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Missouri Public
Service Commission

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UNION ELECTRIC

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Application of Union Electric Company for Approval of Decommissioning Cost Estimate and Funding Level of Nuclear Decommissioning Trust Fund.*

Case No. EO-94-81

Decided June 14, 1994

Electric §45. Although nuclear decommissioning cost estimate had increased substantially, utility allowed to continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without a change in its Missouri retail jurisdiction rates, where federal investment restrictions on decommissioning trust funds were lifted and favorable changes were made to federal tax law relating thereto.

Electric §45. Commission found increased decommissioning costs were included in utility's cost of service and reflected in its current rates for ratemaking purposes.

**ORDER APPROVING COST ESTIMATES AND FUNDING LEVELS
FOR NUCLEAR DECOMMISSIONING COSTS**

On September 1, 1993, Union Electric Company (UE) filed an application for approval of its decommissioning cost estimate and funding level of its nuclear decommissioning trust fund, along with a request for waiver for the filing requirements of 4 CSR 240-20.070(9). On September 14, 1993, the Commission issued an order giving notice to certain individuals and entities, setting an intervention deadline, and giving an opportunity for all parties to address several questions, specifically:

1. Whether either the letter or spirit of Section 393.292, R.S.Mo. Cum. Supp. 1992, or 4 CSR 240-20.070(9) and 4 CSR 240-20.070(10) require a hearing when an electric utility is requesting no change to its authorized rates and charges for its nuclear decommissioning trust fund?
2. What type of hearing is required, if one is required?
3. Whether a waiver is necessary under 4 CSR 240-20.070(9) and 4 CSR 240-20.070(10), where no change to the current funding level is contemplated, and thus, any tariff filed would be identical to the electric utility's current tariff?

UE, the Staff of the Missouri Public Service Commission (Staff), and the Office of the Public Counsel (Public Counsel) all filed responses stating their respective positions regarding the questions raised in the Commission's order of September 14, 1993. UE concluded that if no party proposed a change to UE's rates, no hearing would be necessary, while Public Counsel concluded that unless a party requested a hearing no hearing would be necessary, since by sending notice the Commission allowed proper entities the opportunity for a hearing, sufficient to satisfy the statutory requirement. Staff, however, concluded that a hearing would

*See page 356, Volume 1 MPSC 3d for another order related to this case.

Exhibit No. 27
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be necessary if a party contended that the level or annual accrual of funding should increase even if authorized rates and charges did not, and the utility disagreed with this position. UE, Staff, and Public Counsel all agreed that in the event a hearing was necessary, an evidentiary hearing would be required, and that a waiver of the tariff filing requirement would not be necessary since the requirement applies only to situations in which a change in rates is proposed. UE indicated that it had reexamined the rules, and revised its position with respect to the necessity of a waiver.

No interventions were filed. Pursuant to a motion by Staff, the Commission issued a protective order, consolidated this case with Case No. EO-94-80, a similar case involving Kansas City Power & Light Company, for purposes of hearing, and set a prehearing conference for both cases. On November 23, 1993, a prehearing conference commenced in this case, along with Case No. EO-94-80. On February 17, 1994, UE, Staff, and Public Counsel filed a Unanimous Stipulation And Agreement, with all parties signing.

UE is a Missouri corporation, with its principal place of business located at 1901 Chouteau Avenue, St. Louis, Missouri, and is in the business of supplying electricity and gas in parts of Missouri and elsewhere. It is an electrical corporation and public utility as defined in Section 386.020, R.S.Mo. Supp. 1993, and is subject to the jurisdiction of the Commission pursuant to Chapters 386 and 393, R.S.Mo. 1986, as amended. UE owns 100 percent of the Callaway Plant, and 87 percent of that ownership interest is allocated to the Missouri retail jurisdiction.

The application filed by UE is intended to comply with the provisions of 4 CSR 240-20.070(9), which require that utilities with decommissioning trust funds perform and file with the Commission cost studies detailing the utilities' latest cost estimates for decommissioning their nuclear generating units, along with the funding levels necessary to defray these decommissioning costs, every three years. As part of its application, UE filed a decommissioning cost study for the Callaway Plant dated August 1993 and prepared by TLG Engineering, Inc. for TLG Services, Inc. of Bridgewater, Connecticut. The study provides a cost estimate of decommissioning costs for the Callaway Plant at the expiration of its license in the year 2024, 40 years from the date of issuance, under current regulatory requirements and based upon present-date technology. Included in the study is the cost impact of considerations specific to the Callaway Plant site, as well as a contingency factor, which makes specific provision for unforeseeable elements of cost within the defined project scope. This study addresses three alternative decommissioning options, DECON, SAFSTOR, and ENTOMB. The least expensive alternative is DECON, which the study estimates would have a cost of \$371,511,680 in 1993 dollars.

