

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	
	)	
Union Electric Company	)	Docket No. 03-0167
	)	
	)	
Reconciliation of revenues collected	)	
under Coal Tar riders with prudent costs	)	
associated with coal tar clean up	)	
expenditures.	)	

**PROPOSED FORM OF ORDER**

By the Commission:

On March 12, 2003, the Illinois Commerce Commission (“Commission”) entered an Order Commencing Reconciliation Proceedings, which directed Union Electric Company, doing business as AmerenUE (“Respondent” or “the Company”), to present evidence in this docket to show the reconciliation of revenues collected under its Rider R, Electric Environmental Adjustment Clause, and Rider E, Gas Environmental Adjustment Clause, tariffs (hereinafter collectively “the Coal Tar Riders”) with prudently incurred costs of environmental activities and recoverable under said riders. The applicable reconciliation period is from January 1, 2002 through December 31, 2002 (the “Reconciliation Period”).

**BACKGROUND: DOCKETS 91-0080 through 91-0095**

In Docket Nos. 91-0080 through 91-0095 (Cons.), the Commission initiated a proceeding to consider issues related to the ratemaking treatment of costs that have been or will be incurred by Illinois gas and electric utilities in connection with environmental remediation arising from the operation and decommissioning of manufactured gas plants (“MGPs”). All gas and electric utilities were named as parties in the initiating order.

On September 30, 1992, the Commission entered a final order in the consolidated proceeding. The Commission found there should be a presumption that MGPs were properly

operated and retired; that utilities could recover the prudently incurred costs of environmental remediation arising from the operation and decommissioning of MGPs; that the preferable, but not exclusive means of recovery was through a rider with a prudency review; and that a sharing of clean-up costs between ratepayers and shareholders should be achieved by requiring that costs be amortized over five years with no recovery of carrying costs on the unrecovered balance.

Regarding the preference for use of a rider, the Commission stated in part that given the wide variations in and the difficulties in making forecasts of the scope, costs and timing of coal tar investigation and remediation activities, riders can generally be expected to provide a more accurate and efficient means of tracking costs and matching such costs with recoveries than would be achieved by base rate recovery methods.

In its Order of September 30, 1992, the Commission found that rider mechanisms shall be subject to an annual reconciliation with a prudency review. The Commission explained that a rider which lacks a prudency review does not provide a sufficient means of ensuring that the utility's clean-up activities and costs were necessary or cost effective. The Commission further stated on page 81 that in order to properly assess the necessity for and reasonableness of a utility's remediation costs and activities, the standards to be applied in the review thereof shall include those guidelines identified on pages 78-79 of the Order, as well as the other guidelines found appropriate in the Order. The four guidelines on pages 78-79 are:

- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance; and
- (4) based on facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made.

On page 84 of the Order, the Commission also found that questions relating to a utility's interaction with the Illinois Environmental Protection Agency ("IEPA" or "Agency") are relevant

considerations in the prudency review process. The September 30, 1992 Order further provides, on page 48, that utilities' actions relating to their pursuit of recovery from insurers and potentially responsible parties ("PRPs"), and the costs and results thereof, are proper subjects of attention in future proceedings.

The Commission's Order was appealed by various parties. In an opinion issued on April 20, 1995, the Illinois Supreme Court held that "the decision of the Commission to require utilities to share the statutorily imposed costs of coal-tar remediation was 'not supported by substantial evidence based on the entire record of evidence'", reversed the judgment of the Appellate Court regarding the "sharing portion of the order," and remanded "that portion of the order to the Commission to enter an order consistent with [its] opinion." *Citizens Utility Board v. Commerce Commission*, 166 Ill.2d 111, 651 N.E.2d 1089, 209 Ill. Dec. 641 (1995). The Supreme Court rejected all other challenges to the Commission's Order of September 30, 1992.

On November 21, 1995, the Commission entered an Order on Remand. In that Order the Commission found that carrying charges on prudently incurred remediation costs should accrue from the date of the Supreme Court's opinion to the extent that such costs are otherwise eligible for recovery under the Order of September 30, 1992 and are accrued but unrecovered on and after April 20, 1995. The Commission stated that the utility's after-tax cost of capital was the appropriate carrying charge rate for remediation costs. In other respects, it affirmed and adopted the determinations made in the September 30, 1992 Order relating to riders and other recovery methods.

