BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Tariffs to	)	File No. ER-2019-0335
Decrease Its Revenues for Electric Service.	)	

REPLY BRIEF OF UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

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It is axiomatic that the Commission must base its decisions – including its decision regarding a sharing percentage in the Company's fuel adjustment clause ("FAC") – on competent and substantial evidence of record.[1] Based on the evidence, OPC has completely failed to justify a change in the sharing percentage. Indeed, a review of the OPC's initial brief and the actual evidentiary record reveals a considerable gulf between OPC's *arguments* and *speculation*, and what the actual evidence of record on this issue establishes and supports. That an office (and its witness) that is hostile to the very existence of FACs wants utilities to bear more prudently-incurred net energy cost changes (which would also force customers to miss out on more of the decreases in such costs) does not make OPC's desire good policy; OPC's desire certainly does not equate to competent and substantial evidence sufficient to justify such a change.

A. REPLY TO OPC'S ARGUMENTS

1. Aside from Ms. Mantle's conclusory opinion,[2] there is not a shred of record evidence in this case that supports OPC's contention that changing the sharing percentage would provide a "better incentive," nor is there a shred of evidence that a "better incentive" is needed (Reply to OPC Argument A.a).[3]

[1] ***State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n***, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001) (Commission decisions not supported by competent and substantial evidence of record are unreasonable, and subject to reversal).
[2] The Commission has already determined that the conclusory opinion of a witness that doing so would provide a greater incentive does not justify changing the sharing percentage. Report and Order, File No. ER-2010-0036, pp. 76-77.
[3] OPC concedes that it bears the burden to persuade the Commission – with competent and substantial evidence of record – that its 85%/15% proposal should be adopted. OPC Brief, p. 5. As discussed below, it doesn't come close to sustaining that burden.

The most consistent theme in OPC's brief is, essentially, that "more is better" (actually, all OPC can speculate about is that more *may be* better). OPC says that if 5% is "good," then surely "15% is better." The main problem with this line of thinking is that it reflects a fundamental misconstruction of the function of a FAC. By OPC's logic, if a 15% share of changes in net energy costs is "better," then why not a 25% share, or a 38.2% share, or a 49.9% share, etc.? OPC's position in this case amounts to nothing more than blindly throwing a dart at a dart board and choosing whatever number the dart happens to hit. The Commission has already rejected these kinds of speculative, and unjustified, attempts at experimentation with the FAC.[4]

Moreover, the evidence in this case convincingly demonstrates that more sharing does not provide a "better" incentive either because there need not be any sharing at all,[5] or because the current 5% utility share, together with many other powerful incentives, already "provide [Ameren Missouri] . . . sufficient incentive to operate at optimal efficiency . . .."[6] As recounted in detail in the Company's initial brief, the Commission has deliberately and affirmatively – based on record evidence in a string of cases (that evidence, and more, exists in this case) – done far more than throw darts at a dart board. Instead, the Commission has consciously determined that a 5% share for Ameren Missouri provides a sufficient incentive for it to "operate at optimal efficiency."[7] There is not one piece of evidence in this case that could lead the Commission to abandon that conclusion. Indeed, this case truly reflects a "déjà vu all over again" occasion

[4] Report and Order, File No. ER-2014-0258 ("Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company."); Report and Order, File No. ER-2012-0166 ("Staff's [Ms. Mantle's] stated reasons for experimenting with adjusting the sharing mechanism of Ameren Missouri's fuel adjustment clause to implement an 85%/15% split do not withstand scrutiny").
[5] Ex. 6 (Meyer Rebuttal), p. 10, l. 23 to p. 11, l. 3.
[6] Report and Order, File No. ER-2008-0318, p. 73. See also the discussion at pages 4 to 5 of the Company's Initial Brief.
[7] *Id.*

