

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service Commission  
held at its office in Jefferson City on the  
25th day of July, 2002.

Staff of the Missouri Public Service Commission, )  
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 )  
 Complainant, )  
 )  
 v. )  
 )  
 Union Electric Company, )  
 d/b/a AmerenUE, )  
 )  
 Respondent. )

**Case No. EC-2002-1**

**REPORT AND ORDER APPROVING STIPULATION AND AGREEMENT**

Syllabus: This order approves a settlement reached by the parties that, *inter alia*, requires Union Electric Company d/b/a AmerenUE to reduce rates by \$110 million over three years, and provide a one-time credit of \$40 million to its customers.

The evidentiary hearing in this case began on July 11, 2002. On July 12, the parties informed the Commission that they had reached an agreement in principle that would resolve all issues. The Commission recessed the hearing to allow the parties the opportunity to finalize the agreement and reduce it to writing. On July 16, most of the parties filed a Stipulation and Agreement that resolves all outstanding issues for the purpose of this case. Later that day, the only two parties that did not join in the agreement (Kansas City Power and Light Company and Laclede Gas Company) each filed a pleading

in which each stated that it did not oppose the stipulation and waived a hearing. Pursuant to 4 CSR 240-2.115, the Commission will treat the agreement as unanimous.

The agreement is somewhat complex, and its salient points will be discussed here. The agreement itself is attached to this order.

The first portion of the agreement deals with rate reductions and credits. AmerenUE agrees to make a one-time credit to its Missouri retail electric customers of \$40 million. This credit is in settlement of Case Nos. EM-96-149, EC-2002-1025, and EC-2002-1059, all of which relate to the now-expired Experimental Alternative Regulation Plan. AmerenUE will reduce rates as of April 1, 2002, by \$50 million. A credit reflecting the reduction in rates for the period between April 1 and the effective date of this order will be made to all customers. AmerenUE will again reduce rates on April 1, 2003, by \$30 million, and again on April 1, 2004, by \$30 million. The parties agree that none of them<sup>[1]</sup> shall file a case to institute a general rate increase or decrease before January 1, 2006.

The agreement also provides that AmerenUE will make necessary infrastructure investments during the period of time covered by the agreement. These investments include 700 megawatts of new capacity, upratings of existing plants of 270

megawatts, and new transmission lines and upgrades to existing transmission lines that will increase import capability by 1300 megawatts. These investments will total \$2.25 to 2.75 billion.

AmerenUE, as part of the agreement, also commits to make certain investments in the communities it serves. It will make an initial \$5 million contribution to its Dollar More Program on September 1, 2002, and will contribute \$1 million more each year for the next four years. It will create a weatherization fund for its low-income customers, and initially fund it with \$2 million on September 1, 2002, and will contribute an additional \$500,000 each year for the next four years. AmerenUE will also create a community development corporation and fund it with \$5 million on September 1, 2002, and an additional \$1 million each year for the next four years. Finally, AmerenUE will create a residential and commercial energy efficiency fund and fund it with \$2 million on September 1, 2002, and an additional \$500,000 each year for the next four years. All of these investments will be recorded below the line, and not treated as a regulated expense. The details for several of the programs will be worked out through the collaborative efforts of interested entities.

The agreement also contains a number of miscellaneous provisions. For example, AmerenUE will modify the way it calculated its dismantling costs and/or service lines for certain assets with the result that it will decrease its depreciation expense by approximately \$20 million annually. AmerenUE also commits to provide to the signatories a cost of service study by January 1, 2006, covering the twelve months ending June 30, 2005. Collaborative efforts will also be used to design and implement a residential time-of-use pilot project, and to increase the amount of demand-response options (including interruptible load).

On July 19, 2002, the Staff of the Commission filed a memorandum in support of the agreement, as required by paragraph 15a of the agreement. Staff explains its rationale for entering into the agreement, and explains in some detail why the agreement is in the public interest. Staff tried to anticipate the questions the Commission might have regarding the agreement, and gave its answers to those questions.

On July 24, 2002, the Missouri Industrial Energy Consumers (MIEC), a group of

AmerenUE's industrial customers, filed a response to the Staff memorandum. The MIEC explained that it supports the agreement for some of the same reasons as the Staff, but disagreed with others of the Staff's reasons. Also on July 24, the Staff filed an addendum to its memorandum, and a revised version of the attachment to the agreement. The addendum addresses and explains the provisions in the agreement about the decommissioning of the Callaway nuclear power plant, and raises an issue about the proper treatment of credits that would be due to AmerenUE customers that have been transferred to an electric cooperative pursuant to a Commission order. The revised attachment simply refines the calculations in the original attachment, resulting in a change of \$.001 to one rate element in the second year of the moratorium period, and another change of the same amount to a rate element in the third year. Any party that objects to the revisions to the attachment must file a pleading raising its objection as soon as possible, and will be ordered to do so.

