BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company d/b/a AmerenUE.	))))	Case No. EO-2010-0255

REPLY BRIEF OF AMEREN MISSOURI

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I. Introduction

The initial briefs of the Commission Staff, the MIEC and the MEG all argue that the inevitable result of Ameren Missouri's loss of the Noranda load in the wake of the January, 2009 ice storm was that: (a) the Company was required by the terms of its FAC tariff to lose tens of millions of dollars in revenues needed to offset its legitimate costs, as determined by the Commission in an order issued just days before the ice storm; and (b) the FAC tariff also requires that customers must receive a windfall from the sale of the power that had been used to serve the lost Noranda load as off-system sales. As the Company has pointed out in its initial brief, that is not a reasonable or logical interpretation of the FAC tariff that was in effect during the relevant period. The tariff permitted the Company to replace the sales to Noranda, which are outside the FAC formula, with very similar long-term partial requirements sales at fixed prices, which are also outside the FAC formula. The Wabash and AEP transactions clearly qualify as long-term partial requirements sales under the common meaning of "long-term" (more than one year in the wholesale marketplace, pursuant to FERC's longstanding practice and in other contexts) and the common meaning of the term "partial requirements."

The testimony provided by the other parties in support of their position is shifting, inconsistent and unpersuasive. It does not support the extremely unfair result that they advocate. For example:

- Staff witness Lena Mantle previously testified under oath that the Wabash and AEP contracts at issue in this case qualify as long-term partial requirements sales.[1] Now, although she admits that these contracts still qualify as partial requirements sales, her definition of "long-term" has shifted to either 3 years, or

[1] Tr. p. 384, ln. 24-p. 385, ln. 15. Ms. Mantle attempted to explain away this admission by arguing that she had not read the contracts, even though she filed 5-6 pages of surrebuttal testimony in that case addressing those contracts. Tr. p. 382, ln. 21-p. 383, ln. 15.

4 years or 5 years[2]—any number of years other than the one-year demarcation consistently used in the wholesale power marketplace and pursuant to FERC's longstanding practice.

- Staff witness Eaves based his original adjustment in Staff's Report exclusively on the Commission's order on rehearing in Case No. ER-2008-0318.[3] When it dawned on him that this order did not support his adjustment he shifted his reliance to obscure and outdated FERC Form 1 reporting instructions, which were not cited in the list of documents supporting Staff's initial report.[4] The evidence shows that these FERC Form 1 reporting instructions were never considered in developing the FAC tariff and were clearly not the basis of anyone's understanding of what the tariff meant at the time it was approved.

- MIEC witness Fayne admitted that he ***never even read*** the Wabash and AEP contracts before he filed sworn testimony with this Commission that they did not qualify as long-term partial requirements contracts.[5] Now it is not clear what his position is: He acknowledged that any transaction to a load-serving entity is at least a partial requirements contract regardless of duration,[6] and that the marketplace recognizes one year as the demarcation between long-term and short-term wholesale contracts.[7]

- MIEC witness Brubaker accepts the undeniable fact that one year is the common demarcation between long- and short-term wholesale contracts, and he has chosen not to make the definition of "long-term" an issue in this case.[8] So his position, contrary to the testimony of most of the other witnesses, must be that the Wabash and AEP contracts do not qualify as partial requirements contracts.

- Perhaps most significantly, even though this is a prudence case, there is absolutely no evidence provided by any witness that Ameren Missouri did anything imprudent. In fact, our opponents have affirmatively testified that entering into the Wabash and AEP contracts was a prudent step for the Company to take.[9]

- In addition, there is no evidence whatsoever that any customer suffered any adverse consequence from Ameren Missouri's replacement of sales to Noranda, which were outside the FAC, with long-term partial requirements sales to Wabash and AEP, which are also excluded from the FAC calculation. With

[2] Tr. p. 377, ln. 11-p. 378, ln. 11; Tr. p. 423, lns. 3-11.
[3] Tr. p. 315, ln.15- p. 318, ln. 4.
[4] *Id.*
[5] Tr. p. 493, lns. 10-16.
[6] Exh. 2 (Haro surrebuttal) p. 15, lns. 11-23.
[7] Exh. 2 (Haro surrebuttal) p. 6, lns. 15-17.
[8] Tr. p. 501, lns. 14-18.
[9] Exh. 8 (Staff's Prudence Report), p. 18; Tr. p. 500, lns. 9-19.

