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-2007-0002

APPLICATION FOR REHEARING, MOTION FOR CLARIFICATION AND FOR CORRECTION OF ORDER NUNC PRO TUNC

COMES NOW Union Electric Company d/b/a AmerenUE ("AmerenUE" or the "Company") and, pursuant to § 386.500.1, RSMo.[1] and 4 CSR 240-2.160, respectfully applies for rehearing of the Commission's Report and Order in the above-captioned proceeding which was issued May 22, 2007 ("Report and Order"). Alternatively, the Company moves for clarification of certain portions of the Report and Order, and moves for correction of minor errors in the Report and Order. In support of its Application and Motion, the Company states as follows:

Legal Principles That Govern Applications for Rehearing

1. Commission decisions must be lawful (i.e., the Commission must have statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n*, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). The decision is reasonable only if supported by competent and substantial evidence of record. *Alma*, 40 S.W.3d at 387. Moreover, Commission decisions must not be arbitrary, capricious, or unreasonable. § 536.140.1(6), RSMo. The Commission is a creature of statute and it has only the powers conferred on it by the

[1] Statutory references are the Missouri Revised Statutes (2000), unless otherwise noted.

Legislature. *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934).

2. Under Missouri law, the absence of sufficient findings of fact and conclusions of law also render a Commission order unlawful. *See, e.g., Friendship Village v. Pub. Serv. Comm'n*, 907 S.W.2d 339, 344 (Mo. App. W.D. 1995). Section 386.420, RSMo. requires findings of fact that are not completely conclusory. *State of Missouri ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 103 S.W.3d 813, 816 (Mo. App. W.D. 2003). Section 536.090, RSMo. supplements § 386.420, and requires that the Commission's findings provide insight into how controlling issues were resolved. *Id*. The findings must be sufficiently definite and certain so that a reviewing court can review the decision intelligently to ascertain if the facts afford a reasonable basis for the decision without resorting to the evidence. *Id*.

3. A review of the evidentiary record in this case and applicable law demonstrates that the Report and Order fails to comply with the above-referenced principles in certain respects and that therefore, rehearing should be granted as to certain issues. Those issues are outlined below.

<u>Issues on Which Rehearing is Sought</u>

A. Interim Net Salvage – Callaway Plant Accounts.

4. As a preliminary matter, the Company notes that it is not clear whether this issue requires rehearing, or simply clarification by the Commission. This is because the Company believes the Commission's decision on this issue was the result of the Commission simply overlooking evidence of record on which the Commission could have, and should have, based its decision on this issue.

5. This issue exists because the Commission decided (*see* page 96 of the Report and Order) that 0.1 percent should not be added to the depreciation rates for nuclear plant accounts, other than nuclear plant Account 322, as provided in the Nonunanimous Stipulation and Agreement on Certain Depreciation Issues ("Depreciation Stipulation") signed by the Company and the Staff. The effect of that decision, however, was to fail to include *any* net salvage in the depreciation rates for these four nuclear plant accounts,[2] a result the Company is confident the Commission did not intend. This is because, among other reasons, the failure to include net salvage in these accounts creates intergenerational inequity because ratepayers today, who are benefiting from the service provided by the nuclear plant components included in those accounts, would be paying absolutely nothing toward the net salvage costs that will occur as interim retirements of those nuclear plant components are made. Moreover, as discussed further below, substantial and competent evidence of record in this case supports including net salvage percentages in these accounts, rather than setting the net salvage percentages at zero. Consequently, the Commission's decision is contrary to the evidence and, if not corrected, would be unreasonable and unlawful. In short, the Company believes the Commission simply overlooked evidence of record that supports inclusion of an appropriate amount of net salvage in the depreciation rates applicable to these accounts, as outlined further below.

6. This issue can be easily cleared up based upon a review of the record in this case. Staff, which conducted its own depreciation study for this case, proposed depreciation rates that varied from the Company's rates principally because of Staff's contention that depreciation rates for the nuclear accounts should be based upon a 60 year life for the Callaway Plant, a position the Commission has accepted in the Report and Order.

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[2] Accounts 321, 323, 324 and 325.

While Staff disagreed with the Company regarding the Callaway Plant's life, Staff included net salvage percentages in the depreciation rates applicable to these accounts. Consequently, Staff's calculation of the net salvage for these accounts provides competent and substantial evidence of record that is consistent with the Commission's decisions (in this case, and in the *Empire* and *Laclede* cases[3]) on net salvage issues.

8. The bottom line is that the net salvage percentages for these accounts should not be set at zero. Yet, by concluding that it has "no basis for making a decision regarding these accounts," the Commission has (the Company believes inadvertently) set the net salvage percentages at zero.

9. The Commission, in deciding it could not make a decision, apparently believed that the issue is whether or not 0.1 percent should be added to these accounts' depreciation rates to reflect net salvage. That is not the issue.

10. Because the Depreciation Stipulation was not approved, and because there was no evidence of record that increasing the net salvage amounts in these accounts by 0.1 percent was reasonable, it is understandable that the Commission would decline to add 0.1 percent to these accounts.[4] However, as noted earlier Staff's depreciation rates, which include net salvage, provide substantial and competent evidence of record that *some amount* of net salvage should be included in Accounts 321, 323, 324 and 325. Specifically, that evidence and those rates are found in Staff witness Jolie L. Mathis's Direct Testimony, admitted into the record as Exhibit 222, in Schedule JLM-2 thereto. More specifically, see the columns in Schedule JLM-2 labeled "Staff's Proposal – Net Salvage (%) and Deprec. Rate (%)." The net salvage percentages reflected therein are -3%, -3%, -2%, and -1% for Accounts 321, 323, 324 and 325, respectively.

[3] The *Empire* and *Laclede* decisions are discussed at p. 92 of the Report and Order.
[4] By contrast, Ms. Mathis's hearing testimony regarding the .2 percent added to Account 322 provided evidence upon which to base the Commission's decision to add .2 percent to the rates for Account 322.

