

FILED⁴
APR 16 2004
Missouri Public
Service Commission

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 4th
day of January, 2000.

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-2000-205

ORDER APPROVING STIPULATION AND AGREEMENT

On September 1, 1999, Union Electric Company d/b/a AmerenUE (AmerenUE) filed an application requesting that the Commission: A) approve its decommissioning cost estimate; B) approve the funding level at the current level; and C) find that decommissioning costs in the amount of \$509,451,856 are included in its current cost of service for ratemaking purposes¹.

The Commission issued notice of the application, and allowed interested entities the opportunity to intervene. Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an oral hearing is not necessary and AmerenUE may submit evidence in support of its application

¹ Although the title of AmerenUE's pleading is "Application and Request for Expedited Treatment and Contingent Request for Waiver," AmerenUE does not request expedited treatment, nor is there a request (contingent or otherwise) for any waiver.

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

by verified statement. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

On November 2, 1999, AmerenUE filed a pleading entitled "Motion to Provide Additional Notice." AmerenUE stated that it had agreed, in a stipulation filed in Case No. EM-96-149, that all signatories to that stipulation would be notified of AmerenUE's filing of its application in this case. AmerenUE requested that the Commission provide notice to those signatories. However, as noted below, all signatories have been notified, and the Commission will deny the motion².

The Office of the Public Counsel, Staff, and AmerenUE (the parties) filed a unanimous stipulation and agreement on November 30, 1999. 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. The parties also agree that all signatories to the Stipulation and Agreement in Case No. EM-96-149 have been notified of AmerenUE's filing of its 1999 decommissioning cost case.

On December 1, 1999, Staff filed the testimony of David Broadwater in support of the stipulation. Mr. Broadwater testified that

² It is unclear why AmerenUE requested that the Commission provide notice, instead of simply providing notice itself.

Staff and AmerenUE have agreed to an amount of decommissioning expense of approximately \$509 million in 1999 dollars, and have also agreed upon the annual funding level. Mr. Broadwater reviewed AmerenUE's decommissioning options, and explained the current status of the fund.

Mr. Broadwater also testified that Staff intends to review the earnings and the level of decommissioning funding at the end of AmerenUE's experimental alternative regulation plan.

The Commission has considered the verified application, the unanimous stipulation and agreement, and the testimony of David Broadwater. The Commission finds that the parties' estimate of \$509,451,856 in 1999 dollars to immediately decommission Callaway upon the expiration of its forty year license is reasonable. The Commission also finds that AmerenUE's currently effective rates include an annual amount of \$6,214,184 for decommissioning expense.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement filed on November 30, 1999, 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 the motion for additional notice filed on November 2, 1999, is denied.

4. That AmerenUE or its trustee shall file on a prospective basis in Case No. EO-2000-205 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).

5. That this order shall become effective January 14, 2000.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Mills, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

NOV 30 1999

Missouri Public
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Application of Union Electric Company d/b/a)
AmerenUE for Approval of Decommissioning)
Cost Estimate and Funding Level of Nuclear)
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Case No. EO-2000-205

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-2000-205.

INTRODUCTION

The Legislature provided, in Section 393.292 RSMo 1994,¹ 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 1994, unless otherwise noted.

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 cost studies" with the Commission. Those cost studies shall include the utility's latest cost estimates for decommissioning their 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 April 22, 1997, AmerenUE filed an Application (Case No. EO-97-86²) 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-97-86, was filed on September 22, 1997. This Unanimous Stipulation And Agreement,

²In the matter of the Application and Request for Expedited Treatment of Union Electric Company for Approval of Decommissioning Cost Estimate and Funding Level of Nuclear Decommissioning Trust Fund, and Contingent Request for Waiver of Quarterly Funding Requirement.

among other things, maintained the annual decommissioning expense accrual and trust fund payment at \$6,214,184.

THE 1999 COST STUDY

On September 1, 1999, AmerenUE filed its Application and Request for Expedited Treatment and Contingent Request for Waiver (the "Application"), wherein AmerenUE requested that the Commission: (a) approve its decommissioning cost estimate, (b) approve the funding level of its nuclear decommissioning trust fund at the current level, and (c) find that AmerenUE's current decommissioning costs are included in AmerenUE's current cost of service for ratemaking purposes. AmerenUE owns 100 percent of Callaway and, as of May 31, 1999, 87.47 percent of Callaway was allocated to AmerenUE's Missouri retail operations.

