



Missouri Public Service Commission

Commissioners
SHEILA LUMPE
Chair
HAROLD CRUMPTON
CONNIE MURRAY
ROBERT G. SCHEMENAUER
M. DIANNE DRAINER
Vice Chair

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.ecodev.state.mo.us/psc/>

May 11, 2000

BRIAN D. KINKADE
Executive Director
GORDON L. PERSINGER
Director, Research and Public Affairs
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLLIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

MAY 11 2000

Missouri Public
Service Commission

RE: Case No. EM-2000-145
EA-2000-153

Dear Mr. Roberts:

Enclosed for filing in the above-captioned consolidated cases are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dennis L. Frey
Assistant General Counsel
(573) 751-8700
(573) 751-9285 (Fax)

DLF/lb
Enclosure
cc: Counsel of Record

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

FILED²

MAY 11 2000

Missouri Public
Service Commission

In the Matter of the Application of The)
Empire District Electric Company for)
Permission and Authority to Transfer a)
Partial, Undivided Interest in Certain)
Generation Facilities, Land and Related)
Property Owned by it to Westar)
Generating, Inc. in Accordance with a)
Contract dated July 26, 1999.)

Case No. EM-2000-145

In the Matter of the Application of Westar)
Generating, Inc. for a Certificate of Public)
Convenience and Necessity Authorizing it)
to Construct, Install, Own, Operate,)
Control, Manage and Maintain Electric)
Production Facilities in Jasper County,)
Missouri, Pursuant to the Terms of a July)
26, 1999 Agreement for the Construction,)
Ownership and Operation of State Line)
Combined Cycle Generating Facility.)

Case No. EA-2000-153

STAFF RECOMMENDATION

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and requests that, consistent with the Staff's Recommendation Memorandum attached hereto, the Commission issue an Order granting The Empire District Electric Company ("Empire") permission and authority to sell to Westar Generating, Inc. ("WGI") an interest in certain assets, and granting WGI a certificate of convenience and necessity to construct, own, operate and manage production facilities in Jasper County, Missouri. In support thereof, the Staff respectfully states as follows:

10

1. On August 13, 1999, Empire filed an application with the Commission requesting permission and authority to sell and transfer an interest in certain assets to WGI in connection with a joint plan with WGI to construct additional generating facilities at Empire's "State Line" generating station, located in the southwest corner of Jasper County, Missouri. Case No. EM-2000-145 was opened as a result.

2. On August 17, 1999, WGI, a corporation duly organized and existing under the laws of the State of Kansas and a wholly owned subsidiary of Western Resources, Inc., filed an application with the Commission for a certificate of convenience and necessity ("CCN") to allow it to construct, own and operate the electric generating facilities jointly with Empire. Under its agreement with Empire, WGI is to own a forty percent share of the actual facility and thirty-three percent of the associated common areas. WGI's application was docketed as Case No. EA-2000-153.

3. Also on August 17, 1999, the Commission issued its Order and Notice regarding the aforementioned Empire application. The established deadline for applications to intervene was September 7, 1999. The Commission issued a similar Order and Notice in Case No. EA-2000-153 on August 20, 1999, with an intervention deadline of September 9, 1999. To date, there have been no applications to intervene in either case.

4. On August 19, 1999, Empire and WGI filed a Joint Motion to Consolidate the two cases, and the Commission issued its Order Granting Joint Motion to Consolidate on August 31, 1999.

5. On October 14, 1999, Empire filed an amended application for the purpose of informing the Commission as to the mechanism it expects to employ in order to accomplish the sale and transfer. Specifically, Empire intends first to transfer 100% of the subject property

interests to a wholly owned subsidiary of Empire “and then cause that subsidiary to convey to each of Empire and WGI their respective undivided property interests” in accordance with an agreement between Empire and WGI, dated July 26, 1999.

6. On October 18, 1999, Empire filed a motion for a protective order, and on October 19, the Commission granted the same.

7. In an Order dated April 10, 2000, the Commission directed the Staff to file, by May 2, 2000, a report indicating the current status of the two applications filed in the aforementioned consolidated cases. On May 2, the Staff filed its Report of Status of Staff Memorandum, wherein Staff indicated that it expected to file a Memorandum containing its recommendations regarding both subject applications on or before May 11, 2000. Accordingly, attached hereto and labeled “Appendix A” is Staff’s Memorandum.