11. In summary, applying the evidence submitted by the Staff in this case respecting the appropriate net salvage percentages for these four accounts results in slightly higher depreciation rates than currently reflected in the Report and Order, due to the Commission's inability to make a decision on the "0.1 percent" issue. This results in a relatively small increase (approximately $1,000,000) in AmerenUE's revenue requirement above that reflected in the compliance tariffs filed by the Company on May 24, 2007, but AmerenUE's overall revenue requirement, even with this increase, remains approximately $43 million, as approved in the Report and Order.[5]

12. The Company believes the Commission, having now been pointed to substantial and competent evidence of record respecting the appropriate depreciation rates for these accounts, will correct this oversight. Failure to do so would be unreasonable and unlawful, and would not be supported by adequate findings of fact or conclusions of law respecting the depreciation rates that should be utilized for Accounts 321, 323, 324 and 325. Indeed, failure to correct the Report and Order in this regard would leave a Report and Order totally lacking in findings of fact and conclusions of law with respect to this issue because, as written, the Report and Order simply reflects a failure to make a decision on this issue at all. This would be conclusory, would fail to provide any insight into how this issue was resolved, and would not provide a reviewing court with the definiteness and certainty necessary to support a finding by

[5] The compliance tariffs filed by the Company on May 25, 2007 would produce a revenue requirement increase of just approximately $42 million per year, not the $43 million reflected in the Report and Order. This is because to comply with the Report and Order as written, the Company had to reduce the depreciation rates for these four nuclear plant accounts to reflect elimination of the .1% net salvage, and also had to increase the revenue requirement to include the $600,000 of low-income assistance monies the Commission ordered be paid for by ratepayers at page 112 of the Report and Order. Neither of these adjustments were included in the Staff's final scenario run. The .1 percent error in the original calculation of the $43 million was approximately $1.6 million, which was offset by the $600,000 of low-income assistance funds, resulting in a net decrease of approximately $1 million. Applying Staff's net salvage for these four accounts, adds back approximately $1 million, meaning AmerenUE's rate increase ends up approximately at the originally-ordered $43 million, and the accounting for the low-income assistance monies and the nuclear plant depreciation rates stands corrected.

the court that the Commission had a reasonable basis for the decision (or a lack of decision, in this case) without resorting to the evidence. Therefore, the Commission must grant rehearing with respect to this issue, or alternatively, clarify the Report and Order by stating that it indeed has a basis to make a decision with respect to the depreciation rates for these four nuclear plant accounts; i.e., by adopting Staff's depreciation rates for these accounts, based upon the evidence of record in this case.

B. Return on Equity.

13. For the reasons outlined in this section of this Application and Motion, the Report and Order is unjust, unreasonable, arbitrary, capricious, unlawful, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law with respect to the unreasonably low return on equity ("ROE") established by the Commission.

14. Although the Company believes the Commission has erred with respect to its resolution of the ROE issue in this case, the Company recognizes that ROE is a complicated and difficult issue, as does the Commission, which itself notes the challenges that are inherent in estimating an appropriate ROE.[6] It is without question that the variety of methods that have been devised to undertake this task, and their accompanying complicated formulae, can give the impression of a scientifically objective enterprise that can reach the "right" result. In truth, as the Commission noted, in the hands of a diverse group of well-intentioned and skilled experts, the prevailing approaches to estimating ROE can produce "a thicket of conflicting opinions,"[7] that can "ensnare" the Commission, rather than aid its analysis.

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[6] Report and Order, p. 36.
[7] *Id.,* p. 39.

15. For this reason, AmerenUE applauds the effort of the Commission to "examine the [ROE] problem from a broader perspective."[8] Unfortunately, AmerenUE respectfully submits that the Commission ultimately did get tripped up in the tangle of ROE testimony, producing an arbitrary result that runs afoul of well-established regulatory standards. As a result, the Commission should grant rehearing respecting it decision on ROE. Granting rehearing does not require the Commission to abandon the premises of its ROE analysis. To the contrary, the problems in the Commission's ROE analysis arise because the Commission does not fairly apply its own premises to AmerenUE.

16. At the outset, the Commission rejected the adjustment for financial risk proposed by AmerenUE's witnesses.[9] AmerenUE proposed such an adjustment in this case because it believes such an adjustment fairly corrects for an increasingly important economic disparity created by the use of book and market value data in estimating ROE. However, while some state regulatory commissions have employed such an adjustment, and this Commission also effectively did so in a recent *Empire* rate case,[10] the Company recognizes that such an adjustment has not yet become a standard feature of ROE estimates. Accordingly, AmerenUE does not seek reconsideration of the Commission's rejection of such an adjustment in this case.[11]

17. More importantly, once the Commission rejected one aspect of AmerenUE's proposed ROE – the financial risk adjustment – it apparently abandoned further examination of

[8] *Id.*, p. 40.
[9] *Id.*, p. 40-41.
[10] *See* Case No. ER-2006-0315.
[11] Nevertheless, nothing in the Commission's disagreement with AmerenUE regarding this adjustment supports the Commission's comment that this adjustment was a "transparent effort to inflate the company's proposed return on equity to obtain a better bargaining position." Report and Order, p. 41. A similar criticism could apparently have been directed at ROEs proposed by other experts that would have given AmerenUE the lowest allowed ROE in the country. *Id.* Why were such extraordinarily low ROE recommendations not an equally transparent manipulation to push the allowed ROE for AmerenUE down? While AmerenUE disagrees with the analysis of the other ROE experts, it does not believe that disagreement is a reason to doubt the good faith of these witnesses, or of any AmerenUE witness.

the analysis offered by AmerenUE ROE experts Ms. McShane and Dr. Vander Weide, and in a conclusory fashion embraces as "balanced" the analysis of Missouri Industrial Energy Consumers witness Mr. Gorman.[12] Yet both Ms. McShane and Dr. Vander Weide, like Mr. Gorman, performed at least three different analyses and then "blended" them to arrive at their recommendations. The Commission offered no explanation or discussion to support its bare declaration that Mr. Gorman "does the best job of presenting the analysis that the Commission seeks."[13] The Commission's Report and Order says not one word about the differences in analysis between Mr. Gorman on the one hand and Ms. McShane and Dr. Vander Weide on the other, and why the Commission used the Gorman analysis as its reference point to the exclusion of the McShane and Vander Weide analyses. Such bare conclusions fall far short of the legal standard the Commission's findings must meet and provide no insight into what specifically the Commission found to be the controlling issues separating those experts or into how the Commission resolved those issues in the complete favor of Mr. Gorman.[14] Neither a utility subject to the Commission's jurisdiction nor a reviewing court could possibly glean from the Report and Order the Commission's view of the correct approaches and methodologies for estimating ROE.

18. Compounding the confusion generated by the Commission's preemptory adoption of Mr. Gorman's analysis is its series of unexplained conclusions – central to the ROE it allows – beginning with its statement that "the average allowed return in the electric industry for 2006 was 10.36 percent."[15] The Commission then proceeded to conclude – again without setting out

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[12] *Id.*, p. 42.
[13] *Id.*
[14] *See* §§ 386.420 and 536.090, RSMo.; *Laclede Gas Co.*, 103 S.W.3d at 816-18 (holding a Commission order lacks a reasonable basis when it provides an overview of each party's theory "and then declares the Staff's theory more appropriate").
[15] Report and Order, p. 38. *See also id.*, p. 39.

any justification – that “[t]hat is the market in which AmerenUE will be seeking to raise capital.”[16] The Commission moved on to state that “AmerenUE is an average company with an average risk.”[17] Based on these observations, one would expect that the Commission would then have started its analysis at an ROE of 10.36 percent – in its view, an “average” ROE for a company with “average” risk – but it does not. Again, the Commission simply embraced Mr. Gorman’s recommendation of 9.8 percent – a number 56 basis points below the supposed average – and worked up from there.[18] But the Commission’s allowed ROE never gets back up to the average – it allows only 10.2 percent – and the Commission never justified establishing a below-average ROE for a utility it considers to be of average risk.[19] Moreover, the Commission disavowed any intention to punish AmerenUE, but pointed to no factor other than punishment to justify an allowed ROE lower than the supposed average.[20] At the same time the Commission strikingly observed that “[w]ith no fuel adjustment clause, AmerenUE takes on more risk and its return on equity should be increased to compensate.”[21] That quite correct observation suggested that an allowed ROE higher, not lower, than the average is necessary for AmerenUE (especially since most utilities included in the sample from which the average was derived do have fuel adjustment clauses). A Commission decision that rests on such unexplained and inconsistent conclusions is arbitrary, capricious, and unreasonable and, as noted, not based on adequate findings of fact and consequently, is unlawful.

