Exhibit No.:	
Issue:	Revenue Requirement
Witness:	Greg R. Meyer
Type of Exhibit:	Surrebuttal Testimony
Sponsoring Party:	MIEC
Case No.:	ER-2014-0258
Date Testimony Prepared:	February 6, 2015

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))))	**Case No. ER-2014-0258**

Surrebuttal Testimony and Schedules of

Greg R. Meyer

On behalf of

Missouri Industrial Energy Consumers

February 6, 2015

BRUBAKER & ASSOCIATES, INC.

Project 9913

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))))	**Case No. ER-2014-0258**

STATE OF MISSOURI	)	
	)	**SS**
COUNTY OF ST. LOUIS	)	

Affidavit of Greg R. Meyer

Greg R. Meyer, being first duly sworn, on his oath states:

1. My name is Greg R. Meyer. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.

2. Attached hereto and made a part hereof for all purposes are my surrebuttal testimony and schedules which were prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. ER-2014-0258.

3. I hereby swear and affirm that the testimony and schedules are true and correct and that they show the matters and things that they purport to show.

Greg R Meyer
Greg R. Meyer

Subscribed and sworn to before me this 5th day of February, 2015.

TAMMY S. KLOSSNER
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Mar. 14, 2015
Commission # 11024862

Tammy S Klossner
Notary Public

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In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))))	**Case No. ER-2014-0258**

Surrebuttal Testimony of Greg R. Meyer

Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A Greg R. Meyer. My business address is 16690 Swingley Ridge Road, Suite 140, Chesterfield, MO 63017.

Q ARE YOU THE SAME GREG R. MEYER WHO HAS PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A Yes. I have previously filed direct testimony on revenue requirement issues presented in this proceeding.

Q ARE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE OUTLINED IN YOUR PRIOR TESTIMONY?

A Yes. This information is included in Appendix A to my revenue requirement direct testimony filed December 5, 2014.

Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

A This testimony is presented on behalf of the Missouri Industrial Energy Consumers ("MIEC"). These companies purchase substantial quantities of electricity from Ameren Missouri (or "Company").

Their cost of electricity would increase approximately 9.7% if Ameren Missouri is granted the full amount of the increase it requested. This proceeding will have a substantial impact on these companies' cost of doing business, and thus they are vitally interested in the outcome.

Q WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A The purpose of my testimony is to address the rebuttal testimonies of Ameren Missouri witnesses John J. Reed, Lynn M. Barnes, Laura M. Moore, David N. Wakeman and Steven M. Wills. Specifically, I will describe the misconceptions and misinterpretations of my direct testimony that Ameren Missouri witnesses discuss as it relates to deferral accounting mechanisms (trackers, Accounting Authority Orders ("AAO") and amortizations), and my proposed adjustments regarding these issues. I will also discuss why the infrastructure inspection, vegetation management and storm cost trackers should be discontinued. Finally, I will discuss why the Company's proposed normalized load for Noranda is inappropriate.

Q WHAT ARE THE MAIN POINTS IN YOUR SURREBUTTAL TESTIMONY?

A They are as follows:

- I will discuss the concept of deferral accounting as it is applied in Missouri and explain how Ameren Missouri witnesses (especially Mr. Reed) have misrepresented the Missouri Public Service Commission's ("Commission") historical rulings on the ratemaking standards for deferral accounting.

- Ameren Missouri witness Ms. Moore claims I have violated the terms of a Stipulation and Agreement in Case No. ET-2014-0085. I will demonstrate why Ms. Moore's claims are incorrect. Mr. Reed attempts to join the issue of solar rebate collections with Noranda's previous rate complaint case. I will discuss why this comparison and his arguments are totally unfounded. Seeking to collect these costs through retail rates twice is simply inappropriate.

- Ameren Missouri witness Ms. Barnes claims that no direct testimony was needed to support the inclusion of the Noranda AAO in cost of service. This argument

raises the question, does the granting of an AAO guarantee or indicate a significant possibility of rate recovery? I will discuss why the Commission has historically denied this premise. I will also discuss why the granting of recovery of the costs deferred through this AAO in the current rate case could result in retroactive ratemaking.

- Ameren Missouri is proposing to amortize energy efficiency costs and a study of the Callaway Nuclear Center over multi-year periods. Ameren Missouri witness Moore suggests these costs have already been approved for amortization. I will show why these costs have already been paid for by Ameren Missouri's customers.

- Ameren Missouri witness Mr. Wakeman continues to argue that vegetation management, infrastructure inspections and storm trackers are necessary and should again be authorized in this rate case. The Commission has previously indicated that the vegetation management and infrastructure inspection trackers are not to be considered permanent trackers. These trackers have been in existence since 2009 and should be discontinued. I will also discuss why the storm tracker is an unnecessary regulatory tool as Ameren Missouri has recovered all of its storm costs through the true-up period in this case. This tracker should also be discontinued.

- Should tracked expenses be subject to a review of Ameren Missouri's earnings during the tracking period? Ameren Missouri says no. I believe and will discuss why customers should not have to pay twice for these tracked amounts, as a result of Ameren Missouri's excess earnings.

- I will outline the proper adjustment to reflect an agreed-upon level of storm costs in the true-up filing.

- Ameren Missouri proposes to reduce Noranda's demand and energy purchases, due to recent lower electricity usage. I will discuss why this is a temporary problem associated with operations at the smelter. Normalizing Noranda's load is proper and Ameren Missouri's adjustment should be rejected.

The fact that I do not address a specific position or issue in this surrebuttal testimony should not be interpreted as acceptance of that position or issue.

Deferral Accounting

Q PLEASE DESCRIBE THE CONCEPT OF DEFERRAL ACCOUNTING.

A Deferral accounting is simply the delay in recognition of a cost or revenue from the period in which it is actually incurred to a future period. In the context of ratemaking, deferral accounting reflects the accumulation of an expense or revenue in a

regulatory asset or liability for future consideration in the ratemaking formula. I would note that Ameren Missouri witness Reed agrees with this interpretation in his rebuttal testimony.

Q ARE THERE STANDARDS THAT MUST BE MET BEFORE AN ITEM CAN BE DEFERRED?

A Yes. For an item to be eligible for deferral, it must be an extraordinary item, an item that pertains to an event which is extraordinary, unusual and infrequent and non-recurring. This standard was described in the Commission's Report and Order in Case No. EU-2012-0027.

Q WHAT ARE THE TYPES OF DEFERRALS THAT AMEREN MISSOURI HAS REQUESTED IN THIS CASE AND IN RECENT AMEREN MISSOURI CASES?

A The types of deferrals that Ameren Missouri has requested in recent rate cases include AAOs, construction accounting and trackers.

Q WHAT RATE RECOVERY MECHANISM IS MOST WIDELY USED TO ADDRESS RECOVERY OF DEFERRALS?

A Amortization over a specified period of time is the most common ratemaking tool to recover deferred expenses/revenues. For example, Ameren Missouri has experienced severe storms which have struck the St. Louis area and has filed AAOs to defer the incremental costs associated with storm recovery efforts. These AAOs have been granted and Ameren Missouri has been allowed to recover these costs (expenses), after consideration in a future rate case, generally over a five-year amortization period.

Q IN MR. REED'S REBUTTAL TESTIMONY, HE IMPLIES THAT THE PROPER TREATMENT OF DEFERRAL ACCOUNTING IS RECOVERY OF THOSE EXPENSES IN THE UTILITY'S NEXT RATE CASE UNLESS A FINDING OF IMPRUDENCE IS ESTABLISHED. DO YOU AGREE WITH HIS CONTENTION?

A No. I believe the Commission has been very clear when it determines that an expense item can be deferred for regulatory purposes. I believe the Commission has stated that allowing deferral accounting does not constitute ratemaking and that the entire deferred balance may be subject to zero recovery in the future. I have included specific excerpts from previous Commission Orders addressing this situation.

> 9. An AAO allows the "deferral" in the booking of current expense to a utility's balance sheet as an asset. The cost is booked by a utility based upon the possibility that a regulatory authority will agree to allow recovery of the cost in a future rate case. (Case No. EU-2014-0077, page 7)
>
> 5. Recording in these accounts is in the public interest because it preserves an item for consideration when setting just and reasonable rates. But deferred recording does not guarantee recovery in any later rate action; recovery may be granted in whole, partially, or not at all. (Case No. EU-2012-0027, page 4)

I believe the above language makes it very clear that the Commission does not believe that deferral accounting carries with it guaranteed recovery of the expenses.

Q MR. REED IN ALL LIKELIHOOD WOULD ARGUE THAT THE ABOVE COMMISSION STATEMENTS, CLAIMING POSSIBLE DISALLOWANCE OF DEFERRED EXPENSES, ARE BASED ON A FINDING OF IMPRUDENCE. DO YOU BELIEVE THE COMMISSION'S LANGUAGE IS RESTRICTED TO THAT STANDARD?

A Absolutely not. I do not believe the Commission is limiting the possibility of disallowance or no further recovery to a finding of only imprudence. Disallowance or

no further recovery of all deferred expenses may be ordered for reasons other than imprudence. I support this statement with the premise that in the AAO applications in which I have participated, many parties, and, in particular, utilities, have stressed that the act of deferral accounting does not constitute ratemaking. If the belief was that the only basis for rejecting recovery in a future rate case of costs deferred through AAOs or other forms of deferral accounting was a finding of imprudence, then I believe the parties insisting on claiming that no ratemaking is being determined have been disingenuous. In addition, I do not recall the Commission specifying reasons for disallowance or no further recovery when approving a request for an AAO.

Q MR. REED ALSO ARGUES THAT REGULATORS ACROSS NORTH AMERICA SUPPORT THE ARGUMENT THAT DEFERRED AMOUNTS CAN ONLY BE DISALLOWED BASED ON A FINDING OF IMPRUDENCE. DO YOU AGREE?

A First, let me say that we are dealing with Missouri's regulation and not regulation across North America. However, I have been involved in regulatory proceedings outside of Missouri where deferral accounting meant subsequent recovery, absent a finding of imprudence. But, I do not believe this Commission has taken that stance regarding the possible total disallowance or no further recovery of costs with its consistent language in cases requesting deferral accounting. Furthermore, I do not believe that utilities have been forthright with the Commission if they truly believed that disallowance or no further recovery only as a result of imprudence was the Missouri standard.

Q IS MR. REED CORRECT WHEN HE SAYS IN HIS REBUTTAL TESTIMONY THAT THE REGULATORY ASSETS CREATED BY THE DEFERRED COSTS THAT ARE BEING CONSIDERED IN THIS CASE ARE THE SAME AS PHYSICAL ASSETS?

