BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Annual Revenues for Electric Service.	))))	**File No. ER-2022-0337**

Ameren Missouri's Position Statement

COMES NOW the Union Electric d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), by and through counsel, and provides the following as its Position Statements for this case:

1. Incentive Compensation.

A. Should the Company's expenditures (capital and expense) for restricted stock units be included in the Company's revenue requirement?

Yes. It is reasonable for the Missouri Public Service Commission ("Commission") to include costs of restricted stock units ("RSUs") since RSU costs benefit customers by incentivizing continued employment, thus resulting in a more stable workforce. RSUs represent the right to receive stock depending solely on an employee's continued employment and are not dependent or tied to the Company's financial performance or earnings.[1]

The recommendation is presented by Company witness Kelly Hasenfratz and she explained that Ameren introduced RSUs as part of its long-term incentive compensation in 2018 to make its compensation package competitive and retain employees. The new compensation policy reduced the Performance Share Units and added RSUs consistent with the compensation packages in the market. The addition of RSUs makes the Company's total compensation package competitive to attract and retain employees.[2] The right to receive stock depends solely on an employee's continued employment for a defined vesting period of 36 months.[3]

[1] File No. ER-2022-0337, Rebuttal Testimony of Kelly Hasenfratz, at p.4, ll. 22-23.
[2] File No. ER-2022-0337, Rebuttal Testimony of Kelly Hasenfratz, at p. 5.
[3] File No. ER-2022-0337, Rebuttal Testimony of Kelly Hasenfratz, at p. 3, ll. 5-8; *see also* p. 4 at l. 23.

RSUs are tied to employment and are distinguishable from the Performance Share Units, for which Ameren Missouri is not seeking recovery. Company witness Hasenfratz explained RSUs motivate employees to stay and remain dedicated to serving customers.[4] Encouraging tenured employees to remain at Ameren Missouri benefits customers by having seasoned leaders who are experienced in managing utility operations. Moreover, retention eliminates the costs to recruit, replace, and train tenured employees.[5] Company witness Hasenfratz explained that the costs of replacing leaders tend to be higher.

It is reasonable for the Commission to include the RSUs in the revenue requirement because the RSU stock units vest over a defined period based solely on continued employment and are not based on financial metrics. RSUs contribute to employee longevity which provides a tangible benefit to customers through reduced recruiting and training costs and creates a greater efficiency in operations due to a well trained and experienced workforce.

B. What amount of exceptional performance bonus costs should be included in the Company's revenue requirement?

The Commission should include the amount of exceptional performance bonus ("EPB") costs incurred in the test year in the Company's revenue requirement. Company witness Hasenfratz explained that normalizing one element of employee compensation (EBP costs) while not normalizing all other elements of employee compensation is unreasonable and fails to allow the Company to recover its cost of the program. The level of EPB is tied to Ameren Missouri's payroll and it is reasonable for the Commission to include the test year costs in the revenue requirement.[6]

2. Severance.

A. Should the Company's expenditures (capital and expense) for severance payments be included in the Company's revenue requirement?

[4] File No. ER-2022-0337, Rebuttal Testimony of Kelly Hasenfratz, at pp. 5-6.
[5] File No. ER-2022-0337, Rebuttal Testimony of Kelly Hasenfratz, at p. 6, ll. 4-12.
[6] Surrebuttal and True-up Testimony Staff Accounting Schedules adjust test year EPB costs to reduce those costs by $38,987.

Yes, the Commission should include severance payments in the revenue requirement. Severance payments are an on-going, necessary, and normal cost incurred by the Company in the normal course of business.[7] Ameren Missouri or Ameren Services incurred severance costs over the last five years. Severance creates a safety net for employees who are displaced due to a reduction in work force, elimination of position, or change in strategic direction.[8] The safety net also encourages retention, which in turn reduces costs associated with recruiting and training as explained in 1.A. above.

It is reasonable for the Commission to include severance costs in the revenue requirement since these costs reflect the normal cost of doing business as reflected in the test year.

3. Class Cost of Service, **Revenue Allocation, Rate Design and Rate-Switching Tracker**.

A. How should production costs be allocated among customer classes within a Class Cost of Service Study?

Production costs should be allocated among the customer classes as set out in the Company's Class Cost of Service Study.[9] The 4 Non-Coincident Peak Average and Excess ("4 NCP A&E") method appropriately apportions the production demand-related costs based on cost causative factors, recognizing that the Company's generation fleet is developed through an integrated resource planning process to wholistically meet the energy and capacity needs of all of its customers.[10] 4 NCP A&E, as its name implies, allocates the fixed costs of the generation fleet in part based on the energy requirements of customers (the "average" in "average and excess") and in part on their peak demand, or capacity, requirements (the "excess" in "average and excess").[11] The 4 NCP A&E method is included in the NARUC manual on class cost of service, which Missouri statute requires for allocators of nuclear and fossil generation, and is the only methodology explicitly referenced by name in that statute.[12]

[7] File No. ER-2022-0337, Kelly Hasenfratz Rebuttal Testimony, at p. 13.
[8] Id.
[9] Company witness Thomas Hickman presents the Company's Class Cost of Service Study. See File No. ER-2022-0337, Direct Testimony of Thomas Hickman.
[10] File No. ER-2022-0337, Surrebuttal Testimony of Thomas Hickman, at pp. 14 – 15.
[11] File No. ER-2022-0337, Direct Testimony of Thomas Hickman. at pp. 19 – 20.
[12] National Association of Regulatory Commissioners ("NARUC") *Electric Utility Cost Allocation Manual* (1992); Rebuttal Testimony of Thomas Hickman, at p. 18.

B. How should distribution costs be allocated among customer classes within a Class Cost of Service Study?

Distribution costs should be allocated among the customer classes as set out in the Company's Class Cost of Service Study. The NARUC manual on class cost of service makes clear that the methodological considerations for distribution allocation come down to decisions about how much distribution investment and expense should be allocated based on customer counts versus by class demands. The Company classifies distribution system costs between demand and customer-related costs using the Minimum Distribution System method.[13] The Company's study is the only study presented in this case that allocates these costs based on these recognized cost drivers of distribution investment.

C. Which party's Class Cost of Service Study should be used in this case and used as a starting point for the non-residential rate design working case agreed to by the parties to the Company's last electric general rate case, File No. ER-2021-0240?

The Company's CCOS study is not only the most reasonable CCOS study in this case to use for setting rates in this case and to use for purposes of studying future rate designs, but it is the only reasonable CCOS study presented in this case to use for these purposes. The methodologies presented by the Company are consistent with the methodologies used historically within the state, and across the industry. They are also consistent with the NARUC class cost of service manual. Expert witnesses from MECG and MIEC with extensive experience in CCOS across many utilities and jurisdictions, and a third-party expert testifying on behalf of Ameren Missouri with robust utility experience, emphatically agree that the Company's study is reasonable.[14] Tellingly, Maurice Brubaker of MIEC, described Staff's study, the only complete CCOS study in this case other than the Company's, by saying:

[13] File No. ER-2022-0337, Direct Testimony of Thomas Hickman, at pp. 9 – 13.
[14] File No. ER-2022-0337, Surrebuttal Testimony of MIEC witness Maurice Brubaker, at pp. 2 – 3; Rebuttal Testimony of MECG witness Steve Chriss, at p. 11; Surrebuttal Testimony of Company witness Craig Brown, pp. 3 – 4.

> Assume for purposes of illustration that the universe of generally accepted cost allocation principles and practices is within a circle that has its center on St. Louis and a radius of 100 miles. If all of the generally accepted principles and procedures were within that circle, Staff's cost of service study would be some place in western Kansas. In other words, not even close.[15]

Perhaps even more importantly, following the results of Staff's study would place Missouri far outside of the mainstream when it comes to comparative class rates with its utility peers across the country. Company witness Hickman demonstrates that if Staff's study were followed to set rates, Ameren Missouri would have residential rates 23% below the national average, while industrial rates would be 14% above the national average.[16] The more than 30% disparity between the relationship of residential and industrial rates to their respective national averages is emblematic of the many flaws in Staff's study, and are extreme enough that utilizing them would represent poor energy policy in the state of Missouri.

Because of the interest expressed in this case related to evaluation of future rate design changes for the Company's non-residential customers, it is imperative that the Commission provide guidance on the reasonableness of the CCOS studies in this case, irrespective of whether the decision would change the outcome of revenue allocations in this case.[17] OPC witness Dr. Geoff Marke described the CCOS situation in this case as "a mess."[18] It is simply not tenable to seriously debate rate design in the future working docket without cleaning up the mess in this case by evaluating the merits of the competing CCOS studies, and ultimately finding that the Company's study is the appropriate basis for understanding the Company's cost of serving the various customer classes.

D. How should any rate increase be allocated to the several customer classes?

[15] File No. ER-2022-0337, Surrebuttal Testimony of MIEC witness Maurice Brubaker, at p. 3, ll. 5 – 9.
[16] File No. ER-2022-0337, Surrebuttal Testimony of Thomas Hickman, at pp. 4 – 5 & Table TH-1.
[17] File No. ER-2022-0337,Surrebuttal Testimony of Steven Wills, at pp. 24 – 27.
[18] File No. ER-2022-0337,Surrebuttal Testimony of Geoff Marke, Ph.D., at p. 26, l. 14.

The ordered rate increase should be allocated to customer classes pursuant to the Company's proposed two-step process.[19] Under step 1, the current base retail revenue should be increased or decreased on a revenue-neutral basis to the various classes of customers. Specifically, the Company has made a small revenue neutral adjustment in this step within the Lighting class. Under step 2, the amount of revenue increase/decrease should be determined and allocated to customer classes as an equal percent of current base revenues after making the adjustment in step 1.

E. What should the customer charges associated with the Residential Class rate plans be?

The Company's proposal to differentiate the customer charge for the various residential rate plans should be adopted, resulting in a customer charge of $13 per month for the Evening/Morning Savers, Anytime User, and Overnight Savers rate plans, $11 per month for the Smart Savers rate plan, and $9 per month for the Ultimate Savers rate plan.[20] This proposal better aligns rates with the customer-related costs the Company incurs to serve its customers, but also provides opportunities for customers that wish to have a greater ability to manage their bills to do exactly that by selecting a plan with a lower customer charge and time-varying energy charges and a demand charge that give customers more ability to manage their bill than any legacy rate plans have ever had.[21]

a. If the customer charges for the Ultimate Saver and Smart Saver Plans are discounted relative to other residential rate plans, should a minimum demand charge be imposed with customers to be fully educated on the minimum demand charge?

[19] File No. ER-2022-0337, Direct Testimony of Michael Harding, at p. 6.
[20] File No. ER-2022-0337, Direct Testimony of Steven Wills, at p. 27.
[21] Id. at pp. 26 – 29.

No. As a preliminary point, Staff has only proposed a minimum demand charge for the Ultimate Saver rate plan, and not for the Smart Saver rate plan, in pre-filed testimony.[22] In fact, the Smart Savers rate does not even have a demand charge to begin with, so adding a minimum demand charge to that rate makes no sense whatsoever. Further, since the differentiated customer charges across residential rate plans better align rates with the customer-related costs to serve and provide greater opportunities for customers to manage their bill, imposing a minimum demand charge for the Ultimate Savers rate plan (and Smart Savers rate plan) would act to negate the benefits of the differentiated customer charges.