8. Based on its review and analysis, the Staff concludes that Empire has demonstrated that its aforementioned application, filed pursuant to Section 393.190 RSMo 1994 and 4 CSR 240-2.060(5)¹, to sell and transfer certain assets to WGI is “not detrimental to the public interest.” The Staff therefore recommends that the Commission issue an Order granting Empire’s request for permission and authority to sell and transfer an interest in certain assets to WGI. Further, the Staff recommends that the Commission reserve all ratemaking treatment associated with this transaction for a future rate proceeding, as detailed in Staff’s attached Memorandum.

9. With regard to WGI’s application for a CCN, filed pursuant to Section 393.170 RSMo 1994 and 4 CSR 240-2.060 (2), WGI states therein that it “does not request authority to provide

¹ The Staff conducted its evaluations of the subject applications with respect to the Commission rules that were in effect at the time the applications were filed. The new Chapter 2 rules (effective May 1, 2000) are largely the same. The Staff does not suggest that Empire or WGI needs to make any additional filings as a result of the rule change.

retail service within” the area for which it seeks certification, pointing out that such area is the same as that in which Empire currently operates its State Line facility (in essence, the “footprint” of the plant). WGI’s application further states that it “will sell some or all of its 40 percent share of the output from [said facility] to its franchised utility affiliates, KPL and KGE.” According to the application, KPL is the trade name under which Western Resources, Inc. (“Western Resources”), a Kansas corporation, operates. KGE, another Kansas corporation, is also a subsidiary of Western Resources.² Finally, WGI states that its application “is in the public interest since [the proposed project] will provide additional power for the customers of Western Resources’ franchised utility affiliates, KPL and KGE, so that the public needs may be served.”

10. In Staff’s opinion, WGI’s application presents the Commission with a case of first impression; namely, that of a company, currently with no customers in this state, seeking a CCN in connection with its plans to enter into a joint venture with a Commission-regulated utility to construct a facility in Missouri. WGI’s application raises two questions: (a) whether or not WGI needs to apply for a CCN under the circumstances; and (b) if the preceding question is answered in the affirmative, whether a CCN should be granted. Perhaps not surprisingly, the statutes and associated case law do not directly address the question whether, under the circumstances here presented, WGI should be required to apply for a CCN. Indeed, it seems quite likely that when the statutory language governing the issuance of CCNs was enacted back in 1913, a situation such as that presented in the instant case did not come within the contemplation of the Legislature. Nevertheless, as discussed below, Staff is of the opinion that Missouri law requires

² The Staff would note that at the time WGI filed its application for a CCN, the Western Resources-Kansas City Power & Light Co. (“KCPL”) merger was pending before the Commission (Case No. EM-97-515). Although Western Resources has no service territory in Missouri, KCPL does. Nevertheless, even if the merger had been completed, the facility at issue in this case is not being built in KCPL’s service territory.

the Commission to exercise its authority in this instance, and that the Commission should grant a CCN.

11. Section 393.170.1 RSMo 1994 states, in pertinent part: “No...electrical corporation...shall begin construction of a[n] ...electric plant...without first having obtained the approval of the commission.” Section 386.020(15) RSMo Supp. 1999 defines an electrical corporation as including, in pertinent part: “...every corporation...owning, operating, controlling or managing any electric plant...” According to subsection 3 of Section 393.170, “The commission shall have the power to grant the permission and approval herein specified whenever it shall after due hearing determine that such construction...is necessary or convenient for the public service.” Subsection 3 subsequently makes reference to the “...authority conferred by such certificate of convenience and necessity issued by the commission...” In summary, under these two statutory provisions, electrical corporations desiring to build plant (*i.e.*, facilities) must seek Commission authorization in the form of a CCN. The Commission may then grant the CCN upon a determination that the construction is “necessary or convenient for the public service.”³ The question arises, then, as to whether WGI is an electrical corporation for purposes of Section 393.170.