> respect to these revenues, the evidence shows that customers are in exactly the same position as if no ice storm had occurred.[10]

The evidence in this case provides no basis for the Commission to deny Ameren Missouri the recovery of tens of millions of dollars of its legitimate costs based on definitions of "long-term" and "partial requirements" that have been twisted by the Staff and intervenors beyond their common meaning to reach the result these parties want. Notwithstanding MIEC's repeated quotations of Lewis Carroll, if these arguments are accepted, it will be Ameren Missouri who has fallen down the rabbit hole, or through the looking glass, to a land where logic is ignored and words mean whatever the Staff and intervenors want them to mean to achieve their desired results.

II. Argument

A. MIEC's Initial Brief

Perhaps the most surprising aspect of MIEC's initial brief is what it does not contain. It does not contain any argument that the Wabash and AEP contracts do not qualify as "long-term" contracts. MIEC appears to have accepted the undeniable fact that the demarcation between long-term and short-term contracts is commonly understood to be one year—in the wholesale power marketplace, in the electric transmission markets, pursuant to FERC's "longstanding practice," and in numerous other contexts such as this Commission's treatment of debt instruments for purposes of developing a capital structure and IRS regulations, among others.[11] The MIEC has apparently adopted witness Maurice Brubaker's approach that the definition of "long-term" "should not be made an issue in this case," notwithstanding the fact that FERC Form 1 reporting instructions use 5 years as the demarcation for long-term contracts for reporting

[10] Exh. 3 (Barnes direct), p. 11, lns. 4-6.
[11] *See* Ameren Missouri's Initial Brief, pp. 4-7.

purposes. MIEC's implicit acknowledgement that the obscure reporting instructions in Form 1 cannot supersede the commonly used definition of "long-term" is a welcome development.

The MIEC's initial brief relies on three arguments, all of which are not supported by the record evidence in this case. First, MIEC argues that the term "requirements service" has a particular meaning in the regulatory context as defined by "multiple sources," and Ameren Missouri's reliance on the market definition of the term should be rejected.[12] First of all, there are not "multiple sources" that provide a regulatory definition of requirements service inconsistent with the standard definition of "partial requirements sales." The definition of "requirements service" that appears in FERC Form 1 is also reproduced in the same type of annual report applicable to rural electric cooperatives. But this is not two separate sources; it is the same outdated reporting protocol in the same type of form for two different reporting entities.

MIEC also cites the Edison Electric Institute (EEI) glossary, which contains the same definition of "requirements service" as is contained in FERC Form 1. But what MIEC fails to point out is that the EEI glossary also contains the following definition of "Partial Requirements" which would clearly include the Wabash and AEP contracts:

> A wholesale customer who purchases, or is committed to purchase, only a portion of its electric power generation need from a particular entity. There often is a specified contractual ceiling on the amount of power that a partial requirements customer can take from the entity. In contrast, a 'requirements' or 'full requirements' customer is committed to purchase all of its needs from a single entity and generally would not have a ceiling on the amount of power it can take.[13]

So, contrary to MIEC's argument the EEI glossary actually supports the Company's position that the Wabash and AEP contracts meet the definition of "partial requirements sales." The "multiple

[12] *See* MIEC's Post-Hearing Brief, p. 2.
[13] Ex. 2 (Haro Surrebuttal), Schedule JH-S5.

sources" MIEC claims really come down to the out of date reporting protocols that appear in FERC Form 1, as reproduced in the similar annual report for rural electric cooperatives.

In contrast, Ameren Missouri has cited substantial evidence, in addition to the above-cited EEI definition of "Partial Requirements," to show that the Wabash and AEP transactions meet the common definition of partial requirements sales. This evidence includes:

- testimony from Staff witness Mantle, in which she freely admits that the Wabash and AEP contracts are partial requirements contracts pursuant to the plain meaning of the terms in the phrase;[14]

- testimony from MIEC's own witness, Henry Fayne, who admitted that "any transaction to a load-serving entity is at least a partial requirements contract regardless of duration;"[15]

- testimony from Company witnesses Jaime Haro and Duane Highley that the Wabash and AEP contracts qualify as partial requirements contracts as that phrase is regularly and consistently used in the marketplace, and in particular as it has consistently been used by Ameren Missouri;[16]

