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May 9, 2002

VIA HAND DELIVERY

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 65101



**RE: Application for permission to construct a new
345 kV transmission line to be known as
Callaway-Franks; MPSC Case No. EO-2002-351**

Dear Mr. Roberts:

Enclosed for filing on behalf of Union Electric Company, d/b/a AmerenUE, in the above matter, please find an original and eight (8) copies of its **Response to Staff's Recommendation.**

Kindly acknowledge receipt of this filing by stamping a copy of the enclosed letter.

Thank you.

Yours very truly,

Joseph H. Raybuck / sh

Joseph H. Raybuck
Associate General Counsel

JHR/vww
Enclosures

cc: Service List

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

Application of Union Electric Company)
for Permission and Authority to Construct,)
Operate, Own and Maintain a) Case No. EO-2002-351
345 kilovolt Transmission Line in Maries,)
Osage, and Pulaski Counties, Missouri)
("Callaway – Franks Line"))

**RESPONSE OF UNION ELECTRIC COMPANY TO STAFF
RECOMMENDATION**

COMES NOW Union Electric Company, doing business as AmerenUE (AmerenUE or the Company), and pursuant to the Commission's Order of April 22, 2002 submits its Response to the Conditional Recommendation of the Commission Staff ("Staff") concerning AmerenUE's Application for permission and authority to construct, operate, own and maintain a proposed 345 kV transmission line to be known as the "Callaway-Franks line" (Application).

SUMMARY

The Company is in general agreement with the Staff's Conditional Recommendation. The Staff has confirmed that the proposed line is necessary to provide reliable service to the public. The Staff has also confirmed that the Company's proposal is based on a route that is the least intrusive to the public.

As requested by the Staff, the Company has included below its answers to the questions set forth in the Staff's Conditional Recommendation to address the concerns of the property owners affected by the proposed line.

The Company urges the Commission to promptly grant the Company's Application without a hearing so that AmerenUE may commence construction of the proposed line on a timely basis. The Company disagrees with the Office of the Public Counsel (OPC) that a hearing or any further proceedings are necessary here. In the Company's view, there are no issues which need to be decided by the Commission in this proceeding. The concerns of the property owners hinge on the easement rights which AmerenUE acquired from Associated Electric Cooperative Inc. (Associated). Any issues concerning the Company's easement rights for the proposed route can--and must--be addressed by a court of law and not by the Commission.

With respect to the property owners, the Company sincerely regrets any inconvenience that they may experience as a result of the proposed line. However, AmerenUE takes very seriously its responsibility to provide reliable utility service to the public. It would be harmful to the public if the proposed line is not built. Further, it would be harmful to the public even if the proposed line were delayed unnecessarily. The Company has made good faith efforts to design the proposed line in a way that will minimize disruption to the public. Further, the Company has made accommodations to individual owners where feasible in response to concerns expressed. Any issues in dispute which remain between the Company and the property owners can and should be addressed in another proceeding.

I. BACKGROUND

On January 18, 2002, AmerenUE filed its Application with the Commission. Prior to that time, the Company had given notice of the proposed line to affected property owners and also to public officials in the counties of Osage, Maries, and

Pulaski. Also, the Company conducted public workshops on November 7 and 8, 2001 in Linn and Vienna, Missouri to provide information about the proposed line to such property owners and public officials. The workshop on November 7 was held at the Osage County Community Center in Linn, Mo., and the workshop on November 8 was held at the Vienna High School in Vienna, Mo.

On April 22, 2002 the Commission conducted a local hearing in Linn, Mo. for the purpose of receiving input from the public concerning the proposed line. Prior to that time, the Company had provided notice of the April 22 public hearing to property owners affected by the proposed line. At that hearing, a number of property owners expressed concerns about the proposed line.

On April 29, the Staff filed its Report which conditionally recommended that the Commission approve the Application. Staff first concluded that the proposed line was in compliance with the Commission's rules for applications for a certificate of convenience and necessity to build a transmission line. Second, Staff concluded that the proposed line was "necessary to provide reliable electric service to UE customers by providing transmission capacity needed for the high-voltage system". (at p. 2)

Next, Staff indicated that the proposed route would parallel an existing 161 kV transmission line owned by Central Electric Power Cooperative (Central). "The existing corridor will allow sharing of the right-of-way to minimize the impact of the new line". (at p. 2) Further, Staff pointed out that paralleling the existing line of Central allowed AmerenUE to share 25 feet of right-of-way with Central. As a result, by routing the proposed line parallel to the existing line AmerenUE would only require 125 feet of right-of-way, instead of requiring 150 feet of right-of-way. AmerenUE will be able to

use existing right-of-way of Associated for 43 out of the 54 miles of the proposed line. Based on the above, "Staff recommends use of the existing corridor for the new line".