A No. The regulatory assets that are the subject of discussion in this case are the result of deferral of period costs. In other words, these costs are expenses that would have been charged against income during Ameren Missouri's annual accounting period, if not for Commission approval of a deferral mechanism. Without deferral accounting, these costs would only have been included in future rates to the extent the amounts reflected an ongoing level of expense.

Physical assets, however, are originally booked and accounted for as assets. These costs are designed to provide benefit during multiple future years and are not period costs. These assets are not the result of extraordinary regulatory treatment.

Q MR. REED IMPLIES THAT ACCORDING TO YOUR METHODOLOGY, EXCESS EARNINGS COULD BE USED TO DISALLOW PHYSICAL ASSETS. WHAT IS YOUR RESPONSE?

A Mr. Reed's suggestion that my methodology could result in the disallowance of physical assets is absurd. I have not proposed any adjustments to physical assets as a result of excess earnings, and it would be inappropriate to do so. My proposed adjustments deal with period costs and period earnings. Absent extraordinary regulatory treatment, period costs would be charged against earnings in the period the amounts were incurred. I reiterate that it is inappropriate to defer such costs/expenses during a period of excess earnings. If these costs had been charged against earnings during the period incurred, Ameren Missouri would still have earned its authorized return on equity.

It is important to point out that, except for the Noranda AAO, I am not proposing to disallow deferred costs. As a result of excess earnings during the period of deferral, the rates paid by customers was sufficient to recover these deferred costs and still allow the Company to earn its authorized return on equity. I am opposing double recovery by also including these costs in the determination of the rates resulting from this case.

Solar Rebate Amortizations

Q IN HER REBUTTAL TESTIMONY, MS. MOORE MENTIONS A STIPULATION AND AGREEMENT IN CASE NO. ET-2014-0085 AS THE BASIS FOR RECOVERY OF SOLAR REBATE COSTS. PLEASE DESCRIBE THE STIPULATION AND AGREEMENT.

A Before I describe the Stipulation and Agreement, I would like to provide some background regarding solar rebates. On November 4, 2008, Missouri voters approved Proposition C. Proposition C mandated electric utilities generate or purchase electricity generated from renewable energy resources to a certain percentage of their sales volumes. In complying with Proposition C, utility rates could only increase by a maximum of 1%.

On October 11, 2013, Ameren Missouri filed an Application with the Commission for authority to suspend payments of solar rebates. This case was docketed by the Commission as Case No. ET-2014-0085. Ameren Missouri sought to suspend payments of solar rebates, as it believed further payments would result in the Company exceeding the maximum rate impact of 1%.

As a result of discussions among Ameren Missouri, the Staff, the Office of Public Counsel and several intervenors in the case, on November 8, 2013, a

Stipulation and Agreement was filed with the Commission. The Stipulation and Agreement stated that solar rebate payments would not be suspended until they reached an aggregate level of $91.9 million. In addition to the amount spent on solar rebates ($91.9 million), an additional 10% will be added to that total as a return or carrying charge. It is compliance with this Stipulation and Agreement that Ms. Moore claims MIEC has violated.

Q PLEASE EXPLAIN THE BASIS FOR MS. MOORE'S BELIEF THAT THE MIEC VIOLATED THE STIPULATION AND AGREEMENT.

A Ms. Moore includes a statement and a footnote from page 6 in the Stipulation and Agreement in Case No. ET-2014-0085 which she believes demonstrates that MIEC violated the terms of the Stipulation and Agreement. I have included the statement and footnote below:

> Paragraph 7 d: "…The Signatories agree not to object to Ameren Missouri's recovery in retail rates of prudently paid solar rebates[7] and the additional amount provided for above." (page 6)
>
> [7]Given the Signatories' agreement that the specified amount should be paid, the only questions in future general rate proceedings regarding the recovery of solar rebate payments is whether the claimed solar rebate payments have been made and whether they were prudently paid under the Commission's RES rules and Ameren Missouri's tariff. "Prudently paid" relates only to whether Ameren Missouri paid the proper amount due to an applicant for a rebate, paid it to the proper person or entity, and paid it in accordance with the Commission's RES rules and Ameren Missouri's tariffs.

Q DO YOU AGREE WITH MS. MOORE'S CLAIMS THAT MIEC VIOLATED THE TERMS OF THE STIPULATION AND AGREEMENT AND THUS MUST ALLOW RECOVERY OF THESE SOLAR REBATE COSTS IN THIS CASE?

A No. As my direct testimony explains, retail rates that were in effect during the period when the solar rebates were incurred were sufficient to recover these costs, while still

allowing Ameren Missouri to earn its authorized return on equity. My proposed adjustment reflects that due to the fact these costs have already been recovered in retail rates as a result of Ameren Missouri's excess earnings, the conditions described above in the Stipulation and Agreement have been fulfilled.

The footnote merely states that for whatever balance is to be considered for recovery in Ameren Missouri's next rate case, the only disallowance argument that can be presented is imprudence. I am not making a disallowance – I am recognizing that these costs have already been recovered.

Q ARE THERE OTHER STATEMENTS IN THE STIPULATION AND AGREEMENT WHICH WOULD SUPPORT YOUR PREMISE THAT THE AMOUNT TO BE INCLUDED IN A FUTURE RATE CASE WAS STILL AN ISSUE TO BE DETERMINED?

A Yes. Referenced below is other language in the Stipulation and Agreement (pages 4-5) which I believe supports the position that the solar rebate costs were not automatically a candidate for inclusion in the determination of rates in Ameren Missouri's next rate case.

> Paragraph 7 d: "…Solar rebate amounts paid by Ameren Missouri after July 31, 2012, including the additional amount provided for in the immediately following sentence, shall be included in a regulatory asset to be <u>considered</u> for recovery in rates after December 31, 2013, in a general rate case." (emphasis added)

This language clearly demonstrates that parties would be allowed to include or propose that other amounts, including zero, should be reflected in the rate case. I want to also emphasize again that I am not proposing a disallowance of these costs, but am recognizing that ratepayers have already provided recovery of these costs in their current rates.

Q DID THE COMMISSION APPROVE THE STIPULATION AND AGREEMENT?

A Yes. And, in that Order, the Commission specifically states that the regulatory asset established for solar rebate costs will be considered for recovery in rates.

Based upon this analysis, I believe it is clear that MIEC did not violate the terms of the Stipulation and Agreement.

Q AMEREN MISSOURI WITNESS MR. REED SUGGESTS THAT IN ALLOWING A UTILITY TO DEFER SOLAR REBATE COSTS, THERE IS A SIGNIFICANT LIKELIHOOD THAT THE UTILITY WILL COLLECT THOSE COSTS IN A FUTURE RATEMAKING PROCEEDING. DO YOU AGREE?

A I do not. As I have discussed previously, this Commission has stated very clearly that allowing deferral accounting **does not** constitute ratemaking and that the entire deferral balance may be subject to zero recovery in the future.

If the Commission has determined that recovery in future rates of deferral amounts can only be opposed based on imprudence, it has never been articulated by the Commission in any order that I am aware of. This interpretation would call into question the accuracy of utilities' and the Commission's statements that no ratemaking authority is being requested through applications for deferral accounting mechanisms.

Q MR. REED ALSO ASSERTS THAT THE ISSUE HAS ALREADY BEEN ADDRESSED BECAUSE THE COMMISSION FOUND THAT THE USE OF SURVEILLANCE DATA IN CASE NO. EC-2014-0223 WAS NOT SUFFICIENT TO CHANGE RATES. DO YOU AGREE?

A No. In Case No. EC-2014-0223, the Commission determined that Noranda failed to demonstrate that Ameren Missouri's rates needed to be decreased. That case involved a rate complaint which sought to lower Ameren Missouri's retail rates. The issue in this case is completely different. MIEC is not seeking to reduce Ameren Missouri's rates in this case. The issue I am addressing now is whether the earnings which Ameren Missouri reported were sufficient to allow Ameren Missouri to expense the solar rebates and still earn its authorized return on equity. The answer is an absolute yes. Mr. Reed's arguments are off base and completely irrelevant to this issue.

Q MR. REED PRESENTS A GRAPH WHICH SHOWS HISTORICAL EARNINGS DATING BACK TO 2007. IS THIS GRAPH RELEVANT TO THE SOLAR REBATE ARGUMENT?

A No. Mr. Reed attempts to point out that Ameren Missouri has under-earned during more periods of time than it has over-earned. The analysis is once again not relevant to this issue. One only needs to concentrate on the period when the deferred expenses were being incurred (August 2012 - December 2014). As the right side of his graph shows, that is when Ameren Missouri over-earned, while deferring expenses. If the deferral period for these expenses were during the period from June 2008 - June 2010, no adjustment to the inclusion of deferred solar rebate costs in the rates resulting from this case would have been proposed.

Q MR. REED'S GRAPH ON PAGE 22 OF HIS REBUTTAL TESTIMONY INDICATES THAT FROM JUNE 2007 FORWARD, AMEREN MISSOURI HAS EARNED LESS THAN ITS AUTHORIZED RETURN ON EQUITY MORE THAN IT HAS EARNED ABOVE ITS AUTHORIZED RETURN ON EQUITY. IS THIS AN ACCURATE DEPICTION OF AMEREN MISSOURI'S HISTORICAL EARNINGS?

A Not exactly. I do not have any disputes with the accuracy of the graph Mr. Reed presented for the limited period he chose. However, if the historical period is expanded, I believe a different picture of Ameren Missouri's earnings is revealed. I have attached Schedule GRM-SUR-1 which is a graph of Ameren Missouri's earnings compared to its authorized returns on equity dating back to 1996. As this graph shows, except during the global financial crisis when most companies experienced reduced earnings (or losses), Ameren Missouri/Union Electric has had healthy earnings periods during the years depicted.

Noranda AAO

Q AMEREN MISSOURI WITNESS MS. BARNES FILED REBUTTAL TESTIMONY REGARDING THE NORANDA AAO. IN HER TESTIMONY AT PAGE 67, LINES 7-11, SHE DISCUSSES WHY AMEREN MISSOURI DID NOT PROVIDE ANY TESTIMONY REGARDING THE PROPER RECOVERY OF THE DEFERRED AMOUNT. DO YOU AGREE WITH HER STATEMENTS?

A No. In her rebuttal testimony, Ms. Barnes essentially says that because the Commission granted Ameren Missouri deferral accounting treatment for these costs in Case No. EU-2012-0027, there is no need to provide testimony regarding recoverability in this rate case. Specifically, Ms. Barnes states:

> "These were costs properly recorded on Ameren Missouri's books per the *Report and Order* issued by the Commission in File No. EU-2012-0027. As a result, no further explanation was required."

This is exactly the point I have previously described with the position Ameren Missouri is advocating in this case in addressing deferral accounting. That is, once the Commission has allowed the deferral of an item, cost recovery is essentially guaranteed. Mr. Reed at least makes an exception to the guarantee for a finding of imprudence.

