BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area.	)))))	**Case No. ER-2011-0028**

POST-HEARING BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

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TABLE OF CONTENTS

I. INTRODUCTION

This brief will address the following issues as identified in the List of Issues:

1. Overview and Policy:

A. What "cost of service" and/or regulatory policy considerations, if any, should guide the Commission's decision of the issues in this case?

B. Can the Commission consider and rely on the testimony of ratepayers at local public hearings in determining just and reasonable rates? If so, how should the Commission take this testimony into account, if at all?

4. Energy Efficiency/Demand Side Management (DSM):

A. Is Ameren Missouri in compliance with the Missouri Energy Efficiency Investment Act (MEEIA) regardless of whether or not proposed rules under the law are effective?

(1) What DSM programs should Ameren Missouri continue and/or implement, and at what annual expenditure level; and

(2) Should Ameren Missouri continue to ramp up its demand side management programs to pursue all cost-effective demand side savings?

B. Does Ameren Missouri's request for demand-side management programs' cost recovery in this case comply with MEEIA requirements?

(1) Should the Commission approve a cost recovery mechanism for Ameren Missouri DSM programs as part of this case? If so,

(a) Over what period should DSM program costs incurred after December 31, 2010, be amortized?

(b) Should the mechanism include an adjustment to kWh billing determinants?

(c) How much should the Commission reduce the billing determinants? and

(d) If billing units are adjusted for demand side savings, how should the NBFC rates be calculated?

C. Should a portion of the low income weatherization program funds be utilized to engage an independent third party to evaluate the program?

5. Taum Sauk: What amount, if any, of Ameren Missouri's investment related to the reconstruction of Taum Sauk should be included in rate base for ratemaking purposes?

8. Fuel Adjustment Clause Issues:

A. Should the Commission authorize Ameren Missouri to continue its current Fuel Adjustment Clause (FAC) or should the Commission discontinue or order modifications to the FAC?

B. Should the sharing percentage in Ameren Missouri's FAC be changed from 95/5 percent to 85/15 percent?

13. Rate Design/Class Cost of Service

B. Rate Design:

(1) To what extent should the Commission rely on the results of a class cost of service study in apportioning revenue responsibility among Ameren Missouri's customer classes in this case?

(2) What amount of increase or decrease in the revenue responsibilities of Ameren Missouri's customer classes should the Commission order in this case?

(3) What is the appropriate monthly residential customer charge that should be set for Ameren Missouri in this case?

Many of the issues in the case were resolved through a series of agreements, and Public Counsel does not currently have the resources to delve into the remaining issues. Public Counsel reserves the right to address additional issues in its reply brief.

II. OVERVIEW AND POLICY

The evidence is uncontroverted that economic conditions are hard for most of Ameren Missouri's customers. Many are unemployed, many struggle now to pay their electric bills, and that struggle will become much more difficult if this Commission grants a significant rate increase.

In her Rebuttal Testimony, Public Counsel witness Barbara Meisenheimer stated that:

> every county in AmerenUE's service area experienced an increase in unemployment between 2006 and 2010. For a number of counties the unemployment rate has more than doubled since 2006. AmerenUE's customers have faced substantial increases in the cost of "keeping the lights on." As described later in this testimony, since 2006, AmerenUE has increased base rates for electric service by about $431M. Depending on a customer's other utility service providers, the customer may have also experienced substantial increases in the cost of keeping the heat, water and sewer service on. (Meisenheimer Rebuttal, Exhibit 305, page 2)

Ms. Meisenheimer provided detailed information about unemployment rates in the 58 counties and the City of St. Louis where Ameren Missouri provides service in Missouri, noting that the unemployment rate has increased in every single one since 2006. She also testified that:

> In rate cases, AmerenUE increased companywide electric rates three times for a total of almost $431M and increased natural gas distribution rates by about $6M. In addition, AmerenUE sought and received approval for a rate mechanism [the fuel adjustment clause] that has collected millions of dollars in additional electric fuel cost recovery outside of the normal rate case proceedings. (Meisenheimer Rebuttal, Exhibit 305, page 4)