### **UE'S RIDERS**

UE provides electric service to approximately 63,000 customers in and around the cities of Alton and East St. Louis, Illinois and natural gas service to approximately 18,000 customers in the Alton area. The Company has two riders designed to recover costs associated with the investigation and remediation of MGP sites. These riders are identified as Rider R, Electric Environmental Adjustment Clause ("EEAC") and Rider E, Gas Environmental Adjustment Clause ("GEAC"). Regarding EAC costs, these riders provide:

EAC Costs are all costs paid or payable to parties other than Company employees (including legal fees) which are associated with Environmental Remediation Activities. EAC Costs shall also include Allowable Carrying Charges associated with the deferral of EAC Costs. EAC Costs will be credited to reflect proceeds received from insurance carriers or other entities which represent reimbursement of costs associated with Environmental Remediation Activities. EAC Costs shall not include the salaries of Company employees, or any benefits related thereto. EAC Costs for an Annual Recovery Period also shall not include costs accrued under Statement of Financial Accounting Standards No. 5 ("SFAS No. 5") for which no cash expenditure is forecasted during the Annual Recovery Period. Such SFAS No. 5 costs shall be recoverable as EAC costs in the Annual Recovery Period during which cash expenditures are forecasted. Prior to the time that costs accrued under the SFAS No. 5 are recovered under the GEAC, such costs may be deferred in Account 186.

With respect to Environmental Remediation Activities, the EAC riders provide as follows:

Environmental Remediation Activities shall include: (i) direct or indirect activities associated with the investigation, clean-up, sampling, monitoring, testing, removal, and/or disposal of material, residues, wastes or substances related to manufactured gas site operations, the dismantling of facilities used in connection with manufactured gas site operations and/or 00-0441/01-0381/02-0171 (Cons.) other activity which generated substances subject to Federal, State or local environmental laws or regulations at sites where manufactured gas operations were at any time conducted; and (ii) litigation or other legal activities related to the activities hereinabove listed, including, but not limited to, litigation or legal activities associated with efforts to recover costs associated with any such activities from insurers or other responsible parties

The only amounts that are recoverable through the Riders are those which are paid for services from outside vendors. That is, expenses for work performed by Company personnel are not recoverable through the Riders.

Under the Riders, cost recovery is allocated to both electric and gas customers, including transportation customers.

### **PROCEDURAL REQUIREMENTS**

In compliance with the Commission's Order Commencing Reconciliation Proceedings in this docket and 83 Ill. Adm. Code 255, Respondent filed with the Commission a list of all Illinois municipalities within which the Company provides electric or gas service. Thereafter, Respondent filed testimony and schedules summarizing environmental activities conducted at Respondent's manufactured gas plant site along with an accounting of revenues collected and

costs incurred in connection with that site. Respondent published notice of the filing in newspapers having general circulation in the Company's service territory and submitted with the record Certificates of Publication, marked as UE Exhibit 4.

Following prehearing conferences held in this matter before Administrative Law Judge John Albers of the Commission, an evidentiary hearing of this matter occurred on January 15, 2004, at the Commission's Springfield offices. Appearances were entered by counsel for Respondent and by the Commission Staff. Respondent's direct evidence (Direct and Rebuttal Testimony of Leonard A. Mans and Direct Testimony of Donald L. Richardson) was admitted into evidence. Ms. Leslie Pugh of the Staff's Accounting Department (Financial Analysis Division) provided Direct Testimony that was admitted into evidence at the evidentiary hearing. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken." On February 13, 2004, Respondent filed a proposed form of order which reflected the agreement of Respondent and the Commission Staff.

#### **SUMMARY OF EVIDENCE**

The record contains a detailed description of Respondent's practices and procedures for reconciling the revenues collected under its Coal Tar Riders with the actual costs recoverable under such tariff during the Reconciliation Period. All participants were afforded the opportunity to cross-examine all witnesses and to offer evidence with respect to all issues in this proceeding.

#### **RESPONDENT'S EVIDENCE**

UE has identified one MGP sites for which it has incurred, and will continue to incur, environmental cleanup costs as a potentially responsible party ("PRP") under state and federal law. This site is located at Alton, Illinois.

