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December 1, 2000

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

FILED<sup>3</sup>  
DEC 01 2000  
Missouri Public  
Service Commission


**RE: Union Electric Company**  
**Case No. EO-2001-245**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Motion to Reject Certain Substantive Changes to Nuclear Decommissioning Trust Fund and Investment Guidelines, or in the Alternative Request for Hearing**. Also enclosed please find the **Direct Testimony of Russell W. Trippensee**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

  
John B. Coffman  
Deputy Public Counsel

JBC:jb

cc: Counsel of Record

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

**FILED<sup>3</sup>**  
DEC 01 2000  
Missouri Public  
Service Commission

In the matter of the Application of Union                     )  
Electric Company (d/b/a AmerenUE) for an                    )  
Order to Approve the Change of Trustee for                 )  
its Tax Qualified Nuclear Decommissioning                 )  
Trust Fund and to Approve Related                            )  
Changes to the Trust Agreement                                )

Case No. EO-2001-245

**MOTION TO REJECT CERTAIN SUBSTANTIVE CHANGES TO UNION  
ELECTRIC COMPANY'S NUCLEAR DECOMMISSIONING TRUST FUND  
AND INVESTMENT GUIDELINES, OR IN THE ALTERNATIVE, REQUEST  
FOR HEARING**

Comes now the Office of the Public Counsel (Public Counsel) and for its Motion states as follows:

1. In AmerenUE's (Company's) October 13, 2000 Application, which initiated this case, Company requested a change in the trustee and in the fixed investment manager for its Tax Qualified Nuclear Decommissioning Trust Fund (Trust Fund). Ibid., p. 6. Company further requested a change in the corresponding fees that would be charged by the new trustee and for some changes to the Trust Fund and changes to the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds (Investment Guidelines). Ibid., pp. 6-7.

2. Public Counsel has analyzed the requested change in Trustee and Investment Manager and does not object to these changes. No evidence reviewed by Public Counsel would suggest that the Bank of New York would not be a suitable trustee, and most of the requested changes to the Trust Fund and Investment Guidelines are objectionable. However, many of the requested changes to the Trust and Investment

Guidelines would cause significant changes in the nature of the Trust and could be seriously detrimental to the public interest.

3. When Company filed its Application, along with a Request for Expedited Treatment, Company characterized all of the proposed language changes to the Trust and the Investment Guideline as “minor” and further stated that proposed changes to the Investment Guidelines were “not material in nature and only served to clarify and better define certain aspects of the guidelines.” Ibid., pp., 5-6. Company further stated, “None of the changes made to the Investment Guidelines will affect the purpose, intent or scope of the Investment Guideline.” Ibid., p. 6.

Public Counsel disagrees with Company’s characterization of the proposed language changes. Public Counsel believes that language changes in three specific areas significantly change the potential scope of the Trust, granting Company the ability to inject itself improperly in the management of the Trust, reducing the clarity and specificity currently contained in the Trust and Investment Guidelines, and which create the potential for unnecessary litigation and potential harm to the public interest. The three specific language changes to which Public Counsel objects are discussed in the prepared direct testimony filed in this case on behalf of Public Counsel’s Chief Public Utility Accountant Russell W. Trippensee. These language changes are also outlined below.

4. When Company filed its Application, it also filed prepared direct testimony on behalf of Kevin L. Redhage, which Public Counsel believes also mischaracterize all of the proposed language changes as “minor.” The direct testimony of Mr. Redhage purports to contain a comparison of the current and proposed versions of

the Investment Guidelines and the Trust in Schedules 7 and 10 to that testimony, respectively, utilizing a strike-out to indicate deleted language and background shading to indicate new language. Unfortunately, this background shading was not successfully reproduced in the schedules contained in the prepared testimony served on Public Counsel. The fact that Public Counsel was unable to decipher the full extent of Company's proposed language changes hindered Public Counsel's ability to properly analyze Company's Application.

Public Counsel did receive a comparison document that clearly showed the background shading on or about November 17, 2000. Public Counsel does not know whether or not the background shading is readily apparent in the versions of Schedules 7 and 10 contained in the copies filed with the Public Service Commission.

5. As soon as Public Counsel identified proposed language changes that it believed would be potentially harmful to the public interest, it discussed these issues with Company. While Company asserted no reason why the language changes to which Public Counsel objected where necessary, Company would not agree to revise its proposed language, merely stating its concern that any changes to its proposed language could possibly cause a delay in Company's preferred "timeline" for desired changes to its Trust.

