. Kind refers to paragraph 10.a. of the November 17, 2011 *Non-unanimous Stipulation and Agreement* as intended to address the Midwest ISO’s proposed movement to PJM-type capacity markets. But Mr. Kind says the best way to solve the problem of the Midwest ISO’s proposed movement to PJM-type capacity markets is to have separate Ameren Missouri representation at the Midwest ISO as the Arkansas

Public Service Commission has ordered in Order No. 54 in Docket No. 10-011-U. (Ex. 13, Kind Sup. Reb., p. 23, ln. 21 - p. 24, ln. 2). The language of paragraph 10.a. of the *Non-unanimous Stipulation and Agreement* does not limit the material event that may be raised by a Stakeholder to any one area of concern, such as capacity markets.

II. Public Counsel's Proposal Regarding Separate Ameren Missouri Representation At The Midwest ISO

Public Counsel at pages 13 and 14 of its Initial Post-Hearing Brief, cites Staff witness Adam McKinnie for support for its proposal for separate representation for Ameren Missouri at the Midwest ISO. A full rendering of the quote from which Public Counsel cites adds needed context to Mr. McKinnie's testimony:

Q.[Commissioner Jarrett]: Okay. Does that mean that if something like that would happen as you described, would you see that -- there would be a conflict between Ameren Missouri and Ameren Services or Ameren Illinois?

A. [Mr. McKinnie]: There could be one I would have a hard time saying exactly what that conflict would be at this moment just because of the fluidity of the capacity market situation. It's -- it's really up in the air.

Q. [Commissioner Jarrett]: Well, you know, based on your experience working on these issues, would your concern or your questioning rise to the level of the Missouri Commission applying or attempting to apply a similar condition on Ameren Missouri to -- to seek having a separate voting voice at MISO?

A. [Mr. McKinnie]: I could see that occurring in a few limited situations, but I can't identify off the top of my head a situation in which Ameren Missouri's interest is going to be massively different. There are certainly a few. I mean, I look at things, such as that we took care of in paragraph (j), for example, where there's definitely a difference in -- in -- if you take Ameren Missouri's interest into account and kind of include its ratepayers, I think 10(j) definitely addresses the situation in which there are different interests.

(Vol. 3, Tr. 166, lns. 2-25).

III. Paragraph 10.j. of the *Non-unanimous Stipulation and Agreement*

In its Initial Post-Hearing Brief, Public Counsel makes no mention of its Issue 3 on page 2 of the January 25, 2012 Joint Revised Second List Of Issues and its very own proposal for its Issue 3 in its January 27, 2012 Second Statement of Positions of Public Counsel. Public Counsel stated at page 2 of its January 27, 2012 Second Statement of Positions of Public Counsel regarding Issue 3 that the condition proposed in Mr. Kind's September 14, 2011 Rebuttal Testimony "may need to be modified by adding the underlined qualifier and deleting the closing clause" as follows:

Issue 3. . . . UE shall make diligent efforts to construct and own any and all transmission projects proposed for UE's certificated retail service territory, ~~unless UE requests and receives approval from the Commission for an entity other than UE to pursue, in part or in whole, construction and/or ownership of the proposed project(s), which entity shall have a certificate of convenience and necessity issued by the Missouri Public Service Commission for the proposed project(s).~~

Public Counsel apparently abandons this proposal, and substitutes it with the last of its "three additional (or modified) conditions" to the *Non-unanimous Stipulation and Agreement*. Specifically, Public Counsel offers, at pages 19-21 of its Initial Post-Hearing Brief (in particular at page 21), the uncorrected "alternative approach" language for paragraph 10.j. of the *Non-unanimous Stipulation and Agreement* crafted by its witness Mr. Kind at page 13 in his Supplemental Rebuttal Testimony filed January 18, 2012, Exhibit No. 13. (Mr. Kind corrected the language at the February 9, 2012 evidentiary hearing. (Vol. 3, Tr. 229, lns. 20-240)). Public Counsel did not propose Mr. Kind's January 18, 2012 suggested alternative language in its January 27, 2012 Second Statement of Positions of Public Counsel.

