BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2010-0036

REPLY BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2008-0318

MISSOURI INDUSTRIAL ENERGY CONSUMERS' POST-HEARING BRIEF

The Missouri Industrial Energy Consumers ("MIEC") respectfully replies to positions asserted by other parties to this case

I. POWER PLANT MAINTENANCE EXPENSE

While AmerenUE spent several pages of its initial brief attacking Staff Witness Ms. Grissum's methodology for determining power plant maintenance expense, the only arguments it could muster against Mr. Meyer is that 1) he is not an engineer; and 2) his analysis supposedly fails to account for inflation.[1]

AmerenUE's *ad hominem* attacks against Mr. Meyer are so flimsy they barely merit a response. Nonetheless, MIEC readily concedes that Mr. Meyer has never tinkered with a turbine or powered down a generating unit. Rather, he is an accomplished auditor with over 30 years of regulatory experience.[2] Apparently (and incoherently), AmerenUE believes that in order to testify about power plant maintenance expense (or even to represent a party in this litigation), one must have personally operated a power plant. Indeed, AmerenUE's dubious logic appears to require that even MIEC's counsel should be able to service a turbine.[3] As evinced below, AmerenUE's expert witness, Mr. Birk, initially tried to advance this absurd argument during the evidentiary hearing until the Commission wisely curtailed it:

[1] Post Hearing Brief of AmerenUE, Page 105.

[2] Meyer Direct, Ex. 400, at Curriculum Vitae.

[3] Transcript, Page 1023, Line 7 through Page 1024, Line 6.

A. If you read the footnote, says these outages are planned to be three to four week mini maintenance outages where limited turbine work will be performed. When you do a major overhaul, you tend to open up a turbine. *Do you know what a turbine is?*

Q. But that's really not my –

A. *You don't care if you have to open up a turbine?*

Q. I'm not a -- I'm not a witness. Okay? So I don't need to know how to open up a turbine. I'm asking you –

A. *Okay. I'm trying to clarify what –*

Q. I'm asking you -- it's very simple, because you testified, so I just want to make sure I understand.

A. *Okay.*

COMMISSIONER DAVIS: Judge, would you please instruct this witness to answer the question?

JUDGE WOODRUFF: I will be glad to.

COMMISSIONER DAVIS: I'm sorry to interrupt, counselor.

JUDGE WOODRUFF: Mr. Birk, just please answer the questions that are asked of you, and don't try and argue with the -- debate the question with the attorneys. It will just take us a lot longer.

THE WITNESS: *Okay. Okay.*[4]

Obviously, whether Mr. Meyer is an engineer or has ever operated a generating unit is wholly immaterial to his ability to analyze AmerenUE's expenses and propose a normalized rate of power plant expense. It appears that AmerenUE offers this argument due to its admitted inability to come up with any legitimate criticisms of Mr. Meyer's analysis.[5]

[4] Transcript, Page 1023, Line 7 through Page 1024, Line 6.

[5] Transcript, Page 1042, Lines 16-25.

Indeed at the evidentiary hearing and in its brief, AmerenUE offers no coherent criticisms of Mr. Meyer's methodology, other than its supposed failure to account for inflation.[6] However, as was painstakingly demonstrated during Mr. Birk's laborious cross-examination testimony, Mr. Meyer's normalization methodology resulted in expense levels that were within 1.25% of AmerenUE's *budgeted* amounts, all of which were adjusted liberally for inflation.[7] In other words, Mr. Meyer's methodology unequivocally demonstrates that cost increases for power plant maintenance due to inflation are offset by factors that drive expenses downward, such as more efficient and less expensive technologies, decreases in materials costs, etc.[8] As such, Mr. Meyer's methodology proves to be an extraordinarily accurate indication of AmerenUE's real future costs for power plant maintenance, and his recommendation of $105 million is the correct expense level in this case. By contrast, AmerenUE's recommendation is "inflated" in more ways than one.

Further, Mr. Meyer's methodology accurately accounts both for periods where expenses are high due to multiple planned outages and periods where expenses are low due to few or no planned outages.[9] Birk's testimony on cross-examination proved that Meyer's methodology accurately accounts for those periods where AmerenUE has budgeted for multiple planned outages; in other words, the expensive periods.[10] What AmerenUE conveniently left out of its testimony is the fact that there will also be periods where it will conduct few if any planned

[6] Transcript, Page 1042, Lines 16-25.

[7] Transcript, Pages 1019, Line 19 through Page 1020, Line 1.

[8] Transcript, Page 1144, Line 9 through Page 1145, Line 19.

[9] Meyer Surrebuttal, Ex. 402, Page 7, Lines 15-20.

[10] Transcript, Pages 1019, Line 19 through Page 1020, Line 1.

outages; in other words, the inexpensive periods.[11] So, AmerenUE would have this Commission set an expense level based only on the expensive periods and ignore the inexpensive periods. For these reasons, AmerenUE's request is unreasonable, illogical and ultimately untenable. The Commission should adopt Mr. Meyer's much more reasonable recommendation for an expense level of $105 million for power plant maintenance, a level which was clearly shown to account for the real life fluctuations in AmerenUE's power plant expenses.[12]

II. STORM EXPENSE AND TRACKER

AmerenUE's arguments for an *increase* in storm expense levels (to $10.4 million) is incredible in light of the fact that AmerenUE has incurred only *** *** (non-internal labor) in expenses due to storms since March 1, 2009.[13] In other words, AmerenUE wants this Commission to set a storm expense level that is *** ***** greater than AmerenUE's recent historical storm recovery expenses**.[14]

Moreover, even AmerenUE admitted that all things being equal, it should anticipate a *decrease*, not an increase, in storm recovery expenses due to its compliance with the Commission's more rigorous vegetation management regulations requiring trees to be trimmed further away from power lines.[15] Therefore, in light of the less than *** *** of storm expenses incurred by AmerenUE since March 1, 2009, and the likelihood of the *decrease* in

[11] Ex. 433 HC, DR 294.

[12] Transcript, Pages 1019, Line 19 through Page 1020, Line 1.

[13] Meyer Surrebuttal, Ex. 402, Page 18, Lines 1-5.

[14] Meyer Surrebuttal, Ex. 402, Page 18, Lines 1-5.

[15] Transcript, Page 1580, Line 19 through Page 1581, Line 10; Page 1586, Line 24 through Page 1587, Line 5.

future storm expenses, the Commission's current level of storm expense ($5.2 million) more than adequately funds AmerenUE's storm expense budget.

In addition to an unnecessarily bloated expense level, AmerenUE requests an expense tracker for storm recovery.[16] AmerenUE's request is preposterous for the following reasons:

- First, a tracker would obviate AmerenUE's incentive to cover storm expenses with excessive profits or other expense reductions enjoyed by AmerenUE (blocking consideration of all relevant factors);
- Second, the Commission already provides perfectly reasonable mechanisms such as accounting authority orders to allow AmerenUE recovery for excessive storm expenses;[17]
- Third, AmerenUE's argument that a tracker would correct excessive regulatory lag is patently false, because there is no difference in the expedience of recovery between a tracker and an accounting authority order;[18]
- Fourth, AmerenUE cannot point to a single instance where this Commission failed to grant its request for an accounting authority order for reasonable and prudent storm expenses;[19]
- Fifth, the unnecessary implementation of a tracker in this case could potentially cause AmerenUE to breach its fiduciary duty to maximize returns to its shareholders;[20] and

[16] Post Hearing Brief of AmerenUE, Page 120.

[17] Transcript, Page 1618, Line 12 through Page 1619, Line 8.

[18] Transcript, Page 1614, Lines 4 through 23.

[19] Transcript, Page 1619, Lines 15 through 18.

[20] Transcript, Page 1618, Line 12 through Page 1619, Line 8.

- Sixth, AmerenUE admits that the proposed implementation of a storm tracker would make no difference in its ability to robustly respond to damage incurred to its service area because of a storm.[21]

For the foregoing reasons, the Commission should maintain the current level of storm expense, ($5.2 million) and deny AmerenUE's unnecessary request for a storm tracker.

III. INFRASTRUCTURE INSPECTION EXPENSE AND TRACKER

The Commission should establish the infrastructure inspection expense level at $7.6 million, which is the historical expense actually incurred by AmerenUE during the true-up period.[22] AmerenUE would have the Commission rely on *forecasted* levels of expense for 2010 and 2011, despite the fact that it has been in compliance with the Commission's new infrastructure inspection rules since July 2008.[23] Setting an expense level based on *forecasted* expenses, as proposed by AmerenUE, deviates from this Commission's sound practice of setting expense levels based on actual historical data. Therefore, this Commission should deny AmerenUE's request for an expense level derived from *budgeted* as opposed to actual numbers, and set the expense level at $7.6 million.

AmerenUE would have the Commission believe that it "does not have the experience necessary to confidently forecast what it will cost to comply with the Commission's new rules."[24] Nonsense. AmerenUE has been in full compliance with the new rules since July

[21] Transcript, Page 1621, Lines 5 through 14.

[22] Meyer Surrebuttal, Ex. 402, Page 14, Lines 2-4.

[23] Transcript, Page 1716, Lines 2-13.

[24] Post Hearing Brief of AmerenUE, Page 118.

2008[25], and its costs for the period ending January 31, 2010, totaled $7.6 million.[26] This level of expense offers a reasonable estimate for ongoing expenses. AmerenUE would also have the Commission keep the infrastructure inspection tracker in place until the program reaches "full maturity" (12 years).[27] This is absurd. First, as discussed in Case No. ER-2008-0318, trackers are designed to be implemented judiciously and only when necessary.[28] In its initial brief, AmerenUE tries unconvincingly to use this case to support its position for an extended tracker, despite the case's clear and unambiguous language to the contrary.

Further, AmerenUE's request for a tracker presumes that this Commission is incapable of setting a just and reasonable expense level. That is, AmerenUE would have this Commission set a bloated expense level and simultaneously provide an additional mechanism (tracker) that would free it from adhering to that expense level. One wonders why AmerenUE is so reluctant to utilize the accounting deferral mechanism already in the Commission's Infrastructure Inspection Rules that allows it to recover for reasonable and prudent expense in excess of those established in the rate case.[29] AmerenUE basically wants pre-approval of all expenses through the adoption of a tracker and does not want to subject itself to the all relevant factor concept embodied by an accounting authority order request. In other words, AmerenUE wants to have its cake now, and to eat it later.

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[25] Transcript, Page 1716, Lines 2-13.

[26] Meyer Surrebuttal, Ex. 402, Page 14, Lines 2-4.

[27] Post Hearing Brief of AmerenUE, Page 118.

[28] Case No. ER-2008-0318, *Report and Order*, January 27, 2009, Page 41.

[29] Commission Rule 4 CSR 240-23.020(4).

This Commission should not allow for the continued use of a tracker because: 1) it obviates AmerenUE's incentive to cover costs with excessive profits or other expense reductions enjoyed by AmerenUE, blocking consideration of all relevant factors; 2) the Commission's Infrastructure Inspections Rules provide a reasonable mechanism to recover excessive costs;[30] 3) a tracker does nothing to correct the alleged "regulatory lag" issue of which AmerenUE complains;[31] and 4) the unnecessary continuation of a tracker could cause AmerenUE to breach its fiduciary duty to its shareholders.[32]

For the foregoing reasons, the Commission should set AmerenUE's infrastructure expense level at $7.6 million and deny its request for the continued use of a tracker.

