

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Union Electric Company (AmerenUE) :
:
Petition of Union Electric Company :
(AmerenUE) seeking approval to : 03-0660
Change the Trustee for its Tax :
Qualified and Non-Tax Qualified :
Nuclear Decommissioning Trust :
Funds and seeking approval of related :
changes to the Trust Agreements.

INTERIM ORDER

By the Commission:

Introduction

On October 23, 2003, Union Electric Company ("UE" or the "Company") filed the above-referenced verified petition with the Illinois Commerce Commission ("Commission"). UE therein seeks an Order, pursuant to Section 8-508.1 of the Public Utilities Act ("Act"), 220 ILCS 5/8-508.1, approving proposed changes to its (i) Second Amended Tax Qualified Decommissioning Trust Agreement ("2nd Amended Tax Qualified Trust Agreement"); (ii) Second Amended Non Tax Qualified Decommissioning Trust Agreement; and (iii) Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds ("Investment Guidelines"), all with respect to the Callaway nuclear power plant in Missouri. In its petition, UE also indicated that the equity investment manager for its tax qualified and non-tax qualified decommissioning trust funds had changed due to recent mergers in the banking industry.

Pursuant to due notice, this matter came on for hearing before a duly authorized administrative law judge of the Commission. UE was represented by counsel and presented the direct and supplemental testimony of Kevin L. Redhage of the Planning and Investments Department at Ameren Services Company. The Commission Staff also appeared by counsel. Staff presented the testimony of Mr. Ronald Linkenback of the Commission's Energy Division, filed November 21, 2003. At the conclusion of the hearing on November 24, 2003, the matter was marked "Heard and Taken." A proposed interim order was served on the parties. Staff filed a brief on exceptions suggesting a minor clarification which has been incorporated into this Order. No exceptions were filed by UE.

Statutory Authority: 220 ILCS 5/8-508.1

As noted above, UE filed its petition pursuant to Section 8-508.1 of the Public Utilities Act ("Act"). That section is entitled "Decommissioning Trusts". Subsection (a) defines several terms including (1) "Decommissioning," (2) "Decommissioning costs," (3) "Decommissioning trust" and (4) "Nuclear power plant."

Generally speaking, Section 8-508.1 of the Act requires that decommissioning trusts and decommission funds be established by utilities that operate nuclear power plants, and that an independent trustee be designated to administer each of the trusts. That section also sets forth criteria, restrictions, reporting requirements and other provisions applicable to such trusts. Section 8-508.1, Subsections (b), (c) and (d) provide as follows:

- (b) By 90 days after the effective date of this amendatory Act of 1988, or by the date that the unit satisfies the criteria used by the Internal Revenue Service for determining when depreciation commences for federal income tax purposes on a new generating unit, whichever is later, every public utility that owns or operates, in whole or in part, a nuclear power plant shall:
 - (1) establish 2 decommissioning trusts, which shall be a "tax qualified" decommissioning trust and a "non-tax qualified" decommissioning trust and shall hold the decommissioning funds established by the public utility for all nuclear power plants pursuant to subsection (b)(2) of this Section;
 - (2) establish 2 decommissioning funds for each such plant, each of which shall be held for a plant as a separate account in a decommissioning trust; and
 - (3) designate an independent trustee, subject to the approval of the Commission, to administer each of the decommissioning trusts.
- (c) The 2 decommissioning trusts shall be known as the "tax qualified" decommissioning trust and the "non-tax qualified" decommissioning trust respectively. Each trust shall be established and maintained as follows:
 - (1) The "tax qualified" trust shall be established and maintained in accordance with Section 468A of the Internal Revenue Code of 1986 [26 U.S.C. § 468A] or any successor thereto and shall be funded by the public utility for each such power plant through annual payments by the public utility that shall not exceed the maximum amount allowable as a deduction

for federal income tax purposes for the year for which the payments were made, in accordance with Section 468A of the Internal Revenue Code of 1986 [26 U.S.C. § 468A] or any successor thereto.

