**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF MISSOURI**

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| **In the Matter of an Examination of the Class Cost of Service and Rate Design in the Missouri Jurisdictional Electric Service Operations of Aquila, Inc. (f/k/a UtiliCorp United Inc.)** | ) ) ) ) ) | **EO-2002-384 [EO2002384xxx]** |

# POSTHEARING BRIEF
# OF SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION AND AGP


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## I. PROCEDURAL BACKGROUND.

On August 23, 2005, the Commission succinctly described the procedural background of this case as follows:

> Case No. EO-2002-384 was opened on February 21, 2002, as a "spin-off docket" in which to examine class-cost-of-service and rate design in the Missouri service areas of UtiliCorp United Inc., as Aquila was then known. At that time, UtiliCorp had only one Missouri service area and operated there as "Missouri Public Service." UtiliCorp has since changed its name to Aquila, purchased St. Joseph Light and Power Company, and now operates in two Missouri service areas. A subsequent rate case was filed, determined and closed, and now another rate case is pending, Case No. ER-2005-0436.[1/]

Though sufficient for the purposes of its August 23, Order, the summary does not reveal that the case was initiated pursuant to the Unanimous Stipulation and Agreement concluding the ER-2001-672 rate case, was established to review, on a revenue-neutral basis, Aquila's class cost of service and in-

[1/] *Order Establishing Procedural Schedule*, Case No. EO-2002-384, August 23, 2005, pp. 1-2.

volved the collection of load research data. An analysis based upon fresh load research data, followed by class cost of service studies and then revenue-neutral class shift recommendations, was contemplated by the parties in that stipulation. The purpose was to allow a more detailed analysis of cost-causal factors so that out-of-balance rates could be identified and needed adjustments quantified, independent of the contentious issues and time pressures accompanying a full rate case and that deflect attention from class cost issues and prevent full consideration of them.[2/]

The pertinent provision from that Unanimous Stipulation and Agreement provided as follows:

> 12. Creation of Class Cost of Service and Rate Design Case. The Parties agree that, as a part of this Stipulation and Agreement, the Commission establish in its order approving this Stipulation and Agreement a separate "EO" case for the purpose of examining ***customer class cost of service and rate design for UtiliCorp's MPS and SJLP electric operations*** . . . .[3/]

In approving the Unanimous Stipulation and Agreement, the Commission's ordering paragraph 5 was no less succinct:

> 5. That Case No. EO-2002-384 is hereby established ***for the purpose of examining class cost of service and rate design in***

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[2/] See footnote 1, *supra*.

[3/] Unanimous Stipulation and Agreement, Case No. ER-2001-672, pp. 5-6 (emphasis added).

***UtiliCorp United Inc.'s Missouri jurisdictional electric service operations***. . . .[4/]

In compliance, technical conferences were scheduled, to discuss and resolve data collection issues, sampling, sample size and the like, concerning the load research study that was desired. The overall objective of those conferences was to seek resolution of these data- and sample-related issues so that disputes about incorrect or inadequate data collection could be avoided.

The data collection process took over a year. Then analysis of the data began and technical meetings again were scheduled. The process determined by the parties was for Aquila to initially submit a class cost of service study (CCOSS) which others would then critique and, if desired, prepare their own, followed by further technical conferences to resolve number "busts" and other technical issues, thereby seeking to limit issues to matters of principle. Staff cooperated with this schedule, but OPC failed to even submit any CCOSS until required under a later-ordered procedural schedule.

During this process, one Aquila rate case involving both divisions was filed and resolved[5/] and new rates were developed using essentially a methodology that would not disturb

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[4/] *In the Matter of the Tariff Filing of Missouri Public Service (MPS), a Division of UtiliCorp United Inc., to Implement a General Rate Increase for Retail Electric Service Provided to Customers in the Missouri Service Area of MPS*, 11 MoPSC3d 120 (February 21, 2002), pp. 131-32.

[5/] Case No. ER-2004-0034.

the existing rate relationships and thus preserve the validity of the load research study results.

## II. ARGUMENT.

### A. Summary of Argument.

- Avoiding the statutory prohibition against non-discriminatory rates requires analysis of how costs are incurred and by what rate class.
- The Average and Excess Method appropriately and consistently recognizes and allocates significant capacity costs on an annual energy to those customer classes using the system ***and*** recognizes the significance of summer peaks to the amount of the capacity that the utility must provide to serve its peak load.
- The Average and Excess method is well recognized and is used by numerous utilities and regulatory agencies throughout the country.
- Average and Excess reflects not only the customer classes that make use of the system on an annual basis but also reflects the cost causal nature of summer peaks for this utility. It produces stable, consistent, and economically efficient results that are an appropriate beginning point for the analysis of energy efficiency and conservation measures.
- Staff's method hides errors behind complexity and, despite its claimed virtues, assigns hourly marginal energy costs without regard to the source or cost of those units of energy.
- Staff's method is unique to Missouri and to Missouri PSC Staff. Though over 25 years old, Staff was unable to identify any jurisdiction that had considered or adopted it, ***including*** Missouri.
- Though attempting to fit its method into a NARUC Manual description of a different methodology, Staff failed to perform even the initial steps necessary to have produced this different methodology.
- OPC's method appeared to be abandoned at hearing in favor of Staff and is not recognized by any regulatory agency, anywhere. It is sourced to an engineer who was

with OPC years ago and is no longer there and could not be readily or clearly explained by OPC's witness.

- Along with Missouri's perceived direction to move into the mainstream of public utility regulation, Missouri should move away from unique or aberrant methods that appear to be result driven, are unduly complex, expensive, are not reproducible or reliable and send false price signals. A method that is so expensive that only a state agency can perform that method and then only after an extensive load research study performed by the utility raises due process questions.

## B. Statutory and Legal Framework Of Non-Discriminatory Rates.

### 1. The Statutory Intent Was To Establish Regulation As a Surrogate For Competition and To Avoid Undue Discrimination Or Preference in Making Rates.

Missouri law prohibits its regulated utilities from having rates that

> make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.[6/]

Missouri law also empowers the Commission to address, investigate and rectify utility rates that are "unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law . . . ."[7/] The rationale for this prohibition is found in the purpose underlying

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[6/] Section 393.130.3 RSMo 2000.

[7/] Section 393.140.5 RSMo 2000. Similar provisions apply to all utilities.

Missouri's regulatory structure and, indeed, public utility regulation generally. Partly intended to balance interests of utility shareholders and ratepayers, the more common implications appear in overall revenue levels and utility attempts to exploit their captive customers.

But, a deeper-seated perversity that the General Assembly sought to preclude was a dominant market player's attempts to expand its market share through below-cost pricing to customers with a supplier choice and financing its anti-competitive activities above-cost charges to already-captive customers. Again, the emulated competitive market model priced utility services at their cost including an appropriate margin of utility profit that was essentially equal for all classes of customers.

**2. This Objective Remains the Crucial Purpose of Regulation But Is Often Obstructed By Personal Bias and External Political Pressures.**

Today while the prohibitions remain against inter-class price discrimination, the motivations for such anti-competitive results have changed, with some regulators seeing their role as limited to keeping voters' rates low while allowing other customer classes to pick up the slack -- a result no less perverse than that the General Assembly sought to eradicate. The continued existence of this danger is evident in two aspects revealed in this case. *First*, there is the obvious anti-high load factor and anti-business bias in Aquila's existing rates resulting from many rate case cycles without thoughtful review of the relative inter-

class levels of rates.[8] Both Aquila's and Mr. Brubaker's class cost of service results show that the industrials are subsidizing the residential class,[9] but these distortions did not develop overnight. Were Mr. Brubaker's recommendation approved,[10] they would not be rectified overnight.

*Second*, there is Staff and OPC's otherwise inexplicable result-driven manipulative pseudo-analysis. Concealed behind mysterious "stacking" of figures and a mind-numbing 8,760 + rows of spreadsheet bookkeeping data is an utter insouciance to the reality of the decisions that are made in determining a generation mix for a utility and the importance of load factor as a key indicator of economic efficiency.

### 3. The Courts Have Recognized the Regulatory Purpose and Given Life To the Statutes' Prohibitions.

There are numerous Missouri cases backing up this statutory scheme with language similar to this:

> Arbitrary discriminations alone are unjust; if the difference in rates be based upon a reasonable and fair difference in conditions which equitably and logically justify a different rate, it is not unjust discrimination. State v. M. K. & T. Ry. Co., 262 Mo. 507, 525, 172 S. W. 35, 40, and cases cited. See

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[8] Witnesses indicated that it had been at least a decade since there had been such a review for Missouri Public Service and an equivalent period for St. Joseph Light & Power. Transcript, Vol 4, p. 141.

[9] Transcript, Vol. 4, p. 119, ll. 2-3.

[10] Mr. Brubaker recommended that any movement toward cost be limited to an increase of class revenues no more than 6 percent. Transcript, Vol. 4, p. 270-71.