Ms. Meisenheimer also testified that, since 2006, many Ameren Missouri customers have also had three Missouri American Water increases for a total of almost $91,000,000 and Laclede Gas rate increases for natural gas distribution rates of $38,600,000. Finally, Ms. Meisenheimer states that, if the Commission grants Ameren Missouri a substantial part of its requested rate increase, the overall increase in Ameren Missouri's electric rates since 2006 will have outpaced the increase in wages for Ameren Missouri customers by about a factor of three. (Meisenheimer Rebuttal, Exhibit 305, pages 5-6) All of Ms. Meisenheimer's testimony on this topic is uncontroverted.

Ms. Meisenheimer's testimony reinforces the massive amounts of testimony adduced at the local public hearings. (Transcript Volumes 2-15) Testimony of many witnesses that the price of food, gasoline and medicine is going up along with Ameren Missouri's rates is also uncontroverted. (See, *e.g.*, Transcript Volume 13, pages 19, 38; Transcript Volume 11, page 11) Typical of the testimony of many customers is the following statement of Ms. Daphne Koepp, given under oath at the local public hearing in Jefferson City:

> And when Ameren wants their increases, then I'm, I'm stuck with the choice, you know, you have, as they said, the gas has gone up, the groceries have gone up, Ameren wants their increase, so there I sit turning my thermostat down, you know, three, four quilts on the bed to stay warm, because what am I going to do? Am I going to give up my medication and my treatment? And my food to pay the Ameren bill? I can't do that. I mean, you have to understand that there are these people that just cannot afford the increase; I being one of them. And I think that, once again, as has been brought up, Ameren is making quite a profit and it's time for their shareholders to back off and see what is happening. (Transcript Volume 13, pages 46-47)

The Commission's task in this case is to establish just and reasonable rates. It cannot do so by looking only at Ameren Missouri's point of view; it must also consider the point of view of Ameren Missouri's customers. The Commission is not "hamstrung by the law"[1] in how it can apply the information gathered and the sworn testimony adduced at local public hearings. The Commission is **required** by the law to consider all relevant factors and make its decision based upon the whole record. The testimony of a customer who knows with certainty how a rate increase will affect her and her family is at least as competent as, and definitely more compelling than, a hired-gun expert's speculation about how a new FERC dam inspection process would have turned out if it had taken place.

A seminal United States Supreme Court case regarding rate setting for pipelines makes clear that the Commission cannot simply focus on what a utility claims it needs:

> The requirements of "just and reasonable" embrace, among other factors, two phases of the public interest: (1) the investor interest; (2) the consumer interest. The investor interest is adequately served if the utility is allowed the opportunity to earn the cost of the service.
>
> …
>
> [I]f the rate permits the company to operate successfully and to attract capital all questions as to "just and reasonable" are at an end so far as the investor interest is concerned.[2]

Thus the Commission should not be swayed by arguments that inflated rates of return will allow Ameren Missouri to attract capital at some always-unquantified discount, or that dropping below the fateful 10.00% return on equity mark will make investors swoon. So long as Ameren Missouri can pay its bills and so long as investors are willing to invest, all questions are at an end so far as the investor interest is concerned.

And Missouri cases make clear that the Commission cannot simply pick and choose

[1] Chairman Gunn, as quoted by the Jefferson City News-Tribune, April 3, 2011.
[2] Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 606-607 (U.S. 1942)

which parts of the record it examines:

> But however difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse nor expediency can be substituted for the requirement that such rates be "authorized by law" and "supported by competent and substantial evidence upon the **whole** record." Article V. § 22, Constitution of Missouri, V.A.M.S.[3]

III. ENERGY EFFICIENCY/DEMAND-SIDE MANAGEMENT

The two most important questions with respect to energy efficiency in this case are: 1) whether the Commission should require Ameren Missouri to spend some minimum amount on energy efficiency, and if so, what amount; and 2) what regulatory treatment should be granted for energy efficiency expenditures? This brief will address those two questions.