Staff witness Mr. McKinnie's Surrebuttal Testimony reflects the advice of the Staff Counsel Department, as his Surrebuttal Testimony clearly indicates at pages 9-11, and at the

evidentiary hearings on February 9, 2012, in particular, where Staff counsel opined certain legal views and interpretations (Vol. 3, Tr. 72, ln. 20 - Tr. 73, ln. 15). One or more of these expressions of legal views or interpretations and/or the subject matter in general regarding, for example, nonincumbent transmission developers / providers requiring certificates of public convenience and necessity (“CCN”) to construct transmission, may have prompted Public Counsel to note at page 18 of its Initial Post-Hearing Brief the Federal filed-rate doctrine and the U.S. Supreme Court decisions *Nantahala Power & Light Co. v. Thornburgh*, 476 U.S. 953, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986) (*Nantahala*) and *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988). In doing so, the Public Counsel states that if ATX builds transmission projects and receives incentive adders from FERC and Ameren Missouri passes on those rates to Ameren Missouri’s customers through Midwest ISO approved charges, it is arguable that the filed-rate doctrine would prohibit this Commission from adjusting Ameren Missouri’s retail rates to eliminate those incentive adders. At page 8 of its Initial Post-Hearing Brief, Ameren Missouri also mentions the Federal filed-rate doctrine.

At page 19 of its Initial Post-Hearing Brief, Public Counsel asserts only the “alternative approach” language for paragraph 10.j. proposed by its witness Ryan Kind at page 13 in his Supplemental Rebuttal Testimony filed on January 18, 2012³ will allow the Commission to exclude FERC transmission incentive adders passed on to Ameren Missouri by the filed-rate doctrine. Public Counsel makes its succinct argument without engaging in any discussion of FERC Order No. 1000, the Midwest ISO Transmission Owners Agreement, the Federal right of

³ Public Counsel cites the uncorrected language proposed by Mr. Kind, which he corrected at the February 9, 2012 evidentiary hearing.

first refusal, or ATX's need for a CCN(s) to construct, own, and/or operate transmission facilities. Public Counsel addresses, in various places in its Initial Post-Hearing Brief, FERC Order No. 679 respecting transmission rate incentives but does not address FERC Order No. 1000 anywhere in its Initial Post-Hearing Brief. The lack of discussion of FERC Order No. 1000 in the testimony and pleadings of Public Counsel should not go unnoticed and unnoted by the Commission.

The Commission and its Staff are not strangers to the filed-rate doctrine, *Nantahala*, and other case law. In fact, the Commission, as the appellant, was before the Eighth Circuit Court of Appeals in *Arkansas Power & Light Co. v. Missouri Public Serv. Comm'n*, 829 F.2d 1444 (8th Cir. 1987)⁴ in a case involving the filed-rate doctrine, the *Nantahala* decision, and the Supreme Court's recognition of the State commissions' right to suspend and investigate, for a period of time set by State statute, a retail rate filing (inclusive of the effect of the increase in wholesale rates to the utility) before allowing the retail rate filing to go into effect, as provided by State law, rather than preemption by the Federal Power Act requiring immediate rate recovery, i.e., pass-through, of any increase in wholesale rates to the utility. The Missouri Commission respected, deferred to, and accepted FERC's determinations with respect to wholesale rates after the Missouri Commission performed its statutory duties under Chapters 386 and 393.

Public Counsel highlighted in Mr. Kind's Supplemental Rebuttal Testimony FERC Docket No. EL 10-80-000 wherein Ameren Services Company ("Ameren Services") received authorization to use various transmission infrastructure investment incentives (and other

⁴ See *Re Arkansas Power & Light Co.*, Case No. ER-86-52, 28 Mo.P.S.C.(N.S.) 143; 28 Mo.P.S.C.(N.S.) 151; 28 Mo.P.S.C.(N.S.) 155; 28 Mo.P.S.C.(N.S.) 157; 28 Mo.P.S.C.(N.S.) 158 (1986) (Arkansas Power & Light Company, among other things, sought to reflect in retail rates the increase in wholesale rates relating to the Grand Gulf nuclear station becoming fully operational and used for service).