6. On November 27, 2000, Company filed a Motion Requesting Leave to Amend Its Application To Revise Its Proposed Language Changes To The Trust Fund In Order To Address Concerns Raised By The Staff Of The Commission. This motion incorrectly states that these revisions were made to address issues raised by both Staff and Public Counsel. These revisions do not address the concerns raised by Public

Counsel. Public Counsel did not propose the revisions contained in the November 27, 2000 Motion and never asserted that these changes would address its concerns. The revisions to the Trust added in Company's most recent filing state merely what should be obvious – that the Trust must comply with statutory requirements and regulatory decisions. To the extent that the November 27 Motion suggests that these revisions would eliminate Public Counsel's objection to language changes, it is in error.

It should also be noted, that Schedule 2 to the November 27 motion indicates with a shaded background only the recent revision made to address Staff's concerns. This schedule does not indicate all of the proposed changes to Trust language requested in Company's Application.

7. The following is a summary of the specific language changes to which Public Counsel objects:

- a. Injection of Company into management of the Trust.  
Trust, Article II, Section 2.01  
Investment Guidelines, Article V, Section B.  
(See Trippensee Direct, pp. 5-7)
- b. Elimination of the definition of Decommissioning Costs.  
Trust, Article I, Section 1.01 and 1.04  
(See Trippensee Direct, p. 7, ln. 24 through p. 10, ln. 7)
- c. Trust Fund Disbursement due to sale of Callaway Nuclear Plant.  
Trust, Article III, Section 3.05  
(See Trippensee Direct, p. 10, ln. 8 through p. 11, ln. 11)

8. Rejecting Company's proposed language in the three areas outlined above will not prevent the Commission from granting the requested replacement of the Trust Fund Fixed Income Investment Manager or the replacement of the Trustee, or granting any of the other language changes and relief requested by Company in its Application.

Therefore, the Commission should grant all of the relief requested by Company except with regard to the three language changes to which Public Counsel objects.

If the Commission chooses not to reject these substantiative language changes, it should establish a procedural schedule with an evidentiary hearing to allow the parties to litigate these three issues further. A third alternative available to the Commission would be a deferral of these three issues until a decision is reached by the Commission in the pending AmerenUE Application to Transfer AmerenUE assets in Illinois, Case No. EM-2001-233. It is possible that further amendments to the Trust Fund will be necessary if the Commission grants certain relief requested in Case No. EM-2001-233, and these issues could be resolved at the time the Commission issues its Report and Order in that case.

9. Issue 7.c. above is particularly concerning to Public Counsel in that the proposed language change could impact legislative debate related to restructuring of the electric industry in Missouri. The Commission should not lightly consider changing the manner in which the Nuclear Decommissioning Trust Fund would be distributed in the event that the Callaway Nuclear Plant is sold.

10. The only reason asserted by Company for the request to swiftly expedite a decision in this case is the potential for certain "administrative and financial burdens" as a result of "duplicate record keeping requirements that would have to be maintained throughout the year 2001." These minor burdens should not outweigh the strong public interest in ensuring that Company's Tax Qualified Nuclear Decommissioning Trust Fund is properly drafted to protect the public when the Callaway Nuclear Plant must ultimately be decommissioned and in ensuring that the money that has been placed into the Trust is

used for its originally intended purpose. Serious contested issues about language changes to this important document should not be glossed over because of Company's desire to receive a quick decision.

WHEREFORE, Public Counsel respectfully requests that the Commission grant:

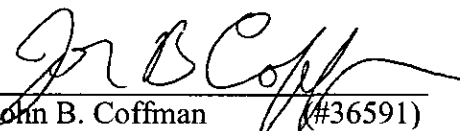
1) all of the relief requested by Company in its Application, including the requested change in its Fixed Income Investment Manager and in its Trustee for the Trust except for the specific language changes in the three areas outlined in this pleading and discussed in the direct testimony of Public Counsel witness Trippensee,

2) or in the alternative, defer these three issues until the Commission has reached a final decision in the pending AmerenUE Application to Transfer Assets in Case No. EM-2001-233,

3) or in the alternative, Public Counsel requests an evidentiary hearing where it may present its evidence as to the reasons that certain language changes proposed in this case are unreasonable and potentially harmful to the public interest.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:   
John B. Coffman (#36591)  
Deputy Public Counsel

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 1<sup>st</sup> day of December 2000:

David B. Hennen  
Ameren Services Company  
One Ameren Plaza  
P O Box 66149 (M/C 1310)  
St. Louis, MO 63166-6149

General Counsel  
Missouri Public Service Commission  
P O Box 360  
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read "J B Coffey", is written over a horizontal line.