> also State ex rel. Pugh et al. v. Pub. Serv. Comm. (Mo.), 10 S. W. (2d) 946, 951.[11/]

And, notably, the following:

> Thus the principle of equality designed to be enforced by legislation and judicial decision forbids any difference in charge which is not based upon difference of service and ***even when based upon difference of service must have some reasonable relation to the amount of difference***, and cannot be so great as to produce unjust discrimination.[12/]
>
> . . . .
>
> Furthermore, it would seem to appear under all the evidence herein that, upon the single reason or ground of classification asserted by the Water Company, the complainants, as the employers of a considerable number of individuals who are likely to be or to become users and consumers of water furnished by the Water Company, stand upon as favorable a footing as do other employers of labor who enjoy, and to whom is extended, the benefit of the so-called manufacturers' rate schedule. It therefore appears to our minds that the strict construction and application given to the manufacturers' rate schedule by the Public Service Commission necessarily results in an unjust and unfair discrimination against the complainants herein, who are users of water under the same or substantially similar and contemporaneous service conditions as are applicable to those users of water enjoying the benefit of the manufacturers' rate schedule, in contravention of both the letter and the spirit of the Public Service Commission Law, which is merely declarative of the rule of the common law bearing upon the subject of unjust discrimination in rates and service. The judgment of the Circuit Court of Cole County, setting aside the order of the Public Service Commis-

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[11/] *State ex rel. St. Louis v. Public Service Com.*, 327 Mo. 318, 325 (Mo. 1931)

[12/] *State ex rel. Laundry, Inc. v. Public Service Com.*, 327 Mo. 93, 110, 34 S.W.2d 45-46 (Mo. 1931)(emphasis added).

> sion herein and remanding the proceeding to the Commission for further action, was right, and therefore must be affirmed.[13/]

Doubtless, some will argue that *Laundry* is "old," its language antique, a water case to boot, and that the issue therein turned on a customer classification rather than a direct rate discrimination issue. But this intellectually limited analysis would overlook the parallel structure of Missouri's Public Service Commission law and would also ignore that *Laundry* would certainly have supported differential treatment of different customer classifications, ***had a cost justification been shown for the difference in treatment***.

That is, of course, what we are about -- trying to identify and properly allocate costs of providing utility service to the receiving customers, to examine "class cost of service and rate design . . ."[14/] a purpose that Staff counsel initially acknowledged:

> Staff's recommendation in this case is based on cost of service. I mean, we did a class cost of service study.[15/]

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[13/] *Id.*

[14/] *In the Matter of the Tariff Filing of Missouri Public Service (MPS), a Division of UtiliCorp United Inc., to Implement a General Rate Increase for Retail Electric Service Provided to Customers in the Missouri Service Area of MPS*, 11 MoPSC3d 120 (February 21, 2002), pp. 131-32.

[15/] Transcript, Vol. 4, p. 101, ll. 6-8.

And disregard of the *Laundry* case would also have to reject or distinguish some of its authority, including the following:

> But that principle of equality does forbid any difference in charge which is not based upon difference in service, ***and even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination***.[16/]

Careful examination of *Laundry* discloses the principle that nondiscriminatory differences in rates must have some "reasonable relation" to the ***amount*** of rate difference, which is another way of saying not only that the costs must be different if the rates are to be different but that the rate differential must be justified by a corresponding difference in the cost of providing the service. The evaluation of cost of service, though not explicitly stated, is the critical measure, for there is no other means to "evaluate" the relationship to the "amount of difference."

And yea, even the courts of Kansas, in order to have utility rates that are intelligently designed, recognize that

> ***The touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class***. ( Coffelt v. Ark. Power & Light Co., 248 Ark. 313, 451 S.W. 2d 881 [1970]; Utilities Comm. v. Consumers Council, 18 N.C. App. 717, 198 S.E. 2d 98 [1973].) The Commission [KCC] recognized this rule and we are in full accord. . . . The practice of assessing the same penalty against all delinquent customers, regardless of the nature or character of their delinquency, is discriminatory and

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[16/] *Western Union Tel. Co. v. Call Publishing Co.*, 181 U.S. 92, 100 (U.S. 1901) (emphasis added).

> unfair. ( Ford v. Waterworks Co., 102 Miss. 717, 59 So. 880 [1912]; Pub. Serv. Com. of Mo. v. Kansas City Power & Light Co., 2 P.U.R. [N.S.] 391 [1933].)[17/]

*Laundry* not only remains a landmark statement of the law, but continues as a powerful precedent, as shown by its citation in the recent reversal [yes, again] of the Commission's decision in the 2000 Missouri American Water Case.[18/]

Why, then, do we engage in such a lengthy discussion of what ought to be an obvious point? Simply because Staff seems confused with its purpose and intent. In demonstration, two comments need be juxtaposed: Compare the previously quoted statement of Staff counsel: "Staff's recommendation in this case is based on cost of service. I mean, we did a class cost of service study"[19/] to Mr. Watkins' puzzling statement in response to questions from RLJ Thompson about this same "cost of service study":

> Q. Okay. Now, in doing those calculations, would you agree it ***was your intent to model the way the costs were actually being caused*** in a historical sense during the years when that load data was collected?
> A. ***No, I wouldn't say that at all.*** I would say that -- and I have said, I think, before that there's a couple of causes for how much -- the total amount of production capacity cost. One is the peak load that has to be served, and the other is the mix of generation. When we go to the allocations, ***I don't think there's any relationship between the load in this hour causing those***

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[17/] *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401, 565 P.2d 597, 606 (Kan. 1977).

[18/] *State ex rel. Joplin v. Public Service Commission*, WD64944, December 6, 2005, at 13-14 of the slip opinion. That case is returning once again to the Commission for correction of its assignment to our "friends in Joplin" of roughly $800,000 of costs incurred essentially to serve Brunswick.

[19/] Transcript, Vol. 4, p. 101, ll. 6-8.

***25 costs of that hour. I think we do that because we believe***

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***1 it's a fair way to price out those costs.***
2 But that if you use it in that hour, you
3 ought to pay for it, and the amount you ought to pay for
4 it using capacity in that hour is the same amount you
5 ought to pay no matter when you use that block of
6 capacity. ***So the cost causation I don't think is there at***
***7 that point. I mean, it does account for the fact that***
***8 there is a capacity mix that's determined by loads***
***9 throughout the year, but I don't think, you know, this***
***10 load and this hour caused those costs.***

And so, despite Staff counsel's statement at the beginning that Staff had done a "cost of service study," Staff's proposal is, rather, a "usage study." Moreover, by its own architect's admission, it is not a cost causation analysis, but rather is an effort to "price out those costs" in a way that Staff -- that is, Mr. Watkins -- believes is "fair." Complexity -- and Mr. Watkins' method is most certainly that -- should not be confused with accuracy.

At an even earlier point in the hearing, Mr. Watkins acknowledged that the Staff's method was not a cost causation approach, but a usage-driven approach

9 . . . . In terms of
10 pricing, what we look at is how that -- how electricity is
11 utilized throughout the year to make the pricing fair.
12 It's a reasonable method. ***It doesn't rely on cost***
***13 causation because classes do not cause costs***. Everybody
14 causes costs jointly, and it's a matter of how do you
15 divide it up.

Transcript, Vol. 5, p. 325, ll. 9-15.

Given this, it may be questioned whether Staff's approach is consistent with the original spin-off order, or even with the Commission's more recent August 23, 2005 scheduling order. In that latter Order, the Commission stated:

> A class-cost-of-service study is an equitable, mathematically-based method of determin-

> ing the percentage of operating costs which each utility customer must pay through rates ***on the principle of matching costs to the customers who cause those costs.*** Utility customers are generally grouped into classes based on shared characteristics and the utility's operating costs are then ***either directly assigned to a class, where possible, or allocated using reasonable methods to reflect class responsibility***.[20/]

It may be news to Mr. Watkins, but ***customers*** cause costs by demanding service and, because it would likely be impossible to separately analyze some 400,000 customers' individual usage and costs,[21/] customers are grouped into classes that share common load and usage characteristics. And, as Mr. Tracy's graphs show,[22/] these customer groups (which we call classes) do use electricity in consistent patterns. Those consistent patterns permit analysis by the tool that Staff counsel referred to as a "class cost of service study." Is it not, by the way, worthy of at least minimal extended remarks that what Staff counsel asserted Staff has done is well-nigh impossible under Mr. Watkins' view because "customer classes do not cause costs."[23/]

The acid test is how costs are incurred -- not whether the staffer feels they are "price[d] out" according to the

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[20/] *Order Regarding Consolidation*, Case Nos. EO-2002-384 and ER-2005-0436, p. 7 (August 23, 2005).

[21/] Transcript, Vol. 5, p. 349, l. 25. It would become unmanageable both for the utility and the regulators if there were 400,000 pages in its tariff book.

[22/] Exhibit 34 pertains to the St. Joseph service territory; Tracy Schedules JMT-2 (filed October 14) pertain to the MoPub service territory.

[23/] *Id.* (emphasis added).

staffer's vague and undefined concept of what is "fair." The overall goal, as stated by the Commission in its August 23, 2005 Order, is to relate the cost payer to the costs they cause.[24/] As we will develop throughout this brief, Mr. Watkins' undefined concepts of what is "fair" neither accord with ours and Aquila's (obviously) nor should they be given any credence or considered as support for any decision by the Commission given the statutory and legal milieu. Indeed, it is, rather, the Commission's prerogative to identify what is "fair," not Mr. Watkins.

### C. It Is Time For Missouri To Move Into the Mainstream of Public Utility Regulation.

SIEUA/AGP counsel stated in his opening statement that it appears that the Commission is taking steps to move Missouri regulation more into the mainstream of other utility regulators. Recent changes in the areas of equity analysis and depreciation have seemed to bring Missouri more in line with general regulatory approaches. Whether one agrees with the direction of those movements, they are undeniable. Pendulums swing.