Based upon the estimate of \$371,511,680, UE attached to its application as Attachment 2 a chart which indicates that, assuming the use of a reasonable set of economic, financial and investment assumptions, the continuation of annual

accruals at current levels will be adequate. Although the estimate of \$371,511,680 is larger than the 1990 estimate of \$347,000,000 approved in Case No. EO-91-300, UE believes it is reasonable to continue the annual accruals at their current level of \$6,214,184, and includes in the assumptions used in its analysis changes in applicable federal tax laws and an investment strategy which sifts out equities in its investment mix five to ten years before the first significant decommissioning payment from the trust.

The parties state in the Stipulation And Agreement that all parties stipulate and agree that the cost in 1993 dollars to immediately decommission the Callaway Plant upon the end of its 40-year operating license shall be deemed to be \$371,511,680. The stipulation further provides that the decommissioning cost study of UE shall be received into evidence, and UE's Missouri retail jurisdiction annual decommissioning expense accrual and trust fund payment shall be \$6,214,184, which is the current payment requirement for the Missouri jurisdictional amount under the Commission's Report and Order in Case No. EO-91-300. The stipulation alludes to Attachment A attached to the stipulation for a calculation of this number and the assumptions upon which it is premised, and states that solely for the purposes of the stipulation, Staff and Public Counsel do not object to UE's assumptions as to inflation and trust fund earnings.

The Stipulation And Agreement further requires UE to take certain actions. UE is required to continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without a change in its Missouri retail jurisdiction rates; required to seek an Internal Revenue Service ruling regarding the continuation of its current accrual and funding level if necessary to receive the maximum tax benefits associated with its decommissioning costs; and required to file or to have its trustee file on a prospective basis in the instant docket one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6). Finally, the stipulation requests that the Commission's order specifically recognize that UE's decommissioning costs are included in its current cost of service and are reflected in its current rates for ratemaking purposes.

The Commission, after considering the aforesaid Stipulation And Agreement and Attachment A thereto, as well as the decommissioning cost study filed by UE, determines that this Stipulation And Agreement is just and reasonable as to the continuation of Missouri retail jurisdiction expense accruals and nuclear decommissioning trust fund payments at current levels without a change in Missouri retail jurisdiction rates, as well as all other agreed-upon terms and conditions specified therein, as previously set out herein.

The Commission is also aware of its prior rulemaking in Case No. EX-93-304, which amended the Commission's rule on decommissioning trust funds, 4 CSR 240-20.070. In that proceeding the Commission became aware of the lifting of federal investment restrictions on decommissioning trust funds and favorable

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changes to federal tax law relating thereto, and partly in response to these changes amended its rule to allow investment in taxable bonds and equity securities and increased the limit on equity investments from 40 percent to 65 percent, which permits greater investment flexibility and greater asset portfolio diversification, with the potential for higher after-tax returns on investments for nuclear decommissioning trusts. Although not specifically alluded to by UE, the opportunity for greater flexibility and diversification and potential for higher after-tax returns on investments was apparently one of the factors considered in the calculations made by UE which indicated that a continuation of annual accruals at current levels would be adequate even though the 1993 decommissioning cost estimate had increased over the 1990 estimate.

In restating portions of the Stipulation And Agreement, the Commission is not changing the language and terms of the stipulation, but adopts it in full as resolving all issues that were set out therein. The Commission in adopting the stipulation is satisfied that the negotiated settlement represents a reasoned and fair resolution of the issues in this case and that it would be in the interest of all parties for the Commission to adopt the stipulation.

Given the responses to the Commission's questions in its order of September 14, 1993, and given that no applications to intervene were filed and no other party requested a hearing, the Commission is of the opinion that a hearing is not necessary. *See, e.g., State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Pursuant to Section 536.060, R.S.Mo. 1986, the Commission may approve a stipulation and agreement concluded among the parties as to any issues in a contested case. The standard for Commission approval of a stipulation and agreement is whether it is just and reasonable. The Commission, in accordance with its statutory power, has determined that the Stipulation And Agreement which settles all issues raised in this case is just and reasonable and appropriate and therefore should be approved in full.