F. What changes should be made, if any, to the Residential rate plans offered by the Company?

Other than the differentiation of customer charges among the different rate plans described in Issue 4E, no changes should be made to the residential rate plans offered by the Company.[23]

a. Should Staff's proposal to eliminate the Anytime (flat) rate option for any Residential customers who have an AMI meter be approved?

No. Customers who have received an AMI meter have recently been provided information about their rate options that explicitly communicated customers' ability to choose the familiar Anytime Users rate plan if they preferred. 55,396 or over 10% of those customers have already affirmatively made that choice.[24] Taking the choice away now and forcing those customers that elected the rate to move to a time-of-use ("TOU") rate would not only cause very justifiable confusion and frustration for those customers, but it would reduce the overall amount of choice available to all customers, when a significant part of the objective of the Company's new optional rate plan was to enhance choice for customers.[25] Furthermore, the concerns expressed by Consumers Council of Missouri witness Jacqueline Hutchinson about the negative impacts to vulnerable customers of being defaulted to TOU rates would only be exacerbated by taking the option away from those customers to return to a more familiar rate plan.[26]

[22] File No. ER-2022-0337, Rebuttal Testimony of Sarah Lange, pp. 56 – 57.
[23] File No. ER-2022-0337, Direct Testimony of Steven Wills, at pp. 6 – 7.
[24] File No. ER-2022-0337, Rebuttal Testimony of Steven Wills, at p. 5.
[25] Id. at pp. 4 – 5.
[26] Id. at p. 6.

b. *What changes, if any, should be made to the deployment of residential TOU rate plans?*

No changes should be made to the deployment of TOU rate plans. The current plan was the result of extensive negotiations between the parties to the Company's 2019 rate case, File No. ER-2019-0335, and the Company has invested a significant amount of energy, effort, and money in developing the TOU customer "journey" tools and materials consistent with that agreement. The AMI meter rollout, which is the trigger for customers to go through the defaulting process, is approximately two-thirds complete. The process should not be changed now. Such a change would result in an inconsistent experience between customers being introduced to AMI meters and TOU rates depending on when their meter was installed. But even more importantly, it would cause the Company to spend significant time and money in revamping the customer journey. This would be duplicated (i.e., wasteful) effort with the work done to initially roll out TOU rates, would take substantial time to complete – meaning the changes could not be rolled out for a significant period of time following a Commission order in this case – and when they finally were rolled out, the AMI rollout and customer defaulting process would be so far along that very few customers would be left to go through the revamped process, making the time and money spent even more wasteful.

Moreover, the six-month timeline post-AMI meter installation was established for good reason — customers have four or more months of interval data from their new AMI metering to empower them to select their rate plan and compare potential bills under the different rate plans.[27]

G. *What changes should be made, if any, to the Non-Residential, Non-Lighting rate options offered by the Company?*

[27] Id. at pp. 7 – 10.

None. The Commission has already ordered the Company to look at updating a number of its non-residential rate structures in its first electric rate review after 2025 (after the Company completes its AMI rollout). [28] All parties who presented non-residential rate design testimony in this case, notably including Staff, acknowledge that a workshop process should be undertaken to work through potential future rate design changes for non-residential customers. That process is the right venue to contemplate rate design changes.[29]

a. Should Staff's proposal to introduce a time-based overlay for all Non-Residential, Non-Lighting classes for all customers who have an AMI meter and are not served on a time-based schedule be adopted?

No. Staff's proposal in this case would be time-consuming and costly to implement and would require significant communications efforts for the Company to educate its customers on the new rates that they were going to be subject to. All of that effort and expense would be for little effect, considering the rates that would be implemented would likely be subject to near-term replacement in the first Company rate case after the contemplated working docket.[30] As witnesses for both MIEC and MECG indicated, there was not sufficient time in this case for customers and stakeholders to thoroughly analyze Staff's rate proposal.[31] That opportunity should be made available prior to the implementation of new rate designs for non-residential customers.

b. Should MECG's proposed shift to increase the demand component for Large General Service and Small Primary Service and decrease energy charges be adopted?

The Company recommends all rate elements be adjusted by equal percentages. Alternatively, the Company does not oppose a modest additional increase in the demand charge with a correspondingly smaller increase in the energy charge.[32]

c. Should the Commission approve MECG's proposed optional EV charging 3M/4M rate design?

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[28] Id. at p. 10.
[29] File No. ER-2022-0337, Surrebuttal Testimony of Steven Wills, at p. 24.
[30] File No. ER-2022-0337, Rebuttal Testimony of Steven Wills, at pp. 10 – 15.
[31] File No. ER-2022-0337, Rebuttal Testimony of MIEC witness Maurice Brubaker, at pp. 12 – 13; Rebuttal of MECG witness Steve Chriss, at pp. 12 – 13.
[32] File No. ER-2022-0337, Rebuttal Testimony of Michael Harding, at pp. 3 – 4.

No, for many of the same reasons articulated in response to sub-issue 4Fa above.

d. Should the Rider C factor be adjusted?

No. The Company undertook an engineering review of the Rider C loss rate to ensure that it is still reasonable, not a detailed rate study designed to update the rate. The engineering review reveals that the existing loss rate is still reasonable. Updating the rate based on this engineering review is not necessary, and it would be administratively burdensome for little benefit. However, if the Commission orders the Rider C loss rate to be updated, billing units should be adjusted to reflect the fact that historical test year sales based on the old Rider C rate will not be reflective of future sales with the new Rider C loss rate applied.[33]

e. Should the values for the monthly customer charge, Rider B credits, and Reactive Charge remain consistent for SPS and LPS customers because these costs are effectively the same regardless of the customer class?

Yes. Consistent with past practice, these charges that similarly impact customers across the two rate schedules that customers may optionally move between should remain consistent. [34]

H. Rate structures:

a. Should the cost-causation and rates of Riders B & C be fully evaluated?

The cost-causation of Rider B was fully evaluated by the Company in this case already. No further evaluation of Rider B is warranted.[35]

[33] File No. ER-2022-0337, Surrebuttal Testimony of Thomas Hickman, at p. 3; Surrebuttal Testimony of Michael Harding, at p. 3; Surrebuttal Testimony of Nicholas Bowden, Ph.D., at p. 29.
[34] File No. ER-2022-0337, Direct Testimony of Michael Harding, at p. 11.
[35] File No. ER-2022-0337, Direct Testimony of Thomas Hickman, at pp. 26 – 28; Rebuttal Testimony of Thomas Hickman, at p. 20; Surrebuttal Testimony of Thomas Hickman, at pp. 2 – 3.

Rider C rates are essentially just a loss rate that adjusts metered usage based on the position of the meter relative to the final voltage transformation. The Company performed an engineering review of that loss rate that was introduced into evidence by Staff in this case. The review indicates that the loss rates are reasonable. No further study is warranted.[36]

b. *Ordered Rider B Study - Did Ameren Missouri comply with the Report and Order in ER-2021-0240 at pages 31 – 34, where the Commission addressed whether it should require "Performance of a study of the reasonableness of the calculations and assumptions underlying Rider B to be filed as part of the Company's direct filing in its next general rate case?"*

The decision paragraph at pages 33-34 states "The Commission will not suspend the Rider B credits, but it believes the question of the proper calculation of those credits should be further addressed in Ameren Missouri's next rate case. Therefore, the Commission will direct Ameren Missouri to study the reasonableness of the calculations and assumption underlying Rider B and to file the results of that study as part of its direct filing in its next general rate case."

The title and content of section IV of Company witness Hickman's direct testimony – "Rider B Reasonableness Study" – and supporting workpaper, makes clear that the Company performed and presented the ordered study.[37]

c. Should Ameren Missouri be ordered to record transmission assets related to maintenance of voltage support due to the retirement of large synchronous generators be recorded to new subaccounts?

[36] File No. ER-2022-0337, Surrebuttal Testimony of Thomas Hickman, at p. 3.
[37] File No. ER-2022-0337, Direct Testimony of Thomas Hickman, at pp. 26 – 28.

No. Staff recommends that the Company be ordered to record certain transmission plant additions and draws of reactive power (sub-issue d below) to merely "maintain future allocation options." [38] Staff appears to misunderstand the reason StatCom devices (transmission assets for maintaining voltage support due to retirement of large synchronous generators) are installed, which is in-turn a driver of Staff's stated concern about reactive demand. Installation of StatCom devices is heavily driven by the distance between newer production facilities and customers being served, without any obvious change in customer demand of reactive power. The Company can estimate the net book value of the StatCom devices at any time, so the creation and maintenance of special subaccounts for some future potential allocation is unnecessary.[39]

d. Should Ameren Missouri be ordered to retain customer and rate schedule characteristics related to draws of reactive demand?

No. As explained for sub-issue c above, Staff is recommending the retention of data related to draws of reactive demand merely for potentially having other allocation options. The Company's AMI meters for residential and general service customers do not record reactive demand measurements. Collecting this data would be prohibitively expensive (over $150 million) and would require wasteful replacement of new and functioning metering infrastructure. Further, Staff's premise for seeking this data is flawed, in that the major driver for investments in distribution solutions to reactive power issues are not related to changes in customer reactive demand requirements, but rather relate to the changing proximity of generation to load.[40]

e. Should Ameren Missouri be ordered to create subaccounts within distribution accounts and transmission accounts (plant and reserve) for recording infrastructure related to utility-owned generation?

See response to (g) below.

f. Should Ameren Missouri be ordered to provide a study of the customer-specific infrastructure, by account, by rate schedule, by voltage, in its next general rate case?

[38] File No. ER-2022-0337, Rebuttal Testimony of Sarah Lange, at p. 34, l. 4.
[39] File No. ER-2022-0337, Surrebuttal Testimony of Thomas Hickman, pp. 16 – 17.
[40] Id.

See response to (g) below.

g. Should Ameren Missouri be ordered to provide data concerning the level of rate base and expense associated with radial transmission facilities including substation components, by customer?

No. There is broad agreement between the expert witnesses of the Company (both internal and third party witnesses) and MIEC that the data that the Company currently relies on is fully consistent with standard industry practice, that such data is completely adequate to perform a class cost of service study, and that such additional data as is requested by Staff will do little or nothing to improve cost allocation.[41] At the same time, developing such data, if it could even be done, would require a tremendous amount of time, effort, and cost to produce. The benefits, if any, are far exceeded by the cost.[42]

h. What information should Ameren Missouri provide for any rate modernization workshop, or for its next general rate case?

The Company should provide its class cost of service study to participants of the workshop as the basis for understanding the cost structure of the utility for purposes of developing rate designs and can work collaboratively with stakeholders to determine what information can be reasonably compiled, shared, and used for developing modern non-residential rates.[43]

i. Should Ameren Missouri be required to study potential rate structures and make available related determinants?

Any determination of rate structures and billing determinants to be studied should be addressed in the non-residential rate design working docket, and the billing determinants studied must be based on existing data that is reasonably available to the Company.[44]

[41] File No. ER-2022-0337, Rebuttal Testimony of Thomas Hickman, at pp. 20 – 22; Surrebuttal Testimony of Craig Brown, at pp. 4 – 8; Rebuttal Testimony of Maurice Brubaker, at pp. 9 – 11.
[42] File No. ER-2022-0337, Rebuttal Testimony of Thomas Hickman, at p. 22.
[43] File No. ER-2022-0337, Surrebuttal Testimony of Steven Wills, at pp. 23 – 27.
[44] Id.