19. The unreasonable and arbitrary character of the Commission’s decision is actually even more extreme, for the Commission’s selection of an average allowed ROE and its

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[16] *Id.*
[17] *Id.*, p. 41.
[18] *See id.*, pp. 42-44.
[19] This average forms the centerpoint for the Commission’s “zone of reasonableness.” *Id.*, p. 39.
[20] *Id.*, p. 44.
[21] *Id.*, p. 43.

identification of that average as AmerenUE's "market" is fundamentally flawed under controlling principles of law governing ratemaking. The Commission correctly quoted the United States Supreme Court to the effect that a

> public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties.[22]

But the Commission's ROE analysis failed to meet this standard because the average allowed ROE that the Commission drew from a report by Regulatory Research Associates[23] included utilities that are not "attended by corresponding risks and uncertainties" because, unlike AmerenUE, they are not integrated utilities, but less risky "wires-only" companies. If one relies on the same report to calculate an average allowed ROE, but only includes utilities that are comparable in risk to AmerenUE, the resulting average is 10.7, not 10.36, percent.[24] And if one narrows the utilities included in this calculation only to those "in the same general part of the country" – that is, integrated Midwestern electric utilities, the average allowed ROE for 2006 was 11.0 percent.[25] And even this 11.0 percent average allowed ROE for Midwestern utilities is low when applied to AmerenUE as most Midwestern electric utilities outside Missouri operate under a fuel adjustment clause which reduces their risk.[26] Thus, if, as the Commission said, AmerenUE is "an average company with an average risk," under bedrock principles of ratemaking, analysis of an allowed ROE for AmerenUE should start at 11.0 percent, 120 basis points higher than where the Commission started its analysis.

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[22] *Id.*, p. 14 (quoting *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692 (1923)).
[23] *See id.*, p. 38.
[24] *See* citations to the record in this case cited at p. 82 of the Post-Hearing Brief of Union Electric Company d/b/a AmerenUE.
[25] *Id.*
[26] *Id.*

20. Moreover, accepting as the Company does the Commission's rejection of a financial risk adjustment, Ms. McShane's proposed allowed ROE was 11.0 percent, while Dr. Vander Weide's was 11.5 percent. Given what the comparable average allowed ROE actually is, such recommendations are neither unreasonable nor warrant the abrupt dismissal set out in the Commission's Report and Order.[27] To the contrary, Mr. Gorman's recommendation was 120 basis points below the average for comparable Midwestern utilities, while the highest recommendation for AmerenUE, that of Dr. Vander Weide, was only 50 basis points above that average. Indeed, Mr. Gorman's recommendation was below the zone of reasonableness constructed around this average. And, again, this does not factor in that the comparable utilities have fuel adjustment clauses that reduce their risk below that of AmerenUE. Thus the evidence in the record simply does not support the Commission's 10.2 percent allowed ROE for AmerenUE, which is unreasonably low.[28]

21. Finally, the Commission's Report and Order does not address the significance of the 10.9 percent ROE it allowed for The Empire District Electric Company and the 11.25 percent ROE it allowed for Kansas City Power & Light Company, both in December 2006.[29] AmerenUE and these two utilities all face similar risks and have similar Standard and Poor's bond ratings.[30] Interest rates at the time those cases were filed and now are approximately the same. The only material difference between those cases and this one is that the risk of investing

[27] Report and Order, p. 43. The Commission also dismissed these recommendations because "they were not consistent with the recommendations of the other witnesses." *Id.* Given how far-removed those other recommendations were from the comparable average allowed ROE, why these recommendations should be any kind of benchmark for a reasonable ROE is not explained. Indeed, the Commission's logic in dismissing recommendations from an expert simply because that expert's recommendation is not clustered with the recommendations of competing experts is flawed. Consider what would happen if all of the non-Company ROE experts in a rate case recommended an ROE of just 5%, where the average ROEs of comparable companies was 11%, and the Company's recommended ROE was 11.5%. Does the Commission disregard the 11.5% simply because it is "not consistent with the recommendations" of other witnesses? Of course not, but following the Commission's statement to its logical conclusion would lead to that result.
[28] *See Alma Tel. Co.*, 40 S.W.3d at 388.
[29] *See* authorities cited in AmerenUE's Post-Hearing Brief, p. 81.
[30] *Id.*

in the electric utility industry as a whole has increased, as measured by the rise in electric utility betas from .88 in December 2005, to .90 in May 2006, to .97 in January 2007.[31] Here again, the recommendations of AmerenUE's witnesses, with the financial risk adjustment removed, propose allowed ROEs reasonably within the scope of ROEs this Commission has allowed in the recent past. The 10.2 percent ROE the Commission now allows to AmerenUE is a significant downward departure from recent Commission decisions that the Commission makes no effort to justify. As a result, such a low allowed ROE is arbitrary, capricious, and unreasonable, rendering it unlawful. Moreover, the Report and Order is wholly lacking in adequate findings that would suggest this substantial departure from ROE's granted in the very recent past is justified.

22. Determining an allowed ROE is not, as the Commission correctly notes,[32] a matter of finding an unassailably correct number for the ROE. AmerenUE respectfully submits that, for the above reasons, the 10.2 percent ROE the Commission allows in this case falls outside any reasonable range, and is unlawful. The Commission should therefore grant rehearing of its decision on ROE, and should grant no less than the ROE recently granted to Empire, 10.9 percent.

C. Life Span.

23. For the reasons outlined in this section of this Application and Motion, the Report and Order is unjust, unreasonable, arbitrary, capricious, unlawful, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law with respect to the issue of whether the life span method should have been

[31] *Id.*
[32] Report and Order, p. 37.

applied to calculate the depreciation rates applicable to the components of the Company's non-nuclear generating units.

