BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs To Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2011-0028

REPLY BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

Diana Vuylsteke, #42419
Brent Roam, #60666
BRYAN CAVE, LLP
One Metropolitan Square, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
dmvuylsteke@bryancave.com
brent.roam@bryancave.com

Edward F. Downey, #28866
Carole L. Iles, #33821
BRYAN CAVE, LLP
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6620
Facsimile: (573) 556-6630
efdowney@bryancave.com
carole.iles@bryancave.com

Attorneys for the
Missouri Industrial Energy Consumers

June 13, 2011

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs To Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2011-0028

MISSOURI INDUSTRIAL ENERGY CONSUMERS' REPLY BRIEF

The Missouri Industrial Energy Consumers ("MIEC") respectfully submits its Reply Brief.

I. RATE OF RETURN

A. Introduction

Ameren Missouri's arguments make it clear that the 10.7% ROE recommended by its expert, Mr. Hevert, is unreasonable and should not be adopted by the Commission. Indeed, Ameren Missouri advocates that the Commission adopt an ROE of 10.4%, stating that "the **reasonable** recommendations in this case all coalesce around 10.4%"[1] Although an ROE of 10.4% is certainly *closer* to being a reasonable ROE than 10.7%, 10.4% is still too high. This rate is higher than the national average ROE awarded in the past twelve months, and as well as the average ROE awarded to integrated electric utilities in the states adjoining Missouri in the same period.[2] In addition, an ROE of 10.4% represents a 30 basis point increase over the ROE awarded in Ameren Missouri's most recent rate case—yet there is no evidence in this case to support the conclusion that the cost of common equity has significantly *increased* in the period since the Commission issued its Report and Order in that case.[3]

---

[1] Ameren Brief at p. 11 (emphasis added).

[2] Ameren Brief at p. 18.

[3] Case No. ER-2010-0036, Report and Order at p. 24.

Ameren Missouri concedes, moreover, that an ROE of 10.15% is supported by the evidence in this case.[4] It reaches this conclusion based on its recalculation of Mr. Gorman's recommended range.[5] In sum, Ameren Missouri's brief demonstrates that the Commission should not adopt Mr. Hevert's recommended ROE, and that even the 10.4% ROE Ameren Missouri now seeks is unreasonable and not supported by the evidence in this case. Instead, the Commission should adopt Mr. Gorman's recommendation of 9.9% for Ameren Missouri's ROE in this case. As explained below, Ameren Missouri's three specific criticisms of Mr. Gorman's testimony are not well-founded.

Ameren Missouri notes that Mr. Gorman testified in the recent Kansas City Power and Light Company ("KCPL") rate case and suggests that the Commission disapproved of his testimony.[6] In fact, in the KCPL case, the Commission found Mr. Gorman's testimony to be more credible than that of the other expert witnesses.[7] In that case, the Commission awarded KCPL an ROE of 10.0%.[8] In support of its ruling, the Commission noted that Mr. Gorman found the average Constant Growth DCF result to be 10.48%, and the average Sustainable Growth DCF result to be 9.74%, and observed that the average of these two DCF results is 10.1%.[9] Similarly, in the current case, in his updated testimony, Mr. Gorman found the ROE as determined by the Constant Growth DCF model to be 10.47%, and the result of the Sustainable

---

[4] Ameren Brief at p. 22.

[5] *Id.*

[6] Ameren Brief at p. 22; Kansas City Power & Light Company ("KCPL"), Case No. ER-2010-0355.

[7] KCPL, Report and Order at p. 117.

[8] *Id.* at 124.

[9] *Id.*

Growth DCF model to be 9.38%.[10] The average of these two models in this case would be 9.93%. Further, the average of all three of Mr. Gorman's DCF estimates in this case is 9.93%.[11]