I. Should the Commission authorize Ameren Missouri to track some valuation of estimated revenue changes that may arise from residential customer rate switching?

Yes. The two-way rate-switching tracker proposed by the Company should be authorized. Opt-in TOU rates, like those offered by the Company, are particularly prone to causing revenue erosion. If the revenue impact was positive, the increased revenues would be able to flow back to benefit all customers. The Company's incentives to encourage greater levels of adoption of TOU rates that promote system benefits should be aligned with its customers' interests in using those rates to lower their bills. Alignment of incentives between utilities and customers is sound regulatory policy that promotes win-win outcomes. The TOU rates situation is analogous to energy efficiency and demand response programs covered by the Missouri Energy Efficiency Investment Act ("MEEIA"). Where the Company can help customers take actions that are beneficial – like installing energy efficient measures to use less energy or adopting TOU rates and shifting load, both of which reduce the Company's revenues – but where the Company's financial interests would be negatively impacted by those reduced revenues, similar regulatory tools can provide recovery of the impact of those reduced revenues in a manner that address that inherent disincentive and promotes good policy outcomes. Whereas the alignment of incentives under MEEIA is statutorily mandated, the Commission has also recognized this principle in circumstances that were not dictated by the legislature, such as the Company's "Charge Ahead" program from File No. ET-2018-0132, where the Commission granted a tracker in order to promote a beneficial program that, absent the ability to use a tracker, would have been financially detrimental to the Company.[45]

a. Is the Ameren Missouri requested method for calculating the tracker balance reasonable?

[45] File No. ER-2022-0337, Direct Testimony of Steven Wills, at pp. 13 – 20; Surrebuttal Testimony of Steven Wills, at pp. 5 – 6 & 18 – 19.

Yes. The two-way tracker will allow any revenue erosion or excess revenues to be tracked to potentially be recovered from or flow back to customers in future rate cases. The only way to align the Company's incentives is to allow it the opportunity to recover the reduction in revenues experienced when customers save money using TOU rates. There are no or negligible short run cost savings to the Company to offset the negative impacts on its bottom line, despite long-term benefits that will arise from lower peak period loads to the benefit of customers.[46]

b. Are alternative approaches available to address what Ameren Missouri characterizes as an inherent disincentive for the utility to pursue a rapid transition toward broad adoption?

The Company is not aware of any such alternatives.

4. Tariff Revisions and Miscellaneous.

A. Should the miscellaneous proposed tariff changes in Sheet Nos. 103 and 104 that were proposed by the Company be approved?

Yes. Company witness Michael Harding, in direct testimony, provided a summary of various Miscellaneous Tariff updates included with his Schedule MWH-D1, and generally referenced "Updates to General Rules and Regulations."[47] Tariff Sheet Nos. 103 and 104 were included in Schedule MWH-D1, and are within the "General Rules and Regulations" portion of the Company's electric tariff. In surrebuttal testimony, Company witness Harding further explained the changes to Tariff Sheet Nos. 103 and 104 simply as clarifying language.[48] The changes proposed to Tariff Sheet Nos. 103 and 104 should be approved.

5. Electric Vehicle Incentive Costs

A. What amount of electric vehicle incentive costs should be included in the Company's revenue requirement?

[46] File No. ER-2022-0337, Direct Testimony of Steven Wills, pp. 14 – 17; Surrebuttal Testimony of Steven Wills, pp. 11 – 13.
[47] File No. ER-2022-0337, Direct Testimony of Michael Harding, p. 11, l. 16.
[48] File No. ER-2022-0337, Surrebuttal Testimony of Michael Harding, pp. 3 – 4.

$26,081 of electric vehicle incentive costs should be included in the Company's revenue requirement. The Company provides an incentive to employees, offered to encourage electric vehicle adoption. The incentive, available to any employee who purchases or leases an electric vehicle, is an incentive which improves employee engagement and attraction while increasing electric revenue which ultimately reduces rates to the Company's customers.[49]

6. Litigation Costs

A. What amount of litigation costs relating to FERC ROE should be included in the Company's revenue requirement?

It is appropriate to include $10,425 for the litigation costs related to the FERC ROE cases. In making this recommendation, Staff merely asserts that a higher ROE only benefits Ameren Missouri shareholders, while completely missing the ratemaking reality that the higher FERC ROE paid by transmission customers flows back to Ameren Missouri's retail customers as a direct offset to the retail revenue requirement.[50] Litigation costs function to decrease costs to customers and should be included in the Company's revenue requirement.

B. What amount of litigation costs relating to the Rush Island New Source Review case should be included in the Company's revenue requirement?

$772,946 of litigation costs from the NSR case should be used to set rates in this case. The NSR case is one that has been going on for multiple years and the case is not over as of the time of this filing. Ameren Missouri incurred litigation costs in every month of the test year and that trend continued throughout the true up period. The Company expects costs to be incurred at least until a plant closure date is ordered by the judge.[51] And, of course, the Company always has litigation costs. There will be different litigation incurred by the Company even after the NSR case is over. To classify these costs as non-reoccurring is blatantly wrong and the Commission should reject Staff's arguments.

[49] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 17, l. 9-15.
[50] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 21, l. 23 through p. 22, l. 8.
[51] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 21, l 8-17.

7. Fuel Adjustment Clause ("FAC")

A. Should the Company's FAC tariff sheets contain language that explicitly states that decommissioning and retirement costs are not included in the Company's FAC?

Additional language prohibiting certain costs is unnecessary as the Company's FAC tariff already specifically excludes the only decommissioning costs that could arguably fall within the definition of "fuel" under the tariff and the FAC enabling statute – unused or basemat coal left at a plant once it retires. No other decommissioning cost (e.g., dismantling a plant, abating asbestos, etc.) could possibly be construed as fuel.[52]

B. Should the Company's tariff sheet contain language describing the treatment of coal costs when a coal plant is retired?

Yes, the Commission should include the additional language recommended by Company witness Andrew Meyer which will allow the Company to defer basemat coal costs so that they can be considered in a future rate review. Such deferral has already been deemed appropriate for both Evergy and Empire and there is no sound reason for not simply codifying the reasonableness of the deferral – which will not resolve any ultimate ratemaking decision about cost recovery – in the FAC to obviate the need to file, process, and decide another case before the Commission.[53]

C. Should language be included in the Company's FAC tariff sheets related to the treatment of costs related to Research and Development? If so, what language should be included in its FAC tariff sheets?

A blanket exclusion of research and development project impacts on the components of the FAC should not be adopted. However, if the Commission believes that there should be a vehicle to identify and review if warranted such impacts, it should adopt the FAC tariff language recommended in the Surrebuttal Testimony of Andrew Meyer. That language properly defines "research and development" in accordance with the FERC Uniform System of Accounts, and provides a process that in substance mirrors the Commission's process in its FAC rules for adding new market settlement types between rate reviews.[54]

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[52] File No. ER-2022-0337, Surrebuttal Testimony of Andrew Meyer, p. 1, l. 13 – p. 3, l. 6.
[53] Id.
[54] Id., pp. 4 – 5.

D. Should Ameren Missouri include the information that is currently provided in tabs 5Dp3 and 5Dp4 in the Company's monthly FAC reports for RES compliance generation resources for all generation resources added between this rate case and Ameren Missouri's next general rate case?

Yes, but only for generation used for compliance with the Missouri Renewable Energy Standard ("RES") compliance. Tabs 5D3p3 and 5Dp4 are not required by the extensive reporting provisions of the Company's FAC rule but the Company voluntarily agreed to add them to that reporting to facilitate the isolation of RES compliance costs for RES assets, especially given that RES compliance costs and benefits are not included in the FAC but are instead included in the RESRAM. It serves no useful purpose and certainly not one worth adding yet more bureaucracy and administrative effort to add to the tabs that only exist because of the RES additional information about non-RES compliance assets.

E. Should Ameren Missouri include hourly day ahead and real-time locational market prices for Ameren Missouri's load and each generating resource be included in the monthly as-burned fuel report required by 20 CSR 4240-3.190(1)(B)?

No. Such information is a: publicly available from MISO, and b: not information related to "as-burned fuel", which is the entire scope of the "as-burned fuel report."

F. Should language be included in the Company's FAC tariff sheets to include MISO Schedule 43K?

Schedule 43K covers costs and revenues arising from the Rush Island Energy Center's operation as a system support resource. All such costs and revenues are *already being included in the FAC*. Consequently, additional language is unnecessary, albeit if the Commission were inclined to include it, there would likely be no harm.

8. Net Base Energy Costs.

A. What is the level of variable fuel and purchased power expense that should be included in the Ameren Missouri's revenue requirement and its FAC net base energy costs?

$644,573,551.[55] See discussion in Item B, below.

[55] File No. ER-2022-0337, True-up Rebuttal Testimony of Mitchell Lansford, Sch. MJL-TUR17.

B. *What net base energy costs should be included in the Company's revenue requirement (including the calculation of the Company's cash working capital)?*

The Company supports including its calculated net base energy costs ("NBEC") in the revenue requirement for two primary reasons. First, the Company's NBEC is lower than the Staff's (Company $440,601,619; Staff $445,623,726). [56] Second, the Company has greater confidence in its own NBEC figure as illustrated by significant errors identified in Staff's NBEC figures. Staff acknowledged errors in its figures in supplemental direct testimony and then yet again acknowledged additional errors in its figures in true-up rebuttal testimony. [57] While the Company did find one error in its true-up NBEC calculation and corrected it in its true-up rebuttal testimony, its pro-forma NBEC recommendation from its direct case and its final NBEC are within 1% of each other, giving the Company greater confidence in the accuracy of its NBEC. [58] Finally, Consistent with the Company's method total purchased power costs determined in the Company's revenue requirement should be applied to purchased power cash working capital factors in order to determine the cash working capital amount included in rate base. Staff's method of applying only a portion of the purchased power balance to the applicable purchased power cash working capital factors, while attributing the majority of the purchased power total to generic cash working capital factors is inappropriate and should be rejected by the Commission.[59]

C. *What are the appropriate Fuel Adjustment Clause seasonal Base Factors and transmission percentages?*

1.252 cents per kWh (Summer) and 1.423 cents per kWh (Winter). See discussion in Item B, above.[60]

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[56] Id. (Company); True-up Rebuttal of Amanda Conner, p. 2 (sum of summer and winter net base energy costs) (Staff).

[57] Although Staff did not file a NBEC calculation in its direct testimony, off-system sales revenues and total power production expenses (including fuel and purchased power expenses) changed by $254,041,100 and $190,019,596, respectively, between Staff's direct and supplemental direct testimonies. Staff's recommended NBEC again changed from $492,001,163 to $445,623,726 between Staff's true-up direct and true-up rebuttal testimonies.

[58] File No. ER-2022-0337, True-up Rebuttal Testimony of Mitchell Lansford, Sch. MJL-TUR17.

[59] Total purchased power costs per the Company are $366,318,000 the True-up Rebuttal Testimony of Mitchell Lansford, Sch. MJL-TUR8. Per Staff's True-up Rebuttal Testimony Accounting Schedule: 09, purchased power costs total $358,219,917, yet per Staff's True-up Rebuttal Testimony Accounting Schedule: 08 only $79,301,368 of purchased power costs have been applied to the purchased power cash working capital factors.

[60] Id.