- the North American Energy Standards Board (NAESB) definition of Partial Requirements: "a sale of power to a purchaser in which the seller pledges to meet a specified part of the purchaser's requirements;"[17]

- the definitions of "partial" and "requirement" in Webster's dictionary, which show that the Wabash and AEP contracts fall within the plain meaning of the phrase "partial requirements;"[18]

- perhaps most significantly, the terms of the Wabash and AEP contracts themselves, which specifically state: (1) that the power provided is to be used to serve part of the load obligations of the purchasing entities, and (2) the power is to have reliability that is the same, or nearly the same as Ameren Missouri's service to its own customers.[19]

The evidence that the Wabash and AEP contracts meet the definition of "partial requirements" sales is overwhelming. MIEC attempts to discount this evidence by arguing that

[14] Tr. p. 380, lns. 13-17.
[15] Exh. 2 (Haro surrebuttal) p. 15, lns. 20-23.
[16] Exh. 2 (Haro surrebuttal) p. 2, lns. 10-16; Exh. 7 (Highley surrebuttal) p. 5, lns. 9-17.
[17] Exh. 2 (Haro surrebuttal) p. 13, lns 1-4; *see also* Sch. JH-S5.
[18] Exh. 2 (Haro surrebuttal) p. 13, lns. 6-13.
[19] Ex. 2 (Haro Surrebuttal) p. 2, ln. 16-p. 3, ln.4; Schedules JH-S1 HC and JH-S2 HC.

there is a "regulatory" definition of the term "requirements service" (which is apparently found only in the fine print of the outdated reporting instructions of Form 1 and the similar annual report for rural electric cooperatives) that trumps the ordinary meaning of the term "partial requirements" as used in all other contexts. But there is no evidence that Ameren Missouri's FAC tariff was ever intended by the Company, the Commission or any other party to be interpreted based on these obscure reporting instructions. The plain meaning of the term "partial requirements sales" is the meaning that is commonly used in every context other than FERC Form 1/RUS reporting instructions, a meaning that encompasses both the Wabash and AEP contracts, and that is reflected in the FAC tariff language.

MIEC next argues that the phrase "partial requirements sales" has to be interpreted to be limited to sales to municipal customers, because of Staff witness Mantle's undocumented recollection of a conversation with an Ameren employee she could not identify from several years ago.[20] Ameren Missouri has presented evidence from witness Gary Weiss that this conversation did not occur as Ms. Mantle recalls it,[21] and Mr. Haro has testified that it would be illogical for Ameren Missouri to have so limited the tariff given the Company's long history of entering into requirements contracts with non-municipal customers,[22] but of course it is impossible for the Company to "prove the negative" that this conversation did not occur.

Whether the Commission believes this conversation occurred or not, what Ms. Mantle is suggesting is far more than an "interpretation" of the Company's FAC tariff. Ms. Mantle is proposing a substantive limitation that simply does not appear in the language of the tariff. She is proposing to make the tariff say something that it does not say based on her questionable

[20] *See* MIEC's Post-Hearing Brief, pp. 9-10.
[21] Ex. 5 (Weiss surrebuttal), p. 6, ln. 1-p.7, ln. 2.
[22] Exh. 2 (Haro surrebuttal) p. 23, ln. 18-p. 25, ln. 22.

recollection of an undocumented conversation. Accepting this kind of after-the-fact modification to tariff language would set an extremely bad precedent. Future litigation over tariff language would devolve into a "he said-she said" battle over what various parties may have said to impose extra limitations to tariff language or to expand the meaning of the language. The bottom line is this Commission, the ratepaying public and utilities are entitled to have tariffs mean what they say. Ms. Mantle's unsupported recollection of conversations cannot be used to add language to the tariff that is simply not there.

One final point is worth making. MIEC argues that the subsequent amendment of the FAC tariff to include the limitation to municipal customers suggests that the tariff was always intended to be so limited.[23] In fact the subsequent tariff amendment pursuant to a settlement suggests exactly the opposite—the limitation had to be added to the tariff because it otherwise would not be there. There is no evidence that the modifications made to the FAC tariff in Case No. ER-2010-0036 were intended to clarify, rather than change, the tariff approved in Case No. ER-2008-0318.