#### 1. Staff's "Method" Is Not Recognized By Any Other Regulatory Commission.

Mr. Watkins testified that the Staff's method had been developed 25 years ago.[25/] Still he characterized it as "cut-

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[24/] *Order Regarding Consolidation*, Case Nos. EO-2002-384 and ER-2005-0436, p. 7 (August 23, 2005).

[25/] Transcript, Vol. 5, p. 322, ll. 3-4.

ting edge."[26] Yet, in 2 1/2 decades, this "cutting edge" methodology has not been adopted by any other jurisdiction, anywhere. In SIEUA Data Request No. 12, identified and admitted into the record as Exhibit No. 26, Staff was asked:

> Please identify all commissions of which you are aware that utilize the generation allocation method that Staff has proposed in this case. Provide a copy or citation to any case approving the use of such method.

Through Mr. Busch, Staff responded: "***Staff is unaware of any other Commission that utilizes the generation allocation method, except for the MoPSC***."[27] The Commission may be assured that, if any other regulatory agency, anywhere, utilized this method, we would have heard of it.

As with the hopeful statement that "Brazil is the country of the future and always will be," after some 25 years in the intellectual marketplace and its non-acceptance by ***any*** other regulatory jurisdiction ***anywhere***, one might be drawn to a different conclusion than that Staff's method is "cutting edge."

Perhaps this situation is like the mom who watched her new Army recruit son on the post parade ground and proudly observed: "Everyone was out of step except my Johnnie!" Missouri needs to get into the mainstream of predictable, reliable and

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[26] I would describe it as more ***cutting edge*** than anything else.

Transcript, Vol. 5., p. 365, ll. 114-15 (emphasis added). Later it was described as "leading edge." *Id.*, l. 20.

[27] Exhibit No. 26 (emphasis added).

replicable methods that have been time proven in many jurisdictions and many different circumstances.

### 2. Staff's Method Is Not Even Understood by Mr. Watkins.

Aquila witness Tracy pointed out a critical deficiency in Mr. Watkins' work. That is that Staff uses marginal costs on energy which is the cost of the last, most expensive unit that is brought on to serve the existing load.[28/] Staff method charges at the margin, not the average and thereby shifts a substantial amount of costs that are based on energy to the high load factor customers.[29/] Referencing his chart for the MPS Large Power customers, Mr. Tracy explained:

> . . . . [The high load factor large power class are] the ones who are creating the bulk of that base, and Staff's time of use allocator by using marginal costs in its allocator, which is what's the cost of the last, the most expensive unit, well, the industrials have all of this power that they're going through, all of this energy, and if you're charging that out at the margin rather than at the average, I mean, let alone what its actual cost is, but if it was just the original cost, that would help them. ***But by charging them at the margin, you are shifting a substantial amount of cost based on energy to those customers.***

Transcript, Vol. 4, p. 139, ll. 8-19 (emphasis added). And Mr. Tracy continued that Staff's method "inappropriately allocates costs to those customers beyond what it costs us to serve them. . . . This kind of allocation is entirely inappropriate."[30/] The

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[28/] Transcript, Vol. 4, p. 139, l. 12; Transcript, Vol. 4, pp. 284-85.

[29/] *Id.*

[30/] Transcript, Vol. 4, p. 140, ll. 6-11.

Large Power (high load factor) customers on both systems "benefit the system and help keep our costs down."[31/]

To Mr. Watkins, however, load factor is just numbers. "I don't think load factor's good or bad. It just exists. And you design your system to meet it in the least cost way."[32/] While appearing to dismiss the importance of load factor, Mr. Watkins acknowledges that designing the system with load factor in mind permits least cost planning. But should we attempt to encourage or discourage high load factor customers? Should we attempt to encourage residential customers to install high-SEER air conditioning equipment so that peaks will be lower with resulting lower capital and possibly fuel costs? Should any of these conservation or efficiency encouraging measures be implemented? Not according to Mr. Watkins:

> Now, to say that it's good or bad doesn't make a bit of sense to me. It is what it is. A lot of that discussion is how you could -- you could serve
>
> customers at a lower average price if they just would change when they wanted to use electricity. ***Well, I don't know that you want to change when people use electricity. Let them use it whenever they want to.***

Transcript, Vol. 5, p. 357, ll. 23-25 - p. 358, ll. 1-4 (emphasis added).

What Mr. Watkins seems to be saying here, remarkably, is that the Commission should take no steps to recognize or encourage conservation or efficient use of expensive facilities and generation fuel. Yet seeking to change "when people use

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[31/] Transcript, Vol. 4, p. 140, ll. 8-10.

[32/] Transcript, Vol. 5, p. , ll. 17-19.

electricity" is the very purpose behind interruptible rates, customer charge levels, and many other rate techniques to try to send correct price signals to consumers so they validly can compare the cost of home efficiency retrofits against energy savings and deferred capacity. Mr. Watkins' statement appears somewhat "out of step" again and is an odd position for an economist that should be concerned with avoiding inefficient resource utilization.

### D. Average and Excess Is Generally Recognized By Regulators as a Reasonable and Appropriate Method.

Significantly, neither Mr. Watkins nor Ms. Meisenheimer appeared to understand the Average and Excess Method (A&E) that had been used, with minimal variations, both by Aquila and by Mr. Brubaker.[33/] In his testimony, Mr. Brubaker clearly articulated the process involved.

> The A&E method is one of a family of methods which incorporates a consideration of both the maximum rate of use and the duration of use. As the name implies, A&E makes a conceptual split of the system into an "average" component and an "excess" component. The "average" demand is simply the total kWh usage divided by the total number of hours in the year. This is the amount of capacity that would be required to produce the energy if it were taken at the same demand rate each hour. The system "excess" demand is the difference between the system peak demand and the system average demand.
>
> Under the A&E method, the average demand is allocated to classes in proportion to their

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[33/] Mr. Tracy stated that Mr. Brubaker's use of A&E was "more standard" than Aquila's. Transcript Vol. 4, p. 157, ll. 13-14.

> average demand (energy usage) and the difference between the system average demand and the system peak(s) is then allocated to customer classes on the basis of a measure that represents their "peaking" or variability in usage.[34/]

It is patently obvious that the A&E method allocates production costs to energy usage (based on the "average" demand), that is the total kWh usage divided by the total number of hours in the year, and the "excess" is then allocated to classes based on their variability in usage. Mr. Brubaker analyzed this component by averaging the three non-coincident peaks for each customer class in the three summer months.[35/] Mr. Tracy agreed which this choice, although sponsoring a 3-coincident peak study.[36/]

Mr. Watkins does not understand this method at all. Indeed, based on its data responses, the Staff never considered any other method but its own "cutting edge" 25 year old meth-

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[34/] Brubaker, Direct Testimony, Exhibit 10, pp. 20-21.

[35/] As Mr. Brubaker stated:

> In order to reflect cost causation the methodology must give predominant weight to loads occurring during the summer months. Loads during these months (the peak loads) are the primary driver which has and continues to cause the utility to expand its generation and transmission capacity, and therefore should be given predominant weight in the allocation of capacity costs.

Brubaker, Direct Testimony, Exhibit 10, p. 22.

[36/] Transcript, Vol. 4, p. 125, ll-23-24; p. 149, ll. 17-20.

od.[37/] But beyond that, Mr. Watkins completely misunderstands the function of the A&E allocation method, accusing it of "making no allocation to any usage by any customer class other than those three hours." He stated:

> Okay. The industrials have chosen to use class peaks, which means you look for the maximum demand of each class during the month and sum those up to determine the allocation factors. But in each case there is no allocation to any usage by any customer class other than those three hours.

Transcript, Vol. 5, p. 327, ll. 9-14.

This is plainly wrong. As both Mr. Brubaker and Mr. Tracy testified, the "average" portion of the Average and Excess allocation method allocates a substantial portion of production costs on each classes' average or energy usage across the entire year, thus allocating to each class that classes' proportionate costs of capacity that would be required to produce the energy if it were taken at the same demand rate each hour.

The A&E used by Mr. Brubaker allocated 60.5 percent ($15.5 million) of the St. Joseph division's total Production

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[37/] SIEUA Data Request No. 11, admitted as Exhibit No. 28. This DR posed the following question:

> Reference James Busch Testimony: Were any other methods of allocation considered? If so, which ones and why were they rejected?

and drew the following response from Staff:

> Staff did not consider any other methods of allocation. In earlier versions of its CCOS studies, Staff utilized a 12 NCP Average and Peak allocator as a proxy for the more preferable TOU allocators ultimately used by Staff in its filed position until such time as Staff was able to develop the TOU allocators.

Capacity cost of $25.7 million strictly on energy use;[38] correspondingly, Mr. Brubaker's A&E method allocated $54.4 million (51 percent of a total Production Capacity cost of $106.7 million) to energy use on the MoPub division.[39] Thus roughly $70 million of the two divisions' production capacity costs were allocated on a strict energy basis under the A&E method.

This is an energy allocator, pure and simple, but Mr. Watkins either fails to recognize it or refuses to do so for his own reasons.

Ms. Meisenheimer is another story altogether. She testified that she did not understand Mr. Brubaker's method at all, and then engaged in a meandering explanation of what she understood and didn't understand. Here is her description of the method:

> It takes a total pot of dollars and divvies it up based on an average use and then additionally some peak periods.

