



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

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

April 9, 2001

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. KOLILIS
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

RE: Case No. EM-2001-233

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF RESPONSE TO UE'S REQUEST FOR LEAVE TO WITHDRAW APPLICATION FOR TRANSFER OF ASSETS** in HC version and the original of the NP version.

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,

Steven Dottheim
Chief Deputy General Counsel
(573) 751-7489
(573) 751-9285 (Fax)

SD:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
APR 9 2001

Missouri Public
Service Commission

In the Matter of the Application of Union Electric)
Company, d/b/a AmerenUE, for an Order Authorizing)
the Sale, Transfer and Assignment of Certain Assets,)
Real Estate Leased Property, Easements and Contractual)
Agreements to Central Illinois Public Service Company,)
d/b/a AmerenCIPS, and, in Connection Therewith,)
Certain Other Related Transactions.)

Case No. EM-2001-233

**STAFF RESPONSE TO REQUEST OF UNION ELECTRIC COMPANY
FOR LEAVE TO WITHDRAW APPLICATION FOR TRANSFER OF ASSETS**

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the Request For Leave To Withdraw Application For Transfer Of Assets of Union Electric Company, d/b/a AmerenUE (UE). The Staff believes that the Missouri Public Service Commission (Commission) should be provided more information than that which UE has related in its March 29, 2001 filing. The Commission should be provided more information because of the significance of the information relating to UE's request. The Commission needs to be better informed than the paucity of information that UE has chosen to reveal in its March 29, 2001 filing.

**

_____** UE in a filing on March 20, 2001 in a separate proceeding, Case No. EM-2000-580, In the Matter of the Investigation into an Alternative Rate Option for Interruptible Customers of Union Electric Company, d/b/a AmerenUE, stated that "recent studies conducted by the Company have suggested that, because of constrained transmission facilities, the Company's import capacity for Summer 2001 is severely limited." As a consequence, the Commission should direct UE to file with the Commission an explanation addressing why these matters should not be deemed grounds for the Commission filing with the Federal Energy Regulatory Commission (FERC) a complaint seeking that UE's authority to sell power at wholesale at market based rates be revoked by the FERC. (See FERC Docket Nos. ER97-3663-000, ER97-3664-000 and ER00-2687-000).

UE has informed the Staff that it will not file for ** _____

_____** The Commission should direct UE to file with the Commission support for its contention that ** _____

_____**

Thus, in response to UE's Motion, the Staff states as follows:

1. On March 29, 2001 UE filed its Request For Leave To Withdraw Application For Transfer Of Assets. Therein, UE stated that "the Company and AmerenCIPS have decided not to proceed with the proposed transfer. UE further noted that "[a]lternative plans for meeting UE's capacity energy needs for the summer of 2001 have already been commenced. Additional plans for later years are being developed and will be shared with the Staff and the Public Counsel in future meetings."

2. The instant case commenced on October 6, 2000, when UE filed its Application For Transfer Of Assets, Change In Decommissioning Trust Fund, And Motion For Expedited Treatment (Application And Motion). UE explained that it was proposing to (1) transfer to AmerenCIPS (the Ameren Corporation (Ameren) utility operating company in Illinois) all of UE's Illinois electric distribution assets and all of UE's Illinois electric transmission assets, other than those associated with UE's Venice, Illinois generating facility, and associated liabilities, and UE's retail electric business located in UE's Metro East, Illinois service territory, and (2) assign to AmerenCIPS, among other things, all of UE's certificates of convenience and necessity, franchises and licenses authorizing UE to provide retail electric service in Illinois. Thus, UE would cease doing business in Illinois as an electric utility. UE was also proposing to (1) transfer to AmerenCIPS all of its gas assets, as well as the associated general plant assets and related liabilities in UE's Metro East, Illinois service territory, and (2) assign to AmerenCIPS, among other things, all of UE's certificates of public convenience and necessity authorizing UE to provide gas utility service in Illinois. Thus, UE would cease doing business in Illinois as a gas utility.

3. At page 9 of the direct testimony of Craig D. Nelson, Vice President – Corporate Planning of Ameren Services Company, also filed on October 6, 2000, Mr. Nelson states that “[t]he primary purpose of the transfer is to alleviate AmerenUE’s projected capacity shortfall through 2004 in a manner beneficial to Missouri customers. The transfer is the lowest cost alternative available to supply AmerenUE’s capacity and energy needs through 2004.” According to Mr. Nelson at page 10 of his direct testimony, “The transfer of AmerenUE’s Metro East service territory in Illinois to AmerenCIPS would include the transfer of 520 MW of firm load. This transfer would alleviate AmerenUE’s capacity shortfall through 2004, assuming a minimum 15% reserve margin.”

