

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Services Company

| Docket No. EL10-80-000

**MOTION TO INTERVENTION AND PROTEST OF
THE MISSOURI JOINT MUNICIPAL ELECTRIC
UTILITY COMMISSION**

On August 2, 2010, Ameren Services Company (“Ameren”), filed its Petition for Declaratory Order for Incentive Rate Treatment (“Incentive Petition”) seeking certain incentives for affiliates, including a new affiliate called Ameren Transmission Company (“ATX”), in connection with four new transmission projects which Ameren estimates will cost \$1.3 billion (the “Projects”).

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, and the Commission’s August 5, 2010 Notice of Petition for Declaratory Order, Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), on behalf of itself and its members, moves to intervene in this proceeding and protests the Incentive Petition. In the Incentive Petition, Ameren appears to request this Commission’s blessing of a formula rate filing that Ameren may make at some point in the future. It is not entirely clear what Ameren is seeking or what the impact would be if the Commission granted the request. In any event, a request for a judgment as to some future filing is entirely improper and the Commission should reject Ameren’s request, reserving all judgment as to a future rate filing until Ameren files a full and complete rate proposal. In addition, Ameren has proposed to use a hypothetical capital structure of 56% equity and 44% debt that is excessive. As shown below, a hypothetical capital structure of 52% equity and 48% debt, which is the consolidated

- 2 -

capital structure of all of Ameren's electric operating utilities and the capital structure of Ameren Corporation, is the capital structure most consistent with Order No. 679 and Order No. 679-A.¹

I. MOTION TO INTERVENE

A. Communications

The names and addresses of the individuals to whom communications related to these proceedings should be addressed are as follows:

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MJMEUC requests waiver of Rule 203(b)(3) to permit more than two entries on the official service list in order to enable MJMEUC and its counsel to receive all communications in the proceeding.

¹ Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *clarified*, 119 FERC ¶ 61,062 (2007).

- 3 -

B. MJMEUC's Interest In These Proceedings

MJMEUC is a joint action agency and a political subdivision of the State of Missouri. It is organized on a statewide basis to promote efficient wheeling, pooling, generation and transmission arrangements to meet the power and energy requirements of municipal utilities in the state. MJMEUC has 60 municipal utility members, and Citizens Electric Corporation, a rural electric cooperative with more than 25,000 customers, is an Advisory Member of MJMEUC. Together, MJMEUC's members serve some 402,000 retail customers, with a combined load of 2,100 MW.

MJMEUC administers a power pool formed by some of MJMEUC's members. The Missouri Public Energy Pool #1 ("MoPEP") currently has 35 members, whose 2009 coincident peak load was approximately 530 MW. MoPEP is the full-requirements supplier for its members, and meets their capacity and energy requirements through generating and purchased-power resources contributed by the pool members, and through additional resources arranged for by MoPEP. MoPEP has significant pool loads and/or resources located within the Ameren Missouri ("AMMO") zone. In addition, several of MJMEUC's other members, who do not participate in MoPEP, are located within the AMMO zone.

Because MJMEUC and its members will be subject to the MISO transmission charges in the AMMO zone as affected by the revenue requirements for the Projects, they have an interest in the issues presented in these proceedings. No other party can adequately represent the interests of MJMEUC, and its participation is in the public interest. Accordingly, MJMEUC should be permitted to intervene in this proceeding.

II. PROTEST

A. *The Commission Should Reject Ameren's Request for Approval of a Future Rate Filing.*

Ameren has made the instant filing pursuant to Section 219 of the Federal Power Act. This filing is not a rate filing pursuant to FPA Section 205. Nonetheless, Ameren apparently seeks this Commission's blessing of a future Ameren Section 205 rate filing.

While admitting that its request is "not immediately pertinent," Ameren goes on to make a "request that the Commission approve [Ameren's] plan to use, in their Section 205 filings implementing the requested incentives, if approved, a formula rate based on projected test year costs with a true-up mechanism to reflect actual costs." Incentive Petition at 36. The Commission should reject Ameren's request as premature and reserve all judgment as to a future FPA Section 205 filing until that future Section 205 filing is actually before the Commission.