12. An important case bearing on this question is *State ex rel. Danciger & Co. v. Public Serv. Comm'n*, 205 S.W. 36 (Mo. 1918). That case involved the sale, by M. O. Danciger & Co. to fewer than fifty neighboring businesses and residences, of excess power produced by a brewery in the course of generating electricity to support its own operations. The Missouri Supreme Court held that Danciger was not subject to regulation by the Commission because Danciger was not holding itself out as a public utility; *i.e.*, Danciger was not willing to sell

³ The statute is underscored by Commission Rule 4 CSR 240-2.060(2)(G), which requires that a company apply for a CCN for the purpose of building an electric generating facility.

electricity to the public in general. Rather, the sales were arranged via private, often informal contracts with particular individuals. In its opinion, the Court acknowledged the fact that the statutory definition of “electrical corporation” makes no mention of the public, but nevertheless found it “apparent that the words ‘for public use’ are to be understood and to be read therein.”⁴

13. The *Danciger* ruling left open the question whether a company such as WGI, with no customers in Missouri at the present time, may nevertheless still be regarded as holding itself out to “the public” and therefore be deemed an electrical corporation subject to regulation by the Commission due to other underlying facts. Not addressed in *Danciger* is the fact that in the instant situation WGI’s application relates to a joint venture with Empire for, in part, public utility purposes by Empire. In Staff’s opinion, WGI’s undivided ownership interest, in partnership with a Commission-regulated utility, in a facility that will serve retail customers in this state is a circumstance that places the instant case beyond the scope of *Danciger*, and is controlling because it implicates the interests of Missouri ratepayers. Indeed, every kilowatt-hour generated by the proposed new facility for customers in Missouri will be produced on equipment of which WGI is a forty percent owner. Under this rationale, and without any need to fashion expanded definitions of “the public,” the Commission clearly may find that WGI’s application for a CCN is appropriate in this instance, and therefore proceed to exercise its regulatory authority.

14. The courts have been quite clear about the fact that Commission-regulated utilities need not seek further Commission authorization to build a plant for public utility purposes in

⁴ In contrast to the statutory definition of an “electrical corporation,” the definition of a “gas corporation” [Section 386.020(18) RSMo Supp. 1999] refers to a corporation “owning, operating, controlling or managing any gas plant operating for public use...” (emphasis added). Section 386.020(42) RSMo Supp. 1999 declares that an electrical corporation is a “public utility” and is “subject to the jurisdiction, control and regulation of the commission...”

Missouri unless the plant is to be located in an area outside of the company's existing Commission-certificated service territory.⁵ Accordingly, in the instant case, Empire is not required to seek a CCN, since the proposed combined cycle unit will be constructed within its Commission-certificated service territory. However, a Commission-regulated utility, seeking to build in Missouri but outside of its service territory, in an analogous joint venture with Empire, would be required to obtain a CCN. In Staff's view, the same should be required of any joint venture partner of a Commission-regulated utility, including WGI.⁶

15. If, as the Staff suggests, WGI's application for a CCN is necessary in the circumstances here presented, the Section 393.170.3 standard for evaluating the request for authority becomes applicable; that is, whether the project is "necessary or convenient for the public service." It should be noted that the courts have employed a rather broad interpretation of the word "necessity" as it pertains to a utility's eligibility for a "certificate of convenience and necessity." In particular, the term does not mean "essential" or "indispensable;" rather, there must be a showing that improvement can be expected to result from the project, justifying its cost. *State ex rel. Beaufort Transfer Co. v. Clark*, 504 S.W. 2d 216 (Mo. App. 1973). "Furthermore, it is within the discretion of the Public Service Commission to determine when the evidence indicates the public interest would be served in the award of the certificate." *State ex*

⁵ See, for example, *State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W. 2d 177 (Mo. App. 1960), in which the Kansas City Court of Appeals affirmed the Commission's ruling that Missouri Public Service Company was not required to obtain a CCN in order to construct a 69 KV transmission line within its previously certificated service territory.

