

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 13th
day of January, 2000.

In the Matter of the Application of Union)
Electric Company, d/b/a AmerenUE, for Approval) Case No. EA-2000-37
of the Transfer of Generating Assets by an)
Affiliate to Another Affiliate.)

ORDER APPROVING UNANIMOUS
STIPULATION AND AGREEMENT, MAKING
FINDINGS UNDER THE PUBLIC UTILITIES
HOLDING COMPANY ACT, AND
CLOSING CASE

Procedural History:

On July 21, 1999, Union Electric Company, doing business as AmerenUE (UE), filed its application for findings by the Commission under 15 U.S.C. § 79z-5a(c), the Public Utilities Holding Company Act (PUHCA), relating to Exempt Wholesale Generators (EWGs). UE seeks these findings in connection with a proposed restructuring of its Illinois-based affiliate, AmerenCIPS. According to UE's application, that restructuring proposes the transfer of all generating assets currently owned by AmerenCIPS, and associated liabilities, to a new affiliate to be known as Genco. Genco will be designated as an EWG. UE asserts that all of the generating assets involved are located in Illinois and none are located in Missouri.

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APR 16 2004

Missouri Public
Service Commission

Exhibit No. 36
Case No(s) EO-2004-0108
Date 3-26-04 Rptr KF

On July 26, 1999, the Commission issued its Order Directing Notice, setting an intervention deadline of August 16, 1999. On July 27, 1999, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to respond by July 30, 1999, and state the earliest date by which it believed it would be able to recommend whether or not UE's application should be granted. On July 30, 1999, Staff responded.

On September 20, 1999, a prehearing conference was held in this matter. Thereafter, on September 23, 1999, the Staff of the Missouri Public Service Commission on behalf of all the parties filed a proposed procedural schedule, which the Commission adopted on September 27, 1999. The procedural schedule required UE to file its Direct Testimony on or before October 4, 1999. Instead, UE filed a request for an extension of time to October 11, 1999, stating that the parties were close to settlement. The Commission granted the requested extension by Order on October 5, 1999. On October 8, 1999, UE filed its second request for an extension of time, to October 18, 1999. The Commission granted the second requested extension, and modified the procedural schedule, on October 12, 1999.

Also on October 8, 1999, the Missouri Industrial Energy Consumers (MIEC) filed their Application to Intervene Out of Time. On October 14, 1999, UE filed its Objection to MIEC's Application, together with its Notice of Settlement, stating that settlement had been reached on all issues and that a stipulation and agreement would be filed "in the near future." The Commission consequently denied MIEC's Application to Intervene on October 21, 1999.

On November 3, 1999, the parties filed their Unanimous Stipulation and Agreement. The Commission promptly suspended the procedural schedule by Order on November 5, 1999. Thereafter, the Commission took no action, awaiting Staff's suggestions in support of the Unanimous Stipulation and Agreement. Staff's suggestions were finally filed on December 21, 1999.

Discussion:

1. The Commission's Role in this Case:

In connection with the ongoing restructuring of the electrical energy industry in Illinois, UE's Illinois affiliate, AmerenCIPS, proposes to transfer its assets to a new entity, Genco, which will be an EWG. Section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA), codified at 15 U.S.C. 79z-5a(c), provides that, in the case of "an affiliate of a registered holding company," a "determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company," that "allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law[.]" Ameren Corporation is a registered holding company which owns both UE, a public utility subject to regulation by this Commission, and AmerenCIPS. Consequently, the PUHCA requires the designated determinations by this Commission if the proposed transaction is to go forward.

2. UE's Position:

UE argues that the proposed transaction is in the public interest, and will benefit consumers, in three respects. First, UE argues that it will make significant additional generating capacity available to UE's customers without adding corresponding construction costs to the rate base, pursuant to the Joint Dispatch Agreement (JDA). Second, UE argues that several millions of dollars in fuel costs will be avoided because Genco will serve certain wholesale customers now served by UE. Third, UE argues that several more millions of dollars will be saved by deferral of construction of a new generation of UE generating plants. UE also asserts that nothing in state law prohibits the proposed transaction.

3. The Unanimous Stipulation and Agreement:

In the Unanimous Stipulation and Agreement (S&A), filed on November 3, 1999, UE, Staff and the Office of the Public Counsel (Public Counsel) recommend that the Commission make the findings requested by UE, subject to certain conditions. In the event that the Commission approves the S&A, the parties waive their rights to cross-examination, oral argument, briefs, the reading of the transcript by the Commission, and judicial review.

The conditions contained in the S&A require UE to seek prior Commission approval of substantive changes to the JDA; to provide certain generation and consumption information to Staff on a monthly basis; to seek agreement from Staff and the Public Counsel regarding the effects on the JDA of UE's operation of two trading groups; to

implement certain standards, and to provide certain reports, with respect to such trading groups; to purchase power from Genco only by competitive bidding; and to provide certain information regarding competitive bidding and the acquisition of additional generating capacity. The S&A also includes provisions dealing with stranded costs and the continuing applicability of the S&A of Case No. EM-96-149.