I do not believe that is what the Commission has been telling utilities with its orders on deferral accounting. Therefore, I still contend that Ameren Missouri has not provided the evidence necessary to justify why these costs should be included in rates **twice**.

Q YOU JUST STATED THAT IF THE COMMISSION GRANTED AMEREN MISSOURI RECOVERY OF THE DEFERRALS FROM THIS AAO IN THE CURRENT RATE CASE THAT THESE COSTS WOULD HAVE BEEN INCLUDED IN RATES TWICE. CAN YOU PLEASE EXPLAIN THIS?

A In Case No. ER-2008-0318, normalized costs were developed for establishing rates. These normalized costs included the fixed costs that Ameren Missouri seeks to recover in this AAO. Because of the ice storm, Ameren Missouri claims that it was not allowed to recover these fixed costs.[1] However, it is undisputed that these fixed costs were included in Ameren Missouri's rates from Case No. ER-2008-0318. If the Commission granted inclusion of the Noranda AAO deferrals in the rates resulting from this case, it would essentially be allowing Ameren Missouri to recover these costs twice.

[1]Several parties to this case and Case No. EU-2012-0027 disputed that claim by showing that Ameren Missouri had positive earnings during this period of the deferral.

Q ARE YOU AWARE OF ANY RULINGS THAT MIGHT PROHIBIT THE INCLUSION OF THESE COSTS IN THIS RATE CASE?

A Yes. Although I am not a lawyer, I believe the simple reading of the following language from state ex rel Utility Consumers Counsel, 585 S.W. 2d 41 (MO 1979) ("UCCM") prohibits inclusion of these costs:

> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e, the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.[25/] [Footnote Omitted.]

Ms. Barnes even acknowledges on page 67, lines 21-23, of her rebuttal testimony that these costs were included in the Company's revenue requirement in a prior rate case. She uses this as a justification why these costs should be granted deferral treatment. Interestingly, Ameren Missouri ignores and does not discuss the language from the UCCM case I cited above.

Q IN HER REBUTTAL TESTIMONY, MS. BARNES DISCUSSES HOW THE ICE STORM WAS AN EXTRAORDINARY EVENT AND THUS THE GRANTING OF THE AAO WAS APPROPRIATE. DO YOU AGREE?

A I agree that the ice storm was an extraordinary event. However, the ice storm did not create extraordinary costs for Ameren Missouri. That is, the criteria for an AAO. Namely, that the extraordinary event caused the utility to incur expenses that would materially affect its earnings if expensed currently. In this case, there were no extraordinary expenses.

Q DO YOU HAVE ANY RECENT EXAMPLES WHERE THE COMMISSION FOUND EXPENSES WERE NOT EXTRAORDINARY AND THUS SHOULD NOT BE SUBJECT TO AN AAO?

A Yes. In Case No. EU-2014-0077, the Commission denied Kansas City Power and Light Company and Greater Missouri Operations Company the ability to defer transmission costs. The Commission found that "transmission expenses are part of the ordinary and normal costs of providing electric service by a utility and are ongoing."

The same is exactly true for the fixed costs claimed in Noranda's AAO.

Q EARLIER IN YOUR TESTIMONY, YOU INCLUDED A FOOTNOTE WHICH SAID THAT MANY PARTIES TO THE NORANDA AAO CASE CLAIMED THAT THIS WAS NOT RECOVERY OF FIXED COSTS. CAN YOU EXPLAIN?

A In the Noranda AAO case, several parties argued that Ameren Missouri's claim for recovery of lost fixed costs was erroneous as Ameren Missouri had paid all of its costs and was reporting positive income. Parties claimed that Ameren Missouri was merely trying to collect lost revenues to recover lost profits.

In addition, Chairman Robert S. Kenney dissented in the Commission's decision in Case No. EU-2012-0027. I have attached a copy of that dissent as Schedule GRM-SUR-2. In that dissent, Chairman Kenney focuses on the deferral of lost revenues and how it is improper to grant deferral treatment for those phantom revenues.

Q ARE YOU AWARE OF OTHER COMMISSION DECISIONS REGARDING THE DEFERRAL OF LOST REVENUES?

A Yes. In Case No. GU-2011-0392, the Commission rejected the recovery of lost revenues. In that Order, on page 25, the Commission stated:

> "Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other... Services not provided and revenues not generated are mere expectancies, are things that simply did not happen, and are not items at all."

I have attached the entire Commission Order from Case No. GU-2011-0392 as Schedule GRM-SUR-3 to this testimony.

In summary, the Commission should deny Ameren Missouri the ability to recover these lost fixed charges or phantom revenues in the current rate case.

Amortizations

Q IN YOUR DIRECT TESTIMONY, YOU PROPOSED ADJUSTMENTS FOR EXPIRING AMORTIZATIONS. DID AMEREN MISSOURI DISCUSS THESE IN ITS REBUTTAL TESTIMONY?

A Yes. Ameren Missouri adopted the Staff's adjustment regarding these amortizations. I also accept the Staff's proposed adjustment for these amortizations.

Q DURING THE TEST YEAR (APRIL 1, 2013 - MARCH 31, 2014) AMEREN MISSOURI INCURRED APPROXIMATELY $939,000 FOR A NUCLEAR REGULATORY COMMISSION MANDATED ONE-TIME FLOOD STUDY BECAUSE OF THE FAILURE OF THE NUCLEAR PLANT AT FUKUSHIMA. WHAT RATEMAKING TREATMENT DID AMEREN MISSOURI SEEK?

A Ameren Missouri proposed a ten-year amortization of these costs.

Q IN HER REBUTTAL TESTIMONY, MS. MOORE SEEMS TO INDICATE THAT THE FUKUSHIMA COSTS HAVE ALREADY BEEN ALLOWED FOR AMORTIZATION (PAGE 32, LINES 17-21). DO YOU AGREE?

A No. It is my understanding that Ameren Missouri is proposing to include recovery of these costs through a ten-year amortization. Ms. Moore's testimony on page 32 presupposes the Commission has already authorized an amortization, is simply misleading and negatively portrays my opposition to including these costs in the determination of rates in this case.

If the Commission had already ordered an amortization of these costs, I would not be arguing that they should not be included in the determination of rates in this case. I cannot recall a time when I have proposed that an amount the Commission approved for amortization be disallowed for rate recovery.

However, in this instance, Ameren Missouri is seeking to amortize a test year expense over ten years, when its reported earnings during that period would have easily covered that expense and still allowed Ameren Missouri to earn **above** its authorized return on equity. Ameren Missouri's request to defer and amortize these test year expenses should be denied.

Q AMEREN MISSOURI IS ALSO REQUESTING AN AMORTIZATION OF ENERGY EFFICIENCY COSTS INCURRED SINCE THE END OF THE TRUE-UP PERIOD IN THE COMPANY'S LAST RATE CASE (JULY 31, 2012). DID YOU AGREE WITH THIS ADJUSTMENT?

A No. In my direct testimony, I proposed that these costs should not be included in the determination of rates in the current case since the costs have already been recovered from customers.

Q ARE THE ARGUMENTS THAT YOU PRESENTED FOR ELIMINATING THE COSTS OF THE FUKUSHIMA STUDY FROM THE DETERMINATION OF FUTURE RATES THE SAME FOR THE ENERGY EFFICIENCY COSTS?

A Yes, except there is one difference. Unlike the Fukushima Study, where the costs were all incurred during the test year, the costs associated with the energy efficiency costs cover a period beyond the test year (August 1, 2012 - December 31, 2014). However, as I clearly demonstrated in my direct testimony, Ameren Missouri's earnings were more than adequate to recover these costs during the periods when these costs were incurred.

The arguments for denying future recovery of these costs are the same as I presented for the Fukushima Study and I will not repeat them. I continue to oppose collecting these costs again.

Vegetation Management & Infrastructure Inspections

Q HAS THE COMPANY PROPOSED NEW LEVELS OF EXPENSE FOR VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTIONS?

A Yes. In its true-up package provided to the parties in this rate case, Ameren Missouri is proposing to use the true-up totals for vegetation management and infrastructure inspections. Ameren Missouri is proposing $56 million for vegetation management and $6.4 million for infrastructure inspections.

Q WHAT LEVEL OF EXPENSES ARE YOU RECOMMENDING FOR INCLUSION IN COST OF SERVICE?

A I would recommend $54 million for vegetation management expenses and $5.8 million for infrastructure inspections based on updated information.

Q WHAT WERE THE RESULTS OF THE VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTION TRACKERS THROUGH THE TRUE-UP PERIOD?

A The vegetation management tracker resulted in a regulatory asset of $2.3 million while the infrastructure inspection tracker resulted in a regulatory liability of $900,000.

Q WHAT IS YOUR RECOMMENDATION FOR THE AMOUNTS DEFERRED AS A RESULT OF THESE TRACKERS?

A I recommend that the infrastructure inspection regulatory liability be amortized over three years consistent with Ameren Missouri's proposal. I recommend that the vegetation management regulatory asset receive no ratemaking consideration. My recommendation for the vegetation management regulatory asset is consistent with

my previous arguments. That is, current retail rates have already provided recovery of these amounts.

Trackers

Q IN YOUR DIRECT TESTIMONY YOU DISCUSSED THE DISCONTINUANCE OF THE VEGETATION MANAGEMENT, INFRASTRUCTURE INSPECTIONS, AND STORM TRACKERS. DID AMEREN MISSOURI RESPOND TO YOUR PROPOSALS?

A Yes. Ameren Missouri witness David N. Wakeman filed rebuttal testimony supporting the continuation of those trackers. In this surrebuttal testimony, I will first discuss vegetation management and infrastructure inspections and then discuss the storm tracker.

Q MR. WAKEMAN ARGUES THAT THE COSTS OF VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTIONS HAVE VARIED AND WILL CONTINUE TO VARY. DO YOU AGREE?

A Yes. I agree that these costs have varied from year to year. I would expect them to do so as I would almost every operating expense incurred by Ameren Missouri. In my direct testimony, I presented Table 3 (page 19) which showed the annual amount of vegetation management costs. Over a six-year period, the variance from the smallest spend year (2008) to the largest spend year (2013) is $6 million. Furthermore, the largest difference from one year to another was from 2012 to 2013 ($2.9 million). Infrastructure inspection expenses revealed even less variance.

Given that Ameren Missouri's revenue requirement is approaching $3 billion, I do not believe the variances claimed by Mr. Wakeman justify the continuation of

these trackers. Considering the experience Ameren Missouri has in complying with the Commission rules and the lack of variation in this cost, it is time to stop this extraordinary regulatory treatment.

Q IN THE LAST RATE CASE, DID THE COMMISSION INDICATE ANYTHING ABOUT THE LIFE OF THESE TRACKERS?

