

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

In the Matter of the Application of	)	
Union Electric Company d/b/a Ameren Missouri	)	
for Authority to Sell and Repurchase Coal and	)	<b><u>File No. EA-2013-0502</u></b>
Lease Property	)	

**STAFF’S RECOMMENDATION TO APPROVE APPLICATION**

**COMES NOW** the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through counsel, and for its recommendation to approve the application in this matter respectfully states:

1. Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “Company”) filed this application on May 28, 2013. In the application, Ameren Missouri requests that the Commission approve the sale of its coal and the lease of its property at the Sioux Energy Center as part of a “refined coal” program.

2. On May 29, the Commission ordered Ameren Missouri to file a supplement to the application listing each county in which a political subdivision affected by the application is located. The Commission also ordered that any applications to intervene in this matter must be received no later than June 19, 2013, and that Staff shall file its recommendation no later than June 27.

3. On May 30, Ameren Missouri filed the supplement as ordered by the Commission, and the Commission ordered that the application be sent to the clerk of any affected county as set forth in Ameren Missouri’s supplemental filing. The Commission also ordered Staff to send a copy of its recommendation to any such clerk.

4. On June 4, 2013, the Missouri Industrial Energy Consumers (“MIEC”) filed a motion to intervene. The Commission granted MIEC’s motion to intervene on June 17.

5. As explained in Staff's *Memorandum*, attached hereto as Appendix A and incorporated by reference, Staff reviewed Ameren Missouri's application and attached documents, and recommends that the Commission approve Ameren Missouri's application, with certain conditions, because it is not detrimental to the public interest.

6. Section 393.190.1 provides that no electrical corporation shall sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber any part of its system that is necessary or useful in the performance of its duties to the public without having first secured authorization from the Commission. The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.<sup>1</sup> Commission Rule 4 CSR 240-3.110.1.D requires that applications for authority to sell, assign, lease or transfer assets shall include reasons why the proposed sale of the assets is not detrimental to the public interest.

7. Staff's investigation concludes that Ameren Missouri has shown that the sale and lease of the assets in this case is not detrimental to the public interest.

8. In this case, Ameren Missouri requests authority to sell coal to GS RC Sioux LLC ("GS RC"). According to the contracts filed with the application, the sale will be at a price that is equal to the cost for the month at the delivery point for the specific type of coal that is being sold. GS RC will refine the coal using a proprietary process designed to reduce emissions, then resell the coal back to Ameren Missouri at the same price for use at the plant.

9. Ameren Missouri also seeks authority to lease a small portion of its Sioux plant site to GS RC so that GS RC can place coal refinement equipment on the site during the term of this transaction. Ameren Missouri will receive monthly payments from GS RC for this service.

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<sup>1</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. Ct. App. 1980).

10. Staff agrees with Ameren Missouri that the requested authority is not detrimental to the public interest, because the transaction is expected to result in reduced pollution and reduced operating expenses that will benefit Ameren Missouri's customers. Staff does not expect that the proposed sale of coal and lease of the property will have any impact on the tax revenues of the political subdivision where the assets are located.

11. As discussed in Staff's *Memorandum*, this application is similar to Ameren Missouri's application in EO-2012-0146. In that case, the Commission imposed seven conditions on its approval. In this case, Ameren Missouri has agreed to the same seven conditions, as modified for this particular transaction.

12. The Application modifies the first recommendation regarding ratemaking treatment by removing the phrase "a ten year period" and inserting "the term of the agreement." In addition, Ameren Missouri proposes to modify the last condition, regarding notice to the Commission, to reflect the agreements that are in place for this Application.

13. While Staff agrees with Ameren Missouri's suggested changes, Staff also believes that the second condition should be modified. This condition refers to a "per-ton handling and license fee," but, as stated above, the dollar per ton fees for this Application are paid monthly for the site license. Staff recommends that the phrase "per-ton handling and license fee" be replaced with the phrase "per-ton site license fee."

14. Therefore, Staff recommends the Commission approve the sale and lease as requested, contingent upon the following conditions:

- a.) No ratemaking determination is being made in this order relative to the sale of coal and the lease of a portion of the property of Ameren Missouri at the Sioux Energy Center over the term of the transaction.
- b.) No ratemaking determination is being made in this order regarding the exclusion of the per-ton site license fee in the Company's FAC.