IV. VEGETATION MANAGEMENT EXPENSE AND TRACKER

AmerenUE requests a vegetation management expense level that is $3 million dollars greater than the amount it actually spent during either the twelve month test year or true-up period.[33] To support its argument, AmerenUE cites Mr. Wakeman's testimony that he could fund additional projects if AmerenUE only had a larger budget.[34] To be certain, Mr. Wakeman testified that there are additional projects AmerenUE would like to undertake if it only had a larger budget.[35] But on cross-examination, Mr. Wakeman admitted that no matter how large the budget, there would *always* be projects he would like to undertake if the budget was just a bit

[30] Commission Rule 4 CSR 240-23.020(4).

[31] Transcript, Page 1614, Lines 4-23.

[32] Transcript, Page 1618, Line 12 through Page 1619, Line 8.

[33] Meyer Surrebuttal, Ex. 402, Page 10, Lines 7-10.

[34] Post Hearing Brief of AmerenUE, Page 114.

[35] Transcript, Page 904, Lines 13-22.

larger.[36] In other words, AmerenUE, like all of us, would be happy to find things to spend money on if it had a bigger budget. Fortunately, AmerenUE's ability to fund projects does not justify an increase in its expense level. As such, the Commission should limit AmerenUE's vegetation management expense level to $50.4 million based on the actual costs it incurred for vegetation management during the true-up period.[37]

AmerenUE's initial brief also continues to propound the glaringly obvious fiction that the implementation of a tracker would somehow reduce "excessive regulatory lag."[38] AmerenUE makes this assertion despite the testimony of its own witness stating that recovery by means of a tracker produces no greater regulatory lag than recovery by an accounting authority order.[39] In both instances, AmerenUE would recover for any excessive expenses in the rate case following the event that gave rise to the excessive costs.[40]

AmerenUE also argues that it needs a tracker so that it may enjoy "a greater assurance of full cost recovery."[41] This argument flies in the face of the unequivocal fact that AmerenUE cannot point to a single instance where the Commission failed to grant it full recovery for all reasonable and prudent expenses it incurred when filing for an accounting authority order. Therefore, AmerenUE's "regulatory lag" and "assurance of full recovery" arguments are baseless.

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[36] Transcript, Page 1621, Line 23 through Page 1622, Line 16.

[37] Meyer Surrebuttal, Ex. 402, Page 10, Lines 7-10.

[38] Post Hearing Brief of AmerenUE, Page 114.

[39] Transcript, Page 1614, Lines 4-23.

[40] Transcript, Page 1614, Lines 4-23.

[41] Post Hearing Brief of AmerenUE, Page 114.

Further, AmerenUE would have the Commission believe that a tracker must remain in place until the programs are "at full maturity" despite the evidence that expenses for vegetation management have stabilized[42] and that they are likely to *decrease* as AmerenUE trims circuits that have already undergone rigorous trimming procedures.[43] Ameren's argument makes no sense. All of AmerenUE's circuits have been trimmed under the relatively stringent 2004 standards;[44] and nearly half of its circuits have been trimmed under the even more stringent 2008 standards.[45] Therefore, AmerenUE's remaining circuits will be *easier* and *less expensive* to trim than the previous circuits, not more expensive as AmerenUE would like the Commission to believe. Like many of AmerenUE's arguments in this case, the logic of its claim that it lacks sufficient experience to forecast expenses begins to unravel by even a cursory application of the facts.

Not surprisingly, AmerenUE's lack of persuasive arguments for a vegetation tracker requires it to resort to the same type of flaccid attacks on Mr. Meyer as those it feebly asserted in Section I above.[46] These arguments are flimsy enough to fall on their own. An even more egregious example of AmerenUE's efforts to distract the Commission from the limpness of its arguments is its transparent distortion of Staff Witness Mr. Rackers' testimony in its initial brief.[47] AmerenUE takes Mr. Rackers' comments wildly out of context in an effort to insinuate

[42] Meyer Surrebuttal, Ex. 402, Page 10, Lines 7-10.

[43] Post Hearing Brief of AmerenUE, Page 114.

[44] Zdellar Direct, Ex. 157, Page 14, Lines 14-16.

[45] Transcript, Page 1718, Lines 16-17.

[46] Post Hearing Brief of AmerenUE, Page 116.

[47] Post Hearing Brief of AmerenUE, Pages 116-17.

that he was claiming to not be a qualified expert in this case.[48] AmerenUE's own arguments demonstrate better than any rebuttal arguments could that AmerenUE is simply grasping at straws.

In conclusion, the evidence points to the simple truth that vegetation management expenses have stabilized at or below $50.4 million.[49] The evidence also demonstrates that a tracker for vegetation management is no longer necessary because expenses have stabilized and more reasonable mechanisms exist for AmerenUE to recover any excessive expenses.[50] Despite its protestations, AmerenUE has failed to present a single logically coherent argument for an increased expense level or a tracker. Therefore, this Commission should set an expense level of $50.4 million and discontinue the tracker.

V. DEPRECIATION

1. Introduction.

Because the depreciation issue is one of a recovered expense that is not an operating expense paid to a third party, it does not directly affect AmerenUE's bottom line. For instance, if the annual recovery through rates is $50M lower than requested, but the annual depreciation expense is $50M lower, there is no direct impact on AmerenUE's bottom line profits (return on equity) because the lower revenue equals the lower expense. Stated differently, depreciation recovery is a matter of when ("pay me now or pay me later"), not a matter of whether. However, for AmerenUE's current customers, both business and residential customers, the resolution of this issue does directly affect their bottom lines now. In the hypothetical case of a $50M

[48] Post Hearing Brief of AmerenUE, Pages 116-17.

[49] Meyer Surrebuttal, Ex. 402, Page 10, Lines 7-10.

[50] Meyer Surrebuttal, Ex. 402, Page 10, Lines 7-10.

increase in this expense, those business and residential customers will pay $50M more in their electric rates this year. AmerenUE is seeking an $18.8M annual increase in electric rates due to its claimed increase in depreciation accruals.[51] Under MIEC's approach, which was adopted by the Office of Public Counsel, AmerenUE's depreciation expense would decline by $55M annually over what is currently approved.[52] Under the Staff's approach, AmerenUE's depreciation expense would increase by $4.6M annually over what is currently approved.[53]

To be sure, there is an intergenerational equity issue. If depreciation rates are set too high, today's ratepayers will overpay for their depreciation expense. If depreciation rates are set too low, tomorrow's ratepayers will overpay for their depreciation expense. And how does the fact that past ratepayers have overpaid enter into the depreciation equation? MIEC represents a large sector of the business community and the Office of Public Counsel represents all ratepayers in general. Thus, it is MIEC and the Office of Public Counsel who represent the interests of today's and tomorrow's ratepayers.

AmerenUE does not represent the interests of tomorrow's ratepayers, as its witnesses tend to argue it does. Indeed, as a for-profit company, AmerenUE's officers and agents are under a fiduciary duty to seek the highest rates that they possibly can. As to the depreciation expense, those same officers and agents are under a fiduciary duty to increase their cash flow as much as possible. MIEC respectfully disagrees with AmerenUE's calculation of depreciation expense in this case, and in some respects, with the calculation of the expense by Staff.

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[51] Rice Rebuttal, Ex. 216, Page 14, Lines 3-9.

[52] Selecky Surrebuttal, Ex. 406, Schedule JTS-15 ($315M - $246M + $3.8M (Dunkel adj.) - $18M AmerenUE increase = $55M

[53] Rice Rebuttal, Ex. 216, Page 14, Lines 3-9.

Ameren tries to make a big deal out of where its depreciation rates would rank relative to other electric utilities under its approach, Staff's approach, and MIEC's approach and argues for higher rates to avoid the alleged unfairness.[54] That argument makes for a good sound bite, but it is utter nonsense, as AmerenUE's own depreciation study shows. That study reflects that AmerenUE's depreciation reserve is excessive; it shows that the depreciation reserve amount should theoretically be $4,576,470,379 ("Calculated Accrued Depreciation") but the actual Book Reserve amount is $5,236,350,754. Thus, AmerenUE's own study shows that the excess in Book Reserve is $659,880,375 ("Reserve Variance").[55] The Staff calculated the excess as $684,132,931.[56] It is thus uncontroverted that there is more than a $650M excess in the AmerenUE depreciation reserve at this time. **What this means is that AmerenUE admits that it has historically over-collected on depreciation, by over $650M**.

AmerenUE witness Wiedmayer proposes to remedy that admitted over-collection by reducing AmerenUE's calculated depreciation accrual by $20,008,649 annually to amortize this huge reserve excess.[57] This reduction is built into the AmerenUE proposed depreciation rates; this build-in occurs on page III-20.[58] In other words, even using AmerenUE's own depreciation proposal and calculations, the AmerenUE depreciation rates should be $20M per year lower than an otherwise identical electric utility that did not have this huge reserve excess. To offset the AmerenUE reserve excess, this Commission **should, as AmerenUE apparently admits it**

[54] Post Hearing Brief of AmerenUE, Pages 5 and 46; Wiedmayer Rebuttal, Ex. 105, Page 5, Lines 18-21.

[55] Wiedmayer Direct, Ex. 104, Schedule JFW-E1, Page III-14, columns (3), (4) and (5).

[56] Rice Surrebuttal, Ex. 217, Schedule AWR-4B.

[57] Wiedmayer Direct, Ex. 104, Schedule JFW-E1, Page III-14.

[58] Wiedmayer Direct, Ex. 104, Schedule JFW-E1.

should, set AmerenUE's depreciation rates lower than the Commission would for a similar utility that has not over-collected. But AmerenUE should not be heard to complain about the resultant lower depreciation rates. For example, if you overpaid a past doctor bill, the doctor will give you a credit on your current bill for your past overpayment. It would be utterly unfair for the doctor to claim that he or she was being underpaid on the current bill that reflected the credit, but that is precisely what AmerenUE is doing here.

2. The Commission Should Use the Whole Life/Mass Property Approach for the Steam and Hydraulic Production Plant.

(a) MIEC supports use of the Whole Life Approach for Hydraulic Plant.

MIEC concurs with Staff that this Commission should use the whole life approach for **both** the steam **and** the hydraulic production plants. AmerenUE misstates MIEC's position on hydraulic plants in AmerenUE's brief at page 44, fn. 92 (arguing that MIEC took no position on the approach to be used for hydraulic plant). In fact, MIEC supports Staff's whole life approach, as evidenced by the testimony of Mr. Selecky:

> Q ARE YOU ALSO PROPOSING ANY CHANGES TO THE DEPRECIATION RATES FOR THE HYDRAULIC PRODUCTION PLANTS?
>
> A Similar to the steam production plant depreciation rates, the hydraulic production depreciation rates should be based on the whole life method. However, I have not developed specific depreciation rates for the hydraulic production plant accounts.[59]

[59] Selecky Direct, Ex. 403, Page 20, Lines 2-6.

(b) AmerenUE Bears the Burden of Proof.

AmerenUE bears the burden of demonstrating that it is entitled to the rate increase it seeks.[60] AmerenUE's brief appears to turn this burden on its head. AmerenUE challenges the Staff's and MIEC's calculations and practically assumes that if this Commission accepts those challenges, AmerenUE's proposed increases in depreciation accruals must be adopted. That logic is fatally flawed, as are the criticisms of the whole life approach in this case.