Transcript, Vol. 5, p. 416, ll. 9-11.

Later Ms. Meisenheimer vocalized her lack of understanding of Mr. Brubaker's approach:

> A. Mr. Brubaker's is one that I understand, I must admit, less.
> Q. You're bound to understand it more than I do.
> A. Well, my understanding is that Mr. Brubaker picks the non-coincident peaks of different classes from different months out of the year, and I'm -- personally, I'm at a loss for what in terms of appropriate allocation method.

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[38] Brubaker, Direct, Exhibit No. 10, Schedules 3 and 4.

[39] Brubaker, Direct Testimony, Exhibit No. 10, Schedules 3 and 5.

Transcript, Vol. 5, p. 421, ll. 4-12.

After acknowledging that the Staff method is what she would have preferred,[40] Ms. Meisenheimer struggles to describe the method that she favors:

> A. Well, it's not a -- theirs, instead of focusing on the peaks to pick out where the highest loads are, instead theirs mirrors where the actual loads occur at all times of the year. So they don't just pick out a few of the highest points and allocate the demand piece according to that and then the energy based on some average. Instead, they say literally at every hour in the year, what's going on with the use of the facilities and allocate cost according to that.

Transcript, Vol. 5, p. 421, ll. 15-23. Once again, Ms. Meisenheimer is confused, this time about "what's going on" with the use of energy that is being generated. Certainly, the cost of the energy being generated should be included in an analysis of "what's going on with the use of the facilities and allocate cost according to that."[41] Of course, Mr. Watkins earlier disclaimed his method as being a cost allocation mechanism since classes didn't cause costs and what he was interested in was an analysis of use and what seemed to him to be "fair."

Thereafter Ms. Meisenheimer seemed to have difficulty even in explaining her own method and work product as a review of that portion of the transcript will demonstrate.[42]

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[40] Transcript, Vol. 5, p. 414, ll. 4-16.

[41] *Id.*

[42] Transcript, Vol. 5, p. 423-25.

### E. Claiming That the A&E Is a "Peak Responsibility" Method Is a Fallacious "Straw Man" Argument.

Mr. Watkins appeared to be obsessed with the Average and Excess method as being a "peak responsibility method." Several times he made reference to this in his prepared testimony and in his live testimony.[43/] He then repeatedly railed against peak responsibility methods apparently in general, with the following being typical:

> Q. Does a peak responsibility method consider how capacity is utilized throughout the year?
> A. No. This methodology is based on the assumption that all capacity is added for the sole purpose of being able to serve the utility's peak load and the cost of all capacity should be allocated to customer classes based on their contribution to peak load.
> Q. Is this a reasonable basis for allocating the costs of generating plants?
> A. No. This premise totally ignores the fact that there are different types of generating units (e.g., baseload, intermediate, and peaking) with different operating cost characteristics (e.g., coal-fired, natural gas-fired, wind powered, etc.). This premise would have the Commission believe that Aquila's participation in the construction of Iatan II has nothing to do with the high cost of natural gas or the limited operating hours of combustion turbines. It's just another way to meet peak load.[44/]

This is a clear example of a "straw man" argument because nothing ought to be more clear than that the A&E method does not -- as Mr. Watkins alleges -- allocate "***all*** capacity . . . to customer classes based on their contribution to peak load."

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[43/] *See, e.g.*, Watkins, Rebuttal Testimony, Exhibit No. 17, pp. 1-2, 3, ll. 8-11; Transcript, Vol. 5, p. 327, ll. 2-5.

[44/] Watkins, Rebuttal Testimony, Exhibit No. 17, pp. 3-4.

A&E simply does not do this[45] and, as Mr. Busch finally admitted, A&E is not classified by NARUC as a "peak responsibility method," but, rather, an "energy weighting method."[46] Indeed, Mr. Watkins completely seems to miss what the "average" portion of the Average and Excess allocation does, namely allocate a substantial portion (here roughly $70 million) of capacity costs on the basis of annual class energy use. This is a far cry from allocating "all capacity costs" on a peak basis.

Typically the reason a party falls back to a "straw man" argument is because the party has no argument to meet the real point and prefers to reconfigure the opposing position so that their otherwise specious argument can appear to "play."

To look ahead a bit, does the Iowa Utility Board not understand its own words when it notes that the Average and Excess method "reflects both peak and off-peak usage."[47] The Iowa Utilities Board (among other jurisdictions) has consistently used the A&E method for allocating generation capacity costs precisely because it does ***not*** allocate "all capacity costs" to a peak hour.[48] Have the Iowa regulators missed some subtlety that only Mr. Watkins sees? Could it be that all the others that

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[45] A&E allocated 57% of the production and transmission assets in the St. Joseph service territory on an energy basis and 47% of the production and transmission assets in the MoPub service territory on an energy basis.

[46] Transcript, Vol. 4, p. 281, ll. 3-18.

[47] See the full quote from the Iowa Utilities Board at p. 39.

[48] *Id.*

are in the parade are out of step and that only Mr. Watkins is in step? Mr. Watkins' loud criticisms of a method that no one here is advocating reveals no more than an attempt to deflect identification of the deficiencies of his own analysis.

However, Mr. Busch, when on the stand, recognized that the NARUC Manual placed the A&E method in the "energy weighting" methods.[49/] Mr. Busch also acknowledged that according to the NARUC manual A&E was a "reasonable method, yes."[50/]

### F. The Missouri Commission Has Not "Adopted" the Staff's Method.

Staff counsel asked the Commission to take notice of four old Commission cases.[51/] Revealing his age, SIEUA/AGP counsel actually participated in a couple of these cases and has reasonable recollections about them. Presumably Staff counsel's intent was to argue that the Commission has already settled this

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[49/] Transcript, Vol. 4, p. 281, ll. 3-18:

Q. So would you agree with me that according to the NARUC manual, the average and excess method is an energy weighting method?
A. I would agree that the NARUC manual places it underneath the energy weighting methods section.
Q. And would you agree with me it doesn't place it in the peak demand responsibility method category?
A. I would agree that in the order, it is not placed in that order.
Q. Let me rephrase the question.
Would you agree the NARUC manual does not place the average and excess revenue in the peak demand responsibility category?
A. Yes, it does not put it in the peak demand category.

[50/] Transcript, Vol. 4, p. 282, ll. 5-6.

[51/] Transcript, Vol. 5, p. 318-19.

issue, but he was belied by Mr. Watkins acknowledgement that the Commission had not "approved" Staff's method.

> Q. Now, when you started out your testimony, you were describing to me how Staff came about to arrive
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> at this methodology. Has this methodology been adopted or approved by the Commission since Staff's initial usage of it in cases, or if you're aware of that?
> A. This is my impression and recollection, is that ***this particular hourly time of use allocation has never been approved by a Commission Order.*** The resource requirements to develop it are fairly expensive. What has been presented to the Commission for decision is -- is the concept, and I believe what has been presented is the hourly time of use allocation methodology as the concept that's the ideal, but due to not having load research data available in that particular case that wasn't settled and went to the Commission, an alternative, which generally has been the 12 NCP average and peak method where -- as a substitute for that, and the Commission has adopted that specific methodology in that case as the appropriate allocation procedure ***among the alternatives that were available.***

As review of these decisions will confirm, the Commission made a selection of approaches ***among the alternatives that were offered.*** Significantly, those approaches did not include Average and Excess. In those 20+ year-old decisions, the Commission was deciding between a pure "peak responsibility" method and other methods. Here, however, no one is advocating a pure "peak responsibility" allocation method.

In none of these cases are the facts and circumstances remotely comparable. In one, the main issue was how to appropriately allocate costs when there was one very large interruptible load [Armco Steel] on the utility's system. The other two cases dealt with circumstances where the respective utilities were seeking to include expensive new nuclear generation facilities; customers of all classes were facing extremely large rate increases.

In each instance the Commission correctly limited itself to the methods developed in the record in each case and pointed out that it was choosing an allocation approach from among those that it had been offered on the record. These cases do ***not*** say that the Commission adopted a methodology for all time, or that the approach used in those cases was to be considered reasonable under all circumstances, or direct the exclusion of any other approach.

More particularly, in each instance the Commission (not dissimilar to the Iowa Board's statements) seemed to be saying that a pure "peak responsibility" allocation method had shortcomings, and methods that considered a broader allocation basis were preferred. This may explain, in part, why Mr. Watkins is so intent to have the Commission believe that Mr. Brubaker and Aquila have used peak responsibility cost allocation methodology. However, both used the Average and Excess methodology that was not involved in any of these cases and which now even Staff witnesses acknowledge is not a peak responsibility method.

**G. Staff's Method Isn't a TOU Method According to NARUC.**

When Staff's unique method was criticized as not being reflected in the NARUC Manual, Mr. Watkins' recourse is to change the name of the method. Despite having labeled it as a "time of use" method throughout most of the proceeding,[52/] Mr. Watkins

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[52/] *See, e.g.*, Watkins, Surrebuttal Testimony, Exhibit No. 18, p. 1, l. 19; Watkins, Surrebuttal Testimony, Exhibit No. 18, pp. 4-5; Busch, Surrebuttal Testimony, Exhibit No. 15, p. 1, l. (continued...)

shifts gears and christens it as a "probability of dispatch" method, apparently because he could find a reference to that in the NARUC Manual.

