

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-27960; 70-10180)

**Ameren Corporation, et al.**

### **Order Authorizing the Intrasystem Sale and Contribution of Utility Assets; Issuance of Note; Declaration of Dividend; Assumptions of Obligations**

**April 19, 2005**

Ameren Corporation (“Ameren”), a registered holding company, Union Electric Company (“Union Electric”), a direct public-utility company subsidiary of Ameren, both of St. Louis, Missouri, and Central Illinois Public Service Company (“CIPSCO” and collectively, “Applicants”), of Springfield, Illinois, another direct public-utility company subsidiary of Ameren, have filed an application-declaration (“Application”) with the Securities and Exchange Commission (“Commission”) under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(d), 12(f) of the Public Utility Holding Company Act of 1935, as amended (“Act”) and rules 43, 44, 45, 46 and 54 under the Act. On April 30, 2004, the Commission published notice of the Application (Holding Co. Act Release No. 27841).

#### I. Background

##### A. Ameren System

Ameren holds, directly or indirectly, all of the issued and outstanding common stock of the following public-utility companies (collectively, “Utility Subsidiaries”): Union Electric, CIPSCO, Illinois Power Company (“Ameren IP”) and Central Illinois Light Company (“CILCO”).<sup>1</sup> Together, the Utility Subsidiaries provide retail and

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<sup>1</sup> Ameren holds all of the common stock of CILCO indirectly, through CILCORP, Inc. (“CILCORP”), an exempt holding company by order. See Ameren, Holding Co. Act Release No. 27645 (January 29, 2003) (granting 3(a)(1) exemptions to CILCORP and Central Illinois Light Company).

wholesale electric service to approximately 2.3 million customers and retail natural gas service to approximately 935,000 customers in portions of Missouri and Illinois. In addition, Ameren is engaged in various exempt and authorized nonutility businesses, which it holds through Ameren Energy Resources Company, a wholly owned intermediate nonutility holding company.

Union Electric provides electric service to about 1.2 million retail and wholesale customers in Missouri and in parts of Illinois, and provides natural gas service to approximately 140,000 customers in those states. Union Electric also provides wholesale full requirements service to certain municipal electric utilities in Missouri. Union Electric's peak load in 2004 was 8,351 MW. As of December 31, 2004, Union Electric owned approximately 8,425 MW of generation capacity. Power from these generation resources, as supplemented by power purchased by Union Electric from others, is used to supply the demands of its electric service customers. Union Electric is subject to regulation with respect to retail sales of natural gas and electricity in Missouri by the Missouri Public Service Commission ("MoPSC") and with respect to retail sales of natural gas and electricity in Illinois by the Illinois Commerce Commission ("ICC").

CIPSCO, a direct subsidiary company of Ameren, provides electric transmission service in a 20,000 square-mile area of central and southern Illinois to approximately 325,000 customers and natural gas transmission and distribution service to approximately 170,000 customers. In May of 2000, CIPSCO transferred all of its electric generation facilities to Ameren Energy Generating Company ("GenCo"), an affiliated exempt wholesale generator ("EWG"). GenCo has continued to acquire additional generation capacity since that time. Power generated by GenCo is sold to wholesale purchasers

under both cost-based and market-based rates that are subject to the jurisdiction of the FERC. As of December 31, 2004, GenCo had approximately 4,751 MW of total installed generating capacity. The generation facilities of Union Electric and GenCo, are dispatched in a coordinated manner in accordance with the terms of a joint dispatch agreement on file at the FERC. That agreement requires each company to serve its load requirements from its own least-cost generation first, but then allows the other company to have access to any available excess generating capacity at cost.

Union Electric and CIPSCO, indirectly through Grid America LLC, are transmission-owning members of the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) and provide open access transmission service over their combined transmission facilities pursuant to the terms of the Midwest ISO Open Access Transmission Tariff on file at the Federal Energy Regulatory Commission (“FERC”). Union Electric and CIPSCO are also members of the Mid-America Interconnected Network (“MAIN”), one of the ten regional electric reliability councils organized for coordinating the planning and operation of the nation’s bulk power supply.<sup>2</sup>

AmerenEnergy Resources Generating Company (“AERG”), a public-utility company subsidiary of CILCO, owns and operates substantially all of the generating assets previously owned by CILCO. Through 2006, AERG sells electricity at wholesale to CILCO under a full requirements contract.

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<sup>2</sup> In July 2004, Union Electric and CIPSCO provided formal written notice of their intent to withdraw from MAIN effective January 1, 2006, provided that the configuration of MAIN remains the same. Until their withdrawal is effective, Applicants state that the utilities will continue to honor all of their obligations as members of MAIN.

CILCO, a holding company exempt under section 3(a)(1) by order,<sup>3</sup> also provides service directly to approximately 203,000 electric customers and 208,000 gas customers. Ameren IP serves approximately 600,000 electric customers and 415,000 gas customers in Illinois.