Based upon the Commission's findings of fact in this case and conclusions of law, the Commission determines that the cost in 1993 dollars to immediately decommission the Callaway Plant at the end of its 40-year operating license shall be deemed to be \$371,511,680; that UE's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,214,184; and that these decommissioning costs are included in UE's current cost of service and are reflected in its current rates for ratemaking purposes.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission hereby approves and adopts the Stipulation And Agreement filed on February 17, 1994, and agreed to and signed by Union Electric Company, the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, which is incorporated herein by reference and attached hereto as Attachment 1.

2. That the Stipulation And Agreement shall be received into evidence as Exhibit No. 1, and the decommissioning cost study filed by Union Electric Company shall be received into evidence as Exhibit No. 2.

3. That pursuant to the Stipulation And Agreement, the cost in 1993 dollars to immediately decommission the Callaway Plant at the end of its forty (40) year operating license shall be deemed to be \$371,511,680.

4. That pursuant to the Stipulation And Agreement, Union Electric Company's Missouri retail jurisdiction annual decommissioning expense accruals and trust fund payments shall continue at the current level of \$6,214,184.

5. That the current decommissioning costs for the Callaway Plant are included in Union Electric Company's current cost of service and are reflected in its current rates for ratemaking purposes.

6. That Union Electric Company or its trustee is directed to file on a prospective basis in Case No. EO-94-81 one (1) copy of the quarterly reports required by 4 CSR 240-20.070(5) and one (1) copy of the annual reports required by 4 CSR 240-20.070(6).

7. That this order shall become effective on June 24, 1994.

McClure, Perkins, and Kincheloe, CC., Concur. Mueller, Chm., and Crumpton, C., Absent.

UNANIMOUS STIPULATION AND AGREEMENT

Case No. EO-94-81

COMES NOW Union Electric Company (UE or Company), Staff of the Missouri Public Service Commission (Staff), and Office of the Public Counsel (Public Counsel), and state the following in resolution of Case No. EO-94-81.

Section 393.292 RSMo. Cum. Supp. 1993 states that the Commission, pursuant to regulations, may authorize changes to the rates and charges of an electrical corporation as a result of a change in the level or annual accrual of funding necessary for its nuclear power plant decommissioning trust fund. 4 CSR 240-20.070(9) requires that on or before September 1, 1990 and every three (3) years thereafter, utilities with decommissioning trust funds shall file cost studies with the Commission detailing their latest cost estimates for decommissioning, along with funding levels necessary to defray these costs.

On September 1, 1993, pursuant to 4 CSR 240-20.070, UE filed an Application for approval of its decommissioning cost estimate and funding level for its nuclear decommissioning trust fund for the Company's Callaway nuclear plant (Callaway). UE also filed a request for a waiver of that part of 4 CSR 240-20.070(9) that requires UE to file "appropriate tariff(s) effectuating the change in rates necessary to accomplish the funding required."

Accompanying UE's Application was a cost study detailing its latest estimate for decommissioning Callaway. Also accompanying the Application was an analysis of the current funding level for UE's decommissioning trust, as set forth

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in a three-page document entitled "Union Electric Nuclear Decommissioning Zone of Reasonableness, Missouri Jurisdiction." Based on this analysis, UE concluded that its current funding level should result in a final decommissioning trust amount which is sufficient to cover the costs estimated in UE's decommissioning cost study under what UE believes are a reasonable set of economic, financial, and investment assumptions. Consequently, UE did not seek any changes to its funding level and asked the Commission to approve the current amount.

On September 14, the Commission issued an Order and Notice setting a deadline for intervention, and posing several questions to be addressed by interested parties. Those questions were as follows: (1) whether the above mentioned statute and Commission rule required a hearing when an electric utility was requesting no change to its authorized rates and charges for its decommissioning trust fund; (2) if a hearing is required, what type is required; and (3) whether a waiver is necessary under the Commission's rule for filing tariffs where no change to the current funding level is contemplated, and thus, any tariff filed would be identical to the utility's current tariff.

On October 14, UE, Staff, and Public Counsel filed responses to the questions posed by the Commission. In part, all three parties responded that neither the statute nor the Commission's rule required a hearing where no party requested a change to the utility's authorized rates. Further, all three responded that the Commission's rule did not require a waiver of the requirement to file new tariffs when the utility was not requesting any changes in rates. Consequently, after reconsideration, UE concluded that it was not necessary to request a waiver of the tariff filing requirement. No other party filed a response to the Commission's questions, or moved to intervene in this proceeding.