The Commission re-convened the hearing on July 24, 2002, for the purpose of asking questions of the parties and of the parties' witnesses. At that hearing, all parties who had not already filed a response to the Staff's memorandum waived their right to do so. The Missouri Energy Group, a group of AmerenUE's industrial customers, concurred with the response to the Staff memorandum filed by the MIEC. The parties affirmed their support for the agreement, and explained why it is in the public interest. The Commission admitted into the record all of the prefiled testimony that had not already been admitted.

Pursuant to Section 536.060, RSMo 2000, the Commission may accept the agreement as a resolution of the issues in this case. The most compelling evidence supporting the conclusion that the agreement is in the public interest is the broad range of interests that entered into it. The parties include representatives of the spectrum of AmerenUE customers, from the small residential customers to the largest industrial customers. The parties also include other utilities and the Missouri Department of Natural Resources. For such a diversity of interests to be able to reach a comprehensive resolution of the 47 separate issues that were in dispute at the beginning of the hearing, the agreement must necessarily be

in the public interest. The responses of the parties to Commission questions at the hearing on July 24 confirm this conclusion.

Another important consideration in the Commission's conclusion that the agreement is in the public interest is that it does not restrict the Commission's powers in any way. The Commission has the right under Section 386.390, RSMo 2000, to institute a complaint about the reasonableness of AmerenUE's rates, and that right is not affected by the agreement. Although the parties (see footnote 1) have agreed to give up some of their rights, the Commission does not, by approving the agreement, give up any of its rights. Furthermore, the Commission has broad oversight over AmerenUE in addition to its right to institute a rate complaint, and the agreement does not limit the Commission's oversight.

The Commission has reviewed the agreement, the memorandum in support of it and the responses to that memorandum, the testimony filed and admitted into the record, and finds the agreement to be reasonable and in the public interest and will, therefore, approve it.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement filed on July 16, 2002, is approved, and all parties shall be bound by its terms.
2. That any party that objects to the revisions, filed by the Staff of the Commission on July 24, 2002, to Attachment A to the Stipulation and Agreement must file a pleading raising its objection no later than July 30, 2002.
3. That this order shall become effective on August 4, 2002.

**BY THE COMMISSION**

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(S E A L)



complete confidence in the investigation by the Staff, Public Counsel, and other parties of the details of the earnings and earning capacity of AmerenUE. Only with thoroughness can an evaluation be made as to whether this agreement is in the public interest. Staff, Public Counsel, the Attorney General's office, and various industry groups all represented to the Commission that they believe this settlement to be so. In fact, Public Counsel and Staff stated that they believed the settlement was within a range of the appropriate rate of return for AmerenUE based upon their particular viewpoints and calculations.

The importance of that representation to this Commission cannot, in my estimation, be over-emphasized. Ameren alone is in full possession of its plans for the next four years. While some details of those plans have been disclosed, a myriad of detail remains within Ameren's knowledge alone. Staff and Public Counsel have agreed, barring changes of circumstances of sufficient magnitude under the Stipulation and Agreement to warrant an end to the moratorium on rate adjustments, to give the company significantly "free rein". Having a resolution of AmerenUE's case rids Ameren Corporation of a substantial unknown and allows it to focus in other arenas. With Ameren Corporation's capital to debt ratio it may be in a position to expand in the future in an industry containing highly leveraged companies with a need to sell assets. The impact of such an expansion of AmerenUE is not clear nor is it evident that this possibility was considered in the settlement.

Staff, Public Counsel, and the other parties received known and reduced rates for ratepayers by this Stipulation. Had the Commission ordered an incentive plan it is possible that customers would receive greater benefits. It is possible too, that a commission order might have produced lower rates than are achieved in this settlement under traditional ratemaking principles.

In both instances the certainty gained by this Stipulation would be lessened or even nonexistent. Ratepayers ride to a limited extent more or less with the company's success under incentive plans. Furthermore, even after it is clear that success has occurred, calculations of the amount of ratepayer share of past incentive plans of AmerenUE have been the subject of litigation and delay. Traditional ratemaking, without a moratorium on rates,

leaves timing of future rate adjustments unpredictable.