⁶ Certainly there are other circumstances in which the Commission is called upon to rule on transactions involving out-of-state corporations. Consider that Empire concurrently seeks Commission authorization under Section 393.190 RSMo 1994 to sell to WGI an undivided partial interest in its State Line generating station. Moreover, the Commission, in Case No. EA-2000-37, was required, under the Energy Policy Act of 1992 (Exempt Wholesale Generator ["EWG"] Amendment of the Public Utility Holding Company Act of 1935), to approve the transfer of the generation assets and liabilities of an out-of-state affiliate of a Commission-regulated utility to an EWG also located in another state. In this light, it is eminently appropriate to require WGI, an owner of an undivided interest, to seek Commission authorization to participate in the construction of a generating plant that will also be serving Missouri retail load.

rel. Intercon Gas v. Public Service Commission, 848 S.W. 2d 593 (Mo. App. 1993). Once again, because of WGI's proposed undivided ownership interest, in partnership with a Commission-regulated utility, in a facility that will serve Missouri retail customers, the interests of said Missouri retail customers are thus implicated in WGI's Application for a CCN, and should therefore be considered in applying the statutory test. In the attached Recommendation Memorandum, Staff identifies a number of operating benefits expected to flow to Empire's customers from the construction of the combined cycle generating plant. Accordingly, Staff is of the opinion that the project is "necessary or convenient for the public service," and WGI's application should therefore be approved and a CCN granted.⁷

16. The Staff would note that a Commission decision to adopt Staff's recommendation regarding WGI's application for a CCN will set a precedent, albeit a rather narrow one. Specifically, any company desiring in the future to enter into a joint venture with a Commission-regulated utility for the construction of a new facility in Missouri, which will serve, at least in part, Missouri retail customers, will be required to obtain a CCN from the Commission. Thus, such a requirement would not necessarily apply, for example, to the construction in Missouri of wholly independently owned generating stations (so-called "merchant plants").

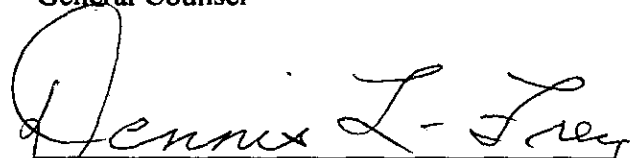
17. Irrespective of how the Commission decides the question whether WGI needs a CCN from the Commission in Case No. EA-2000-153, the Staff believes, as noted in Paragraph 8 above, that Empire's application in Case No. EM-2000-145 for permission and authority to sell and transfer assets in connection with its joint project with WGI should be approved.

⁷ The granting of a CCN signifies "public use" for purposes of an eminent domain proceeding. *State ex rel. Missouri Cities Water Company v. Hodge*, 878 S.W. 2d 819 (Mo. banc 1994). In the instant case, however, WGI has merely requested a CCN for the area of the plant itself and would therefore need to obtain another CCN before seeking condemnation rights in Missouri for an area other than the plant site. Because the subject facility abuts the Missouri-Kansas border, WGI will likely not need a CCN to build transmission line(s) to serve its existing customers in Kansas.

WHEREFORE, for the foregoing reasons, the Staff respectfully requests that the Commission issue an Order in accordance with the Staff's Recommendation Memorandum attached hereto. In particular, the Staff recommends that Empire be granted permission and authority to sell and transfer an interest in certain assets to WGI in connection with a joint plan with WGI to construct additional generating facilities at Empire's State Line generating station, with the understanding that the Commission reserves all ratemaking treatment associated with this transaction for a future rate proceeding. The Staff further recommends that WGI's application for a CCN be approved and that WGI be granted a CCN in connection with this project. In the alternative, should the Commission determine that WGI does not require a CCN in this instance, the Staff recommends, nevertheless, that Empire's application for permission and authority to sell and transfer assets in connection with its joint project with WGI be approved.

Respectfully submitted,

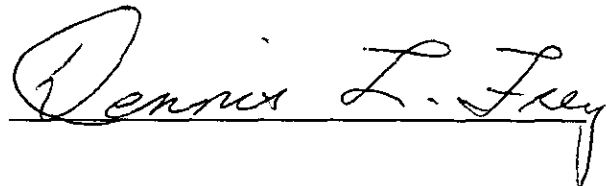
DANA K. JOYCE
General Counsel


Dennis L. Frey
Assistant General Counsel
Missouri Bar No. 44697

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8700 (Telephone)
(573) 751-9285 (Fax)

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 attached service list this 11th day of May 2000.



MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. EM-2000-145: The Empire District Electric Company
Case No. EA-2000-153: Westar Generating Inc.

