

FILED³

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Missouri Public
Service Commission

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Corporation)
Dynegy Inc.)
Illinova Corporation)
Illinova Generating Company)
Illinois Power Company)

Docket No. EC04-__-000

PREPARED DIRECT TESTIMONY

OF

CRAIG D. NELSON

ON BEHALF OF

AMEREN CORPORATION

FILED⁴

APR 16 2004

Missouri Public
Service Commission

Date: March 25, 2004
Washington, D.C.

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Case No(s) 80-2004-0108
Date 4-8-04 Rptr TR

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Exhibit No. 263
Case No(s) GR-2007-0002
Date 3-19-07 Rptr PR

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**PREPARED DIRECT TESTIMONY
OF
CRAIG D. NELSON**

1 I. INTRODUCTION.

2 Q. Please state your name and business address.

3 A. My name is Craig D. Nelson. My business address is One Ameren Plaza, 1901 Chouteau
4 Avenue, St. Louis, Missouri 63166.

5 Q. What is your relationship to the Applicants in this case?

6 A. I am Vice President - Corporate Planning of Ameren Services Company ("Ameren
7 Services") and Vice President of Central Illinois Public Service Company d/b/a
8 AmerenCIPS ("AmerenCIPS").

9 Q. Please describe Ameren Services.

10 A. Ameren Services is a subsidiary of Ameren Corporation ("Ameren"). Ameren Services
11 provides various administrative and technical support services for its parent and other
12 subsidiaries including Union Electric Company d/b/a AmerenUE ("AmerenUE"), Central
13 Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), and AmerenCIPS.
14 Ameren Services was formed in connection with the December 1997 merger of Union
15 Electric and CIPSCO Incorporated.

16 Q. Please describe your educational background.

1 A. I earned a bachelor's degree in accounting in 1977, graduating with highest honors, and a
2 master's in business administration in 1984. Both degrees were awarded by Southern
3 Illinois University - Edwardsville. I am a Certified Public Accountant.

4 **Q. Please describe your qualifications.**

5 A. I worked for Arthur Andersen & Co. from 1977 to 1979, when I joined Central Illinois
6 Public Service Company as a Tax Accountant. In 1979, I was promoted to Income Tax
7 Supervisor. I served in various tax and accounting positions until 1985 when I was
8 appointed Assistant Treasurer. In 1989, I became Treasurer and Assistant Secretary, a
9 position I held for seven years. In 1996, I was elected Vice President of Corporate
10 Services. After Union Electric and CIPSCO merged, I was named Vice President,
11 Merger Coordination for Ameren Services effective December 31, 1997. In 1998, I
12 assumed the additional responsibility of Vice President of Regulatory Planning.
13 Effective June 1, 1999, I was appointed Vice President - Corporate Planning.

14 **Q. Please describe your duties and responsibilities as Vice President - Corporate**
15 **Planning.**

16 A. My duties and responsibilities include strategic and resource planning, corporate
17 development, corporate analysis, and power supply acquisition.

18 **II. PURPOSE OF TESTIMONY.**

19 **Q. What is the purpose of your testimony?**

20 A. The purpose of my testimony is to describe the "mitigation measures" that Ameren
21 commits to undertake in the event its acquisition of Illinois Power Company ("Illinois
22 Power") is consummated, including the acquisition by AmerenEnergy Resources
23 Company ("AER") of a 20 percent interest in Electric Energy, Inc. ("EEInc") from

1 Illinova Generating Company ("Illinova Generating"). I refer to this series of
2 transactions, collectively, as the "TP Sale".

3 **Q. Why is Ameren proposing such mitigation measures?**

4 A. In his analysis of the potential competitive impacts of the IP Sale, Mr. Rodney Frame
5 finds that, under certain very conservative assumptions, the IP Sale would fail to pass
6 certain of the screens set forth in Appendix A of the Commission's *Merger Policy*
7 *Statement*. Mr. Frame concludes however that, notwithstanding these technical screen
8 failures in certain limited instances, the IP Sale will in fact have no adverse impact on
9 competition. In fact, Mr. Frame even questions whether an Appendix A analysis is
10 necessary because, pursuant to the IP Sale, Ameren will be merely increasing an existing
11 majority ownership position in EElnc, which owns a generating plant located in Joppa,
12 Illinois. Nonetheless, in order to ensure and facilitate a timely order from the
13 Commission approving the IP Sale, and in order to avoid any trial-type hearing or other
14 dispute, Ameren is proposing certain mitigation measures which are consistent with
15 protections the Commission has found in the past to be acceptable.