Mr. Gorman's testimony demonstrates that with reasonable adjustments, Mr. Hevert's analysis in this case yields an ROE in the range of 9.4% to 10.2%, with a mid-point of approximately 9.8%.[12] The problems with Mr. Hevert's DCF studies in this case are nearly identical to the issues raised by Mr. Gorman with respect to the utility's expert witness in the KCPL case, Dr. Hadaway.[13] In this case, Mr. Gorman was critical of Mr. Hevert's use of a long-term sustainable growth rate based on historical real GDP and future inflation projections.[14] Mr. Gorman explained that historical real GDP is inconsistent with analysts' projected real GDP growth. Further, Mr. Gorman criticized Mr. Hevert for relying on CPI inflation forecasts, rather than GDP inflation forecasts. He noted that CPI was more heavily impacted by medical costs than the overall economy as measured by GDP, and Mr. Hevert produced an incorrect inflation measure to estimate nominal GDP growth.[15] Similarly, in the KCPL case, Dr. Hadaway also developed a GDP growth forecast primarily based on historical data.[16] In the KCPL case, the Commission relied on Mr. Gorman's revision of Dr. Hadaway's DCF models using analysts' projected GDP growth, rather than historically derived GDP growth. That revision to Dr.

---

[10] Gorman Surrebuttal, Ex. 409 at p. 18, Table 1.

[11] *Id.*

[12] Gorman Surrebuttal, Ex. 409 at p. 21, Table 2.

[13] KCPL, Report and Order at p. 116.

[14] Gorman Rebuttal, Ex. 408 at p. 11, ll. ll. 4- 3 to p. 12, l. 5.

[15] *Id.*

[16] KCPL, Report and Order at p. 116.

Hadaway's analysis reduced his DCF returns from 10.7% to 9.6%.[17] Similarly, in this case, Mr. Gorman showed that if Mr. Hevert's multi-growth stage DCF analysis were adjusted to reflect analysts' projected GDP growth, rather than the historically based GDP growth rate Mr. Hevert used in his analysis, his DCF numbers would drop from a range of 10.07% to 10.55% (as estimated by Mr. Hevert), to a range of 9.69% to 9.92%.[18] Therefore, if the Commission employs the same analysis of Mr. Gorman's analysis in this case as it did in the KCPL case, it should find Ameren's return on equity to be 9.9% to 10.0% in this case, just as it found KCPL's ROE to be 10.0% in a case decided in May of this year.

B. Mr. Hevert Recommended ROE of 10.7% Is Unreasonable

Mr. Hevert relies on the GDP long-term growth forecast, just as Mr. Gorman does in developing his DCF return estimate. Unfortunately, as noted above, Mr. Hevert's GDP growth forecast is derived based on long-term historical GDP growth, rather than a long-term projection of what the future analysts believe GDP growth rate will be in the future.[19] There is no basis in the record to suggest that investors expect real GDP growth going forward to be comparable to what it has been in the past. Mr. Hevert agreed that Ameren Missouri competes for capital in a global market—as he quipped "it's an increasingly global world we live in."[20] This underscores the fact that the U.S. economy is now operating in a more competitive global economy than it has in the past. Moreover, Ameren Missouri's assertion that Mr. Hevert's approach was "endorsed" by the Commission in the company's last rate case is not supported by the decision in

---

[17] *Id.*

[18] Gorman Surrebuttal, Ex. 409 at p. 21, Table 2.

[19] Hevert Direct, Ex. 121 at p. 29, ll. 3-7.

[20] Tr. at p. 114, ll. 8-9.

that case.[21] Further, Mr. Gorman provided ample evidence that economists simply believe the real GDP growth rate will be slower going forward than it has been historically.[22] Because Mr. Hevert relied on real GDP growth data which does not reflect rational expectations of future nominal GDP growth, he overstated the growth rate in his DCF model, and reached an inflated DCF return estimate. The Commission should reject Mr. Hevert's historically-derived DCF growth factor here, just as it did with Dr. Hadaway's testimony in the KCPL case.

In addition, Mr. Hevert's CAPM and risk premium analyses are severely flawed and should be disregarded. As explained in MIEC's opening brief, Mr. Gorman demonstrated that Mr. Hevert's CAPM analysis is based on market volatility of derivative markets, rather than the stock markets.[23] Mr. Hevert was the only expert witness in this case to take this approach.[24] Because the CAPM and market risk premium are modified to reflect this futures exchange derivative product market volatility, rather than the markets Ameren Missouri would actually use to sell its common equity (assuming, of course it were a publicly-traded company), Mr. Gorman concluded that Mr. Hevert's CAPM return estimate substantially overstated their risk-adjusted returns for Ameren Missouri in his analysis.[25] Mr. Hevert's CAPM return estimate is simply not based on an appropriate investment risk characteristic for utility stocks. Rather, his return reflects expected risks associated with derivatives futures and options markets, which are more

---

[21] Although the Commission's decision refers to "historical growth in real GDP" it does not state in the Report and Order that this is its preferred approach. *See* Case No. ER-2010-0036, Report and Order at p. 19.