(c) The Experts Are Not Unanimous In Support of the Life Span Approach.

Ameren argues that the only experts in the case who have performed depreciation studies are unanimous in their use of the life span approach for power plants.[61] That statement is unfounded. First, as AmerenUE concedes in its brief, Mr. Selecky clearly advocates use of the mass property approach **in this case**.[62] Second, Mr. Rice is a depreciation expert and has offered a mass property depreciation study for production power plants **in this case**. Third, Mr. Dunkel is a depreciation expert and testified in numerous cases where production plants were not depreciated using the life span approach, and his testimony was supportive of the use of the mass property approach **in this case**.[63] Last, as Mr. Dunkel noted in his testimony, even AmerenUE's depreciation experts used the mass property approach, rather than the life span approach, **in this case** for their depreciation of the gas turbines, which are power plants.[64]

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[60] Section 393.150.2, RSMo 2000.

[61] Post Hearing Brief of AmerenUE, Page 46.

[62] Selecky Direct, Ex. 403, Page 2, Lines 19-22; Page 20, Lines 2-6.

[63] Transcript, Page 1451, Line 25 through Page 1453, Line 3.

[64] Transcript, Page 1452, Lines 12-16.

(d) The Mass Property Study Should be Used in this Case Because it is More Reliable.

Subject to some adjustments that MIEC proposes, the Staff's depreciation study using the mass property approach for steam and hydraulic production plant, as well as for the gas turbines (just as AmerenUE did), is faithful to the determination that this Commission made in Case No. ER-2007-0002 because we simply do not have reliable estimates of the final retirement dates for the steam and hydraulic production plants. Moreover, as indicated in the initial brief of MIEC, the difference between the mass property approach for the coal-fired steam production plant utilized by the Staff and that approach recommended by MIEC solely deals with the treatment of AmerenUE's retired steam production units at Venice, Mound and Cahokia, and a calculation that had the effect of including terminal net salvage in the depreciation calculation.[65] For the reasons stated in MIEC's initial brief, MIEC contends that those units should be excluded from the analysis because they are not representative of the type of coal-fired steam units that AmerenUE currently has in service. Therefore, the Staff's mass property analysis for the steam production plants needs to be adjusted to exclude these units from the life analysis and to remove terminal net salvage from the calculation of depreciation rates.

Another reason to continue using the mass property approach that this Commission used in Case No. ER-2007-0002, and that the Staff proposed in this case, is that AmerenUE's proposed depreciation rates for steam and hydraulic plant are unreliable. The reliability of AmerenUE's calculations is tied directly to the reliability of the estimated retirement dates for its steam and hydraulic production plants. Under the life span approach, if those retirement dates are too early, today's ratepayers overpay their electric rates. If those retirement dates are too late, tomorrow's ratepayers overpay their electric rates. AmerenUE's retirement dates are

[65] Post Hearing Brief of MIEC, Pages 27-30.

speculative, particularly since they are not based upon the plants' physical limitations, but rather on dates when it is assumed that the plants will no longer be economical to operate.[66] Although AmerenUE claims that its retirement dates are based upon "the best evidence that we have available,"[67] that "evidence" did not include, much less focus upon, what technologies will replace the existing plants nor the economics of those technologies because that would be too "uncertain."[68] The retirement dates for the steam plants were largely determined by adding 20 years to the projected installation dates of pollution control equipment (scrubbers) at those plants and then assuming that at the conclusion of that 20-year period, the plants will no longer be economical to operate. AmerenUE then attempts to validate those projections by studying the retirements of much smaller generators with higher heat rates and generators retired in jurisdictions possibly having more renewable energy options and more environmental regulation.

The Meramec retirement date is an example of AmerenUE's flawed analysis. AmerenUE projects that its Meramec units, and their 900MW of capacity,[69] will retire in 2022. In 2022, the oldest unit will be 69 years old, and the other units at that plant will be 68 years old, 64 years old, and 61 years old.[70] The AmerenUE retirement date for Meramec was developed in part from AmerenUE's 2008 integrated resource plan ("IRP"). That IRP shows that the retirement of Meramec is related to placing Callaway 2 in service. AmerenUE has abandoned the Callaway 2 project, so no IRP exists that shows how the 900MW capacity of Meramec will be replaced.

[66] Loos Direct, Ex. 107, Page 10, Lines 3-7.

[67] Transcript, Page 1272, Lines 14-20.

[68] Transcript, Page 1318, Lines 8-23.

[69] Loos Direct, Ex. 107, Page 2-2, Table 2-1, column (C).

[70] Selecky Direct, Ex. 403, Schedule JTS-2.

Moreover, a recent report by an AmerenUE consultant ***

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AmerenUE discounts the fact that it has no plan today, as shown in any IRP, to replace that 900MW of capacity. It argues that it has ample time to devise a plan to replace this capacity and that it will submit its next IRP in 2011. Witness Birk opined that the substantial capacity would likely be replaced with gas turbines, renewable energy, and some form of energy efficiency.[72] It is ironic that AmerenUE would argue that renewable energy sources are the more economic alternative that will be the basis for retiring Meramec in 2022. As indicated in MIEC's initial brief, AmerenUE has not performed to date any economic studies supporting the retirement of Meramec.

It would be inappropriate to accept the Meramec retirement date in this case given the "trust me" assertion by AmerenUE that the 2011 IRP will address the replacement capacity at Meramec and that everyone will be satisfied. The correct approach is to continue using the mass property approach or, alternatively, move the retirement date of Meramec back until sufficient retirement and capacity additions data are identified.

AmerenUE also argues that the Meramec Condition Assessment study shows that additional and substantial capital expenditures are required to extend the life of the plant past 2022.[73] The study, however, does not bear that out. The study provides ***

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[72] Post Hearing Brief of AmerenUE, Page 73.

[73] Post Hearing Brief of AmerenUE, Page 72.

*** MIEC does not read the study to say that the substantial capital expense from 2009 through 2013 will be avoided if the plant retires in 2022 rather than later.

In short, the evidence shows the considerable uncertainty about the estimated retirement dates upon which the life span depreciation rates rely. AmerenUE's projected retirement date for Meramec clearly highlights the uncertainty that exists regarding the projected retirement dates for all of the coal-fired steam production plants. It is because of this uncertainty that the Commission should continue to follow its analysis in Case No. ER-2007-0002:

> "Without better evidence of when those plants are likely to be retired, allowing the Company to increase its depreciation expense based on what is little more than speculation about possible retirement dates would be inappropriate."[75]

(e) There is Sufficient Data Under the Mass Property Approach.

AmerenUE argues that the whole life treatment leads to false results because it relies on insufficient data that does not allow a statistically significant analysis.[76] This argument is unfounded. A review of the statistical analysis contained in the AmerenUE depreciation analysis of AmerenUE witness Wiedmayer contains the retirement history for all of AmerenUE's plant accounts.[77] A comparison of the retirement history for the steam production plant accounts, **even**

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[75] In the Matter of AmerenUE, Case No ER-2007-0002, *Report & Order* (May 22, 2007), Page 84.

[76] Post Hearing Brief of AmerenUE, Page 47.

[77] Wiedmayer Direct, Ex. 104, Schedule JFW-E1.

excluding the retirement of those plants described above, with the retirement history for the transmission and distribution plant accounts indicates that the percentage retirements that the steam production plant accounts have experienced is greater than the percentage retirements for either the transmission or distribution plant accounts on a total basis.

The attached Schedule A (derived from the Wiedmayer Schedule JFW-E1) shows that the retirement history for the steam production plant accounts is 16.5% of the 2008 plant balance. That compares to the retirement history of 6.9% for transmission plant accounts and 13.6% for distribution plant accounts of their 2008 plant balances. Thus, a review of AmerenUE's retirement data indicates that for the steam production plant accounts, there is more retirement history than there is for the transmission and distribution plant accounts. This is significant because, as indicated in the testimony of Wiedmayer, AmerenUE relies on the retirement rate method to develop its service lives for the accounts that it admits are mass property accounts, such as the transmission and distribution accounts.[78] The retirement rate method derives survivor curves using the average rates at which property retires.[79] The survivor curves that are produced by this method provide the average service lives that are used to develop the depreciation rates. Logically, it would seem that the plant accounts with the greatest percentage of retirements would provide for the best survivor curves and life parameters.

Therefore, AmerenUE's contention that there is insufficient retirement data on which to base an analysis for the steam production plant accounts contradicts its own use of a lesser percentage retirement data for the transmission and distribution plant accounts. As a result, the

[78] Wiedmayer Direct, Ex. 104, Page 39, Lines 18-20.

[79] Wiedmayer Direct, Ex. 104, Schedule JFW-E1, Page II-10.

Commission should reject AmerenUE's claim that there is insufficient data to allow for a statistically significant analysis to estimate lives for the steam production plant accounts.

The depreciation rate for an account is effectively a weighted average depreciation rate that reflects all investments and lives in the account, including both those with short lives and those with long lives. In any average some items will be below average and others above. For example the price for an all-you-can-eat salad bar is reasonable based on a average of all customers. Saying that some customers eat less than the average does not prove the average price charged is excessive, nor does proving that some customers eat more than the average prove the average price charged is too low. The same sentiment also applies to the undisputed mass property plant accounts--gas turbines and transmission and distribution plant. All of the accounts effectively use weighted averages. Some poles live shorter lives than the average life, and other poles live longer than the average life. That is the nature of an average. This does not prove that the average used for the account is wrong for the account overall.

3. MIEC's Adjustments to the Staff's Coal-Fired Steam Production Plant are Correct.[80]

(a) The Retirements of Mound, Cahokia and Venice Should be Disregarded.

AmerenUE claims that MIEC's exclusion of terminal retirements from the mass property depreciation rates is improper.[81] Primarily, AmerenUE's criticism is not in the exclusion of the subject plants, but rather in the amount of remaining data once the plants are excluded. However, as discussed earlier, even excluding these units from the retirement history, there are sufficient data to rely on the mass property approach. And AmerenUE argues that MIEC's

[80] The Staff hardly addresses MIEC's proposed adjustments in the Staff brief, other than to say, Page 50, that Staff believes that MIEC repeated an "acknowledged staff error from" a prior case.

[81] Post Hearing Brief of AmerenUE, Page 66.

proposed depreciation rates are based on the same mass property analysis utilizing the method approved by the Commission in Case No. ER-2007-0002.[82] In that case, the Commission approved the depreciation rates proposed by the Staff using the mass property approach because of the uncertainty surrounding AmerenUE's speculative retirement dates for its steam production plants. This same uncertainty exists today.

Furthermore, the Staff admitted in its initial brief that it is in fact proper to disregard the retirement data of three of the four retired units to develop a representative average service life. The Staff's initial brief states the following:

> Of the four retired AmerenUE plants studied, three do not yield a plethora of data, although the retirement history associated with the Venice plant is reasonable for purposes of developing an average service life for the mass property technique study. Further, the plants in current operation are expected to be longer-lived than those retired. A danger in estimating a retirement date for a plant is that if the lives used are too short, current customers overpay.[83]

Therefore, the Staff appears to state that the retirements of three of the four plants should be excluded from the life analysis, but for different reasons than asserted by MIEC. Moreover, AmerenUE appear to agree that using these "smaller power plants" in the life analysis was inappropriate.[84] The Venice retirement should also be excluded from the life analysis because, among other reasons, and as explained in MIEC's initial brief, the Venice plant was retired prematurely due to a fire.