FROM: David Elliott, Project Coordinator
Cary Featherstone, Utility Regulatory Auditor V
Guy Gilbert, Utility Regulatory Engineer I

David Elliott 5-10-2000 Steven Roth 5/11/00
Project Coordinator/Date General Counsel's Office/Date

D.L.F.
5-10-00

SUBJECT : Staff Recommendations for conditional approval of the Application by The Empire District Electric Company to sell a portion of State Line Generating Station Facilities, and a portion of State Line Unit No. 2 to Westar Generating Inc., and approval of the Application by Westar Generating Inc. to receive a Certificate of Convenience and Necessity to own and operate electric facilities in the State of Missouri.

DATE: May 10, 2000

INTRODUCTION

On August 13, 1999, The Empire District Electric Company (Empire or Company) filed an Application requesting approval for the sale and transfer of a portion of State Line Generating Station common facilities, and a portion of State Line Unit No. 2 to Westar Generating Inc. (WGI), a wholly owned subsidiary of Western Resources Inc. (Western Resources). This was designated as Case No. EM-2000-145.

On August 17, 1999, WGI filed an Application requesting a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain electric facilities in Jasper County in the State of Missouri. This was designated as Case No. EA-2000-153.

On August 19, 1999, Empire and WGI filed a Joint Motion to Consolidate Case Nos. EM-2000-145 and EA-2000-153. That request was granted by the Missouri Public Service Commission (Commission) in an order issued on August 31, 1999 (effective September 10th).

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 2 of 9

BACKGROUND INFORMATION

Empire presently owns and operates State Line Generating Station, which is located west of Joplin, Missouri, in Jasper County. The land dedicated to the station abuts the Missouri-Kansas state line. The existing site currently has two combustion turbines, designated Unit No. 1 and Unit No. 2. Unit No.1, with a capacity of 100 MW, went into service in 1995, and Unit No. 2, with a capacity of 150 MW, went into service in 1997.¹

Empire and WGI entered into a joint ownership of the combined cycle unit pursuant to a Construction, Ownership and Operation Agreement (Agreement) dated July 26, 1999. Empire proposes to design, construct, own and operate a 500 MW capacity combined cycle generating unit at State Line Generating Facility. This combined cycle unit will consist of the existing 150 MW Unit No. 2, a new 150 MW combustion turbine, and a new 200 MW steam turbine. Under the Agreement, Western Resources, through its subsidiary WGI, will own 40 % of the combined cycle unit at State Line Generating Station, and 33% of the common plant facilities. In order, then, for Unit No. 2 to become part of the jointly owned combined cycle unit, Empire has requested Commission approval of the sale and transfer of 40% of Unit No. 2 to WGI.¹

The site at State Line Generating Station includes space for the combustion turbines, access roads, maintenance and administrative buildings, and work structures.¹ A combustion turbine requires plant support facilities to operate safely and reliably; for example: the roads on which access is used to maintain or repair the turbine; the water tank, which is used for fire protection; the perimeter fence, which limits access to the site.^{1,2} These and other plant facilities are indirectly used to generate electricity at the State Line Generating Station and are common plant to all generating units.¹

In brief, Empire's Application seeks Commission approval of the sale and transfer of 40% of State Line Unit No. 2 and 33% of common plant facilities to WGI. Empire has projected that the combined net book value of 33% of the common plant facilities and the 40% portion of State Line Unit No. 2 will be approximately \$14,250,772 as of October 1, 2000.³ Upon completion of this sale and transfer, the joint owners will have responsibility for maintenance and continued safe operation of the electric facility in accordance with the Agreement. Empire's Application identifies the specific common plant of State Line Generating Station that will be jointly owned by Empire and WGI.¹

As noted above, on August 17, 1999, WGI filed with the Commission an Application for a Certificate of Convenience and Necessity, authorizing it to participate in this joint arrangement

- 1 - Statements contributed by David Elliott
- 2 - Statements contributed by Cary Featherstone
- 3 - Statements contributed by Guy Gilbert

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 3 of 9

with Empire. WGI is a corporation duly organized and existing under the laws of the State of Kansas with its principal place of business in Topeka, Kansas, and is a wholly owned subsidiary of Western Resources. Neither Western Resources nor WGI currently has any certificated service territory in Missouri.¹ WGI's Application requests a Commission order granting a certificate of convenience and necessity for an area in Jasper County that is confined to the land on which Empire's State Line Generating Station is located. WGI's Application specifically states that it is not requesting authority to provide retail service within this area, and further states that its 40% share of the output from the State Line Generating Facility will provide additional power to its franchised utility affiliates, Kansas Gas and Electric, and Kansas Power and Light. These entities have no retail customers in Missouri.¹