9. RESRAM Base.

A. *What should be the base amount for the Company's Renewable Energy Standard Rate Adjustment Mechanism?*

The Company supports including its calculated RESRAM base amount in the revenue requirement for two primary reasons. First, the Company's RESRAM base amount is lower than the Staff's (Company $1,722,680; Staff $34,219,094). Second, the Company has greater confidence in its own RESRAM base figure as illustrated by significant errors identified in Staff's RESRAM figures. Staff acknowledged errors in its figures in supplemental direct testimony and then yet again acknowledged additional errors in its figures in true-up rebuttal testimony.[61] There is significant overlap between the errors Staff made in its NBEC calculation and the errors relating to Staff's RESRAM base amount.

10. Coal Inventory.

A. What should be the level of coal inventory costs included in rate base?

The Company's recommended $104,809,000 coal inventory costs should be included in rate base.[62] Staff's recommendation, based on year-end 2022 coal inventory levels completely fails to account for the unusual and abnormally low coal inventory levels in 2022 arising from the poor coal delivery performance of the two railroads that deliver coal to Ameren Missouri's plants.[63]

11. Transmission Expense/Revenue.

A. What is the appropriate level of transmission expense related to MISO Schedules 26A and 9?

[61] Although Staff did not file a RESRAM base calculation in its direct testimony, off-system sales revenues, changed by $254,041,100 between Staff's direct and supplemental direct testimonies. Staff's recommended RESRAM base again changed from $35,431,789 to $34,219,094 between Staff's true-up direct and true-up rebuttal testimonies.
[62] File No. ER-2022-0337, True-Up Rebuttal Testimony of Mitchell Lansford, MJL-TUR3, l. 2.
[63] File No. ER-2022-0337, Rebuttal Testimony of Andrew Meyer, pp. 11 – 12.

The sums sponsored by the Company should be reflected in transmission expense because they are known and measurable, based on FERC-approved transmission service rates being paid by the Company to take transmission service from MISO to serve its retail load. These transmission service rates took effect on January 1, 2023. Including known and measurable transmission charges based upon new transmission service rates that took effect the day after the end of the true-up period is how transmission expense levels have been set in prior Ameren Missouri rate reviews. Moreover, doing so is consistent with how both the Company and the Staff treat other price (rate) changes for items like new wage rates that took effect on January 1, 2023, and new coal and coal transportation rates that also took effect on January 1, 2023. There is nothing different about the new FERC-approved transmission service rates that justifies treating them differently than similar revenue requirement items have been, and are, being treated in this case.[64]

12. Equity Issuance Cost Amortization

A. What amount of amortization relating to previously deferred equity issuance costs should be included in the Company's revenue requirement?

Previously deferred equity issuance costs ($6,790,634) should be either recovered over five years with no rate base treatment or, consistent with Staff's recommendation in the Company's previous rate review, over 30 years with rate base treatment.[65]

Staff's proposal is to recover over 30 years with no rate base treatment. The basis for Staff's position is to point to the *Unanimous Stipulation and Agreement* in the Company's previous rate review.[66] Of course, this reliance violates the very terms of the agreement, where it states:

[64] File No. ER-2022-0337, True-up Rebuttal Testimony of Mitchell Lansford, pp. 6 – 16.
[65] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 35, ll. 2 - 6.
[66] File No. ER-2022-0337, Surrebuttal Testimony of Karen Lyons, p. 8, ll. 8 - 11.

> This *Stipulation* is being entered into solely for the purpose of settling the issues specifically set forth above, and unless otherwise specifically set forth herein represents a settlement on a mutually agreeable outcome without resolution of specific issues of law or fact. This *Stipulation* is intended to relate *only* to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this *Stipulation* except as otherwise specifically set forth herein. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this *Stipulation* in any other proceeding, regardless of whether this *Stipulation* is approved.[67]

Ms. Lyons has no rebuttal to the reasoning set forth by Ameren Missouri witness Mitchell Lansford. That is, that Staff's recommendation is for an unreasonably long period of time (30 years instead of five) if there is not any type of compensation for financing cost.[68] Staff's recommendation must be rejected.

13. Low-Income and Other Customer Programs.

A. Should the changes to the Keeping Current/Keeping Cool Program proposed by CCM be approved?

B. Should the changes to the Keeping Current/Keeping Cool Program proposed by OPC be approved?

CCM and OPC each request that the Keeping Current/Keeping Cool program funding be increased. CCM requests $5 million annually and OPC recommends an increase of $250,000.

Ameren Missouri agreed to most of the program changes and will bring those to the working collaborative for the program.

[67] File No. ER-2021-0240, Unanimous Stipulation and Agreement, filed November 24, 2021, p. 14, para 36.
[68] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 34, ll. 14-18.

Ameren Missouri does not believe increased funding recommendations are appropriate at this time. The current level of funding has resulted in more funds than the program has been able to disperse.[69] Instead of increasing the dollars available, the collaborative should focus on ways to increase participation and disbursement of the existing funds in the program.

14. Membership Dues.

A. Should the Company's expenditures for membership dues be included in the Company's revenue requirement?

Yes. Ameren Missouri is requesting recovery of membership dues incurred in the test year. In Staff witness Neito's direct testimony, she offers specific arguments about why EEI dues should not be recovered, which is necessary for Staff to overcome the presumption of prudence[70] that exists in all rate reviews, but there is no such reasoning set forth for other proposed disallowances. As is mentioned elsewhere in this document, Ms. Neito's direct testimony relies upon the understanding that she reviewed membership dues and donations and excluded those that did not, in her mind, meet the criteria previously established in previous Commission cases.[71] She does not, with the exception of EEI, explain why these particular amounts failed her criteria, at least not until surrebuttal and only then for some subset of her recommendations.

Greater St. Louis, Inc. $303,580. Despite the failure to set forth Staff's complete case in Neito's direct, Company witness Charlie Steib's rebuttal testimony points out the important economic development benefit of Greater St. Louis, Inc. ("GSLSI").[72] Mr. Steib clearly demonstrates how GSLI initiatives have resulted in thousands of new jobs and over a half billion dollars of investment in new business in the Company's service territory. None of these benefits are denied by Staff. In fact, Ms. Nieto's surrebuttal simply cut and paste a clause from the GSLI website, which confirms the very benefits set forth in Mr. Steib's rebuttal.

[69] File No. ER-2022-0337, Rebuttal of Michael W. Harding, p. 6, ll. 19 - 23.
[70] Office of Pub. Counsel, 409 S.W.3d at 13 376.
[71] File No. ER-2022-0337, Direct Testimony of Antonija Nieto, p. 11, l. 10.
[72] File No. ER-2022-0337, Rebuttal Testimony of Charles Steib, p. 4, ll. 4-11 and p. 4, l 20 through p. 7, l. 7.

EEI. Staff's disallowance recommendation focuses on EEI, alleging that the primary benefit of EEI flows to shareholders.[73] This is nothing more than an assertion in that Staff made no effort to quantify the benefits to either shareholders or to customers. It should be noted that Ameren Missouri placed charitable contributions below the line and removed from its request the lobbying portion of the dues (for EEI and for all of its membership dues).[74] Finally, Ameren Missouri's direct case demonstrated that just one benefit from EEI membership saved its customers more than the entire cost of its membership. That is, mutual assistance from other utilities after major storms that result in widespread customer outages.[75] Ms. Neito took a great deal of time to point out items that, if they were the only thing EEI did, would make this cost non-recoverable. But she ignored the direct testimony of Laura Moore, which demonstrated that the Company's customers benefit from the Company's membership far more than the amount spent on dues. Those include mutual assistance, digital information sharing, Controller's function information needs, energy efficiency efforts, environmental updates – just to name a few. Ms. Moore's direct testimony contained eight pages that listed benefits of the Company's EEI membership.[76] Ms. Nieto denies none of these benefits.

Other organizations. Mr. Steib's rebuttal, after combing through Ms. Neito's workpapers as she does not name or explain all of her proposed disallowances in her testimony, defends other expenditures to economic development organizations that provide "industry resources, economic development, and diversity equity and inclusion" that benefit customers.[77] Ms. Neito's surrebuttal argument is simply that these do not benefit customers and are not necessary for the provision of safe and adequate utility service."[78] This is an incredibly limiting standard which has not been adopted by this or any Commission. All of these benefit customers, both directly and indirectly. Staff's arguments should be rejected.

B. Should the Company's expenditures for membership dues related to the Utility Solid Waste Activities Group?

[73] ER-2022-0337, Direct Testimony of Antonija Nieto, p. 9, l. 6-7.
[74] ER-2022-0337, Surrebuttal Testimony of Laura Moore, p. 5.
[75] File ER-2022-0337, Direct Testimony of Laura Moore, p. 14, l. 11 through p. 21, l. 20.
[76] Id.
[77] File No. ER-2022-0337, Rebuttal Testimony of Charles Steib, p. 11, ll. 3-5.
[78] File No. ER-2022-0337, Surrebuttal Testimony of Antonija Nieto, p. 14, ll. 15-18.

Ameren Missouri spent $81,011 for UWAG fees for advisory services related to the Clean Air Act. Again, the direct testimony of Ms. Nieto did not provide any reason for her recommendation. In fact, one does not find mention of UWAG dues in her direct testimony at all (only in her workpapers). In surrebuttal, Ms. Nieto quotes from the UWAG website to say it advocates in agency proceedings and, when necessary, in litigation but does not litigate Congress. It is unclear if Staff believes that means UWAG lobbies or if this is just merely just making an unclear recommendation, but either way, the UWAG group charter prohibits any legislative lobbying activities.[79] Staff also misses the rebuttal testimony of Mr. Steib which explains that $114,084 of costs were miscoded in the Company's general books and that they are not "dues" at all. Instead, Ameren Missouri received advice related to upcoming regulatory changes, current legal actions related to the Clean Air Act and the potential impacts of each on the Company. If the Company did not receive this information in this manner, it would have needed to expend significant additional funds to gain this knowledge on its own.[80] This is a benefit to customers and to the Company.

15. Blues Power Play Goal For Kids

A. What orders, if any, should the Commission make regarding Ameren Missouri's Blues Power Play Goal for Kids sponsorship?

There is no order necessary on the Blue's Power Play Goal for Kids sponsorship. Although Ameren Missouri takes issue with many of Dr. Marke's assertions, the Company is not requesting recovery of these costs and so there is no need to refute his misstatements. Dr. Marke's request that the Commission prohibit the Company from requesting recovery in the future is inappropriate and not available under Commission authority. As the Commission (and probably Dr. Marke) knows, one Commission cannot bind a future Commission,[81] so making such an order in this case would serve no purpose. Additionally, the Commission cannot direct management of the business, which is what this recommendation is asking the Commission to do.[82] The Commission should avoid acting on Dr. Marke's recommendations for this expenditure.

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[79] File No. ER-2022-0337, Rebuttal Testimony of Charlie Steib, p. 10, l. 3.
[80] File No. ER-2022-0337, Rebuttal Testimony of Charlie Steib, p. 8, ll. 7 - 14.
[81] The Commission has repeatedly recognized this limitation on its authority. *See e.g.*, *In the Matter of Union Electric Co.*, 2015 WL 1967858 (Mo. P.S.C.), File No. ER-2014-0258, Report and Order (Apr. 29, 2015 ("the Commission cannot bind future Commissions, nor can it preclude future litigants from presenting contrary positions in future rate cases…").
[82] *See e.g., State ex rel. Harline v. Public Service Commission of Missouri*, 343 S.W.2d 177, 181-82 (Mo. App. W.D. 1960),

16. Employee Benefit Costs

A. Should employee benefit costs be updated to account for headcount as of the true-up cutoff date?

For the first time in multiple rate reviews, Staff takes the position that it is not appropriate to update employee benefit costs to reflect headcount changes that existed as of December 31, 2022. Of course, any employee hired on December 31, 2022, will have no associated employee benefit cost reflected in the revenue requirement under Staff's approach.[83] Staff annualizes many expenses and not doing so for this cost does not make sense.