4. Staff's Technical Memorandum:

As stated, Staff filed its suggestions on December 21, 1999. It is important to distinguish the two components of Staff's filing: the suggestions proper, produced by the General Counsel's Office, will be discussed later. The other component is a lengthy technical memorandum by Michael Proctor, Chief Regulatory Economist of Staff's Electric Department.

Proctor agrees with UE that the proposed transaction is in the public interest and will benefit consumers and that the Commission should make the requested findings. However, Proctor sees these benefits as an increased operating efficiency of Genco due to separation of regulated and competitive functions, which will inure to the benefit of Missouri consumers through the JDA. Another benefit, Proctor states, is a decreased potential for market power abuse. The three benefits asserted by UE, in Proctor's view, have nothing to do with the proposal to transfer AmerenCIPS' generating assets to Genco and designate it as an EWG. The benefits asserted by UE, rather, derive entirely from the proposal to serve UE's retail load growth with existing facilities. Proctor notes that UE can implement this

proposal whether or not the AmerenCIPS-Genco proposal is implemented. The two proposals are really independent and unrelated in Proctor's view.

Proctor states that the proposed transaction may affect Missouri consumers in two ways. First, the JDA was created as part of the merger of UE and Central Illinois Public Service Company (CIPS), Case No. EM-96-149, in order to equitably share the benefits of low cost power generation through the joint dispatch of the generation of the two systems. Under the proposed transaction, Genco will replace AmerenCIPS in the JDA and undertake its responsibilities and obligations. Second, under the proposed transaction, UE will no longer serve certain wholesale customers in Missouri, and Genco will bid for these customers on a deregulated basis. These wholesale customers include Citizens Electric Cooperative and the cities of Rolla, Farmington, Fredericktown, and Owensville. Finally, Proctor notes that it is proposed that Genco will own eight new combustion turbines originally planned for UE. UE intends to serve its retail load growth through the capacity formerly devoted to wholesale customers rather than through this new construction.

UE asserts that the proposed transaction will result in savings of several millions of dollars to Missouri ratepayers in the form of fuel cost savings and avoided new construction costs. Proctor agrees with UE that the proposed transaction will result in fuel cost savings for Missouri consumers because UE's existing facilities are less expensive in that regard than the new combustion turbines that will be assigned to Genco. Proctor also agrees with UE's claim that

the proposed transaction will result in additional savings for Missouri consumers by avoiding the construction of new facilities (based on a comparison of \$322/kW embedded costs for existing facilities to \$390/kW embedded costs for new facilities); however, he does not believe that these savings will be as great as UE projects. Proctor notes that UE also failed to reduce its estimated savings by the additional Operation and Maintenance (O&M) costs necessarily consequent upon using existing generating facilities (\$27/kW/year) as opposed to new combustion facilities (\$4/kW/year). Proctor calculates the result of adding in this figure to be a reduction of savings of approximately \$6,000,000 per year.

UE also asserts that the proposed transaction will benefit Missouri ratepayers by giving them access to a larger generation pool, thus reducing purchased power costs from peak demand capacity shortfalls. However, Proctor states that, under the proposed transaction, UE will still experience a shortfall in capacity and will need to buy power. Proctor cautions that care must be taken that UE is permitted to buy power from Genco only if Genco is the most cost-effective alternative. Proctor notes that any such purchase agreement will require a further finding by this Commission under PUHCA. See, e.g., Case No. EM-99-369 (April 22, 1999).

Proctor notes that Staff has other concerns. Staff is concerned that the future evolution of the competitive electrical industry in Illinois will require further changes to the JDA. Proctor recommends that the Commission reserve the right to approve any such proposed changes. Proctor further notes that Staff lacks certain

information necessary to permit it to determine whether or not UE is complying with the JDA. Proctor recommends that UE be required to furnish this information. Proctor states that UE and its affiliates will likely form a new trading group in addition to the existing trading group and devote one to retail sales and the other to wholesale sales. Proctor insists that Staff and Public Counsel should have a role in defining the interaction of the proposed pair of trading groups to ensure that costs and profits continue to be equitably distributed under the JDA.

Proctor further states that the reallocation of certain existing facilities from wholesale customers to retail customers may result in stranded costs. Proctor insists that any such stranded costs must not be recovered from the retail consumers.

In order to meet the various concerns he identifies, Proctor proposes a number of conditions to be included in the S&A with UE. These conditions are identical to those included in the S&A filed herein, already summarized above.

Finally, Proctor states that he has been advised, by Staff counsel, that the proposed transaction will not violate any law of the state of Missouri.

5. Staff's Suggestions:

Staff notes that this case is the first of its kind to be taken up by the Commission, although a previous case, Case No. EM-99-369, involved similar findings under Section 32(k) of PUHCA. Staff notes that there was no S&A in that case. Staff observes that it is aware of three cases from other states in which commissions made

conditioned PUHCA Section 32(c) findings, but Staff does not discuss any of them. Staff states that it provided advance copies of its suggestions to the Public Counsel and to UE. The only suggestion made by Staff is as follows:

Since there is a detailed stipulation and agreement in the instant case, the Staff believes that the Commission need not repeat in its Order all of the conditions in the Unanimous Stipulation and Agreement, but can proceed, as it has in other cases, by adopting the Unanimous Stipulation and Agreement and attaching a copy to its Order.