because it is nothing more than a rehash of the same arguments made by the same witness in the third Company rate review case after the Commission approved a FAC for the Company in the first place, File No. ER-2012-0166. In that case, the Commission described the exact same proposal as follows: "Staff [Ms. Mantle] contends that increasing the sharing percentage to 85%-15% would give Ameren Missouri a greater incentive to minimize its costs . . .."[8] In rejecting this and other similar contentions to those made by OPC now, the Commission pointed out that it was easy for Staff (Ms. Mantle) to "say that Ameren Missouri should not complain about a proposal triple . . . [the percentage]," going on to point out that the additional $30 million of prudently-incurred net energy cost changes the Company would have had to absorb under such a mechanism is not *de minimis* as Ms. Mantle implied at the time and concluding that such a tripling of the utility share would impose a "significant financial burden" on the Company.[9] The evidence in this case dictates the same conclusions, that is, that there is no proof that more sharing would create a better incentive, there is no proof of a need for more sharing, and imposing more sharing would unfairly impose a significant financial burden on the Company.

OPC does try to enhance Ms. Mantle's tired "more must be better" argument with an enhanced emphasis on another tact, that is, OPC's wrong-headed focus on trying to convince the Commission that it ought to let the Company "make more money" by increasing the Company's share.[10] This "why doesn't the Company want to make more money" contention was also already addressed in the Company's initial brief (pages 12-13) but a couple of points bear emphasis here.

[8] Report and Order, File No. ER-2012-0166, p. 78.
[9] *Id.*, pp.78, 80-81. That $30 million the Commission determined would significantly and unfairly burden the Company in that case would, based upon today's facts, be more than $125 million. Ex. 6, p. 15, l. 12 to p. 16, l. 2.
[10] OPC Brief, p. 5 (suggesting that the Company "enjoys" keeping reductions in net energy costs); p. 10 (claiming a greater utility share is likely to be "a more favorable arrangement").

Aside from the fact that the Company should neither lose nor gain money because of changes in net energy costs, OPC's claim that a change in the sharing percentage will create a greater gain is pure speculation that finds no support in the record in this case.[11] OPC doesn't (and can't) cite any support for its statement that "85/15 sharing should be a more favorable arrangement to the Company." OPC Brief, p.10. Is it possible that net energy costs continue to decline? Absolutely. Does anyone know if that will happen? Absolutely not. Does the record in this case indicate a further decline in the future? No, it does not. What we do know is that net energy costs have already declined a lot since the last rate review. And they may decline more, or they may go back up – who knows? Which of those outcomes occur will largely depend on unpredictable load and volatile, uncertain, and uncontrollable market prices for coal, nuclear fuel, transportation, and power. As the Commission has recognized, that volatility is a reason for "keeping the sharing mechanism at 95%-5%, not for changing it."[12]

The truth is that whether these kinds of factors will cause net energy costs to rise or fall after a rate review should not even be a consideration at all when discussing incentives in a FAC. By its very nature, the FAC is simply supposed to pass through substantial costs that must be incurred (or revenues that are generated) to provide service and that are, taken as a whole, volatile/uncertain and largely beyond the control of the utility.[13] No one – save OPC now – has ever suggested that sharing percentage decisions ought to be influenced based on speculation about whether utilities might profit more from changes in net energy costs if the sharing were more. Instead, the Commission has always recognized that the sharing should be no more (or

[11] The Company is not looking to "enjoy retaining" net energy cost reductions and is not looking to obtain a "reward" from such reductions. OPC Brief, pp. 5 and 9, respectively. As noted, the Company does not believe there should be any sharing at all but has accepted the Commission's repeated determination that a 5% share is appropriate and enough.

[12] Report and Order, File No. ER-2012-0166, p. 79.

[13] This basic purpose has repeatedly been recognized by the Commission. *See, e.g.* Report and Order, File No. ER-2014-0258, p. 102.

less) than the level determined by the Commission to be necessary to provide a sufficient incentive; otherwise, the Commission would simply be creating a lottery by which utilities are deprived of prudently-incurred net energy costs or customers are deprived of the benefit of declines in such costs.