(p. 3)

Staff also discussed the concerns expressed at the local hearing of April 22. In light of those concerns, Staff recommended that AmerenUE answer the questions that were brought by property owners at the public meeting, including the following: a) Easement clearing and management; b) Property owners questions about the route selection; c) Combining existing 161 kV and proposed 345 kV lines on a single structure; and d) Other information that would aid the Commission decision in defining the public interest. (p. 4)

Finally, Staff indicated that it would supplement its conditional recommendation for approval of the Application after AmerenUE provided a response to the issue brought by the property owners.

II. RESPONSE TO STAFF'S CONDITIONAL RECOMMENDATION

A. Overall Response to Staff's Report

As noted above, the Company is in general agreement with the Staff's Report and recommends that the Commission adopt it.

The Staff's Report is accurate in its statement of the facts. Further, the Staff's Report is reasonable in its treatment of the facts to reach a decision that is in the public interest. Regarding the Staff's request that the Company answer questions raised by property owners, the Company does so below.

B. Staff's Report Shows that the Proposed Line is in the Public Interest

Staff fully confirms AmerenUE's contention that the new line is needed to provide reliable service. No one has presented any evidence whatsoever claiming that the proposed line is unnecessary. In fact, there is no dispute that if the proposed line is not built it will overload neighboring electrical facilities and will compromise the Company's ability to provide safe and reliable service.

Further, Staff's report reaches the common sense conclusion that the route selected by the Company is the least intrusive route to the public, and therefore by definition is in the public interest.

As a result, the Staff Report correctly concludes that the proposed line is necessary for AmerenUE to provide reliable service to its customers, and that the route selected is the least intrusive, and least disruptive, alternative. Therefore, Staff confirms that the public interest allows, and even requires, that AmerenUE's Application be granted.

C. Response to Specific Questions Addressed

As was evident at the local hearing of April 22, some of the concerns expressed by the property owners were directed not at AmerenUE but at Central or Associated concerning their practices of utility easement maintenance and operation. Obviously, the Company can not respond to the concerns about the past practices of other electric suppliers. However, it is the Company's understanding that Central and Associated are filing letters with the Commission providing information on these issues. Further, the Company's belief and experience with Central and Associated is that they are

reputable suppliers which will take seriously any concerns expressed at the April 22 hearing.

The following addresses concerns directed to AmerenUE.

a) Easement clearing and management

It has always been Ameren's intent to be good stewards of the environment and respectful of property rights and individual property owners. In that regard, Ameren has, over the years, developed detailed specifications for easement clearing which address concerns similar to those expressed at the Public Hearing on April 22, 2002. These specifications outline the obligations of the Contractor and the Company in resolving property damages and owner complaints, methods of tree clearing and brush handling, erosion protection, permanent and temporary gating and the protection of livestock, etc. In addition, during initial clearing and line construction, an Ameren Construction Supervisor is either on-site or on-call to monitor the Contractor's work and personally address property owner concerns.

Once the initial clearing and line construction is complete, AmerenUE continues to promote good stewardship and best practices in the management of vegetation on its rights-of-way. In that regard AmerenUE issues the following general information and guidelines to all outside contractors engaged in vegetation management: (1) Personnel engaged in vegetation management work, supervisors, and tree crews, have frequent contact with individual customers. It is important, and expected, that they make every effort to maintain good public relations; (2) Good quality tree trimming, complete cleanups, courteous workmen, and a sufficient explanation of work to be done are major items in ensuring good public relations. It is necessary that supervisory personnel direct

the work and keep these factors under control; and (3) When trimming trees for routine maintenance work in Missouri, signed or verbal permits are not required; but in the interest of public goodwill, a reasonable effort should be made to notify the property owner or residents that trimming is to be performed. In addition, during vegetation maintenance operations, an Ameren Supervisor is on-site or on-call to personally address property owner concerns.

It is also Ameren's goal in managing vegetation on its rights-of-way to provide safe, reliable electrical service while maintaining and, where possible, improving desirable wildlife habitat within the right-of-way. In that regard, Ameren participates in a program called "Project Habitat." Project Habitat is sponsored by the North American Butterfly Association, BASF Corporation, Quality Deer Management Association, Quail Unlimited, and the National Wild Turkey Federation. Project Habitat promotes the establishment and maintenance of wildlife habitat using proven methods that are safe for the environment, economically feasible, and give proven results. AmerenUE also maintains a staff that consists of Supervisors that are certified in the field of arboriculture by the International Society of Arboriculture.