Ameren has not, at this time, committed to the details of a formula rate filing. In the Incentive Petition (at 34), Ameren states that it "anticipates" that the formula "may be forward-looking" (emphasis supplied). Ameren repeats its use of "may" in the heading of section VI.C of the Incentive Petition. Ameren concludes the section of the Incentive Petition that purports to justify its request with the statement that "The details of such a projected test year and the accompanying true up would be fleshed out in the Ameren Companies' Section 205 filings" and makes vague references to two of the many formula rates now on file at the Commission. Incentive Petition at 36-37. Unlike those two cases (as well as the other cases Ameren cites) in which the transmission owner tendered a rate for the Commission's approval, Ameren has not made a Section 205 rate proposal for the Commission, or other interested parties, to evaluate.

- 5 -

In the absence of a FPA Section 205 filing, the Commission should not make any judgment as to that future filing. The devil is in the details. Neither the Commission nor Ameren's future customers know what Ameren will ultimately file. Thus, customers do not have any notice of the filing and cannot now inform the Commission as to any defects with that future filing. Accordingly, the Commission should reject Ameren's request for approval of some future rate filing. When Ameren makes its FPA Section 205 filing, the Commission can evaluate the proposal on its merits.

B. The Commission Should Establish a Just and Reasonable Hypothetical Capital Structure Consisting of 52% Equity and 48% Debt.

Ameren has requested that the Commission approve a hypothetical capital structure of 56% equity and 44% debt during the construction of the Projects. Ameren has further placed a limit on the use of the hypothetical capital structure of "the beginning of the calendar year following the date by which all of the Projects have been placed in service or no later than 2022." Incentive Petition at 31. Ameren's requested hypothetical capital structure is excessive. The Commission should authorize Ameren to have a capital structure of 52% equity and 48% debt.

In support of its excessive hypothetical capital structure, Ameren provides a misleading, modified quote from the Commission's Order No. 679-A. Ameren omits the Commission's qualification (at P 93) that it is only in "relatively narrow" circumstances that a hypothetical capital structure is an appropriate ratemaking tool. Ameren's omission is particularly significant because the Commission also stated (at P 93) that "We would not normally expect traditional regulated utilities to propose incentives based on hypothetical capital structures." Because Ameren has formed a new affiliate, ATX, to

- 6 -

construct and own the Projects, to avoid the rate instability inherent with the use of an actual capital structure of this new entity constructing new projects, MJMEUC does not oppose the use of a hypothetical capital structure. But to avoid giving traditional regulated utilities incentive to evade the Commission's preference for the use of actual capital structures and consistent with the "relatively narrow" circumstances in which the use of a hypothetical capital structure is appropriate, the Commission must closely scrutinize Ameren's request. That scrutiny reveals that Ameren's proposed hypothetical capital structure is excessive.

Ameren states that its proposed hypothetical capital structure is based on the consolidated capital structure of its utility operating companies AmerenCIPS, AmerenCILCO, and AmerenIP (the AMIL zone of MISO) as of December 31, 2009. Thus, Ameren has manipulated the calculation to exclude its Missouri operating utility, AmerenUE. While Ameren states that the bulk of the Projects will be in Illinois (Incentive Petition, at 30), portions of at least 2 of the projects will be in Missouri (Incentive Petition at 5). In addition, Ameren has made no commitment that only the Ameren Illinois zone will bear the costs of the Projects. Given that the consolidated capital structure of Ameren's Illinois utility operating companies are much higher than that of AmerenUE, Ameren's use of the Illinois companies' equity percentages is a cherry-picked justification.

The Commission should also recognize that Ameren has recently undergone rate proceedings at the state level that will likely dramatically reduce Ameren's equity percentages. The Illinois Commerce Commission has set common equity percentages for

- 7 -

the Illinois utility operating companies from 43.6% to 48.7%.² While Ameren has indicated in public statements that it will challenge the ICC order, Appendices A through C to the ICC order appear to show that the ICC made only minor modifications to Ameren's filed numbers. Thus, the December 2009 data for the equity percentage of the Illinois companies at 56% is not only 8 months stale, it ignores the significant change in circumstances given the ICC's order. A 56% equity percentage is substantially in excess of the equity percentages Ameren's Illinois utility operating companies are likely to have in the very near future. Similarly, as reported in the June 2010 10-Q (at 32), the Missouri Public Service Commission has set a common equity percentage of 51.26% for Ameren's Missouri utility operating company. Thus, Ameren appears to have not only cherry-picked its affiliates with the highest equity percentages, by filing now, Ameren appears to be attempting to avoid any impact from the significant downward pressure that its state regulators are putting on the equity portion of the capital structures of the Ameren utility operating companies. The bottom line is that the 56% equity percentage Ameren has proposed is excessive now and not representative now. In the near future, that 56% equity percentage will become even more excessive and even less representative.