A Yes. In its Order in Case No. ER-2012-0166, on page 107, the Commission stated the following:

> "However, as the Commission has indicated in previous rate cases, it does not intend for this tracker to become permanent."

In addition, in that same Order, on page 96, the Commission stated:

> "11. In general, the Commission remains skeptical of proposed tracking mechanisms. There is a legitimate concern that a tracker can reduce a company's incentive to aggressively control costs."

Q IN HIS REBUTTAL TESTIMONY, DOES MR. WAKEMAN CONTINUE TO ADVOCATE FOR A STORM TRACKER?

A Yes.

Q IN HIS REBUTTAL TESTIMONY, MR. WAKEMAN DISAGREES THAT STORM COSTS ARE NOT A LARGE COMPONENT OF AMEREN MISSOURI'S ONGOING EXPENSES. PLEASE COMMENT.

A In her rebuttal testimony, Ms. Moore proposes to include $4.6 million in expense for major storm costs. This amount cannot be claimed to be significant when compared to a revenue requirement approaching $3 billion.

Q WHEN WAS AMEREN MISSOURI FIRST ALLOWED TO TRACK MAJOR STORM EXPENSES?

A In Ameren Missouri's last rate case, Case No. ER-2012-0166, the Commission allowed Ameren Missouri to institute a storm tracker.

Q WHY ARE YOU OPPOSED TO THE STORM TRACKER?

A I have several reasons for my opposition. First, the Company has recovered every dollar it has incurred for major storm expenses dating back several years. Second, Ameren Missouri has and can file AAOs to recover extraordinary storm costs when they occur. The process has historically worked well for everyone. Finally, if the premise is that once a tracker is granted, that a utility's earnings cannot be reviewed during the period of the tracker, the tracker should be eliminated.

Q IN THE COMMISSION'S ORDER IN CASE NO. ER-2012-0166, DID THE COMMISSION DISCUSS THE PAST HISTORY OF MAJOR STORM EXPENSES?

A Yes. On page 94 of the Report and Order in Case No. ER-2012-0166, the Commission stated the following regarding past major storm expenses:

> "4. The Commission has frequently approved such AAOs and has allowed Ameren Missouri to recover its extraordinary storm recovery costs through an AAO and subsequent five-year amortizations. In fact, the company's current revenue requirement contains four separate amortizations related to extraordinary storm restoration costs.[285]
>
> 5. The current system has allowed Ameren Missouri to recover all of its major storm recovery costs in recent years. For the period from March 1, 2009, when rates from Case No. ER-2008-0318 went into effect, until the July 31, 2012 true-up cut-off date for this case, Ameren Missouri has, or will, collect in rates approximately $8.2 million more than the actual costs it incurred to restore service.[286]" [Footnotes omitted.]

The past practice for addressing major storm expenses has worked well for Ameren Missouri. The past regulatory treatment should be reinstated and the storm tracker discontinued. This is especially true if trackers are intended to shield a utility's earnings from review as part of the determination of future recovery.

For all of the reasons discussed above, I continue to propose that the Commission discontinue the trackers for vegetation management expenses, infrastructure inspections, and major storms.

Major Storm Costs

Q IN THEIR REBUTTAL TESTIMONY, AMEREN MISSOURI WITNESSES AGREED WITH THE STAFF'S PROPOSAL THAT MAJOR STORM COSTS SHOULD BE SET AT $4.6 MILLION. DO YOU ACCEPT THAT TOTAL?

A Yes. For purposes of this rate case, MIEC will not oppose the level proposed by the Staff and accepted by Ameren Missouri.[2]

Q ARE THERE ANY OTHER OUTSTANDING ISSUES RELATED TO MAJOR STORMS?

A Yes. There are two remaining issues. The first issue is whether a storm tracker should be implemented for purposes of this rate case. Earlier in my surrebuttal testimony, I have discussed why the storm tracker should not be continued.

The second issue is the test year amount of major storm expenses. Ameren Missouri claims there is $6.8 million included in the test year expenses.

[2]MIEC is only agreeing to the total and not the methodology used to derive the total.

Q HOW DID THE COMPANY CALCULATE THE $6.8 MILLION TOTAL?

A The Company claims it recorded $4.3 million actual major storm expenses in operation and maintenance expense during the test year and then recorded an amortization expense of $2.5 million, for a total expense of $6.8 million.

Q WHY WAS THE AMORTIZATION OF $2.5 MILLION INCLUDED IN THE COMPANY'S TOTAL?

A In the last rate case, Ameren Missouri was permitted to track major storm costs, and the level included in rates from that case was $6.8 million. Ameren Missouri recorded actual major storm expenses in operation and maintenance expense and established an amortization expense of $2.5 million to equal the $6.8 million included in rates.

Q DO YOU AGREE WITH THE COMPANY THAT $6.8 MILLION IS BOOKED IN TEST YEAR EXPENSES?

A Yes. After receiving more information from Ms. Moore, I agree that the test year includes $6.8 million of expense for major storm costs.

Q GIVEN YOUR AGREEMENT ON THE LEVEL OF MAJOR STORM EXPENSES, WHAT ADJUSTMENTS WOULD YOU EXPECT AMEREN MISSOURI TO INCLUDE IN ITS TRUE-UP FILING?

A In order to reflect the $4.6 million annual level of major storm expenses, I would expect that Ameren Missouri's cost of service would eliminate the previous amortization expense total of $2.5 million and increase the test year operation and maintenance expenses in FERC Account 593 by $308,250. These adjustments

combined would produce Ameren Missouri's proposed $4.6 million of major storm expenses.

Noranda Load

Q IN THE REBUTTAL TESTIMONY OF AMEREN MISSOURI WITNESS STEVEN WILLS, HE PROPOSED TO DECREASE THE ANNUAL DEMAND AND ENERGY USAGE FOR NORANDA. DO YOU AGREE WITH THIS ADJUSTMENT?

A No. The adjustment proposed by Ameren Missouri does not reflect the normalized demand and energy usage at the smelter.

Q HAS THE DEMAND AND ENERGY USAGE DECREASED AT THE SMELTER? IF SO, TO WHAT CAN THE DECLINE BE ATTRIBUTED?

A Yes. The demand and energy usage at the smelter has decreased since mid 2014. This decreased power consumption is attributable to higher than normal pot failures.

Q HAS NORANDA INDICATED IF IT WILL RETURN TO ITS NORMAL POWER CONSUMPTION, AND IF SO WHEN?

A Yes. Noranda has stated in response to Staff Data Requests 0564 and 0565 that it expects to be back at full production by the end of March 2015. I have attached Noranda's responses to Staff Data Requests 0564 and 0565 as Schedule GRM-SUR-4. Once Noranda is back at full production, its power consumption will also return to its normalized level. This brief reduction of power consumption cannot be the basis for adjusting Noranda's normalized power consumption. Therefore, I recommend that Noranda's power consumption be included at normalized levels

proposed by MIEC. Please refer to the testimony of my colleague Nicholas Phillips for further discussion on this topic.

Q DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A Yes.

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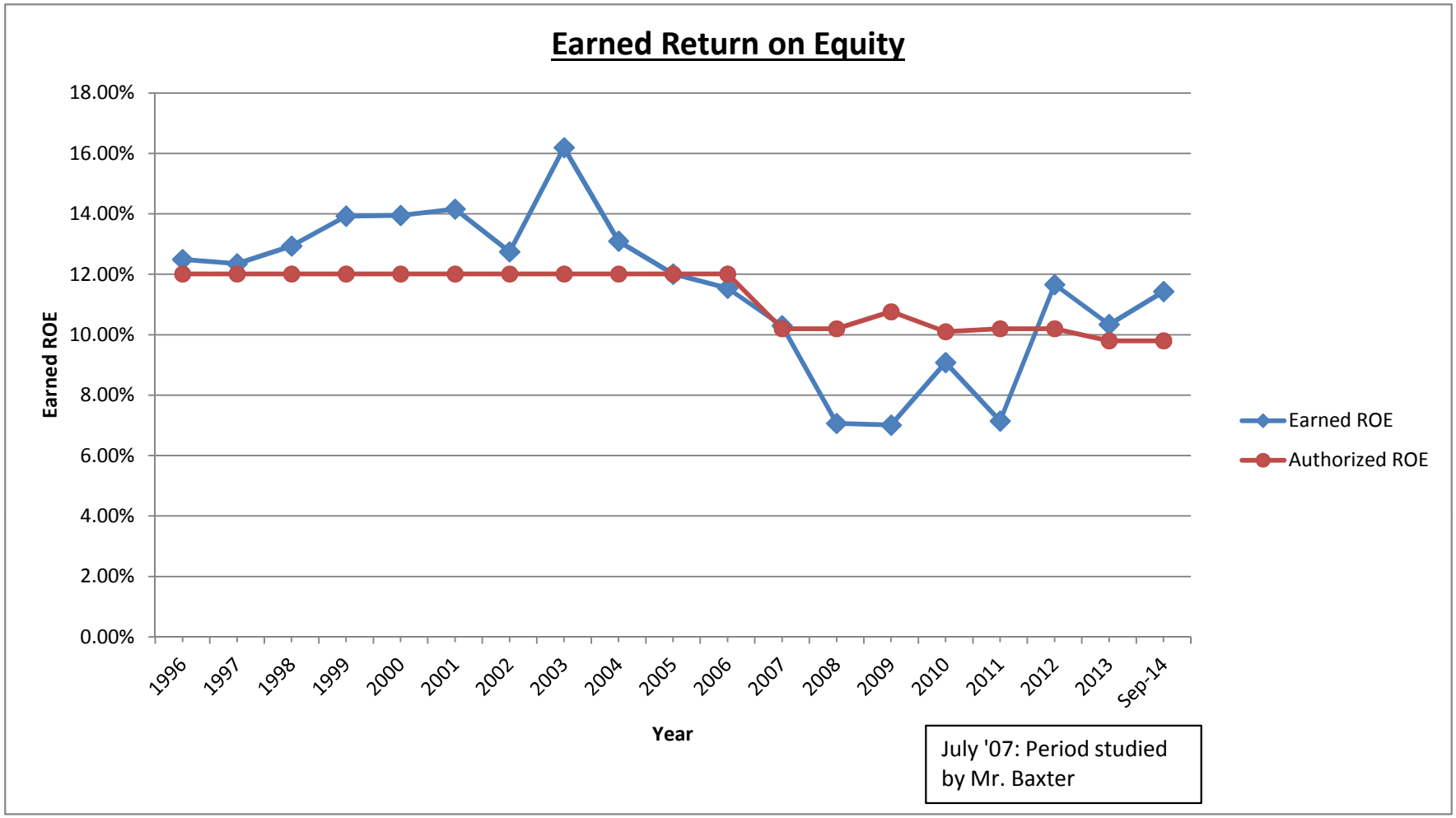
Ameren Missouri



BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Union Electric Company d/b/a Ameren Missouri	)	File No. EU-2012-0027
for the Issuance of an Accounting Authority	)	
Order Relating to its Electrical Operations	)	

DISSENTING OPINION OF CHAIRMAN ROBERT S. KENNEY

I dissent from the decision reached in the Report and Order, which grants Ameren Missouri's (Ameren's) request for an Accounting Authority Order (AAO), because it is wrong as a matter of law and as a matter of public policy.