16 Indeed, it bears noting that neither Mr. Frame nor Ameren believes that the screen
17 violations imply any ability of Ameren, post-transaction, to either exercise market power
18 or to harm competition. The amount of capacity causing the screen violations (125 MW
19 of the 218 MW) is only a fraction of the amount of capacity available to the Ameren
20 control area under the procedures of the Appendix A analysis. Ameren is nonetheless
21 willing to commit to certain mitigation measures in order to fall within the "safe harbor"
22 provisions of the Commission's Appendix A calculus.

23 **III. PROPOSED MITIGATION MEASURES.**

1 **Q. What are the screen violations that Mr. Frame finds in his analysis?**

2 A. As indicated in his Prepared Direct Testimony, Mr. Frame finds screen violations in
3 limited circumstances, and only slight ones at that. He finds these screen violations only
4 for the time period after January 1, 2006. In addition, the screen failures are limited only
5 to certain sales into the AmerenUE/AmerenCIPS control area. Mr. Frame ascribes these
6 violations to AER's proposed acquisition of Illinova Generating's 20 percent interest in
7 EEInc. More specifically, he notes that this circumstance only arises due to the fact that
8 an existing contract for the sale of capacity and energy by EEInc to Illinois Power expires
9 at the end of 2005.

10 **Q. What does Ameren propose to undertake as mitigation measures in light of this**
11 **limited screen failure?**

12 A. Ameren commits, if the IP Sale is consummated, to undertake two actions: (i) sell some
13 of its rights to EEInc output; and (ii) seek to ensure that the only owner of EEInc not
14 affiliated with Ameren – LG&E Energy's Kentucky Utilities Company ("KU") – is able
15 to receive output from EEInc attributable to its 20 percent interest in EEInc, if it wishes
16 to receive that much.

17 **Q. Please describe the first mitigation action.**

18 A. If the IP Sale is consummated, Ameren commits to cause its marketing subsidiary
19 AmerenEnergy Marketing, Inc. ("AEM") to sell 125 MW of capacity from the 1,014 MW
20 coal-fired Joppa plant owned by EEInc (the "Joppa Station"). (EEInc also owns, through
21 a subsidiary, the "6B" project combustion turbines with a combined capacity of 72 MW.)

22 Energy associated with this 125 MW of capacity would be sold by AEM only
23 when the Joppa Station is operating at or near full output. If the Joppa Station is

operating, but at levels below its full output (due to curtailments or otherwise) the first 125 MW of output from the 203 MW share that Ameren will acquire under the proposed transaction would be subject to the mitigation sale.¹ In other words, there would have to be a curtailment of 78 MW of the 203 MW share being acquired by Ameren before there would be any reduction in the amount of power sold under the mitigation sale. Because curtailments in the output of Joppa are shared prorated among its owners, the amount of the output under the mitigation sale would not be affected by any curtailments at Joppa unless the total output at the six unit, 1,014 MW station fell below 61.6 percent (624 MW).²

I refer to the amount of capacity and energy which AEM will sell under this mitigation proposal as the "Divested Joppa Power".

Q. Under what conditions will Ameren cause AEM to offer and sell the Divested Joppa Power?

A. AEM would offer and sell the Divested Joppa Power:

(i) to one or more unaffiliated buyers, with the limited exception of Illinois Power, as a result of being selected through a competitive bidding process initiated by an unaffiliated buyer(s) and/or Illinois Power, to meet such buyer(s)' load and/or supply needs;

(ii) to one or more unaffiliated buyers, with the limited exception of Illinois Power, as a result of a competitive bid process initiated by AEM to sell the Divested Joppa Power on the market to the highest bidder; or

¹ For the most part, this issue of "prioritizing" or "queuing" the energy from the Joppa Station is immaterial as the Joppa Station is generally either running at or very close to full output levels, or is not running at all.

² These figures are derived as follows: $125 \div 203 = 0.616$, and $0.616 \times 1,014 \text{ MW} = 624 \text{ MW}$.

1 (iii) to one or more buyers through a combination of the two processes.

2 **Q. What would be the period of such sales?**

3 A. Sale of the Divested Joppa Power would begin on January 1, 2006, and continue until the
4 earliest of: (i) the date that Ameren or its subsidiaries install sufficient transmission
5 system upgrades to alleviate the screen violations identified by Mr. Frame; (ii) the date
6 that Ameren demonstrates to the satisfaction of the Commission that it should no longer
7 be subject to such sales conditions on EEInc capacity and energy; or (iii) April 30, 2009.