> Q. On page 10, lines 12-13, of the prefiled rebuttal testimony of SIEUA/AG Processing/FEA (Intervenors) witness Maurice Brubaker, he claims that the Staff's time-of-use methodology (TOU) is not described in the NARUC cost allocation manual. On page 11, line 5, of the prefiled rebuttal testimony of Aquila witness David L. Stowe, he make the same claim. Are they correct?
>
> A. No. The methodology is found generally in the "Time-Differentiated Embedded Cost of Service Methods" section beginning on page 59 of the 1992 NARUC cost allocation manual, and in particular to the "Probability of Dispatch Method" sub-section 4, on page 62. ***The method, commonly referred to in Missouri as "The Staff's Time-of-Use Method," is described as follows:***
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> > The probability of dispatch (POD) method is primarily a tool for analyzing cost of service by time periods. The method requires analyzing an actual or estimated hourly load curve for the utility and identifying the generating units that would normally be used to serve each hourly load. ***The annual revenue requirement of each generating unit is divided by the number of hours in the year that it operates, and that "per hour cost" is assigned to each hour that it runs.*** In allocating production plant costs to classes, the total cost for all units for each hour is allocated to the classes according to the KWH use in each hour. The total production plant cost allo-

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[52/] (...continued)
23; Watkins, Rebuttal Testimony, Exhibit No. 17, pp. 3-4; Watkins, Direct Testimony, Exhibit No. 16, p. 5, l. 5, p. 8, l. 9; Pyatte, Direct Testimony, Exhibit No. 19, p. 2, ll. 12-13; Busch, Direct Testimony, Exhibit No. 13, p. 10, ll. 7, 18-19.

> cated to each class is then obtained by summing the hourly cost over all hours of the year. These costs may then be recovered via an appropriate combination of demand and energy charges. It must be noted that this method has substantial input data and analysis requirements that may make it prohibitively expensive for utilities that do not develop and maintain the required data.[53/]

Mr. Watkins' choice of words is canny. And because he doubtless spent time in preparing it, we have quoted from Mr. Watkins' Surrebuttal testimony to make a couple of points. *First*, the above quote is, of course, a prime example of an attempt to shift the target. ***There is no other reference to a "probability of dispatch method" in any prepared testimony or in the hearing transcript.*** When your method doesn't appear in the NARUC Manual (which it doesn't), change its name to something that you think does. He then makes an attempt to equate the two by appearing to suggest that they are the same and the probability of dispatch method is known -- "in Missouri" -- as "The Staff's Time-of-Use Method."

*Second*, he words his testimony as "[t]he method is described . . ." in a specific location in the NARUC Manual, using the definite article "the". This is confirmed be his final choice of words that the method ["The Staff's Time-of-Use Method"] "is described as follows." Mr. Watkins then quotes the portion of the NARUC Manual he references. Unfortunately, he

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[53/] Watkins, Surrebuttal Testimony, Exhibit No. 18, pp. 2-3 (emphasis added).

should have read the quote he pulled because the emphasized portion of his quote from the NARUC Manual shows that he did not perform a "probability of dispatch" analysis, either. A probability of dispatch analysis, as the NARUC quote correctly describes, begins with identifying the annual revenue requirements of the various generating units and then dividing that number by the number of hours that the unit ran during the period. Did Staff do this? Did anyone on the Staff do this? Mr. Busch says ***no***.

Mr. Busch was asked:

> Q. And I want you to tell me how you derived marginal production capacity costs from the hourly marginal energy costs.
> A. And I cannot tell you that answer. Mr. Watkins did that. ***This is what Staff -- my testimony presents what Staff did.*** Mr. Watkins performed that calculation, and he will be happy to discuss that with you.
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> . . . .
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> Q. All right. Did you calculate -- well, let me ask you this: What is the revenue requirement of Sibley 1?
> A. What is the revenue requirement of
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> Sibley 1?
> Q. Yes, sir.
> A. Are you asking for what the dollars are?
> Q. I'm asking you what is the revenue requirement of Sibley 1, Sibley Generating Unit 1?
> A. I don't know.
> Q. Would your answer be the same if I asked you about Sibley Unit 2?
> A. Yes.
> Q. Would your answer be the same if I asked you about one of the Greenwood units?
> A. Yes.
> ***Q. Did you calculate the revenue requirements of each generating plant for Aquila?***
> ***A. No, I did not.***
> ***Q. Did anyone do so, to your knowledge?***
> ***A. Not to my knowledge.***

Transcript, Vol. 4, p. 298-99 (emphasis added). The NARUC Manual's description of the method is clear. The analyst first

identifies the dollars of annual revenue requirement to be spread, then spreads that annual revenue requirement over the number of hours that unit was used.

*Third*, while there may be independent criticisms of the probability of dispatch method as described, it is also clear from the excerpt that the ***fuel cost*** of each unit ***must be assigned to the hours that the unit operates*** and then allocated to the customer classes using each classes' energy use in those hours. Mr. Watkins did not do this either. He only used the marginal energy cost for each hour, not the fuel cost associated with the individual units that are operating.

*Fourth*, and whatever it is, Mr. Watkins' method is neither a probability of dispatch method as described by NARUC, nor a class cost of service study or cost-causation analysis. In describing the history of the method to Commissioner Gaw, Mr. Watkins stated:

> So that was really the focus of the development of the timing of these allocators was how to develop the proper summer/winter differentials in the rates. Electricity costs more in the summer than it does in the winter. Rates should be higher. We needed a methodology which would allocate those costs properly between the seasons.
>
> The same thing is true within the rates. Most, if not all, of the rates at least for the major classes in Missouri have block rates of some kind. We needed a methodology which would appropriately take the costs that were allocated to a class and put them to those energy blocks by ***making some assumptions*** about what those blocks represented. In most cases the initial block is ***assumed*** to be on peak. The last block is ***assumed*** to be off peak, and if there's a middle block, it's somewhere between on peak and off peak. We needed a methodology to get the costs to those blocks.

Mr. Watkins' comment is revealing in this sense: This method, as he describes it, was not designed to allocate costs

between classes, but rather to "get the costs to those blocks," and to "get the proper summer/winter differentials ***in*** the rates." This method ***assumed*** certain things about timing of block usage and *sub rosa* ***assumes*** that a rate is already constructed that is part of a properly allocated ***class*** revenue requirement. What was sought was a method to help design the seasonal structure of the rate and the appropriate blocking of the rate so that across the test period the rate would recover the ***separately allocated class revenue requirement***. This method was a final step in the process; not the beginning of the process. Mr. Watkins' use of this method here is a demonstration of the old saw: "Once you think you know how to use a hammer, lots of things begin to look like nails." In fact, these "nails" are vastly different.

We mentioned that Mr. Watkins' selection of words is canny, and the foregoing is not the only example. When Commissioner Gaw asked Mr. Watkins "So the Staff's belief is that this is the ***most accurate*** methodology to utilize?"[54/] Mr. Watkins' response was carefully crafted: "Staff believes it's the ***most reasonable*** methodology to utilize."[55/]

There is a significant difference between the question Commissioner Gaw posed and the response that Mr. Watkins made. "Accurate" addresses the precision of the analysis itself without making a value judgment as to the outcome. "Reasonable" is

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[54/] Transcript, Vol. 5, p. 324, ll. 19-20 (emphasis added).

[55/] *Id.*, ll. 20-21 (emphasis added).

conclusory and presumes a result by which the "reasonable" outcome is measured.

### H. The Average and Excess Allocation Method is Well Recognized and Is the Most Popular Method Used.

In comparison to the "unique" methods used by Staff and OPC, neither of which is claimed by any other jurisdiction, the Average and Excess method is probably the most widely used method of class cost of service allocation used in the country.[56/] Although Mr. Tracy acknowledged that he hadn't done extensive research on it, his statement is correct. We (actually counsel for FEA) undertook some research.

Decisions have been located that approve, adopt or utilize the Average and Excess allocation method in Colorado,[57/]

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[56/] Transcript, Vol. 4, p. 150, ll. 6-8.

[57/] *Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company*, Electric, Decision No. C05-0412; DOCKET NO. 04S-164E, Colorado Public Utilities Commission, 2005 Colo. PUC LEXIS 359; 240 P.U.R.4th 323, March 17, 2005, Adopted; April 11, 2005; *Re: The Investigation and Suspension Of Tariff Sheets Filed By Aquila, Inc.*, Decision NO. C04-1060; Docket No. 03S-539E, Colorado Public Utilities Commission, 2004 Colo. PUC LEXIS 965, August 3, 2004 (The Commission found argument's for A&E compelling and therefore adopted the use of the A&E method using NCP to calculate the excess portion for allocation of production and transmission plant and associated expenses); *In The Matter Of The Application Of Public Service Company Of Colorado For An Order Determining Whether The Size And Load Impact Of The Demand Side Management And Renewables Segments Of Its 1999 Integrated Resource Plan Maximize The Public Interest*, Decision No. C00-1057; Docket No. 00A-008E, Colorado Public Utilities Commission, 2000 Colo. PUC LEXIS 1093, September 26, 2000 (The Commission stated that the dissent was mistaken in its assertion that current rates are not reflective of system peaking costs. The electric rates for the Company were approved by the Commission and were based, in part, upon the average and excess demand cost allocation method. This Commission found that the A&E (continued...)