The Commission will take this opportunity to suggest some useful improvements to the General Counsel's Office with respect to suggestions submitted in support of stipulations and agreements. It is Staff's practice to submit suggestions in every such case, a practice which the Commission encourages. Suggestions should be concise and should address these questions: What is the legal standard which the Commission must apply in the case at hand? Does the stipulation and agreement meet that standard?

In some cases, an additional legal issue must be addressed. For example, in the present case, the Commission is asked by UE to determine that the proposed transaction does not violate any Missouri law. This question is not addressed in the General Counsel's suggestions. An opinion on this point by the General Counsel's Office would have been useful. Staff also would have assisted the Commission had its suggestions discussed the purpose and effect of the EWG designation sought by UE and its affiliates.

6. Analysis by the Commission:

The Commission has considered the unanimous S&A filed herein, together with the pleadings, Staff's technical memorandum, and Staff's suggestions. Staff's technical memorandum indicates that the benefits to consumers identified by UE in its application are, in fact, to be traced to a part of the proposed transaction that has nothing to do with the determinations which UE seeks in this case. UE has not filed any pleading contesting this opinion. Nonetheless, Staff's technical memorandum concludes that the proposed transaction will result in benefits to Missouri consumers as long as certain conditions are imposed. UE, as well as Staff and the Public Counsel, has agreed to those conditions and they are contained in the unanimous S&A.

Staff's technical memorandum also states that Staff counsel is of the opinion that the proposed transaction does not violate any law of the state of Missouri. The Commission has reviewed Sections 386 and 393, RSMo, and has not found any provision that prohibits the proposed transaction. AmerenCIPS and Genco are not Missouri entities and do not operate in Missouri. The generating assets under consideration are not located in Missouri.

Based on Staff's well-considered technical memorandum and its own review of the law, the Commission will adopt the unanimous S&A of the parties and make the requested determinations.

Findings of Fact:

Based on the Unanimous Stipulation and Agreement filed by the parties herein, as well as on the verified application and Staff's

suggestions and technical memorandum, the Commission makes the following findings of fact and conclusions of law.

UE is a public utility and an electrical corporation, within the jurisdiction of this Commission. Section 386.020, RSMo Supp. 1999. UE is a wholly owned subsidiary of Ameren Corporation, a registered holding company. AmerenCIPS is an affiliate of UE. AmerenCIPS proposes to transfer all of its generating assets, located solely in the state of Illinois, to a new entity to be called Genco. Genco will also be an affiliate of UE and Genco will be designated as an Exempt Wholesale Generator (EWG) under Section 32 of PUHCA. Genco will succeed to all of the rights and obligations of AmerenCIPS under the Joint Distribution Agreement (JDA) previously approved by this Commission.

Conclusions of Law:

Subject to the conditions contained in the Unanimous Stipulation and Agreement of the parties, a copy of which is attached hereto as Attachment 1, the Commission determines that the proposed transaction will benefit consumers and is therefore in the public interest. The Commission further determines that the proposed transaction does not violate any law of the state of Missouri in that neither AmerenCIPS nor Genco is a Missouri entity, neither of them operates in Missouri, and none of the generating assets concerned are located in Missouri.

IT IS THEREFORE ORDERED:

1. That, in compliance with Section 32(c) of the Public Utility Holding Company Act of 1935, the Commission determines that:

- a) the proposed transaction will benefit consumers;
- b) the proposed transaction is in the public interest;
and
- c) the proposed transaction does not violate any Missouri
law.

2. That the Commission's approval of the Application of Union Electric Company, doing business as AmerenUE, is specifically conditioned upon the parties' Unanimous Stipulation and Agreement, a copy of which is attached hereto as Attachment 1.

3. That the Commission's approval of the Application of Union Electric Company, doing business as AmerenUE, does not imply or assure approval of any future contracts to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of an electrical corporation within the Commission's jurisdiction.

4. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties and transactions herein involved.

5. That the Commission reserves the right to consider any ratemaking treatment to be afforded the properties and transactions herein involved in a later proceeding.

6. That this order shall become effective on January 25, 2000.

7. That this case may be closed on January 26, 2000.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray, and Schemenauer, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

FILED²

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In the matter of the Application of Union)
Electric Company, d/b/a AmerenUE,)
for approval of the transfer of generating)
assets by an affiliate to another affiliate.)

