

**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 and Funding)
Level of Nuclear Decommissioning Trust)
Fund)

Case No. EO-2023-0448

**PUBLIC COUNSEL’S RESPONSE TO AMEREN MISSOURI AND STAFF’S
MOTION TO STRIKE PORTIONS OF PUBLIC COUNSEL’S INITIAL BRIEF**

COMES NOW the Office of Public Counsel (“Public Counsel”) and for its response to Ameren Missouri and the Commission’s Staff’s motion to strike portions of Public Counsel’s Initial Brief states:

1. Ameren Missouri and the Commission’s Staff filed a nonunanimous stipulation and agreement in which they not only addressed the issues Ameren Missouri raised in its application and in the prefiled testimony, but also first injected into this case the regulatory treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE.

2. Commission rule 20 CSR 4240-2.115(2)(D) provides:

A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

3. Public Counsel timely objected to Ameren Missouri and the Commission’s Staff’s nonunanimous stipulation and agreement.

4. Once Public Counsel objected to Ameren Missouri and the Commission’s Staff’s settlement agreement, by operation of rule 20 CSR 4240-2.115(2)(D), quoted *verbatim supra*, like the other terms of their agreement, how they addressed the regulatory treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE in their settlement agreement became their positions.

5. As to the issues raised by Ameren Missouri's application and in the prefiled testimony, Public Counsel specifically identified which terms to which it objected and those it supported. Public Counsel did not specifically object to the newly injected issues of the treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE. Not objecting implicates the rule 20 CSR 4240-2.115(2)(B) waiver of the right to a hearing, but not whether the Commission will address in this case the treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE or a party's right to argue the issue in briefs.

6. In its initial brief Public Counsel responded to Ameren Missouri and the Commission's Staff's proposed regulatory treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE primarily because in their opening statements they both advocated that the Commission adopt their settlement agreement.¹ Consistently, they advocate in their initial briefs that the Commission adopt/approve their settlement agreement.² Further, in its initial brief Ameren Missouri specifically requests the Commission to adopt Ameren Missouri and the Commission's Staff's settlement agreement position on the regulatory treatment of independent spent fuel storage installation funds Ameren Missouri recovers from the DOE:

10. Recognizing that ISFSI funds recovered from the DOE will be used to reduce plant in-service and depreciation reserve balances by the amount of the proceeds until the costs of the re-racking project and dry cask storage construction project are covered. Any ISFSI funds recovered from the DOE in excess of the re-racking project and dry cask storage construction project costs will be used to offset the decommissioning costs of the Plant and ISFSI.³

7. When preparing Public Counsel's initial brief undersigned counsel was unaware that in Case No. EO-2021-0050 the Commission had ordered,

¹ Tr. 2:4-9; 12-13.

² Ameren Missouri initial brief, pp. 1 & 16, ¶10; Commission's Staff initial brief, pp. 3 & 6.

³ Ameren Missouri initial brief, p. 16, ¶10.

10. ISFSI funds recovered from the DOE will be used to reduce plant-in-service and depreciation reserve balances by the amount of the proceeds until the costs of the re-racking project and dry cask storage construction project are covered. Any ISFSI funds recovered from the DOE in excess of the re-racking project and dry cask storage construction project costs will be used to offset the decommissioning costs of the Plant and ISFSI.

and

11. Pursuant to 20 CSR 4240-20.070(16), excess trust funds from the costs of decommissioning the Plant and ISFSI are to be reimbursed to the ratepayers through the ratemaking process.

8. Regardless, Public Counsel's argument is not a collateral attack on any prior Commission order as Ameren Missouri and the Commission's Staff assert. Public Counsel is not arguing that Ameren Missouri retroactively change how it has applied any independent spent fuel storage installation funds that it already has recovered from the DOE; Public Counsel is arguing for how Ameren Missouri is to apply those recovered funds prospectively. Public Counsel is arguing that because circumstances have changed the funds should be returned to Ameren Missouri's customers who paid through rates the amounts Ameren Missouri paid to the DOE for the federal independent spent fuel storage installation that the United States never built. All parties recognize that the present value of the assets in the Callaway Energy Center Nuclear Decommissioning Trust Fund (inclusive of the Independent Spent Fuel Storage Installation) is more than sufficient to decommission both Callaway Unit 1 and the Callaway Independent Spent Fuel Storage Installation in 2044.

9. Further, Ameren Missouri and the Commission's Staff's argument that Public Counsel's position here is inconsistent with the position it took regarding Evergy Metro's Wolf Creek decommissioning trust fund is without merit because that fund was at an appropriate level for where it is in its license life when the Commission last reviewed it and it then was appropriate

to apply independent spent fuel storage installation funds Evergy Metro recovered from the DOE to that trust fund.

10. As Public Counsel understands their motion, Ameren Missouri and the Commission's Staff are arguing that because the regulatory treatment of the independent spent fuel storage installation funds that Ameren Missouri recovers from the DOE is not a listed issue, then their position prevails because Public Counsel did not specifically object to their proposal for how to treat those funds in their settlement agreement. Public Counsel disagrees. It is Public Counsel's position that the Commission need only address in this case the issues listed as uncontested—the cost to decommission Callaway and the amount Ameren Missouri retail customers should contribute annually to the Callaway decommissioning trust fund—and that Public Counsel is not limited on what it may argue in its briefs as to other matters parties have raised whether as specifically identified as issues or otherwise. Further, if one were to accept Ameren Missouri and the Commission's Staff's argument that only listed issues are before the Commission for decision, then the Commission should disregard their positions and arguments for the regulatory treatment of the independent spent fuel storage installation funds that Ameren Missouri recovers from the DOE

11. As Public Counsel argued in its initial brief, there is no reason for the Commission to address in this case the issues listed as contested or the regulatory treatment of the independent spent fuel storage installation funds that Ameren Missouri recovers from the DOE; however, in light of the change in circumstances—that the present value of the assets in the Callaway Energy Center Nuclear Decommissioning Trust Fund (inclusive of the Independent Spent Fuel Storage Installation) is more than sufficient to decommission both Callaway Unit 1 and the Callaway Independent Spent Fuel Storage Installation in 2044—the Commission should open another

proceeding to reconsider how Ameren Missouri prospectively is to apply the independent spent fuel storage installation funds that it recovers from the DOE.

Wherefore, Public Counsel prays the Commission to deny Ameren Missouri and the Commission's Staff's motion to strike portions of Public Counsel's Initial Brief.

Respectfully,

/s/ Nathan Williams

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 13th day of May 2025.

/s/ Nathan Williams