Connecticut,[58] Idaho,[59] Iowa,[60] Illinois,[61] Indiana,[62]

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[57] (...continued)
method reflects the costs of serving various customer classes at the time of system peak. There was nothing in the record that indicates that the "solution" to the growth in demand for electricity is simple modification of the electric rate design. Given the growth in demand on Public Service's system, the Commission stated it would be reckless to reject the Stipulation reached in the case, in part, in the unsupported and unexamined hope that future adjustments to rates will decrease future demand for electricity at times of system peak); *Investigation Of Proposed Changes To Electric And Steam Rates Public Service Company Of Colorado*, (Decision No. C96-134); Docket No. 95i-513e, Colorado Public Utilities Commission, 1996 Colo. PUC LEXIS 348, January 31, 1996 ("The Intervenor Cities argue in their application that, instead of the Average and Excess Demand method, we should utilize a Coincident Peak cost allocation methodology in the present case. For the reasons articulated in Decision No. C95-1098, pages 15 through 18, we will deny this request.").

[58] *DPUC Review Of The Connecticut Light And Power Company's Rates And Charges*, Docket No. 98-01-02, Connecticut Department of Public Utility Control, 1999 Conn. PUC LEXIS 1, 191 P.U.R.4th 373, February 5, 1999 (The Department determined that the Average and Excess Demand ("AED") methodology has historically been found by the Department to be an acceptable and appropriate cost-of-service methodology for the CL&P system. In past proceedings the Department had found the Company's application of the AED/12CP-NCP method to be reasonable and no new evidence was been presented to convince the Department that it is appropriate to amend the cost-of-service study at this time.).

[59] *In The Matter Of The Petition By FMC Corporation Seeking Resolution Of A Deadlock In Negotiations Between FMC Corporation And Idaho Power Company Pursuant To The Special Contract For Electric Service To FMC Corporation*, Case No. U-1006-158; ORDER NO. 15977, Idaho Public Utilities Commission, 1980 Ida. PUC LEXIS 1, December, 1980 (The Commission stated that the average and excess method has been the only method presented for consideration in recent Idaho Power rate cases. The Commission continued to use the A&E methodology.).

[60] *In Re: Interstate Power And Light Company*, Docket No. RPU-04-1, Iowa Utilities Board, 2005 Iowa PUC LEXIS 17; 239 P.U.R.4th 309, January 14, 2005 (proposed changes to previously used A&E method were rejected); *In Re: Interstate Power And Light Company*, Docket Nos. RPU-02-3; RPU-02-8; ARU-02-1, Iowa Utilities Board, 2003 Iowa PUC LEXIS 140; 225 P.U.R.4th 165, April 15, 2003, Issued; April 15, 2003 (IUB states that it will continue to
(continued...)

Louisiana,[63] Maryland,[64]

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[60] (...continued)
use A&E method for transmission and generation allocation). *See*, discussion of Iowa cases, *infra*.

[61] *MidAmerican Energy Company Petition to Renew Decommissioning Nuclear Power Plant Expense Rider MidAmerican Energy Company Petition to Renew Decommissioning Nuclear Power Plant Expense Rider*, 98-0757; (Cons.); 99-0577, Illinois Commerce Commission, 2003 Ill. PUC LEXIS 426, May 21, 2003 (A&E method applied to nuclear plant decommissioning costs); *MidAmerican Energy Company: Petition for Decommissioning Expense Adjustment Under Rider 12*, 97-0569, Illinois Commerce Commission, 1999 Ill. PUC LEXIS 499, July 8, 1999 (approving A&E method of allocation for nuclear decommissioning costs).

[62] *In the Matter of the Petition of Harrison County Rural Electric Membership Corporation to Increase Its Rates and Charges for Electric Service*, Cause No. 36873, Public Service Commission of Indiana, 1982 Ind. PUC LEXIS 236, August 11, 1982 (approving use of A&E method).

[63] *Gulf States Utilities Company*, ex parte, ORDER NO. U-14495-B, Louisiana Public Service Commission, 1980 La. PUC LEXIS 84; 40 P.U.R.4th 593, November 17, 1980 (approved A&E method recommended by the company).

[64] *Re Potomac Electric Power Company Intervenors: Office of People's Counsel, Apartment and Office Building Association of Metropolitan Washington, Inc., General Services Administration, Washington Metropolitan Area Transit Authority, Sumner Village Condominium No. One, Inc., Sumner Village Condominium No. Two, Inc., and Sumner Village Community Association*, Case No. 7384, Order No. 64268, Maryland Public Service Commission, 1980 Md. PSC LEXIS 79; 71 Md. P.S.C. 157, April 14, 1980 (notes that the A&E method is used in Maryland for PEPCO as well as Virginia and Washington DC); *In The Matter Of The Potomac Electric Power Company's Proposed: (A) Stranded Cost Quantification Mechanism; (B) Price Protection Mechanism; And (C) Unbundled Rates*, Case No. 8796, PHASES I & II, ORDER NO. 75850, Maryland Public Service Commission, 1999 Md. PSC LEXIS 47; 198 P.U.R.4th 1, December 22, 1999 (allocated the ratepayers' share of a credit on the basis of production allocation factors computed using the average demand (4 coincident peak) method).

Minnesota,[65] New Jersey,[66] Oklahoma,[67] Pennsylvania,[68]

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[65] *In the Matter of the Petition of Interstate Power Company For Authority to Increase its Rates For Electric Service in Minnesota*, DOCKET NO. E.-001/GR-86-384, Minnesota Public Utilities Commission, 1987 Minn. PUC LEXIS 43, May 1, 1987 (adopting the A&E method as the most reasonable for production and transmission); *In the Matter of the Petition of Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, for Authority to Change its Schedule of Rates for Electric Services Furnished to its Customers in the State of Minnesota*, DOCKET NO. E-015/GR-80-76, Minnesota Public Utilities Commission, 1981 Minn. PUC LEXIS 14; 41 P.U.R.4th 554, January 30, 1981 (utility was ordered to use the A&E methodology for its cost-of-service study).

[66] *In The Matter Of The Verified Petition Of Jersey Central Power & Light Company For Review And Approval Of An Increase In And Adjustments To Its Unbundled Rates And Charges For Electric Service, And For Approval Of Other Proposed Tariff Revisions In Connection Therewith In The Matter Of The Verified Petition Of Jersey Central Power & Light Company For Review And Approval Of Its Deferred Balances Relating To The Market Transition Charge And Societal Benefits Charge In The Matter Of The Consumer Education Program On Electric Rate Discounts And Energy Competition - Jersey Central Power & Light Company's Verified Petition For Declaratory Ruling In The Matter Of The Verified Petition Of Jersey Central Power & Light Company For Review And Approval Of Costs Incurred For Environmental Remediation Of Manufactured Gas Plant Sites And For An Increase In The Remediation Adjustment Clause Of Its Filed Tariff In Connection Therewith In The Matter Of Jersey Central Power & Light Company For Increases In Its Levelized Energy Adjustment Clause Charge And Demand Side Factor*, DOCKET NO. ER02080506; DOCKET NO. ER02080507; DOCKET NO. EO02070417; DOCKET NO. ER02030173; DOCKET NO. ER95120633, New Jersey Board of Public Utilities, 2004 N.J. PUC LEXIS 192, May 17, 2004 (using the A&E method.).

[67] *Application Of Oklahoma Gas And Electric Company For An Order Of The Oklahoma Corporation Commission Amending Its Cogeneration Credit Rider (CCR) Tariff To Recognize Authorized Changes In Capacity Payments To Qualified Facilities Pursuant To PURPA*, Cause No. PUD 200400391; ORDER NO. 499044, Oklahoma Corporation Commission, 2004 Okla. PUC LEXIS 215, December 21, 2004 (the appropriate allocation factor to be used in making a fair allocation of cogeneration capacity and O&M costs and credits among OG&E's Oklahoma customers was the production demand allocator utilized in OG&E's cost of service study to allocate production demand related costs based on the Average and Excess methodology, as previously approved by the Commission in its Order No. 470044).