24. The underlying defect in the Commission's Report and Order is that it authorizes depreciation rates for all of the Company's non-nuclear generating units based upon an unreasonable and unsupported assumption. That unreasonable and unsupported assumption is that these units will remain in service indefinitely resulting in service lives for some components as long as 90, or even 180 years. The depreciation rates approved by the Commission for these plants are based on average service lives that incorporate these incredibly unreasonable and unrealistic time periods. This is patently unreasonable, and lacks any evidentiary support whatsoever. Indeed, it is obvious that a plant component will not remain in service if the generating plant in which it is incorporated is no longer in service. It follows then that it is inappropriate to depreciate plant components over a time period beyond the period when the plant itself can reasonably be expected to operate, and that by doing so, the Commission is creating the situation where when these plants do retire, future ratepayers not served by these plants will then have to pay the cost of components that will no longer be in use.

25. It is equally obvious that AmerenUE's non-nuclear units, many of which are already more than 40 years old, will not remain in service until 2187, or even until 2097. This is particularly true given that, for the dozens of fossil plants retired over the past approximately 50 years, the average age of retirement was just 46 years.[33] Contrast that fact with the fact that in 2097 every one of these AmerenUE plants would be more than 120 years old. The Commission's decision to depreciate plant components as if these plants will last indefinitely is,

[33] Exh. 69, Schedule WMS-3.

on its face, arbitrary, capricious, and unreasonable, and lacks any evidentiary support whatsoever.

26. The Commission's findings of fact on this issue are also conclusory, contradictory and insufficient, and fail to provide any court with a reasonable basis to support the Commission's decision to depreciate plant components over a time period way beyond any reasonable estimated date for the retirement of these plants.

27. The first conclusory, contradictory and insufficient factual finding is that because the retirement dates of these plants cannot be known with certainty at this time, the life span approach cannot be utilized.[34] The only evidence of record is that the inability to know, with certainty, when a large fossil plant will be retired is true with respect to virtually *every* large generating unit in the country, a point Staff witness Mathis conceded. Yet, the unrefuted evidence in this case is that the life span method is the mainstream depreciation method applied by regulatory commissions across this country. If there existed a requirement that retirement dates must be known with certainty for large power plants before the life span method could be utilized, then how could the life span approach have become the mainstream depreciation approach used by regulatory commissions across the country? The answer is that, of course, it could not have become the mainstream approach if that requirement was a prerequisite to use of the life span approach. Yet, the findings in the Report and Order reject the life span approach by in effect creating just that prerequisite. The Report and Order contains no findings that support

[34] Moreover, while the Company cannot, at this time, provide this Commission with absolutely certain dates for retiring these plants, the Company did provide substantial evidence supporting reasonable estimates of the retirement dates of these plants, as the citations to the record appearing at pages 130-131 of AmerenUE's Post-Hearing Brief demonstrate.

its creation of this "certainty" prerequisite, and its decision to do so is arbitrary, capricious, unreasonable, and lacks support of substantial and competent evidence of record.[35]

28. The Commission's second conclusory, contradictory and unsupported factual finding relates to its emphasis on the fact that the Company's integrated resource plan ("IRP"), which was prepared in 2005, does not mention the retirement of any of the Company's four coal-fired steam plants. The planning period for the 2005 IRP extended only to 2024 – a period of 20 years – as contemplated by the Commission's IRP rules.[36] The evidence in this case shows that at this time the Company only expects to retire one of these plants – the Meramec Plant – on or before 2024 (in fact just three years before, in 2021). As the Report and Order notes, the careful evaluation of the retirement dates of these four plants did not even occur until after the IRP was filed, and even if it had occurred earlier, only one of the four plants would have been shown by the IRP as being retired within the 20-year planning horizon reflected in the IRP. The Commission itself apparently believes that certainty of retirement dates cannot be achieved until a few years prior to the actual retirement date (even as to Meramec, that date remains 14 years away), demonstrating that it is of no consequence that the retirement of a small amount (approximately 923 megawatts of the Company's approximately 8,573 megawatts of baseload generation in service) near the end of a 20-year planning horizon was not mentioned in an IRP plan that was prepared before this rate case was even filed. To rely on that fact to reject the life span approach is arbitrary, capricious, unreasonable, and lacking in evidentiary support.

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[35] AmerenUE agrees that the Commission is not bound by the fact that the life span approach is the mainstream deprecation approach used across the country. However, the Commission *is* required to provide an adequate explanation, supported by the record, as to why it would diverge from use of such a mainstream approach, and instead follow a policy which is not generally accepted. The Commission *is required* to act in a non-arbitrary and capricious manner, meaning it must provide an adequate explanation, supported by the record, as to why it should not use the mainstream, generally accepted life span approach.

[36] 4 CSR 240-22. 020(43). The Commission can take official notice of the Company's IRP filing, §536.070(6), in Docket No. EO-2006-0240.

29. The Commission's rejection of the life span approach is arbitrary, capricious and unreasonable for another reason as well. Even if the Commission were to accept Staff's flawed premise that the life span method is inappropriate because of a lack of certainty respecting the retirement dates of AmerenUE's non-nuclear generating units, Staff simply used incomplete data in developing its survivor curves for these plant accounts. Staff's use of data was incomplete because Staff used only *interim* retirement data, and completely ignored final retirement data when it developed its survivor curves. In other words, when Staff examined historical retirements in these accounts, Staff simply acted as if no component in these plant accounts had ever been finally retired. However, that is not true. Had Staff used the life span approach and truncated its survivor curves, it would have been appropriate to ignore past final retirements because the truncation of the curves would effectively reflect final retirements in the chosen survivor curves. However, given that Staff did not follow the life span approach, Staff cannot then just ignore past final retirements; otherwise, Staff's survivor curves entirely fail to reflect the final retirement of plant components.

D. Off-System Sales.

30. For the reasons outlined in this section of this Application and Motion, the Report and Order is unjust, unreasonable, arbitrary, capricious, unlawful, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and conclusions of law with respect to the Commission's decision to determine the Company's revenue requirement using a base level of off-system sales margins of $230 million.

31. The Commission's decision on this issue reflects the Commission's arbitrary, capricious, unreasonable and unsupported acceptance of Staff's view that use of an underlying gas price of $7/MMBtu is appropriate for modeling off-system sales in this case. As the

Commission itself notes, modeling was necessary because of several changes occurring during the test year which needed to be taken into account in setting an appropriate level of off-system sales margins to include in rates to become effective in 2007.[37] Consequently, the Commission's inappropriate reliance on a key model input results in an arbitrary, capricious and unsupported determination with respect to off-system sales margins in this case.

32. The Commission's view that a $7 gas price is an appropriate model input completely ignores (and just as importantly, fails to address) that Staff's use of a three-year average of gas prices is significantly and unreasonably skewed by the inclusion of gas prices from several months where gas prices were nearly twice as high as the average gas price recommended by either the Company or the Staff, all because of the 2005 hurricanes. As Dr. Proctor's Schedule 2.3 to his surrebuttal testimony (Exhibit 229) itself shows, included in Dr. Proctor's averages are incredibly high gas prices of more than $11/MMBtu, approximately $12.50/MMBtu, and nearly $13/MMBtu.