4. UE requested expedited treatment, stating: “AmerenUE requests that the Commission issue an Order authorizing the transfer as requested herein prior to February 15, 2001. Action by this date is required to allow AmerenUE to make the necessary arrangements for its capacity and energy needs for the summer of 2001.” According to page 8 of UE’s Application And Motion and the direct testimony of Craig D. Nelson, filed on October 6, 2000, if UE’s Application And Motion were denied, it would be required to contract for 327 megawatts (MW) of generation capacity in order to meet its fifteen (15) percent reserve requirement for the summer of 2001:

If no Commission action is received by February 15, 2001, the Company will be required to issue Requests for Proposals for this acquisition of capacity and energy for the summer of 2001. This will impose an increased administrative cost on AmerenUE and may possibly result in the acquisition of resources that would not be needed if an Order is later received.

5. More specifically, Mr. Nelson, at pages 9-10 of his direct testimony, states as follows respecting UE’s capacity needs:

AmerenUE’s forecast shows that an additional supply of power and energy beyond its current generation capacity will be required through 2004 and beyond

in order to provide for its Missouri and Illinois customers' needs and maintain a 15% to 18% reserve margin. Based on a minimum 15% reserve margin, AmerenUE forecasts a capacity shortfall of 327 MW in 2001, 410 MW in 2002, 462 MW in 2003, 583 MW in 2004. . . . These shortfalls will have to be met through the purchase of power and energy at market prices or with the addition of new AmerenUE generation capacity, or some combination thereof.

6. In response to an October 18, 2000 Commission Order Adopting Protective Order And Directing Filings, the Staff stated, among other things, that UE's filing: (1) requests that the Commission make various ratemaking determinations outside the context of a rate proceeding, (2) is in violation of the Case No. EM-96-149 Stipulation And Agreement, (3) provides insufficient analysis for the ratemaking determinations that it is requesting be made and (4) requests an expedited schedule which is not possible if an adequate analysis of what UE proposes is to be performed by the Staff. The Staff suggested that an intervention period be set, the parties to Case No. EM-96-149 be provided notice of UE's filing and a prehearing conference be scheduled for the purpose of the parties to the instant proceeding recommending to the Commission a procedural schedule should hearings be required.

7. On October 30, 2000, the Office of the Public Counsel filed a response in which it stated concerns similar to those expressed by the Staff.

8. On December 13, 2000, UE filed its Unopposed Request For Prehearing Conference To Establish Procedural Schedule. On December 15, 2000, the Commission issued its Order Granting Intervention And Setting An Early Prehearing Conference. On January 12, 2001, the Commission issued another Order Granting Interventions.

9. On January 16, 2001, a Unanimous Stipulation And Agreement Respecting Procedural Schedule was filed, and on February 1, 2001 the Commission issued an Order Setting Procedural Schedule.

result of the merger of Union Electric Company and CIPSCO Inc. in 1997. Ameren has several subsidiaries: *AmerenCIPS*, which is a utility operating company in Illinois; *AmerenUE* (Union Electric Company, d/b/a AmerenUE (UE)), which is a utility holding company in Missouri; and *Ameren Energy Resources Company*, which owns an Illinois nonregulated generating subsidiary, *Ameren Energy Generating Company (Genco)*, which is an exempt wholesale generator under Section 32 of PUHCA, and an energy marketing company subsidiary, *Ameren Energy Marketing Company (AEMC)*. Mr. Nelson further described *AEMC* as follows at page 5 of his direct testimony:

AEMC markets power and energy at wholesale as a power marketer and at retail as an alternative retail electric supplier in Illinois. AEMC obtains power and energy from Genco at wholesale, under a contract approved by the FERC, and supplies power and energy to AmerenCIPS under the PSA and supplies power to other customers at wholesale and retail. . . .

13. AmerenCIPS proposed to transfer all of its generating assets to a new affiliate, Ameren Energy Generating Company (Genco), which was to be an EWG. An EWG is an entity, which is exclusively in the business of owning and/or operating "eligible facilities" and sells electric energy exclusively at wholesale. An "eligible facility" is a facility, wherever located, which either is used for the generation of electric energy exclusively for sale at wholesale or used for the generation of electric energy and leased to a public utility company. An EWG is exempt from the provisions of PUHCA.