- (2) The "non-tax qualified" decommissioning trust shall be funded by the public utility for each such power plant through annual payments by the public utility that shall consist of the difference between the total amounts of decommissioning expenses collected after the effective date of this amendatory Act of 1988 through rates and charges from the public utility's customers as provided by the Commission minus the amounts contributed to the "tax qualified" trust as provided by subsection (c)(1) of this Section and deductible for federal income tax purposes in accordance with Section 468A of the Internal Revenue Code of 1986 [26 U.S.C. § 468A] or any successor thereto.
- (3) The following restrictions shall apply in regard to administration of each decommissioning trust:
 - (i) Distributions may be made from a nuclear decommissioning trust only to satisfy the liabilities of the public utility for nuclear decommissioning costs relating to the nuclear power plant for which the decommissioning fund was established and to pay administrative costs, income taxes and other incidental expenses of the trust.
 - (ii) Any assets in a nuclear decommissioning trust that exceed the amount necessary to pay the nuclear decommissioning costs of the nuclear power plant for which the decommissioning fund was established shall be refunded to the public utility that established the fund for the purpose of refunds or credits, as soon as practicable, to the utility's customers.
 - (iii) In the event a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear power plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of the reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the

liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning.

- (iv) The trustee shall invest the "tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested, subject to the limitations specified in Section 468A of the Internal Revenue Code of 1986 [26 U.S.C. § 468A] or any successor thereto.
 - (v) The trustee shall invest the "non-tax qualified" trust assets only in secure assets that are prudent investments for assets held in trust and in such a way as to attempt to maximize the after-tax return on funds invested. However the trustee shall not invest any portion of the "non-tax qualified" trust's funds in the securities or assets of any operator of a nuclear power plant.
 - (vi) The "non-tax qualified" trust shall be subject to the prohibitions against self-dealing applicable to the "tax qualified" trust as specified in Section 468A of the Internal Revenue Code of 1986 [26 U.S.C. § 468A], or any successor thereto.
 - (vii) All income earned by the trust's funds shall become a part of the trust's funds and subject to the provisions of this Section.
 - (viii) The Commission may adopt by rule or regulation such further restrictions as it deems necessary for the sound management of the trust's funds, consistent with the purposes of this Section.
- (d) By 90 days after the effective date of this amendatory Act of 1988, the Commission shall determine an appropriate method to segregate, either internally or externally, all decommissioning funds collected prior to the effective date of this amendatory Act of 1988 by the utility from its customers, and shall order any change in past decommissioning funding methods that the Commission finds necessary. In making its determination of the appropriate funding method, the Commission shall give consideration to, but not be

limited by, all applicable federal regulations. The change in funding method shall be phased-in over an appropriate period of time.

Subsection (e) of Section 8-508.1 sets forth certain annual reporting requirements applicable to the trustee of a trust. Subsection (f) provides that a nuclear decommissioning trust established pursuant to this Section shall be exempt from taxation in Illinois.

Background

UE is a Missouri corporation with a principal place of business located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and is a public utility within the meaning of Section 3-105 of the Act. Its principal business is supplying electricity and natural gas in parts of Missouri and Illinois. UE owns and operates the Callaway nuclear power plant in the state of Missouri and uses the power and energy generated from that plant to provide retail electric service to customers in the states of Missouri and Illinois.

On October 13, 2000, the Company filed a verified petition with the Commission in Docket No. 00-0664 seeking approval of various changes to (1) the 2nd Amended Tax Qualified Trust Agreement, (2) the First Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement, and (3) the Investment Guidelines, and approval of a new trustee of the tax qualified and non-tax qualified trust funds. On December 6, 2000, the Commission issued its order in Docket No. 00-0664 approving the requested changes.

According to the Company, however, when it requested the similar approvals from the Missouri Public Service Commission ("MoPSC"), the MoPSC did not approve all of the changes requested by the Company. UE states that as a result, the Company could not implement the changes to the 2nd Amended Tax Qualified Trust Agreement and it could not implement all of the changes to the Investment Guidelines.