There is no question that Missouri stands at a crossroads with respect to energy efficiency. Historically, Missouri's regulated electric utilities have done relatively little to promote energy efficiency programs. The Missouri Energy Efficiency Investment Act (MEEIA), codified as Section 393.1075 *et seq.*, was passed by the legislature to change that. It contains provisions that are intended to encourage regulated utilities to encourage their customers to use energy more efficiently, as well as provisions that are intended to make the ratemaking treatment of demand- and supply-side investments more consistent. But the Commission's rules implementing MEEIA just became effective, and some utilities – including Ameren Missouri – have asked the Cole County Circuit Court to stay the effectiveness of those rules. As a result, there is some uncertainty about what level of expenditures on energy efficiency will be appropriate for Ameren Missouri in the future.

In an apparent response to this uncertainty, Ameren Missouri proposes in this case to cut

[3] State ex rel. Missouri Water Co. v. Public Service Com., 308 S.W.2d 704, 720 (Mo. 1957); emphasis added.

its energy efficiency expenditures by fifty percent if it does not get the regulatory treatment that it seeks, and to cut its energy efficiency expenditures by twenty-five percent even if it gets that extraordinary regulatory treatment. Those are the only two proposals that Ameren Missouri has presented in this case. There is nothing, according to Ameren Missouri, that the Commission can provide in the way of incentives in this case that would induce Ameren Missouri to keep its energy efficiency spending at the current level, much less get it to the "aggressive" level outlined in its recent Integrated Resource Plan (IRP) filing. (Exhibit 232; Transcript volume 26, page 1836) This is so, even though Ameren Missouri acknowledges that the "Energy Efficiency Plan" identified in the IRP is the least cost plan. (Transcript volume 26, page 1830)

Ameren Missouri's current level of energy efficiency expenditures, for calendar year 2011, is approximately $33 million. (Transcript volume 16, page 231) Ameren Missouri Chief Executive Officer Warner Baxter testified that it was likely that the expenditure in 1012 would be less than the $20 million currently budgeted for 2012 if Ameren Missouri did not receive the extraordinary regulatory treatment it is asking for in this case. (Transcript volume 16, pages 216-217) In fact, he testified that he expects that it would be "meaningfully reduced" from the $20 million budgeted amount. (Transcript volume 16, page 227) Although Mr. Baxter declined to quantify how much less than the budgeted amount it would be (Transcript volume 16, pages 226-227), a fair assumption is that a "meaningful reduction" from $20 million would be perhaps $3-4 million, which would put the 2012 levels fifty percent below the 2011 levels.

Even if Ameren Missouri gets the unprecedented and ill-defined treatment it seeks, Ameren Missouri would still only spend $25 million in 2012 on energy efficiency. (Transcript volume 16, pages 228-229) But ratepayers would be faced with an incremental amount of $25 million in payments under Ameren Missouri's proposal to address the "throughput incentive."

(Transcript volume 16, pages 229-230) So under Ameren Missouri's proposal, in order to move from the unknown-but-approximately $16-17 million expenditure level in 2012 to the $25 million expenditure level, customers would pay $28-29 million more. That is way too steep a price to pay for a slightly higher level of energy efficiency expenditures.