33. The Commission's finding that Dr. Proctor's method is "preferable (Report and Order, p. 30), apparently because it includes what the Commission labeled as "both low and high cost months" is also arbitrary, capricious, and unreasonable, based on the facts *in this case*. The record demonstrates that the so-called "low cost" months referred to by the Commission as "unusual" were not significantly lower than actual price levels observed in recent years. Rather, these "low cost" months saw gas prices that were just under $5/MMBtu (in 2003) and right at $5/MMBtu in 2004 and in 2006. That these prices were essentially repeated three times in this three year period demonstrates that the Commission's conclusion that they are "unusual" is

[37] The Commission makes note of only one change, the termination of the Joint Dispatch Agreement at the end of 2006, but there were other important changes as well, including the addition of Noranda Aluminum, Inc. as a customer, transfer of the Metro East service territory, implementation of the Midwest Independent Transmission System Operator, Inc.'s Day Two energy markets, and the addition of several new gas peaking units, among other changes. *See* Exh. 28, p. 3.

simply wrong and not supported by the evidence. Indeed, those gas prices are only about approximately $1.50 to $2.00/MMBtu (about 30%) below the average gas price used in both the Company's and Staff's models in this case. Occasional, 30% swings in gas prices are hardly unusual. Indeed, the Commission's decision to rely upon a $7 gas price smacks of arbitrariness because there are *no* findings of fact; no citation to any evidence of record (because there is none), that supports the contention that a gas price of around $5 is "unusual"[38] or that somehow a gas price of $5 that occurred multiple times throughout recent years should be ignored for purposes of determining a normalized gas price used to model off-system sales.

34. By contrast, the high gas prices Staff used – which as noted earlier occurred at *one time and one time only* (during the aftermath of the severe 2005 hurricanes) are between approximately $4 and $6 per MMBtu above the averages used by the Company and the Staff in their modeling; i.e., a significant and unusual approximately 60% to 90% above those levels. Consequently, the Commission erred when it preferred Staff's average because to do so arbitrarily gives far too much weight to incredibly high gas prices caused by the 2005 hurricanes, a result not supported even by Staff's own evidence. As Dr. Proctor himself conceded, "[e]very single one of those [the last five months of 2005], except for those months . . . [where] gas prices were significantly affected by the hurricanes, are essentially in the mid $6 range …."[39] The $6.58/MMBtu gas price recommended by the Company – and borne out by the evidence – is in

[38] Something is "unusual" if it is "uncommon" or "rare." *Black's Law Dictionary* (5th ed. 1979). According to Staff's own data, a roughly $5 gas price, which the Commission improperly termed as "unusual," is obviously not rare or uncommon having been observed approximately nine times in just four years (Exh. 229, Sch. 2.3). By contrast, gas prices of $11 to nearly $13 were observed one time and one time only – right after the 2005 hurricanes – during that same period.
[39] Tr. p. 1470, l. 3 – 7.

the mid $6 range; Staff's $7 gas price, which is undeniably skewed by through-the-roof gas prices – is not.[40]

35. The Commission attempts to dismiss the Company's use of a 12-month average by alleging in the Report and Order that the Company's 12-month average was "designed to avoid a particular high-cost month." There are *no* findings of fact; no citation to any evidence of record that supports the contention that the Company's use of a 12-month average for the calendar year just concluded was "designed" to avoid anything. In fact, had Staff done what Dr. Proctor said he should have done – remove the effects of the 2005 hurricanes from his analysis – Staff would have ended up with a nearly identical gas price to that used by the Company. That the Commission chose to ignore this is arbitrary, capricious and unreasonable, and the Commission has completely failed to provide any findings that would support its decision to do so, rendering the Commission's determination with respect to off-system sales margins unlawful.

36. Some of the Commission's findings regarding gas prices are also incorrect. For example, the Commission found that Dr. Proctor contended that he removed the effects of the 2005 hurricanes by using his multi-year average to determine his view of a normalized gas price. The record reflects that Dr. Proctor never contended any such thing. Indeed, the record shows that Dr. Proctor agreed that he did *not* remove the effects of the 2005 gas prices from his averages. To the contrary, the record is clear that Dr. Proctor conceded that he *failed* to remove those effects.[41]

37. Another mistaken factual finding is the Commission's finding that that Dr. Proctor "demonstrated" (Report and Order, p. 30) that there was no need to account for seasonal

[40] Again, the Commission has ignored that the predominant number of data points relied upon by Staff – a fact clearly depicted on Dr. Proctor's Schedule 2.3 – show gas prices well below Staff's $7 number, yet the Commission has in effect allowed Staff to skew those numbers by including blow-out gas prices affected by the 2005 hurricanes.
[41] Tr. p. 1457, l. 21 to p. 1458, l. 5; Tr. p. 1459, l. 1-4 ("Q. And the several months of significantly increased gas prices are included in your '03-'04 – excuse me – I believe its [a] '04 to '06 average, correct? A. That's correct.").

differences in gas prices, seasonal differences which further undermine Staff's $7 gas price. That demonstration is also not supported by the record. What Dr. Proctor said about seasonal differences in gas prices is that it was "unnecessary," in his view, to do a "monthly type" model.[42] Instead, he opted to follow a "simpler" approach that ignores the seasonal differences that the Company established exist.[43] Consequently, the Commission's finding, wherein the Commission found that "there is no need to further adjust Staff's off-system sales base level" (Report and Order, p. 31) is simply not supported by the evidence.

38. At bottom, this one unsupported assumption – that a normalized gas price of $7 is appropriate – accounts for nearly the entire difference between the Company's off-system sales margin recommendation and Staff's recommendation.[44] That assumption is arbitrary, unreasonable, not supported by the record, and is not supported by adequate findings of fact and conclusions of law. Because reliance on a $7 gas price to model off-system sales margins is arbitrary and unreasonable, the record supports setting the base level of off-system sales margins at $202.5 million, as recommended by the Company. Indeed, but for Staff's inappropriate reliance on $7 gas, Staff's margin would have been approximately $207 million.[45] Consequently, at most, off-system sales margins should be set at that figure.

E. Fuel Adjustment Clause.

39. For the reasons outlined in this section of this Application and Motion, the Report and Order is unjust, unreasonable, arbitrary, capricious, unlawful, not supported by substantial and competent evidence of record, and not supported by adequate findings of fact and

[42] Tr. p. 1468, l. 16-25.
[43] Exh. 30, p. 14, l. 17 to p. 15, l. 8 (Schukar Jan. 31, 2007 Rebuttal Testimony).
[44] *See* last row, Exhibit 110; Tr. p. 1488, l. 1-8; l. 20-24.
[45] Exh. 110.

conclusions of law with respect to the Commission's decision to deny approval of a fuel adjustment clause ("FAC") for the Company in this case.