AmerenUE argues that MIEC's exclusion of the atypical retirements of Mound, Cahokia and Venice was the continuation of an error that staff committed in a prior case and, in support

[82] Post Hearing Brief of AmerenUE, Pages 67-8.

[83] Post Hearing Brief of Staff, Page 46.

[84] Post Hearing Brief of AmerenUE, Pages 49-50.

of that argument, cites the testimony of Mr. Rice "admitting" that his predecessor, Jolie Mathis, allegedly committed that error.[85] While Mr. Rice did agree with AmerenUE on this point, Mr. Rice, as is AmerenUE, is simply mistaken. The undisputed evidence in this case, as established in MIEC's initial brief, clearly establishes that the retirements of the subject power plants were atypical because of their heat rates, use as cycling units, size and, in one case, the existence of a fire.[86] These plants, and their experience, are simply not representative of the existing coal-fired steam production plants under consideration. MIEC and former Staff Witness Mathis were correct in excluding these atypical retirements.

(b) Terminal Net Salvage Should Not Be Included in Depreciation Rates.

AmerenUE claims that MIEC's exclusion of terminal retirements from the mass property depreciation rates is improper.[87] The Staff performed a good study. However, in preparing its study, Staff overlooked the well-established Commission policy of excluding estimated future terminal net salvage. As the Commission stated in the Empire Order:

> Second, with respect to Terminal Net Salvage of Production Plant Accounts, this Commission generally has not allowed the accrual of this item. The reason is that generating plants are rarely retired and any allowance for this item would necessarily be purely speculative. It is true that all depreciation is founded upon estimates, but all estimates are not unduly speculative. Just as utility companies plan rate cases around the projected in-service dates of new plants, so Empire can plan around the retirement of its generating plants so that the Net Salvage expense is incurred in a Test Year. Another alternative is the device of the Accounting Authority Order. As already discussed in connection with the Production Account Service Life issue, there is no evidence that the retirement of any of Empire's plants is imminent and the estimated retirement dates considered in this proceeding are not persuasive. **For**

[85] Post Hearing Brief of AmerenUE, Pages 67-8. Staff makes the same claim, but with no analysis. Post Hearing Brief of Staff, Page 50.

[86] Post Hearing Brief of MIEC, Pages 27-30.

[87] Post Hearing Brief of AmerenUE, Page 66.

> **these reasons, the Commission will not allow the accrual of any amount for Terminal Net Salvage of Production Plants**.[88]

The steam production depreciation rates proposed by the Staff need to be adjusted to be consistent with this established, and proper, Commission policy.

Ameren argues that, under mass property analysis, all retirements, including interim retirements, must be considered and, accordingly, MIEC's proposed adjustment to exclude terminal net salvage must be rejected.[89] MIEC does not read the Empire Order that way. In Empire, this Commission rejected the life span approach for production plant, just as the Commission should do in this case:

> In determining the Service Lives to be used in depreciating production accounts, that is, generating plants, Empire proposes the use of the Life Span method. The Life Span method depends on Company estimates of service lives. Staff and Public Counsel criticize Empire's position on the grounds that the estimated retirement dates of Empire's plants, upon which Roff's analyses were based, are simply not credible. Staff and Public Counsel instead urge the use of the Average Service Life method with Production Plant Accounts just as with Mass Property Accounts; in other words, the fitting of Iowa Curves to historical data. Roff testified that the sample sizes are simply too small to support the use of this statistical method.
>
> The record shows that Empire has retired no plants, although the purported estimated date for doing so has come and gone in at least one case. Further, Empire has no plans to replace any of its plants, a circumstance that suggests that retirement is not imminent. The record shows that generation plants tend to remain in service indefinitely under present conditions and that this is likely to continue to be the case in the future. For these reasons, the Commission will reject the reduced service lives sponsored by Empire in favor of the longer lives produced through the use of Iowa Curves as advocated by Staff and Public Counsel. The

[88] In the Matter of Empire District Electric, Case No. ER-2004-0570, *Report and Order*, (March 10, 2005), Page 53. (emphasis added)

[89] Post Hearing Brief of AmerenUE, Pages 80-1.

> Commission concludes that the estimated retirement dates relied upon by Roff are simply not persuasive.[90]

Moreover, Ameren's argument in this regard is inconsistent with AmerenUE's own filing. In its depreciation study, AmerenUE recognized that it was this Commission's practice not to allow the advanced recovery of future estimated terminal net salvage for Steam production plants, and AmerenUE therefore excluded future terminal net salvage from its steam production depreciation rate calculations.[91] However, the Staff failed to make that adjustment and therefore the Staff effectively included terminal net salvage from its steam production depreciation rate calculations. Failing to correct this oversight would result in a change in Commission policy, as set out in MIEC's opening brief, for no good reason. The $5.8M annual depreciation expense that the Staff includes in its proposed steam production depreciation rates as the result of failing to exclude future terminal net salvage should be removed from the Staff-recommended Steam depreciation rates.

In addition, by failing to make this adjustment, Staff effectively applied the interim net salvage factor to the investments that will be terminal retirements. No terminal net salvage data was used in calculating the interim net salvage factor, so the interim net salvage factor is the wrong factor to use for terminal net salvage, even in the unlikely event that the Commission did want to include estimated future terminal net salvage.[92]

Further, AmerenUE argues that because Mr. Selecky did not make the same adjustment that Mr. Dunkel made, their positions are inconsistent. However, Mr. Selecky could not have

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[90] In the Matter of Empire District Electric, Case No. ER-2004-0570, *Report and Order*, (March 10, 2005), Pages 50-1.

[91] Wiedmayer Direct, Ex. 104, Page II-28 of Schedule JFW-E1; Dunkel Rebuttal, Ex. 407, Page 5, Lines 4-27.

[92] Dunkel Rebuttal, Ex. 407, Page 3, Line 10 though Page 11, Line 18.

been clearer that his failure to make an adjustment to a factor should not be construed to be acceptance of that factor.[93] Moreover, it was not necessary for Mr. Selecky to include a discussion of Mr. Dunkel's adjustment, as both witnesses' adjustments were combined to reflect MIEC's position.

4. MIEC's Adjustments to the AmerenUE Life Span Depreciation Study are Correct.

(a) Meramec Plant Retirement Date.

The Commission should reject the life span approach in this case. In the event that it does not do so, the Commission should extend the retirement date for the Meramec plant by 5 years. *See* discussion in (2)(d) hereof and in MIEC's initial brief.[94]

(b) Account 312 Salvage Factor.

On page 74 of its brief, AmerenUE criticizes MIEC's proposed net salvage for Account 312 Boiler Plant Equipment.[95] AmerenUE states that "an examination of Mr. Selecky's Account 312 recommendation indicates it too fails to match the results of an actual analysis of the Company's history." However, that is precisely the problem with the Company's analysis.

When developing the net salvage value for Account 312, Mr. Wiedmayer stated that he adjusted the net salvage estimate to -15% based on the assumption that 60% of the retirements are interim retirements. However, on page 19 of his rebuttal testimony, he states that when the coal units that are currently in service retire, a substantial portion, nearly 50% to 80% of the retirements will occur when the plant is retired. That means that the interim retirements will only be between 50% and 20%, or on average 35%. The problem is simply that Mr. Wiedmayer

[93] Selecky Rebuttal, Ex. 405, Page 2, Lines 6-7.

[94] Post Hearing Brief of MIEC, Pages 25-6.

[95] Post Hearing Brief of AmerenUE, Page 74.

cannot determine what will be the level of interim retirements. It is interim retirements that drive the development of net salvage value for this account. If the interim retirement average is 35% as indicated by Mr. Wiedmayer, then AmerenUE's proposed net salvage ratio for Account 312 is overstated. A lower level of interim retirement activity will lower the net salvage value.

Mr. Selecky's analysis to develop the net salvage ratio for Account 312 is more accurate because it relies on AmerenUE's actual costs. Mr. Selecky inflated the actual costs and developed a level of net salvage expense that AmerenUE is likely to incur over the next 38 years using the life span approach.

5. MIEC's Adjustment to the Nuclear Account is Correct.

Within the context of all the depreciation issues in this case, this issue is the easiest to understand and the one which should have had the least controversy. The simple facts are that the steam generators at Callaway began operation in 1985 and were projected to operate for the initial license period of Callaway (40 years). However, these generators were retired in 2005 after operating for 19.5 years, or less than half of their original planned life. In 1999, AmerenUE and Westinghouse entered into a Release and Settlement Agreement (Agreement).[96] Within the Agreement is the following:

> WHEREAS, AmerenUE has made claims, demands, allegations and assertions with respect to the design, verification, fabrication, materials, and reliability of the Model F steam generators supplied as part of the NSSS for Callaway ("Steam Generators"), which incorporate mill-annealed Inconel-600 tubing, rather than the thermally-treated tubing in other Model F steam generators (hereinafter referred to as the "Dispute")[.]

[96] Settlement Agreement, Ex. 438, Page 1.

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In this case, both AmerenUE and the Staff have treated the abnormal retirement of the defective Callaway steam generators as a **normal retirement** of plant. MIEC contends that the retirements of the steam generators were predicated on faulty design and materials when placed into service and, as such, their retirements were atypical and should have been excluded from the analysis. Under AmerenUE's current approach, the Callaway steam generators will be replaced three times prior to the expiration of the 60-year operating license, even though the generators are supposed to live 40 years. This is simply unrealistic. If the Staff and AmerenUE's arguments were credible, the Commission should expect the current steam generators to live approximately 19.5 years, to 2025, and their premature retirement would generate *** *** in settlements with the manufacturer at that time. Again these assumptions are simply unrealistic and must be dismissed.

Finally, the portion of the cash settlement for the defective steam turbines was negotiated during a time when no rate case was pending. Therefore, it is very likely that the cash settlement was never reflected in customer rates and flowed to AmerenUE's bottom line. The Commission should not compound the problem by allowing these premature retirements to unfairly increase the depreciation rates that ratepayers must incur.

In the last rate case where depreciation was analyzed, Case No. ER-2007-0002, Mr. Wiedmayer proposed a 0% net salvage for Account 322.[99] In this case, Mr. Wiedmayer is proposing a -10% net salvage. This is quite a drastic change from the last depreciation case, and Mr. Wiedmayer has provided no justification for this change. For Case No. ER-2007-0002, Mr. Wiedmayer had the information about the retirement of the defective steam generators, but apparently made the correct decision in that case to exclude those premature retirements from his net salvage recommendation. Further, Mr. Wiedmayer agreed to an addition of .2% to Account 322 for net salvage in the last case and a .1% addition for net salvage in the other nuclear accounts.[100] These figures are substantially less than his proposal in this case, but are close to the rates proposed by Mr. Selecky in this case. It appears that Mr. Wiedmayer has abandoned his previous position in favor of one that creates more depreciation expense for AmerenUE.

AmerenUE argues that without the retirements of the subject generators, the net salvage figure would have been -7% in any event, and not the -1.2% proposed by Mr. Selecky.[101] AmerenUE cites Mr. Wiedmayer's Rebuttal, page 42, lines 17-19,[102] to support that assertion. But that testimony does not even remotely support that factual assertion. Perhaps AmerenUE meant to cite Selecky Direct, Ex. 403, Schedule JTS-4, line 15, which shows a -6.8% Net Salvage Ratio. However, line 16 of that Schedule shows the calculation to remove the final retirement component of that ratio since there is a special decommissioning fund for Callaway's

[99] In the Matter of AmerenUE, Case No ER-2007-0002, *Report & Order* (May 22, 2007), Pages 95-6.