Case No. EA-2000-37

Missouri Public
Service Commission

UNANIMOUS STIPULATION AND AGREEMENT

As a result of discussions among the parties to Case No. EA-2000-37, the parties hereby submit to the Missouri Public Service Commission ("Missouri Commission" or "Commission") for its consideration and approval the following Unanimous Stipulation And Agreement:

AmerenUE's Application

1. On July 19, 1999, Union Electric Company, d/b/a AmerenUE ("AmerenUE" or "UE"), a wholly owned subsidiary of Ameren Corporation ("Ameren"), filed its Application For Findings Pursuant To 15 U.S.C.A. §79z-5a ("Application") together with a Motion For Expedited Treatment. AmerenUE stated that these filings were made as part of a process to restructure operations of Central Illinois Public Service Company, d/b/a AmerenCIPS ("AmerenCIPS"), an affiliate of AmerenUE, in conformance with the 1997 law that deregulated electric generation in Illinois. Specifically, the Missouri Application sought, pursuant to Federal law, to have the Missouri Public Service Commission make three findings necessary for the transfer of AmerenCIPS generation assets and liabilities to an Exempt Wholesale Generator ("EWG"). These findings are that the proposed transfer of AmerenCIPS generating assets and liabilities would benefit customers, is in the public interest and does not violate any provision of Missouri State law.

2. In its Application, AmerenUE stated that the Illinois Electric Service Customer Choice And Rate Relief Law of 1997 ("Customer Choice Law") implemented a comprehensive restructuring of the electric industry in Illinois. The restructuring package includes mandatory rate cuts for residential consumers and phases in the opportunity for all consumers to choose their electric supplier. Other parts of the package provide utilities the opportunity to quickly and efficiently restructure, reorganize and transfer assets in order to adjust to the competitive market. AmerenUE further stated that the proposal to transfer AmerenCIPS' generation and marketing to a new affiliate is fully authorized, and indeed, encouraged by the Customer Choice Law, as well as by previous statements of the Illinois Commerce Commission ("ICC"). On October 12, 1999, the ICC approved the transfer of AmerenCIPS assets to the new affiliate.

3. AmerenUE further stated in its Application that following the transfer of assets by AmerenCIPS to a new generation affiliate ("Genco"), the Genco intends to seek authority from the Federal Energy Regulatory Commission ("FERC") to operate as an "exempt wholesale generator" (or "EWG") pursuant to Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA"). An EWG is an entity which owns or operates "eligible facilities" and sells electric energy exclusively at wholesale. "Eligible facilities" are those facilities used for generation of energy exclusively for sale at wholesale. As an alternative to forming an EWG, AmerenCIPS could also file an Application on Form U-1 with the Securities and Exchange Commission seeking authority to transfer assets and related liabilities to Genco. Ameren also plans to use a separate wholesale and retail marketing company ("Marketing Company").

4. AmerenUE stated that Section 32 of PUHCA requires that when an affiliate of a registered holding company transfers a previously rate-based generating facility to an EWG, that facility will be considered an eligible facility only if every State commission having jurisdiction

over the retail rates and charges of the affiliates of the registered holding company determines that "allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law." 15 U.S.C. § 79z-5a(c)(Section 32(c) of PUHCA).

5. According to AmerenUE, the proposed transfer will clearly benefit consumers and is in the public interest. Genco will become a party to the Joint Dispatch Agreement (JDA) with AmerenUE and AmerenCIPS. In the Application, AmerenUE stated that this means Genco will bring its own generating assets, initially (removed underlining) consisting of approximately 750 mw of new gas-fired generation, together with the existing AmerenCIPS assets, to the central dispatch of the Ameren system.¹ This added capacity, AmerenUE claimed, is designed to quickly provide power in high demand periods and will provide a significant hedge against the price spikes that have been experienced recently in the wholesale market. Thus, AmerenUE stated that the presence of those new units -- from which energy transfers would be priced at marginal production cost -- reduces the likelihood that AmerenUE will be required to purchase market-priced energy during high-priced peak periods.

6. Moreover, AmerenUE stated, because the additional capacity will be added by Genco, AmerenUE's retail ratepayers will not have to bear any portion of the investment burden or fixed operating expenses associated with the new gas fired generating units. Under the JDA, AmerenUE's retail ratepayers would pay only the marginal production costs associated with energy from the new units. Of course, AmerenUE's ratepayers would also continue to have the rights to energy from the generation presently owned by AmerenCIPS as those rights are defined

¹ Since the Application was filed in July 1999, Ameren has announced additional generation acquisitions which will increase the total new generation to over 1800 MW.

in the JDA. The application stated that the formation of Genco would only expand the pool from which AmerenUE can draw energy.

7. In addition to the above, AmerenUE advised it would seek to serve certain of AmerenUE's current wholesale customers through the new Genco and Marketing Company in the future. AmerenUE stated that this would result in an increase in existing AmerenUE capacity available to serve its retail customers. Five contracts representing 1998 demand of 260 mw of capacity are expiring at the end of the year 2000. Three contracts, representing 1998 demand of 19 mw of capacity, expire during 2003. If a successful bidder, Ameren intends to serve this load out of the Marketing Company and use existing AmerenUE generation facilities that were formerly dedicated to supplying wholesale customers to supply AmerenUE's retail load. With these demands on the AmerenUE system released, AmerenUE stated that the remaining regulated customers will enjoy a lower average fuel price and the need to buy less energy during periods of peak demand. AmerenUE anticipated that this would result in a decrease in fuel costs to its regulated customers of \$14 million to \$18 million dollars per year. Further, AmerenUE stated, this reduction in peak demand defers the need for significant additional generating units to be constructed and brought into AmerenUE's rate base. AmerenUE states this would allow the current retail customers of AmerenUE to achieve greater benefits from an installed generating asset base currently valued at \$322/kW name plate, \$343/kW net, rather than constructing additional gas-fired capacity at an estimated cost of \$390/kW net. AmerenUE estimates that a reduction of 297 MW peak demand along with a 15% capacity margin would defer the construction of \$133 million of new plants, with a savings of \$23 million in fixed costs.