The Commission should instead adopt an approach similar to the one it took in the recent Kansas City Power & Light and KCP&L Greater Missouri Operations Company cases. There the Commission stated that:

> The Commission concludes that the continuance of the DSM programs is in the public interest as shown by the customer participation and clear policies of this state to encourage DSM programs. In the absence of a clear proposal for a cost recovery mechanism and during the gap between the end of the true-up for this case and the implementation of a program under MEEIA, the Commission concludes that the Companies should continue to fund and promote or implement, the DSM programs in the 2005 Agreement (KCP&L only), and in its last adopted preferred resource plan (both KCP&L and GMO). In addition, the Commission directs that those costs be placed in a regulatory asset account and be given the treatment as further described below.
>
> …
>
> KCP&L agrees with MDNR regarding the treatment for ―future investments. The Commission agrees as well and will direct that DSM program costs for investments made from December 31, 2010, until a future recovery mechanism is in place shall be placed in a regulatory asset account and amortized over six years with a carrying cost equal to the AFUDC rate applied to the unamortized balance.
>
> …
>
> Finally, the Commission must decide whether to include the unamortized balances in rate base. The Commission has determined that it is important to reduce the disincentives to the Companies to having robust DSM programs. The Companies have clearly indicated that delayed recovery is one of those disincentives. By adding the unamortized balances to rate base the Commission will encourage DSM programs and promote the policy of this state as stated in MEEIA. Thus, the Commission determines that the unamortized balances of the regulatory asset accounts shall be included in rate base for determining rates in this case. (Report and Order, Case No. ER-2010-0355, pages 91-94).

This approach is consistent with the recommendation of Public Counsel witness Ryan Kind in his Surrebuttal Testimony (Kind Surrebuttal, Exhibit 303, pages 10-12). Mr. Kind testified that the regulatory treatment should consist of deferrals with a 6-year amortization and

the inclusion of the unamortized balances in rate base. The level of expenditure should be generally consistent with the level that the Commission ordered KCP&L to pursue, taking into account the much larger size of Ameren Missouri as compared to KCP&L.

IV. TAUM SAUK

The original Taum Sauk upper reservoir was completed in 1963. Although it had chronic issues with leakage, it functioned as designed until 2005. In late 2005, through an astonishingly myopic refusal to recognize red flags popping up everywhere, Ameren Missouri repeatedly overtopped the upper reservoir parapet walls by overfilling the reservoir, ultimately resulting in a breach and catastrophic collapse. Although Ameren Missouri prefers to call them "errors of judgment," Ameren Missouri's refusal to recognize and respond to the issues at Taum Sauk clearly constitutes imprudence on Ameren Missouri's part. Ameren Missouri concedes that no other entity shares any blame, and Ameren Missouri takes full responsibility for the collapse of the upper reservoir. (Transcript volume 16, pages 209-210)

For several years after the collapse, Ameren Missouri consistently proclaimed that it would hold customers harmless from any consequences of the collapse. As Public Counsel witness Ryan Kind stated in his direct testimony, as late as November 2007 – almost two years after the collapse – Ameren Missouri was still talking publicly about holding ratepayers harmless with no qualifiers about enhancements:

> UE's commitment to hold customers harmless from any adverse financial impacts from the Taum Sauk disaster was restated in two separate pleadings filed by the Company in Case No. ES-2007-0474. In its June 12, 2007 pleading opposing the Staff's request to investigate the Taum Sauk disaster, the Company stated that "AmerenUE has already accepted full responsibility for the effects of the breach of the Taum Sauk reservoir." In its November 7, 2007 pleading titled "AmerenUE's Response to Staff's Initial Incident Report," the Company states on page 8 that "Ameren has already committed to protecting its customers from

bearing the costs of the Taum Sauk failure."

But shortly thereafter, as a part of a complicated settlement agreement with the State of Missouri, a potential loophole appeared. In a document entitled Consent Judgment (Exhibit 157), Ameren Missouri agreed to rebuild the upper reservoir, but reserved the right to seek rate recovery of a certain category of rebuilding costs called "allowed costs." Two paragraphs of that settlement agreement are particularly relevant to the cost recovery Ameren Missouri seeks in this case:

> 2. Rebuild. Subject to authorization by FERC, AmerenUE shall replace the failed Upper Reservoir Dike with a new Upper Reservoir Dam, according to all requirements of construction and licensing of all Federal and State regulatory agencies with jurisdiction over the rebuild. In order to facilitate the rebuilding of the Upper Reservoir Dam, the State agrees to timely process and issue all necessary or required permits in a manner consistent with prevailing law and to fully cooperate with AmerenUE during the rebuild process.
> 3. Ratepayer Protection. AmerenUE acknowledges that it will not attempt to recover from ratepayers in any rate increase any in-kind or monetary payments to the State Parties required by this Consent Judgment or construction costs incurred in the reconstruction of the Upper Reservoir Dam (expressly excluding, however, "allowed costs," which shall mean only enhancements, costs incurred due to circumstances or conditions that are currently not reasonably foreseeable and costs that would have been incurred absent the Occurrence as allowed by law), and further acknowledges the audit powers of the Missouri Public Service Commission to ensure that no such recovery is pursued. In the event that Ameren intends to seek recovery for allowed costs, it shall notify the State Parties in writing at least seven (7) business days in advance of its initial applications for the recovery of these costs. If AmerenUE fails to provide the required notice, it shall forfeit whatever legal right it has to seek such recovery.

In order for Ameren Missouri to be allowed to even seek recovery for particular costs, those costs must be "allowed costs." Nothing in the Consent Judgment specifies who is to determine whether costs are allowed costs. The only party to the agreement in the instant case (other than Ameren Missouri) is the Missouri Department of Natural Resources, which provided testimony that it believed the Commission is the appropriate entity to do so. It does not appear that any party to the Consent Judgment (other than Ameren Missouri) has taken a position one

way or the other on whether the costs that Ameren Missouri seeks to recover here are indeed "allowed costs." Thus, a threshold question for the Commission is whether the costs that Ameren Missouri seeks to recover are "allowed costs." Public Counsel submits that the record in this case shows that they are not, and that the Commission should therefore not allow their inclusion in rate base.[4]

The term "allowed costs" is not defined in the Definitions section of the Consent Judgment, but there is a sketchy definition in paragraph 3 (quoted above). That section states that "allowed costs … shall mean only enhancements, costs incurred due to circumstances or conditions that are currently not reasonably foreseeable and costs that would have been incurred absent the Occurrence as allowed by law." The general provisions of the Consent Judgment prohibit recovery, but there are three categories of exceptions: 1) enhancements; 2) unforeseeable costs; and 3) costs that would have been incurred absent the collapse. The final phrase "as allowed by law" may modify all three exceptions or perhaps only the third. In any event, it does not appear that any of the costs for which Ameren Missouri seeks recovery are not allowed by law, so that phrase may not be relevant to the Commission's determination.

Ameren Missouri claims that the costs for which it seeks recovery qualify as "allowed costs" under 1) or 3) or both. There has been no claim from Ameren Missouri that any costs for which it seeks recovery qualify under 2) unforeseeable costs. With respect to 1) enhancements, both the Consent Judgment and the hearing in this case are notable for their failure to come up with an incontrovertibly plausible definition. Because the Consent Judgment does not define the term, rules of construction require that its meaning be derived from the context in which it is used in the Consent Judgment and/or the way it is normally used. The

[4] Even if the Commission determines that the costs at issue are "allowable costs" under the Consent Judgment, Public Counsel still opposes recovery. This is discussed in more detail below.