Finally, MIEC argues that "long-term partial requirements sales" must be construed against the drafter of the tariff—in this case Ameren Missouri. Specifically, at page 13 its initial brief, MIEC argues that "[u]nder Missouri law, it has long been held that any ambiguity in the language of a tariff is to be strictly construed against the drafter." But even a cursory review of the cases cited in support of this argument shows that MIEC has failed to distinguish between applicable principles of federal law and applicable principles of state law. Each of the three cases cited by MIEC was decided by a federal court – two decisions from the United States Court of Appeals for the Eighth Circuit and one from the United States District Court for the

[23] *See* MIEC's Post-Hearing Brief, pgs. 11-12.

Western District of Missouri – and involved the interpretation of a tariff adopted by a federal agency charged with regulating rail or motor carriers. Based on those cases, the most recent of which was decided almost thirty-five years ago, it appears that federal law views a carrier's tariffs to be "no different from any contract,"[24] which causes those courts to construe such tariffs strictly against the carrier that drafted them.[25]

But state law governing the interpretation of tariffs is much different than the federal law cited in MIEC's brief. For one thing, Missouri's courts do not equate tariffs with contracts. Instead, because a tariff, once approved, has the same force and effect as a statute directly prescribed by the legislature, state courts consistently have held that tariffs should be interpreted in the same manner as statutes. *E.g., State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n.*, 156 S.W.3d 513, 521 (Mo. App. 2005). Accordingly, as with statutes, the court's primary role is to "ascertain the intent from the language used, to give effect to that intent if possible, and to consider the words used in their ordinary meaning." *Wolff Shoe Co. v. Dir. Of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). But the Commission also has recognized that when interpreting the intent of a tariff it is necessary to discern both the intent of the party that drafted the tariff and the intent of the Commission when it approved the tariff. See *In re Laclede Gas Co.*, 203 Mo. PSC Lexis 516 (2003).

In its initial brief in this case, Ameren Missouri noted that the Commission has recognized the principles of law that govern the interpretation of tariff provisions found to be

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[24] *Penn Cent. Co. v. General Mills, Inc.*, 439 F.2d 1338, 1340 (8th Cir. 1971).

[25] *Id.*, p. 1341. A review of the court's decision shows that strict interpretation against the drafter is but one of several principles that federal courts employ when interpreting an ambiguous tariff. Other legal principles that govern the interpretation of tariffs include: (1) that terms used in a tariff "must be taken in the sense in which they are generally used an accepted"; (2) a finding of ambiguity "must be a reasonable one and should not be the result of a straining of the language"; and (3) "there must be a substantial and not a mere arguable basis in order to justify resolving doubt against the carrier."

ambiguous. The Company also cited several cases that instruct the Commission as to how it is to determine the "plain meaning" of tariff terms and under what circumstances the Commission can go beyond the "plain meaning" of such terms to avoid a result that is illogical or that would defeat the purpose of the tariff. In the interest of brevity, those citations and the legal principles for which they stand will not be reiterated here.

But Ameren Missouri believes one of the legal principles discussed in its initial brief does warrant repetition: the requirement that administrative rules – and, by analogy, tariffs – be interpreted and administered in a way that is consistent with the statute that the rule or tariff was designed to implement. With respect to the Company's FAC, that statute is Section 386.266, RSMo, which authorizes the Commission to approve mechanisms to adjust fuel and purchased power costs between rate cases provided those mechanisms meet certain specifically-prescribed requirements. One of those requirements is that the mechanism be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." Ameren Missouri believes the FAC tariff that the Commission approved in Case No. ER-2008-0318 satisfies the requirements of that statute because the tariff was designed to, among other things, achieve the objective of providing the Company an opportunity to earn a fair rate of return. But that objective cannot and will not be achieved unless the Commission appropriately interprets and administers the tariff.

Only one of the interpretations of the FAC tariff that have been proposed in this case will satisfy that requirement: the interpretation advocated by Ameren Missouri. The alternate interpretations – those advocated by Staff, MIEC, and/or MEG – do not satisfy the statute because, if adopted, those interpretations will require the Company to pass through to customers 95 percent of the revenues received from the Wabash and AEP contracts during the two

accumulation periods at issue in this case. The uncontested surrebuttal testimony of Lynn Barnes shows that Ameren Missouri's earnings already were well below the level authorized by the Commission in Case No. ER-2008-0318 during those periods. Refunding revenues from the power sales to Wabash and AEP will reduce that return even further, with the final result being an actual, earned rate of return for the Company that is anything but the fair return on equity that Section 386.266, RSMo, requires.