Not only is there no evidence that a greater utility share would provide more incentive but there is a total lack of evidence that more incentive is needed. OPC admits that it is not even alleging imprudence or mismanagement or less than optimal management by the Company. And in a classic case of "no good deed goes unpunished," OPC tries to turn the good job the Company has done (within the limited areas of control that it has) to lower net energy costs into a claimed reason to place more risk of failing to recover prudently-incurred net energy cost changes on the Company.[14] OPC is right about one thing: the Company has continued to do what it can to lower net energy costs when it can, as reflected in the large net energy cost decrease included in the newly-set base rates in this case. The Company has told the Commission from the very beginning that this is what it would do; told the Commission that in this case too; and has told the Commission that it did not need any sharing at all because of the other powerful incentives it has to properly manage its net energy costs where it can.[15] Its behavior over the past 12-plus years backs up what it has told the Commission. And the Commission, and even Ms. Mantle, agrees that those powerful incentives exist.[16] But make no mistake: the Company cannot control fuel and transportation and power markets, or the volume of its sales (which of course drive in a substantial way the level of its net energy costs).[17] OPC's argument now is yet again an attempt by Ms. Mantle to recycle an old and already

[14] OPC Brief, p. 7.
[15] Ex. 6, pp. 10-11.
[16] *Id.*, p. 15.
[17] Tr., p. 336, ll. 15-16; see also Ameren Missouri Initial Brief, p. 13.

discarded argument, that Ameren Missouri doesn't need a FAC because it can control these costs. But the Commission properly recognized, when Ms. Mantle made that argument years ago, that "most of the costs [at issue] . . . are dictated by national and international markets . . . [and are] far beyond the control of AmerenUE."[18]

Having addressed OPC's "more is better" claim, the Company addresses below a few miscellaneous points OPC makes related to that argument, as follows:

- OPC claims the current sharing percentage was a "political compromise," citing only Ms. Mantle's unsupported statement to that effect.[19]
    - The Company debunked this myth in its initial brief (see pages 3 to 9). There is certainly nothing in the Report and Order when the Commission approved the first post-Section 386.266 FAC for Aquila, Inc. in 2007 that states that the 95%/5% mechanism put into place for Aquila was a "political compromise." Regardless, as it pertains to *Ameren Missouri and this case*, the record overwhelmingly demonstrates that the current Ameren Missouri sharing mechanism is the product of deliberate, affirmative decision making based on record evidence in each Ameren Missouri rate case.
- OPC claims that its 85%/15% proposal "protects customers" against increasing fuel costs.[20]
    - Accepting that a sharing percentage has a function – and as noted, the Company has accepted the Commission's viewpoint that it does – that

[18] Report and Order, File No. ER-2008-0318, p. 63. Mr. Meyer confirmed that this remains true today; OPC hasn't claimed, let alone proven, otherwise.
[19] OPC Brief, p. 6.
[20] *Id*., p. 9.

function is not to "protect customers from rising fuel costs." To the contrary, that function is to supplement the already powerful incentives the Company has to prudently manage its net energy costs. That customers avoid 5% of net energy cost increases because there is a sharing percentage amounts to a lucky break for them, but isn't "protection" against paying the cost of serving them.

- OPC bemoans the mathematical fact that at either sharing percentage the Company would recover 98% - 99% of its overall net energy costs.[21]
  - The General Assembly decided FACs should be available and this Commission has, for the many reasons recounted in its orders that are of record in this case, repeatedly concluded that Ameren Missouri should have one, with a 95%/5% sharing percentage. That sharing percentage is not designed to cut the total net energy cost recovery; it is designed to create an additional incentive. Consequently, by its very nature, since a 5% utility share is enough, the share should be no more, regardless of what overall percentage of net energy costs are ultimately recovered through a combination of base rates and FAC recoveries. OPC's drum beating about the overall recovery percentage is nothing more than an attempt to disguise OPC's hostility to FACs.
- OPC claims prudence reviews can't "guarantee" that only prudent fuel costs are reflected in a FAC.[22]
  - The evidence is contrary:

[21] OPC Brief, p. 10.
[22] OPC Brief, p. 13.