As a matter of law, the decision is wrong because it is not supported by substantial and competent evidence. An AAO should not have been granted because the evidence showed that the requirements of the Uniform System of Accounts[1] for granting an AAO were not met.

[1] The Commission by rule has instructed that electric utilities in the state are to comply with the Uniform System of Accounts. The Commission rules provide:

> [E]very electric corporation subject to the commission's jurisdiction shall keep all accounts in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR Part 101 (1992) and 1 FERC Stat. & Regs. paragraph 15,001 and following (1992) . . . . This uniform system of accounts provides instruction for recording financial information about electric utilities. It contains definitions, general instructions, electric plant instructions, operating expense instructions, and accounts that comprise the balance sheet, electric plant, income, operating revenues, and operation and maintenance expenses.

4 CSR 240-20.030(1).

As a matter of public policy the decision to grant an AAO in this case is wrong for two reasons. First, the Commission's decision in this case is inconsistent with prior Commission decisions, particularly the Commission's decision in a recent Report and Order where the Commission denied an AAO for un-generated revenue.[2] The Commission departs from the rationale in that case with virtually no explanation. Second, it is not the Commission's job to mitigate or insure against all risk, especially business risk. In granting an AAO for un-generated revenues, a previously unheard of way of employing an AAO, the Commission has done exactly that, turning itself into an insurer of last resort.

I. The Decision in the Report and Order is Wrong as a Matter of Law

The Commission has noted that an AAO is appropriate for allowing the deferral of extraordinary costs for later recovery.[3] The Uniform System of Accounts sets forth the requirements for determining whether a particular item is extraordinary and therefore appropriate for deferral. The Uniform System of Accounts provides in pertinent part:

> Extraordinary items . . . . Those items related to the effects of events and transactions which have occurred during the current

[2] *See, In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2),* File No. GU-2011-0392, January 25, 2012.
[3] *See, In the Matter of the Application of Mo. Pub. Serv. for the Issuance of an Accounting Authority Order*, 129 P.U.R.4th 381, 385 (Mo. Pub. Serv. Comm'n 1991).

> period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.[4]

In other words, in order to qualify for deferral, the events giving rise to the request should pertain to an event that is extraordinary, unusual and unique, not recurring; and the costs associated with the event should be material.[5]

Here, there is no question that the ice storm was extraordinary. But the associated un-generated revenues are not of the type intended to be included in an AAO. First, un-generated revenues are not a cost or expense to be deferred.[6] Second, the evidence in the record demonstrates that both Ameren's storm related costs and fixed costs have already been recovered.[7]

The Report and Order asserts that Ameren is being allowed to recover "unrecovered fixed costs attributable to serving Noranda . . . ."[8] This characterization reflects a misapprehension of the process of ratemaking and rate design. Alternatively, this characterization creates a fiction in order to justify the result reached. It is true that rates are set based on cost of service. And a customer class's rate should roughly approximate the cost to serve that

[4] *See*, GU-2011-0392, *supra*, footnote 2, quoting Uniform System of Accounts, General Instruction No. 7.
[5] Staff Exhibit No. 3, Rebuttal Testimony of Mark L. Oligschlaeger, page 6, lines 8-10.
[6] *See*¸ GU-2011-0392, *supra*, footnote 2.
[7] Tr. Vol.2, pages 92-94.
[8] Report and Order, page 2, paragraph 3.

class. But after rates are set, the dollars coming into the utility are not segregated into specific accounts designated or earmarked by customer class. In other words the dollars coming in are fungible.

The evidence adduced in this case shows that Ameren did, in fact, recover its fixed costs and earned a profit. Any assertion to the contrary is not supported by evidence.

In addition, Ameren's application is untimely as an AAO is intended as a mechanism to defer items during the period in which the event occurred. The event occurred in January of 2009. But Ameren did not file its application until July of 2011, approximately two and a half years after the storm occurred. The Uniform System of Accounts defines extraordinary items as "[t]hose . . . related to the effects of events . . . [that] have occurred during the current period . . . ."[9]

II. The Decision in the Report and Order is Wrong as a Matter of Public Policy

Approval of Ameren's application only gives Ameren the opportunity, but not the guarantee, to recover its un-generated revenue. But the fact is that the recording of the un-generated revenues has the effect of distorting the utility's balance sheet. Additionally, it is contrary to sound ratemaking

[9] *See*, GU-2011-0392, *supra*, footnote 2, quoting Uniform System of Accounts, General Instruction No. 7.

principles. Furthermore, it is rarely, if ever, the case that the Commission has allowed deferral of a cost and then disallowed that deferral in a future rate case. As Mark Oligschlager testified, a regulatory asset is a "cost booked by a utility based upon a *reasonable probability regulatory authorities will agree to allow recovery of the cost* at a later time."[10] (Emphasis added).

Additionally, the decision the Commission reaches in this case is inconsistent with the decision in GU-2011-0392.[11] In that case the Commission granted an application for an AAO as to capital costs and operating and management expenses related to the utility's restoration of service after the Joplin tornado. But the Commission denied the application as to "un-generated revenue."[12] While the Commission is not bound by its prior decisions, when it departs from them, sound regulatory policy dictates that it should explain that departure. The Report and Order in this case departs from sound regulatory policy by failing to adequately distinguish the granting of an AAO here from the Commission's denial in GU-2011-0392.

Finally, it is not the Commission's responsibility to shield utilities from all business risk. The Western District Court of Appeals instructs that

[10] Staff Exhibit No. 3, Rebuttal Testimony of Mark L. Oligschlaeger, page 6, lines 2-4.
[11] *See*, GU-2011-0392, *supra*, footnote 2.
[12] *Id.* at 2.

"Ameren . . . ignores that the risk of a dramatic loss of retail revenue is a business risk every utility faces . . . ."[13] I agree.

III. Conclusion

An AAO is reserved for rare exceptions, traditionally granted to allow a utility the opportunity to recover costs unaccounted for in its rates and associated with extraordinary events (i.e. restoration costs associated with the Joplin tornado[14]). This is so because the deferral of certain expenses, but not others, for recovery in later periods is contrary to traditional ratemaking principles whereby all items of expense and revenue from a test year are used to set rates. That is why recording discreet items from outside of the test year for later recovery is reserved only for extraordinary items; it would otherwise distort rates. Of course, the Commission wants to encourage utilities to work expeditiously to restore service to consumers after storms, and if as a result the utility faces material financial harm that could impede its provision of safe and adequate service to consumers, then granting an AAO may be appropriate.

But because Ameren's request for an AAO was not supported by substantial and competent evidence on the whole record demonstrating

[13] *Union Electric Co. v. Pub. Serv. Comm'n*, 399 S.W.3d 467, 490 (Mo. Ct. App. 2013)
[14] *In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)*, Case No. GU-2011-0392, January 25, 2012.

conformity with the Uniform System of Accounts and because granting an AAO in this case is contrary to sound regulatory policy, I respectfully dissent.

Respectfully Submitted,

Robert S. Kenney, Esq.
Chairman

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Southern Union Company for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)	))))))	File No. GU-2011-0392

REPORT AND ORDER

Issue Date: January 25, 2012

Effective Date: February 24, 2012

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Southern Union Company for the Issuance of An Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)	))))))	File No. GU-2011-0392

FINAL DECISION GRANTING IN PART, AND DENYING IN PART, ACCOUNTING AUTHORITY ORDER

Issued: January 25, 2012 Effective: February 24, 2012

The application of Southern Union Company ("the Company") for an accounting authority order ("AAO") is:

- Granted as to operating and management expenses, and capital costs, because those expenditures constitute extraordinary items. Such items are subject to recording in Account 182.3. Amortization for those items shall start on January 1, 2012, and continue for ten years.
- Denied as to ungenerated revenue.[1] The Company has not carried its burden of proving that its sales dropped, and that any such drop would constitute an "item" for recording in any period. AAOs do not create an item for recording.

This decision does not determine whether any item will be recoverable in a future general rate increase request[2] ("rate case"). This decision constitutes the Commission's final decision subject to rehearing under Section 386.500, RSMo 2000.[3]

[1] "Lost revenue," is the term that the Company and Staff use, but that term is misleading because it suggests that the Company had the money and then lost it, which is untrue. OPC's term "expected revenue," is more accurate. "Ungenerated" fully expresses the characteristic determinative of the claim.

[2] As defined at 4 CSR 240-2.065(1).

Contents

Appearances

For Southern Union Company d/b/a Missouri Gas Energy:

L. Russell Mitten and Paul A. Boudreau
Brydon, Swearengen & England, PC
312 East Capitol, P.O. Box 456, Jefferson City, MO 65102.

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[3] 4 CSR 240.2-070(13).

For Staff:

Robert Berlin, Sarah Kliethermes, and Goldie Tomkins
Missouri Public Service Commission
200 Madison Street, Suite 800, P.O. Box 360, Jefferson City, MO 65102.

For the Office of the Public Counsel:

Marc Poston
Office of the Public Counsel
200 Madison Street, P.O. Box 2200, Jefferson City, MO 65102

Senior Regulatory Law Judge: Daniel Jordan.

Procedure

The Company filed the application on June 6, 2011. On August 19, 2011, Staff filed its recommendation favoring a partial denial of the application and the Company filed a response to the recommendation.[4] The Commission received no application for intervention. The Commission issued notice of a contested case[5] and convened an evidentiary hearing on the application's merits on November 30, 2011. The parties filed briefs on December 23, 2011.

I. Past Commission Decisions

At the hearing, the parties appropriately shaped their presentations to matters made relevant by the controlling law as they see it. The controlling law, as quoted below, includes Commission regulations that incorporate federal regulations, which have not changed since 1991. Perhaps for that reason, a 1991 Commission decision

[4] 4 CSR 240-2.080(15).

[5] On September 20, 2011.

("Sibley") figures prominently in all parties' arguments.[6] The Commission's analysis in a past decision may help resolve issues in a later case.