Also on October 14, the Staff filed a Motion to consolidate this proceeding with the proceeding to approve a decommissioning cost estimate and trust funding level for Kansas City Power and Light Company (KCPL) with respect to its Wolf Creek nuclear plant (Wolf Creek) (Case No. EO-94-80). Staff sought to consolidate Case Nos. EO-94-80 and EO-94-81 for several reasons. Neither KCPL nor UE sought changes in their authorized rates and charges to their decommissioning trust funding levels. Both Wolf Creek and Callaway have the same architect/engineer, nuclear steam supply system (NSSS), and turbine-generator manufacturer. Both KCPL and UE retained the same consulting firm, LaGuardia and Associates/TLG Engineering, Inc., to perform the updates to their 1990 decommissioning cost studies. Staff believed that Case Nos. EO-94-80 and EO-94-81 involved related questions of law and fact. On November 5, the Commission issued an Order which consolidated the two cases as requested by the Staff, adopted a Protective Order, and scheduled a Prehearing Conference.

On November 23, a Prehearing Conference occurred. During the course of that Prehearing Conference and thereafter, certain agreements were reached. Consequently, UE, Staff, and Public Counsel stipulate and agree as follows:

1. The cost in 1993 dollars to immediately decommission Callaway, upon the end of its operating license (40 years of service), shall be deemed to be \$371,511,680.

2. UE's Missouri retail jurisdiction annual decommissioning expense accrual and trust fund payment shall be \$6,214,184.¹ See Attachment A to this Unanimous Stipulation and Agreement for the calculation of this number and the assumptions on which it is premised. Payments to the trustee of the external trust fund are made on a quarterly basis in the month following the end of the quarter to which the payment applies. Solely for purposes of the instant Unanimous Stipulation and Agreement, the Staff and Public Counsel do not object to UE's assumptions as to inflation and trust fund earnings.

3. UE shall continue its Missouri retail jurisdiction expense accruals and trust fund payments at current levels without a change in its Missouri retail jurisdiction rates.

4. In order for UE to receive the maximum tax benefits associated with its decommissioning costs, UE shall seek, if required, an Internal Revenue Service (IRS) ruling regarding continuing its current accrual and funding level. The parties to this Unanimous Stipulation and Agreement agree that such decommissioning costs are included in UE's current cost of service and are reflected in its current rates for ratemaking purposes and request that this be specifically recognized in the Commission's Report and Order.

5. UE or its trustee shall file on a prospective basis in the instant docket one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6).

6. None of the parties to this Unanimous Stipulation and Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Unanimous Stipulation and Agreement, or for which provision is made in this Unanimous Stipulation and Agreement.

7. The Staff may provide to the Commission an explanation of its rationale for entering into this Unanimous Stipulation and Agreement and to provide the Commission with whatever further explanation the Commission requests. The Staff's explanation shall not become a part of the record of this proceeding and shall not bind or prejudice the Staff in any future proceeding or in this proceeding in the event the Commission does not approve the Unanimous Stipulation and Agreement. It is understood by the signatories hereto that any rationales advanced by the Staff are its own and are not acquiesced in or otherwise adopted by UE or any other party hereto.

¹As a result of the Commission's Report and Order in Case No. EO-91-300, UE's annual trust fund payment requirement currently is \$6,214,184 (Missouri jurisdictional amount).

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8. This Unanimous Stipulation and Agreement represents a negotiated settlement for the sole purpose of addressing the authority requested by the Application of UE. Except as specified herein, the parties to this Unanimous Stipulation and Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Unanimous Stipulation and Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve the instant Unanimous Stipulation and Agreement, or in any way condition its approval of same.

9. The decommissioning cost study of UE shall be received into evidence.

10. The provisions of this Unanimous Stipulation and Agreement have resulted from extensive negotiations among the signatory parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Unanimous Stipulation and Agreement in total, it shall be void and no party hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof unless otherwise provided herein.

11. In the event the Commission accepts the specific terms of this Unanimous Stipulation and Agreement, the signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1986; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986. This waiver applies only to a Commission Report and Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Unanimous Stipulation and Agreement.

WHEREFORE, the signatories hereto request that the Commission (1) approve the instant Stipulation And Agreement, (2) specifically recognize in its Report And Order that Union Electric Company's current decommissioning costs are included in its current cost of service and are reflected in its current rates for ratemaking purposes, and (3) direct that Union Electric Company or its trustee file on a prospective basis in Case No. EO-94-81 one copy of the quarterly reports required by 4 CSR 240-20.070(5) and one copy of the annual reports required by 4 CSR 240-20.070(6).