ratemaking proposals) for its affiliates, including ATX, in connection with two of four new transmission projects in the first phase of a portfolio of projects called “Grand Rivers.” (Ex. 13, Kind Sup. Reb., p. 11, Ins.18-23; FERC Docket No. EL 10-80-000, May 19, 2011, Order On Transmission Rate Incentives, 135 FERC ¶ 61,142). This Commission filed a Notice of Intervention in said FERC case. MIEC filed a Motion to Intervene, and MJMEUC filed a late motion to intervene and protest and a motion to accept the late-filed intervention and protest. FERC’s May 19, 2011 authorization was conditioned on the two projects obtaining approval in the Midwest ISO Transmission Expansion Planning (“MTEP”) process. In its May 19, 2011, Order On Transmission Rate Incentives in Docket No. EL 10-80-000, the FERC identified the two conditionally approved projects as the Illinois Rivers Project and Big Muddy River Project and the two projects for which the requested rate incentives were denied, without prejudice, as the Spoon River Project and the Wabash River Project. The transmission project to be built in Missouri by an affiliate of Ameren Missouri, which in particular Public Counsel has noted, is the Mark Twain Project. (See Footnote 3 in Staff’s Initial Brief.)

The December 8, 2011 Ameren Corp. Financial News Release attached to Mr. Kind’s Supplemental Rebuttal Testimony as Attachment A states, in part, as follows on page 1:

. . . The Midwest Independent Transmission System Operator (MISO) announced earlier today that its Board had approved its Transmission Expansion Plan 2011 (MTEP11), which includes the ATX projects.

* * * *

The ATX projects approved by MISO’s board are part of the Grand Rivers projects, consisting of the Illinois Rivers and Spoon River transmission line projects in Illinois and Mark Twain transmission line project in Missouri. . . .

* * * *

The Illinois Rivers project, preliminary estimated to cost \$860 million, will span 331 miles with a new 345-kilovolt transmission line, crossing the Mississippi River near Quincy, Ill., continuing east across Illinois to the Indiana border. . . .

The Spoon River project in Illinois, preliminary estimated to cost \$180 million, will span 70 miles of new 345-kilovolt transmission line from Oak Grove to Galesburg, Ill. continuing near Peoria, Ill. . . .

The Mark Twain project in Missouri, preliminary estimated to cost \$230 million, will span 89 miles of new 345-kilovolt transmission line from the Iowa border to Adair, Mo. on to Palmyra, Mo. . . .

((Ex. 13, Kind Sup. Reb., p. 12, ln. 18 - p. 13, ln. 2 and Attach. A, p. 1).

There is no indication in the record that Ameren Services to date has sought FERC authorization to utilize transmission infrastructure investment incentives (and other ratemaking proposals) for its affiliates, including ATX, in connection with the Mark Twain Project. Should Ameren Services do so, this Commission may want to intervene at FERC and commence a proceeding on its own motion here. The Staff or some other entity might seek to commence a CCN proceeding.

The second page of Exhibit 19 has at the top of the page, turned length-wise (11 x 8½) the heading: "Transmission Opportunities Ameren Transmission Company." This page, among other things, shows the States of Missouri and Illinois and the routes of the Mark Twain Project, the Illinois River Project, and the Big Muddy Project. This page also indicates that FERC granted transmission rate incentive treatment for the Big Muddy Project and the Illinois River Project in its May 19, 2011 Order On Transmission Rate Incentives in Docket No. EL 10-81-000. In addition, this page shows the Big Muddy Project as extending from a hub at Grand Tower into Missouri through/near Cape Girardeau. This page states that the Illinois River, the Mark Twain Project, and the Spoon River Project are expected to be approved by the MISO Board during 2011, which they were, and the Big Muddy Project is expected to be evaluated in

the MISO 2012 planning process. Finally, there is no indication on the page that the Mark Twain Project has been granted FERC transmission rate incentive treatment.

IV. Paragraph 10.b. of the *Non-unanimous Stipulation and Agreement*

Paragraph 10.b. of the *Non-unanimous Stipulation and Agreement* provides for Ameren Missouri to perform a cost-benefit study for the next proceeding addressing Ameren Missouri's participation in an ISO / RTO / ICT. Paragraph 10.b. provides for two different levels of participation in the cost-benefit study by the parties to File No. EO-2011-0128, if they choose to participate. The level of participation is not determined by whether an intervenor is a signatory to the *Non-unanimous Stipulation and Agreement*. The intervenors granted the greatest level of participation are the Staff, MIEC, and Public Counsel, Public Counsel not being a signatory to the *Non-unanimous Stipulation and Agreement*. Before Ameren Missouri performs its cost-benefit study, it will contact and consult with all intervenors regarding the analysis it believes is appropriate and necessary for the cost-benefit study. After taking into consideration in good faith the comments and input of the intervenors, Ameren Missouri will determine the specific parameters of the cost-benefit study. Ameren Missouri will permit the Staff, MIEC, and Public Counsel to have access and input regarding the actual analysis, but Ameren Missouri will be the project manager and will be entitled to maintain a level of independence and control of the analysis. (Paragraph 10.b., *Non-unanimous Stipulation and Agreement*).