- Ms. Mantle admits that the Commission's power to disallow imprudent net energy costs is a "powerful incentive" for the utility to avoid imprudent behavior.[23]
- The Commission has repeatedly concluded – based on record evidence – that prudence reviews do provide an effective incentive for the Company to properly manage its net energy costs:
    - Ameren Missouri's FAC "already includes features designed to give the company an incentive to maximize its income from off-system sales and minimize its costs. Specifically, . . . [the requirement that] the Commission review the prudence of the company's purchasing decisions every 18 months."[24]

2. OPC'S reliance on the PISA statute is completely misplaced (Reply to Argument A.b).

The Company has largely anticipated, addressed, and debunked OPC's claim that the General Assembly's decision to require deferral of 85% of qualifying capital investments to the PISA regulatory asset provides support for OPC's quest to change the sharing percentage for Ameren Missouri's FAC to 85%/15%. It doesn't, for the reasons discussed at pages 14 to 16 of the Company's initial brief. However, a few of OPC's statements, especially in the early portions of its PISA-related argument, require a specific response.

OPC's claim that the current sharing percentage is the result of "regulatory happenstance, and deference to status quo"[25] is plainly wrong and is rebutted by the evidence of record in this

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[23] Ex. 6, p. 15, quoting the transcript of Ms. Mantle's deposition in File No. ER-2011-0028.
[24] Report and Order, File No. ER-2008-0318, p. 70.
[25] OPC Brief, p. 11.

case. As discussed in detail at pages 3 to 9 of the Company's initial brief, the Commission independently, deliberately, and affirmatively decided—for Ameren Missouri and based on specific record evidence for Ameren Missouri—that a 5% Company share was appropriate.[26] For the same reasons, OPC's claim that "[u]nlike the 95/5 sharing mechanism … [it's proposal is supported by the record]"[27] is likewise wrong and unsupported by the record. And OPC's claim that the 95%/5% sharing percentage was created "out of whole cloth"[28] in 2007 is equally unsupported. It is also irrelevant even if it were true for Aquila in 2007 given the Commission's affirmative decisions, noted above, regarding the appropriate sharing for Ameren Missouri.[29]

OPC continues its complete mischaracterization of the current sharing ratio for Ameren Missouri when it claims that "no party has since [2007] demonstrated that the 95/5 ratio is sufficient to induce efficient fuel operations."[30] Is OPC claiming that the Commission was somehow duped by the evidence it did rely upon in numerous prior Ameren Missouri rate cases when it concluded that not only was a 5% Ameren Missouri sufficient to do just that, but was sufficient to cause Ameren Missouri to manage net energy costs optimally? The fact is that all OPC can say in support of this obviously incorrect claim is that in the unsupported opinion of its FAC-opposing witness the proof she wants has been lacking, the clear inference being that the Commission has gotten it wrong all these years.

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[26] Four of those six determinations were made after *contested evidentiary hearings* on the issue.
[27] OPC Brief, p. 11.
[28] *Id.*
[29] OPC cites the Report and Order in File No. ER-2007-0002 (Ameren Missouri) to support is "whole cloth" claim. That Order provides no such support. Nor does the Report and Order in Aquila's case, File No. ER-2007-0004. Notwithstanding Ms. Mantle's claims about why the then-Commissioners decided what they decided *for Aquila* in 2007, the *record* in that case demonstrates that the Commission thought more sharing would expose Aquila to under-recoveries that were too large (Report and Order, p. 53, last full paragraph) and that a 95% share for customers (and 5% for Aquila) was appropriate because it would protect Aquila from "extreme fluctuations in fuel and purchased power cost, yet retain a *significant incentive* . . . [for Aquila to act prudently]" (emphasis added).
[30] OPC Brief, p. 12.