8 **Q. Please explain in greater detail the first option.**

9 A. Under this option, AEM would sell the Divested Joppa Power to another party by being
10 the winning bidder (or one of several winning bidders) in a competitive bid solicitation
11 process initiated by such party to meet its load or supply needs. This option would not be
12 limited to a single bid process, but could be a combination of one or more processes
13 announced by such buyer(s).

14 **Q. Please explain in greater detail the second option.**

15 A. Under this option, AEM would sell the Divested Joppa Power to one or more entities as
16 the result of a competitive process to be conducted within a reasonable period prior to the
17 start of the Divested Joppa Power sale (January 1, 2006). All of the capacity and energy
18 sold in this manner will be made available at the Joppa station busbar by AEM, and any
19 transmission needed to take the output from the Joppa station will need to be arranged by
20 the RFP winner(s) with the appropriate transmission provider(s) or RTO. (The Joppa
21 station is directly or contractually interconnected with the transmission lines of Ameren,
22 Illinois Power, KU and TVA.)

23 **Q. Please explain in greater detail the third option.**

A. Under this option, AEM would use a combination of the first two options – *i.e.*, by selling some portion of the Divested Joppa Power in response to another party's solicitation for supply, and/or by selling some of the Divested Joppa Power through its own competitive bid process where parties could bid to purchase such portion of the Divested Joppa Power at the Joppa busbar.

Q. What rights to the output of the Joppa station will Ameren have beginning January 1, 2006, absent an agreement to sell some of these rights?

A. If the IP Sale closes, Ameren's subsidiaries will be entitled, beginning January 1, 2006, to 80 percent of the capacity and associated energy output of the Joppa station. If the station is running at full capacity, its energy output is approximately 1,014 MW. Ameren's share of this is approximately 811 MW. If the station is running below full capacity, Ameren's share of the energy output would be reduced proportionately. Ameren's rights to capacity from the Joppa station would be treated in a similar manner.

Q. If AEM chooses to follow the second or third options, how will AEM conduct the competitive bid process for the sale of the Divested Joppa Power?

A. AEM will issue a request for proposals ("RFP") for bids for the Divested Joppa Power. The timeline will be set to provide AEM with ample time following closing of the IP Sale to create an RFP, review the bids, and negotiate final terms with the winning bidders. The timeline will be reasonable so that parties would have time to obtain regulatory approvals if needed.

Q. Who would be eligible to bid for the Divested Joppa Power?

A. All entities other than Ameren's subsidiaries would be eligible to bid on the Divested Joppa Power. Further, Illinois Power would be eligible to bid as well. This should be

1 acceptable to the Commission since Mr. Frame finds no screen failures for sales of EEInc
2 capacity and energy into Illinois Power's control area. In the event Illinois Power is one
3 of the winners of the RFP process, it would not be permitted to resell any of the Divested
4 Joppa Power purchased from AEM at wholesale (though it may use it to serve retail
5 load). Ameren believes that this condition sufficiently prevents Illinois Power from using
6 the Divested Joppa Power to exercise market power in the AmerenUE/AmerenCIPS
7 control area – the only control area in which Mr. Frame projected that the IP Sale could
8 fail the Appendix A screen. Further, such a narrowly-tailored restriction will maximize
9 the number of entities that may bid on the Divested Joppa Power.

10 **Q. Will there be other restrictions on the nature of bids under the second option?**

11 **A.** Yes, but only to make the RFP process manageable. In particular, AEM will require that
12 bids cover calendar year periods beginning January 1, 2006, and will require that such
13 bids will be in one, two, or three year amounts (except for the 2008 block which could
14 include a supply requirement until April 30, 2009). Bidders must specify in their bids a
15 \$/MW-year price for capacity and a \$/MWh price for the energy delivered.

16 **Q. How will the winner or winners of the RFP process be determined under the second**
17 **option?**

18 **A.** AEM will determine the winners of the RFP process based on an analysis that seeks to
19 maximize revenue from the sale of Divested Joppa Power. Where it is necessary to
20 "normalize" bids in order to compare bids with different capacity and energy price offers,
21 AEM will base assumptions regarding the future output of the Joppa station on historical
22 output levels during calendar year 2004.

23 **Q. Is Ameren committing to enter into agreements prior to January 1, 2006, for the**

sale of the entire Divested Joppa Power covering the period January 1, 2006, through April 30, 2009?