Ameren Missouri has proposed using the same methodology that it has used for multiple cases and with which Staff has not previously objected.[84] This is the best way to ensure that an appropriate annual level of this cost is included in the Company's revenue requirement.

17. Non-qualified Pension Costs

A. What amount of non-qualified pension costs should be included in the Company's revenue requirement?

The Commission should adopt the Willis Towers Watson values to determine the amount necessary to fund these obligations. Willis Towers Watson are subject matter experts and use the same methodology for determining the non-qualified costs as for qualified costs. And Staff takes no issue with the qualified plan costs.[85]

Instead, over the past several years, Staff has come up with varying recommendations for this cost, ranging from using actuals during the test year, to using a three-year average, to using calendar year levels divided by a conversion factor for lump sum payments.[86] In this case, Staff wants to go back to a three-year average. The Company submits that it would be best to adopt a standard approach. That is, instead of allowing Staff to opportunistically recommend adoption of whatever method lowers the cost each case, the Commission adopt the recommendations of the subject matter experts, as Ameren Missouri recommends.

[83] File No. ER-2022-0337, True-Up Rebuttal Testimony of Mitchell Lansford, p. 5, l. 11 - 12.
[84] File No. ER-2022-0337, True-Up Rebuttal Testimony of Mitchell Lansford, p. 4, ll. 9 - 10.
[85] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 13, ll. 3 - 9.
[86] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 12, ll. 4 - 12.

18. Return on Common Equity ("ROE")

A. In consideration of all relevant factors, what is the appropriate value for Return on Equity ("ROE") that the Commission should use in setting Ameren Missouri's Rate of Return?

The Company's return on common equity ("ROE") should be set at 10.20%, based on a range of 9.90% to 11.25%.[87] Company witness Ann Bulkley, a Principal at the Brattle Group, presented her recommendation by applying the Constant Growth form of the Discounted Cash Flow model, the Capital Asset Pricing Model, the Empirical Capital Asset Pricing Model, and the risk Premium Approach.[88] Ms. Bulkley considered forward looking-looking inputs and assumptions as well as additional risk factors that affect the Company's required ROE, including current and projected capital market conditions, Ameren Missouri's electric operations relative to its business and financial risk and the proxy group.[89]

19. Capital Structure

A. What is the appropriate capital structure to use for ratemaking in this case?

Company witness Darryl Sagel recommends using Ameren Missouri's actual capital structure as of December 31, 2022:[90]

CAPITAL COMPONENT	PERCENT OF TOTAL	COST	WEIGHTED COST
Long-Term Debt	47.423%	3.926%	1.862%
Short-Term Debt	0.000%	4.760%	0.000%
Preferred Stock	0.669%	4.180%	0.028%
Common Equity	51.908%	10.200%	5.295%
TOTAL	**100.000%**		**7.185%**

[87] File No. ER-2022-0337, Direct Testimony of Ann Bulkley at p. 8.
[88] File No. ER-2022-0337, Direct Testimony of Ann Bulkley at pp. 5 - 8.
[89] File No. ER-2022-0337, Direct Testimony of Ann Bulkley at page 8.
[90] File No.ER-2022-0337, Surrebuttal Testimony of Darryl Sagel, p.10 and Schedule DTS-S1 – Capital Structure/Weighted Average Cost of Capital.

20. Allowance for Funds Used During Construction:

A. What short-term debt balances should be included in the Company's calculation for AFUDC?

The Commission should agree with the rules set by the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USoA"), which the Commission has adopted at 20 4240-20.030 rather than adopt OPC witness Murray's recommendation of using only short-term debt. Not following the USoA rules for AFUDC would require the Company to prepare and maintain a separate set of accounting records and financial statements, all at the cost of customers and with no customer benefit.[91] The Commission concluded it was most appropriate to continue calculating AFUDC as set forth in the USoA.[92]

21. Rush Island.

A. *Should any of the Company's investment in the Rush Island Energy Center be excluded from rate base in this case?*

No. The sole basis of the proposed exclusion from rate base of hundreds of millions of dollars of prudent investment in the Rush Island Energy Center ("Rush Island") is the flawed claim that a "slice" of Rush Island is not used and useful. The sole basis for that claim is that Rush Island is being dispatched differently than it historically had been now that it has been designated by MISO[93] as a system support resource ("SSR").[94] Not only is the "not used and useful" claim factually flawed but adopting the Staff's proposed exclusion would reflect extremely poor, unfair, and punitive regulatory and ratemaking policy because the proposed adjustment neither rests on, nor is it supported by, any established imprudence on the Company's part.[95]

[91] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 6, l. 11 through p.7, l.3.
[92] *Cf.* Amended Report and Order, File No. ER-2019-0374 (July 23, 2020) (Where Empire included as long-term debt a loan it had taken out from its affiliate). The affiliate's cost of those funds was just 2.53% but by loaning it to Empire and then Empire including it in Empire's long-term debt, effectively Empire rates would reflect a cost of debt higher than the source of the funds, to the detriment of customers. To that extent, i.e., as for this loan only, the Commission required use of a short-term debt to determine AFUDC. However, the Commission specifically rejected what OPC proposes here, stating that the "overall formula and method for calculating AFUDC will still be as directed by the USOA."
[93] Midcontinent Independent System Operator.
[94] File No. ER-2022-0337, Direct Testimony of Claire Eubanks, p. 13, ll. 1 – 14.
[95] File No. ER-2022-0337, Rebuttal Testimony of John Reed, pp. 1 – 16 (to line 16); p. 22, l. 13 – p. 26.

While Staff attempts to claim that it need not establish that an imprudent decision has led to the reduced dispatch of Rush Island, such a claim flies in the face of well-established regulatory and ratemaking principles this Commission has followed for decades and has recently re-affirmed. Just last year, in rebuking an Office of the Public Counsel ("OPC") attempt to deny The Empire District Electric Company ("Empire") recovery of investment in its Asbury Plant (via securitization) after Asbury retired, the Commission cited with approval Company witness John Reed's statement of the applicable and governing principles with respect to cost recovery of prudently incurred rate base, including as follows:

> Information that was not known or reasonably knowable at the time of the decision being made cannot be considered in evaluating the reasonableness of a decision and subsequent information on 'how things turned out' cannot influence the evaluation of the prudence of a decision."[96]

If Staff's approach to rate base exclusions was valid, if it were to be adopted, then the prudence standard employed by this Commission for decades would effectively be eviscerated and would become completely meaningless. Utilities, whose returns are effectively capped by rate regulation (appropriately so, given the monopoly utilities are also given within their service territories) would find themselves in the position of prudently investing in the facilities that become dedicated to the public service so that electricity can be provided to their customers but then being forced to suffer massive disallowances and lost returns on those investments to which they should have due based on *subsequent* information on how things turned out. Utilities would receive no upside when investments turn out better than originally thought, but would have the downside imposed on them, even if they made no imprudent decisions that led to that downside.[97]

[96]File No. ER-2022-0337, Rebuttal Testimony of John Reed, p. 4, l. 30 – 34 (quoting the Commission's August 18, 2022, *Report and Order* in File Nos EO-2022-0040 and EO-2022-0192 (Empire's securitization case)) (the "Empire Order").
[97] Id., p. 14, ll. 3-16.

Staff tries hard to avoid this label, arguing that its proposal is not based on facility economics but is simply a reflection of the fact that as an SSR, Rush Island produces significantly less power than it would have produced if it were not operating as an SSR. Staff can no more successfully dance on the head of that pin than can any of the rest of us. The obvious fact is that the substance of Staff's proposal is that the prudence standard matters not because Rush Island is no longer economically used and useful (or, perhaps, is not *as* economically used and useful as Staff thinks it ought to be). This approach, not used by any state and historically almost never used, reflects an after-the-fact attempt to change the rules for cost recovery.[98] Mr. Reed sums-up the flaws inherent in what would in effect be confiscating a utility's otherwise prudent investment in assets dedicated to the public service because those assets are no longer providing as much economic value as they once did. Discussing Manhattan Institute Fellow and regulatory economics expert Professor Jonathan Lessor's comprehensive dismantlement of the approach Staff is clearly attempting to follow (despite its protestations to the contrary), Mr. Reed testifies:

> Dr. Lesser concluded that the use of this approach "creates an untenable regulatory and economic situation. Utilities can never fully know whether their actions are reasonable or whether their shareholders may be exposed to asymmetric risks."
>
> He [Dr. Lessor] further concludes that:
>
> "The electric utility industry has changed dramatically over time. In its current state, it is more important than ever to address economic concepts, not only to promote greater efficiency in the provision of electric services to ratepayers, but also to promote equity. An economic used and useful test promotes neither. Instead, it allows regulators a "second bite of the apple" that combines the "end results" standard of Hope and the fair-value approach of Smyth v. Ames, while relegating economic, legal, and established regulatory principles to the dustbin."[99]

[98] File No. ER-2022-0337, Rebuttal Testimony of John Reed, p. 9, ll. 6-21.
[99] Id., p. 10, l. 15 – p. 11, l. 3. (internal citation omitted.)

Moreover, consider what Staff's position means. In the Empire securitization docket, Asbury was obviously no longer used or useful at all given that it was fully retired. Yet, Staff disagreed with OPC's imprudence claims and supported securitization (i.e., recovery of the full investment by issuing securitization bonds).[100] The position Staff is taking in this case, if adopted, would put the Company in a worse position respecting Rush Island than if Rush Island had already retired. That is, prudence does not form the basis of Staff's proposed adjustment and the plant is still operating, still providing capacity to meet Ameren Missouri's planning reserve margin and still generating revenues, yet the Company would be forced to write-off hundreds of millions of dollars of investment. That result makes no sense.

Staff witness Eubanks unwittingly demonstrates why Staff's unprincipled position makes no sense. Witness Eubanks, attempting to rebut the obvious problem with applying an economic used and useful test, claims that Mr. Reed's criticism of that test doesn't make sense because under Reed's point of view, utilities would "*always* be shielded from its decisions."[101] Using hyperbole, she claims that rejection of the economically used and useful approach would mean "heads the utility wins, tails the ratepayers lose."[102] Those statements are obviously false. Utilities are not shielded from (the consequences of) their decisions *when* those decisions *are imprudent and harm customers*. In that case there is no shield. The utility only "wins" if it makes prudent investments and then makes prudent decisions with respect to the ownership or operation of the assets built with those investments. It loses – is not “shielded” -- if it is imprudent and customers are protected in that circumstance.

[100] Empire Order, reflecting Staff's support for securitizing the full Asbury balance and not recommending any imprudence with respect to Asbury.
[101] File No. ER-2022-0337,Surrebuttal Testimony of Claire Eubanks, p. 9, ll. 10-11(emphasis added).
[102] Id., p. 9, l. 8.

