

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
December 14, 2000**

CASE NO: EO-2001-245

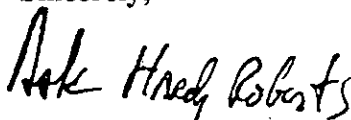
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of December, 2000.

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)	<u>Case No. EO-2001-245</u>
Trust Fund and to Approve Related)	
Changes to the Trust Agreement)	

**ORDER DENYING MOTION FOR LEAVE TO AMEND APPLICATION
AND ORDER APPROVING THE APPLICATION OF UNION ELECTRIC
COMPANY FOR APPROVAL TO CHANGE THE TRUSTEE OF ITS TAX
QUALIFIED NUCLEAR DECOMMISSIONING TRUST FUND
AND FOR APPROVAL OF A NEW INVESTMENT MANAGER**

Procedural History

On October 13, 2000, Union Electric Company d/b/a AmerenUE (AmerenUE) filed with the Missouri Public Service Commission (Commission) an application pursuant to Commission Rules 4 CSR 240-2.060 (i.e., the general procedural rule on applications) and 4 CSR 240-20.070(4)(A) (i.e., the decommissioning trust fund rule) for (1) approval of the replacement of Banc of America Capital Management, Inc. with The Bank of New York (BNY) as the fixed income investment manager for AmerenUE's tax-qualified nuclear decommissioning trust fund (trust fund); (2) approval of the corresponding Investment Management Agreement between AmerenUE and BNY; (3) approval of the replacement of Bankers Trust Company with BNY as trustee of its Third Amended and Restated Tax Qualified Decommissioning Trust; (4) approval of the corresponding Schedule of Fees to be charged by BNY for administering the Trust Fund; (5) the amendments to the Third Amended and Restated Tax Qualified Decommissioning Trust (Trust Agreement); (6) approval of the

changes to the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds; and (7) conditioning the approval of the aforementioned requests upon the approval of the same by the Illinois Commerce Commission¹. AmerenUE supplemented its Application by the filing, as Appendix 1, of the direct testimony of Kevin L. Redhage (Redhage Testimony) which set forth in detail the changes requested and the reasons therefor.

AmerenUE also requested that the Commission issue an order authorizing the changes requested in its pleading by December 15, 2000. This request for expedited treatment was granted on November 6, 2000.

On November 27, 2000, AmerenUE filed a motion for leave to submit an amendment to its original application (motion for leave).

Issues

In its motion for leave, AmerenUE stated that on November 16, 2000, Staff, and the Office of Public Counsel (Public Counsel) met with AmerenUE to discuss the issues. According to AmerenUE, the parties determined that for Staff and Public Counsel to support the application filed by AmerenUE, minor wording changes would have to be made to the Trust Agreement filed as Schedule 6 of the Redhage Testimony.

AmerenUE noted that on November 20, 2000, it submitted to Staff draft language to which Staff responded with additional recommended language, which AmerenUE also agreed to include in the Trust Agreement.

AmerenUE thus requested leave of the Commission to amend its pleading beyond the limitation provided in Commission Rule 4 CSR 240-2.080(21).

¹ AmerenUE failed to explain why the approval of its requests by the Illinois Commerce Commission was necessary. Thus, this part of AmerenUE's pleading was not taken into consideration by the Commission.

Commission Rule 4 CSR 240-2.080(21) states: "Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission."

For its good cause, AmerenUE stated that it could not have known within such ten-day limitation that the amendment requested would be necessary.

On December 1, 2000, Public Counsel filed its motion to reject certain substantive changes to AmerenUE's trust agreement and investment guidelines, or, in the alternative to request an evidentiary hearing.

In its motion, Public Counsel stated that it does not object to the requested change in Trustee and Investment Manager. Public Counsel stated that no evidence it has reviewed would suggest that BNY would not be a suitable trustee, and "...most of the requested changes to the Trust Fund and Investment Guidelines are objectionable (*sic*)²."

Public Counsel's position is that AmerenUE has characterized all of the proposed language changes to the Trust Agreement and the Investment Guideline as "minor." Public Counsel quotes AmerenUE as stating that the proposed changes to the Investment Guidelines were "...not material in nature and only served to clarify and better define certain aspects of the guidelines." Public Counsel again quotes AmerenUE: "None of the changes made to the Investment Guidelines will affect the purpose, intent or scope of the Investment Guideline."

Public Counsel disagrees with AmerenUE's characterization and believes that language changes in three specific areas significantly alter the potential scope of the Trust Agreement: (1) granting AmerenUE the ability to inject itself improperly in the management of the Trust, (2) elimination of the definition of decommissioning costs, and (3) modifying

2 It is assumed that Public Counsel meant "not objectionable."

the provisions of trust fund disbursement due to the sale of the Callaway nuclear plant.

Public Counsel stated that it discussed these issues with AmerenUE. According to Public Counsel, while AmerenUE asserted no reason why the language changes to which Public Counsel objected were necessary, AmerenUE would not agree to revise its proposed language, merely stating its concern that any further changes to its proposed language could possibly cause a delay.

Public Counsel stated that AmerenUE's revisions to its application do not address the concerns raised by Public Counsel. Public Counsel alleges that it did not propose the revisions contained in AmerenUE's motion for leave and never asserted that these changes would address its concerns. Public Counsel argues that the revisions to the Trust Agreement added in the motion for leave merely state what should be obvious, i.e., that the Trust Agreement must comply with statutory requirements and regulatory decisions. To the extent that the motion for leave suggests that these revisions would eliminate Public Counsel's objection to language changes, Public Counsel stated that AmerenUE's motion for leave is in error.