A. Ameren will cause AEM to take a flexible approach to its sales of the Divested Joppa Power. AEM will, based on the bids received in 2005, enter into one or more agreements to sell the Divested Joppa Power (pursuant to the conditions I describe) for at least calendar year 2006. Depending on the prices received in the bids for the 2007 and 2008/2009 blocks, and expectations as to what future market prices will be in these out-years, AEM may opt prior to January 1, 2006, to sell none or only some portion of the Divested Joppa Power for 2007 and 2008/2009. Instead, AEM may engage in one or more additional RFPs later in 2005 or in subsequent years for sale of the 2007 and 2008/2009 blocks. In either event, Ameren commits to selling the full amount of the Divested Joppa Power for the entire period January 1, 2006 through April 30, 2009.

Q. Will AEM have recall rights to the Divested Joppa Power?

A. No.

Q. You said that Ameren is offering to sell the Divested Joppa Power for the period between January 1, 2006, and an end-date that is no later than April 30, 2009. Please explain how the end date will be determined.

A. As I explained earlier, this end date would be the earlier of: (i) the date that Ameren or its subsidiaries install sufficient transmission system upgrades to alleviate any market power concerns; (ii) the date that Ameren demonstrates to the satisfaction of the Commission that it need no longer should be subject to such forced sales conditions; or (iii) April 30, 2009.

Q. What is the rationale for the April 30, 2009 date?

1 A. April 30, 2009, is more than five years after the point in time that Ameren first
2 announced its intention to purchase Illinois Power and Dynegy's 20 percent stake in
3 EEInc (the announcement was made December 5, 2003). This time period should be
4 sufficient for any party that believes that it might be subject to adverse competitive
5 effects as a result of the proposed transaction to protect itself by arranging for bulk power
6 purchases from entities other than Ameren or even by constructing its own generation
7 facilities. Placing an outer time bound on Ameren's mitigation condition helps keep to a
8 minimum interference with competitive bulk power markets.

9 Q. You also mentioned a commitment by Ameren to seek to ensure that KU is able to
10 receive up to 20 percent of the EEInc output, if it wishes to receive that much.
11 Please explain.

12 A. Currently, Ameren subsidiaries hold a 60 percent interest in EEInc, which entitles them
13 to, among other things, vote 60 percent of the outstanding shares in shareholder votes
14 and, for all intents and purposes, to elect a majority of the members of the EEInc Board
15 of Directors. The EEInc Bylaws currently provide for the allocation of capacity and
16 energy from the generation facilities owned by EEInc in proportion to the owners'
17 ownership shares. This provision, however, may be changed by a 75 percent vote of the
18 outstanding shares. Upon consummation of the IP Sale, Ameren subsidiaries will hold 80
19 percent of the voting shares of EEInc.

20 So as to prevent any ability of Ameren, following closing of the IP Sale, to
21 "freeze out" KU from receiving the 20 percent of the EEInc capacity and output to which
22 it is presently entitled, Ameren commits to: (i) direct its representative members of the
23 EEInc Board of Directors to take no action which would result in decisions to restrict

1 KU's ability to receive up to 20 percent of the capacity and output of the generating
2 facilities owned by EEInc (if KU desires to receive such capacity and output); and (ii)
3 direct AER and AmerenUE (the Ameren subsidiaries that are EEInc shareholders) to
4 undertake no action at shareholder votes that would restrict KU's ability to receive up to
5 20 percent of the capacity and output of the generating facilities owned by EEInc (if KU
6 desires to receive such capacity and output). With these commitments in place, Ameren
7 believes that KU is fully protected from any adverse impact that may result from
8 Ameren's collective ownership in EEInc increasing from 60 to 80 percent.

9 **Q. Does this conclude your testimony?**

10 **A.** Yes, it does.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AFFIDAVIT

STATE OF MISSOURI


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COUNTY OF COLE

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CRAIG D. NELSON, being duly sworn, deposes and states that he prepared or directed the preparation of the Prepared Direct Testimony of Craig D. Nelson, and that the statements contained therein are true and correct to the best of his knowledge and belief.

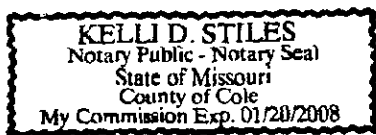


Craig D. Nelson

SUBSCRIBED AND SWORN BEFORE ME, this the 19th day of March, 2004



Notary Public



My Commission Expires 1/20/08