The Company won't address the first full paragraph at page 12 of OPC's brief or the carryover sentence from the next paragraph on that page because the Company's initial brief already deals with the contentions made there. However, the very last sentence in section A.b of its brief (top of page 13) is so outlandish as to warrant a response. OPC argues that "absent justification to the contrary, the legislative compromise that produced the 85/15 PISA split is a clear baseline for what this State believes is a necessary incentive for ratemaking mechanisms." That claim is truly stunning. The claim is that the PISA statute has created a rebuttable presumption that the Commission must use 85%/15% in every instance where sharing might be warranted in the ratemaking context unless some party meets its burden to establish something other than 85%/15% is proper. Nothing in any statute, including the FAC statute, supports such a conclusion. As outlined in the Company's initial brief, this argument is the same or at least quite similar to the argument the Court of Appeals just rejected when OPC tried to claim that the legislature's failure to mention the statute enabling a RESRAM meant that the capital costs associated with the 15% of investments in wind projects that were not deferred to the PISA regulatory asset could not be reflected in the RESRAM. OPC also overlooks a very basic legal principle that the courts do not infer an amendment to a statute, Section 386.266 here, from silence, but rather, the General Assembly would have had to explicitly amend the FAC statute in order to impose this new presumption regarding sharing in a FAC. See, e.g., *LeSage v. Dirt Cheap Cigarettes and Beer, Inc.*, 102 S.W.3d 1, 5 (Mo. banc 2003). It didn't, and OPC can't rely upon the General Assembly's silence to do so.

3. OPC's attack on the prudence review process fails to withstand scrutiny. (Reply to Argument A.c).

As earlier noted, the Commission has determined, for Ameren Missouri, two things regarding this issue: 1. Its prudence reviews already provide an incentive for Ameren Missouri

to maximize FAC revenues and minimize FAC costs,[31] and 2. Given that incentive and others, a 95%/5% sharing mechanism is appropriate and sufficient; indeed it induces optimal management of these costs and revenues by Ameren Missouri.[32] OPC offers nothing new that undermines or justifies a departure from those determinations.

In its efforts to claim that prudence reviews coupled with the current sharing percentage (and the fact that a utility could lose its FAC entirely if it fails to responsibly manage its net energy costs) are insufficient incentives OPC: (a) mischaracterizes its rights in the prudence review process, and (b) mischaracterizes the *record* in this case when it comes to unit commitment practices.

a. The Prudence Review Process is Robust and Fair.

With respect to OPC's rights in the prudence review process, while it is true that the Staff initiates the prudence review by notice and then has 180-days to file a recommendation, that process in no way prevents OPC from doing whatever investigation or analysis it wants regarding the prudence of the Company's net energy cost management; OPC clearly implies as much, but that implication is false.

20 CSR 4240-20.090(11)(B)2 specifically provides that if "the staff, *OPC,* or other party auditing the [FAC] believes that insufficient information has been supplied to make a recommendation regarding . . . [prudence], it may utilize discovery to obtain the information it seeks" (emphasis added). The rule goes on to provide for a suspension of the 180-day timeline if there is a discovery dispute and a pending motion to compel and allows the Commission to extend the 180-day timeline for other reasons for good cause shown. Clearly, OPC itself can audit the operation of the FAC during the prudence review period. This process has been in

[31] *See, e.g.,* Report and Order, File No. ER-2008-0318, p. 70.
[32] *Id.*, p. 73.

place since the inception of the Commission's FAC rules, and despite having reviewed and revised its rules less than three years ago (with OPC's full participation), no party claimed that the process was inadequate or should be changed. Why? Because the process works.