[100] *Id*.

[101] Post Hearing Brief of AmerenUE, Page 80.

[102] Wiedmayer Rebuttal, Ex. 105.

final retirement. Line 16 shows that the interim salvage value is exactly as Mr. Selecky proposed: -1.2%.

6. There Should be a $25M Offset for T&D Net Salvage.

Before addressing the merits of MIEC's T&D net salvage adjustment, the record must be made clear. Contrary to AmerenUE's representation,[103] the MIEC has never proposed in this case that the Commission abandon the accrual method of calculating net salvage. The MIEC is merely proposing to modify the accrual method of net salvage expense to establish a just and reasonable level in this case.

The fundamental issue that MIEC has with AmerenUE's and the Staff's proposed T&D depreciation rates is that the depreciation rates contain a provision for net salvage of approximately $55M. A review of the last 10 years and a review of the next 10 years as projected by the Staff indicate that the Company is nowhere near experiencing that actual level of net salvage. The Staff projects that the average annual level of T&D net salvage that will likely be incurred over the next 10 years is $19M, or approximately $35M less than the amount requested. The idea that AmerenUE will incur that level of expense is purely speculative and disadvantages current ratepayers. Ratepayers are required to pay now a cost that AmerenUE will not incur over the next 10 years and may not incur during the ratepayers' lifetimes. As MIEC has shown in Schedule JTS-10,[104] AmerenUE has consistently accrued excess net salvage cost and with the proposed $25M offset, this excess will continue to grow by $10M annually. MIEC is not proposing to expense the net salvage cost but is continuing to support the use of the accrual method that allows AmerenUE to more gradually accrue for future net salvage expense.

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[103] Post Hearing Brief of AmerenUE, Page 89. Laclede Gas Company also made this erroneous representation in its opening statement, Tr. Page 855, Line 20 to Page 857, Line 19.

[104] Selecky Direct, Ex. 403.

AmerenUE claims that the accrual is needed for the future because the plant in-service is much greater today than it was years ago.[105] But this Commission should consider that the T&D plant will continue to grow and, as the growth occurs, so will AmerenUE's accrual for net salvage. As AmerenUE's plant in-service grows, its approved depreciation rates are applied to a larger and larger T&D investment base, which produces more depreciation expense and more accrual for future net salvage. Therefore, future accruals for net salvage will continue to grow.

AmerenUE argues that under MIEC's proposed offset there would be a huge under-recovery for the net salvage needed for Account 364 Poles and Account 365 Overhead Conductors over the life of the current plant in-service.[106] First, that argument assumes that the depreciation rates that are approved by the Commission in this case will remain in place from the period from 2009 through 2092 for Account 364[107] and until 2106 for Account 365.[108] This assumption is not realistic since AmerenUE filed a depreciation study in ER-2007-0002 and this case.

It is unrealistic to assume that the parameters used to develop depreciation rates are static and will not change over time. As retirements occur and facts and circumstances change, depreciation rates will be updated. AmerenUE is required to make such filings on a regular basis not less than every 5 years.

AmerenUE asks current ratepayers to fund a net salvage cost that AmerenUE does not expect to incur until some 92 years into the future per Mr. Wiedmayer's analysis. AmerenUE,

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[105] Post Hearing Brief of AmerenUE, Page 84.

[106] Post Hearing Brief of AmerenUE, Page 89.

[107] Wiedmayer Rebuttal, Ex. 105, Schedule JFW-ER15.

[108] Wiedmayer Rebuttal, Ex. 105, Schedule JFW-ER15, Page 4.

throughout its brief, discusses intergenerational inequities. AmerenUE expects ratepayers to fund the net salvage for plant in-service that may not be retired for some 90 plus years. Assuming that an average age for AmerenUE's ratepayer is 40 years old, a ratepayer would have to live 130 years to reap the benefits associated with his net salvage contributions.

It should also be noted that ratepayers provide AmerenUE with a return on net plant. The net plant is the gross plant in-service less the depreciation reserve. The larger the net salvage, the larger the depreciation reserve, and the smaller the net plant. For example, for Account 364, AmerenUE is proposing a net salvage value of a -150%. In addition, AmerenUE is proposing an average service life of 45 years. Therefore, the resulting depreciation rate is 5.56% ((1 - net salvage ratio)/average life; 1-(-1.5) = 2.5; 2.5/45 = 5.56%). Therefore, for a $100 asset, AmerenUE will collect $5.56 per year. So after 18 years, the net plant will be zero (18 x $5.56 = 100). The ratepayers who use the asset for the last 27 years of its life will not provide a return on the asset because the net plant is zero. This benefit that the ratepayers receive during the last 60% of the average service life is caused in part by today's ratepayers paying inflated costs that will not incur until sometime into the future. It is clear that this treatment does produce intergenerational inequities in favor of future ratepayers.

In summary, the Commission should adopt the adjustments proposed by MIEC's witnesses Selecky and Dunkel. As this Commission noted in Case No. ER-2007-007:

> [T]he calculation of depreciation expense will have a significant impact on the rates that AmerenUE will be allowed to charge its customers.[109]

[109] In the Matter of AmerenUE, Case No ER-2007-0002, *Report & Order* (May 22, 2007), Page 84.

In this case, the impact of depreciation expense continues to have a significant impact on customer rates and, therefore, the adjustments proposed by MIEC should be approved rather than adopting speculative positions advanced.

VI. RETURN ON EQUITY

1. Introduction.

As explained in MIEC's opening brief, the sound analysis set out in Michael Gorman's expert testimony demonstrates that 10.0% is the appropriate return on equity ("ROE") for AmerenUE in this case. AmerenUE has not shown that an ROE of 10.8% is reasonable—the recommendation of its expert witness, Dr. Roger Morin, is inaccurate and unsupported in that it improperly includes a quarterly dividend adjustment and is not supported by verifiable calculations. Mr. Gorman's detailed Rebuttal Testimony, moreover, shows that Dr. Morin's properly updated analyses support an ROE of no more than 10.00%.[110] In addition, AmerenUE's position on this issue ignores the key fact that the cost of capital has significantly declined since AmerenUE's last rate case.[111]

Rather than focusing on matters that are relevant to the current cost of capital, AmerenUE repeatedly urges the Commission to consider that the Company has not earned its authorized ROE in the past.[112] AmerenUE also emphasizes that its recommended ROE is closer to the national average of allowed ROEs for 2009 than the recommendations of the other expert

[110] Gorman Rebuttal, Ex. 409, Page 3, Table 1.

[111] Gorman Direct, Ex. 408, Page 5, Line 9 through Page 6, Line 15.

[112] Post-Hearing Brief of AmerenUE, Pages 2-3, 20, 43. As AmerenUE states in its brief, "AmerenUE's past inability to recover its costs is admittedly not directly related to the Commission determination of just and reasonable rates for AmerenUE" in this case on a going-forward basis." *Id.*

witnesses in this case.[113] The chart provided by AmerenUE to support this contention clearly shows, however, that AmerenUE's recommendation is **above** the national average for allowed ROEs for 2009. Indeed, it is the only recommended ROE in this case that is above the 2009 average.[114] AmerenUE's recommendation is also higher than the ROE approved for AmerenUE in its last rate case. And, although AmerenUE contends that Mr. Gorman's recommendation is "clearly too low"[115]—the record in this case shows that AmerenUE's criticisms of Mr. Gorman's testimony are not well-founded, as explained below.

2. Mr. Gorman's Testimony Gives Appropriate Weight to the DCF, CAPM and Risk Premium Analyses.

AmerenUE concedes that Mr. Gorman's ROE recommendation is based on "properly conducted conventional analyses."[116] The primary reason his recommendation is too low, according to AmerenUE, is that Gorman placed too much reliance on the risk premium analyses (which include his CAPM analysis and Risk Premium study), and not enough emphasis on the DCF model. AmerenUE attacks Mr. Lawton's testimony on these same grounds.[117]

A careful examination of Mr. Gorman's DCF results reveals that AmerenUE's position in this case is not sustainable, even if more emphasis is placed on the DCF models. Two of Mr. Gorman's DCF models (the constant growth DCF model for sustainable growth and the multistage DCF model) support an ROE of around 10.2%.[118] Only the constant growth DCF

[113] Post-Hearing Brief of AmerenUE, Pages 4, 11-12, 30.

[114] Post-Hearing Brief of AmerenUE, Pages 4, 12.

[115] Post-Hearing Brief of AmerenUE, Page 30.

[116] Post-Hearing Brief of AmerenUE, Page 31.

[117] *Id.*

[118] Gorman Direct, Ex. 408, Page 38, Table 3.

model based on analysts' growth rates produces a number as high as the ROE proposed by AmerenUE. Thus, to reach the result proposed by AmerenUE, this Commission would essentially have to rely solely on the constant growth DCF results. As Mr. Gorman explained, however, that DCF model is not reliable by itself, because the growth rates upon which it is based are not sustainable over a long term as required by this model.[119] Moreover, in his Rebuttal Testimony, Mr. Gorman demonstrated that Dr. Morin's constant growth DCF models, when properly updated, actually support a return in the range of only 10.30% to 10.77%.[120] But, these models are still unreliable and inflated due to their reliance on excessive and unrealistic long-term growth rates. A multi-stage growth DCF model applied to Dr. Morin's comparable groups and using Dr. Morin's data would support an ROE of 9.98%.[121]

As the foregoing discussion demonstrates, if the Commission chooses to give little to no weight to the risk premium analyses, then it must carefully select DCF models that reflect long-term sustainable growth rates that accurately estimate investors' required returns. When the appropriate long-term growth rates are included in the DCF analyses—the results of these analyses demonstrate that AmerenUE's 10.8% ROE recommendation is too high. In sum, AmerenUE's argument that the DCF models should be given more weight does not support its position in this case.

AmerenUE also argues that the CAPM and Risk Premium models, "are generally not as reliable for estimating ROEs as DCF methods."[122] Further, AmerenUE contends that "there is

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[119] Gorman Direct, Ex. 410, Page 38, Lines 1-3.

[120] Gorman Rebuttal, Ex. 409, Page 3, Table 1.

[121] *Id.*

[122] Post-Hearing Brief of AmerenUE, Page 13.

consensus among the experts that the DCF is the best method for estimating an ROE for a public utility."[123] These assertions are inconsistent with Dr. Morin's testimony that "[t]here is no guarantee that a single DCF is necessarily the ideal predictor of the stock price and the cost of equity reflected in that price, just as there is no guarantee that a single CAPM or risk premium constitutes the perfect explanation of a stock's price or the cost of equity."[124] All of the experts in this case used more than one method of analysis. This is a sound approach. AmerenUE would have this Commission give essentially no weight to the risk premium analyses—because that is the only way to arrive at an ROE which is higher than the ROE adopted in its last rate case. This approach, however, places too much weight on the DCF analysis. As Dr. Morin wrote in his textbook, "It is dangerous and inappropriate to rely on only one methodology in determining the cost of equity. The results from only one method are likely to contain a high degree of measurement error."[125]

AmerenUE also accuses Mr. Gorman of taking steps designed to "water down" his DCF analyses.[126] In fact, he used three different DCF models, each with different growth rate inputs, and then gave equal weight to each of these models by averaging them.[127] As explained above, in doing so, Mr. Gorman carefully considered the appropriate growth rates. Unlike Dr. Morin, his models are based on growth rates that are sustainable on a long term basis. This approach is entirely consistent with Mr. Gorman's approach in prior cases—that is, it is reasoned and

[123] *Id.*, Page 31.