b) Property owners questions about the route selection

As stated above, the Company regrets any inconvenience the proposed line might impose on individual members of the public. The Company will fully comply with all applicable laws and regulations in its dealings with such affected individuals. Furthermore, the Company has agreed to abide by all easements and documentation created between Associated and property owners at the time of easement acquisition. However, the Company has an obligation under the law to plan its electrical

system to meet the needs of all of its customers. It must therefore plan, develop and operate its system in a way that benefits as many members of the public as possible, and which disadvantages as few persons as possible. The Company's proposed line was developed with these principles in mind.

i) Background

On June 1, 2001 AmerenUE and Associated entered into a letter of intent which outlined the terms for the construction of a new 345 kV line to connect AmerenUE's Callaway Substation and Associated's Franks Substation. The need for this line was identified in a joint electrical transmission study. Associated had acquired easements for a similar project in the late 1970's. As a part of the agreement with AmerenUE, Associated agreed to assign these easements to AmerenUE, with AmerenUE agreeing to acquire any additional easements that are needed for the project.

The preliminary route that was selected utilized the approximately 43 miles of existing easements acquired by Associated. For the remaining 11 miles at the northern end of the project the Company elected to continue to parallel the existing transmission line in order to utilize an existing corridor. By utilizing this existing corridor AmerenUE is able to construct the line by clearing a 125' wide right of way on the parallel portion of the route, rather than clearing a 150' wide right of way.

ii) Discussions with Property Owners

The Company developed an adjusted route at the southern portion of the project where the line does not parallel the existing transmission line. The adjusted route was depicted to be several hundred feet to the west in order to avoid placing the new line on the east side of the Redel residence and move the line further away from the

Speiser residence and the Waldbart barn. This adjusted route would have required some new easements and revised easements from the property owners that had the existing easements on their property.

The entire route was presented at informational workshops held November 7 and 8, 2001, in Linn and Vienna, Missouri. Prior to the workshops Ameren met with the county commissioners from Osage, Maries and Pulaski counties to advise them of the project and inform them of when the workshops would be held. The informational workshops were well attended with 64 attending in Linn and 53 in Vienna.

Due to comments received from property owners that attended the workshops, the adjusted route that was presented for the southern end was eliminated. Many of the property owners were of the opinion that the easements and route of the line were negotiated in good faith with Associated years ago and that they had made plans for their property based upon that route. Since the three properties we were trying to accommodate with the alternate route (Redel, Speiser and Waldbart) had existing easements on them and these property owners were aware of the easements, the Company concluded that the line route should utilize the existing easements at the southern end. The Company did, however, agree to minor modifications to the route to accommodate these properties if an agreement could be reached with the other adjoining property owners that would be affected by the change.

A subsequent meeting was held with several property owners (Speiser, Baker, Terry, D'Mellow, and Yoakum) to discuss a revision that would move the route east of the Speiser house. This change would have also moved the line further from the Waldbart barn. After the meeting and further work by the surveyor, it was

determined that the Speiser house would not be located within the existing easement. Therefore, it was decided the route would not be revised as it would have burdened additional property owners.

As a result of comments received from property owners at the workshops other revisions to the route are being considered. The new line will meet the existing transmission line at the Redel property. The intent of the easement, signed by Mr. Redel, was for the new line to be placed on the east side of his house and meet the existing line north of his house. Mr. Redel would now like the line to meet the existing line south of his house so that his house will not be located between the two lines. The Company has agreed to investigate the revision suggested by Mr. Redel. However, his barn would need to be relocated and he would need to grant us a revised easement. In addition, the property owner to the south, Mr. Wyss, would have to agree to grant a revised easement on his property.

From Mr. Redel's property, the route proceeds to the north on the east side of the existing line until it makes a crossing to the west side north of Mr. Rackers' property. Mr. Rackers has requested that the line cross to the west side, further south to avoid crossing his lake. The Company has agreed to this revision if all the affected property owners (Rackers, Wilde, Bray and Buechler) agree to grant revised easements.

The proposed route continues north on the west side of the existing line until it crosses back to the east side north of Highway 50. The owner of Hometown Lumber has requested that the line cross to the east side of the existing line south of Highway 50 to avoid having to relocate one of his buildings. AmerenUE is in the process of finalizing a revision to the route to accommodate his request.

The proposed route continues on the east side of the existing line until it reaches Chamois, where the line will extend to the northeast to tap the existing Callaway-Bland line. Mr. Hackmann has requested that the tap structure not be located in his field as had been proposed at the workshop. The Company is investigating a revision that would move the tap structure further south to accommodate his request.