As explained by UE, since both jurisdictions approved the change in trustee, the Company was able to make that change by assigning the 2nd Amended Tax Qualified Trust Agreement to the new trustee, that being The Bank of New York (hereinafter "BNY"). UE also states that since the requirement to maintain a non-tax qualified trust is not a requirement in Missouri, the 2nd Amended Non-Tax Qualified Trust Agreement was not submitted to the MoPSC for approval and BNY was able to execute the 2nd Amended Non-Tax Qualified Trust Agreement approved by the Commission in Docket 00-0664.

UE also states that because some of the changes to the 2nd Amended Trust Agreement were sought at the request of BNY, BNY agreed to accept assignment of the 2nd Amended Tax Qualified Trust Agreement so long as the Company was willing to pursue the changes to the 2nd Amended Trust Agreement at a later date.

According to UE, in December of 2002, the United States Nuclear Regulatory Commission ("NRC") published a rule that modified the Code of Federal Regulations ("CFR") by revising paragraphs 10 CFR 50.75(e)(1)(i) and (ii) and adding a new paragraph 10 CFR 50.75(h). UE says these modifications address utility and non-utility owned decommissioning trust fund requirements, and requirements to notify the NRC before making any disbursements from the trust funds. UE says the NRC rule also requires that specific language, as set forth in the rule, be added to decommissioning trust agreements. UE also says the December 2002 rule requires companies that operate a nuclear power plant to implement the NRC changes by December 24, 2003.

Relief Requested in Docket 03-0660

In its application in Docket 03-0660, UE requests a Commission Order approving the Third Amended and Restated Tax Qualified Decommissioning Trust agreement so that these changes may be implemented by December 24, 2003 in accordance with the NRC Regulation. UE also requests approval of the Third Amended and Restated Non-Tax Qualified Decommissioning Trust agreement so that these changes may be implemented by December 24, 2003 in accordance with the NRC Regulation. In addition, UE requests approval of the changes to the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds. UE and Staff also propose that approval of these requests should be conditioned upon approval of the same by the Missouri Public Service Commission.

In his direct testimony, UE witness Mr. Redhage identified UE's proposed changes to the Investment Guidelines as well as changes to the 2nd Amended Tax Qualified Trust Agreement and the 2nd Amended Non-Tax Qualified Trust Agreement that were requested by BNY or were purportedly needed to comply with the NRC rule. Mr. Redhage also identified other miscellaneous changes proposed by UE to remove, from the trust agreements, language that UE views as redundant or unnecessary and to incorporate amendments that were made to the 2nd Amended Tax Qualified Trust Agreement. The changes and amendments that were made to the 2nd Amended Tax Qualified Trust Agreement in developing it into a 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement ("3rd Amended Tax Qualified Trust Agreement") were attached to Mr. Redhage's direct testimony. In addition, the changes that were made to the 2nd Amended Non-Tax Qualified Trust Agreement in developing it into 3rd Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement ("3rd Amended Non-Tax Qualified Trust Agreement") were also attached to Mr. Redhage's direct testimony.

After UE's direct testimony was filed, the Company was contacted by the Commission Staff regarding four Staff-proposed changes to the 3rd Amended Non-Tax Qualified Trust Agreement and one proposed change to the 3rd Amended Tax Qualified Trust Agreement. UE says that in response to Staff's proposed changes, the Company proposed one additional change to the 3rd Amended Non-Tax Qualified Trust Agreement. Thereafter, in attachments to Mr. Redhage's supplemental direct testimony filed November 17, 2003, the changes proposed by Staff and UE were incorporated into

a revised 3rd Amended Non-Tax Qualified Trust Agreement and a revised 3rd Amended Tax Qualified Trust Agreement. The changes recommended by Staff are described below. UE says Staff did not request that any changes be made to the Investment Guidelines filed as part of Mr. Redhage's direct testimony.

According to UE, Staff and UE also agree that in the event the MoPSC does not issue an Order approving the agreements and guidelines as currently proposed in Commission Docket 03-0660, the Order issued by the Commission in Docket 03-0660 approving the 3rd Amended Tax Qualified Trust Agreement and the Investment Guidelines should be void. UE says that in order to apprise the Commission of the MoPSC Order, UE has agreed to file immediately with the Commission, with a copy to Staff, such MoPSC Order, including the 3rd Amended Tax Qualified Trust Agreement and the Investment Guidelines as were approved, modified or disapproved by the MoPSC.