[124] Morin Direct, Ex. 111, Page 22, Lines 8-12.

[125] Morin, *New Regulatory Finance*, Public Utilities Reports, Inc., Page 28 (2006).

[126] Post-Hearing Brief of AmerenUE, Pages 14, 32.

[127] Gorman Direct, Ex. 408, Page 38, Lines 1-9.

appropriate given the current outlook for long term economic growth.[128] Contrary to AmerenUE's assertions, this approach is reasonable and not designed to impose an undue downward bias on the results.[129]

3. Mr. Gorman's Use of the Median Growth Rates of the Proxy Groups is Reasonable and Follows the Same Approach Taken By AmerenUE's Witness.

AmerenUE criticizes Mr. Gorman for using the median growth rates of the proxy groups rather than the averages, an action which AmerenUE describes as "opportunistic."[130] Mr. Gorman explained, however, that the proxy groups included "significant outliers."[131] For example, Empire District has a growth rate of 34%.[132] AmerenUE recognizes that "using medians excludes outlier data,"[133] so it is not clear why the company has criticized Mr. Gorman's use of medians in this instance. AmerenUE's criticism is even more puzzling in light of the fact that its own expert witness, Dr. Morin, relied on medians rather than averages in reaching his DCF results—and for precisely the same reason. For example, in his Direct Testimony, Dr. Morin explains, "In order to palliate the effect of outliers, the median estimate . . . is preferable in this case."[134]

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[128] Gorman Surrebuttal, Ex. 410, Page 5, Line 17 through Page 6, Line 6.

[129] Post-Hearing Brief of AmerenUE, Page 37.

[130] Post-Hearing Brief of AmerenUE, Page 36.

[131] Gorman Direct, Ex. 408, Page 23, Line 20.

[132] *Id.,* Lines 20-21, Schedule MPG-5; *see also* Transcript, Page 2005, Line 23 through Page 2007, Line 8.

[133] Post-Hearing Brief of AmerenUE, Page 36.

[134] Morin Direct, Ex. 111, Page 49, Lines 20-22.

4. AmerenUE's Reliance on the ROE Awarded in the *Missouri Gas Energy* Case is Misplaced.

In the conclusion of its ROE argument, AmerenUE cites an ROE of 10.0% authorized by the Commission in a recent case involving Missouri Gas Energy.[135] AmerenUE asserts that this ROE serves as a "point of reference that suggests an ROE in the neighborhood of the national average for integrated electric utilities is warranted for AmerenUE."[136] This assertion is misplaced. As the record in this case clearly demonstrates, the cost of capital has declined dramatically in recent months.[137] This is highlighted by the seventy basis point difference between Dr. Morin's June 2009 ROE recommendation and his revised recommendation submitted in February 2010. The decision cited by AmerenUE was issued on February 10, 2010. Testimony concerning ROE was submitted in August of 2009.[138] This case does not provide the Commission with an example of Missouri Gas Energy's cost of equity in the *current* capital market.

Moreover, AmerenUE's comparison is simplistic—it assumes that AmerenUE and Missouri Gas Energy are identically situated with respect to all factors relevant to ROE, except for their level of business risk. The record in these cases does **not** support such an assumption. Missouri Gas Energy's capital structure includes only 38.7% common equity, versus 51.1% for AmerenUE.[139] AmerenUE's higher equity ratio is an indication of lower financial risk, which in

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[135] *In the Matter of Missouri Gas Energy*, GR-2009-0355.

[136] Post-Hearing Brief of AmerenUE, Pages 42-43.

[137] Gorman Direct, Ex. 408, Page 5, Line 9 through Page 6, Line 15, Schedule MPG-2, Page 4.

[138] *See In the Matter of Missouri Gas Energy*, GR-2009-0355, Lawton Direct, Ex. 69.

[139] *In the Matter of Missouri Gas Energy*, GR-2009-0355, Lawton Direct, Ex. 69, Page 51, Table 11; O'Bryan Rebuttal, Ex. 116, Schedule MGO-ER5.

turn warrants a lower ROE. Indeed, Dr. Morin testified that every 100 basis point increase in common equity ratio corresponds to a 10 basis point decrease in ROE.[140] Since the common equity ratio of AmerenUE is 1240 basis points above Missouri Gas Energy's, AmerenUE's ROE should be 124 basis points *lower* than Missouri Gas Energy's – all other factors being equal. This suggests that MIEC's recommended ROE of 10.0% for AmerenUE is conservative.

5. Conclusion

As demonstrated by the foregoing, the record in this case does not support AmerenUE's proposed ROE of 10.8%. Nor has AmerenUE demonstrated by its arguments that Mr. Gorman's recommended ROE of 10.0% is unsound. For these reasons, and as explained in MIEC's opening brief, Mr. Gorman's recommendation of 10.0% should be adopted by the Commission as AmerenUE's ROE in this case.

VII. CALLAWAY

1. Callaway Nuclear Fuel Cost.

In its initial brief, AmerenUE argues that the cost for the new nuclear fuel for Callaway, that it will begin loading in April 2010 and not start consuming until late-May of 2010 at the earliest, is a known and measurable cost that AmerenUE should be permitted to include in its Net Base Fuel Cost despite that the fact these dates are *** *** after the January 31, 2010 end of the true up period in this proceeding. AmerenUE specifically argues the cost of the nuclear fuel loaded after the end of the true-up period:

[140] Transcript, Pages 1850-1851.

- Is known and measurable since the fuel must be fabricated specifically for Callaway and was purchased by and delivered to AmerenUE in advance of the end of the true-up period;[141]
- Will reflect the cost of nuclear fuel used to generate power before the rates set in this case will go into effect since consumption of the fuel will begin to take place prior to that date;[142]
- Will not affect other AmerenUE revenues, expenses or ratebase;[143]
- Was allowed to be included in Net Base Fuel Cost in AmerenUE's last rate proceeding.[144]

AmerenUE also specifically argues that, while it will be able to recover the cost through its Fuel Adjustment Clause (FAC), if this cost is excluded from Net Base Fuel Cost, AmerenUE will:

- Experience an unfair delay in the recovery of the cost;[145]
- Be required to absorb 5% of the cost (Id. at 6)

Finally, AmerenUE specifically argues that failure to include the cost in Net Base Fuel Cost amounts to a failure to rebase AmerenUE's Net Base Fuel Cost as accurately as possible (Id. at 6).

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[141] Post Hearing Brief of AmerenUE, Pages 6 and 110.

[142] *Id.* at Page 6.

[143] *Id.* at Page 112.

[144] *Id.* at Pages 109 and 112.

[145] *Id.* at 6.

2. AmerenUE's Arguments Are Severely Flawed.

MIEC is not arguing whether the disputed cost increase is known and measurable, but rather, that an **isolated** known and measurable fuel cost increase that will not be incurred by the Company to serve its customers until after the end of the true-up period[146] should not be permitted to be included in Net Base Fuel Cost (and recovered in base rates) unless the party advocating such inclusion has reasonably demonstrated that there are no known and measurable revenue increases, expense reductions or rate base reductions that would contemporaneously offset the known and measurable nuclear fuel cost increase in question. Otherwise, the relationship between AmerenUE's revenues, expenses and rate base will not be kept in synchronism and AmerenUE's Net Base Fuel Cost may not be not be rebased as accurately as possible.

AmerenUE's proposal would be an isolated adjustment closely analogous to the larger issue of single-issue ratemaking -- an issue the Commission was greatly concerned with in its order deciding AmerenUE's last rate proceeding:

> The Commission finds that Staff and AmerenUE are correct in their concern about making an isolated adjustment to a few depreciation accounts outside the context of a full depreciation study. **Such an isolated adjustment is closely analogous to the larger concept of single-issue ratemaking. Just as it would be inappropriate to adjust a utility's rates based on a change to a single item without considering changes in all other items that may off-set that single item,** it would be inappropriate to adjust a few depreciation rates without looking at all depreciation rates in a complete study. In a complete study, depreciation rates for some accounts may increase, while others decrease. The balance

[146] The purchase and delivery of the nuclear fuel prior to the end of the true-up period does not make that cost a known and measurable cost incurred by AmerenUE to serve its customers prior to the end of the true-up period because the cost in question is not incurred to serve the AmerenUE's customers until consumption of that nuclear fuel on behalf of customers actually begins. Such consumption of fuel on behalf of customers will not begin until late-May of 2010 at the earliest – well over three months after the end of the true-up period in this proceeding.

> of the increases and decreases is what is important in establishing depreciation rates for the company (emphasis supplied).[147]

Obviously, AmerenUE's pattern is to advocate for the inclusion or exclusion of isolated adjustments based entirely on whether the item at issue results in a rate increase.

While AmerenUE has cited that the record indicates that various costs and its capital investment will not be affected by including the nuclear fuel cost in Net Base Fuel Cost[148], this is not a demonstration that there are no known and measurable revenue increases, expense reductions or rate base reductions that would contemporaneously offset the isolated known and measurable fuel cost increase in question. Such known and measurable revenue increases, expense reductions or rate base reductions do not necessarily have to be caused by the inclusion of the nuclear fuel cost increase in Net Base Fuel Cost. Such known and measurable revenue increases, expense reductions or rate base reductions can be caused by factors completely unrelated to the inclusion of the nuclear fuel cost in Net Base Fuel Cost. Furthermore, it does not matter whether such revenue increases, expense reductions or rate base reductions are caused by the inclusion of the isolated nuclear fuel cost increase in Net Base Fuel Cost – what matters is whether such known and measurable revenue increases, expense reductions or rate base reductions that have not been included in the true-up will offset the isolated nuclear fuel increase. AmerenUE has made not made a reasonable demonstration that there are no such offsetting known and measurable revenue increases, expense reductions or rate base reductions after the end of the true-up period. Finally, it is not relevant that AmerenUE will have begun consuming the new nuclear fuel in question prior to AmerenUE's rates from this proceeding go into effect. What matter is whether it has been reasonably demonstrated by AmerenUE that there are no

[147] *In the Matter of Union Electric Co.*, ER-2008-0318, January 27, 2009, Page 95.

[148] *Id.* at 112.

known and measurable revenue increases, expense reductions or rate base reductions after the end of the true-up period that would contemporaneously offset the isolated known and measurable nuclear fuel cost increase that takes place after the end of the true-up period.

It is also not relevant that there was no opposition in AmerenUE's last rate proceeding to AmerenUE including nuclear fuel cost increases incurred on behalf of customers after the end of the true-up period in its base rates. The circumstances faced by AmerenUE in that proceeding are substantially different than in the current proceeding. First, in the previous proceeding AmerenUE was going to begin consuming the nuclear fuel in question in that proceeding significantly sooner than in this proceeding. Specifically, as Staff cited in its Initial Brief in this proceeding, AmerenUE in this proceeding is proposing to include nuclear fuel costs that will be incurred on behalf of customers over three times the length after the end of the true-up proceeding than in AmerenUE's previous proceeding.[149] More importantly, in the previous proceeding AmerenUE did not have a FAC in place and there was a considerable uncertainty in regard to whether AmerenUE's request to establish an FAC would be granted. In this proceeding AmerenUE already has an FAC in place and AmerenUE itself in its discussion in its initial brief related to the nuclear fuel cost increase issue clearly believes it will continue to have a FAC.[150]

It addition, it is not relevant there is a delay in recovery of the nuclear fuel cost increase or that AmerenUE will only recover 95% of the cost through its FAC. First, the delay in the FAC ensures that all expenses and revenues passed through the FAC are fully accounted for such that fuel and off-system sales related expenses and revenues remain in near perfect synchronism.

