

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric)
Company, Doing Business as AmerenUE, for an)
Order Authorizing the Sale, Transfer and Assign-)
ment of Certain Assets, Real Estate, Leased)
Property, Easements and Contractual Agreements)
to Central Illinois Public Service Company, Doing)
Business as AmerenCIPS, and, in Connection)
Therewith, Certain Other Related Transactions.)

Case No. EO-2004-0108

CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

I write separately because I neither agree with the majority on the imposition of three conditions, nor with the majority's application of the cost-benefit analysis. I do, however, concur in the approval of the transfer.

First, with respect to the Commission's Affiliate Transaction Rules, the majority has lost sight of the fact that this is a transaction between two regulated utilities. This is not the sort of transaction, consequently, that the Affiliate Transaction Rules are intended to cover. Those rules, as the Missouri Supreme Court explained, are designed to prevent a conglomerate from subsidizing its unregulated activities by shifting costs to its regulated operations, where recovery of those costs from ratepayers is more certain. *State ex rel. Atmos Energy Corp. v. Public Service Commission*, 103 S.W.3d 753 (Mo. banc 2003). That is not the case here. CIPS, like UE, is a regulated utility. For that reason, the rules do not apply in my view, and the transfer should not be conditioned upon the application of any of the requirements of 4 CSR 240-20.015 and 4 CSR 250-40.015.

Second, the majority has also ignored UE's "Zone of Reasonableness" analysis that shows convincingly that the contribution that was to be made by the Metro East ratepayers to the decommissioning Trust Fund is not needed. Although UE has offered to do so, I believe it is pointless to require the shareholders to make an entirely unnecessary contribution. The estimate of decommissioning costs will be recalculated for the next triennial review, which will start in less than one year from today. At that time, contribution levels will be adjusted to meet the new estimate. I believe that the majority should rely on UE's calculation and not require the contribution in question.

Third, the majority attempts to insulate Missouri ratepayers from the extremely speculative and unlikely result of increased transmission costs for use of the transferred transmission assets by making a ratemaking determination. The legality of that determination, outside of a general rate case, is doubtful. See *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41, 57 (Mo. banc 1979) (ratemaking decisions must be based upon a consideration of all relevant factors). More important, however, is the difficulty of administering the majority decision. Just how are any increased costs resulting solely from the transfer to be recognized? This condition simply guarantees continuous needless litigation in the future over amounts sought to be excluded from rates.

Additionally, the cost-benefit analysis employed here included every conceivable detriment that could possibly occur as a result of the transfer. Highly speculative or unlikely

detriments should not be weighed in the equation. Nevertheless, the transfer results in a net benefit, even though the potential detriments are over-weighted in the analysis. Therefore, there is no question that the transfer should be approved.

Respectfully submitted,



Connie Murray, Commissioner

(S E A L)

Dated at Jefferson City, Missouri,
on this 6th day of October, 2004.