- c.) Ameren Missouri shall notify the Commission at least 30 days prior to exercising the Option Agreement for Purchase of Membership Interest.
- d.) Prior to exercising the Option Agreement for Purchase of Membership Interest, and as soon as practical once the decision is made to take the action, Ameren Missouri shall make a presentation to the Commission and the parties to this case explaining their decision to exercise this Option.
- e.) Should Ameren Missouri exercise the Option Agreement for Purchase of Membership Interest it shall identify any assets it acquires from that agreement, including, but not limited to, any tax credits.
- f.) Ameren Missouri shall not sell, transfer or encumber any tax credits it may receive as a result of exercising the Option Agreement for Purchase of Membership Interest. The phrase “sell, transfer or encumber” encompasses the term “assignment” as used in the Option Agreement.
- g.) If Ameren Missouri decides to suspend, terminate or otherwise modify the terms of the transaction agreements, the Company will notify the Commission and the parties of the changes by filing a notice with the Commission as soon as practical, once the decision has been made to take the action.

15. Ameren Missouri’s application also includes a motion for expedited treatment pursuant to 4 CSR 240-2.080(14), which states that there is good cause for the Commission to expedite approval—so that the Company and its customers can realize the environmental and financial benefits from this transaction as soon as possible. Staff finds that good cause exists to expedite approval, and that there will be no negative effect on Ameren Missouri’s customers or the general public if the Commission acts by the date requested.

16. Staff has verified that Ameren Missouri has filed its annual report and is not delinquent on any assessment. The Company’s application discusses the appeal process related to Ameren Missouri’s 2012 electric rate case, Case No. ER-2012-0166, but Staff finds this appeal has no effect on the Application.

**WHEREFORE,** Staff recommends the Commission issue an order granting Ameren Missouri's request for authority to sell and repurchase coal and lease property as described in its application, subject to the conditions described in Paragraph 12 above, and Staff recommends the Commission grant Ameren Missouri's motion for expedited treatment.

Respectfully Submitted,

**STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION**

/s/ John D. Borgmeyer

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 28<sup>th</sup> day of June, 2013.

/s/ John D. Borgmeyer

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File No. EA-2013-0502,  
In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri  
for Authority to Sell and Repurchase Coal and Lease Property

FROM: Daniel I. Beck, Engineering Analysis

/s/ Daniel I. Beck / 06/28/2013  
Engineering Analysis / Date

/s/ John D. Borgmeyer / 06/28/2013  
Staff Counsel's Department / Date

Subject: Staff Recommendation to Grant Requested Authority Subject to Conditions.

Date: June 28, 2013

## **OVERVIEW**

On May 28, 2013, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company") filed an Application and Motion for Expedited Treatment with the Missouri Public Service Commission seeking authority to sell coal, and lease a small portion of its property at the Sioux Energy Center, as part of a program to utilize refined coal in order to lower costs and reduce emissions. The Commission granted intervention in this case to the Missouri Industrial Energy Consumers on June 17, 2013. The Commission also ordered the Staff of the Missouri Public Service Commission ("Staff") to file a recommendation regarding Ameren Missouri's Application no later than June 27, 2013. Subsequently, Staff requested and was granted a Motion for Extension of Time to June 28, 2013.

## **BACKGROUND**

The Application seeks Commission approval pursuant to Section 393.190.1 RSMo. for the sale of coal from Ameren Missouri's coal pile at Sioux Energy Center to GS RC Sioux, LLC (GC RC), a wholly owned subsidiary of the Goldman Sachs Group, Inc. The sales would

commence soon after the Commission approves this Application and will continue until September 13, 2021, which is the date that federal refined coal tax credits end. GS RC will refine the coal using a proprietary process (known as Cyclean) designed to reduce emissions from the coal and then sell the coal back to Ameren Missouri (at the same price as it purchased the coal from Ameren Missouri) for use at the plant. In addition, Ameren Missouri seeks authority to lease a small portion of its plant site to GS RC so that GS RC can place its coal refinement facilities on the site. The coal refinement equipment is owned by a third party, Clean Coal Solutions/AM-S, LLC ("Clean Coal Solutions"). The Application also seeks expedited treatment of this case to take advantage of the tax benefits, which will begin when the equipment is operating.