[149] Post Hearing Brief of Public Service Commission Staff, Page 54.

[150] Post Hearing Brief of AmerenUE, Page 6.

Second, the 95% cost recover provides an important incentive for AmerenUE to minimize its fuel costs while maximizing its off-system sales revenues. Finally, and ultimately, AmerenUE was in complete control of when it filed its case in this proceeding. Callaway refueling outages are regular and predictable.[151] AmerenUE could have timed its rate filing such that the new nuclear fuel would have begun to be consumed on behalf of its customers prior to the end of the true-up period. It chose not to do so.

In summary, AmerenUE has not met its burden to show that the isolated known and measurable nuclear fuel cost increase that will be incurred after the end of the true-up period in this proceeding will not be offset by contemporaneous known and measurable revenue increases, expense reductions and/or ratebase reductions. Furthermore, AmerenUE will be able to recover nearly all of the nuclear fuel cost increase in question through its FAC in a manner will implicitly assure that all changes in AmerenUE's expenses and revenues that are passed through the FAC are kept in synchronism and incent AmerenUE to minimize its fuel costs while maximizing its off-system sales revenues. Finally, the refueling outages for the Callaway facility are regular and predictable. AmerenUE had complete control over the date in which it filed its case in this proceeding and could have chosen to time the filing such that the incurrence of the new nuclear fuel cost on behalf of customers occurred within the true-up period. For all of these reasons, AmerenUE's request to include in its Net Base Fuel Cost the cost of the new nuclear fuel which will be loaded in *** *** of 2010 should be denied.

AmerenUE was granted an FAC (containing all of the provisions AmerenUE desired) in its last rate case, ER-2007-0002. Two weeks after rates became effective in that case, AmerenUE lost the Noranda load due to an Act of God. AmerenUE responded by attempting to

[151] Irwin Rebuttal, Ex. 127 HC & NP, Page 3, Lines 13-14.

modify the exact FAC for which it was granted two weeks prior in the Commission Order. The Commission denied AmerenUE its request for modification. Now in the context of this case, AmerenUE wants to ignore the purpose of the FAC, to collect fuel price increases outside of a rate case and is asking this Commission to adopt an isolated adjustment. It appears AmerenUE only wants to use the FAC or modify it when it is best suited for its real needs.

VIII. COST OF SERVICE AND RATE DESIGN

1. The Non-Unanimous Stipulation Reflects the Interests of All Parties, Save Three Customers, is Based on Competent and Substantial Evidence in the Record and Leads to Reasonable Results.

Only one party objects to the non-unanimous stipulation on cost of service and rate design ("Agreement"). That party, the Midwest Energy Users Association ("MEUA"), consists of three retail store customers, Wal-Mart, Lowe's and Best Buy. All other parties to this case either expressly consent, or do not object, to the Agreement. The reason for such virtually universal support is that the Agreement is in the best interests of all parties.

The Agreement also is based on competent and substantial evidence in the record. The agreement appropriately reflects revenue neutral reductions where such reductions are appropriate as explained by cost of service studies of witnesses in the case, including MIEC's witness on this topic, Mr. Brubaker. The Agreement also appropriately recognizes public policy considerations relating to Noranda Aluminum. These considerations are likewise supported by evidentiary underpinnings in the record, submitted by MIEC and Noranda, both in terms of facts as well as through experts in economics and regulatory policy.

At various points in its opening brief, MEUA makes assertions that the Agreement is not based on cost of service evidence. This is not true. As MIEC explained in detail in its opening brief (page 53 through 56), the Agreement is fully supported by the cost of service evidence in

the record. While no class moves exactly to its cost of service under any party's preferred cost of service study, the relationships of those revenue changes with respect to one another are consistent with the cost of service evidence. In particular, see the results of the traditional[152] cost of service studies sponsored by MIEC and AmerenUE, including the AmerenUE study adjusted to recognize the Commission's treatment of margins from off-system sales adopted in the case of Kansas City Power and Light Company.[153]

MEUA blusters in its objection that the Agreement results in unreasonable rates and lacks the requisite competent and substantial evidence to be approved by this Commission. But when the rhetoric is stripped away, it is clear that MEUA actually likes the Agreement (and must believe it is supported by the evidence) except in one respect: Noranda would get a relatively larger benefit than Wal-Mart, Lowe's and Best Buy. MEUA treats the Agreement opportunistically as a "pool" of dollars, despite the rate request contained in its own filed testimony. MEUA's objections to the Agreement are not based on any lack of competent and substantial evidence to support the Agreement; rather, MEUA simply sees the Agreement as an opportunity to seek more.

MEUA's opposition to the Agreement ignores that its three members are not *sui generis* consumers of electricity, as is Noranda. MEUA's opposition to the Agreement also fails to acknowledge the unrefuted evidence that if the Noranda smelter closes (as have numerous smelters in the past few years), thousands of people will be adversely affected; the economy of the state of Missouri will be harshly impacted; and state and local governments will lose millions

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152 As noted at pages 53-56 of Post Hearing Brief of MIEC, the other cost of service studies contain critical infirmities and should not be used to measure class cost of service.

153 Post Hearing Brief of MIEC, Page 54.

in revenues. When all of these factors are appropriately considered it becomes clear that, in overall affect, the Agreement is indeed reasonable and should be adopted by this Commission.

2. No Enhanced Business Risk of Noranda Justifies a Higher Rate.

At pages 12 and 13 of its opening brief, MEUA tries to stitch together various statements in the record in an attempt to develop an argument that Noranda poses more business risk to AmerenUE than do other customers, and as a result should face higher rates. This is pure fabrication. MEUA did not offer a witness to support this theory, nor did any of the witnesses of other parties who were cross-examined by MEUA counsel support such a notion. Having failed in its attempt to secure relevant testimony from any witness, MEUA attempts in its brief at pages 12 and 13 to "quantify" the risk that it assumes is associated with serving Noranda by referring to an act of God, in the form of a catastrophic ice storm, that affected the lines of Associated Electric Cooperative, Inc., and prevented Noranda from consuming electricity. It is more than a stretch to attribute an act of God as a business risk posed by a particular customer!

Even if the business risk argument had merit, the mathematical manipulations at page 13 of MEUA's opening brief are unsupported by any evidence in the record, and are illogical. Clearly, the revenue lost to AmerenUE does not translate into higher cost of service for any customer class, or indeed for all customers taken collectively. MEUA refers to revenue numbers, and there is no consideration of additional off-system sales that AmerenUE may have made (and not flowed through the fuel clause), or other off-setting factors. In short, the mathematical manipulations are pure speculation and are entitled to no weight.

Furthermore, to the extent a customer, or a customer class, is thought to present unique circumstances, rate design is the vehicle typically used to address the issue. Indeed, AmerenUE witness Cooper testified to this effect when he discussed the take-or-pay proposal in his direct

testimony. This has been replaced by factor "N" in the proposed FAC.[154] This factor deals with any future Noranda load decrease, and resolves the business risk issue, if indeed there was one. MEUA did not oppose the inclusion of this factor in the FAC.

3. Prior "Rate Relief" to Noranda Does Not Affect the Facts Presented by this Case.

At pages 13 and 14 of its opening brief, MEUA engages in an outrageous exercise of selective recall. At the cited part of the brief, and Footnote 47, MEUA points to prior stipulations in which Noranda's revenue change was less than the system average. Reference to those exact same documents shows that in both of those cases the revenue increase to the LGS customer class also was less than system average. This selective recall is, at best, carelessness. Moreover, the history of rate relief to Noranda is irrelevant to the evidence presented in this case concerning cost of service and rate design. This case should be decided on the facts of this case and not based on previous relief Noranda may have earlier achieved.

4. Higher Electricity Costs for Noranda Realistically Could Lead to a Shut Down of the Smelter in New Madrid, MO, Which Would Have Dramatically Deleterious Results on the Citizens of the State of Missouri.

If the Noranda smelter in New Madrid, MO were to close, thousands of people in this state would be adversely impacted, some seriously. It is important to note that of this causal conditional statement, all parties apparently agree that closing the smelter would be a really bad thing for the region and the state of Missouri. Not one shred of evidence has been submitted in an effort to refute the testimony submitted by MIEC in this regard by such witnesses as Coomes, Haslag, Hodges and Mayer. At this point, this issue is proven fact. Additionally, no evidence has been submitted to attempt to refute MIEC's position that these overall economic factors are appropriate for this Commission to consider in rate setting, as set forth in the testimony of

[154] Transcript Page 2892.

Yatchew. The only issue that is questioned by any party is whether Noranda's claims of potential closure of the smelter are realistic, and that issue is only raised by the one objector to the Agreement, MEUA.

5. Higher Electricity Costs for Noranda Realistically Could Lead to a Shut Down of the Smelter in New Madrid, MO.

MEUA attempts to attack the proposition that failing to give Noranda relief in its rate for electricity could realistically lead to a shutdown of the smelter with a number of arguments that are merely glancing blows to the proposition. Significantly, MEUA fails to acknowledge, question or attempt to attack a broad and significant fact. Evidence in this case proves that at least five aluminum smelters in the United States have closed in the last two years and, in each case, the cost of power was identified as at least a contributing factor leading to the closure.[155] This fact, alone, should give this Commission great pause. Given the significant role electricity plays in the operations of an aluminum smelter, higher power costs can and do lead to smelter closures. Period. End of story.

Will it happen in New Madrid? Noranda hopes not. As a commodity business, Noranda's success or failure is determined by its ability to control its costs. Noranda has taken steps to control its costs where it can and has undertaken to be more energy efficient, as testified to by Mr. Smith[156] and Mr. Gregston.[157] But a failure to control electrical costs, which can only be done through this Commission, ultimately, logically and (as demonstrated by the five recently closed smelters) realistically could lead to the closure of the Noranda smelter in New Madrid.

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155 Transcript, Page 2990, Line 3 through Page 2991, Line 25; Transcript, Page 3064, Lines 5-14.

156 Transcript Page 2986, Line 6-24; Transcript, Page 2985, Lines 18-24.

157 Gregston Direct, Ex. 422, Page 4, Lines 4-25.

MEUA first attacks by claiming that certain loans and agreements between Noranda and the state of Missouri require Noranda to maintain certain employment levels in Missouri for 10 years. Documentation of these loans and agreements are not part of the record and the context and in which the commitments apparently were made is not clear. Moreover, the consequences to Noranda for non-compliance are unknown. It is difficult to imagine that these agreements would require Noranda to continue to operate an unprofitable operation for too long or that Noranda would continue to do so.