But the parties do not offer analysis to guide the Commission. They offer past findings and conclusions attempting to restrict the Commission's discretion, as if past Commission decisions constitute a body of case law, like appellate court opinions with the weight of stare decisis. Stare decisis does not bind the Commission to past Commission decisions.[7] Such arguments are misleading, and denigrate the authority and duty of the Commission to apply the law to the facts the best it can, which is the same today as it was in the past.[8]

That authority and duty may lead the Commission on any day to read the law differently from the way it read the law 20 years before.[9]

II. Other States' Decisions

The parties also cite decisions of other commissions. The Company cites a Hawai'i Public Utilities Commission ("Hawai'i PUC") decision ("Hawai'i decision")[10] and

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[6] *In the Matter of the Application of Missouri Public Service for the Issuance of an [AAO]*, 129 P.U.R.4th 381 (Dec. 20, 1991).

[7] *State ex rel. AG Processing, Inc. v. Public Serv. Comm'n,* 120 S.W.3d 732, 736 (Mo. banc 2003).

[8] The parties refer to the Sibley decision as though it added something new to USoA, and refer to purported "prevailing case law;" and a Sibley standard, test or requirements. Those references imply that (i) the Sibley decision constitutes a Commission statement implementing, interpreting, or prescribing law or policy; and (ii) such statement generally applies to AAOs. On the contrary, no such Commission statement controls the disposition of this contested case without promulgation as the statutes require. *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 361 (Mo. banc 2001). See also Section 536.021.9, RSMo 2000; Section 386.125, RSMo Supp. 2010.

[9] *Id.* The Company offers a standard under which the Commission may read the law differently only if it can "articulate a sound basis for such a significant change in regulatory policy." *Post-Hearing Brief of the [Company]* at 8-9. In support, the Company cites *McKnight Place Extended Care, L.L.C. v. Missouri Health Facilities Review Comm.*, 142 S.W.3d 228, 235 (Mo. App., W.D. 2004), where the court stated, "An administrative agency is not bound by stare decisis, nor are agency decisions binding precedent on the Missouri courts. 'Courts are not concerned with alleged inconsistency between current and prior decisions of an administrative agency so long as the action taken is not otherwise arbitrary or unreasonable.' The mere fact that an administrative agency departs from a policy expressed in prior cases which it has decided is no ground alone for a reviewing court to reverse the decision." *Id.* (citations omitted).

Staff and OPC cite a Delaware Public Service Commission ("Delaware PSC") decision ("Delaware decision").[11] Those decisions do not bind the Commission[12] and the Commission finds those decisions unpersuasive.

In the Hawai'i decision, the relief, facts, and procedure were significantly different from this case. The Hawai'i utility sought "lost gross margin."[13] The factual basis was Hurricane Iniki, which destroyed over 30 percent of the utility's transmission and 30 percent of the utility's distribution infrastructure. The Hawai'i decision merely approved a settlement just seven weeks after the filing of an application. It cites no controlling authority.

The Delaware decision cites provisions of law that also appear in this decision. But it applies those provisions, without analysis, substituting earlier Delaware PSC decisions for legal reasoning. Earlier Delaware PSC decisions may bind the Delaware PSC, but they do not bind the Commission. [14]

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[10] *Re Citizens Utilities Co., Kauai Elec. Div.*, 138 P.U.R.4th 589 (Hawai'i P.U.C., Dec. 9, 1992).

[11] *Re United Delaware, Inc.*, 284 P.U.R.4th 496 (Del. P.S.C., Sept. 21, 2010).

[12] *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State of Mo.*, 765 S.W.2d 618, 623 (Mo. App., W.D. App. 1988).

[13] Defined as "revenue lost as a result of its diminished customer base, less variable production costs avoided as a result of diminished demand." Hawai'i decision at 593.

[14] This moots the Company's objection to the Delaware decision. The Company objects that the Commission was not asked, and therefore did not take, official notice on the record of the Delaware decision. The Company cites *Prokopf v. Whaley*, 592 S.W.2d 819, 823 (Mo. banc 1980), stating that a reviewing court cannot take official notice of an administrative regulation, which does not apply to the Delaware decision. Because the Delaware decision's failure to analyze controlling law renders it unhelpful, no prejudice accrues to the Company when we read it.

III. Standards

The burden of proving the elements of an AAO is with the Company[15] and the quantum of proof is a preponderance of the evidence.[16] Discretion's boundaries generally are careful consideration, justice, and the logic of the circumstances.[17]Under those standards, the Commission independently finds the facts[18] as follows.

Findings of Fact

1. The Company is a Delaware corporation authorized to do business in Missouri under the fictitious name of "Missouri Gas Energy." the Company's principal office is located at 3420 Broadway, Kansas City, Missouri 64111.

2. The Company provides natural gas services in 29 Missouri counties to approximately 515,000 customers.

3. For the April 2011 billing month, the Company had in the City of:

a. Joplin, Missouri ("Joplin"):16,165 customers; and

b. Duquesne, Missouri ("Duquesne"): 533 customers.

I. The Tornado

4. On May 22, 2011, at 5:17 p.m., the National Weather Service issued a tornado warning for Joplin and Duquesne ("the tornado area") and 24 minutes later, a tornado touched down ("the tornado").

[15] *State ex rel. Tel-Central of Jefferson City, Inc. v. Public Serv. Comm'n of Missouri*, 806 S.W.2d 432, 435 (Mo. App., W.D. 1991).

[16] *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

[17] *Peters v. ContiGroup,* 292 S.W.3d 380, 392 (Mo. App., W.D. 2009).

[18] The findings of fact reflect the Commission's assessments of credibility. *Stone v. Missouri Dept. of Health & Senior Services*, 350 S.W.3d 14, 26 (Mo. banc 2011).

5. The tornado was a rare multi-vortex tornado, in which the funnel cloud spins off smaller, faster funnel clouds within its edges. The tornado rated an EF-5 on the Enhanced Fujita Scale, the highest rating possible. The tornado was the single deadliest tornado recorded.

6. The tornado took lives and property in the tornado area as follows:

a. 162 people dead and 900 more injured;

b. 4,000 residences destroyed and 3,500 more damaged; and

c. 300 businesses destroyed.

7. The tornado resulted in the disconnection of approximately 3,200 customer meters, which represents 0.62 percent of the Company's customer base.

8. As of the date of the hearing, the Company had reconnected about 1,900 of the customers who lost service due to the tornado.

II. Expenditures

9. To restore service lost to the tornado, the Company incurred O&M expenses ("O&M") and capital costs ("capital") for repair, restoration, and rebuild activities.

10. Insurance proceeds, government grants, and tax credits will cover some of the O&M and capital.

11. As of July 28, 2011, the Company had spent:

a. O&M: $1,042,000.

b. Capital: $ 99,500.

12. The projected amounts needed to restore service may run as high as:

a. O&M: $1,318,000.

b. Capital: $6,667,000.[19]

13. Those projected amounts represent proportions of the projected total as follows:

a. O&M: 16.5 percent (1/6).

b. Capital: 83.5 percent (5/6).

14. Amortization will be more accurate the closer it starts to when the Company made the expenditures. Accounting practices amortize expenditures as follows:

a. O&M over five years; and

b. Capital over twenty years.

15. The Company's next rate case rate case will occur no later than approximately September 18, 2013.[20]

III. Ungenerated Revenue

16. Just after the tornado, in the period May-September 2011, Company revenue was up by $409,119 in the Company's Missouri service territory overall, over the same period in 2010. [21]

17. Customer payments throughout the Company's service territory fund the Company's fixed costs throughout the Company's service territory.

18. The Company collects revenue under a rate structure called straight fixed-variable ("SFV").

19. SFV attributes each customer's bill to two types of Company cost itemized as follows:

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[19] Company Exhibit 1, page 5 line 9, to page 6 line 7.

[20] Company Exhibit 2, page 20, lines 13 through 16.

[21] OPC Exhibit 2, page 2 line 18, to page 3 line 20.

a. Fixed: what the Company spends on each customer, whether that the customer consumes gas or not.

b. Variable: what the Company spends on gas that the customer consumes.

But neither charge represents an exclusive fund for paying the respective cost. The Company may pay either cost amounts collected under either attribution.

20. Any drop in revenue from the tornado area resulting from the tornado-related disconnections ("ungenerated revenue") threatens neither the Company's ability to provide safe and adequate service, nor its opportunity to earn a profit.

Conclusions of Law

The Commission independently concludes as follows.

I. Jurisdiction

The Commission has jurisdiction as follows. The Company is a public utility.[22] Public utilities are within the Commission's jurisdiction for record-keeping,[23] and rate-setting,[24] both of which are subjects of the parties' arguments.

Staff and OPC argue that issuing an AAO for ungenerated revenue constitutes retroactive ratemaking and single-issue ratemaking. Retroactive ratemaking and single-issue ratemaking are doctrines founded on constitutional and statutory provisions, respectively. But Missouri case law is directly to the contrary. It states,

[22] Section 386.020(18) and (43), RSMo Supp. 2010.

[23] Section 393.140(4), RSMo 2000.

[24] Section 393.140(11), RSMo 2000.

generally, that an AAO does not constitute ratemaking.[25] It also states, specifically, that an AAO does not constitute single-issue ratemaking.[26]

Staff and OPC do not make those arguments as to expenditures. Further, Staff and OPC cite no authority for the Commission to determine the validity of the regulations governing this action. Therefore, the Commission will apply its regulations[27] to its findings as follows.

II. AAOs

The Commission's regulations[28] incorporate 18 CFR 201, the Uniform System of Accounts ("USoA"). USoA is a set of federal regulations that governs utilities' recording of items. USoA includes *General Instructions*, *Definitions*, and *Balance Sheet Accounts Assets and other Debits* ("*Accounts*").

A. Generally

Ordinarily, USoA records any item of profit or loss in the year in which the item occurred ("current" year) as set forth in *General Instructions*:

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[25] *Missouri Gas Energy v. Pub. Serv. Comm'n, State of Mo.*, 978 S.W.2d 434, 438 (Mo. App., W.D. 1998).

[26] *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Missouri*, 858 S.W.2d 806, 813 (Mo. App., W.D. 1993).

[27] *State ex rel. Stewart v. Civil Serv. Comm'n of St. Louis*, 120 S.W.3d 279, 287-88 (Mo. App., E.D. 2003).

[28] 4 CSR 240-40.040(1). The Commission made that regulation under the statutory delegation of authority at Section 393.140(4), RSMo 2000, "to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations [and] forms of accounts, records and memoranda to be kept by such persons and corporations [.]" The Company notes that a change "in the required method or form of keeping a system of accounts" requires six months' notice "to such persons or corporations." Orders of uniform application, as described in that 1913 statute, are now subject to today's statutes on rulemaking. Section 386.250(6); and Sections 536.021 and 386.125, RSMo Supp. 2010. (Compare Section 393.140(8), RSMo 2000, which provides a hearing when the Commission inspects the books of a specific "corporation or person" and makes an order as to a "particular" item.) Rulemaking includes amending a rule. Section 536.021.1, RSMo Supp. 2010. The Commission cannot make a rule through adjudication. *Greenbriar Hills Country Club v. Dir. of Revenue*, 47 S.W.3d 346, 361 (Mo. banc 2001). This decision addresses only the Company's right to record the items described in the application, and does not change the uniform method or form of keeping accounts for gas corporations. Therefore, this decision may take effect in less than six months.