[22] Gorman Rebuttal, Ex. 408 at pp. 10, ll. 15-22.

[23] Gorman Rebuttal, Ex. 408 at p. 19, l. 5 to p. 20, l. 2.

[24] Tr. 1107, ll. 7-16.

[25] Gorman Rebuttal, Ex. 408 at p.19, ll. 17-23.

volatile and more risky than utility stock investments.[26] For these reasons, Mr. Hevert's CAPM analysis is severely flawed, and overstates a fair return on equity for Ameren Missouri.

Mr. Hevert's risk premium analysis is also flawed because it inappropriately assumes a simple inverse relationship between equity risk premiums and interest rates.[27] This relationship between equity and risk premiums is driven more by changes in perception of risk and not simple changes in nominal interest rates.[28] Mr. Hevert's risk premium is thus inconsistent with academic literature on the relationship between equity risk premiums and interest rates, and overstates a fair return on equity for Ameren Missouri.[29] For all these reasons, Mr. Hevert's risk premium studies should be rejected.

C. Ameren Missouri's Business Risk Does Not Support a Higher ROE

Ameren Missouri asserts that its business risks relative to the proxy group's support an above-average ROE in this case.[30] It bases this assertion on Mr. Hevert's general assessment that Ameren Missouri has higher regulatory risks and on the fact that it owns coal-based generation.[31] There is, however, a significant flaw in Mr. Hevert's analysis. That is, he bases this assumption on his apparent belief that the market has not considered Ameren Missouri's regulatory risks and generation mix in assessing the overall operating or business risk characteristics of Ameren Missouri. As Mr. Gorman explained, credit rating agencies do consider business risk factors for operating utility companies including their regulatory risk and

[26] *Id.*

[27] Gorman Rebuttal, Ex. 408 at p. 20, l. 18.

[28] *Id.* at p. 21, ll. 1-2.

[29] *Id.* at p. 20, ll. 18-19.

[30] Ameren Brief at p. 19.

[31] *See* Hevert Direct, Ex. 121 at p. 46, ll. 4-12.

their asset fuel diversity risk.[32] Based on a review of all of Ameren Missouri's risks, the credit rating agencies assigned a bond rating to Ameren Missouri that reflects a risk level that is comparable to that of the proxy group. It is therefore obvious that there is no legitimate justification for concluding, as Mr. Hevert did, that Ameren Missouri's business risk is greater than the proxy groups and that it should have a higher than average ROE. In reality, Ameren Missouri's consolidated total investment risk is reasonably comparable to that of the proxy group, and therefore a fair return on equity for Ameren Missouri can be accurately measured by the proxy group.[33]

D. Ameren Missouri's Specific Criticisms of Mr. Gorman's Testimony are Baseless

Ameren Missouri asserts that Mr. Gorman under-weighted his DCF return estimate and over-weighted its CAPM return estimate in arriving at his recommended ROE of 9.9%.[34] This argument is wholly without merit. Indeed, Mr. Gorman's analysis gives equal weight to each of his three DCF analyses—notwithstanding his concerns that his Constant Growth DCF result is unreasonably high.[35] By taking this balanced approach, Mr. Gorman arrived at reasonable DCF return estimate of 9.93%, the midpoint of his three DCF results.[36] Mr. Gorman's recommended return on equity of 9.90% is wholly consistent with his DCF return estimates. Further, had Mr. Gorman relied only on his Constant Growth DCF return of 10.47% and his Sustainable Growth

---

[32] Gorman Rebuttal, Ex. 408 at p. 22, l. 16 to p. 23, l. 17.

[33] *Id.* at p. 23, ll. 15-17.

[34] Ameren Brief at p. 21.