8. Finally, AmerenUE stated that there is nothing in the law of this State that prohibits any aspect of the proposed transactions between AmerenCIPS and Genco. The

proposed transfers for the most part affect Illinois operations. AmerenUE claimed that only positive benefits will accrue to AmerenUE and its Missouri regulated customers: (1) the addition of new gas-fired generation to the pool available to satisfy demand for electricity under the JDA; (2) the reduction in fuel costs and savings to Missouri regulated customers in the range of \$14 million and \$18 million dollars per year associated with the transfer or non-renewal of certain wholesale contracts; and, (3) the ability to defer construction of new generation to serve AmerenUE retail load at an estimated savings of \$23 million dollars.

9. After AmerenUE filed the Application and associated request for expedited treatment, the parties conducted discovery and substantial negotiations regarding numerous issues. On October 13, 1999, the parties reached agreement as to all outstanding issues.

Limitations and Reservation of Rights

10. The statements in paragraphs 1 to 9 above are AmerenUE's. The Missouri Public Service Commission Staff ("Staff") and the Office of the Public Counsel ("OPC") believe that the findings required by Section 32(c) of PUHCA can be, and should be, made by the Commission pursuant to the conditions set out in paragraph 21 below.

11. None of the parties to this Unanimous Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Unanimous Stipulation And Agreement, or for which provision is made in this Unanimous Stipulation And Agreement.

12. Because this is a Stipulation And Agreement, it shall not be cited as precedent or referred to in testimony as an assertion of the particular position of any party in any subsequent

or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

13. To assist the Commission in its review of this Unanimous Stipulation And Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties related to the matters addressed in this Unanimous Stipulation And Agreement, including any procedures for furnishing such information to the Commission.

14. The Staff shall have the right to file suggestions or testimony in support of the Unanimous Stipulation And Agreement, and the other parties shall have the right to file responsive suggestions or prepared testimony. Any memoranda submitted shall not bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Unanimous Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Unanimous Stipulation And Agreement, whether or not the Commission approves and adopts this Unanimous Stipulation And Agreement.

15. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Unanimous Stipulation And Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are

settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding, or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Unanimous Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Unanimous Stipulation And Agreement, whether or not the Commission approves and adopts this Unanimous Stipulation And Agreement.

16. The Staff also shall have the right to provide, at any agenda meeting at which this Unanimous Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

17. This Unanimous Stipulation And Agreement represents a negotiated settlement. Except as specified herein and in matters relating thereto as specified herein, the parties to this Unanimous Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Unanimous Stipulation And Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide either not to approve the Unanimous Stipulation And Agreement in the instant proceeding or in any way to condition its approval of the same, except as stated herein.

18. The provisions of this Unanimous Stipulation And Agreement have resulted from numerous discussions/negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Unanimous Stipulation And Agreement in total, it shall be void and no party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

19. If the Commission does not unconditionally approve this Unanimous Stipulation And Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Unanimous Stipulation And Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Unanimous Stipulation And Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 1994² or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Unanimous Stipulation And Agreement had not been presented for approval, and any testimony or exhibits that have been offered or received in support of this Unanimous Stipulation And Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

20. In the event the Commission accepts the specific terms of this Unanimous Stipulation And Agreement, the signatories waive their respective rights to cross-examine

² All statutory references are to Revised Statutes of Missouri 1994, unless otherwise noted.

witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2; and their respective rights to judicial review pursuant to Section 386.510. This waiver applies only to a Commission Report And Order respecting this Unanimous Stipulation And Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Unanimous Stipulation And Agreement.

Section 32(c) PUHCA Findings

21. Having considered the verified Application of AmerenUE submitted in this matter and having conducted settlement negotiations and discussions with other parties, AmerenUE, the Staff and the OPC agree and recommend, subject to the conditions set forth in the next section, that the Commission should find that the proposed transfer by AmerenCIPS of its generation assets and liabilities (1) will benefit consumers; (2) is in the public interest ; and, (3) does not violate Missouri State law.

Conditions

1. Joint Dispatch Agreement (JDA) Conditions.

- a. AmerenUE agrees that all substantive proposed changes to the JDA between AmerenUE, AmerenCIPS and Genco shall be submitted to the Missouri Commission for approval. Non-substantive changes to the JDA do not need Missouri Commission authorization, but all proposed changes to the JDA must be submitted to the Staff and the OPC for their determination whether the proposed changes are substantive. Proposed changes to the JDA which either the Staff or the OPC deem to be substantive must be submitted to the Commission for approval. All proposed changes to the JDA which AmerenUE asserts to

be non-substantive must be submitted to the Staff and OPC in advance of said changes being filed with the FERC. AmerenUE's filing with the Commission for Commission approval shall occur prior to or concurrent with AmerenUE's analogous filing for approval with the FERC, which FERC filing shall include notification that approval of the Missouri Commission has been obtained or is being sought contemporaneously. A determination by AmerenUE either that a general change or that a particular change in the JDA does not require FERC approval will not control whether Missouri Commission authorization is required. Any changes to the JDA approved or required by another administrative agency shall not supersede or void the need for Ameren to fulfill all of the terms and conditions approved or required by the Missouri Commission respecting the JDA. Any approval by the Commission respecting the JDA, as identified in this Unanimous Stipulation and Agreement, shall not be deemed to constitute a ratemaking determination.

b. AmerenUE agrees to provide Staff and, upon request, the OPC with the following information on a monthly basis, which is not currently supplied to Staff or Public Counsel.