The Application states the transaction is very similar to a transaction that the Commission approved in File No. EO-2012-0146. While both Applications request approval to sell coal and lease a small portion of an Ameren Missouri plant as part of a program to utilize refined coal, there are also a number of differences in the Applications. These differences include:

- The location - This Application is for the Sioux Energy Center while the previous Application was for the Rush Island Power plant. The Sioux Energy Center is based on a cyclone boiler design, while the Rush Island Power Plant is based on a pulverized coal boiler design. The pulverized coal design requires that the coal is pulverized into relatively small particles for the coal to burn fully while the cyclone design does not.
- The technology – This application is for the Cyclean process while the previous Application was for the Chem-Mod process. Each process is said to be better at addressing the issues regarding their respective type of boiler.

- The subcontractors – The current Application is for GS RC to operate the clean coal process at Sioux while the previous Application was for Bluffington Partners, LLC (BP) to operate the clean coal process at Rush Island. In addition, the coal refinement facilities are owned Clean Coal Solutions/AM-S, LLC at Sioux, while BP owns the coal refinement facilities at Rush island.
- The start of operations – In the current Application, the plan is to begin operations as soon as possible after the Commission approves the Application. The previous Rush Island Application sought to be operational by January 1, 2012, which was a date that was included in the federal law regarding the tax credits. The current Application states that a Private Letter Ruling for the Internal Revenue Service and completion of contract amendments account for the delay in the operation date for Sioux.
- The end of operations – The current Application states that the clean coal technology will cease operations on September 13, 2021, while the previous Application sought to operate for 10 years to approximately January 1, 2022. It is Staff's understanding that September 13, 2021, is the final date for this tax credit program so the current Application will be for a little more than 8 years.
- Direct Testimony – The previous Application consisted of the pleading and a Verification statement. In addition, concurrent with the previous Application, Ameren Missouri filed Direct Testimony from two witnesses, which included a discussion of contracts associated with that Application. The current Application consists of the pleading, a Verification statement, and an Appendix containing 14 contracts or amendments associated with this project.



While the contracts that are associated with this Application are highly confidential, the list of the contacts is public. Most the contracts include both an original document that was executed on March 22, 2012, and amendments which were executed on April 17, 2013. Here is a summary of the contracts:

Coal Purchase Agreement (Original, Amended & Executed)

Refined Coal Sale Agreement (Original, Amended & Executed)

Refined Coal Facility & Coal Yard Site License (Original, Amended & Executed)

Coal Yard Services Agreement (Original, Amended & Executed)

Option Agreement for Purchase of Membership Interest (Original, Amended & Executed)

Security Agreement (Original dated March 22, 2012)

CSS – Letter Agreement re Refined Coal Production Facility (Original dated 3/22/ 2012)

CSS (& UEC) Purchase Right Agreement (Original, Amended & Executed)

Staff would note that the first five agreements listed above were documents that were from 27 to 61 pages long and the amendments are only a few pages long with modifications to specific portions of the documents. In contrast, the documents that Ameren Missouri identified as Sioux CCS – Purchase Right Agreement (March 22, 2012) and Sioux CCS & UEC Purchase Right Agreement – Amended and Restated (April 2013) are 20 pages and 19 pages in length, respectively. Staff confirmed with Ameren Missouri that the Sioux CCS & UEC Purchase Right Agreement – Amended and Restated (April 2013) replaces the previous Sioux CCS – Purchase Right Agreement (March 22, 2012).

Additional items of interest in the Application include a discussion of the Internal Revenue Service (IRS) requirements—a 20 percent reduction in nitrogen oxide emissions, and at

least a 40 percent reduction in either sulfur dioxide or mercury emissions—to qualify for the tax credit. The Application states that certification tests in May 2013 showed that the treatment would meet the targets for nitrogen oxide and mercury emissions, and therefore would qualify for the tax credits. The Application also states that Ameren Missouri will receive two monthly payments for the site license and the coal yard services. In contrast, the Rush Island agreement consisted of a handling and license fee to Ameren Missouri on a dollar per ton basis and a monthly lease payment. Staff has determined that the site license fee that discussed in the Application is also dollar per ton basis so the basic design of both payment arrangements is the same but the language is different between Applications.