40. One of the Commission's apparent reasons for denying the Company's request for an FAC was that the evidence in this case is unrefuted that the Company's fuel and transportation expenses will rise significantly during the time when rates set as a result of this case will be in effect. There is no evidence that the Company has acted imprudently in its fuel procurement activities or that it can avoid these increases. Consequently, the fact that in the very near term known fuel cost increases will occur should not disqualify AmerenUE from the use of an FAC, which appears, at least in part, to form the basis for the Commission's denial of the Company's FAC request.[46] Indeed, the Company respectfully submits that it is poor regulatory policy to buy into State witness Brosch's theory that the "worst reason" to implement a fuel adjustment clause is to allow recovery of rising (and prudently incurred) fuel costs (Report and Order, p. 23). What Mr. Brosch (and, apparently, the Commission) is saying is that single issue ratemaking should not be used.

41. Mr. Brosch's condemnation of single issue ratemaking runs counter the the Legislature's decision that indeed single issue ratemaking, with respect to prudently incurred fuel and purchased power costs, is appropriate. Stated another way, if the Commission buys into the idea that an FAC is inappropriate if costs are rising for a time, or falling for a time (but not both rising and falling during the same time frame) simply because other costs in the business may or may not rise or fall,[47] then the Commission is effectively setting a different policy than that reflected in Senate Bill 179 ("S.B. 179"), more specifically, a policy that condemns an FAC

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[46] If the mere fact that fuel prices are expected to rise disqualified a utility from obtaining an FAC, then in times where fuel prices are expected to fall the Commission's logic would suggest that an FAC is also inappropriate, which would preclude customers from realizing the periodic rate *decreases* that would occur with an FAC.

[47] The record in this case contains no evidence that suggests that the Company's non-fuel operating expenses are expected to fall in the coming years. Indeed, the record suggests those costs will continue to rise.

simply because it constitutes single issue ratemaking. The Commission also overlooked the fact that the Legislature required that rate changes occurring as a result of the single issue ratemaking inherent in S.B. 179 be examined periodically – every four years – so that if there are other costs and expenses “changing in the background” (Report and Order, p. 23), rates can be set to reflect those cost and revenue levels. In short, the Legislature struck the balance between single issue ratemaking and the use of expensive and inefficient rate cases to recover fuel costs in enacting S.B. 179. The Commission should not disregard that policy and deny a FAC simply because of the existence of a rising fuel cost environment, or simply because other non-fuel costs and revenues are not examined with each periodic FAC adjustment.

42. Aside from the foregoing issue, the Commission also arbitrarily, capriciously, and unreasonably concluded that AmerenUE’s fuel costs are not volatile, apparently based upon the Commission’s view that AmerenUE’s can partially hedge some of its fuel costs in the near term. The evidence demonstrates, however, that even if this were true, AmerenUE remains exposed to substantial fuel price volatility. No evidence disputes the extreme volatility in fuel prices (or the fact that AmerenUE is a price taker, not a price maker) demonstrated by AmerenUE witness Bob Neff’s surrebuttal testimony, including the fact (completely ignored by the Commission) that coal prices have moved up *and* down substantially. Indeed, the record reflects huge price swings in just the past approximately five years (30% 12 times; more than 50% four times; 80 % one time).

43. The Commission also ignored the fact that large percentages of the Company’s coal costs[48] are not hedged at all in 2009 and beyond (exposing the Company to severe

[48] These percentages appear at pages 17-18 of the Company’s Post-Hearing Brief, but are not reproduced here because they are highly confidential.

deterioration in its return on equity), and that the Company has not locked in transportation prices beyond 2008 as well.

44. The Commission also arbitrarily, capriciously, and unreasonably ignored the evidence of record in this case that demonstrated that Staff's theory, that off-system sales margins would simply mitigate rising fuel costs, was unsupported by the record in this case. Dr. Proctor admitted that there were a number of variables that he did not even examine, and that he simply did not conduct a complete analysis.[49] The Commission apparently ignored, and certainly did not address with adequate findings of fact, the fact that Dr. Proctor's theory was shown by the Company to simply not apply at all in 22 of the 27 scenarios run by the Company.[50] This fails entirely to provide insight into how this controlling issue was resolved and renders the Commission's decision unlawful on that basis. There are other examples of evidence of record that demonstrates that the Commission's reliance on the alleged offset (discussed at p. 24 and also at p. 26 of the Report and Order) was not supported by the record. One such example is Dr. Proctor's admission that even if AmerenUE's fuel costs and power prices do at times move in the same direction, the resulting off-system sales margin may not outpace the fuel cost increases.[51]

F. Other Issues.

45. The Report and Order is, to varying degrees, unlawful with respect to the Company's Economic Development and Retention Rider ("EDRR"), its Economic Redevelopment Rider ("ERR"), its Industrial Demand Response ("IDR") pilot program and respecting shareholder-funded low-income assistance program funding purportedly ordered by the Commission, and is unlawful with respect to each of these four programs for essentially the

[49] Tr. . 1492, l. 15; p. 1493, l. 1-5, 9-11.
[50] Exh. 32, Sch. SES-17-2.
[51] Tr. p. 1492, l. 2-14; p. 1497, l. 7-10.

same reasons. Indeed, the Commission seems to recognize it acts beyond its jurisdiction when it attempts to mandate a program that is a part of the regulated electric service the Company would provide, but then effectively forces the Company's shareholders pay for that service, without including the costs in the Company's rates. This is evidenced by statements in the Report and Order such as the statement appearing at page 100, whereby the Commission indicates it is "willing to give the Company more discretion" since shareholders would fund the program.

46. The law is not that the Commission is empowered to effectively confiscate shareholder funds to be used to provide utility service if the Commission simply gives the utility "more discretion." To the contrary, the law is that the Commission must set the Company's revenue requirement based upon a recovery of the full cost of providing the utility service regulated by this Commission, including depreciation, taxes and a fair return on shareholder equity.[52]

47. When it filed the tariffs that initiated this rate increase case, the Company also filed (though it was under no requirement to do so) the EDRR, EDR and IDR tariff sheets. Each of these three programs was new, and the Company designed them according to the Company's view of how the programs should work and based upon the shareholder funds the Company was willing to commit to those programs. Importantly, the Company included no costs in its revenue requirement for these programs because there were no expenses associated with them in the test year, given that the programs did not exist in the test year. Rather, expenses associated with these programs, like other revenues and expenses occurring in the future, were not known and measurable and could not be included in the Company's rates. The exclusion of future but unknown costs for these programs was consistent with this Commission's use of a historic test year, as this Commission itself discussed in the Report and Order.

[52] This Commission recognizes this at page 12 of the Report and Order.

