

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 30th day of
December, 2002.

Application of Union Electric Company d/b/a)
AmerenUE for Approval of Decommissioning)
Cost Estimate and Funding Level of Nuclear)
Decommissioning Trust Fund)

Case No. EO-2003-0083

ORDER APPROVING STIPULATION AND AGREEMENT

On August 30, 2002, Union Electric Company d/b/a AmerenUE filed an application requesting that the Commission: (1) approve the Company's estimate of decommissioning costs and the funding level necessary to defray these costs, and (2) specifically find that the annual funding level contributed to the decommissioning trust fund is included in the Company's current cost of service for rate-making purposes.

The Commission issued notice of the application, and allowed interested entities the opportunity to intervene. No applications to intervene were filed.

The Office of the Public Counsel, Staff, and AmerenUE (the parties) filed a unanimous stipulation and agreement on December 10, 2002. The parties agree that AmerenUE shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates. The parties further agree that annual decommissioning costs in the amount of \$6,214,184 are, and should continue to be, included in AmerenUE's cost of service and reflected in its current rates for ratemaking purposes.

FILED⁴

APR 16 2004

Missouri Public
Service Commission

Exhibit No. 24
Case No(s). EO-2004-0108
Date 3-25-04 Rptr LF

On December 6, 2002, Staff filed a Staff Recommendation in support of the agreement. In the agreement itself, the parties state that the Staff Recommendation will serve as Staff's suggestions in support of the agreement.

The Commission has considered the verified application and its attendant studies and analyses, the unanimous stipulation and agreement, and the Staff Recommendation. The Commission finds that AmerenUE's currently effective rates include an annual amount of \$6,214,184 for decommissioning expense. The Commission also finds that AmerenUE's 2002 Cost Study meets the requirements of 4 CSR 240-20.070(9).

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on December 10, 2002, is approved.
2. That Union Electric Company d/b/a AmerenUE's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,214,184.
3. That AmerenUE or its trustee shall file on a prospective basis in Case No. EO-2003-0083 one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6).

4. That this order shall become effective on January 9, 2003.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray, Lumpe, Gaw and Forbis, CC., concur

Mills, Deputy Chief Regulatory Law Judge

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

Application of Union Electric Company d/b/a)
AmerenUE for Approval of Decommissioning)
Cost Estimate and Funding Level of Nuclear)
Decommissioning Trust Fund.)

Case No. EO-2003-0083

UNANIMOUS STIPULATION AND AGREEMENT

COME NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or "UE"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of the Public Counsel ("Public Counsel"), and submit this Unanimous Stipulation And Agreement to the Missouri Public Service Commission ("Commission") in resolution of Case No. EO-2003-0083.

INTRODUCTION

The Legislature provided, in Section 393.292 RSMo 2000,¹ that the Commission may authorize changes to the rates and charges of an electrical corporation as a result of a change in the level or annual accrual of funding necessary for its nuclear power plant decommissioning trust fund. This statute creates a narrow exception to the general requirement that the Commission must consider "all relevant factors," prior to changing any rate charged by a utility under its jurisdiction. See State ex. rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n, 585 S.W.2d 41 (Mo. banc 1979). Under Section 393.292, the Commission may limit its review in nuclear decommissioning trust fund cases to only those factors relevant to the funding level or accrual rate of the trust fund when deciding matters related to the rates and

¹ All statutory references are to Revised Statutes of Missouri 2000, unless otherwise noted. Section 393.292 was enacted by the Missouri Legislature in Laws 1989 and has not been amended.

charges associated with that fund. Further, Section 393.292 gives the Commission authority to adopt rules and regulations governing the procedures associated with these tariff changes as well as to ensure that the amounts contained in the trust funds will be neither "greater nor lesser than the amounts necessary to carry out the purposes of the trust." In Case No. EX-90-110, the Commission adopted the original decommissioning rule, 4 CSR 240-20.070.

4 CSR 240-20.070(9) requires: "[o]n or before September 1, 1990, and every three (3) years after that, utilities with decommissioning trust funds shall perform and file with the commission cost studies." Those cost studies shall include the utility's latest cost estimates for decommissioning its nuclear generating unit(s) along with the funding levels necessary to defray these decommissioning costs.

AmerenUE established an external nuclear decommissioning trust fund as a result of its Callaway Plant ("Callaway") rate case decided by the Commission in 1985. Re Union Electric Co., Case Nos. EO-85-17 and ER-85-160, 27 Mo.P.S.C. (N.S.) 183, 249, 256-57 (1985); See also, Re Union Electric Co., Case Nos. ER-84-168 and EO-85-17, 27 Mo.P.S.C. (N.S.) 164 (1984).