HISTORY OF THE SALE AND PROPOSED ASSET TRANSFER

Faced with a forecasted need for additional capacity requirements, Empire sought initially in early 1998 to acquire the necessary capacity through purchases in the open market by issuing a Request for Proposal (RFP). Empire reviewed the responses received and believed that all were uneconomical and none of them provided firm commitment of capacity for the period required by the Company. At that point in time Empire started to investigate building additional capacity. Before any final decision was made to build, the Company issued a second RFP for purchased power capacity. The results were the same as the first RFP. Empire therefore elected to meet its capacity needs by building additional capacity at the State Line site. Because the Company was interested in the possibility of sharing ownership of such new generation capacity, it issued another RFP for part ownership in the new unit. After a review of the resultant proposals, and following discussions with Western Resources, Empire selected a proposal from Western Resources to jointly construct and own a combined cycle unit at State Line Generating Facility, incorporating the existing Unit No. 2 combustion turbine.²

In the course of developing its plan to increase the capacity of the State Line facility, Empire conducted extensive analyses, involving a variety of alternatives, during 1997 and 1998. The result was a decision to design, construct, own and operate a 500 MW combined cycle generating station. The following items detail some of the underlying considerations, as well as the procedures followed by Empire in arriving at its decision to construct through a partnership this generating facility²:

- Empire has been experiencing steady growth, especially in Missouri.²

1 - Statements contributed by David Elliott
2 - Statements contributed by Cary Featherstone
3 - Statements contributed by Guy Gilbert

- Empire has existing generating facilities that are aging.²
- Empire's existing generating facilities are currently being fully utilized.²
- Empire needs an intermediate generating facility to complement its existing base load and peaking facilities, and the combined cycle unit satisfies this need.²
- Empire believes that retail competition is a possibility and therefore considered purchase options first.²
- Because of capacity and energy shortfalls, Empire needs firm capacity commitments.²
- On February 10, 1998, Empire issued a RFP to 41 entities to meet projected capacity and energy needs through contract year 2006. Empire received written or verbal responses from 8 of the 41 entities. After evaluation of the responses, Empire determined that none of entities offered to provide at an acceptable price the firm capacity requirements that the Company needed.²
- Early in 1998, Empire determined that economical purchased power contracts were no longer available, as more companies began issuing RFPs for capacity and it became known that utilities were ordering more combustion turbines from generator vendors such as Siemens-Westinghouse and General Electric.²
- On June 16, 1998, Empire made a second attempt to secure capacity and energy needs through contract year 2006 when it issued another RFP to 41 entities. Empire received seven responses. After evaluation of the responses, Empire determined that none of entities offered to provide at an acceptable price the firm capacity requirements that it needed.²
- Early in the summer of 1998 Empire contacted Black and Veatch, (an engineering firm) to get engineering, procurement and construction cost estimates to convert Empire's existing State Line generation (Units No. 1 and No. 2) to a combined cycle unit. Another option was considered, using one of the existing combustion

1 - Statements contributed by David Elliott

2 - Statements contributed by Cary Featherstone

3 - Statements contributed by Guy Gilbert

turbines and a new combustion turbine in a combined cycle mode. Black and Veatch based its cost estimates on the assumption that the electric generation business would be deregulated in three to five years.²

- On July 29, 1998, Empire's officers and management decided to pursue the "build" option, both with and without a partner, through more detailed analyses.²
- On September 10, 1998, the Board of Directors of Empire approved the purchase and installation of a 150 MW gas-fired combustion turbine. Further analysis was required in order to determine if additional equipment should be purchased to convert this and the existing Unit No. 2 into a combined cycle unit.²
- On October 1, 1998, Empire issued a RFP seeking companies interested either in purchasing power from a combined cycle generating unit or in becoming an equity partner in the unit. A separate RFP was issued for gas transportation and gas commodity to supply the combined cycle unit.²
- On October 15, 1998, a pre-bid meeting was held with representatives of eighteen companies. As the result of the discussion, Empire received five purchase power proposals and three equity proposals.²
- After review of the proposals, on January 4, 1999, Empire signed a memorandum of understanding with Western Resources to participate in the construction of the State Line combined cycle unit. Western Resources would pay its share of the actual cost of the construction.²
- On February 4, 1999, Empire announced that Western Resources would be a joint owner of the State Line combined cycle facility. Construction was to begin in the fall of 1999, and the project was to be completed by June 1, 2001.²

In the analysis prepared by Empire's Strategic Planning Group, the Company stated the following in the conclusion section of the report entitled State Line Combined Cycle²:

The electric industry has dramatically changed over the last year. Prices have been volatile and purchase power contracts have sometimes been undeliverable.