The Company absolutely agrees that if its imprudent decisions harm its customers, it would be proper regulatory policy to impose the financial consequences of the imprudence to the extent it harmed customers of the utility. Utilities are required to make prudent, albeit not perfect decisions,[103] based on what they knew or reasonably should have known at the time they had to make them. The Company takes no issue with this basic, balanced, and fair regulatory policy. But the Company does take issue – as has every other regulatory commission in this country - with the end-run Staff advocates around the requirement that a utility act imprudently and thus cause harm to customers before it is deprived of recovery of the investment it has made on behalf of customers. The simple truth is that customers do not "lose" if an asset produces less economic value than it once did just because their rates will reflect that reduction in value. That is exactly how public utility regulation works. The utility must serve them. The rates they pay are then based on the prudent costs of providing that service. The customer gets the upside and yes, bears the downside, absent imprudently caused harm.[104]

Aside from the terrible policy underlying Staff's proposed adjustment are its flawed factual underpinnings as well. Every turbine, boiler component, pipe, wire, motor, valve, etc. is available, operational, and operating each and every time MISO dispatches Rush Island. Not a single plant component is not used; every plant component is useful.[105] Moreover, the plant is a capacity resource in MISO's capacity market, receiving full credit for its roughly 1,100 megawatts of capacity, producing millions or tens of millions of dollars of capacity revenues which reduce customer rates via the fuel adjustment clause, including $95.1 million of capacity revenues in 2022-2023 despite the fact that the Company had announced that it would retire by 2025.[106]

[103] Empire Order, pp. 28-29. It is well-established that the law requires two outcomes to be true before a utility is deprived of its investments made to serve customers: imprudence and resulting harm. *See, e.g., State ex rel. Associated Natural Gas v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 530 (Mo. App. W.D. 1997) (Where the Court of Appeals reaffirms the prudence standard and recognizing that even imprudence alone does not justify a disallowance: "It would be beyond [the Commission's] . . . statutory authority . . . to make a decision on the recoverability of costs, based upon a prudency analysis . . . without reference to any detrimental impact of those practices . . ." on the utility's customers.

[104] Staff's entire discussion of this "shield" that does not exist and its attempt to draw an analogy from a coin flip apparently reflects Staff's thinking that public utility regulation is a game, and that all that matters is to find a way to lower customer rates.

[105] File No. ER-2022-0337, Rebuttal Testimony Andrew Meyer, p. 4, l. 1 - 9.

[106] Id., p. 2, l. 12 – p. 3, l. 8.

As noted, Staff has not established that its proposed adjustment is justified by any imprudent decision on the Company's part, notwithstanding what is to any objective observer certainly looks like an attempt to sow doubt in the Commission's collective mind without owning that this is what it is doing, and without proving imprudence (easier to just imply that it exists) in the obvious hope that the Commission will look past the flawed policy underpinnings of Staff's position and nevertheless punish the Company by disallowing hundreds of millions of dollars of investment. As recounted in the Company's Motion to Strike (filed March 20, 2023) there was no question until Staff filed surrebuttal testimony in this case but that the Staff was neither alleging imprudence nor resting its proposed adjustment on imprudence in any way. While the transcript of Staff witness' Eubank's deposition was not available in time to quote it in this Position Statement, the transcript will show that Staff witness Eubanks, despite Staff's surrebuttal testimony, reaffirmed two key points: 1. Staff's proposal does not rest on a claim that Ameren Missouri has acted imprudently in causing Rush Island to operate as an SSR,[107] and 2. This case is not the appropriate forum to take up questions of imprudence but rather, the later securitization case the Company intends to file to securitize its undepreciated investment in Rush Island is the forum in which such claims, if any, should be heard and decided by the Commission.[108]

While the Commission is not being called upon to decide any question of prudence in this case, an abbreviated discussion of the topic is called for given Staff's approach to the issue. Staff insisted, in File No. EO-2022-0215 (an investigatory docket opened at Staff's behest arising from the Company's decision to retire Rush Island rather than investing hundreds of millions of dollars on pollution controls at the nearly 50-year-old plant) that the Company should be required to provide evidence about the prudence of its actions relating to Rush Island. The Company readily agreed to do so, suggesting that given the impending filing of this rate review it made the most sense to do so in its direct testimony in this rate review. The Commission agreed. The Company filed extensive testimony on that very issue.

[107] Witness Eubanks also testified that she was not affirmatively endorsing the prudence of all of Ameren Missouri's decisions, nor has anyone asked her to but her lack of endorsement is beside the point since she continues to repeat under oath that her adjustment does not rest on imprudence.

[108] It should be noted, as outlined in the Company's Motion to Strike/Alternative Motion for Leave to File Sur-Surrebuttal testimony, that Staff witness Majors does appear to allege imprudence, in contradiction of Eubank's sworn testimony and without even identifying the decision or decision that is/are claimed to have been imprudent. Moreover, Staff's Response to the Company's Motion disavows the claim that Staff is basing its adjustment in this case on imprudence.

In its direct testimony, Staff then proposed its adjustment, stating directly that it was not recommending a prudence disallowance.[109] Its rebuttal testimony then largely consisted of out-of-context quoted snippets from the federal District Court's record in the federal case that led to the adverse judgment respecting the Company's compliance with New Source Review ("NSR") regulations. Staff implied that these snippets settled any prudence question yet, since it was not basing its adjustment on a claim of imprudence, Staff directly told the Commission that it need not address – and should not address – prudence in this case. Instead, Staff testified that Staff would address the issue in the future securitization case.[110] There was (and is) little purpose to Staff's testimony with respect to prudence at all (aside from its not so subtle attempt to sow doubt without any real proof) since Staff swears that its adjustment is proper in the absence of proving imprudence but given Staff's choice to throw out these snippets from the Court's record, the Company provided a limited response in its surrebuttal testimony to put these snippets into context.

Note, however, that Staff's entire recitation of isolated parts of the federal court record completely misses the point. The question is not whether a federal court about 10 years after decisions were made respecting whether permits were required determined that permits were required. The court so determined. The Company didn't nor does it dispute that.[111] The question before this Commission is completely different, however, than the question before the court. This Commission will – it isn't yet – but presumably will in the securitization case be called upon to decide whether the decisions the Company made about 15 years ago were imprudent and whether those decisions caused harm. And when it addresses that question, it won't use hindsight, it won't require perfection, and it will simply ask was Ameren Missouri reasonable in its belief – back then – that it did not need the permits?[112]

[109] File No. ER-2022-0337, Direct Testimony of Claire Eubanks, p. 13, ll. 1 - 4.
[110] File No. ER-2022-0337, Rebuttal Testimony of Claire Eubanks, p. 19, l. 20 – p. 20, l. 2.
[111] As outlined in the Company's surrebuttal testimony in this case, the federal district court made no decisions on that question.[111]
[112] Empire Order, pp. 28-29. If Staff succeeds in the securitization case in creating a serious doubt on the prudence question, the Company will bear the ultimate burden of establishing that its decisions were not imprudent or, even if they were, that they did not cause harm. *Associated Natural Gas*, 984 S.W.2d at 528-30.

It should be noted (albeit given that the basis of Staff's adjustment does not rest on alleged imprudence such evidence in this case is unnecessary) that the evidence of record *in this case* is that the Company had very strong reasons for believing, *at the time it made its decisions* on the question of whether permits were required, that permits were not required.[113] In Missouri, the Missouri Department of Natural Resources ("MDNR")—not the U.S. EPA—issues NSR permits. MDNR's permitting requirements are found in its state implementation plan, which EPA approved as consistent with the Clean Air Act.[114] At the time the Rush Island project were done, both MDNR and Ameren Missouri interpreted the state implementation plan to require NSR permits only for projects that increase the rate of potential emissions, measured by the maximum rated design capacity (e.g., pounds of pollutants per hour). MDNR did not require NSR permits for projects like those at Rush Island, which simply replaced components with their functional equivalent and did not increase the hourly rate of emissions.[115] No utility in Missouri (or elsewhere in the country) sought NSR permits for the like-kind replacement of components such as those undertaken by Ameren Missouri at Rush Island.[116]

As has happened to other utilities, U.S. EPA initiated enforcement against Ameren Missouri after the fact, claiming that the Company should have obtained NSR permits before undertaking the projects. After considering a number of issues of first impression, the federal Court hearing those claims found Ameren Missouri liable for starting construction on the projects without first obtaining the NSR permits. The Court also held that the remedy for that violation should include installing flue gas desulfurization technology ("scrubbers") on Units 1 and 2 in order to reduce sulfur dioxide emissions (SO2).[117] The Court did not hold, however, that Ameren Missouri intentionally violated the law, or even acted negligently. The Court was not asked to opine on whether Ameren Missouri's actions violated the standard of care for a reasonable power plant operator, nor did it. Although the Court found that the emissions analyses offered by Ameren Missouri at trial "were not reasonable under the law" because they did not conform to the legal rulings issued by the Court, nowhere did the Court state that Ameren Missouri's *understanding* of the law was unreasonable at the time it took the relevant actions.

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[113] Company witnesses Jeffrey Holmstead and Karl Moor, in their direct testimonies, the substance of which was completely unrebutted by the Staff, provide hard facts and evidence supporting the conclusion that the Company indeed was reasonable in concluding, at the time it had to make the decision, that it did not need permits before it did so.

[114] File No. ER-2022-0337, Direct Testimony of Jeffrey Holmstead, p. 16, l. 15 – p. 22, l. 8.

[115] Id.

[116] Id., p. 4, ll. 1-6; p. 28, ll. 16-21.

[117] The Court also ordered other relief in the form of controls on the Labadie plant. The Eighth Circuit held that order was unlawful and reversed it.

As the Court acknowledged, Ameren Missouri had a compliance process to assess permitting requirements.[118] That process applied the same understanding of the applicable law held by the permitting authority (MDNR) and other state regulators and electric utilities throughout the country.[119] As Ameren Missouri's witnesses explain in their testimony, that understanding of the law was reasonable and had prevailed in many other courts considering the same issues.[120] The Court here ultimately adopted a different view of the law, which Ameren Missouri has now accepted. But only impermissible hindsight would say that such a decision, rendered years after the relevant decisions had to be made, settles the question of whether Ameren Missouri had a reasonable understanding of the law at the time it had to act. The testimony offered by Ameren Missouri witnesses Holmstead and Moor provide specific facts demonstrating that Ameren Missouri acted reasonably under the circumstances.[121]

[118] 229 F. Supp. 3d at 1011 (describing how Ameren Missouri's compliance process employed an emission increase test that the Court had rejected on summary judgment in 2016).

[119] Id.; Holmstead Direct, p. 29, l. 19 to p. 32, l. 11 and Schedule JRH-D4 (explaining MDNR's interpretation of the applicable law); p. 32, ll. 12 – 18 (explaining similar approaches in other states); Moor Direct, p. 11, l. 22 to p. 12, l. 14 (explaining MDNR approach to permitting requirements); p. 17, ll. 12 – 23 (explaining similar approaches in other states).

[120] Holmstead Direct, p. 3 l. 5 TO p. 4 l. 9 (explaining why Ameren Missouri's determinations that the Rush Island projects would not trigger NSR were reasonable); Moor Direct, p. 4 l. 6 to p. 6 l. 23 (explaining why Ameren Missouri's determinations were reasonable, and consistent with the majority of court rulings at the time); p. 38 l. 13 top. 42 l. 10 (demonstrating that Ameren Missouri's approach to NSR was in line with the majority of court opinions at the time).