Not only can OPC conduct an audit and discovery during the 180-day review period but all OPC has to do if it wants to turn a prudence review into a full-blown contested evidentiary matter is file a request for a hearing within 10 days after the Staff files its report. 20 CSR 4240-20.090(11)(B). If that happens, the case becomes a contested one under Section 536.010, the Commission will set a prehearing conference and require an appropriate procedural schedule, and OPC will have yet more opportunity to conduct discovery – and will receive the full process to which it is due. There is no operation of law date in such a proceeding; OPC or any other party can take the steps it needs to address claims of imprudence. It should also be noted that even the initial 180-day audit process provides a robust opportunity for audit when one considers that an entire rate case, where *all* of the utility's operations are examined, takes only 11 months, start to finish, and that the initial audit in such a case typically takes about five months. OPC's attempt to paint the prudence review process as essentially meaningless falls flat.

b. The Sierra Club's allegations do not support the existence of a flaw in the prudence review process; OPC's attempt to misuse those allegations exposes just how weak OPC's argument is.

In its quest to disparage the prudence review process, OPC also completely mischaracterizes the record regarding Sierra Club's accusations about the Company's unit commitment decisions.[33] First, OPC is just plain wrong in alleging that Sierra Club accused Ameren Missouri of incurring $300 million of losses because of the Company's unit

[33] The Company doesn't know if the mischaracterization is intentional or the result of sloppiness; either way, a mischaracterization it is. Moreover, when the actual record is examined it provides no support for OPC's complaints about the prudence review process.

commitment decisions.[34] Instead, in his direct testimony, Sierra Club witness Avi Allison claimed that unit commitment decisions had cost customers $861,000.[35] The $300 million (actually $347 million)[36] figure cited by Mr. Allison was the claimed difference between cash flows provided by the market and cash spent at the plants in question during a three-year period. This allegation had nothing to do with unit commitment but was solely related to claims by Sierra Club about continuing to operate and invest in these plants at all, regardless of how they might be committed.[37] While the Company won't get into a detailed debate about Mr. Allison's cash flow analysis here – given that Sierra Club agreed to the overall settlement of this case without any negative adjustment to Ameren Missouri's rate base respecting the three coal plants at issue – it suffices to say that the Company filed robust testimony rebutting Mr. Allison's claims and vigorously disputes that these plants "lost money" during the period Mr. Allison examined.[38] OPC should know better because even Ms. Mantle, in discussing Mr. Allison's analysis that led him to the $300 million figure concluded that "*it is economic* to continue to operate these plants" (the ones Allison claimed lost $347 million) (emphasis added).[39] Ms. Mantle also cautioned the Commission against relying on Mr. Allison's analysis that led to his more than $300 million figure.[40]

Sierra Club witness Allison did claim that the plants lost the $861,000 due to unit commitment decisions,[41] but OPC fails to mention that the Company rebutted Mr. Allison's claim and showed that in fact the unit commitment decisions at issue led to approximately

[34] OPC Brief, p. 14.
[35] Ex. 550 (Allison Direct), p. 35, ll. 1-3.
[36] Ex. 550, p. 10, Table 3.
[37] *Cf.* Section 4 of Ex. 550 (discussing the cash flows) to Section 5 (discussing unit commitment). The issues are completely distinct.
[38] *See* Ex. 9 (Michels Rebuttal).
[39] Ex. 201, p. 16, ll. 5-6.
[40] *Id.*, p. 16, ll. 18-22.
[41] Two tenths of one percent of the figure OPC incorrectly pointed to.

$781,000 in benefits.[42] And when given the opportunity via surrebuttal testimony to rebut Mr. Meyer's conclusion that there were in fact about $781,000 in benefits, Mr. Allison did not disagree, admitting that the costs he used were incorrect when judging the Company's unit commitment practices in the instances he examined (he did shift his position to be a claim that had the Company chosen to re-commit a unit at a different point in time it could have made about an additional $31,000; $31,000 (and the Company does not agree with Mr. Allison) is a far cry from OPC's citation of $300 million).[43]

OPC also falsely implies that since the amount of data the Company produced for Sierra Club to conduct its analyses and will produce in the next rate case as agreed upon in the main settlement in this case is voluminous, this somehow means that the prudence review itself is "so intense" as to be unworkable. OPC Brief, p. 14. It is true that 8,760 hours of cost and revenue data for 8 different coal units means that the data file itself must contain more than 140,000 data entries and that this results in a very large Excel file that is not easily accommodated by electronic filing.[44] So what? That there is a lot of data in an Excel file does not mean Staff (or OPC) can't understand and analyze the data and indeed manipulate and run sensitivities and other analyses on it as part of a prudence review.