B. Staff's Initial Brief

Staff's initial brief contains many of the same deficiencies as MIEC's brief, and the Company will not repeat arguments it has previously made in this section of the brief. However, some of statements and arguments made in Staff's initial brief are Staff's alone, and they require response. On the very first page of Staff's initial brief, Staff argues "[f]or the reasons stated in Staff's *Prudence Report and Recommendation* in this case, which is supported by the evidence, the Commission should find these two bilateral contracts were off-system sales for purposes of Ameren's Fuel Adjustment Clause".[26] Ameren Missouri disagrees with this statement. The only basis for the Staff's recommendation stated in the Staff's Report was the Commission's order on rehearing issued in Case No. ER-2008-0318.[27] That order provides absolutely no justification for the Staff recommendation, as has been made clear in this proceeding. There is no evidence in this case supporting Staff's initial reasons for its recommendation stated in the Report.

Second, in the "Facts" section, the Staff's initial brief states: "Neither the AEP contract nor the Wabash contract provided any system planning."[28] Although Ameren Missouri does not dispute this statement, the Company does not understand its relevance. As Mr. Haro testified,

[26] *See* Staff's Post Hearing Brief pp. 2-3 (footnotes omitted).
[27] Tr. p. 315, ln. 15-p. 318, ln. 11.
[28] *See* Staff's Post Hearing Brief, p. 4 (footnote omitted).

the Wabash and AEP contracts were fully taken into account in all system planning activities that occurred after the contracts were executed, including Module E filings with the MISO, annual and monthly capacity position calculations, load forecasting, fuel budgeting and risk management position calculations, which are all elements of the Company's system resource planning.[29] The fact that the contracts themselves don't "provide any system planning" is irrelevant; no power sales contracts provide system planning.

On page 8 of its initial brief, Staff raises the issue that the Wabash and AEP contracts may not be "associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to service Missouri retail load, and (3) any related transmission" as the FAC tariff required. However, as Mr. Haro explained at the hearing, (1), (2) and (3) simply enumerate the sources of power used to serve off-system sales.[30]

Staff's interpretation of the tariff language fails to recognize that the phrase "excluding Missouri retail sales and long-term full and partial requirements sales" is enclosed within commas and fails to appreciate the significance of that punctuation. Under the rules of English grammar, that phrase is a non-restrictive dependent clause. Such clauses are parenthetical in the sense that they are not critical to the meaning of the sentence in which they are found, and if removed, such phrases do not change the general meaning of the sentence.[31]

With respect to Ameren Missouri's FAC tariff, the general meaning of the sentence in question is to define off-system sales revenues that are to be included in the calculation of net fuel and purchased power costs. As expressed in the tariff, those revenues are defined as "all

[29] Exh. 2 (Haro surrebuttal) p. 19, ln. 20-p. 20, ln. 12.
[30] *See* the discussions of this topic between Commissioner Kenney and Mr. Haro, Tr. p. 124, lns 6-25; p. 152. ln. 9-p. 153, ln. 19.
[31] See Anne Stilman, *Grammatically Correct: The Writer's Essential Guide to Punctuation, Spelling, Style, Usage and Grammar,* pp. 73-74 (Writer's Digest Books 1997).

sales transactions (including MISO revenues in FERC Account Number 447) … that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve retail load, and (3) any related transmission." Because the phrase "excluding Missouri retail sales and long-term full and partial requirements sales" was not intended to be part of that definition but was, instead, intended to denote revenues that were specifically excluded from that definition, it was set off from the rest of the sentence with commas. Accordingly, the three requirements cited by Staff in its initial brief do not apply to the restrictive dependent clause, only to the words that preceded it.

As evidenced by his testimony in this case, Mr. Haro recognized the significance of the punctuation that Ameren Missouri used in its FAC tariff. Apparently Staff – as reflected in the testimony of Staff's witness Dana Eaves – did not, which accounts, in part, for Staff's erroneous interpretation of the language of that tariff.