normal usage and dictionary definition, generally agreed upon by the parties, is that an enhancement is simply making something better. But this definition begs the real question here: from what baseline does the Commission judge whether a particular cost in rebuilding the Taum Sauk upper reservoir constitutes an enhancement? It is with the critical issue of the baseline that the context of the use of the word "enhancement" comes into play, because the most plausible baseline is set forth in the Consent Judgment itself, in the paragraph immediately preceding the use of the term "enhancement." In paragraph 2, quoted above, the Consent Judgment requires Ameren Missouri to rebuild the upper reservoir "according to all requirements of construction and licensing of all Federal and State regulatory agencies with jurisdiction over the rebuild." Some parties have suggested that the baseline ought to be the original 1963 design, or the 1963 construction (which may or may not be the same as the 1963 design). In particular, Ameren Missouri witness Paul Rizzo defines the term "enhancements" by stating that "the new Upper Reservoir has a number of enhancements compared to the old Upper Reservoir." (Rizzo Direct, Exhibit 117, page 3) Staff witness Gilbert seems to be alone in suggesting that the baseline ought to be the actual condition of the upper reservoir at the time of collapse. (Transcript volume 29, pages 2334-2335) Ameren Missouri CEO Warner Baxter conceded that the enhancements that Ameren Missouri wants ratepayers to pay for are "enhancements that [Ameren Missouri] took advantage of because [Ameren Missouri was] basically starting from scratch." (Transcript volume 16, page 119)

But none of these suggestions finds any traction in the Consent Judgment itself. In order to give the term "enhancements" meaning in this case, it must be capable of being understood with reference to a commonly-used and generally-accepted external reference, or it must be capable of being understood with reference to the context in which it appears in the Consent

Judgment itself. Because there is no generally accepted baseline that derives from an external source, the Commission must look to the Consent Judgment itself. The only plausible definition of enhancement in the Consent Judgment is an improvement over, or an augmentation of, the "requirements of construction and licensing" currently imposed by State and Federal agencies. And with respect to that definition, there is no evidence in the record that any aspect of the Taum Sauk rebuild constitutes an improvement over construction and licensing requirements applicable to such structures. The Commission must conclude that the costs of the Taum Sauk rebuild do not qualify as "allowed costs" by reason of being "enhancements."

Ameren Missouri claims, in conjunction with or in the alternative to its claim that costs are for enhancements, that the rebuild costs qualify as "allowed costs" because they are costs "that would have been incurred absent the Occurrence." This claim must also fail. In order for rebuild costs to qualify as "allowed costs" under this provision of the Consent Judgment, Ameren Missouri must be able to prove with certainty that the costs "would have been incurred" – not "might have been incurred" or even "probably would have been incurred," but "**would have been** incurred" absent the breach. The speculation of a witness, even an expert witness, about the probable outcomes of a relatively new FERC inspection process fall far short of the "would have been incurred" standard.

And speculation is the best that Ameren Missouri has to offer. Even their main witness on the topic, Paul Rizzo, concedes that his opinion falls short of certainty. He qualifies his statements in his Surrebuttal testimony by claiming that they are made with "a **high degree** of confidence" and **"**a **reasonable degree** of engineering certainty." (Rizzo Surrebuttal, Exhibit 118, page 2; emphasis added) Moreover, even these sweeping statements are belied by the details of Dr. Rizzo's testimony. Dr. Rizzo begins his analysis in his direct testimony by listing

six deficiencies he suspects that a Potential Failure Modes Analysis (PFMA) would have uncovered, but for each of these he identifies possible remediation procedures. (Rizzo Direct, Exhibit 117, pages 19-32) The following must all be true for his ultimate conclusion about the outcome of a PFMA to be true: 1) his suspicion about the six deficiencies that might have been uncovered in an analysis that was performed; 2) his speculation about the very limited number of mediation procedures; and 3) his guesses that the costs of those remediation measures would be prohibitively high. Neither the record in this case nor Dr. Rizzo's qualifications confer upon him the requisite degree of omniscience for the Commission to conclude that everything he opines about "**would have**" occurred exactly as he speculates.