- (1) Identification of amount, cost and purchasing entity for each capacity purchase made by AmerenUE, AmerenCIPS/Genco and by any other entities or agents engaging in such purchases on behalf of the two generating parties or on behalf of the joint system;
- (2) Identification of hourly energy, cost and purchasing entity for each net purchase and sale made by AmerenUE, AmerenCIPS/Genco and by any other entities or

agents engaging in such purchases and sales on behalf of the two generating parties or on behalf of the joint system;

(3) Hourly net system load requirements (firm load requirements) for AmerenUE and AmerenCIPS/Genco.

(4) The Staff and OPC agree that they will treat this information as Highly Confidential and/or Proprietary if it is properly marked as Highly Confidential and/or Proprietary. Appropriate precautions will be taken to safeguard and maintain this confidentiality, and sufficient notice will be given to Ameren in advance of any release of this information to permit Ameren to seek a protective order or other relief, should it determine that to be appropriate.

2. Trading Company or Function

a. Ameren currently has one trading company, Ameren Energy, and one trading function within this company. Ameren believes that, in order to ensure compliance with FERC regulations, it may be necessary for Ameren to operate two trading groups, each either structurally or functionally separate from the other, in order to sell energy separately for Genco (nonregulated) and AmerenUE (regulated). Prior to beginning active commercial operation of a second trading company or function, AmerenUE agrees to seek agreement from the Staff and OPC respecting the rules and procedures that will govern the operation of the JDA, including definition of the roles that the separate trading companies or functions will have and how trading activities will be treated in making JDA allocations. In the event such agreement cannot be reached, the parties will submit the matter to the Commission for resolution. Said resolution shall not be deemed to constitute a ratemaking determination.

- b. Changes required by another administrative agency to rules and procedures that will govern or affect the operation of the JDA shall not supersede or void the necessity of Ameren to fulfill all of the terms and conditions of: (i) AmerenUE's agreement with the Staff and OPC regarding said rules and procedures, or (ii) a Commission directed resolution respecting the rules and procedures that will govern or affect the operation of the JDA.
- c. AmerenUE agrees to inform Staff and OPC of any FERC or Illinois Commerce Commission actions affecting AmerenUE's agreement with Staff and OPC or Missouri Commission resolution, as set forth in section 2.a. above.
- d. If Ameren utilizes separate trading groups, it will commit to the following conditions regarding these groups:
 - (1) To arrange for the separate trading groups to share systems and software that are applicable to the separate trading groups to the extent permitted under applicable law;
 - (2) To offer comparable terms and conditions of employment for comparable jobs within each of the separate trading groups, and for a period of five years (2000 through 2004), to provide Staff and OPC with annual reports demonstrating compliance with this condition;
 - (3) To require both trading groups to operate as full-service trading entities; and
 - (4) To maintain separate records for each trading group over the next five years (2000 through 2004) comparing the systems, software, employees and profit margins, and for that five year period, to provide Staff and OPC with annual reports summarizing these records. AmerenUE, Staff and OPC shall agree

upon the format of such reports prior to the start of the initial annual reporting period. In the event such agreement cannot be reached, the parties will submit the matter to the Commission for resolution. Said resolution shall not be deemed to constitute a ratemaking determination. If purchases to replace higher cost generation on Ameren's systems are made separately by AmerenUE's trading group and the Genco's trading group for the respective utility's own account rather than for the joint system, then Ameren agrees to maintain separate records for each trading group over the next five years (2000 through 2004) comparing the cost savings for that five year period, and to provide Staff and OPC with annual reports summarizing these records. AmerenUE, Staff and OPC shall agree upon the format of such reports prior to the start of the initial annual reporting period. In the event such agreement cannot be reached, the parties will submit the matter to the Commission for resolution. Said resolution shall not be deemed to constitute a ratemaking determination. The Staff and OPC agree that they will treat this information as Highly Confidential and/or Proprietary if it is properly marked as Highly Confidential and/or Proprietary. Appropriate precautions will be taken to safeguard and maintain this confidentiality, and sufficient notice will be given to Ameren in advance of any release of this information to permit Ameren to seek a protective order or other relief, should it determine that to be appropriate.