Attachment 1 to the Application is a cost study (the "1999 Study") detailing AmerenUE's latest estimate for decommissioning Callaway entitled "Decommissioning Cost Study for the Callaway Plant," dated August 1999. TLG Services, Inc., a consulting engineering firm, prepared the 1999 Study for AmerenUE. TLG Services Inc. examined three decommissioning options in the 1999 study: (a) DECON,³ (b) SAFSTOR⁴ and (c) ENTOMB.⁵ All three

³ DECON assumes decontaminating and decommissioning ("D&D") immediately following conclusion of power operations in 2024 when the 40-year operating license expires. The DECON option requires the removal and decontamination of the equipment (including spent fuel and any source material), structures, and those portions of the site containing radioactive contaminants to a level that permits the site to be released for unrestricted use shortly after cessation of operations. The 1999 Study assumed that all D&D work would be completed by the end of 2033. The total cost for the DECON option was calculated to be \$509,451,856 in 1999 Dollars.

⁴ SAFSTOR places the facility in protective storage once spent fuel and source material are removed. Delayed decontamination and dismantling activities are initiated such that license termination is accomplished within the 60-year time period set by the NRC. This process is assumed to be completed by 2086. The total cost for the SAFSTOR option was calculated to be \$637,125,145 in 1999 Dollars.

⁵ ENTOMB places the facility in protective storage. Initial activities include: removing contaminated components, systems, and structures outside the designated entombment boundary, and sealing the remaining
(Footnote continued on the next page.)

alternatives are acceptable to the United States Nuclear Regulatory Commission ("NRC"). For the purposes of the study, the final shutdown date of Callaway is projected to occur in 2024.

Attachment 2 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" (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.

To aid in this determination, AmerenUE developed a Lotus model that computes the required annual decommissioning contribution within a range of economic and financial parameters which AmerenUE deems to be reasonable. The Lotus model computes "Optimistic," "Expected" and "Conservative" annual amounts required for future decommissioning liability to be fully funded at various decommissioning inflation rates. The Lotus model was converted by the Staff to an Excel model, which was used by AmerenUE for purposes of its September 1, 1999 filing.

The Excel model was used by AmerenUE in a manner to verify the adequacy of the current annual funding level (\$6,214,184) given the revised prediction of decommissioning costs from the 1999 Study (\$509,451,856). 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 1999 Study under what AmerenUE believes are a reasonable set of

radioactivity within the reactor containment building. This process is restricted in overall duration to 60 years and is assumed to be completed by 2086. The total cost for the ENTOMB option was calculated to be \$731,566,385 in 1999 Dollars.

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-97-86. 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), and again in Case No. EO-97-86.⁶ AmerenUE took the position in Case No. EO-97-86 that it was reasonable to continue the annual accruals at the \$6,214,184

⁶ 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, and the recent federal litigation against the Department of Energy which this Commission was a party to along with many other states, 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 and EO-97-86, Unanimous Stipulations And Agreements were accepted by the Commission which identified the costs in 1993 and 1996 Dollars, respectively, to immediately decommission Callaway, as if it had completed 40 years of service, as being \$371,511,680 and \$419,975,000. In both 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.

amount previously agreed to in Case No. EO-94-81, 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. As a result of the Energy Policy Act of 1992, there were changes in federal tax law and corresponding changes in state regulations. The federal income tax rate was lowered and there were changes in the investment restrictions.

2. UE's accrual schedule in Case No. EO-94-81 ("the 1993 Accrual Schedule") projected that the \$371,511,680 (1993 Dollars) decommissioning cost estimate for the DECON alternative would escalate to approximately \$424 Million in terms of 1996 Dollars. The 1996 UE Study estimated the decommissioning cost to be \$419,975,000 in 1996 Dollars for the DECON alternative. The difference was the result of a lower inflation rate than UE projected.