At page 2, the first complete paragraph, and page 3, the second complete paragraph, of its Initial Post-Hearing Brief, MJMEUC asks for modification of the paragraph 10.b. language of the *Non-unanimous Stipulation and Agreement*, i.e., the cost-benefit study provision. MJMEUC does not address in either its January 27, 2012 (post-*Non-unanimous Stipulation and Agreement*) Second Revised Statement of Position or its November 17, 2011 (pre-*Non-unanimous Stipulation*

and Agreement) Statement of Position an issue(s) relating to the cost-benefit study to be performed by Ameren Missouri for the next proceeding addressing its participation in an ISO / RTO / ICT.

MJMEUC's Initial Post-Hearing Brief on page 3, the last sentence on the page and the citation footnote 4, is not clear respecting what MJMEUC is contending Ameren Missouri witness Mr. Arora agreed to on the witness stand when MJMEUC's Initial Post-Hearing Brief states: "As Mr. Arora testified in the hearing, Ameren does not object to such an arrangement."⁴

⁴ Id 95:17 - 96:12" A review of paragraph 10.b.of the *Non-unanimous Stipulation and Agreement* and the referenced colloquy between Mr. Arora and Counsel for MJMEUC is helpful to an understanding of what Mr. Arora actually said at the evidentiary hearing:

Q. [Mr. Healy]: Sure. Would you have any objection to MJMEUC being involved in the modeling of a proposed study to determine the benefits of staying in MISO?

A. [Mr. Arora]: Could you clarify what you mean by "being involved?" I assume -- I assume AmerenUE or Ameren Missouri would be the project manager?

Q. [Mr. Healy]: Correct. Under the terms as proposed in the stipulation, there's a provision for the other parties to participate, both in the modeling and in the application of the data. And my question doesn't involve the data but just the modeling side of this.

Would you have an objection to MJMEUC being involved in the modeling of a new study?

A. [Mr. Arora]: Yeah, I think I would like to have the modeling done under the management of Ameren Missouri. I think it should be done for judging the benefits and the costs to MISO participation for Ameren Missouri customers. Now, to the extent a party would like to suggest things that could be analyzed, I think we would be okay with considering those. But recognizing that the study is done for the benefit of Missouri retail customers.

(Vol. 3, Tr. 95, ln. 17 - Tr. 96, ln. 12).

V. MIEC's Initial Post-Hearing Brief

Although MIEC is a signatory to the *Non-unanimous Stipulation and Agreement*, the Staff believes that MIEC's Initial Post Hearing Brief deserves comment. In its Initial Post-Hearing Brief, MIEC first expressly states that it is MIEC's position that the Commission should approve Ameren Missouri's continued participation in the MISO, under the terms and conditions set out in the *Non-unanimous Stipulation and Agreement*, and find that such participation is not detrimental to the public interest. Then, to the surprise of the Staff, MIEC proceeds to argue in support of its filed rebuttal testimony position, and then one of Public Counsel's now abandoned amended positions if the Commission does not approve the changed positions of MIEC, the Staff, Ameren Missouri, and the Midwest ISO as embodied in the *Non-unanimous Stipulation and Agreement*.

WHEREFORE the Staff of the Missouri Public Service Commission, by and through the undersigned counsel of the Staff Counsel Department of the Missouri Public Service Commission, prays that the Commission, based on the competent and substantial evidence in this proceeding, approve the changed positions reflected in the *Non-unanimous Stipulation and Agreement* filed on November 17, 2011.

Respectfully submitted,

/s/ Steven Dottheim

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing of *Staff's Reply Brief* was served via e-mail on counsel for all parties of record on this 26th day of March, 2012.

/s/ Steven Dottheim