

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Union Electric Company

Docket No. ER06-467-000

ORDER ACCEPTING FILING

(Issued March 9, 2006)

1. In this order we accept for filing a Second Amendment to the Joint Dispatch Agreement (Second JDA) between Union Electric Company (Union Electric), Central Illinois Public Service Company (CIPS)¹ and Ameren Energy Generating Company (AEG) (collectively, the Parties) with an effective date of January 10, 2006.

Background

2. The Parties are each wholly owned subsidiaries of the Ameren Corporation. They are parties to a JDA that was originally entered into by Union Electric and CIPS. The Commission accepted the original JDA in 1996 and made it effective on the date that Union Electric and CIPS came under the common control of Ameren Corporation.² Subsequently, CIPS spun off its generating assets to AEG. As a result, the original JDA

¹ In their application, Union Electric and Central Illinois Public Service Company use the names Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS, respectively. However, Union Electric Company and Central Illinois Public Service Company are the legally recognized names of the companies. Therefore, Union Electric Company and Central Illinois Public Service Company are the official names used throughout this order.

² *Union Electric Company and Central Illinois Public Service Company*, 77 FERC ¶ 61,026, at 61,111 (1996), *reh'g denied*, 81 FERC ¶ 61,011 (1997) (approving merger and accepting Joint Dispatch Agreement subject to refund); *Central Illinois Public Service Company*, 80 FERC ¶ 61,111 (1997) (approving partial settlement which found that “the terms and conditions of the Joint Dispatch Agreement are just and reasonable and not unduly discriminatory or preferential.”)

was amended (First Amended JDA) on August 17, 1999, to add AEG as a party.³ Union Electric and AEG make off-system electric power sales both to each other and to third parties. The First Amended JDA provided for, among other things, the allocation between Union Electric and AEG of profits from off-system sales on the basis of relative levels of the load served by Union Electric and the load served by AEG during the month when the off-system sales occur. Moreover, the First Amended JDA allocated the profits from the off-system sales between Union Electric and AEG based on the relative load obligations of Union Electric and AEG.

3. In an order issued February 10, 2005, the Missouri Public Service Commission (MoPSC) conditionally approved the transfer of Union Electric's Illinois retail electric and gas operations to CIPS (the Metro-East Transfer). MoPSC conditioned its approval on, among other things, a requirement that Union Electric amend its First Amended JDA to provide that profits from off-system sales are shared on the basis of generation output rather than based on load.⁴

Proposed Filing

4. In order to comply with the February 10 MoPSC Order, the Parties filed, on January 9, 2006, the Second Amended JDA to incorporate the required change in the allocation for retail ratemaking purposes of profits from off-system sales between Union Electric and AEG.⁵ Specifically, the Parties propose to modify section 1.12 of the First Amended JDA, which defines the term Net Output,⁶ to effectuate the change required by the February 10 MoPSC Order. Additionally, section 2.01 under Article II Term of Agreement, is being changed to delete a provision that in no event would the JDA be terminated before December 31, 2004. The Parties state that this is a ministerial change necessitated due to the passage of time. The Parties further state that there is no change in any other rates, terms or conditions of off-system sales by Union Electric and AEG to third parties, which will continue to be made pursuant to their market-based rate

³ *Ameren Operating Cos.*, Letter Order, Docket No. Er99-4115-000, November 3, 1999 (accepting First Amended JDA)

⁴ Case No. EO-2004-108, State of Missouri Public Service Commission Report and Order on Rehearing, February 10, 2005. (February 10 MoPSC Order).

⁵ *Id.* at Order Para 4.

⁶ Net Output is presently defined as each Generating Party's monthly total of the energy delivered for Load Requirements. In the proposed Second Amended JDA, Net Output would be defined as each Generating Party's monthly total of the energy delivered to the transmission system.

authorizations on file.⁷ The Parties have executed the changes of Second JDA and seek an effective date of January 10, 2006.

Notice and Responsive Filings

5. Notice of Union Electric's filing was published in the *Federal Register*,⁸ with interventions and protests due on or before January 30, 2006.

MOPC protests

6. On January 30, 2006, the Missouri Office of Public Counsel (MOPC) filed a motion to intervene, protest and request for hearing. MOPC is an independent state agency established by the State of Missouri to represent and protect the interest of the public, including residential and small business electricity consumers, in regulatory proceedings and in the courts. MOPC protests that the Second JDA will not satisfy the just and reasonable standard under the FPA section 205,⁹ unless it is further modified so that energy transfers from Union Electric to serve AEG loads take place at the market price (and vice versa), rather than at incremental cost.¹⁰ MOPC contends that this additional modification is necessary to ensure that Union Electric will not experience any lost opportunities for off-system sales of energy because of the pricing of energy transferred to AEG.