14 Genco and AEMC were formed in conjunction with AmerenCIPS' transfer of its generating assets to Genco. On July 21, 1999, UE filed with the instant Commission an application for findings under 15 U.S.C. Section 79z-5a(c) (Section 32(c)), PUHCA, relating to EWGs. (UE's Missouri Commission filing was docketed as Case No. EA-2000-37.) AmerenUE's July 21, 1999 filing was made as part of a process to restructure the operations of

AmerenCIPS in conformance with the 1997 Illinois law, the Illinois Electric Service Customer Choice And Rate Relief Law of 1997, that deregulated electric generation in Illinois.

15. Section 32(c) of PUHCA requires that when an affiliate of a registered holding company transfers a 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 specifically 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. As earlier noted, UE's filing for such a specific determination by this Commission respecting Ameren's Genco was docketed as Case No. EA-2000-37. The Staff, the Office of the Public Counsel (Public Counsel) and UE entered into a Unanimous Stipulation And Agreement which was filed on November 3, 1999. Therein, UE agreed to certain conditions, and the Staff and Public Counsel requested that the Commission find, pursuant to 15 U.S.C. Section 79z-5a(c) (Section 32(c) of PUHCA), that the proposed transfer of the generating assets of AmerenCIPS to Genco, subject to the conditions agreed to by UE, (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

16. Various conditions agreed to by UE in the Unanimous Stipulation And Agreement which are relevant to the likely consequences of the instant proceeding are as follows:

3. Resource Planning Conditions.

- 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

- f. By receiving or reviewing the material provided [i.e., draft copies of competitive bidding Requests for Proposals (RFP), copies of RFPs made available to bidders, copies of all proposals received, documentation of UE's acquisition decisions, etc.], 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.

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

- 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.

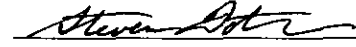
- h. Contingent Jurisdictional Stipulation – FERC. In the exclusive event that any court with jurisdiction over UE, Ameren or any of its affiliates or subsidiaries issues an opinion or order which invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking 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:

- 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 the Staff in response to Union Electric Company's March 29, 2001 Request For Leave To Withdraw Application For Transfer Of Assets requests that the Commission issue an Order directing UE to file with the Commission (1) an explanation addressing why the Commission should not file with the Federal Energy Regulatory Commission (FERC) a complaint seeking that UE's authority to sell power at wholesale at market based rates be revoked by the FERC and (2) support for its contention that **_____


Respectfully submitted,
DANA K. JOYCE
General Counsel


Steven Dottheim
Chief Deputy General Counsel
Missouri Bar No. 29149

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-7489 (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 9th day of April 2001.



3(18)(B)(ii) of the Federal Power Act (16 U.S.C. 796 (17)(C)(ii) and 796(18)(B)(ii)).

"(k) PROTECTION AGAINST ABUSIVE AFFILIATE TRANSACTIONS.—

"(1) PROHIBITION.—After the date of enactment of this section, an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

"(2) STATE AUTHORITY TO EXEMPT FROM PROHIBITION.—Notwithstanding paragraph (1), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company—

"(A) if every State commission having jurisdiction over the retail rates of such electric utility company makes each of the following specific determinations in advance of the electric utility company entering into such contract:

"(i) A determination that such commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under this subparagraph.

"(ii) A determination that the transaction—

"(I) will benefit consumers,

"(II) does not violate any State law (including where applicable, least cost planning),

"(III) would not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with the electric utility company, and

"(IV) is in the public interest; or

"(B) if such electric utility company is not subject to State commission retail rate regulation and the purchased electric energy:

"(i) would not be resold to any affiliate or associate company, or

"(ii) the purchased electric energy would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes each of the determinations provided under subparagraph (A), including the determination concerning a State commission's duties.

"(l) RECIPROCAL ARRANGEMENTS PROHIBITED.—Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited."

Service List for
Case No. EM-2001-233
Verified: April 9, 2001 (SW)

Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102

Robert C. Johnson
720 Olive Street, 24th Floor
St. Louis, MO 63101

Robin Fulton
Schnapp, Fulton, Fall, Silvey & Reid, L.L.C.
135 East Main Street
PO Box 151
Fredericktown, MO 63645

James J. Cook
Ameren Services Company
1901 Chouteau Avenue
P. O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149

Diana M. Vuylsteke
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102