The Staff, unlike MIEC, argues that the Wabash and AEP contracts do not meet the definition of "long-term." As their basis for this claim, Staff relies on the 5-year definition of long-term contained in the FERC Form 1 instructions. As previously mentioned, the uncontroverted evidence shows that:

- One year is consistently used as the demarcation between long-term and short-term in the wholesale power marketplace;[32]
- FERC (the author of Form 1) considers one year to be the demarcation between long-term and short-term power sales contracts pursuant to its "longstanding practice;"[33]
- One year is the dividing line between long-term and short-term electric transmission contracts;[34]

[32] Exh. 2 (Haro surrebuttal) p. 2, lns. 10-16; Exh. 7 (Highley surrebuttal) p. 5, lns. 9-17.
[33] Exh. 2 (Haro surrebuttal) p. 6, ln. 18-p. 8, ln. 24.
[34] Exh. 2 (Haro surrebuttal) p. 9, lns. 3-7.

- Under the FAC tariff at issue in this case, one year is the demarcation between electric capacity contracts included in the FAC formula and those that are excluded;[35]

- One year is also the demarcation point between long-term and short-term debt as recognized by this Commission.[36]

- Perhaps most significantly, a five year demarcation would exclude the Company's existing contracts with municipalities that all parties agree qualify as long-term.[37]

Aside from the reporting instructions contained in FERC Form 1 (and the similar report for rural electric cooperatives) all of the evidence in this case points to one year as the commonly understood demarcation between long-term and short-term power sales contracts.

Finally, the Staff's initial brief incorrectly accuses Ameren Missouri of "circumventing" the FAC tariff because the Company did not like the outcome of proper application of the tariff.[38] Similarly, the Missouri Energy Group's initial brief accuses Ameren Missouri of "misusing" the FAC to recover non-fuel costs.[39] Both allegations are demonstrably false. Ameren Missouri is not seeking to circumvent its FAC tariff; rather it is asking the Commission to apply the tariff as it is written, based on the plain meaning of the terms "long-term" and "requirements" as used in the real world. It is the Staff and intervenors who are seeking to circumvent the tariff by applying unusual meanings to those terms that are found only in an obscure and outdated reporting instruction, or imposing a limitation that does not appear in the tariff language. With regard to MEG's allegation that Ameren Missouri is proposing to misuse the FAC tariff to recover non-fuel costs, nothing could be further from the truth. Our contention

[35] Exh. 2 (Haro surrebuttal) p. 9, lns. 12-17; Exh. 11 HC (Eaves direct/rebuttal) Sch. DEE-5-3 (definition of CPP).
[36] Exh. 5 (Weiss surrebuttal) p. 7, ln. 17-p. 8, ln. 5.
[37] The Staff argues that it is the length of the "relationships" Ameren Missouri has with these municipalities that count, not the terms of the contracts. But that argument is a canard. Ameren Missouri has long-term relationships with Wabash, Citizens and AEP, as well as many municipalities. But the tariff refers to "long-term full and partial requirements *sales*" not "relationships." Sales are defined by contracts, and Ameren Missouri has terminated its relationships with several cities in recent years at the end of their contracts, such as Hannibal and Kahoka. Tr. p. 70, lns. 18-24.
[38] *See* Staff's Post Hearing Brief, p. 19.
[39] *See* MEG's Post Hearing Brief, pp. 3-4.

is that the Wabash and AEP contracts are *outside* the FAC, just like the Noranda load that they replaced. It is MEG, the Staff and the other intervenors who are seeking to improperly include these long-term partial requirements sales within the FAC, contrary to the terms of the tariff.

III. Conclusion

As Ameren Missouri has said from the beginning, the only reason that it executed the Wabash and AEP contracts was to replace the lost Noranda load with sales that would be similar from an operational standpoint and which would be treated similarly for ratemaking purposes. The Wabash and AEP contracts achieve these objectives because they are load-backed, fixed price sales that qualify as long-term partial requirements sales according to the terms of the FAC tariff. They are exempt from the FAC, just like revenues from the Noranda sales that they replaced.

The Staff and intervenors have alleged imprudence, but they have not satisfied the requirements for a finding of imprudence. In fact, they have not alleged that Ameren Missouri engaged in any imprudent action, nor could such an allegation be supported. Furthermore, they have not alleged that customers were in any way adversely impacted by Ameren Missouri's actions—sales to Noranda that were excluded from the FAC were simply replaced by sales to Wabash and AEP that were also excluded from the FAC, and customers were left in the same position that they would have been in if there had been no ice storm. There is simply no basis for any finding of imprudence in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on February 24, 2011, to all parties of record.

/s/ Thomas M. Byrne_____
Thomas M. Byrne