4. OPCs Proposed Findings of Fact/Conclusions of Law

There being no support for OPC's position – that an 85%/15% sharing mechanism is "better" for Ameren Missouri and is somehow needed – there is consequently no support for OPC's proposed findings and conclusions, all of which should be rejected.

[42] Ex. 6, p. 26, ll. 11-17.
[43] Ex. 551 (Allison Surrebuttal), p. 26, ll. 20-21.
[44] 8,760 * 8 units * costs in each hour + 8,760 hours * 8 units * revenues in each hour = 140,160 data entries.

5. **Ameren Missouri's Proposed Findings of Fact and Conclusions of Law**

a. Proposed Findings of Fact.

1. OPC proposed to change the sharing percentage in Ameren Missouri's FAC based upon its claim that doing so would provide a better incentive for Ameren Missouri to manage its net energy costs.[45] OPC provided no direct evidence to support its claim except an expression of an opinion to that effect by OPC witness Lena Mantle.

2. OPC has been hostile to the use of FACs.[46] Ms. Mantle remains of the opinion that the Company should not have a FAC, although OPC did not make that proposal in this case.[47] These facts in turn undermine the credibility of OPC's proposal and of Ms. Mantle's opinion in support of it.

3. The Commission has previously ruled on the question of whether Ameren Missouri's FAC sharing percentage should be 95%/5% or some other percentage (with a greater share on Ameren Missouri) on four separate occasions, in File Nos. ER-2008-0318, ER-2010-0036, ER-2011-0028, and ER-2012-0166. Ms. Mantle proposed a greater utility share in two of those cases, the 85%/15% proposal she supports in this case (File No. ER-2011-0028) and a 90%/10% proposal in File No. ER-2012-0166.[48] In each of these four cases, the Commission examined the evidence of record and affirmatively determined that a 95%/5% sharing percentage for Ameren Missouri was appropriate. In its Report and Order in File No. ER-2008-0318, the Commission determined such a sharing

[45] Ex. 200 (Mantle Direct), p. 5, ll. 24-26.
[46] Ex. 6 (Meyer Rebuttal), p. 14, ll. 13-17 and n. 10.
[47] Tr., p. 392, ll. 8-12.
[48] Ex. 6 (Meyer Rebuttal), Sch. AMM-R1.

percentage for Ameren Missouri was appropriate because it "provides AmerenUE [Ameren Missouri) a sufficient incentive to operate at optimal efficiency because the Company already has several incentives in place that encourage it to minimize net fuel costs."[49] The evidence of record in this case supports the same rulings and findings. Ms. Mantle's bare opinion that her proposal is somehow better provides no justification for the Commission to reach a different conclusion regarding the appropriate sharing percentage for Ameren Missouri's FAC.

4. Ameren Missouri, with a 95%/5% sharing percentage, has the appropriate incentive to properly manage its net energy costs because having a FAC is a privilege and not a right and the Commission would have the ability to deny its continuation if Ameren Missouri mismanaged it; because Ameren Missouri could suffer a prudence disallowance if it fails to prudently manage its net energy costs; because the Commission could substantially change the sharing percentage in a future case to Ameren Missouri's detriment if it fails to prudently manage its net energy costs; and because the 95%/5% sharing percentage creates the risk that Ameren Missouri could fail to recover significant sums of prudently-incurred net energy cost changes between rate cases, sums which would be more significant if Ameren Missouri fails to prudently manage revenues and costs tracked in its FAC. The $42 million[50] of prudently-incurred net energy cost changes Ameren Missouri has failed to recover since its FAC was implemented is significant even to a company of Ameren Missouri's size. Tripling that sum so that it would have been more than $125 million had OPC's proposal been in place is unnecessary to

[49] Report and Order, File No. ER-2008-0318, p. 73.
[50] Ex. 6 (Meyer Rebuttal), p. 15, l. 12 to p. 16, l. 2.

ensure Ameren Missouri has the proper incentive to manage its net energy costs and would unreasonably punish the Company which has been a good steward of its FAC.