The final route reflects the comments and concerns expressed by the property owners. While not all of the property owners can be accommodated, the route is designed to have the least overall impact on the entire area. Within the 54 mile route, only two houses and two barns will need to be relocated. One of the barns (Bax) was constructed on the existing easement. The Company has agreed to work with Mr. Bax to have it removed. The Company does not have easements on the properties with the remaining two houses and barn. These structures will need to be relocated or removed. However, as in all easement negotiations, the property owners will be paid a fair market value for the property rights that will be required for this project.

c) Combining existing 161 kV and proposed 345 kV lines on a single structure

Single circuit H-frame construction is the most economical, and reliable design alternative for this project. Further, by paralleling Central's existing 161 kV line on adjacent/existing right-of-way, AmerenUE is minimizing the impact of the new line on the public. Any option that involves placing both circuits on single structures—a double-circuit arrangement-- would significantly increase the cost of the project, have similar clearing requirements and property impacts, decrease reliability, and create additional maintenance and operational concerns.

Overbuilding is not feasible because it would require that the existing

line be taken out of service for an extended period (up to two years approximately) to construct new, larger structures to accommodate both circuits. Because of its importance to Associated, Central and the region in general, it is simply not feasible to take the existing line out of service for any extended period.

The type of structures that would be necessary to support the loads imposed by a double circuit configuration would require that they be constructed of steel and utilize concrete foundations. This would increase the cost of the project by 40 to 60%.

As discussed above, operational considerations will not allow Central's 161 kV line to be taken out of service to facilitate the timely completion of a new double-circuit line along the existing centerline. Instead, new structures would have to be built adjacent to the existing line on the 345 kV easement. Therefore, this new alignment would have tree clearing requirements and property impacts similar to or greater than those necessitated by the proposed H-frame construction. Further, a new double circuit configuration would require that the existing 161 kV line be torn down once the new double circuit had been completed. Obviously, this would involve some disruption, noise, etc. which could be a significant inconvenience to affected property owners.

Utilizing double-circuit structures could also decrease overall system reliability. For structure failures, both circuits would be forced out of service. In addition, in certain circumstances, performing maintenance on one circuit would require that both circuits to be de-energized. Having both of these circuits out of service poses significant operating, reliability, and coordination concerns.

d) Other information that would aid the Commission's decision in defining the public interest.

i) The Company lawfully acquired the Property Rights in Question

As mentioned above, AmerenUE acquired the easement rights for the proposed line from Associated by an assignment. Missouri law allows for easements to be assigned and transferred from one entity to another. Hennick v. Kansas City Southern Railway Co., 269 S.W.2d 646, 651-2 (Mo. 1954); Kansas City Area Transportation Authority v. Ashley, 485 S.W.2d 641, 645 (Mo. App. 1972).

The easements AmerenUE acquired from Associated expressly stated that the easement rights are conveyed to the cooperative "and to its successors, licensees or assigns". Thus, under Missouri law Associated has properly assigned and transferred to AmerenUE the property rights pertaining to the route for the proposed line.

ii) The Commission has no authority to make a legal determination concerning the adequacy of AmerenUE's easement rights.

AmerenUE has properly acquired easement rights for the proposed route from Associated. The Commission cannot address any easement issues because it has no statutory authority to do so. The affected property owners must bring any such disputes to a court, and not to the Commission.

The Commission is a creature of the Legislature and has only such powers as are expressly conferred upon it by statute and those powers reasonably incident thereto. It has no power to determine damages, award pecuniary relief, declare or enforce any principle of law or equity. State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980); Straube v. Bowling Green Gas Co., 227 S.W.2d 666

(Mo. 1950).

Further, the Commission cannot enforce, construe nor annul contracts, nor can it enter a money judgment. Wilshire Construction Company v. Union Electric Company, 463 S.W.2d 903, 905 (Mo. 1971); May Department Stores Co. v. Union Electric Light & Power Co., 107 S.W.2d 41 (Mo. 1937).

Therefore, the Commission should not address any issues concerning the validity of AmerenUE's easements for the proposed route. The Commission does not have the authority to enforce, construe, or annul them.

iii) Conclusion

In this case, the sole question before the Commission is whether it should grant AmerenUE the permission and authorization to construct the proposed line. Section 393.170 R.S. Mo. authorizes the Commission to grant the permission and authorization requested for the proposed line if it "is necessary or convenient for the public service".

As evidenced by the Staff's Recommendation, the proposed line is necessary to provide reliable service. Without the proposed line, neighboring facilities would be overloaded, and this could result in interruptions in service, and possibly public safety concerns. Further, as also shown by the Staff's Recommendation, the proposed route is the least intrusive of all. Any other alternative would require additional property rights, and would create the potential for more property owners to be concerned.

Finally, there are no remaining issues which the Commission should address. Any further disputes between the Company and property owners can and should be handled by the Courts, and not by the Commission.

Therefore, AmerenUE requests that the Commission promptly issue an order granting the Application as being necessary and in the public interest.

UNION ELECTRIC COMPANY
d/b/a AmerenUE

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class U.S. mail, postage prepaid, on this 9th day of May, 2002, on the following:

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