> [N]et income shall reflect all items of profit and loss during the period with the exception of [certain items.[29]]

And:

> All other items of profit and loss recognized during the year shall be included in the determination of net income for that year. [[30]]

"Shall" signifies a mandate and means "must" in the present tense.[31] As Staff aptly describes it, USoA "defaults" to current recording.

The year in which a utility records an item is important because of Commission practice in setting utility rates. Commission practice is to project a utility's future cost of service from a historic test year. If that test year does not include a certain item, that item will not count in setting the rates. Current recording thus excludes items outside the test year from consideration in rate-setting. That is true even for items with far-reaching effects for the utility and the customer.

To protect just and reasonable rates, USoA requires the utility to record certain items in a special account designated "182.3 Other regulatory assets:"

> A. This account shall include the amounts of regulatory-created assets, not includible in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition No. 31.) [[32]]

Definition No. 31 provides:

> Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies.

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[29] General Instruction No. 7 (emphasis added).

[30] General Instruction No. 7.1 (emphasis added).

[31] *State ex rel. Scott v. Kirkpatrick*, 484 S.W.2d 161, 164 (Mo. banc 1972). That requirement is subject to "a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application" under 4 CSR 240-40.040(5). No such application is before the Commission.

[32] Account No. 182.3.

> Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of [USoA] but for it being probable: 1) that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services [.[33]]

Regulatory assets in Account 182.3 are thus preserved beyond their current year for consideration in later rate case. In Commission practice, that treatment is called "deferral" and a Commission order directing that treatment is called an AAO.

An AAO is only necessary to defer an item that is less:

> . . . than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. [[34]]

The last sentence expressly provides "Commission approval . . . to treat an item of less than 5 percent, as extraordinary."[35] Otherwise the utility makes those determinations for itself every day.

To summarize:

- A utility must record all items of profit and loss.
- The utility routinely does that on its own.
- A utility must determine the recording year: current or deferred.
- The utility routinely does that on its own, too.
- No AAO is necessary for any recording, except to defer 5 percent or less.

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[33] Definition No. 31.

[34] General Instruction No. 7.

[35] That plain language shows that two arguments of Staff and OPC to the contrary are meritless: (i) deferral is possible only for amounts greater than 5 percent of income; and (ii) the Company should file rate case.

- Items deferred are preserved for consideration in a later rate case.[36]

The elements of an AAO are as follows.

B. Extraordinary

USoA makes an exception to current recording for:

> Extraordinary items. . . . Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future [.[37]]

That language examines an event's:

- Time (during current period);
- Rarity (unusual, infrequent, not foreseeably recurring, activities abnormal and significantly different from the ordinary and typical,); and
- Effect (significant).

Those characteristics are all manifest in the tornado. The tornado occurred in the current period because it occurred on May 22, 2011, which was the period of the application. The tornado was rare because it caused damage unseen in the United States for 60 years. The tornado had a significant effect because it disconnected 3,200 meters.[38] Therefore, "items related to the effects of" the tornado are extraordinary, and are subject to deferred recording.

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[36] Later consideration in a rate case may explain why prior authorization is required for smaller items and not for larger items. As in this case, small items may cause disproportionately large litigation. Such litigation is better before a rate case than during a rate case.

[37] General Instruction No. 7 (emphasis added).

[38] Staff's and OPC's restriction of "significant effect" to dollar amounts has no basis in USoA.

C. Items

If an event is extraordinary, consequent items are free from current recording. The Company and Staff agree, and OPC does not object, to deferred recording for the O&M and capital (together, "actual expenditures") required to restore the Company's service after the Joplin tornado. Because those expenditures are extraordinary, their recording shall be deferred.

i. Amount

Each party offered evidence of the amounts spent on restoration. But the expenditures were continuing as of the hearing date, so any number based on the record in this action was already obsolete when it was offered. An amount certain for 2011 is ascertainable only when all information for 2011 is available. In other words, this AAO consists of:

> . . . just putting all this stuff in a box and saying, hey we're going to take a look at this box later on and determine whether it's appropriate to be . . . recovered or not [.[39]]

The Commission has approximated as best it can the eventual amounts required to restore service. But no further finding is necessary or helpful, so the Commission will make its order as to the quality, but not the quantity, of items subject to deferral.

ii. Amortization

The parties dispute the period and start date of amortization for deferred expenditures. The Company requests a five year period. The record shows that the standard amortizations are (i) five years for O&M, and (ii) twenty years for capital. The Company estimates that the ratio of eventual expenditures will be approximately 5/6

[39] Transcript, volume II, page 61 line 23 to page 63 line 1.

capital and 1/6 O&M. Therefore, the Commission will set amortization at Staff's recommended ten years.[40] The Commission will order the amortization to begin on January 1, 2011 because a closer start date yields a more accurate result.

iii. Conditions

OPC asks the Commission to condition any AAO on a requirement that the Company file a rate case generally no later than May 22, 2013. The Company argues that such an action is already due by September 18, 2013, because its rate includes an infrastructure and system replacement surcharge ("ISRS"), which requires a rate case every three years. OPC's premise is that General Instruction No. 7 bars deferral below 5 percent, which the plain language refutes.

OPC also asks the Commission to impose a condition that safeguards against deferring expenditures that the Company was scheduled to make anyway because such expenditures are not "related to the effects of" the tornado. That determination will be ripe if the Company offers scheduled items as deferred items in its next rate case. In any event, OPC proposes no such language that would provide what it wants.

Also, OPC proposes no language providing its proposed conditions. The Company does not object to Staff's proposed conditions: including all setoffs and detailed documentation. Therefore, the Commission will grant the application as to expenditures as described, subject to Staff's proposed conditions as set forth in the ordered paragraphs.

[40] This is less generous than the Company's requested five-year period, but substantially more generous than the weighted average of the periods for capital and O&M. (20 x 5) + (5 x 1) / 6 = 17.5. On this matter the Commission gives weight to Staff's expertise in accounting practice.

III. Probable Recovery

Staff and OPC argue that the Company must also prove that an item is "probably" recoverable in the next rate case. The Company argues that no such requirement exists. The Company is correct.

A. Recording Period

Staff and OPC cite the description of a regulatory asset that appears in both *Definitions* and *Accounts*.

Staff and OPC read "the Commission will probably allow recovery for such items" in the following:

> Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable: 1) that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services [.[41]]

And:

> B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services [.[42]]

That language refutes Staff's and OPC's reading as follows.

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[41] Definition No. 31 (emphasis added).

[42] Emphasis added.

As the Company notes, the language addresses only the period of inclusion. It describes items that "would have been included in" "one" or "the current" "period "but for it being probable that such items will be included in a different period." The period of inclusion, current or different, is the only distinction between regulatory assets and other assets under the quoted language. And to be included for purposes of developing rates does not equal "recoverable." Many items are included in the Commission's consideration when the Commission develops rates. Some items merit recovery, and others do not, but that determination occurs in a later rate case.

This is plain from other provisions, not cited by Staff and OPC, of Account No. 182.3:

> C. If rate recovery of all or a part of an amount is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of disallowance.
>
> D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account. [43]

In other words, Account No. 182.3 is for an amount that:

- Would be included in the current period for determining income; but
- Will probably be included in a different period for developing rates;
- For which recovery will be determined later based on records kept.

That simply describes deferred recording: recording an item as paragraph B describes, for determination of recovery in a later rate case as paragraph C describes, based on records as paragraph D describes.

[43] Account No. 182.3 (emphasis added).

Deferred recording—preserving an item for consideration in a later ratecase—is *the* relief that an AAO grants, as described by the case law footnoted above and worth quoting here:

> In [an earlier] case, the court made it clear that AAOs are not the same as ratemaking decisions, and that AAOs create no expectation that deferral terms within them will be incorporated or followed in rate application proceedings. The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order. At the rate case, the utility is allowed to make a case that the deferred costs should be included, but again there is no authority for the proposition put forth here that the PSC is bound by the AAO terms. [[44]]

And:

> The Commission authorized [the utility] to defer certain costs by recording them in Account No. 186. The Commission's order did not presume to determine a new rate but effectively permitted [the utility] the option to file a rate case by December 31, 1992, and then to present evidence and argue that the deferred costs recorded in Account No. 186 should be considered by the Commission in approving a rate change.[[45]]

That case law holds that an AAO simply sets an item aside for later consideration in a separate action.

Staff and OPC leave unexplained two crucial matters. The first is why the Commission would determine recoverability twice: once in this action and again in the later rate case.[46] The second is "probability." Staff and OPC leave probability undefined

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[44] *Missouri Gas Energy v. Pub. Serv. Comm'n, State of Mo.*, 978 S.W.2d 434, 438 (Mo. App., W.D. 1998) (citation omitted).

[45] *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Missouri*, 858 S.W.2d 806, 813 (Mo. App., W.D. 1993).

[46] Staff and OPC may believe that, under their theory, they need win only once and the Company must win twice. But see, *State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n*, 344 S.W.3d 178, 186-88 (Mo. banc 2011).

so neither Commission nor a reviewing court can tell whether the evidence meets that standard.

Therefore, the Commission concludes that "but for it being probable" does not make "probable recovery" an element of the Company's claim.

B. Capitalization of Regulatory Assets

OPC cites Financial Accounting Board Standard No. 71, Section 9 ("FAS 71.9"). FAS 71.9 does not govern this Commission under any law cited. Even if it did, FAS 71.9 does not set requirements for the issuance of an AAO and does not discuss the period for recording an item.

FAS 71.9 constitutes a guideline for accounting treatment of Company assets. That determination must account for Commission actions according to FAS 71.9. FAS 71.9 thus describes the accounting consequences of—not the legal prerequisites for—deferred recording as follows.

First, the Commission may create a regulatory asset:

> Rate actions of a regulator can provide reasonable assurance of the existence of an asset.

Second, if recovery of a past cost will generate enough revenue to cover that cost, the Company must capitalize it: [47]

> An enterprise shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

[47] That treatment, Staff and OPC argue, leads to further undesirable consequences: that an AAO for ungenerated revenue will relieve the Company of business risk, shift that risk to ratepayers, and distort the Company's financial image. Those considerations can support allocation of a loss to the utility, as in *State of Missouri ex rel. Union Elec. Co.*, 765 S.W.2d 618 (Mo. App., W.D. 1988). The Commission addresses those considerations in its rejection of the ungenerated revenue claim below.