Staff Recommendation

Staff witness Mr. Linkenback testified that a review of UE's proposal was conducted by Ms. Rochelle Phipps and Ms. Leslie Pugh of the Financial Analysis Division, and himself. As part of its review, Staff recommended that several changes be made to the agreements.

Mr. Linkenbeck testified that Staff proposed three changes to the Third Amended and Restated Non-tax Qualified Decommissioning Trust Agreement and one common change to both the Tax and Non-tax Qualified Nuclear Decommissioning Trust Agreements. He said UE agreed to those changes and incorporated them into the agreements. He also said Staff agreed to one additional revision to the Third Amended and Restated Non-tax Qualified Decommissioning Trust Agreement that was proposed by UE.

According to Mr. Linkenback, Staff's requested revisions to the Third Amended and Restated Non-tax Qualified Decommissioning Trust Agreement include the addition of language in Article I, Section 1.04 requiring full compliance with all federal and state laws and with all orders issued by any applicable federal or state regulatory authorities.

In Article II, Section 2.08, the following clarification was added, "Administrative costs and other incidental expenses, as defined by the Code, shall be paid by the Trustee out of the Trust Fund, and the same shall constitute a charge upon the Trust Fund." In Article IV, Section 4.01 a definition of a "prudent investor" was added.

After completing its review, Staff recommended that the Commission enter an Order approving the 3rd Amended Tax Qualified Trust Agreement, the 3rd Amended Non-Tax Qualified Trust Agreement and the Investment Guidelines, as modified by UE to incorporate Staff's proposed changes as described above.

Mr. Linkenback also testified that the Order approving UE's 3rd Amended Tax Qualified Trust Agreement and the Investment Guidelines should be conditioned on the receipt by UE of an Order from the Missouri Public Service Commission approving these agreements and guidelines.

Conclusions, Findings and Ordering Paragraphs

As indicated above, Section 8-508.1 of the Act requires that decommissioning trusts and decommissioning funds be established by utilities that operate nuclear power plants, and that an independent trustee be designated to administer each of the trusts. That section also sets forth criteria, restrictions, reporting requirements and other provisions applicable to such trusts.

In the instant docket, a number of changes in the trusts and guidelines are proposed. Among other things, these amendments are proposed to comply with NRC rule changes pertaining to pre-disbursement notifications, revise reporting requirements, add definitions of relevant terms and make various clarifications. Having reviewed the record, the Commission finds that the revisions to the Trust Agreements and Investment Guidelines, as currently proposed, are reasonable and should be approved, provided that the same changes are approved by the MoPCS.

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) Union Electric Company is a corporation engaged in the sale and distribution of electricity in Illinois and is a public utility within the meaning of the Act; UE owns and operates a nuclear power plant and supplies electricity from that plant to the public in the State of Illinois;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the facts recited and conclusions reached in this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the proposed changes codified in the 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement, the 3rd Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines should be approved, subject to the condition that the Missouri Public Service Commission approves the same without modification.

IT IS THEREFORE ORDERED by the Commission that the 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement, the 3rd Amended and Restated Non-Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear

Decommissioning Trust Funds are hereby approved, subject to the conditions set forth below.

IT IS FURTHER ORDERED that the approval of the 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds shall hereby be void ab initio in the event the Missouri Public Service Commission does not approve, without modification, the same 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement and the same Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds that are approved herein.

IT IS FURTHER ORDERED that Union Electric Company shall file with the Commission, with a copy to the Manager, Accounting Department, Financial Analysis Division and the Manager, Engineering Department, Energy Division, the Order issued by the Missouri Public Service Commission on the above-referenced request for approvals, along with a copy of the 3rd Amended and Restated Tax Qualified Decommissioning Trust Agreement and the Investment Guidelines for the Callaway Plant Tax Qualified and Non-Tax Qualified Nuclear Decommissioning Trust Funds, as approved, modified or disapproved by the Missouri Public Service Commission Order, immediately after UE receives a copy thereof.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 17th day of December, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman