

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

In the Matter of the Application of Union Electric    )  
Company, d/b/a Ameren Missouri for Approval of    )  
Decommissioning Cost Estimate for Callaway    )  
Energy Center and Funding Level of Nuclear    )  
Decommissioning Trust Fund.                                )

**File No. EO-2012-0070**

**STAFF’S NINTH STATUS REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through the Missouri Public Service Commission’s (“Commission”) Staff Counsel Department, and notifies the Commission of the status of the Stipulation And Agreement between the Staff and Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) in the pending file as follows:

1. On June 8, 2012, the Staff filed its Eighth Status Report in which undersigned counsel stated that the press of other Commission cases had not permitted the undersigned Staff counsel to complete the required remaining work on a Stipulation And Agreement with Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) that Staff intended to file along with a Staff recommendation in support. Undersigned Staff counsel had related in a prior status report that the Staff and Ameren Missouri believed they had reached a resolution in principle and Staff needed time to prepare a Stipulation And Agreement and a Staff recommendation in support.

2. The Staff’s willingness to enter into a Stipulation And Agreement at this time regarding the adequacy of the Callaway nuclear generating station decommissioning fund is based in part on the view that the Callaway nuclear unit will be relicensed in the near term and the extension of the Callaway operating license from 2024 to 2044 has a salutary effect on the sufficiency of the funds in the Callaway decommissioning trust fund.

3. However, on June 8, 2012, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) vacated and remanded the Nuclear Regulatory Commission’s (“NRC”) 2010 Update to its Waste Confidence Decision (“WCD”) concerning storage and disposal of spent nuclear fuel from commercial reactors and the NRC’s regulatory implementation of the 2010 Update of the WCD’s through a new Temporary Storage Rule (“TSR”).<sup>1</sup> A three-judge panel unanimously ruled that the NRC failed to conduct a sufficient environmental review under the National Environmental Policy Act (“NEPA”) when it made findings that spent nuclear fuel can be stored safely at commercial reactor sites for at least 60 years after the expiration of the plant’s license and a permanent geological repository for spent nuclear fuel will be available “when necessary.” The D.C. Circuit noted in its decision that the NRC is conducting an Environmental Impact Statement (“EIS”) regarding the environmental impacts of spent nuclear fuel storage beyond the 60-year post license period at issue in the *State of New York* case, and some or all of the problems addressed in the *State of New York* case may be addressed in such a rulemaking. (*State of New York v. Nuclear Regulatory Comm’n*, No. 11-1045, 2012 WL 2053581 (D.C. Cir. 2012).

4. Since NEPA applies to the relicensing process, this D.C. Circuit decision appears to have some relevance to the Staff’s position on the sufficiency of Ameren Missouri’s decommissioning trust fund. The D.C. Circuit stated as follows in the *State of New York* case regarding NEPA and relicensing:

---

<sup>1</sup> The D.C. Circuit’s June 8, 2012 decision in the *State of New York* case should not be confused with the D.C. Circuit Court of Appeals’ June 1, 2012 decision overturning the U.S. Secretary of Energy’s 2010 assessment under the Nuclear Waste Policy Act of the adequacy of the Nuclear Waste Fund’s one-tenth of a cent (one mill) per kilowatt hour (kWh) fee on nuclear generated electricity. The D.C. Circuit retained jurisdiction and remanded the matter to the U.S. Department of Energy (“DOE”). The fee is not suspended. The Secretary of DOE has six (6) months to provide an assessment of the fee that DOE believes is legally sufficient and in accordance with the D.C. Circuit’s decision. (*NARUC v. US DOE*, No. 11-1066, 2012 WL 1957942 (D.C. Cir. 2012)).

. . . Under NEPA, each federal agency must prepare an Environmental Impact Statement (“EIS”) before taking a “major Federal action[ ] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). An agency can avoid preparing an EIS, however, if it conducts an Environmental Assessment (“EA”) and makes a Finding of No Significant Impact (“FONSI”). *See Sierra Club v. Dep’t of Transp.*, 753 F.2d 120, 127 (D.C. Cir. 1985); *see also Theodore Roosevelt Conservation P’ship v. Salazar*, 616 F.3d 497, 503–04 (D.C. Cir. 2010) (explaining NEPA procedures in detail). The issuance or reissuance of a reactor license is a major federal action affecting the quality of the human environment. *See New York v. Nuclear Regulatory Comm’n*, 589 F.3d 551, 553 (2d Cir. 2009).

*State of New York v. Nuclear Regulatory Comm’n*, No. 11-1045, 2012 WL 2053581, 3 (D.C. Cir. 2012).

5. New York Attorney General Eric T. Schneiderman, whose office apparently led a coalition of state attorney generals and another entity in the successful challenge of the 2010 Update of the WCD and the new TSR, issued a news release after the D.C. Circuit handed down its June 8, 2012 *State of New York* decision in which he stated, “This decision means that the NRC cannot license or re-license any nuclear power plant, including the Indian Point facility in Westchester County, until it examines the dangers and consequences of long-term on-site storage of nuclear waste.” The Van Ness Feldman, Washington, D.C. law firm issues “news alerts” on various regulatory matters and on June 13, 2012 issued a “news alert” in which it stated that the implications of the June 8, 2012 *State of New York* decision were as follows:

This decision has significant implications for current and recently completed NRC licensing proceedings, though it will be some time before its full impacts are clear. If a mandate vacating the WCD and TSR is issued, then currently pending NRC licensing proceedings and recently issued licenses could be significantly affected. First, in pending proceedings, the NRC will not be able to rely on the vacated rules in issuing commercial reactor licenses, license extensions, and “power uprate” license amendments. It would appear that the NRC will either have to re-promulgate the WCD and TSR rules after complying with NEPA or conduct the SNF-related NEPA review on a case-by-case basis. . . .

Thus, the full implications for pending and recently completed licensing proceedings will not be known for some time. In the meantime, the D.C. Circuit’s

decision casts a cloud of uncertainty over pending licensing proceedings at the NRC, and may affect judicial review of recent licensing actions.

The Van Ness Feldman “news alert” also explained the timing of possible action to follow:

The NRC has 45 days to petition the Court for rehearing. The Court’s mandate implementing the decision will not issue until seven days after the expiration of the government’s 45-day rehearing window. If the NRC seeks rehearing, the general rule is that the mandate will not issue until seven days after final disposition of the rehearing request. If the Solicitor General authorizes the NRC to petition the Supreme Court for certiorari, a further stay may be possible.

6. Counsel for Ameren Missouri has asked to meet with the Staff to address Ameren Missouri’s view of the effect of the *State of New York* decision on the relicensing of the Callaway nuclear unit. An effort is being made to meet between June 27 and June 29, 2012.

7. The Commission on June 12, 2012 issued an *Order Directing Staff To File A Stipulation And Agreement Or A Further Status Report*. The Commission directed the Staff to file a stipulation and agreement with Ameren Missouri or a further status report no later than June 22, 2012.

8. As a consequence of the June 8, 2012 *State of New York decision*, the Staff requests an additional two weeks to Friday, July 6, 2012 to file a Stipulation And Agreement with Ameren Missouri and a Staff recommendation in support or some other Staff recommendation.

9. The Staff hopes this planned procedure is acceptable to the Commission.

**WHEREFORE**, the Staff submits the instant Staff status report and requests additional time to Friday, July 6, 2012 to file a Stipulation And Agreement with Ameren Missouri and a Staff recommendation in support or some other Staff recommendation.

Respectfully submitted,

**/s/ Steven Dottheim**

Steven Dottheim

Chief Deputy Staff Counsel

Missouri Bar No. 29149

(573) 751-7489 (Telephone)

(573) 751-9285 (Fax)

steve.dottheim@psc.mo.gov (e-mail)

Attorney for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing *Staff's Ninth Status Report* have been transmitted electronically to all counsel of record this 22nd day of June, 2012.

**/s/ Steven Dottheim**