48. The Commission has, however, violated its own historic test year principles and is attempting to confiscate shareholder funds for programs the Company never had to propose in the first place by conditioning the approval of the EDRR and ERR tariffs on removal of termination dates from the ERR tariff, by suggesting that it might impose revisions to the IDR tariff at some point, and by ordering the Company to file tariffs that require the expenditure of $600,000 of shareholder funds, not included in the Company's revenue requirement, for low-income assistance. These orders are beyond the statutory authority and jurisdiction of the Commission, and are arbitrary, capricious and unreasonable, in particular given that they effectively reach forward and confiscate shareholder money to be spent in the future without consideration of other future revenue and expense items and while employing a historic test year in setting the Company's revenue requirement. These orders also unlawfully dictate to management how it should manage its business by mandating the terms and conditions upon which shareholder funded programs (which are not required to deliver adequate and reliable electric service in the first place) must be implemented. Additional bases upon which portions of the Report and Order are unlawful respecting the EDRR, EDR and IDR programs are discussed below.

a. Economic Development and Retention Rider and Economic Development Rider.

49. The Commission attempts to justify taking over the management of AmerenUE by dictating that these shareholder funded programs exist without a defined termination date by finding that "economic development is an important goal that benefits all Missourians" (Report and Order, p. 99). The Company does not disagree with this goal, and there are of course many other goals that if met would benefit Missourians. For example, utilities could install utility systems that are built entirely underground and that also provide a back-up line in case the

primary line fails to every house in the state. Such a system would no doubt benefit all Missourians. However, the Commission does not have the authority to order public utilities to fund such a system at shareholder expense. The same holds true with respect to the EDRR and EDR riders – the Commission cannot order AmerenUE to expend shareholder funds AmerenUE itself does not desire to expend to promote economic development in Missouri.

50. As an apparent justification for its decision, the Commission notes that this "small modification" should not create an "undue burden" on AmerenUE. (Report and Order, p. 100). There is nothing in the Commission's enabling statutes, which are the only source of the Commission's authority, that creates a standard that provides that the Commission can force utilities to fund utility programs with shareholder money as long as it does not create an "undue burden." The Commission has no power to create such a standard, and doing so is unlawful. Not only does this standard have no basis in law, but it also has no basis in fact. There is no evidence of record that establishes the nature or extent of the "burden" that will exist on shareholders if the termination dates are removed. Consequently, this decision is not supported by adequate (indeed by any) findings of fact, and is supported by not a single conclusion of law, rendering it unlawful for that reason as well.

51. As noted above, the Commission cannot take over the utility's management or dictate how the utility provides service. *See, e.g. State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980); *State ex rel. Pub. Serv. Comm'n v. Bonacker*, 906 S.W.2d 896, 899 (Mo. App. W.D. 1995). This means that the Commission cannot dictate to management that it implement the EDR or EDRR without termination dates (which has the effect of increasing the costs of the program) and at the same time deny recovery of the costs of the program from ratepayers. Whether the Commission could adopt an economic

development tariff rule, or prescribe a program, in each case as part of the utilities' provision of regulated service for which costs can be recovered, may be an open question. What is not an open question is whether or not the Commission can mandate new utility programs at shareholder expense.

52. This principle has existed since at least the time when public utility regulation in this state began, as illustrated by *City of Joplin v. Wheeler*, 158 S.W. 924 (Mo. App. S.D. 1913). In *Wheeler*, the City attempted to require the local water utility to pay for service lines from the water main to the residence/business with shareholder funds. The City argued that doing so was part of the "rate-fixing power" of the City. *Id.* at 927. This would be the same argument one would have to make on the Commission's behalf if the Commission's attempt to order the Company to fund these programs with shareholder money was to be sustained. The Court easily disposed of this argument, noting that "this expense to the operating company must be ultimately paid by the consumer." *Id.* The Court drew the important distinction between *regulating* a service the utility provides, and *forcing* a utility to do something, at shareholder expense, that the utility never had to do in the first place, a distinction summed up well in the following statement from the Court's opinion: "The city council [nor this Commission] can no more compel a public service corporation to do or abstain from doing anything not pertaining to the public service itself than can it compel a private individual . . .." *Id.* at 928; *see also Home Tele. Co. v. Carthage*, 139 S.W. 547 (Mo. 1911) (holding that a telephone company could not prohibited from supplying party lines (as opposed to private lines) at the expense of the company's shareholders). The Commission has consistently and properly respected these principles or law. *See, e.g., In re: Southwestern Bell Tel. Co.*, 1993 Mo. PSC LEXIS 11, 2 Mo. P.S.C.3d 125 (1993), where the Commission recognized that it was Southwestern Bell's decision whether to

include caller id in three service offerings Southwestern Bell had proposed for approval by the Commission ("The Commission considers this a business decision of SWB and therefore will not require SWB to provide Caller ID to these services."). This is simply extension of the well-settled principle that the Commission's "authority to regulate does not include the right to dictate the manner in which the company shall conduct its business." *Bonacker*, 906 S.W.2d at 899. Stated another way, the "customers of a public utility have a right to demand efficient service at a reasonable rate, but they *have no right to dictate the methods* which the utility must employ in the rendition of that service." *State ex rel. St. Joseph v. Pub. Serv. Comm'n*, 30 S.W.2d 8 (Mo. 1930).

53. A mandated change to the EDRR and EDR programs the Company did not have to propose in the first place, which increases shareholder costs for the programs, even if the programs are good for Missourians, is no different than forcing a water utility to use shareholder funds to pay for service lines, a telephone company to use shareholder funds to pay for private phone lines out of shareholder funds, or a telephone company to add a service to a program proposed by the Company that the telephone company does not believe should be included in the program. Missourians might benefit from private phone lines, but if they want the benefit, they have to pay the related cost.

b. IDR Tariff.

54. Precisely the same principles would apply if this Commission sought at some point to force the Company to spend more shareholder funds than the Company voluntarily is willing to spend on the IDR pilot. At least four of the six conditions the Missouri Energy Group ("MEG") proposes, and which the Commission suggests it might attempt to impose, would add program costs and thus effectively would unlawfully confiscate shareholder monies the

Commission has no authority to force the Company to spend. The Commission cannot take over AmerenUE's management and tell it what IDR program it must and must not design, at least when it is the Company's shareholders who are footing the bill.[53]

55. The possible imposition of the conditions MEG seeks is also completely unsupported by adequate findings of fact or conclusions of law. For example, that the Commission is understandably interested in the development of demand response programs is not a finding of fact at all. Nor is the Commission's (understandable) hesitancy to attempt to impose more costs on shareholders. The rest of the "findings of fact" respecting the IDR tariff deal only with compliance with the Commission's Electric Utility Promotional Practices rule. There are absolutely no conclusions of law that support imposition of costs on shareholders for a program the Company did not design. Again, the only conclusion of law deals with the Commission's Electric Utility Promotional Practices rule. For these additional reasons, the Commission's Report and Order respecting the IDR tariff is unlawful.

c. Low-Income Program Funding.

56. For all of the reasons discussed in connection with the EDRR, EDR and IDR tariffs, the Commission lacks the power to mandate that shareholders fund a low-income assistance program.[54] No findings of fact or conclusions of law support any such power, and for this additional reason the Commission's attempt to force this shareholder funding is unlawful.