Rejecting AmerenUE's proposed language in the three areas outlined above will not, according to Public Counsel, 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 AmerenUE in its Application. Therefore, it is Public Counsel's position that the Commission should grant all of the relief requested by AmerenUE except the changes to which Public Counsel objects.

However, Public Counsel urges that if the Commission chooses not to reject these substantive 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 proposed by Public Counsel 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, filed under Case No. EM-2001-233. Public Counsel believes that it is possible that further amendments to the Trust Agreement will be necessary if the Commission grants certain relief requested in that case, and these issues could be resolved at the time the Commission issues its Report and Order.

Also on December 1, 2000, Staff filed its recommendation and memorandum which advocated that the Commission approve AmerenUE's motion for leave. However, Staff stated, if the Commission should choose not to allow the Application to be amended, Staff would then recommend that the change in Trustee (and Schedule of Fees), investment manager, and the Investment Management Agreement (and Investment Guidelines) be approved, but that the Third Amended and Restated Tax Qualified Decommissioning Trust document portion in the initial Application, as filed on October 13, 2000, not be approved.

Findings

The Commission finds that the arguments by Public Counsel against the modification of language in the trust agreement are persuasive. The injection of AmerenUE into the management of the trust, the elimination of the Commission's definition of "decommissioning costs" as set forth in Case No. EO-85-17 et al., and the change allowing AmerenUE to direct the fund disbursement after the sale of the Callaway nuclear plant, are not in the public interest. The Commission finds that it would be ill-advised to change the language as requested by AmerenUE before a resolution of Case No. EM-2001-233. The Commission finds that the other amendments requested by AmerenUE are reasonable and in the public interest.

Decision

The Commission will deny AmerenUE's motion to amend its application as set forth in its motion for leave filed on November 27, 2000. This case will remain open until after the resolution of Case No. EM-2001-233 at which time the Commission will decide the remaining issues. However, the Commission will grant all of the other requests of AmerenUE as set forth in its original application filed on October 13, 2000.

Conclusions of Law

The Commission has the authority to approve changes dealing with Nuclear Decommissioning Trusts. Section 393.292, RSMo 1994, states:

Notwithstanding any other provision of law to the contrary, the public service commission shall have the power, pursuant to regulations, to review and authorize changes to the rates and charges contained in the schedules of an electric corporation as a result of a change in the level or annual accrual of funding necessary for its nuclear power plant decommissioning trust fund only after a full hearing and after considering all facts relevant to such funding level or accrual rate. The commission shall also have the authority to adopt regulations to govern the procedure for submission, examination, hearing and approval of such tariff changes and to ensure that the amounts collected from ratepayers and paid into such trust funds will be neither greater nor lesser than the amounts necessary to carry out the purposes of the trusts.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Except for a conditional request in the alternative by Public Counsel, since no one has requested a hearing in this case, the Commission may grant the relief requested based on the application.

In addition, Commission Rule 4 CSR 240-20.070(4)(A) states, in part that "[a]ny change in the trust agreement, trustee or investment manager(s) ...shall be submitted to the commission for approval."

IT IS THEREFORE ORDERED:

1. That the Application for Approval to Change the Trustee of its Tax Qualified Nuclear Decommissioning Trust Fund and for Approval of a New Investment Manager, filed by Union Electric Company d/b/a AmerenUE on October 13, 2000, is granted in all respects except as set forth below.

2. That the disposition of the following proposed revisions filed by Union Electric Company d/b/a AmerenUE on October 13, 2000, in its Application shall be taken under advisement by the Missouri Public Service Commission until the resolution of In the Matter of the Application of Union Electric Company d/b/a AmerenUE for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company d/b/a AmerenCIPS and, in Connection Therewith, Certain Other Related Transactions, filed under Case No. EM-2001-233:

- a. A proposed addition to a paragraph in Article V, Section B of the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds, as set forth on page 4 of both Schedules 9 and 10 (Subsection C. Illinois Jurisdictional Sub-Account) of the Direct Testimony of Kevin L. Redhage filed as Appendix 1 of the Application of Union Electric d/b/a AmerenUE;
- b. A proposed addition to Article II, Section 2.01 of the Third Amended and Restated Tax Qualified Decommissioning Trust, as set forth on page 6 of both Schedules 6 and 7 of the Direct Testimony of Kevin L. Redhage filed as Appendix 1 of the Application of Union Electric d/b/a AmerenUE; and

c. A proposed elimination of a sentence in Article I, Section 1.01 of the Third Amended and Restated Tax Qualified Decommissioning Trust, as set forth on page 4 of Schedule 7 of the Direct Testimony of Kevin L. Redhage filed as Appendix 1 of the Application of Union Electric d/b/a AmerenUE.

3. That this order shall become effective on December 24, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Schemenauer, and Simmons, CC., concur
Murray, C., absent

Hopkins, Senior Regulatory Law Judge

ALJ/Sec'y: Hopkins/17 ye
Date Circulated 12-8 20-2001-245
CASE NO.
Lumpke, Chair 12-8-04
Draimer, Vice Chair ade
Murray, Commissioner about
Schemenauer, Commissioner OS
Simmons, Commissioner KS
Agenda Date 12-14
Action taken: 4-045
Must Vote Not Later Than _____

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 14th day of December 2000.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