> a. It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable cost for rate-making purposes.
>
> b. Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate adjustment clause, this criterion requires that the regulator's intent be to permit recovery of the previously incurred cost. [48]

FAS 71.9 addresses capitalization of deferred claims, not standards for granting the application. [49] Therefore, the word "probable" does not make probable recovery an element of the Company's claim.

C. Summary as to Probable Recovery

Staff's "probable recovery" argument creates a new kind of mini-rate case outside of any other rate case. No such intent appears anywhere in the controlling law. The Commission concludes that "probable recovery" is not an element of a claim for an AAO.

IV. Ungenerated Revenue

The Company also seeks to record ungenerated revenue in Account 182.3 in an amount equal to its fixed cost charge times the customers who lost service due to the tornado. The Company argues that customers disconnected due to the tornado don't pay bills, part of which is earmarked as fixed costs, so the Company cannot pay its fixed costs. Staff and OPC allege that there was no drop in revenue and that nothing prevents the Company from paying its fixed costs. Staff and OPC also argue that

[48] FAS 71, Section 9 (emphasis added).

[49] "As can be seen, not only do these laws and regulations not share a common purpose, they likewise don't even address a common subject matter." *Dep't of Soc. Servs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 14 (Mo. App., W.D. 2007).

revenue not generated, from service not provided, is not an "item" for recording in any period. Staff and OPC are correct.

A. No Drop in Revenue and No Unpaid Costs

The Company hypothecates a loss by isolating a drop in revenue in the tornado area. No authority makes that area relevant to exclusion of the rest of the Company's service territory. On the contrary, Staff and OPC showed that Company revenue is up.

Staff and OPC supported their allegations with evidence that supports the findings above as follows. The maximum number of meters disconnected was less than two-thirds of one percent of the Company's customer base. Over half were re-connected as of the date of the hearing. Company revenue was up $409,119 in the months after the tornado over the same time the previous year. The Company made no attempt to rebut that evidence, which negates the Company's allegation of a "loss."

Even if there were a drop in revenue, it would not prevent recovery of fixed costs. The Company argues that:

> Consequently, instead of covering its fixed costs through rates, the funds necessary to pay those costs are coming directly from MGE's earnings. Requiring MGE to dip into earnings to cover its fixed costs of providing service acts to deny the company the reasonable opportunity to earn a fair rate of return to which it is entitled by law. [50]

But that happens whenever a customer leaves the Company's service under ordinary events. The Company equates a customer's departure to a reduced opportunity for profit while ignoring the costs saved by providing no service. The Company offers no authority for its lopsided definition of opportunity to earn.

[50] Transcript, volume II, page 30, lines 20 through 25.

SFV does not create two types of money. SFV merely attributes the Company's costs of serving a customer class to a line on customer bills. The Company stands SFV on its head, changing it from a description of how the Company collects revenue to a prescription for how the Company shall spend revenue. The Company offered no evidence that revenue continuously generated, from its 511,800 customers not deprived of service, is insufficient to cover fixed costs.

On the contrary, the rates that the Company is collecting throughout the State include amounts for its fixed costs throughout the State. The absence of any real loss makes the case for rejection of ungenerated revenue even stronger than in *State of Missouri ex rel. Union Elec. Co.*[51] In that case, the item rejected was money actually spent on the aborted Callaway II power plant ("cancellation costs"). The utility claimed recovery of cancellation costs, the Commission rejected that claim, and the Court of Appeals affirmed on that point. Reasons for allocating the loss to the utility included the compensation for business risk that the utility receives in its rates. The Commission need not guarantee the Company's profit, nor shift the risk of disappointing profits to ratepayers, especially when the source of disappointment is the provision of no service.

B. No Item

In support of recording ungenerated revenue on a deferred basis, the Company urges the Commission to look only at whether the tornado was extraordinary. Staff and OPC argue that the AAO sought would not only allow the recording of an item, it would create the item recorded. Staff and OPC are correct.

[51] 765 S.W.2d 618 (Mo. App., W.D. 1988).

An extraordinary item is simply one that would ordinarily be currently recorded according to *Definitions* and *Accounts*. Account No. 182.3 provides:

> B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated or other comprehensive income, determinations in the current period under the general requirements of [USoA.[52]]

Definition No. 31 provides:

> . . . Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of [USoA.[53]]

Deferred recording is merely the alternative to current recording.

The Company argues that the Commission must allow deferral of revenues because the Commission allowed deferral of costs in the Sibley decision and USoA applies equally to both. The Company's premise is right but its conclusion is wrong. Consistent application of USoA results in different results on different facts.

As Staff notes, in the Sibley decision, the Commission deferred recording of actual expenditures. This explains the language on which the Company relies:

> [T]he decision to defer costs associated with an event turns on whether the event is in fact extraordinary and nonrecurring. [[54]]

Actual expenditures exist in the past, present, or future and represent an exchange of value that the Company must record. Ordinarily, the Company records them currently and, if they are extraordinary, the Company must record them in Account 182.3.

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[52] Emphasis added.

[53] Emphasis added.

[54] 129 P.U.R.4th at 385 (emphasis added).

The Company's claim is different. Ungenerated revenue never has existed, never does exist, and never will exist. Revenue not generated, from service not provided, represents no exchange of value. There is neither revenue nor cost to record, in the current period nor in any other.

The Company showed no instance when service not provided resulted in recording any revenue or cost, lost or generated, on a deferred or current basis. That is because the Company cannot have an item of profit or loss when it provides no service, whether the cause of no service is ordinary or extraordinary. Services not provided and revenues not generated are mere expectancies, are things that simply did not happen, and are not items at all.

C. Summary as to Ungenerated Revenue

An AAO only determines the period for recording an item but the Company seeks an AAO to create the item itself by layering fiction upon fiction. To issue an AAO for ungenerated revenue would create a phantom loss, and an unearned windfall, for the Company. Therefore, the Commission will deny the AAO as to ungenerated revenue.

V. Summary

Each party conflates this action with an irrelevant agenda. The Company wants the Commission to make an item out of something it never records otherwise, while Staff and OPC want the Commission to determine that the newly minted item will not be recoverable when the Company raises it in an action not yet filed. Neither matter is within the function of an AAO.

Rulings

Therefore, the Commission issues its AAO as follows.

THE COMMISSION ORDERS THAT:

1. The *Application* of Southern Union Company ("the Company") for an accounting authority order ("AAO") to defer recording items related to the effects of the Joplin tornado of May 22, 2011, to Account No. 182.3, Other Regulatory Assets, ("application") is denied in part and granted in part as follows.

2. The application is denied as to ungenerated revenue as described in the body of this order.

3. The application is granted as to actual incremental operations and maintenance expenses, and capital costs, associated with repair and restoration activities, with depreciation and carrying charges equal to the Company's ongoing Allowance for Funds Used during Construction rates associated with capital expenditures.

4. Authority to defer recording is conditioned on the following. The Company shall:

a. Not seek to recover through its Infrastructure System Replacement Surcharge rate any capital costs for which it is deferring depreciation and carrying charges under this order.

a. Apply, to the total amount of deferred costs, any insurance claim proceeds, government payments, government credits, and other offsets applicable to incremental operation and maintenance expense or capital expenditures.

b. Ratably amortize deferred costs expense over a ten-year (120-month) period beginning on January 1, 2012, and concluding on December 31, 2021.

c. Maintain records, invoices and other documents as required by 18 CFR 201, Account No. 182.3. For each expenditure in Account No. 182.3, those records shall support the nature and amount, including any related deferred taxes recorded as a result of the cost deferral, and shall justify inclusion. The Company shall make such records available for review by the Commission Staff, the Office of the Public Counsel, and other interveners, pursuant to 4 CSR 240-2.085 and Section 386.480, RSMo.

5. Nothing in this order shall constitute a finding or conclusion by the Commission of the reasonableness of any amount deferred, and the Commission reserves the right to consider the ratemaking treatment to be afforded any deferred amount.

6. This order shall become effective February 24, 2012.

7. This file shall close on February 25, 2012.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

Gunn, Chm., Jarrett and Kenney, CC, concur,
Stoll, C., abstained,
and certify compliance with the provisions of
Section 536.080, RSMo.

Jordan, Senior Regulatory Law Judge

Missouri Public Service Commission

Respond Data Request

Data Request No.	0564
Company Name	Missouri Industrial Energy Consumers (MIEC)-(All)
Case/Tracking No.	ER-2014-0258
Date Requested	1/29/2015
Issue	Other - Other
Requested From	Diana Vuylsteke
Requested By	Kevin Thompson
Brief Description	Events or Circumstances Impacting Level of Electrical Usage or Demand
Description	Please identify and describe any events or circumstances known to MIEC or Noranda impacting the level of electrical usage or demand experienced in the months March 2013 – December 2014 for the LTS rate classification, for example, equipment malfunction or increases and decreases in plant production. If any event or circumstance increased or decreased the level of electrical usage or demand during that time, please identify whether it is expected to persist. Data Request submitted by Sarah Kliethermes (sarah.kliethermes@psc.mo.gov).
Response	Noranda has experienced higher than normal pot failures since around mid-2014 which has led to lower production levels and therefore lower electricity consumption. Noranda is currently estimating to be back to full production by the end of March 2015. This is the only circumstance known to have materially affected power usage during the specified time period.
Objections	NA

The attached information provided to **Missouri Public Service Commission** Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the **Missouri Public Service Commission** if, during the pendency of Case No. **ER-2014-0258** before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information. If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the **Missouri Industrial Energy Consumers (MIEC)-(All)** office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to **Missouri Industrial Energy Consumers (MIEC)-(All)** and its employees, contractors, agents or others employed by or acting in its behalf.

Security :	Public
Rationale :	NA

Missouri Public Service Commission

Respond Data Request

Data Request No.	0565
Company Name	Missouri Industrial Energy Consumers (MIEC)-(All)
Case/Tracking No.	ER-2014-0258
Date Requested	1/29/2015
Issue	Other - Other
Requested From	Diana Vuylsteke
Requested By	Kevin Thompson
Brief Description	Expected Annual Electrical Usage
Description	Please quantify the expected annual electric usage for Noranda once all such events are corrected/addressed and indicate the date when that expected electric usage level will return. Data Request submitted by Sarah Kliethermes (sarah.kliethermes@psc.mo.gov).
Response	Noranda expects our annual usage to be in line with prior years at approximately 480 MW of power. Noranda is currently estimating to be back to full production by the end of March 2015.
Objections	NA

The attached information provided to **Missouri Public Service Commission** Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the **Missouri Public Service Commission** if, during the pendency of Case No. **ER-2014-0258** before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information. If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in the **Missouri Industrial Energy Consumers (MIEC)-(All)** office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to **Missouri Industrial Energy Consumers (MIEC)-(All)** and its employees, contractors, agents or others employed by or acting in its behalf.

Security :	Public
Rationale :	NA