5. The FAC sharing mechanisms should not be a means for a utility to obtain a reward or extra profit when net energy costs happen to fall, nor should it be a penalty to the utility when net energy costs happen to increase. Instead, any sharing mechanism should impose the least possible share of net energy cost changes on a utility that the Commission determines, along with other incentives that exist, to be necessary to give the utility an appropriate incentive to prudently manage its net energy costs. Similarly, any sharing mechanism should be set such that customers can obtain the maximum possible percentage of reductions in net energy costs when those reductions occur, consistent with maintaining an appropriate incentive for the utility.

6. Imposing a greater share of net energy cost changes on Ameren Missouri would be ineffective because its control over such costs is limited.[51] In general, Ameren Missouri's net energy costs are dictated by markets for energy and fuel that are largely beyond Ameren Missouri's control.[52]

7. Most utilities with FACs do not have a sharing mechanism at all, which is indicative of the fact that utilities are able to exercise only limited control over FAC components.[53] Changing Ameren Missouri's sharing percentage without a

[51] Tr., p. 336, ll. 15-16.
[52] *Id.*; Report and Order, File No. ER-2008-0318, p. 63.
[53] Ex. 6 (Meyer Rebuttal), p. 12, ll. 7-8.

good reason to do so could erode investor confident in Ameren Missouri and the state regulatory process.[54]

8. Ameren Missouri did not manipulate the setting of its recommended net base energy costs in this case so that they would be lower than they should be. Ameren Missouri used historical cost and revenue data, consistent with longstanding practice in Commission cases, with appropriate normalizations where warranted to develop its net base energy cost recommendation.[55] Its approach was consistent with the Commission's Staff's approach, and yielded similar results, with Staff's net base energy cost recommendation being lower than Ameren Missouri's.[56] Ameren Missouri's pragmatic acceptance of using normalized historical cost and revenue data to make a net base energy cost recommendation does not indicate that it lacks the proper incentive to recommend a reasonable net base energy cost level.

b. Proposed Conclusions of Law.

1. Section 386.266.1, RSMo (Cum. Supp. 2016), the statute that allows the Commission to establish a fuel adjustment clause, provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

[54] Ex. 6 (Meyer Rebuttal), p. 12, ll. 1-6.
[55] Ex. 6 (Meyer Rebuttal), pp. 2-8.
[56] *Id.*, p. 8, ll. 9-12.

2. The sharing percentage in Ameren Missouri's FAC is an incentive feature adopted by the Commission pursuant to this statutory authority.

3. The General Assembly's enactment of Section 393.1400 did not establish a legislative policy, presumption, or directive that supports imposing a 15% share of changes in net energy costs on utilities for which the Commission approves a FAC. The General Assembly did not amend Section 386.266 regarding the utilization of FACs, and its silence regarding the impact of the 85% deferral provided for by Section 393.1400 cannot amend Section 386.266 by implication.[57]

c. Recommended Decision.

There is no sufficient reason to change the existing 95%/5% sharing percentage under which Ameren Missouri has operated since its FAC was first approved. The 95%/5% sharing mechanism remains appropriate for the same reasons it was found to be appropriate in prior commission decisions regarding the sharing percentage in Ameren Missouri's FAC. The commission will retain the current 95%/5% sharing mechanism included in Ameren Missouri's FAC.

[57] *See, e.g.*, *LeSage v. Dirt Cheap Cigarettes and Beer, Inc.*, 102 S.W.3d 1, 5 (Mo. banc 2003).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 7th day of April, 2020.

/s/James B. Lowery
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