

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

In the Matter of Union Electric Company, d/b/a)	
AmerenUE's Tariffs to Increase Its Annual)	<u>Case No. ER-2008-0318</u>
Revenues for Electric Service)	Tariff Nos. YE-2008-0605

**STATEMENT OF CLARIFICATION OF COMMISSIONER TERRY M. JARRETT
Callaway 2 COLA Costs**

I write separately from the majority for the sole purpose of adding emphasis to the Report and Order issued here on the matter of the Callaway 2 COLA Costs. While much of the Report and Order is written in plain and simple terms, the value of the footnotes, and the reference to individuals represented in the footnotes, in my opinion creates the possibility for confusion with respect to this particular portion of the Report and Order.

AmerenUE accounted for the costs associated with the Callaway 2 COLA as CWIP¹, which was the same accounting treatment AmerenUE chose to use for costs associated with the operating permit to build the Callaway 1 plant in the 1970's and 1980's. A utility's choice to account for certain costs as CWIP is quite different than whether these costs are CWIP under section 393.135 RSMo (2000),² which is a question of law.

The Commission in this case never reached the question of law within section 393.135 regarding "construction work in progress" because, in the Commission's findings of fact, it found that AmerenUE's accounting treatment of the COLA costs as CWIP was dispositive of the

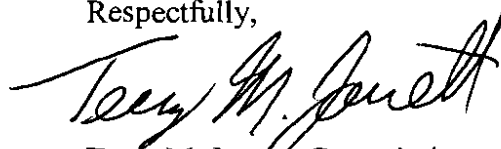
¹ The Commission found that the costs associated with the Callaway 2 COLA are properly *accounted for* as CWIP, as a necessary construction related cost to operate the Callaway 2 reactor (emphasis added). Yet the Commission did not find that the COLA was CWIP for any purpose other than accounting measures. See Report and Order, ER-2008-0318, "Findings of Fact" pg.78, and "Decision" pg. 80; "The costs associated with AmerenUE's preparation and filing of the Callaway 2 COLA are properly treated as CWIP and as such they may not be included in AmerenUE's rate base until the Callaway 2 plant is fully operational and used for service."

² All statutory references are to RSMo (2000) unless otherwise cited.

issue, *in this case*.³ Further, the only conclusions of law reached by the Commission acknowledges the existence of section 393.135 and explains that CWIP may not be included in an electric utility's rates until the construction work is complete and the project is fully operational and used in service. There is no conclusion of law regarding COLA costs being CWIP in the Commission's Report and Order.

The Commission's decision *in this case, on these facts*, should not tempt others to mischaracterize or misinterpret the Commission's decision and interpret it to be dispositive on a question of law, which it is not.

Respectfully,



Terry M. Jarrett, Commissioner

Dated at Jefferson City, Missouri
on this 8th day of April, 2009.

³ Section 393.140(4) states that the Commission shall "Have [the] power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for light, heat or power, or in the distribution and sale of water for any purpose whatsoever, or in the collection, carriage, treatment and disposal of sewage for municipal, domestic or other necessary beneficial purpose. It may also, in its discretion, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations. [...]" A system of accounts designation prescribing an item as "construction work in progress" is not dispositive as to what "constitutes construction work in progress" under section 393.135. Because the expertise of an administrative agency when reaching decisions based on technical and scientific data are given deference by Appellate courts it is possible that a party could book an item as "construction work in progress" for accounting purposes, but this Commission could conclude that it is not "construction work in progress" under 393.135 or vice versa. See *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117, 128 (Mo. App. 1982), citing to *Smithkline Corp. v. FDA*, 587 F.2d 1107, 1118 (D.C.Cir.1978); *Cayman Turtle Farm, Ltd. v. Andrus*, 478 F.Supp. 125, 131 (D.C.Cir.1979). As such, accounting labels are not dispositive as to what constitutes "construction work in progress" under section 393.135, as is further supported by the Commission's rule 4 CSR 240-20.030(4): "(4) In prescribing this system of accounts, the commission does not commit itself to the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining other matters before the commission." The Commission found that Ameren UE's accounting of the COLA costs as CWIP, not as CWIP under section 393.135, was determinative for purposes of our decision.