On September 1, 1999, AmerenUE filed an Application (Case No. EO-2000-205²) with the Commission for approval of its then-current decommissioning cost estimate and continuation of the then-current authorized funding level for its nuclear decommissioning trust fund for Callaway. A Unanimous Stipulation And Agreement, settling all issues pertaining to Case No. EO-2000-205 was filed on November 30, 1999. Among other things, said Unanimous

² Application of Union Electric Company, d/b/a AmerenUE for Approval of Decommissioning Cost Estimate and Funding Level of Nuclear Decommissioning Trust Fund.

Stipulation And Agreement maintained the annual decommissioning expense accrual and trust fund payment at \$6,214,184.

THE 2002 COST STUDY

On August 30, 2002, AmerenUE filed its Application For Approval Of Decommissioning Cost Estimate And Funding Level Of Nuclear Decommissioning Trust Fund (the "Application"), wherein AmerenUE requested that the Commission: (a) approve its estimate of decommissioning costs and the funding level to defray said costs, and (b) find that AmerenUE's current level of contribution to the decommissioning trust fund is included in AmerenUE's current cost of service for ratemaking purposes. AmerenUE owns 100 percent of Callaway and, according to the Application, 90.92 percent of Callaway was allocated to AmerenUE's Missouri retail operations as of April 30, 2002.³

Schedule 1, attached to the Application, is a cost study (the "2002 Study") detailing AmerenUE's latest estimate for decommissioning Callaway entitled "Decommissioning Cost Analysis for the Callaway Plant," dated August 2002. TLG Services, Inc. ("TLG"), a consulting engineering firm, prepared the 2002 Study for AmerenUE.

³ Commission rule 4 CSR 240-20.070(4)(C) states, in relevant part: "Amounts to be contributed annually for Missouri jurisdictional customers shall be computed based on the jurisdictional allocator used in the company's last general rate proceeding unless otherwise ordered by the commission." The Missouri jurisdictional allocator used by the Staff in the most recent rate proceeding involving UE (Case No. EC-2002-1, filed July 1, 2001) was 89.7%.

AmerenUE/TLG examined three decommissioning options: (a) DECON,⁴ (b) SAFSTOR,⁵ and (c) ENTOMB.⁶ All three alternatives are acceptable to the Nuclear Regulatory Commission ("NRC"). However, the ENTOMB option is currently not considered viable because the NRC is considering a rulemaking to alter the 60-year completion window and to clarify the use of engineered barriers for reactor entombments. Because entombment requests are now handled on a case-by-case basis pending completion of the rulemaking, no 2002 Dollar cost estimate is provided by AmerenUE/TLG. For the purposes of the 2002 Study, the final shutdown date of Callaway is projected to occur in 2024.

Schedule 2, attached to the Application, is AmerenUE's analysis of the current funding level for the decommissioning trust, as set forth in a five-page document entitled "Callaway Plant Tax-Qualified Nuclear Decommissioning Trust Fund Projection, Missouri Jurisdiction"

⁴ DECON assumes decontaminating and decommissioning (D&D) immediately following conclusion of power operations in 2024, when the 40-year operating license expires. Work is anticipated to be completed by the end of 2033. DECON consists of removal of fuel assemblies, source material, radioactive fission and corrosion products, and other radioactive materials immediately after cessation of power operations. Total estimated cost to decommission in 2002 Dollars is \$515,339,000.

⁵ SAFSTOR places the facility in protective storage for deferred decontamination to levels that permit release for unrestricted use. Delayed decontamination and dismantling activities are initiated once spent fuel and source material are removed, such that license termination is accomplished within the 60-year time period set by the NRC. This process is anticipated to be completed by 2086. Total estimated cost to decommission in 2002 Dollars is \$628,719,000.

⁶ ENTOMB places the facility in protective storage. Radioactive contaminants are encased in a long-lived material such as concrete and the entombed structure is appropriately maintained and continued surveillance is carried out until the radioactive material decays to a level permitting unrestricted release of the property. Initial activities include: removing contaminated components, systems, and structures outside the designated entombment boundary, and sealing the remaining radioactivity within the reactor containment building. This process is restricted in overall duration to 60 years and would be required to be completed by 2086 under current NRC requirements. The 2002 study states: "The 60-year restriction has limited the practicality of the ENTOMB alternative at commercial reactors that generate significant amounts of long-lived radioactive material. As such, the NRC is currently re-evaluating this option and the technical requirements and regulatory actions that would be necessary for entombment to become a viable option." Therefore, no 2002 cost analysis is provided pending outcome of a new NRC rulemaking.

(the "Economic Analysis"). The Economic Analysis summarizes a detailed analysis by AmerenUE based on the premise that the current contribution to the decommissioning trust should be changed only if it does not result in a final trust account balance which is just sufficient to cover the predicted decommissioning costs under a reasonable set of economic, financial, and investment assumptions. The calculations called for in the Economic Analysis were performed in a manner consistent with previous filings.