3. Resource Planning Conditions.

- a. AmerenUE agrees that by granting the relief requested by AmerenUE in this case, the Commission is not pre-approving the method that AmerenUE has chosen to meet its near-term capacity needs. Specifically, the Commission is not pre-approving AmerenUE's proposal to release some of its existing generation from serving wholesale customers in order to serve its remaining regulated load.
- b. AmerenUE agrees that any future purchased power contract with Genco or its marketing affiliate will only be entered into if Genco is determined to be the most cost effective offer, giving due consideration to reliability and financial viability, through a competitive bidding process in which all bidders, including Genco or its marketing affiliate, are provided with equal information and bidding opportunities; and
- c. AmerenUE agrees to the following informational requirements associated with competitive bidding Requests for Proposals ("RFPs") made available to Genco or Marketing Company for purposes described in subsection (3)(b) above.
 - (1) Prior to the first time an RFP is made available to Genco or Marketing Company, AmerenUE will provide to the Staff and OPC a draft copy of the RFP. Within 20 days of receiving a draft copy of the RFP, the Staff and OPC will review said RFP and provide AmerenUE with comments.
 - (2) RFPs will include evaluation criteria, and the review process described in (3)(c)(1) above will be repeated subsequently for later RFPs only if AmerenUE makes substantive changes to later RFPs (e.g., changes in evaluation criteria).
 - (3) AmerenUE will provide to the Staff and OPC copies of RFPs at the same time that RFPs are made available to bidders.

- d. Within 120 days from the time of committing to acquire additional generating capacity resources, AmerenUE will send to the Manager of the Commission's Electric Department and the OPC the following items:
- (1) A description of the resource needs and acquisitions;
 - (2) The impact of the additional generating capacity resources on capacity reserves;
 - (3) The proposed ratemaking treatment for the additional generating capacity resources;
 - (4) A copy of all proposals received for purchased generating capacity; and
 - (5) Documentation of AmerenUE's acquisition decisions, including:
 - (i) A description of the process used in deciding to acquire the additional generating capacity resources;
 - (ii) A copy of AmerenUE's evaluations of the resource alternatives; and
 - (iii) AmerenUE's reasons for its decisions.
- e. The Staff and OPC agree that they will treat this information as Highly Confidential and/or Proprietary if it is properly marked as Highly Confidential and/or Proprietary. Appropriate precautions will be taken to safeguard and maintain this confidentiality, and sufficient notice will be given to Ameren in advance of any release of this information to permit Ameren to seek a protective order or other relief, should it determine that to be appropriate.
- f. By receiving or reviewing the material provided, neither Staff nor the OPC, nor any other party shall be precluded in any future rate case, earnings complaint case or second alternative regulation plan or sharing credit calculation proceeding from contesting the ratemaking treatment to be afforded the purchase of capacity.

4. Stranded Cost Conditions.

- a. AmerenUE agrees to actively pursue all reasonable means allowed by the FERC to recover any possible stranded costs that may be related to the release of AmerenUE's wholesale customers. AmerenUE also agrees to provide Staff and OPC with copies of all studies, memoranda and FERC filings that it makes regarding stranded costs for its released wholesale customers.
- b. With the assignment to Genco of the new gas-fired generation, AmerenUE agrees not to seek any future stranded costs related to these specific generation facilities. This condition would not necessarily apply to future AmerenUE purchased power contracts with Genco, which include generation from these units.

5. Regulatory Conditions In Case No. EM-96-149.

Regulatory conditions applicable to Ameren, AmerenUE, Genco, Marketing Company and any AmerenUE marketing company, which are contained in the July 12, 1996 Stipulation And Agreement in Case No. EM-96-149, include, but are not limited to, the provisions in said Stipulation And Agreement set out below for illustrative purposes (nothing in the conditions agreed to by AmerenUE in the instant proceeding, Case No. EA-2000-37, reduces the requirements contained in the Stipulation And Agreement in Case No. EM-96-149):

8. State Jurisdictional Issues

- a. Access to Books, Records and Personnel. UE and its prospective holding company, Ameren, agree to make available to the Commission, at reasonable times and places, all books and records and employees and officers of Ameren, UE and any affiliate or subsidiary of Ameren as provided under applicable law and Commission rules; provided, that Ameren, UE and any affiliate or subsidiary of Ameren shall have the

right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel are not subject to Commission jurisdiction by operation of the Public Utility Holding Company Act of 1935 ("PUHCA"). In the event that rules imposing any affiliate guidelines regarding access to books, records and personnel applicable to similarly situated electric utilities in Missouri are adopted, then UE, Ameren and each affiliate or subsidiary thereof shall become subject to the same rules as such other similarly situated electric utilities in lieu of this paragraph.