Mr. Leonard A. Mans, a Director of General Ledger/Fuel Accounting of Ameren Services Company, an affiliated service company of Respondent, testified as to his responsibility for supervising the calculation and filing with the Commission of Respondent's annual reconciliation reports required by Respondent's Coal Tar Rider tariff. Mr. Mans sponsored Schedule A to his

Direct Testimony (UE Exhibit 1) which identified and reconciled all components of the Company's 2002 Electric and Gas Environmental Adjustment Clauses Annual Report filed with the Commission. Schedule A showed that Respondent had incurred incremental costs with respect to its Illinois MGP site during 2002. Mr. Mans testified during the 2002 Reconciliation Period that the Company incurred environmental costs of \$1,871.15 and collected revenues of \$36,992.55 through its EEAC and GEAC Riders. The Company later agreed with the Staff's recommendation to increase the amount of incremental costs that are recoverable to \$3,357. This increase of \$1,486 reflects the costs incurred by the Company in paying a consultant for services rendered with respect to the Alton MGP site. As set forth in Mr. Mans' rebuttal testimony (UE Exhibit 3), both the Commission Staff and the Company agree that UE should be allowed to recover \$3,357 for costs incurred during the Reconciliation Period. Through December 2002, the Company over-collected revenues in excess of incremental costs totaling \$34,851.

Mr. Donald Richardson testified (UE Exhibit 2) that the Company is responsible for one manufactured gas plant ("MGP") site located in Alton, Illinois. Cash incurred during the 2002 Reconciliation Period, related to the preparation of report summaries provided to the site owner to resolve access issues. Mr. Richardson further testified that remediation work at the site is currently scheduled to occur in 2004. Cleanup objectives will need to be negotiated with the site owner and long-term tenant and approved by IEPA. Lastly, Mr. Richardson described the methodology by which the Company performs environmental work and that all work is performed in consultation with the IEPA and in accordance with TACO requirements.

#### **COMMISSION STAFF'S EVIDENCE**

Ms. Leslie Pugh of the Accounting Department of the Financial Analysis Division of the Commission, stated at the evidentiary hearing that the Staff issued extensive data requests concerning the revenues collected under the rider tariff and costs recoverable under such tariff. The Staff reviewed the Company's filing and responses to data requests. Certain of the Company's responses to the Staff's Data Requests concerning auditing and accounting

practices were introduced and received into evidence. On behalf of the Staff, Ms. Pugh stated that subject to the \$1,486 cost adjustment proposed in her direct testimony, she recommended that the Commission accept the reconciliation of revenues collected under the tariff with actual costs as depicted in ICC Staff Exhibit 1, Schedule 1.

Ms. Pugh also testified on behalf of the Staff that she had reviewed the Company's filing and responses to extensive data requests concerning the prudence of the Company's gas expenditures during the Reconciliation Period. Ms. Pugh stated that the audit revealed no evidence that the costs incurred by the Company failed to comply with prudence standards.

### **ORDER**

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent is a corporation engaged in the distribution of natural gas to the public in Illinois and, as such, is a public utility within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over Respondent and of the subject matter of this proceeding;
- (3) the statements of facts set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;
- (4) the evidence shows that during the calendar year 2002 Reconciliation Period, Respondent performed environmental remediation activities in connection with the Alton site and prudently incurred costs totaling \$3,357 associated with this site;
- (5) for the calendar year 2002 Reconciliation Period, the Commission accepts Respondent's and Staff's proposed amended reconciliation of revenues collected under the Company's tariff with costs incurred which reflect a

cumulative over-recovery for the Alton MGP site of \$34,851 recorded as of December 31, 2002, attached to this Order as Appendix A;

- (6) the evidence shows that Respondent anticipates incurring costs at its Alton MGP site; therefore, Respondent shall roll \$34,851, said amount reflecting an over-recovery of revenues during the 2002 Reconciliation Period, into costs incurred and to be incurred during calendar year 2003 and shall adjust its billing factors accordingly; and
- (7) all motions, petitions, objections or other matters in this proceeding which remain undisposed of should be disposed of consistent with the conclusion herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the reconciliation submitted by Union Electric Company d/b/a AmerenUE of the revenues collected under its Electric Environmental Adjustment Clause and Gas Environmental Adjustment Clause Riders, with costs prudently incurred for environmental activities for calendar year 2002, are hereby approved.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-112 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_.