B. Obligations of Union Electric

As a regulated electric utility in Missouri, Union Electric must have sufficient generating capacity with which to serve the forecasted demands of its electric service customers and to maintain an adequate reserve margin. Standards established by MAIN require Union Electric to meet certain minimum short-term and long-term planning reserve requirements, which currently are 15% for 2003 and increases to 17% for 2006.

In July 2002, Union Electric entered into a Stipulation and Agreement (“Stipulation”) to resolve certain retail rate issues in Missouri. The Stipulation fixes retail electric service rates for Union Electric in Missouri that, except under certain specified conditions, will remain in place without modification through June 30, 2006. Union Electric also agreed to undertake commercially reasonable efforts to make energy infrastructure investments totaling \$2.25 billion to \$2.75 billion from January 1, 2002 through June 30, 2006. This includes the obligation to acquire 700 MW of new generating capacity, which may be satisfied by the purchase of generation facilities from an affiliate “at net book value.” The Stipulation also requires Union Electric to make enhancements to its transmission infrastructure.

Applicants state that the Generation Transfer is intended to allow Union Electric meet its generation capacity obligations efficiently under the Stipulation and the MAIN

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<sup>3</sup> See supra at n.1.

standards. Union Electric needs a significant amount of additional generation in 2005 and 2006 to meet the applicable MAIN generation capacity requirements. The Generation Transfer will provide Union Electric with a total of 548 MW of additional generating capacity. In addition, Applicants state that transmission capacity is available to deliver electricity generated by these plants to Union Electric; the Pinckneyville and Kinmundy Plants are connected directly to the Ameren transmission system with no operating guide restrictions.<sup>4</sup>

## II. Asset Transfers

### A. Transmission and Distribution Assets

Applicants intend to effect certain transactions (“Illinois Asset Transfer”) that would result in CIPSCO acquiring two sets of assets owned by Union Electric (collectively, “Acquired Assets”): (1) Union Electric’s electricity transmission and distribution assets in Illinois, with the exception of those associated with Union Electric’s Venice, Illinois generating plant, its Keokuk, Iowa generating plant, and minor amounts of property in Illinois to be retained by Union Electric to ensure the smooth operation of its electric utility system in Missouri (“Retained Assets”); and (2) Union Electric’s retail gas distribution facilities in Illinois.

Union Electric would transfer the Acquired Assets to CIPSCO at their net book value. In connection with this transaction, CIPSCO would not assume any indebtedness of Union Electric. Approximately one-half of the Acquired Assets (“Transferred Assets”) to CIPSCO would be transferred in consideration for a promissory note issued

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<sup>4</sup>Further, Applicants state that the Pinckneyville Plant has black start capability and can be ramped up quickly to provide service, which will allow Union Electric to respond quickly to system emergencies.

by CIPSCO in a principal amount equal to approximately fifty percent of the total net book value of the Acquired Assets, approximately \$69 million, net of liabilities, as of December 31, 2004. Union Electric would hold the note and receive payments including interest from CIPSCO. The remaining balance (approximately fifty percent) of the net book value of the Acquired Assets (approximately \$69 million as of December 31, 2004, net of liabilities) would be transferred to CIPSCO through a dividend in kind from Union Electric to Ameren, and Ameren would then contribute the remaining Acquired Assets (“Dividend Assets”) to CIPSCO. Under the governing agreement, Union Electric would prepare a schedule to be delivered at the time of closing that identifies the assets, properties and rights to be acquired by CIPSCO and designates whether the specific assets are to be conveyed as Dividend Assets or Transferred Assets. The percentages of Acquired Assets to be conveyed as Transferred Assets and Dividend Assets would be determined by Ameren immediately prior to the closing.

By the Illinois Asset Transfer, Ameren would consolidate in CIPSCO the responsibility to serve electric and gas utility customers in Illinois. CIPSCO would acquire Union Electric’s electric transmission and distribution and gas distribution assets and associated general plant assets and related liabilities in Illinois,<sup>5</sup> and Union Electric would also assign all related obligations to CIPSCO, including the certificates of public convenience and necessity granted by the ICC authorizing Union Electric to provide electric utility service and gas utility service in Illinois, environmental permits and obligations, all municipal and county franchises, labor agreements (as applicable), and

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<sup>5</sup> As mentioned above, Union Electric would continue to own and operate the Retained Assets.

any other relevant agreements that exist as of the transfer date. Subsequently, CIPSCO would succeed Union Electric's Illinois retail utility operations and provide the retail electric and gas services currently provided by Union Electric under the ICC-approved tariffs currently in effect for Union Electric. After the Illinois Asset Transfer, Union Electric would be regulated as a public utility only in Missouri.