Next, MEUA claims that documents Noranda has filed with the SEC fail to describe the risk of closure of the New Madrid smelter with as much clarity as Noranda has done in this case. Once again, the SEC documentation is not a part of the record, so the exact statements made and the context in which the risks are disclosed is not clear. But what is clear is that Kip Smith, Chief Executive Officer of Noranda Aluminum, has publicly gone on the record in this case, both in oral testimony and in written testimony, and explained under oath his concerns.

Moreover, MEUA apparently fails to recognize that Noranda is a fully vertically integrated manufacturer of aluminum, with ownership of the mines from which the bauxite originates to the upstream sale of the finished product.[158] Noranda has business operations that are much greater than just the smelter. Consequently, it is entirely possible that closure of the New Madrid smelter, while devastating to the region and damaging to the economy of Missouri, may only lead to declining profitability of Noranda Aluminum as an entire operation.

MEUA then goes to great lengths to attempt to undermine the testimony of Henry Fayne, an industry expert presented by MIEC. Frankly, MEUA's attacks on Mr. Fayne are inaccurate and unfair. But more importantly, through its efforts to attack Mr. Fayne, MEUA demonstrates

[158] Transcript Page 2984, Line 9 – Page 2985, Line 1

that it fails to see the proverbial forest from the trees. At least five aluminum smelters have closed in the United States in the last two years due to high electricity costs. That is the big picture reality, the forest that MEUA ignores.

More granularly, MEUA begins its attack on Mr. Fayne by complaining that he used a computer to do research. A greater red-herring of an argument would be hard to find. While it might not be advisable to visit "Electric Joe's Blog" in search of reliable data on rate specific information, the Internet is certainly a respected medium for accessing the CRU database the source of Mr. Fayne's information. Complaining that Mr. Fayne's access of CRU data over the Internet "raises concerns about reliability" is about as credible as saying that counsel's utilization of the Internet to access a Westlaw or Lexis database raises questions about the reliability of a lawyer's research. No issue is to be found here.

MEUA then apparently attacks the credibility of the CRU data. As explained, the CRU data is relied upon because each of the smelter companies with which Mr. Fayne has worked treats CRU "as the authority in the industry . . . " It is reasonable to rely on this data.[159] Moreover, Mr. Fayne has personal knowledge of five of the 12 smelters identified on Exhibit 421, Schedule HWF-1, by which he could verify the accuracy of the CRU data.[160] It is difficult to imagine any industry-wide data that is more reliable than the CRU data or industry-wide data that has been more specifically verified as Mr. Fayne is able to do in this case.

MEUA then attacks Mr. Fayne by MEUA's undertaking of its own calculation of Noranda's cost of power. Unfortunately for MEUA, while it made the effort, MEUA fails to arrive at a correct calculation of Noranda's cost of electricity. There are at least two major

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159 Transcript, Page 3063, Lines 2-18.

160 Transcript Page 3060, Lines 9-22.

problems with MEUA's calculation. First, MEUA's numbers are wrong (never a good thing when doing math) and, second, MEUA leaves out important costs incurred by Noranda.

MEUA calculates, in footnote 63 of its opening brief, a revenue per MWh for Noranda by using information from Exhibit 429. While the total revenue number is correct, the divisor used by MEUA is not the energy that is delivered to and purchased by Noranda. It is clear from the table on page 16 of Exhibit 429 (from which the MWh number was taken) that MEUA's number is energy at the generating station, after adjustment for losses. That amount is higher than the amount which is delivered to Noranda and dividing by an inflated number produces a revenue per MWh amount that is understated. The correct number is found only two pages later, on page 18 of Exhibit 429, and is 4,119,018 MWh. Using this correct divisor produces a revenue per MWh of $33.78.

But there is an even larger problem with MEUA's analysis. MEUA fails to take into account the fact that AmerenUE is not the only electric utility that Noranda must pay in order to receive its electricity at the smelter. MEUA fails to recognize that Noranda also must pay Associated Electric Cooperative, Inc. for use of its transmission system.[161] These costs are not included in MEUA's calculation, further understating and grossly misrepresenting Noranda's power costs.

MEUA's mathematically incorrect and incomplete calculations should not be given any weight. Contrary to MEUA's claim, Noranda's total cost of power really is $35.67 MWh, as attested to by both the industry information source CRU and expert witness Henry Fayne.

MEUA then flat out accuses Mr. Fayne of manipulating the data to arrive at a conclusion with an average cost of electricity for smelters in the United States that is lower than it should be.

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[161] Cooper Direct, Ex. 135, Page 24, Note 2.

Not only is this personal attack by MEUA inaccurate and unfair, it once again misses the bigger point: Higher electrical costs lead to the closure of aluminum smelters, as demonstrated by the at least five smelters that have closed in the United States in the last two years as a result of electrical costs.

As explained in Mr. Fayne's testimony, Exhibit 421, Schedule HWF-1 was meant to reflect all smelters operating in the United States at some time in the year 2009 and demonstrated that the average cost of electricity for domestic smelters in 2009 was $33.36 per MWh.[162] Unfortunately, and admittedly, Mr. Fayne inadvertently omitted one smelter from his chart, Columbia Falls.[163] When that smelter is included, the average cost of electricity increases to $33.50 per MWh.[164] No other smelters met the criteria for inclusion on Schedule HWF-1. At its accurately reported cost of electricity of $35.67 per MWh, Noranda is in the third quartile of electrical expense for smelters. In other words, the cost of power for Noranda's smelter in New Madrid is higher than most other smelters in the United States.[165] More significantly, as Mr. Fayne testified, several of the smelters have negotiated new contracts which result in lower electrical costs for those smelters going forward. With these new contracts, without any change to Noranda's electrical costs, the New Madrid smelter has one of the highest costs for electricity in the United States.[166]

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162 Fayne Direct, Exhibit 421, Schedule HWF-1.

163 Transcript Page 3048, Line 20 – Page 3049, Line 13.

164 Transcript Page 3049, Line 23 – Page 3050, Line 1.

165 If all of the closed smelters identified on Schedule HWF-1 are omitted from analysis, the average cost for electricity increases to $33.75 per MWh and Noranda is still mired in the third quartile. *See* Fayne Direct, Exhibit 421, Schedule HWF-1; Transcript Page 3050, Lines 10-18.

166 Fayne Direct, Exhibit 421, Lines 15-25 .

The analysis and testimony of Henry Fayne are sound and credible. MEUA's over-the-top attempts to attack Mr. Fayne are not only uncalled for, they are inaccurate.

MEUA continues its fusillade with an specious argument that because Noranda claims to have competitive advantages over other aluminum companies in certain regards (secure source of alumina at good prices, secure source of electrical service, strategic location, etc.) that somehow these obviate a need for this Commission to be concerned about the price of electrical service to Noranda. This unquantified, wild speculation by MEUA barely deserves a response. The cost of electricity represents approximately one third of the total expenses of the smelter.[167] At that level, it is clear that higher electricity costs represent a threat to the overall viability of the smelter, regardless of whatever other competitive advantages Noranda might enjoy. The fact that Noranda determined to remain open during 2008 and 2009 (notwithstanding the ice storm in January 2009) is by no means a logical jumping-off point for the conclusion that the Noranda smelter will remain open indefinitely. While keeping the Noranda smelter open may be a testament to sound management or good policy decision making, it does not change the economic picture.

In a last, desperate attempt at an argument, MEUA contends that people in New York will benefit from lower rates to Noranda and, presumably, this Commission should simply not allow that to happen. This argument is silly for a number of reasons. First, even if true, this assertion undermines MEUA's own claim that MEUA's class should receive all benefits from any rate reduction or rate re-design scheme. Common sense dictates that the stockholders of Wal-Mart, Lowe's and Best Buy are largely not from Missouri too. If MEUA's argument in this

167 Smith Direct, Exhibit 426, Page 3, Lines 13-23.

regard has any merit, MEUA needs to undertake some serious self-examination before asking what it seeks from this Commission.

Second, and more importantly, the rate relief sought in this case by Noranda is not a zero sum game. Rate relief may end up making Noranda, overall, a little more profitable. And that enhanced, marginal profitability may slightly increase the value of the enterprise. But continued, viable operations of the Noranda smelter in New Madrid, MO will pump millions of dollars into the local and state economy. Rate relief is good for everyone associated with Noranda, shareholders, Missouri-based employees, service providers, and the State of Missouri and local governments to identify a few. As a result, sound public policy supports Noranda, in its unique position, being a beneficiary of rate relief.

IX. STREET LIGHTING

MIEC believes that the Municipal Group makes a fair point when it notes that street lighting rates, and in particular Rate 5M, have not been examined on a cost of service basis for many years. MIEC supports Municipal's proposal to make any increase to Rate 5M subject to refund, based on the results of cost of service studies that are to be conducted and filed for review in AmerenUE's next general rate case.

If, in the next case, it is determine that Rate 5M is too high and should be reduced, the decrease should be refunded to Rate 5M customers. Since, in the interim, other customers will have been the beneficiary of the overcharge to Rate 5M, it would be appropriate to amortize any refund to Rate 5M customers as a charge to other customers over a one-two year period following the next rate case. This approach will keep AmerenUE whole, be fair to Rate 5M customers, and recognize the identity of the beneficiaries of any overcharge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic mail this 30th day of April, 2010, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke

Schedule A

AmerenUE's Total Retirements - Filed Depreciation Study

Line	Account	Description	Original Cost at Dec 31, 2008[1] ($000) (1)	Total Retirements[2] ($000) (2)	Percent Retirements (3)
		STEAM PRODUCTION			
1	311	Structures & Improvements	$196,696	$22,197	11.3%
2	312	Boiler Plant Equipment	1,825,224	313,785	17.2%
3	312.03	Boiler Plant Equipment - Aluminum Coal Cars	116,271	11,957	10.3%
4	314	Turbogenerator Units	528,136	99,689	18.9%
5	315	Accessory Electrical Equipment	199,836	24,543	12.3%
6	316	Miscellaneous Power Plant Equipment	60,149	9,568	15.9%
7		Total Steam Production	$2,926,312	$481,739	16.5%
		TRANSMISSION			
8	352	Structures & Improvements	6,272	$577	9.2%
9	353	Station Equipment	228,351	25,247	11.1%
10	354	Towers & Fixtures	70,394	1,864	2.6%
11	355	Poles & Fixtures	138,656	4,686	3.4%
12	356	Overhead Conductor & Devices	145,108	8,220	5.7%
13	359	Roads & Trails	72	0	0.4%
14		Total Transmission	$588,852	$40,595	6.9%
		DISTRIBUTION			
15	361	Structures & Improvements	$15,367	$2,936	19.1%
16	362	Station Equipment	598,830	49,614	8.3%
17	364	Poles & Fixtures	767,060	75,395	9.8%
18	365	Overhead Conductors & Devices	856,325	140,402	16.4%
19	366	Underground Conduit	223,548	4,643	2.1%
20	367	Underground Conductor & Devices	527,668	36,664	6.9%
21	368	Line Transformers	401,240	83,534	20.8%
22	369.1	Overhead Services	153,326	19,330	12.6%
23	369.2	Underground Services	134,154	5,618	4.2%
24	370	Meters	106,166	78,203	73.7%
25	371	Installations On Customers' Premises	165	1,684	1023.3%
26	373	Street Lighting & Signal Systems	109,203	31,322	28.7%
27		Total Distribution	$3,893,051	$529,347	13.6%

Sources:

[1]See Wiedmayer Direct, Schedules III-4, 5, 7 & 8.
[2]See Wiedmayer Direct, Schedule B.