7. On February 7, 2006, MOPC filed a motion to amend and amended protest to the January 30 protest. MOPC supplements its protest of January 30 by raising a number of additional issues. MOPC argues that the Parties failed to consider or address the criteria set forth in *Edgar*¹¹ for demonstrating that the Second JDA would not result in affiliate abuse or self-dealing and that the Second JDA would not harm the development of

⁷ *Ameren Energy Generating Co.*, 93 FERC ¶ 61,024 (2000), *reh'g denied*, 95 FERC ¶ 61,009 (2001); and *Union Electric Development Corp.*, 80 FERC ¶ 61,352 (1997), *Ameren IP*, 110 FERC ¶ 61,408 (2005).

⁸ 71 Fed. Reg. 3284 (2006).

⁹ 16 U.S.C. § 824d (2001).

¹⁰ MOPC January 30, 2006, protest at 3. (January 30 protest).

¹¹ *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*) (providing that parties can show that there is no affiliate preference in three ways: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers).

competitive wholesale markets. MOPC also states that the Second JDA contains energy transfer terms that would neither encourage development of competitive wholesale markets nor protect the captive ratepayers from any potential affiliate abuse or self-dealing.

Parties' Reply

8. On February 21, 2006, the Parties filed an answer to MOPC's protest stating that MOPC's protest is without merit, procedurally improper and beyond the scope of this proceeding. Moreover, the Parties state that there is no requirement to make any *Edgar* showing because the JDA is not a new power purchase agreement, and the Parties are not proposing any changes to the JDA's energy transfer pricing provisions. Parties further state that even if *Edgar* was applied, the existing provisions of the JDA and modifications proposed in the January 9 filing raise none of the concerns about affiliate abuse or harm to wholesale competition that underlie *Edgar*. The Parties also oppose MOPC's request for a hearing. The Parties state that a hearing is required only when there are disputed issues of material fact the Commission cannot resolve on the basis of the record and that MOPC's unsupported and speculative claims do not give rise to such issues as to the limited amendment to the JDA proposed by the Parties January 9 filing.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept MOPC's amended motion and amended protest because it will not disrupt the proceeding or place additional burden on the other parties.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹³ prohibits an answer to a protest unless otherwise ordered by decisional authority. We will accept the Parties' answer filed in this proceeding because it provided information that assisted us in our decision-making process.

Commission Determination

11. The Commission finds that the Parties' proposed Second Amended JDA is just and reasonable, and accordingly we accept the Second JDA for filing, effective January 10, 2006. The only protester, MOPC, does not oppose the specific change filed

¹² 18 C.F.R. § 385.214 (2005).

¹³ 18 C.F.R. § 385.213(a) (2) (2005).

by the Parties, which modifies the JDA so that the profits from off-system sales are allocated between Union Electric and AEG based on generation output rather than load requirements.¹⁴ Rather, MOPC raises other concerns about the existing JDA. However, we agree with the Parties that the purpose of the January 9 filing was to provide for a limited amendment to the JDA made solely to comply with the February 10 MoPSC Order, and find that MOPC has provided no basis for the Commission to take the other actions MOPC seeks.

12. MOPC's February 7 protest alleges that the criteria of *Edgar* regarding affiliate abuse and self-dealing were not satisfied and cites *Mountainview*,¹⁵ where the Commission concluded it would require henceforth that all affiliate long-term (one year or longer) power purchase agreements, whether at cost or market, be subject to the conditions set forth in *Edgar*. However, in that order, the Commission also said that the new policy would be applied prospectively only to avoid regulatory impact on transactions already filed for Commission approval, i.e., filed as of the date of the issuance of the order. We do not agree with MOPC that the Second JDA should be modified as they suggest. Because the First Amended JDA was accepted and on file prior to the Commission's ruling in *Mountainview*, the limited amendment the Parties now seek does not make the Second JDA a new agreement. As such it is outside the scope of *Mountainview*. For these reasons, we deny MOPC's protests in this proceeding.

13. We further note, as stated in the Parties' answer, that the MOPC and MoPSC staff previously sought that the JDA be modified to require that energy transfers be priced at market rather than at incremental cost. In its February 10 Order,¹⁶ MoPSC rejected this requirement after extensive proceedings, and imposed a condition that requires revenues to be imputed to Union Electric in a future rate case unless Union Electric is able to prove that benefits directly resulting from the Metro-East transfer exceed the difference between market price and incremental cost for incremental inter-company energy transfer.¹⁷

14. We grant waiver of the Commission's 60-day prior notice requirement and accept the Parties Second JDA for filing to become effective January 10, 2006, as requested.¹⁸

¹⁴ January 30 protest at 1.

¹⁵ *Southern California Edison Co.*, 106 FERC ¶ 61,183 at P 58 (February 25, 2004) (*Mountainview*).

¹⁶ Ordering paragraph 5 and at 58-60.

¹⁷ Ameren Parties answer at 13-14.

¹⁸ *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The Commission orders:

(A) The Commission hereby approves the Parties Second JDA, as discussed in the body of this order, effective January 10, 2006.

(B) The Commission hereby denies MOPC's protest, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.