1 - Statements contributed by David Elliott
2 - Statements contributed by Cary Featherstone
3 - Statements contributed by Guy Gilbert

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 6 of 9

coal-fired units to meet EPA standards have been, and will continue to be costly. All of these factors, along with the fact that Empire's resources are heavily peaking and the base load units are old, have led Empire to the decision to build a combined cycle generating facility that will add gas-fired base load generation to Empire's system.

Because Empire's forecast with a combined cycle has excess capacity, a partner was desired to help build the combined cycle and share costs. After months of analysis, Empire decided that the offer made by Western Resources would be of greatest financial benefit to Empire's customers and stockholders.

STAFF REVIEW AND CONCLUSIONS

Because Empire's proposal involves the sale and transfer of the assets in the Application at their net book value, Staff, after its initial review of the Application, was concerned that Empire would not be receiving full value for the assets. Staff submitted data requests to Empire in order to review Empire's analyses leading up to the Company's decision to construct a combined cycle unit, as opposed to purchasing power.¹ Staff also spoke with Empire personnel and toured the State Line Generating Facility.^{1,2,3}

Staff believes Empire has identified numerous advantages of choosing Western Resources as a partner for the State Line combined cycle project that result in direct benefits to Empire. This proposal, which gives Western Resources a 40% ownership interest in the combined cycle unit, allows Empire to retain the majority of capacity and energy, designates Empire as the operating partner that exercises control over the unit, and provides a payment schedule allowing Empire to reduce its own financing payments. Thus, Western Resources assumes some of the risk associated with the project costs, the construction schedule, the actual (as opposed to expected) capacity, and the resultant reliability of the unit. The amount offered by Western Resources represented a firm offer with a sharing in the actual costs of the construction project. It was a negotiated price that allowed Empire to maintain operational control over the unit and at the same time minimized the risk during the construction period by providing for payments to be made by Western Resources.²

Empire also points out that the Western Resources proposal provides other benefits that will have a positive impact on Empire. One such benefit is that during the construction phase of the combined cycle unit, State Line Unit No. 2 will be completely refurbished to a "like new" status, thereby avoiding some major maintenance expenses. Moreover, Unit No. 2 will be upgraded to allow

1 - Statements contributed by David Elliott

2 - Statements contributed by Cary Featherstone

3 - Statements contributed by Guy Gilbert

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 7 of 9

combined cycle unit, State Line Unit No. 2 will be completely refurbished to a "like new" status, thereby avoiding some major maintenance expenses. Moreover, Unit No. 2 will be upgraded to allow the unit to gain an additional 5 to 10 MW of capacity. Western Resources will contribute 40% of the cost of this work, which will essentially convert a 3-year-old combustion turbine (installed into service in 1997) into a "like new" unit of increased capacity that is part of a combined cycle generating facility. Empire will have the full benefit of the upgraded and refurbished Unit No. 2 during the summer of 2000 before the transfer is made to Western Resources. This capacity will be available to Empire to meet its capacity commitments during the summer peaking season, for the contract year beginning June 1, 2000.²

Another benefit to Empire will be that WGI will share in the cost of the exhaust stack extension, which will be required to operate Unit No. 2 during construction and which will be removed before completion of the of combined cycle project. Extension of the exhaust stack will enable Empire to operate Unit No. 2 throughout the year 2000 to meet its load requirements while construction is still in progress.¹