B. Generation Assets

Additionally, Union Electric intends to acquire from GenCo four 44 MW combustion turbine generator ("CTG") units and four 35 MW CTG units located at GenCo's Pinckneyville, Illinois facility ("Pinckneyville Plant")<sup>6</sup> and two 116 MW CTG units located at GenCo's Kinmundy, Illinois generation facility ("Kinmundy Plant")<sup>7</sup> and, correspondingly, to assume certain liabilities and obligations of GenCo related to those units ("Generation Transfer"). The generation assets also would be transferred for cash at their net book value as of the closing date.

Applicants state that the Generation Transfer is intended to enable Union Electric to meet its generation capacity obligations under the Stipulation and under the MAIN standards. Union Electric needs 991 MW of additional generation resources by 2006 in order to meet the applicable MAIN generation capacity requirements. The Generation

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<sup>6</sup> As of December 31, 2004, those eight units had a collective net book value of approximately \$150 million.

<sup>7</sup> As of December 31, 2004, those two units had a net book value of approximately \$90.3 million.

Transfer would provide Union Electric with a total of 548 MW of additional generating capacity.<sup>8</sup>

### III. Requests for Authority

Applicants request authority for: (1) Union Electric to sell the Transferred Assets to CIPSCO, its affiliate; (2) CIPSCO to issue a promissory note to Union Electric in connection with the acquisition of the Transferred Assets; (3) Union Electric to declare an in-kind dividend of the Dividend Assets to Ameren; (4) Ameren to contribute the Dividend Assets to CIPSCO; (5) CIPSCO to acquire the Acquired Assets; (6) CIPSCO to assume the obligations of Union Electric in connection with Illinois Asset Transfer; (7) Union Electric to acquire the Pinckneyville Plant and Kinmundy Plant from its affiliate, GenCo; and (8) Union Electric to assume the obligations of GenCo relating to the Pinckneyville Plant and Kinmundy Plant.

### IV. Discussion

Rule 54 provides that, in determining whether to approve any transaction that does not relate to an EWG or “foreign utility company” (“FUCO”), the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an EWG or FUCO upon the registered holding company system if paragraphs (a), (b) and (c) are satisfied. Ameren has complied or will comply with the record-keeping requirements of rule 53(a)(2), the limitation under rule 53(a)(3) on the use of the Ameren system’s domestic public-utility company personnel to render services to EWGs and FUCOs, and the requirements of Rule 53(a)(4) concerning the submission of copies of

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<sup>8</sup> Both the Pinckneyville Plant and the Kinmundy Plant are already connected directly to the Ameren transmission system with no operating guide restrictions.

certain filings under the Act to retail regulatory commissions. Further, none of the circumstances described in rule 53(b) has occurred or is continuing. Rule 53(c) is inapplicable by its terms because the proposals contained herein do not involve the issue and sale of securities (including any guarantees) to finance an acquisition of an EWG or FUCO.

Rule 53(a)(1) limits a registered holding company's financing of investments in EWGs if such holding company's "aggregate investment" in EWGs and FUCOs exceed 50% of its "consolidated retained earnings." Ameren's "aggregate investment" in all EWGs is approximately \$605,634,775, or 32.2% of Ameren's "consolidated retained earnings" for the four quarters ended December 31, 2004 (\$1,879,931,775). The sale of the Pinckneyville Plant and the Kinmundy Plant by GenCo to Union Electric and the associated transactions will have the effect of reducing Ameren's "aggregate investment" in EWGs. Ameren does not hold an interest in any FUCO.

#### V. Conclusion

The ICC, MoPSC and FERC have approved the Illinois Asset Transfer. Applicants state that, except as described above, no state or federal commission, other than the Commission, has jurisdiction over any of the proposed transactions associated with the Illinois Asset Transfer.

The FERC has approved the Generation Transfer. Applicants state that MoPSC approval is not required for the Generation Transfer, but point out that the MoPSC has stated in filings with the FERC that this transaction is consistent with and supported by a stipulation agreement approved by the MoPSC in August of 2002. Applicants also state that ICC approval is not required for the Generation Transfer, because it will not occur

until the Illinois Asset Transfer has been completed, and that no state or federal commission, other than the Commission, has jurisdiction over the Generation Transfer.

Applicants state that the fees, commissions and expenses incurred or to be incurred by: (1) Union Electric and CIPSCO, in connection with the Illinois Asset Transfer, will not exceed \$600,000 and \$570,000, respectively; and (2) Union Electric in connection with the Generation Transfer will not exceed \$1,000,000. These fees, commissions and expenses consist primarily of outside legal fees, charges billed or to be billed to Union Electric and CIPSCO by Ameren Services, and a \$165,600 fee to be paid to the ICC in connection with the issuance of CIPSCO's subordinated promissory note to Union Electric.

Due notice of the filing of the Application has been given in the manner prescribed, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is found that the applicable standards of the Act and rules are satisfied, and that no adverse findings are necessary.

IT IS ORDERED, that the Application, as amended, is granted and permitted to become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland  
Deputy Secretary