### **DISCUSSION**

Although applications seeking Commission approval for the sale or lease of company property pursuant to Section 393.190.1 RSMo. are not uncommon, Staff cannot recall a request to sell an asset that the company will then buy back in a modified form a few days later, especially when the transactions will take place over a multi-year period, other than the two Applications discussed in this Recommendation (File No. EO-2012-0146 and File No. EA-2013-0502). Staff agrees with the Company that the proposed transaction must meet the “not detrimental to the public interest” standard and the information provided indicates that the project will result in benefits to ratepayers. The benefit will be an expected reduction of both mercury and nitrogen oxide emissions from the Sioux Energy Center, and an expected reduction in Ameren Missouri’s plant operations and maintenance expenses as a result of payments made by GS RC to Ameren Missouri. Since there is no long-term operational experience at the Sioux Energy Center with refined coal, the actual benefits and costs of Ameren Missouri’s proposal are unknown at this time. However the technology is being used at other plants in the

United States and Ameren Missouri's experience with the similar clean coal process at the Rush Island facility has been favorable.

Section 393.190.1 RSMo. requires that the applicant file a statement regarding tax impacts on the political subdivisions in which the facilities are located. Page 6, paragraph 13 of the Application addresses the statute as follows: "The proposed sale of the coal and lease of the property should have no impact upon the tax revenues of the political subdivision in which the assets are located." Ameren Missouri later clarified the location of the Sioux Energy Center as being in St. Charles County.

In File No. EO-2012-0146, the Commission imposed conditions and Ameren Missouri's Application in the current case states that these conditions "would be acceptable to Ameren Missouri as modified to fit this transaction." The Application then modifies the first recommendation by removing the phrase "a ten year period" and inserting "the term of the agreement." In addition, Ameren Missouri proposes to modify the last condition to reflect the agreements that are in place for this Application. While Staff agrees with Ameren Missouri's suggested changes, Staff also believes that the second condition should be modified. This condition refers to a "per-ton handling and license fee" but, as stated above, the dollar per ton fees for this Application are paid monthly for the site license. Therefore, Staff recommends that the phrase "per-ton handling and license fee" be replaced with the phrase "per-ton site license fee." In summary, Staff recommends the Commission approve the sale and lease contingent upon the following conditions:

- a.) No ratemaking determination is being made in this order relative to the sale of coal and the lease of a portion of the property of Ameren Missouri at the Sioux Energy Center over the term of the transaction.
- b.) No ratemaking determination is being made in this order regarding the exclusion of the per-ton site license fee in the Company's FAC.

- c.) Ameren Missouri shall notify the Commission at least 30 days prior to exercising the Option Agreement for Purchase of Membership Interest.
- d.) Prior to exercising the Option Agreement for Purchase of Membership Interest, and as soon as practical once the decision is made to take the action, Ameren Missouri shall make a presentation to the Commission and the parties to this case explaining their decision to exercise this Option.
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- g.) If Ameren Missouri decides to suspend, terminate or otherwise modify the terms of the transaction agreements, the Company will notify the Commission and the parties of the changes by filing a notice with the Commission as soon as practical, once the decision has been made to take the action.

#### **STAFF RECOMMENDATION**

Staff recommends that the Commission find, subject to the seven conditions that Staff proposes above, that granting the Application is not detrimental to the public interest per Section 393.190.1 RSMo. Staff also recommends that the Commission grant the Company’s request for expedited treatment pursuant to 4 CSR 240-2.080(14).

Staff has verified that Ameren Missouri has filed its annual report and is not delinquent on any assessment. The Company’s Application discusses the appeal process related to Ameren Missouri’s 2012 electric rate case, Case No. ER-2012-0166, but Staff finds this appeal has no effect on the Application.

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**OF THE STATE OF MISSOURI**


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Electric Company d/b/a Ameren Missouri     )  
for Authority to Sell and Repurchase Coal     )  
and Lease Property

Case No. EA-2013-0502

**AFFIDAVIT OF DANIEL I. BECK**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE     )

Daniel I. Beck, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

  
\_\_\_\_\_  
Daniel I. Beck

Subscribed and sworn to before me this 28th day of June, 2013.

  
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Notary Public