[121] Holmstead Direct, p. 29 l. 15 top. 33 l. 6 (explaining why Ameren Missouri's understanding of the law was reasonable); p. 33 l. 7 top. 36 l. 15 (explaining why Ameren Missouri's determination that its projects would not cause an increase in emissions was reasonable); p. 36 l. 1 top. 39 l. 2 (explaining why Ameren Missouri's determination that the projects were excluded from permitting requirements as "routine maintenance, repair or replacement" was reasonable); Moor Direct, p. 15 l. 5 top. 16 l. 9 (explaining why Ameren Missouri's reliance on the MDNR interpretation and application of the law was reasonable); p. 22 l. 1 to p. 23, l. 22 (explaining why Ameren Missouri reasonably believed its projects would not cause an emissions increase); p. 24 l. 1 to p. 36 l. 21 (explaining why Ameren Missouri reasonably concluded that the Rush Island projects were excluded from permitting requirements as "routine maintenance, repair or replacement").

Staff largely ignores, and fails to rebut, this evidence. Instead, Staff is only focused on "how things turned out" in its view. The Commission should ask itself: if Staff's adjustment is proper in the absence of proof that some imprudent decision harmed customers, as Staff claims, why did Staff insist in the investigatory docket that the Company produce evidence that it was prudent, and why did Staff spend so much time in its rebuttal and surrebuttal testimonies attempting to imply imprudence – stopping short of actually proving or alleging it? The answer to that question is clear: it would make terrible regulatory policy, as discussed above, to disallow hundreds of millions of dollars of a utility's rate base absent imprudence on the utility's part that caused harm to customers. Staff is attempting to blind the Commission to those policy problems with the implication that this is "all Ameren Missouri's fault." The Company firmly believes that the Commission will not do so.

Rush Island is used and useful. Staff is – whether it wants to admit it or not – attempting to claim that part of Rush Island is not by using the discredited and flawed economically used and useful approach. The Company is not shielded from the consequences of its decisions and if upon proper proof in a case where that issue is presented the Commission concludes its imprudence caused customers harm, the Company would bear those consequences. That case is not presented here. It is not even alleged. Staff's proposed adjustment should be rejected.

22. High Prairie.

A. Should a portion of the Company's investment in the High Prairie Energy Center be excluded from rate base in this case? If so, how much should be excluded?

B. Should MECG witness Meyer's proposal to impute energy revenues, production tax credits, renewable energy credits and disallow any monitoring expenses or mitigation projects based on his contention that the High Prairie is underperforming be adopted?

C. Should Staff witness Eubanks' proposal to impute energy revenues, renewable energy credit costs, and production tax credits into the Company's revenue requirement be adopted?

Neither OPC's proposal (Item A), MECG's proposal (Item B), nor Staff's proposal (Item C) should be adopted because no party has alleged, much less proven, that Ameren Missouri has made any imprudent decisions respecting either acquisition of High Prairie or its ownership and operation of High Prairie.

As discussed earlier in connection with the Rush Island issues, whether they want to admit it or not, each of these parties is attempting to exclude rate base[122] or impute revenues to substantially lower the Company's revenue requirement[123] based on "how things turned out." This hindsight approach that changes well-established cost recovery principles after the fact indeed is an application of the discredited economic used and useful theory discussed in detail by Company witness John Reed. Everything outlined above respecting why such an adjustment is inappropriate for Rush Island applies with equal force to High Prairie, both with respect to OPC's proposed rate base adjustment and MECG's and Staff's revenue imputation adjustments.[124]

[122] Like Staff's proposed Rush Island rate base exclusion, OPC's proposed exclusion, if adopted, would require the Company to write-off approximately $175 million dollars in 2023.

[123] In the case of MECG witness Meyer, the reduction would occur via future imputation of revenues into the Company's RESRAM but the impact is the same – exclusion of prudent costs by forcing the Company to bear the financial impact of lower production solely because of "how things turned out" and without any claim that the Company has acted imprudently in any way.

[124] See the above-cited portions of Company witness Reed's Rebuttal Testimony for a discussion of the prudence standard and the discredited economic used and useful theory. See also Reed Rebuttal, pp. 14 – 20 for a specific discussion of why the proposed adjustments are improper with respect to High Prairie. Mr. Reed also addresses these issues in his Surrebuttal Testimony.

The undisputed facts are that when it signed the contract to buy the facility and obtained the Commission's permission to do so (via a CCN) the Company did not know, nor could it have reasonably known that it would need to voluntarily curtail operation of the wind turbines at High Prairie at night during bat season when temperatures are above a certain level in order to avoid the take of endangered Indiana bats. As Company witness Ajay Arora testifies – testimony that remains completely unchallenged – the understanding of the experts at the time the Company signed the contract for the facility, and at the time the Commission approved the High Prairie CCN, including the understanding of experts at the United States Fish and Wildlife Service ("USFWS") itself, was that Indiana bat takes would be fully avoided if the facility were operated at night during bat season at a minimum cut-in speed of 6.9 meters per second ("m/s").[125] Based upon that demonstrably reasonable understanding on the Company's part, the Company presented to the Commission and the parties to the CCN case – including Staff and OPC – what the production from the facility would be if the Company did need to use a minimum cut-in speed of 6.9 m/s at night during bat season. Everyone in that case knew (or if they didn't, they did not pay any attention to the record in the CCN case), that the Company might have to operate at the cut-in speed and knew what the production impact would be.[126] Staff and OPC affirmatively agreed that the CCN should be issued despite that knowledge, as did the client of MECG witness Meyer's firm (the Missouri Industrial Energy Consumers, represented in the CCN case by Maurice Brubaker of Brubaker & Associates). Not only did Staff and OPC support the issuance of the CCN but they affirmatively agreed not to challenge the prudence of the Company's decision to construct the facility pursuant to the Build Transfer Agreement ("BTA"):

> Prudence: The Signatories agree that they shall not challenge the prudence of the decision to acquire the facility under the terms of the BTA, including Non-Compliant windturbine generators under the terms of the BTA, and to merge TG High Prairie, LLC into Ameren Missouri if the acquisition of the facility closes pursuant to the BTA. Nothing in this Stipulation limits the ability of any Signatory or other party from challenging the prudency of the design, construction costs, interconnection costs, and all other project related costs, including costs impacted by construction duration.[127]

[125] File No. ER-2022-0337, Rebuttal Testimony of Ajay Arora, p. 4, l. 10 – p. 14, l. 6.
[126] Id., p. 17, l. 1 – p. 18, l. 9.
[127] File No. EA-2018-0202, *Third Stipulation and Agreement*.

Staff and OPC claim they are not mounting such an impermissible prudence challenge in this rate review yet the effect of their positions, if adopted, would be precisely the effect that would occur if they did not attempt an end-run around their CCN case stipulation commitment: an extremely large and adverse ratemaking adjustment against the Company, based on hindsight about how things turned out, without proof of any kind that the Company acted imprudently.

Such a result would, as is the case with respect to Rush Island, reflect terrible regulatory policy. It would amount to imposing rate regulation on the Company which as earlier discussed properly prevents the utility from capturing the upside when things turn out better than expected, while asymmetrically imposing the downside on the utility when things turn out less favorable than expected.

The Company acted prudently when it acquired the High Prairie facility. Unfortunately, it and the experts were wrong about what it would take to fully avoid Indiana bat takes. That has forced the Company to curtail the turbines at night during bat season while it prudently pursues measures to reduce that nighttime curtailment as much as possible to regain production. There is absolutely no basis to penalize the Company under these circumstances and doing so would reflect terrible regulatory policy based purely on hindsight and an after-the-fact assessment of how things turned out. Staff's, OPC's, and MECG's adjustments should therefore be rejected.

23. Depreciation/Continuing Property Record ("CPR").

A. What depreciation rates should be ordered?

The depreciation rates presented by Company witness John Spanos should be ordered.[128]

B. Should the Company be ordered to change the manner that property retirements are recorded to its CPR?

[128] File No. ER-2022-0337, Direct Testimony of John Spanos, Schedule JJS-D2.

No. The Company is in full compliance with the FERC Uniform System of Accounts and the Commission's rules for its CPR.[129] In addition, the Company's processes and methods of retirements for mass property assets are the same or similar to those of many other utilities, and the technology solutions and accompanying statistical analysis relied upon by the Company (and many other utilities) to process retirements for mass property in a utility's CPR are a necessity for keeping the property records accurate and as current as possible.[130]

24. Property Taxes/Tracker.

A. What is the appropriate level of Missouri property tax to be included in rates?

After adjusting for capitalization, gas operations, and non-utility amounts, the Company's 2022 property tax expense totaled $170,509,624. The Commission should include this amount in the Company's revenue requirement used to set rates in this case.

B. What base level of property taxes should the Commission approve for Ameren Missouri to track property tax?

$170,509,624, which represents property tax expense base against which the legislatively mandated tracker should be applied.[131]

C. What amount of property tax deferrals should be included in the Company's revenue requirement used to set customer rates in this case?

The Company's 2,244,000 deferred regulatory asset[132] should be included in the Company's rate base, while $1,122,000[133] should be included in the Company's revenue requirement as amortization of the previously mentioned regulatory asset.

[129] File No. ER-2022-0337, Surrebuttal Testimony of Mitchell Lansford, pp. 10 – 11.
[130] File No. ER-2022-0337, Rebuttal Testimony of John Spanos, pp. 17 – 18.
[131] File No. ER-2022-0337, Surrebuttal Testimony of Mitchell Lansford, p. 13, l. 17.
[132] File No. ER_2022-0337, True-Up Rebuttal Testimony of Mitchell Lansford, MJL-TUR8, l. 7.
[133] File No. ER-2022-0337, True-Up Rebuttal Testimony of Mitchell Lansford, MJL-TUR12-1, l. 36.

Staff does not disagree with beginning a tracker (because it is required by law) but is recommending the deferrals not start until after the date of new rates in this case. There is no reason not to start tracking property tax at the beginning of September of 2022. The statute became law in August of 2022, and it should be implemented as of that point in time (the Company chose the first of the September for ease of administration.) And Staff's protest about not knowing what is in rates is disingenuous, one can look at the record from the Company's last rate review and determine the amount of property tax in the revenue requirement against which to track property tax going forward.[134]

25. Income Taxes.

A. Should any amount of federal tax credit carryforwards be included in the Company's revenue requirement as an offset to ADIT in rate base?

Yes. Staff recognizes that it is appropriate to have symmetry between amounts included in the Company's revenue requirement and the costs or benefits (such as tax credits) that are required or claimed on the tax return. However, Staff's proposal violates that principal.

The tax credits at issue *have not yet been used to offset income tax obligations.* Thus, they must be carried forward for utilization at a later time. Staff's position, however, is that the Company should be forced to provide to customers the tax benefits the credits will someday provide before those benefits exist. Staff attempts to do so by recommending that the deferred tax asset ("DTA") that carrying the credits forward for later use creates be excluded from rate base, even though the Company would indisputably provide customers with the full value of unused credits in the coming year and even though DTAs for other tax return items are included in rate base, both by the Company and the Staff.[135]

Staff should not be allowed to have it both ways. Staff (and the Company's) allowance for income taxes in the revenue requirement in this case has been reduced by the among of these credits, lowering revenue requirement. The Company has symmetrically included the DTA arising from the carryforward in rate base, i.e., if it wants to remove the DTA from the revenue requirement, then the allowance for income taxes reflected in rates should go up by removing the credits themselves from the revenue requirement as well.