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[53] While the Company must seek rehearing and, if necessary, appeal aspects of the Report and Order that force shareholders to fund programs the Commission has no authority to impose, the Company hereby advises the Commission that it has every intention of consulting with other parties and to give due consideration to the revisions urged by MEG, although the Commission is without authority to mandate that the Company do so. The Company has also filed an IDR tariff sheet that complies with the Commission's Electric Utility Promotional Practices Rule, as it was ordered to do.

[54] At this point, the Commission has ordered this funding, and the Company will comply with the Report and Order in this regard, subject to the Company's right to discontinue the funding at such time as this Commission removes this unlawful order on rehearing, or at such time as a reviewing court does so on appeal.

Motion for Correction of Order Nunc Pro Tunc

57. The Commission's Order contains three inadvertent errors which the Commission should correct nunc pro tunc, all of which can be corrected based upon the record in this case, as follows:

a. The undersigned counsel for AmerenUE's last name is misspelled in the "Appearances" section and should be spelled "Lowery."[55]

b. On page 9, the Report and Order states that the Company serves approximately 2 million electric customers. The correct figure is approximately 1.2 million.[56]

c. Pages 74-75 of the Report and Order indicates that the Commission was not including a base amount of SO2 sales in AmerenUE's revenue requirement, but the Commission's actual decision on this issue (at page 78) fixes a base level of SO2 sales of $5 million. As explained on page 78, if sales levels are below $5 million, the shortfall will accrue in the regulatory account established by the Report and Order, as will any sales in excess of $5 million, but the accruals in the regulatory account vary around a base of $5 million, not $0, as suggested at pages 74-75. The Commission should correct this error.

WHEREFORE, the Company hereby respectfully requests that the Commission grant the following relief:

a. Rehearing or, alternatively, clarification of the Commission's decision respecting the inclusion of net salvage in the depreciation rates for

[55] The Company notes that Mr. Dottheim's name was also misspelled.
[56] Public Service Commission's 2006 Annual Report, p. 56.

Accounts 321, 323, 324 and 325, and adoption of Staff's depreciation rates for those accounts;

b. Rehearing of the Commission's decision to award an ROE of just 10.2%, and a order on rehearing granting an ROE of at least 10.9%;

c. Rehearing of the Commission's decision to deny life span treatment with regard to the depreciation rates for the Company's non-nuclear generating units, and adoption of life span treatment for those units in its order on rehearing;

d. Rehearing of the Commission's decision to set a base level of off-system sales margins at $230 million, and an order on rehearing setting those margins at $202.5 million;

e. Rehearing of the Commission's decision to deny an FAC for the Company, and an order on rehearing granting the Company's request for an FAC, as proposed in the surrebuttal testimony of AmerenUE witness Martin J. Lyons and as reflected in Exhibit 104;

f. Rehearing of the Commission's decision to order removal of the termination dates on the proposed EDRR and EDR riders, and an order on rehearing approving the EDRR and EDR riders as proposed or, alternatively, rejection of the EDRR and EDR riders;

g. Rehearing of that part of the Commission's Report and Order that suggests the Commission could impose conditions on the IDR pilot program requested by MEG, and an order on rehearing removing that suggestion; and

h. Rehearing of that part of the Commission's Report and Order purporting to require AmerenUE's shareholders to fund $600,000 of low-income assistance programs absent approval of an FAC as proposed by the Company, and an order on rehearing removing that part of the original Report and Order.

Dated May 31, 2007.

Respectfully submitted:

SMITH LEWIS, LLP

/s/ James B. Lowery
James B. Lowery, #40503
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

UNION ELECTRIC COMPANY,
d/b/a AmerenUE

By: **/s/ Thomas M. Byrne**
Steven R. Sullivan, #33102
Sr. Vice President, General Counsel & Secretary
Thomas M. Byrne, #33340
Managing Associate General Counsel
1901 Chouteau Avenue, MC-1310
P.O. Box 66149, MC-131
St. Louis, Missouri 63101-6149
(314) 554-2514 (Telephone)
(314) 554-4014 (Facsimile)
tbyrne@ameren.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application was served via e-mail, to the following parties, on the 31st day of May, 2007.

Staff of the Commission Office of the General Counsel Missouri Public Service Commission Governor Office Building 200 Madison Street, Suite 100 Jefferson City, MO 65101 gencounsel@psc.mo.gov	Paul A. Boudreau Russell Mitten Aquila Networks 312 East Capitol Ave. P.O. Box 456 Jefferson City, MO 65102 PaulB@brydonlaw.com Rmitten@brydonlaw.com
Office of the Public Counsel Governor Office Building 200 Madison Street, Suite 650 Jefferson City, MO 65101 opcservice@ded.mo.gov	John B. Coffman Consumers Council of Missouri AARP 871 Tuxedo Blvd. St. Louis, MO 63119 john@johncoffman.net
Joseph P. Bindbeutel Todd Iveson Missouri Department of Natural Resources 8th Floor, Broadway Building P.O. Box 899 Jefferson City, MO 65102 joe.bindbeutel@ago.mo.gov todd.iveson@ago.mo.gov	Michael C. Pendergast Rick Zucker Laclede Gas Company 720 Olive Street, Suite 1520 St. Louis, MO 63101 mpendergast@lacledegas.com rzucker@lacledegas.com
Lisa C. Langeneckert Missouri Energy Group 911 Washington Ave., 7th Floor St. Louis, MO 63101 llangeneckert@stolarlaw.com	Sarah Renkemeyer Missouri Association for Social Welfare 3225-A Emerald Lane P.O. Box 6670 Jefferson City, MO 65102-6670 sarah@gptlaw.net
Stuart Conrad Noranda Aluminum, Inc. 3100 Broadway, Suite 1209 Kansas City, MO 64111 stucon@fcplaw.com	Diana M. Vuylsteke Missouri Industrial Energy Consumers 211 N. Broadway, Suite 3600 St. Louis, MO 65102 dmvuylsteke@bryancave.com

Douglas Micheel Robert Carlson State of Missouri P.O. Box 899 Jefferson City, MO 65102 douglas.micheel@ago.mo.gov bob.carlson@ago.mo.gov	Rick D. Chamberlain The Commercial Group 6 NE 63rd Street, Ste. 400 Oklahoma City, OK 73105 rdc_law@swbell.net
H. Lyle Champagne MOKAN, CCAC 906 Olive, Suite 1110 St. Louis, MO 63101 lyell@champagneLaw.com	Matthew B. Uhrig U.E. Joint Bargaining Committee Lake Law Firm LLC 3401 W. Truman Jefferson City, MO 65109 muhrig_lakelaw@earthlink.net
Koriambanya S. Carew The Commercial Group 2400 Pershing Road, Suite 500 Crown Center Kansas City, MO 64108 carew@bscr-law.com	Samuel E. Overfelt Missouri Retailers Assn. Law Office of Samuel E. Overfelt PO Box 1336 Jefferson, City, MO 65201 moretailers@aol.com

/s/ James B. Lowery
James B. Lowery