On the other hand, a moratorium on rate adjustment is a significant concession from all parties. Indeed, if this moratorium extended beyond the 3½ years proposed it would be difficult to accept under any circumstances. In some ways the company gives up less in this moratorium than do the others. No outside entity can know the earnings potential or expense reduction possibilities better than Ameren. No matter how thorough the investigation, none of the other parties can possibly have access to the same insight as company leadership. Company decisions are after all made by the company. While uncertainty exists for Ameren in the market – that uncertainty is present without this Stipulation. Staff and Public Counsel risk the possibility that their insight was insufficient, that their assumptions were incorrect. They may later find prior to 2006 they would have brought a case to further lower rates if not barred by the Stipulation's moratorium. My comfort level in approving this Stipulation was greatly increased as a result of the parties acknowledgement that despite the parties concession to the moratorium, the Commission is not prevented from ordering inquiry into the appropriateness of rates prior to the termination of the term of the Stipulation. By approving the Stipulation, the Commission does nothing (nor likely could it) to diminish its responsibility to the people of Missouri or its authority to oversee regulated utilities.

The parties have agreed to an investment plan for Ameren, which will improve its ability to serve native load with owned generation. This is a continuation of the traditional philosophy that ratepayers should have reliability of service by receiving electricity generated from the regulated company's own assets. Such planning served this country for many years. This type of approach, however, runs against a backdrop of current policies and trends in Washington and the push for deregulation and forced sale of generation assets in some states where emphasis is placed on encouraging purchase of generation on the wholesale market. Arguments can be made that this plan is at cross purposes with these movements. It is indeed probable that at times market rates of wholesale generation will allow purchase of electricity at a lower rate than ratepayers will be paying for the cost of the regulated utility's owned generation. There will also be times when such rates are higher. However, this stipulation is

in line with Missouri statute directives on serving native load, a policy that ensures greater reliability of service. Furthermore, it protects Missouri customers of Ameren from the up and down ride of the unregulated market even as it is cast against a national momentum away from this goal.

Part of the need for this generation and undoubtedly Ameren's calculations for making it pay off are dependent on customer numbers and anticipated usage. Several large industrials are signatories to this Stipulation. Successful efforts by some in this group to seek legislative avenues to allow the purchase of electricity from other sources could reduce revenues for AmerenUE. This Stipulation assumes a continuation of the large industrials in Ameren's customer base. If choice is introduced to Missouri the rates under this Stipulation might need reevaluation.

Depreciation issues were resolved in this case in an awkward manner. While no rate of return was agreed upon, the parties structured a hybrid policy/monetary agreement on depreciation. The effect of this upon ratepayers should strike at the earliest, at the end of the settlement period. This Commission has made some significant statements about depreciation and particularly negative net salvage of late. This Stipulation could create less, not more, guidance regarding the appropriate treatment of negative net salvage in Missouri. It should be clear that the resolution of depreciation in this Order is accepted by the Commission because of the approval of the entirety of the settlement and not as any indication of a policy shift of this Commission. We should set consistency as a goal in future cases and make it clear when negative net salvage will be allowed and disallowed.

This case is monetarily one of the largest cases in recent memory for the Commission. The parties' efforts to obtain a reasonable settlement in this case are to be commended. It would have perhaps been better, from a policy standpoint, had this Commission resolved the nearly 50 issues in controversy. But the parties have represented that for the immediate future this settlement is in the public interest. Only time will verify this wisdom. Since this Commission is not blessed with such foresight and without significant reason evident to the contrary today, the insight (of a unanimous Stipulation and Agreement)

of all the parties and their representation of its benefit to Missouri must serve as surrogate<sup>[2]</sup>.

Respectfully submitted,

Steve Gaw  
Commissioner

Dated at Jefferson City, Missouri,  
on this 30th day of July, 2002.

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<sup>[1]</sup> The agreement specifically exempts the Office of the Attorney General from this moratorium. While the question of the authority of the Attorney General's Office to file a case to change the rates resulting from this agreement has not been briefed, the reason for the exemption appears to be the Office of the Attorney General's desire to not concede its statutory or constitutional authority.

<sup>[2]</sup> Acceptance of this settlement is based upon an assumption that Ameren has been forthcoming with the Commission about its future plans and its anticipated revenues and expenses in the foreseeable future, about which there was significant inquiry and discussion in the settlement presentation.