[35] Gorman Direct, Ex. 407 at p. 24, l. 14; Gorman Surrebuttal, Ex. 409 at p. 18, Table 1.

[36] Gorman Surrebuttal, Ex. 409 at p. 18, Table 1.

DCF of 9.38%, his analysis would have produced a midpoint estimate of 9.93%.[37] This approach is the one used by the Commission in analyzing Mr. Gorman's DCF studies in the KCPL case.[38] Here, Mr. Gorman's DCF returns on a stand-alone basis support a return on equity of 9.93%, which is consistent with his recommended return in this case of 9.90%. In sum, Mr. Gorman's return on equity recommendations can be supported entirely through his DCF return estimates, which clearly refutes Ameren Missouri's assertion that Mr. Gorman has over-weighted his CAPM return estimates and under-weighted his DCF return estimates.

Ameren Missouri also makes a self-serving argument to disregard Mr. Gorman's Sustainable Growth DCF return estimate in this case.[39] Importantly, Mr. Gorman relied on three versions of the DCF, and noted that each of them has distinct strengths and weaknesses.[40] Note that Ameren Missouri does not take issue with the DCF return estimates which produce returns above 10%, but only finds it unreasonable to accept DCF return estimates for those found below 10%. This suggests that the company is judging the reasonableness of the DCF return model based on the output of its results. In contrast, Mr. Gorman provided a thorough review of each of his three DCF studies.[41] Based on that detailed review, Mr. Gorman found that his DCF return estimates support a return on equity of 9.93%.[42] Mr. Gorman's methodology supports a return on equity that is generally consistent with and supported by his entire DCF study. Ameren

[37] *Id.*

[38] KCPL, Report and Order at p. 124.

[39] Ameren Brief at p. 24.

[40] Gorman Direct, Ex. 407 at p. 11, l. 1 to p. 25, l. 2.

[41] *Id.*

[42] Gorman Surrebuttal, Ex. 409 at p. 18, Table 1.

Missouri's results-oriented arguments against the acceptance of a Sustainable Growth DCF analysis should be disregarded.

Finally, Ameren argues that Mr. Gorman's long-term GDP growth forecast should be set aside because the analysts' projections are only intended reflect growth over next 10 years.[43] In place of this projected growth rate, Ameren recommends adopting Mr. Hevert's GDP growth forecast which is based on historical data and not analysts' projections of future *real* GDP growth at all. Mr. Hevert's real GDP growth forecast does not reflect market investors' expectations of future real GDP growth, and therefore is not a projection at all.[44] Rather, it is simply a summary of historical real GDP growth.[45] Mr. Hevert has not shown that any market participant would base his investment decisions on a belief that the future real GDP growth will be consistent with historical real GDP growth. To the contrary, it is more reasonable to believe that future real GDP growth may be lower than historical GDP growth, because the United States is now competing in a global economy with stronger economic competition from other countries. For these reasons, long-term historical average achieved real GDP growth is not an appropriate proxy for future real GDP growth.

E. Conclusion

As demonstrated by the foregoing, the appropriate ROE for Ameren Missouri in this case is 9.9% in that this return is supported by the evidence and is sufficient to support Ameren Missouri's current investment grade bond rating and overall financial integrity. The record in this case does not support Ameren Missouri's recommended ROE of 10.7%, nor its revised

[43] Ameren Brief at p. 27.

[44] Gorman Rebuttal, Ex. 408 at p. 10, l. 1 to p. 12, l. 5.

[45] *Id.*

recommendation of 10.4%. Ameren Missouri's recommendation is based on an unrealistic long-term growth rate, as well as flawed risk premium and beta estimates and an incorrect assessment of Ameren Missouri's business risks.

II. VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTION TRACKER

The Commission should deny Ameren Missouri's request for the continued use of the vegetation management and infrastructure inspections tracker, because any justification that may have existed for the tracker in the past has evaporated.

Ameren Missouri continues to propound the same justification for the continued use of its vegetation management and infrastructure inspections tracker that it has been offering since 2008, namely, that it lacks sufficient information to accurately predict the cost of completing its urban and rural trim cycles. This argument is demonstrably false. By the end of 2011, Ameren Missouri will have completed trimming its entire urban cycle and 2/3 of its rural cycle.[46] Ameren Missouri's position that it *still* lacks sufficient information to determine costs of vegetation management is incredible.