- b. Voluntary and Cooperative Discovery Practices. UE, Ameren and any affiliate or subsidiary thereof agree to continue voluntary and cooperative discovery practices.
- c. Accounting Controls. UE, Ameren and each of its affiliates and subsidiaries shall employ accounting and other procedures and controls related to cost allocations and transfer pricing to ensure and facilitate full review by the Commission and to protect against cross-subsidization of non-UE Ameren businesses by UE's retail customers. In the event that rules imposing any affiliate guidelines regarding accounting controls applicable to similarly situated electric utilities in Missouri are adopted, then UE, Ameren and each affiliate or subsidiary thereof shall become subject to the same rules as such other similarly situated electric utilities in lieu of this paragraph.
- e. Electric Contracts Required to be Filed with the FERC. All wholesale electric energy or transmission service contracts, tariffs, agreements or arrangements, including any amendments, of any kind, including the Joint Dispatch Agreement, between UE and any Ameren subsidiary or affiliate required to be filed with and/or approved by the

Federal Energy Regulatory Commission ("FERC"), pursuant to the Federal Power Act ("FPA"), as subsequently amended, shall be conditioned upon the following without modification or alteration: UE and Ameren and each of its affiliates and subsidiaries will not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by UE in or as a result of a wholesale electric energy or transmission service contract, agreement, arrangement or transaction on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the FERC, or was incurred pursuant to a contract, arrangement, agreement or allocation method which was filed with or approved by the FERC.

- g. No Pre-Approval of Affiliated Transactions. No preapproval of affiliated transactions will be required, but all filings with the SEC or FERC for affiliated transactions will be provided to the Commission and the OPC. The Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a later ratemaking proceeding or a proceeding respecting any alternative regulation plan.
- h. Contingent Jurisdictional Stipulation – FERC. In the exclusive event that any court with jurisdiction over UE, Ameren or any of its affiliates or subsidiaries issues an opinion or order which invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge,

cost or allocation incurred or accrued by UE on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the FERC, then the Contingent Jurisdiction Stipulation, attached hereto as Attachment D, shall apply to FERC filings according to its terms, at the option of the Commission.

6. Additional Conditions:

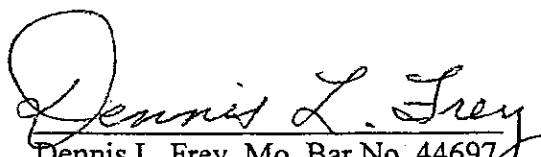
- a. AmerenUE agrees that a Commission Order approving the instant Application does not imply or assure approval of any future application for PUHCA findings respecting an EWG that is an affiliate, subsidiary or associate company of an electrical corporation within the Commission's jurisdiction.
- b. AmerenUE agrees that a Commission Order containing the findings required by PUHCA with respect to Genco shall in no way be binding on the Commission or preclude any party to a future rate case, earnings complaint case or second alternative regulation plan sharing credit calculation proceeding from contesting the ratemaking treatment to be afforded transactions relating to AmerenCIPS, Genco, Marketing Company, AmerenUE marketing company, Ameren Energy, or any affiliate, associate, mutual service, subsidiary or holding company.
- c. AmerenUE agrees that it will not seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or Order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost or allocation incurred or accrued by AmerenUE in or as a result of the JDA on the basis that such expense, charge, cost or allocation has itself been filed with or approved by the FERC, or was incurred as a result

of the Commission making findings pursuant to 15 U.S.C.A. § 79z-5a(c) (Section 32(c)) of PUHCA).

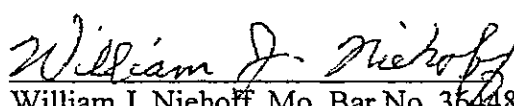
WHEREFORE AmerenUE, the Staff and the OPC request that the Commission approve the instant Unanimous Stipulation And Agreement and thereby find, pursuant to 15 U.S.C.A. §79z-5a(c)(Section 32(c) of PUHCA), that the proposed transfer of AmerenCIPS generating assets and liabilities to an EWG /Genco, subject to the conditions agreed to herein, (1) will benefit consumers, (2) is in the public interest and (3) does not violate Missouri State law.

Respectfully submitted,

DANA K. JOYCE
General Counsel


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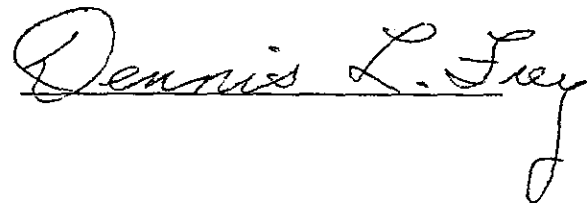


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Attorney for the
Office of the Public Counsel

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the service list below this 3rd day of November, 1999.



Service List for
Case No. EA-2000-37
Revised: November 3, 1999

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Jefferson City, MO 65102

William J. Niehoff
James J. Cook
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
P. O. Box 66149
St. Louis, MO 63166

**STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 13TH day of January 2000.**



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 13, 2000**

CASE NO: EA-2000-37

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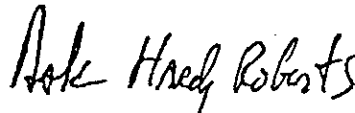
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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

LEGAL DEPT. JAN 14 '00

Ameren Services

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314.621.3222

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January 18, 2000



Mr. J. K. Mitchell
Thelen Reid & Priest LLP
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2608

Re: MPSC Case No. EA-2000-37

Dear Jim:

Enclosed please find MPSC Order Approving Unanimous Stipulation and Agreement, Making Findings Under the Public Utilities Holding Company Act, and Closing Case No. EA-2000-37.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wm J. Niehoff".

William J. Niehoff
Attorney-at-Law

WJN:rd
Enclosures