Texas,[69] and Virginia.[70]

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[68](...continued)

[68] *Pennsylvania Public Utility Commission v. Pennsylvania Power Company*, R-870732, Pennsylvania Public Utility Commission, 1988 Pa. PUC LEXIS 407; 67 Pa. PUC 91; 93 P.U.R.4th 189, May 3, 1988 (rejecting challenges to the Company's A&E methodology); *Pennsylvania Public Utility Commission v. Duquesne Light Company, R-842583 et al., Pennsylvania Public Utility Commission*, 1985 Pa. PUC LEXIS 68; 59 Pa. PUC 67, January 24, 1985; entered January 25, 1985 (The Commission held that the A&E method was a fair and equitable method of allocating costs. The Average and Excess Demand Method allocates demand costs in a two-part formula. A portion of demand costs is allocated based on the average demand of the classes. The remaining demand costs are allocated based on the excess of class maximum demands over class average demand. This method has the advantage of recognizing the impact on costs of both energy consumption and maximum demand. By considering both energy and demand, the importance of class load factor, or relative use of facilities, is incorporated into the study. Diversity is also considered with the benefit of diversity allocated on the basis of load factor. ***The low load factor customers receive a greater proportion of the benefits of diversity. One of the most important advantages of this method is that stable results are produced)***; *Pennsylvania Public Utility Commission v Duquesne Light Company*, R-821945 et al., PENNSYLVANIA PUBLIC UTILITY COMMISSION, 1983 Pa. PUC LEXIS 84; 57 Pa. PUC 1; 51 P.U.R.4th 198, January 27, 1983 (approving classification of production plant and expenses using the average and excess demand method. The method was described in Duquesne Exh No. IV as follows: "Average and Excess Demand Method. In support of the reasonableness of the average and excess methodology as the method of allocating demand-related production plant and expenses, Duquesne stated that the important factor to remember is that, unlike peak demand methodologies, ***the average and excess method, as its descriptive name indicates, allocates a portion of total demand responsibility on an average demand or energy basis (Duquesne Statement No. 22, p. 31), thereby reducing the totality of costs allocated on a demand, as opposed to an energy, basis.*** Duquesne also states that the commission has expressed a preference for demand allocation methodologies which give some recognition to average demand as compared with those methodologies which rely solely on peak demand allocators, and that its average and excess demand methodology was considered and approved in its last two rate proceedings at R-80011069 and R-811470); *Pennsylvania Public Utility Commission v. West Penn Power Company*, R-842651 et al., 69 PUR 4th 470, Pennsylvania Public Utility Commission, 1985 Pa. PUC LEXIS 42; 59 Pa. PUC 552; 69 P.U.R.4th 470, August 28, 1985; entered August 28, 1985 (accepting the Company's A&E methodology as valid and just and reasonable stating that they have approved of the average and excess method many times).

[69/] *Application of AEP Texas Central Company For Authority To Change Rates*, PUC Docket No. 28840; SOAH DOCKET NO. 473-04-1033, Public Utility Commission of Texas, 2005 Tex. PUC LEXIS 32, August 15, 2005 (nuclear-decommissioning costs were properly allocated using an average and excess, four coincident peak (A&E/4CP) allocator); *Application of TXU Electric Company For Approval Of Unbundled Cost Of Service Rate Pursuant to PURA § 39.201 And Public Utility Commission Substantive Rule § 25.344*, PUC Docket No. 22350; SOAH Docket No. 473-00-1015, Public Utility Commission of Texas, 2001 Tex. PUC LEXIS 68, October 3, 2001 (affirming SOAH ALJ's recommendation that nuclear decommissioning costs be allocated using the same average and excess non-coincident peak (A&E-NCP) methodology the Company used in its last cost-of-service study); *Application of Southwestern Public Service Company For A Rate Increase*, Docket No. 1861, Public Utility Commission of Texas, 1978 Tex. PUC LEXIS 231; 4 Texas P.U.C. Bulletin 216, September 7, 1978 (determining that it was reasonable to allocate costs using the A&E method proposed by the company.); *Application Of Texas Utilities Electric Company For Authority To Change Rates And Investigation Of The General Counsel Into The Accounting Practices Of Texas Utilities Electric Company*, DOCKET NO. 11735, Public Utility Commission of Texas, 1994 Tex. PUC LEXIS 296; 20 Texas P.U.C. Bulletin 1029, January 28, 1994 (approving the 4 NCP A&E methodology); *Application Of Texas Utilities Electric Company For A Rate Increase; Petitions For Review Of Texas Utilities Electric Company From The Final Decision And Action Of The City Of Lindale, Et Al. (Part 2 Of 3)*, Docket Nos. 5640 and 5661, Public Utility Commission of Texas, 1984 Tex. PUC LEXIS 50; 10 Texas P.U.C. Bulletin 659, November 19, 1984 (using company's A&E methodology); *APPLICATION OF TEXAS ELECTRIC SERVICE COMPANY FOR A RATE INCREASE*, DOCKET NO. 3250, Public Utility Commission of Texas, 1980 Tex. PUC LEXIS 111; 6 Texas P.U.C. Bulletin 166, October 3, 1980 (approving the A&E methodology; *APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY FOR AUTHORITY TO CHANGE RATES (Part 8 of 11)*, DOCKET NO. 9300, Public Utility Commission of Texas, 1991 Tex. PUC LEXIS 279; 17 Texas P.U.C. Bulletin 2057; 133 P.U.R.4th 604, September 27, 1991 (approving use of A&E with NCP again); *Application Of El Paso Electric Company For Authority To Change Rates Docket No. 9945, Public Utility Commission of Texas*, 1992 Tex. PUC LEXIS 122; 18 Texas P.U.C. Bulletin 9, February 6, 1992 (authorizing utility to use the A&E 4CP method); *Application Of El Paso Electric Company For Authority To Change Rates*, DOCKET NO. 9165; Public Utility Commission of Texas, 1990 Tex. PUC LEXIS 188; 16 Texas P.U.C. Bulletin 605, August 22, 1990 (authorizing use of A&E 4CP method); *Application Of Texas Utilities Electric Company For Authority To Change Rates*, Docket No. 9300, Public Utility Commission of Texas, 1991 Tex. PUC LEXIS 279; 17 Texas P.U.C. Bulletin 2057; 133 P.U.R.4th 604, September 27, 1991 (approving

(continued...)

Iowa is a good example, and explains its orders well and in trenchant terms that also, by the way, disprove the contentions of both Mr. Watkins and Ms. Meisenheimer about the method. These are the Iowa Board's words:

> Generation cost allocation is typically the class cost-of-service issue with the largest potential rate impact. All of the proposed

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[69/](...continued)
TU's continued use of A&E NCP methodology; rejected methodologies included the A&E-4CP methodology and the average and peak methodologies); *Application Of Gulf States Utilities Company For Authority To Change Rates; Application Of Sam Rayburn G&T Electric Coop., Inc. For Sale Transfer Or Merger; Appeal Of Gulf States Utilities Company From Rate Proceedings Of Various Municipalities*, Docket No. 8702, Public Utility Commission of Texas, 1991 Tex. PUC LEXIS 231; 17 Texas P.U.C. Bulletin 703, May 2, 1991 (approving the A&E method); *Application Of El Paso Electric Company For Authority To Change Rates; Application Of El Paso Electric Company For Review Of The Sale And Leaseback Of Palo Verde Nuclear Generating Station Unit 2*; DOCKET NOS. 7460 AND 7172, Public Utility Commission of Texas, 1988 Tex. PUC LEXIS 126, June 16, 1988 (approving use of A&E 4CP method); *Application For Review Of Certain Ratemaking Actions Of The City Of Austin*, Docket No. 6560, Public Utility Commission of Texas, 1986 Tex. PUC LEXIS 171; 12 Texas P.U.C. Bulletin 1311, April 25, 1986; On Rehearing June 2, 1986 (approving use of A&E 4CP method; *Application Of Texas Utilities Electric Company For A Rate Increase; Petitions For Review Of Texas Utilities Electric Company From The Final Decision And Action Of The City Of Lindale, Et Al.* , Docket Nos. 5640 and 5661, Public Utility Commission of Texas, 1984 Tex. PUC LEXIS 51; 10 Texas P.U.C. Bulletin 659, November 19, 1984 (The A&E method was approved); *Application Of Fayette Electric Cooperative, Inc. For A Rate Increase*, Docket No. 3578, Public Utility Commission of Texas, 1981 Tex. PUC LEXIS 385; 6 Texas P.U.C. Bulletin 754, April 2, 1981 (again approving use of the A&E method).

[70/] *Application Of Virginia Electric And Power Company, For A General Increase In Rates*, Case No. PUE920041, Virginia State Corporation Commission, 1994 Va. PUC LEXIS 111, February 3, 1994 (stating that the average and excess method of allocating costs has been the basis of cost of service studies approved in every Virginia Power rate case since the early 1970s. The Commission agreed that the average and excess method of allocating costs should be used in the cost of service study to determine the proper allocation of revenues).

> methods and variations, except the 1CP method, reflect peak demand responsibility, peak and off-peak usage, and load diversity. The Board has historically rejected the 1CP method and will do so in this case, because it does not reflect the fact that generation capacity is designed to serve both peak and off-peak demand, as required by 199 IAC 20.10(2)"c." ***The A&E method does not share this shortcoming because, among other things, allocation is based partly on average demand, which reflects both peak and off-peak usage. The Board has consistently used the A&E method for allocating generation capacity costs.***[71/]

With respect, the Missouri Commission should ask itself whether all these states have simply missed the "cutting edge" methodology that Mr. Watkins has purportedly had for 25 years? Is it reasonable that "all the other boys are out of step except my Johnnie?" Perhaps there is merit in suggesting Johnnie is the one that is out of step and has been doing some "leading edge" march step essentially on his own for the past 25 years.

Indeed, this context is all the more interesting given that Ms. Meisenheimer admits that she does not understand this widely used method at all and Staff (and Mr. Watkins) both failed to consider it or misunderstood what the allocation method does, revealing more about the bias of the Staff and OPC witnesses than problems with the widely used A&E method.

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[71/] In Re: INTERSTATE POWER AND LIGHT COMPANY, DOCKET NOS. RPU-02-3; RPU-02-8; ARU-02-1, Iowa Utilities Board, 2003 Iowa PUC LEXIS 140; 225 P.U.R.4th 165 (April 15, 2003); *see also*, In Re: INTERSTATE POWER AND LIGHT COMPANY, DOCKET NO. RPU-02-7, Iowa Utilities Board, 2003 Iowa PUC LEXIS 193, 225 P.U.R.4th 227 (May 15, 2003) also approving A&E for use in an LDC gas system for main allocation: "The Board will adopt . . . Consumer Advocate's A&E method for allocating main costs." Slip at 36.