AmerenUE performed its Economic Analysis to verify the adequacy of the current annual funding level (\$6,214,184), given the revised prediction of decommissioning costs from the 2002 Study (\$515,339,000). Based on this analysis, AmerenUE has concluded that its current funding level should result in a final decommissioning trust amount which is sufficient to cover the costs estimated in the 2002 Study under what AmerenUE believes are a reasonable set of economic, financial and investment assumptions. Consequently, AmerenUE does not seek any changes to its funding level, and asks the Commission to approve the current funding level amount, which is consistent with the Unanimous Stipulation And Agreement in Case No. EO-2000-205. Since AmerenUE is not proposing a change in the funding level, AmerenUE has not filed new tariffs regarding its funding of decommissioning, is not requesting a hearing, and does not believe that a hearing is required respecting its decommissioning cost study filing.

STIPULATIONS AND AGREEMENTS

The Parties to this case have reached certain understandings so that the Staff, AmerenUE, and Public Counsel stipulate and agree as follows:

1. AmerenUE's Missouri retail jurisdiction annual decommissioning expense accrual and trust fund payment was set by the Commission at \$6,214,184, first in Case No. EO-91-300, Re Union Electric Co., Mo.P.S.C.3d 356 (1992), again in Case No. EO-94-81, Re Union Electric

Co., 3 Mo.P.S.C.3d 68 (1994), again in Case No. EO-97-86, and again in Case No. EO-2000-205.⁷ AmerenUE took the position in Case No. EO-2000-205 that it was reasonable to continue the annual accruals at the \$6,214,184 amount previously agreed to in Case No. EO-97-86, as that annual contribution amount was deemed to be sufficient to cover the then-current decommissioning cost estimate under the reasonable set of economic, financial and investment assumptions used by AmerenUE in its analysis.⁸

2. The 2002 Study estimates the decommissioning cost for the DECON alternative to be \$515,339,000 in 2002 dollars, which is approximately one percent higher than the 1999 estimate of \$509,451,856 (1999 dollars). AmerenUE deems the

⁷ In 1984 in UE's Callaway rate case, UE and the Staff stipulated that the decommissioning cost of Callaway was \$120,000,000 in 1983 Dollars. As a result of the Commission's Callaway Report And Order, UE's Missouri jurisdictional annual trust fund payment requirement was set at \$2.9 million. Re Union Electric Co., Case Nos. EO-85-17 and ER-85-160, 27 Mo.P.S.C.(N.S.) 183, 249 (1985). In Case No. EO-91-300, UE's first filing pursuant to 4 CSR 240-20.070, a Unanimous Stipulation And Agreement was accepted by the Commission which identified the cost in 1990 Dollars to immediately decommission Callaway, as if it had completed 40 years of service, as being \$347 million and set UE's Missouri retail jurisdiction annual trust fund accrual and payment requirement as \$6,214,184. The great increase in the cost estimate was due principally to a major increase in the projected cost of disposal facilities for low-level radioactive waste. (Low-level radioactive waste should not be confused with high-level radioactive waste and spent nuclear fuel. The federal fee, which is collected with each kilowatt hour of electricity generated by Callaway, relates to disposal facilities for high-level radioactive waste and spent nuclear fuel, not disposal facilities for low-level radioactive waste.) In Case Nos. EO-94-81, EO-97-86 and EO-2000-205, Unanimous Stipulation And Agreements were accepted by the Commission which identified the costs in 1993, 1996 and 1999 Dollars, respectively, to immediately decommission Callaway, as if it had completed 40 years of service, as being \$371,511,680, \$419,975,000, and \$509,451,856, respectively. In all three cases, UE's Missouri retail jurisdiction annual trust fund accrual and payment requirement remained at \$6,214,184, as that amount was determined to be adequate for the funding of future decommissioning expenses.

⁸ Section 1917 of the Energy Policy Act of 1992 (EPACT) lifted the stringent decommissioning trust fund investment restrictions, which allowed the Commission to adopt by rule a maximum investment in equity securities of 65 percent of the decommissioning trust fund's book value for tax-qualified and non-tax qualified trust assets. Section 1917 of EPACT reduced the federal income tax rate on certain investment earnings of decommissioning trusts from the regular corporate federal income tax rate of 34 percent to 22 percent for 1994 and 1995, and 20 percent commencing in 1996. The Commission's subsequent amendment of its decommissioning rule placed more restrictions on self-dealing and prohibits the trust from holding investments of affiliated companies associated with the trust or the utility.

current decommissioning cost estimate of \$515,339,000 to be reasonably close to the decommissioning cost projection in its 1999 Study.⁹

3. AmerenUE deems the current contribution of \$6,214,184 to be reasonable inasmuch as it results from a set of economic, financial and investment assumptions, including inflation rates, which are themselves considered reasonable by AmerenUE. (See Schedule 2, attached to the Application.) Therefore, AmerenUE believes that it is reasonable and prudent to continue the annual accruals at a level of \$6,214,184, the current Missouri jurisdictional amount. AmerenUE's Application asks that the Commission approve the continuation of the annual accrual at the current level.