On September 30, 1999, and on December 15, 1999, Staff conducted field inspections in Jasper County, Missouri of the State Line Generating Station facilities subject to sale. The assets to be transferred include 40% of one Westinghouse combustion turbine-generator and auxiliaries (serial number: S0/38010 1-S-93PO900), and 33% of the plant common facilities, and the land. At the time of inspection, all equipment was operational and appeared to be well maintained. No violation of the National Electric Safety Code, which the Commission has adopted pursuant to 4 CSR 240-18.010, was observed. In addition, the Staff has reviewed the preliminary plans for the combined cycle unit and the expected operating parameters. The combined cycle unit will have a considerably better heat rate than the existing Unit No. 2, resulting in less fuel used per MWH generated.¹

The Staff also conducted a review of Empire's method of calculating net book value on the plant items related to the sale and believes that the method used by the Company is reasonable. Based on this review the Staff has determined that as of October 1, 2000, WGI's purchased net investment (less accrued depreciation) is expected to be \$14,250,772. The increase in net book value resulting from the refurbishing work on Unit No. 2 is estimated at \$570,922. Empire's accounting for this proposed transaction is consistent with the Uniform System of Accounts for electric utilities and previous sale applications of this type.³

- 1 - Statements contributed by David Elliott
- 2 - Statements contributed by Cary Featherstone
- 3 - Statements contributed by Guy Gilbert

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 8 of 9

The Staff believes that WGI's participation in the project creates benefits and advantages to Empire that could be thought of as a "premium" being paid by WGI for the right of ownership of the combined cycle unit, and further, that WGI's participation will ultimately lower the overall cost of the project to Empire. While this "premium" cannot be thought of as a typical premium that generally results from the sale of utility property for more than net book value, the benefits are real and tangible.² Accordingly, based on its preliminary review and in consideration of these added benefits Staff believes the sale and transfer of the assets at net book value is appropriate.¹

The Staff has reviewed the information, including responses to data requests, provided by WGI in support of its Application for a Certificate of Convenience and Necessity and has determined that WGI is in compliance with the requirements of 4 CSR 240-2.060(2)(G). As noted earlier, the Application states that WGI is not requesting authority to provide retail service within this area.¹

STAFF RECOMMENDATIONS

Based on the review of the Empire Application, field inspections, responses to Staff data requests, interviews of company personnel and related financial considerations, it is the Staff's opinion that the sale of the specified electric facilities at State Line Generating Station will not be detrimental to the public interest. Therefore, the Staff recommends that the Application for the sale and transfer of electric facilities at State Line Generating Station be approved.^{1, 2, 3}

Staff recommends that the Commission reserve for a future rate proceeding the right to consider ratemaking treatment to be afforded this transaction as well as any jurisdictional foregone revenues associated with this sale. Such ratemaking treatment should include, but not be limited to, questions involving accounting authority order principles, valuation methodologies, cost of service methodologies or determinations, depreciation principles or methods, rate design methodologies, cost allocations and cost allocation methodologies, cost recovery, and prudence. Further, the Staff recommends that Empire file with the Commission for inclusion in the official case papers and submit to the Accounting Department Staff, a copy of all journal entries made in connection with this sale and transfer no later than 90 days after the closing date of the transaction.²

Based on a review of the WGI Application, responses to Staff data requests, and related documents, it is the Staff's opinion that a certificate of convenience and necessity to construct,

1 - Statements contributed by David Elliott
2 - Statements contributed by Cary Featherstone
3 - Statements contributed by Guy Gilbert

MO PSC CASE NO. EM-2000-145
MO PSC CASE NO. EA-2000-153
OFFICIAL CASE FILE MEMORANDUM
May 10, 2000
PAGE 9 of 9

install, own, operate, control, manage, and maintain electric facilities in Jasper County in the State of Missouri is "necessary or convenient for the public service" (Section 393.170.3 RSMo 1994). The Staff, based on the advice of Staff counsel as indicated in the accompanying pleading, recommends that the Application for a Certificate of Convenience and Necessity be approved.¹

- 1 - Statements contributed by David Elliott
- 2 - Statements contributed by Cary Featherstone
- 3 - Statements contributed by Guy Gilbert

**Service List for
Case No. EM-2000-145 and EA-2000-153
May 11, 2000**

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Martin J. Bregman
Western Resources, Inc.
818 Kansas Avenue
Topeka, KS 66612

Gary W. Duffy
Brydon, Swearengen & England, P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102

James M. Fischer
Fischer & Dority, P.C.
101 West McCarty Street, Suite 215
Jefferson City, MO 65101