## I. The Key To Efficient Use of Energy and Costly Resources Is Proper Price Signals.

### 1. Wise Resource Utilization (Conservation) and Efficient Use Are Important Considerations That Begin With Correct Price Signals That Charge Cost Causers the Costs That They Cause.

At an early stage in the hearing, Commissioner Gaw appeared to express concern that one of the participants, DNR, did not have a specific proposal regarding conservation or energy efficiency.[72] Concern about conservation and efficient use is appropriate, but should begin with correct pricing of resources.

Aquila witness Tracy responded to Commissioner Gaw's concerns by pointing out that economically efficient pricing was key to these concerns.[73] Mr. Tracy testified:

> A. Yes, it is. If you want to make policy statements about conservation, you have to first start from cost of service. And ultimately, in my opinion, that's where you stop as well, until you start making some decisions about, you know, why should we take money from Peter to pay Paul.

Transcript, Vol. 4, p. 192, ll. 9-14.

As stated earlier, Missouri law prohibits undue discrimination and preference in public utility rates. By fulfilling that objective, the Commission can also take steps to encourage efficiency through adopting economically efficient rates. This represents a rate that is properly aligned with cost causation, matching the costs that the company is incurring to the

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[72] Transcript, Vol. 4, p. 103-04.

[73] Transcript, Vol. 4, p. 124, ll. 18-22.

revenues that the company is collecting. This sends correct price signals to the customers.[74] As Mr. Tracy stated:

> A. The economically efficient rate I believe is determined by the cost of service study, and ultimately I'm going to advocate that our cost of service study best
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> reflects the economically efficient rate, the rate that says, here's the price signal that tells you how much you should use and what that costs to the company, and ultimately to society, for you to use that, and so that's sending that economically efficient signal.

Transcript, Vol. 4, p. 192-93. Mr. Tracy continued that when rates are not based on cost of service, efficient use is discouraged, inefficient use is encouraged, and "all of society is penalized to the extent you've got this built-in inefficiency."[75]

When the Commission properly aligns rate revenues with costs to provide that customer or customer class utility service, its job ends. To do otherwise would suggest that an intentional tax could be levied on one class of customer to provide a benefit or income transfer to another class of customer.[76] It is clear that the taxing authority is not delegated to the Commission and the Commission has only those powers explicitly granted to it and those necessarily implied from the express grant.[77] Accordin-

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[74] Transcript, Vol. 4, p. 191, ll. 7-17.

[75] Transcript, Vol. 4, p. 193, ll. 19-21.

[76] Given the recent decision in *State ex rel. Joplin v. Public Service Commission*, WD64944, December 6, 2005, this approach should be viewed with some scepticism.

[77] "We agree with the respondent that the Public Service Commission is a body of limited jurisdiction and has only such powers as are (continued...)

ly, there is no authorization to, in Mr. Tracy's words: "take money from Peter to pay Paul.[78/]

**2. Earnings Stability For the Utility Results From Proper Alignment Of Incurred Costs With Rates.**

In his opening statement, SIEUA and AGP counsel made reference to the interest of the utility in having costs correctly aligned with the rates that recover those costs. Commissioner Murray made reference to one of the results of not doing so in her questions to Mr. Tracy that the methods that Staff has used creates a large imbalance in the cost of service.[79/] Commissioner Murray is correct, but the problem goes deeper than that.

A major problem with Staff's method that has not been discussed in other terms is its failure to properly distinguish between and deal with ***fixed*** and ***variable*** costs. Certainly most would agree that the costs of production and transmission capacity are fixed -- they do not vary except over a long period of time. The cost of generation, however, principally fuel and purchased power, does vary over the short run. Staff's method ***shifts*** fixed production capacity cost recovery from the customer classes that are responsible for the utility's need for that

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[77/](...continued)
expressly conferred upon it by the Statutes and powers reasonably incidental thereto."

*State ex rel. Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 766, 168 S.W.2d 1044, 1046 (Mo. 1943).

[78/] Transcript, Vol. 4, p. 192, ll. 13-14.

[79/] Transcript, Vol. 4, p. 151-52.

production capacity to the variable (energy) component of the rate. This means that when we have a cooler than weather normal summer, the electric utility does not sell as much energy and the ***recovery*** of its fixed costs declines, but the ***incurrence*** of those fixed costs does ***not*** decline. Concomitantly, if the summer is warmer than normal, the utility is unlikely to complain because it will overrecover its fixed costs.

The Commission should see what is going on in the discussions spawned by SB179 concerning the gas utilities. There rate design and cost of service allocations have consistently shifted fixed costs so that they are recovered through the commodity component of the rates, creating an obvious mismatch between the cost incurrence pattern and the cost recovery pattern and makes the utility's earnings highly dependent on weather patterns.

For this reason, having class rates that properly recover costs from the customers or customer groups that cause them not only serves the public interest by sending proper price signals but also serves the utility's interest by stabilizing earnings.

### J. There Were Minor Differences Between the Analysts Regarding Far Less Significant Components of the Studies.

**1. Income Taxes Should be Allocated Across Rate Base.**

Mr. Brubaker differed from Aquila on the treatment of income taxes. At the hearing, Mr. Stowe acknowledged the difference in treatment and adopted Mr. Brubaker's position.[80/]

**2. Allocation of Several Of the "500" Group of Accounts Resulted in Immaterial Differences.**

There was also a difference in treatment between Ms. Meisenheimer and Aquila and Mr. Brubaker regarding the allocation of several 500-series expense accounts largely concerning maintenance. These were pointed out and Ms. Meisenheimer acceded to some of them, claiming that the NARUC Manual "instructed" certain treatment.[81/]

The amounts in controversy here are essentially insignificant and the production capacity allocator is the real point of controversy. Significantly, the NARUC Manual (which is more of a compendium and explanation of particular allocation methodologies then it is an "instruction manual") devoted only about one page to the allocation of these expenses, but spreads its discussion of the allocation of generation and transmission capacity and fuel costs over several full chapters. From that, one can infer the relative importance of these smaller items compared to the larger production and transmission capacity allocation controversy.

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[80/] Transcript, Vol. 4, p. 199-200.

[81/] Transcript, Vol. 5, p. 436, l. 12.

Regardless, Mr. Brubaker performed his allocation using the methods that the Commission has historically followed and, even in this case, this allocation was accepted by Aquila and by the Staff with only OPC being a holdout.

### K. At the End of the Hearing, OPC Appeared To Abandon Its Study In Favor Of Staff's Position.

OPC's method appears to also be unique. More than that, it appears to be discernable only by OPC. In an exchange with RLJ Thompson, Ms. Meisenheimer sought to describe the OPC "method":

Q. So what's the name of your method?
A. I'd say it's an average and peak method. The -- it would, I think, fall under customer weighting. It's not specifically described as one of the methods in the NARUC manual. However, the NARUC manual never claims to be exhaustive on the types of methods that might be used.

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Q. So it's an average and peak method. Is that different from an average and excess method?
A. Yes. And it may, in fact, be different than other average and peak methods.
Q. Okay. Where did you find this method?
A. This method was originally developed, I think, when Public Counsel had an engineer on staff.
Q. So it's Public Counsel's own method? You didn't find it in a textbook?
A. Well, the concepts I believe are similar to what you might find in a description of calculating like an average or a peak. In terms of how exactly it -- the concept of exactly how we stack increments, I -- I haven't seen it elsewhere.
Q. Thank you. You have not seen it elsewhere?
A. That's true. And that's what I said in response to a Data Request.
Q. So it is a method not used by anyone else, to your knowledge?
A. Not in the exact way that we did it, not to my knowledge.

Transcript, Vol. 5, p. 418, ll. 8-21. Earlier Ms. Meisenheimer testified that she preferred Staff's method to her own, stating that she "liked the Staff's time of use allocator."[82/]

Exhibit 25 had been offered on the first day of the hearing to present in one place the various positions of the parties to the proceeding. It presented OPC's results as well as results of the other parties. On the final day of the hearing, however, Ms. Meisenheimer appeared to abandon her position for OPC in favor of Staff's method.[83/] We will confess that the following exchange with RLJ Thompson is somewhat puzzling, but it seems that OPC has moved away from its own study.

> Q. So you're telling me that Exhibit 25 no longer represents your professional opinion of what the Commission should do?
> A. I think that it does not represent an alternative that I think the Commission could do.
> Q. State that again.
> A. Does not represent an alternative that they can do. I think it represents -- I think it still
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> 00429
> represents an alternative that they could do. And the concept of cost of service studies, they are a guide.

Transcript, Vol. 5, pp. 428-29. We will confess some confusion as Ms. Meisenheimer appears to contradict herself almost on the same line of testimony. However, Mr. Brubaker's study, Aquila's study and Mr. Brubaker's recommendation remain quite clear.

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[82/] Transcript, Vol. 5, p. 414, ll. 15-16.

[83/] *Id.*

**III. CONCLUSION.**

WHEREFORE SIEUA/AGP respectfully urges the Commission to accept and adopt the recommendations offered by Mr. Brubaker.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have sent true copies of the foregoing pleading either by United States Mail, facsimile or other electronic means, to the parties according to the Commission's records on the date shown below.

Stuart W. Conrad
An Attorney for SIEUA

December 19, 2005