Although Ameren Missouri's outside expert Dr. Rizzo remained steadfastly and dogmatically positive that a PFMA would allow only one course of action – a total teardown and rebuild – a more disinterested expert witness testified that there would likely have been a number of options. Staff witness Guy Gilbert, a registered geologist and professional engineer, testified that there would be at least one more attractive option: continue operating the plant at a "derated" level until the off-system sales market or native load rebounded. (Transcript volume 16, page 2330) Moreover, Mr. Gilbert testified that he believed that the Federal Energy Regulatory Commission, if a PFMA was conducted on the Taum Sauk upper reservoir, might have granted Ameren Missouri a variance or simply grandfathered in the upper reservoir. (Transcript volume 16, page 2339)

Finally, even if the Commission somehow manages to conclude that the costs that Ameren Missouri wants to include in rate base are "allowed costs," that conclusion does not end the inquiry because allowed costs are simply those costs for Ameren Missouri may seek recovery; nothing obligates the Commission to allow recovery. As Public Counsel witness Kind

state in his Surrebuttal Testimony, none of these costs would be at issue in this case if Ameren Missouri had operated the Taum Sauk plant prudently or if Ameren Missouri had lived up to its original and genuine hold harmless commitments:

> Q. DO YOU BELIEVE THAT THE RECOVERY OF TAUM SAUK REBUILDING COSTS WOULD BE AN ISSUE BEFORE THE COMMISSION IN THIS CASE IF UE HAD TRULY FULFILLED ITS STATED COMMITMENTS TO HOLD OTHERS HARMLESS THAT YOU REFERENCED ABOVE FROM YOUR DIRECT TESTIMONY?
> A. No. If UE had followed through on its commitment to "protecting its customers from bearing the costs of the Taum Sauk failure," then the recovery of Taum Sauk re-building costs would not be part of this case. The recovery of Taum Sauk rebuilding costs is an issue is this case because UE is seeking to have ratepayers bear a portion of the costs of the Taum Sauk disaster in order to shift a portion of this burden from shareholders to ratepayers. As I have stated previously, there is absolutely no evidence to indicate that UE's efforts to increase rates in this case so that customers will pay for additional capital costs related to the Taum Sauk generating facility would have occurred absent the Taum Sauk disaster. Therefore, the Commission should reject UE's attempt to redefine its hold harmless commitment and its attempt to harm customers by seeking to have them bear a portion of the Company's Taum Sauk re-building costs that are solely attributable to its failure to prudently maintain and operate Taum Sauk. (Kind Surrebuttal, Exhibit 303, pages 5-6)

V. CLASS COST OF SERVICE

On May 12, almost all of the customer representatives filed a Non-Unanimous Stipulation and Agreement regarding class cost of service and rate design. On May 17, Ameren Missouri and the Staff both filed pleadings stating that they did not object to that agreement. On May 18, the Municipal Group filed an objection to the agreement, presumably on the grounds that it "calls for the lighting customers to receive a larger percentage share of the rate increase sought in this case than all other customers."

As a result of the Municipal Group's objection, the Commission convened a hearing to take evidence on the issue of class allocations. The Municipal Group adduced no evidence to show why it should not receive a greater share than other customer groups, nor did it challenge

the class cost of service studies – which it demanded in the last Ameren Missouri rate case, and which show that the lighting class (based upon cost to serve) should receive a much greater increase than proposed in the Non-Unanimous Stipulation and Agreement regarding class cost of service and rate design. Notably, the Municipal Group did not even bother to participate in the hearing after the noon recess, even though the hearing was convened solely because of the Municipal Group's objection.

The evidence in this case supports the class cost of service allocations contained in the nonunanimous stipulation and agreement. Evidence can be found to support other CCOS allocations, for example those proposed by the Staff or by OPC witness Kind. But no evidence can be found that supports the allocations advocated by the Municipal Group.[5] Every cost of service study shows that the revenues provided by the lighting class need to be significantly increased. Public Counsel urges the Commission to find that the Non-Unanimous Stipulation and Agreement regarding class cost of service and rate design is supported by the evidence on the record in this case and is a reasonable resolution of the class cost of service and rate design issues presented in this case.

[5] Exactly what allocations the Municipal Group proposes is unclear, but it appears to range from system average increase to system average plus two percent.

WHEREFORE, Public Counsel respectfully offers this Post-hearing Brief and prays that the Commission conform its decision in this case to the arguments contained herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 1st day of June 2011.