4. AmerenUE shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without any change in its Missouri retail jurisdictional rates.

5. Annual decommissioning costs in the amount of \$6,214,184 are, and should continue to be, included in AmerenUE's cost of service and reflected in its current rates for ratemaking purposes. AmerenUE, the Staff and Public Counsel request that this finding be specifically recognized in the Commission's Report And Order and note that this finding is required in order for the decommissioning fund to retain its qualified tax status.

6. AmerenUE or its trustee shall file on a prospective basis in the instant docket one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual

⁹ A Comparative Analysis of the 1999 and 2002 Callaway Plant Decommissioning Cost Analysis ("Comparative Analysis") was prepared in September 2002 for AmerenUE by TLG Services, Inc. The latest estimate for decommissioning the Callaway Plant shows little change from its 1999 counterpart. As shown in the Comparative Analysis, the cost for several elements of the estimate changed significantly over the three-year period. In general, the increases and decreases were offsetting, yielding no significant change in the total estimated cost reported. Increasing the cost were elements such as waste processing \$22,408,000; program management, \$26,148,000; spent fuel management, \$24,030,000; and spent fuel isolation, \$9,060,000. Lower waste disposal costs (\$72,352,000), and lower removal costs (\$6,232,000), provided most of the savings.

reports required by 4 CSR 240-20.070(6). Payments to the trustee of the external trust fund are made on a quarterly basis in the month following the end of the quarter to which the payment applies.

7. None of the parties to this Unanimous Stipulation And Agreement ("Agreement") shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement or for which provision is made in this Agreement.

8. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Agreement, regarding cross-examination or a decision in accordance with Section 536.080.1 RSMo or Art. V, Section 18 Mo. Const. The parties shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any testimony or exhibits that may have been offered or received in support of or in opposition to this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions, and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

9. To assist the Commission in its review of this Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from

the parties related to the matters addressed in this Agreement, including any procedures for furnishing such information to the Commission.

10. On December 6, 2002, the Staff filed a Staff Recommendation in memorandum form in support of this Agreement. The Staff intends that the Staff Recommendation serve as its suggestions in support of the Agreement. The other parties shall have the right to file responses. Any memorandum submitted shall not bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding, whether or not the Commission approves this Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Agreement, whether or not the Commission approves and adopts this Agreement.

11. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum responsive to the Commission's request. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Agreement, whether or not the Commission approves and adopts this Agreement.

12. The Staff also shall have the right to provide, at any agenda meeting at which this Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral

explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

13. Because this is an Agreement with the sole purpose of addressing the authority requested by the Application of AmerenUE, except as specified herein, the parties to the Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding, should the Commission decide not to approve the Agreement or in any way condition its approval of the same, except as stated herein. Because this is an Agreement for the purpose of settling matters in this case, it shall not be cited as precedent or referred to in testimony as an assertion of the particular position of any party in any subsequent or pending judicial or administrative proceeding, except that this shall not be construed to prohibit reference to its existence in future proceedings, including proceedings to enforce compliance with its terms.

14. The 2002 Study and the Economic Analysis shall be received into evidence.

15. The provisions of this Agreement have resulted from numerous discussions/negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

16. In the event the Commission accepts the specific terms of this Agreement, the signatories waive their respective rights: a) to cross-examine witnesses pursuant to Section 536.070(2) RSMo; b) to present oral argument and written briefs pursuant to Section 536.080.1 RSMo; c) to the reading of the transcript by the Commission pursuant to Section 536.080.2

RSMo; and d) to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Report And Order respecting this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the signatories hereto request that the Commission issue an order:

1. Approving the instant Unanimous Stipulation And Agreement;
2. Receiving into evidence this Unanimous Stipulation And Agreement, the 2002 Study, and the Economic Analysis;
3. Finding, pursuant to this Unanimous Stipulation And Agreement, that AmerenUE's retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,214,184;
4. Finding that the current decommissioning costs for Callaway are included in AmerenUE's current cost of service, and are reflected in its current rates for ratemaking purposes;
5. Recognizing that AmerenUE's 2002 Cost Study meets the requirements of 4 CSR 240-20.070(9); and
6. Directing that AmerenUE or its trustee file, on a prospective basis in Case No. EO-2003-0083, one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6).

Respectfully submitted,

DANA K. JOYCE
General Counsel

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 10th day of December 2002.