3. UE's 1993 Accrual Schedule in Case No. EO-94-81 projected that the 1993 decommissioning cost of \$371,511,680 (1993 Dollars) would escalate to approximately \$484 Million in 1999 Dollars. The 1999 Study estimates the decommissioning cost to be \$509,451,856 in 1999 Dollars for the DECON alternative. AmerenUE deems this current decommissioning cost estimate to be reasonably close to the decommissioning cost projection in its 1993 Accrual Schedule. 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 decommissioning inflation rates, which are themselves considered reasonable by AmerenUE. (See Attachment 2 to the Application.) Therefore, AmerenUE believes that it is reasonable and prudent to continue the annual accruals at the current levels of \$6,214,184, the current Missouri jurisdictional amount, subject to any additional payment required to be made to the trust fund as a result of the Commission's final unappealable order regarding the

"Decommissioning Fund Deposits" issue currently pending in the Experimental Alternative Regulation Plan sharing credits case (Case No. EO-96-14). AmerenUE's Application asks that the Commission approve the continuation of the annual accrual at the current level.

4. AmerenUE's 1999 nuclear decommissioning cost study for its nuclear decommissioning trust fund for Callaway is addressed in the Stipulation And Agreement in Case No. EM-96-149 (In the Matter of the Application of Union Electric Company for an Order Authorizing: (1) Certain Merger Transactions Involving Union Electric Company; (2) the Transfer of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company; and (3) In Connection Therewith, Certain Other Related Transactions). Said Stipulation And Agreement was approved by the Commission in a February 21, 1997 Report And Order in Case No. EM-96-149. Pursuant to said Report And Order, all signatories to the Stipulation And Agreement in Case No. EM-96-149 have been notified of UE's filing of its 1999 decommissioning cost case. Should the Commission approve the instant Unanimous Stipulation And Agreement, no further action respecting UE's September 1, 1999 Application would be required by the Unanimous Stipulation And Agreement approved by the Commission in Case No. EM-96-149.

5. 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.

6. 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.

7. 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 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.

8. None of the parties to this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement or for which provision is made in this Unanimous Stipulation And Agreement.

9. If the Commission does not unconditionally approve this Unanimous Stipulation And Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement, for cross-examination, or for a decision in accordance with Section 536.080.1 RSMo or Art. V, Section 18 Mo. Const., and the parties shall retain all procedural and due process rights as fully as though this Unanimous Stipulation And 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 Unanimous Stipulation And 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.

10. To assist the Commission in its review of this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement, including any procedures for furnishing such information to the Commission.

11. The Staff shall have the right to file suggestions or testimony in support of the Unanimous Stipulation And Agreement, and the other parties shall have the right to file responsive suggestions or prepared testimony. 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 Unanimous Stipulation And 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 Unanimous Stipulation And Agreement, whether or not the Commission approves and adopts this Unanimous Stipulation And Agreement.

12. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Unanimous Stipulation And Agreement. 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. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis

by all parties, and shall not become a part of the record of this proceeding, or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement, whether or not the Commission approves and adopts this Unanimous Stipulation And Agreement.

13. The Staff also shall have the right to provide, at any agenda meeting at which this Unanimous Stipulation And 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.

14. Because this is a Stipulation And Agreement with the sole purpose of addressing the authority requested by the Application of AmerenUE, except as specified herein, the parties to the Unanimous Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement or in any way condition its approval of the same, except as stated herein. Because this is a Unanimous Stipulation And Agreement, 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.

15. The 1999 Study and the Economic Analysis shall be received into evidence.

16. The provisions of this Unanimous Stipulation And 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 Unanimous Stipulation And 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.

17. In the event the Commission accepts the specific terms of this Unanimous Stipulation And Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo; and their respective rights to judicial review pursuant to Section 386.510 RSMo. This waiver applies only to a Commission Report And Order respecting this Unanimous Stipulation And 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 Unanimous Stipulation And Agreement.

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

1. Approving the instant Unanimous Stipulation And Agreement;
2. Receiving into evidence the Unanimous Stipulation And Agreement, the 1999 Study, and the Economic Analysis;

3. Finding, pursuant to the Unanimous Stipulation And Agreement, that the cost in 1999 Dollars to immediately decommission Callaway upon the expiration of its forty-year operating license shall be deemed to be \$509,451,856;
4. Finding, pursuant to the 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;
5. 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;
6. Recognize that AmerenUE's 1999 Cost Study meets the requirements of 4 CSR 240-20.070(9); and
7. Directing that AmerenUE or its trustee file on a prospective basis in Case No. EO-2000-205 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
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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 30th day of November, 1999.

Dennis L. Frey

Service List for
Case No. EO-2000-205
November 30, 1999

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