[134] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 24, ll. 3 – 21.
[135] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 32, l. 4 – p. 34, l. 5.

26. Cash Working Capital

A. What cash working capital factors should be used for income taxes to determine the amount to adjust the Company's rate base in this case?

The cash working capital factors sponsored by both the Company and the Staff should be used. OPC's cash working capital factors should not be adopted, both because OPC's testimony on the issue is untimely and improper as outlined in Staff's Motion To Strike OPC witness Riley's surrebuttal testimony on these issues, and because OPC's position is substantively wrong. While the Commission used OPCs factors in the Spire case referenced by OPC, the facts of that case were different than the facts of this case. In this case, the Company in fact has made cash estimated tax payments, as outlined in Company witness Lansford's Direct Testimony. Spire had not. This clearly demonstrates that use of those actual cash tax payment dates is proper, as the Company and Staff both recognize.[136]

B. What cash working capital factors should be used for sales and use taxes to determine the amount to adjust the Company's rate base in this case?

The Company's factors should be used. Staff is improperly grouping sales tax with other pass-through taxes, like gross receipts tax, by excluding the service lag from the revenue lag component. This is improper because these two types of taxes are distinct and have different statutory requirements. Those different requirements dictate that they must be treated differently.

It is proper to remove the service lag from the revenue lag for gross-receipt taxes because the tax is imposed on *Ameren Missouri* but passed—through to customers. However, sales tax is imposed on *customers* at the time the customer takes electric service. Those taxes are calculated on the electricity usage – the service – and thus the service lag should be included in the revenue lag component.[137]

27. Inflation Reduction Act ("IRA") Tracker.

A. Should Ameren Missouri be allowed to implement an IRA Tracker, and if so, what costs and benefits should be included?

[136] While beyond the scope of the issue in this case, the Company does not believe use of OPC's approach would be appropriate even if cash taxes had not actually been paid but, as noted, that belief need not be addressed in this case.
[137] File No. ER-2022-0337, Rebuttal Testimony of Charles Steib, pp. 12 – 14.

Staff and Ameren Missouri agree that the new law will impact multiple aspects of Ameren Missouri's business, including providing a significant level of additional tax credits (PTC and ITC) for renewable and nuclear generation and as well as an increased income tax burden.[138]

Mr. Lansford's supplemental direct testimony goes into great detail as to how an IRA tracker should work and how it will benefit customers as well as the Company. A tracker is necessary to ensure all impacts from the IRA can be reflected in the Company's revenue requirement, ultimately lowering the total revenue requirement for customers.[139]

Without a tracker, regulatory lag will mean that portions of the benefits (and costs) of the IRA will not be included in rates.[140] Impacts in 2023 and 2024 are anticipated to be minimal, but a tracker could result in net reductions in the amount of $50 to $100 million. Not tracking all elements of this law results in cherry-picking savings at the expense of the Company.

28. Retail Revenues.

A. What level of billing units and normalized revenues should be used in calculating rates?

The billing units and normalized revenues presented by Company witness Nicholas Bowden, Ph.D., in surrebuttal/true-up testimony should be used in calculating rates.[141]

1. What block adjustment should be used in calculating rates?

[138] File No. ER-2022-0337, Rebuttal Testimony of Young, p. 26, ll. 7-10; Supplemental Direct Testimony of Mitchell Lansford, p. 2, ll. 9-14.
[139] File No. ER-2022-0337, Supplemental Direct of Mitchell Lansford, p. 9, ll. 5-10; p. 10, ll. 6-14.
[140] File No. ER-2022-0337, Supplemental Direct of Mitchell Lansford, p. 9, ll. 9-13.
[141] File No. ER-2022-0337, Surrebuttal/True-Up Testimony of Nicholas Bowden, Ph.D., Schedule NSB-S1.

The Company's block weather normalization adjustment through true-up should be used, because the adjustment is based on the relationship between weather and kilowatt-hour ("kWh") block usage estimating using historical weather and usage data, and includes a mechanism that ensures consistency with the total kWh weather normalization.[142] On the other hand, Staff's block normalization adjustment is based on an estimated relationship between average usage and block usage within the test year and not the weather.[143] Staff's block normalization also produces results that are inconsistent with its own total kWh weather normalization.[144]

2. *What weather normalization adjustment should be applied when determining rates?*

The Company's weather normalization adjustment should be used. The Company's adjustment uses a statistically valid method to estimate the relationship between weather and usage, and Staff's does not. The purpose of weather normalization is to remove the effect of abnormal weather events which occurred in the test year. A valid estimate of the relationship between weather and usage is needed to appropriately remove the effect of abnormal weather. Staff's statistical methods do not produce a valid (or unbiased) estimate of the relationship and the Company's methods do.[145]

3. *What customer-owned solar adjustment should be used in calculating rates?*

The Company's customer-owned or behind-the-meter solar adjustment through true-up should be used because it is based on known and measurable behind-the-meter generation capacity installed during the test year. Staff proposes no adjustment because the energy generated by these installations is estimated. The Company's solar adjustment method based on known capacity and estimated generation is equivalent to the method used for the Company's and Staff's energy efficiency adjustment, where energy savings are estimated for known and measurable investments in energy efficiency measures.[146]

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[142] File No. ER-2022-0337, Direct Testimony of Nicholas Bowden, pp. 14 – 17; Surrebuttal/True-Up Testimony of Nicholas Bowden, pp. 11, 14 – 16.
[143] File No. ER-2022-0337, Rebuttal Testimony of Nicholas Bowden, Ph.D., pp. 16 – 18.
[144] File No. ER-2022-0337, Surrebuttal/True-Up Testimony of Nicholas Bowden, Ph.D., pp. 12 – 13.
[145] File No. ER-2022-0337, Rebuttal Testimony of Nicholas Bowden, Ph.D., pp. 4 – 15; Surrebuttal/True-Up Testimony of Nicholas Bowden, Ph.D., pp. 4 – 10.
[146] File No. ER-2022-0337, Surrebuttal/True-Up Testimony of Nicholas Bowden, Ph.D., pp. 20 – 25.

4. What growth adjustment should be used in calculating rates?

The Company's growth/switching adjustments through true-up should be used to calculate rates. The Company's residential growth/switching adjustment are based on better modeling assumptions than Staff's adjustment, specifically related to the significant switching between Anytime Users and Evening/Morning Savers rate plans observed during the test year. The Company's LPS and SPS growth/switching adjustments are reasonable, and Staff's is not because Staff moves large historic energy and demand billing units from LPS to SPS for a customer who has shut down operations.[147]

5. What energy efficiency annualization adjustment should be used in calculating rates?

The Company's energy efficiency adjustment through true-up should be used to calculate rates.[148] The Company and Staff adjustments are nearly identical.

6. Should the Community Solar adjustment be annualized?

Yes. The Company's community solar adjustment through true-up should be annualized and used to calculate rates.[149]

[147] Id., p. 28; True-Up Rebuttal Testimony of Nicholas Bowden, Ph.D., pp. 3 – 6.
[148] File No. ER-2022-0337, Surrebuttal/True-Up Testimony of Nicholas Bowden, Ph.D., p. 3.
[149] Id. at p. 4, Table 3.

29. Identification of Avoided Capital Investments for the Sioux and Labadie Coal Plants.

A. Should the Company be required to identify avoided capital investments should the Sioux or Labadie Energy Centers retire earlier than currently planned as recommended by Sierra Club witness Comings?

This recommendation is better suited for consideration in an Integrated Resource Plan ("IRP") case. A rate review looks backward and does not deal with future resource planning decisions.[150] As part of the IRP case, there are specific opportunities to suggest the inclusion of analysis beyond that explicitly required by the Commission's regulations. The Sierra Club is an active participant in Ameren Missouri's IRP cases, including the annual update and special contemporary issues cases. This suggestion would be better considered at that time and in those cases.

30. Meramec Return.

A. What is the appropriate level of return for deferred costs of operating the Meramec plant up until its closure to be included in rates?

[150] File No. ER-2022-0337, Rebuttal Testimony of Matt Michels, p. 2, ll. 3 - 10.

It is appropriate to grant Ameren Missouri carrying costs on the unamortized balances of Meramec rate base. As the Commission and other parties are aware, Ameren Missouri proposed to spread the recovery of the then-undepreciated investment, along with actual expenses to be incurred while operating the plant for those remaining months of its life, over 5 years instead of the 10 months of life the plant had remaining. This approach allowed the Company to recover its investment in plant while avoiding a large regulatory liability that otherwise would have been ordered for amounts collected after Meramec retired and until rates were reset in this case.[151] This is good for the Company and for its customers. If the Company had not taken this approach, it would have recovered the full return on that rate base of the plant during the time period while the plant was used and useful serving customers. Ultimately, the approach set forth by the Company and ultimately adopted by the Commission lowered costs to customers by close to $50 million by deferring costs of operating the plant during its useful life.[152] Staff, in the prior case, recognized that and indicated it would support rate base treatment.[153] It was not ordered in the case and now Staff takes a different position. This new position punishes Ameren Missouri for taking a creative approach to lower and reduce volatility in rates for its customers. Staff's recommendation ignores the existence of approximately $4 million of annual financing costs that the Company still incurs on the remaining balance.[154] This is bad regulatory policy, and the Commission should reject Staff's attempt to deny Ameren Missouri recovery of these costs and should allow the Company's $50,765,000 unrecovered regulatory asset to be included in rate base.[155]

31. Rate Case Expense.

A. What is the appropriate amount to include in Ameren Missouri's revenue requirement for Rate Case Expense?

[151] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 3, ll. 6 - 22.
[152] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 4, l. 1 - 3.
[153] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 2, l. 19 through p. 3, l. 3; quoting ER-2021-0240, Rebuttal Testimony of Lisa Ferguson, p. 4, l. 23 through p. 5, l. 1.
[154] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 4, ll. 18-21.
[155] File No. ER-2022-0337, True-up Surrebuttal of Mitchell Lansford, Schedule MJL-TUR8, line 5.

Ameren Missouri's recommendation in this case is to set rate case expense at a level that is equal to the average from its last five rate cases, recovered by amortizing that amount over two years, in recognition that it typically files rate reviews every two years.[156] Staff goes beyond that by recommending an average of costs from the Company's last three rate cases, amortized over two years and also reducing the overall expense by 50% based on the presumption that both customers and the Company benefit from the expenditures in the case.

Staff's three case average fails to include a fully litigated case, which is historically more costly, and, therefore, is not a normal amount to use to set rates in this case. The KCPL case cited by Staff relies upon a Commission finding that the utility's decision to pursue its (KCPL) litigation strategy that in large part inured to the sole benefit of shareholders was imprudent.[157] Staff has not even alleged this as being true in this case and, in fact, it is not. The Commission should reject Staff's recommendation of 50/50 sharing and use Ameren Missouri's five-year average.

WHEREFORE, Ameren Missouri requests the Missouri Public Service Commission accepts its Position Statements in satisfaction of the Commission's *Order Setting Procedural Schedule and Adopting Test Year* issued herein on September 28, 2022.

Respectfully submitted,

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[156] File No. ER-2022-0337, Rebuttal Testimony of Mitchell Lansford, p. 18, ll. 6 - 11.
[157] File No. ER-2022-0337, Surrebuttal and True-Up Direct Testimony of Jared Giacone, p. 7. ll. 5-10.

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 27th day of March, 2023, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Wendy K. Tatro
Wendy K. Tatro