As shown above, a 56% equity percentage is excessive. Of course, this is not a proceeding in which a protestor or complainant must show that the proponent's rate is not just and reasonable. Rather, this is a proceeding to determine an appropriate mix of incentives. The appropriate mix of incentives should not include an excessive equity

² *Cent. Ill. Light Co.*, Nos. 09-0306 to -0311 (Ill. Commerce Comm'n Apr. 29, 2010). The AmerenCILCO equity percentage is 43.6%, shown at page 13 of Appendix A to the ICC order. The AmerenCIPS equity percentage is 48.7%, shown at page 13 of Appendix B to the ICC order. The AmerenIP equity percentage is 43.6%, shown at page 14 of Appendix C to the ICC order.

- 8 -

percentage. In addition, as the Commission pointed out in Order No. 679-A, a hypothetical capital structure is appropriate in relatively narrow circumstances and traditional regulated utilities are not expected to request such an incentive. Consistent with the policies expressed in Order No. 679-A, and to avoid undermining those policies, a new affiliate of a traditional regulated utility should be required to utilize a hypothetical capital structure that is a close approximation of the actual capital structure.

One alternative option the Commission might use that more closely resembles actual capital structure data is to include the AMMO zone capital structure data. According to the data published in the June 2010 update to the MISO Attachment O, the AMMO zone (essentially, AmerenUE) has a capital structure of 51% equity, 48% debt, and 1% preferred stock. As preferred stock is treated as debt by the Incentive Petition, a capital structure based on the AMMO zone data would be 51% equity and 49% debt. Consolidating the AMMO and AMIL zone capital structure data yields a hypothetical capital structure of 52% equity and 48% debt.³

A second alternative option would be to simply use the Ameren Corporation capital structure as a proxy. Given that an unrated, asset-less entity like ATX will not be obtaining capital on its own without parental guarantees, it is all but certain that any financing of ATX will be based on Ameren Corporation. According to the June 2010 ValueLine report, Ameren Corporation has a capital structure of 52% equity to 47% long term debt.

³ The 48% debt would consist of 46% debt plus 2% preferred stock treated as debt.

- 9 -

For the foregoing reasons, a 56% equity percentage is excessive. A hypothetical capital structure that complies with Order No. 679-A and provides an appropriate mix of incentives will have, at most, a 52% equity component.

C. The Commission Should Clarify the Incentives That May Be Assigned to Other Ameren Affiliates.

In the Incentive Petition (at 37), Ameren “requests authorization to assign the CWIP and abandoned plant recovery incentives to any of the Ameren Companies (and their successors, such as AIC, which will be the successor to AmerenCIPS, AmerenCILCO, and AmerenIP) that is involved in the development and construction of the Projects.” Without identifying CWIP and abandoned plant recovery incentives as the “requested incentives,” Ameren proceeds to refer to the “requested incentives.”

MJMEUC does not contest Ameren’s request to assign CWIP and abandoned plant recovery to another Ameren affiliate subject to the necessary section 203 and 205 filings being made with the Commission. MJMEUC does, however, contest the right to assign other incentives to other Ameren affiliates. As noted above, it is appropriate to use a hypothetical capital structure so long as ATX – which does not yet have a capital structure – is the transmission owner for the Projects. Consistent with the Commission’s expectation in Order No. 679-A (at P 93) that traditional regulated utilities would not propose a hypothetical capital structure, if an Ameren utility operating company takes over all or a portion of the Projects, it would be inappropriate for that operating company to use the hypothetical capital structure. Accordingly, the Commission should make clear that, if it approves the request to assign incentives at all, the Commission is only approving the request to assign CWIP and abandoned plant recovery to another Ameren

- 10 -

affiliate subject to the necessary section 203 and 205 filings being made with the Commission.

III. CONCLUSION

For the foregoing reasons, the Commission should issue an order (1) granting MJMEUC's motion to intervene, (2) rejecting Ameren's request that the Commission pre-judge some future Ameren rate filing, (3) setting the hypothetical capital structure at 52% equity, (4) clarifying that the Commission is only approving the request to assign CWIP and abandoned plant recovery to another Ameren affiliate subject to the necessary section 203 and 205 filings being made with the Commission, and (5) granting such other relief as the Commission may deem appropriate.

Respectfully submitted,

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August 31, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 31st day of August, 2010.

/s/ Stephen C. Pearson

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