Moreover, the Commission's Report and Order in Case No. ER-2010-0036 expressly held that its allowance of the tracker in that case "does not mean the tracker will become permanent. . . . [T]he Commission will certainly revisit [the tracker issue] in Ameren Missouri's next rate case." In that case, the Commission's allowance of the continued use of the tracker was largely premised on the fact that "[o]ver half of Ameren Missouri's circuits [had] not been trimmed to the new standards."[47] This rationale for the continued use of the tracker has also disappeared, as both the rural and urban cycles are nearly completed.

[46] Wakeman Rebuttal, Ex. 105 at p. 9, ll. 19-21.

[47] Commission Report and Order, Case No. ER-2010-0036, at p. 60.

Additionally, the amount of fluctuation in vegetation management and infrastructure inspections costs is immaterial to Ameren Missouri even by Ameren Missouri's own express standards. In Case No. EO-2010-0255, Ameren Missouri's controller Ms. Barnes testified that materiality for Ameren Missouri is 1-2% of operating revenues.[48] One to two percent of Ameren Missouri's operating revenues equals approximately $24 to $48 million. The fluctuation in Ameren Missouri's vegetation management and infrastructure inspections costs, as described in MIEC's initial brief, is far below the dollar threshold identified by Ms. Barnes as material to Ameren Missouri. As such, the fluctuations in Ameren Missouri's vegetation management and infrastructure inspections costs are immaterial, and thus do not justify the continued use of a tracker for these expenses. Therefore, the accounting safeguard of the tracker is no longer necessary and should be discontinued.

Finally, the Commission should carefully consider the implications of allowing the continued use of a tracker, as demonstrated in the following hypothetical: If a utility's tracked expenses for vegetation management and infrastructures inspections increase while its overall operations and maintenance expenses decrease, ratepayers would still be required to cover the increased tracked vegetation management and infrastructure inspections expenses despite the overall decrease in the utility's cost of service. Such a scenario does not balance the interests of ratepayers and investors. Thus, as a general matter, the Commission should not allow the use of trackers, and should discontinue the tracker at issue in this case as there is simply no longer a colorable argument to justify its continued use.

[48] Meyer Surrebuttal, Ex. 401 at p. 15, ll. 1-5.

III. STORM COSTS

The Commission should allow Ameren Missouri no more than $4.9 million in storm recovery costs, because such an amount will adequately compensate Ameren Missouri for its actually incurred storm costs. Moreover, Ameren Missouri's methodology produces an artificially inflated amount by including multiple outlier events that are unlikely to recur.

Ameren Missouri dedicated much of its initial brief to criticizing the methodology employed by MIEC to determine a reasonable amount of storm recovery costs. However, it appears from Ameren Missouri's criticisms that it completely misapprehends MIEC's position, as none of the arguments address MIEC's methodology or conclusions. First, Ameren Missouri characterizes MIEC's proposed calculation of storm costs as "even worse" than Staff's "flawed" calculation.[49] This statement is baffling in light of the fact that MIEC's proposal allows for $100,000 **more** in storm cost recovery than the amount recommended by Staff.[50] Second, Ameren Missouri alleges that MIEC bases its storms costs proposal only on "the amount of costs actually incurred during the test year."[51] Ameren Missouri has either misread or not read Mr. Meyer's testimony. MIEC derived its proposal not based only on the test year costs, but rather by normalizing storm costs over the past 23 months ("*since the beginning of* the test year in this case").[52] Third, Ameren Missouri incomprehensibly argues that MIEC "ignores the fact that Ameren Missouri incurred more than $8 million in storm costs through the end of the true-up period."[53] This statement also demonstrates Ameren Missouri's confusion about MIEC's

---

[49] Ameren Missouri Brief, p. 113.

[50] *Id.*

[51] *Id.*

[52] Greg Meyer Surrebuttal, Ex. 401 at p. 23, ll. 19-22.

[53] Ameren Missouri Brief, p. 114.

position. MIEC's calculation expressly *includes* the $8.1 million as part of its 23-month normalization period. The arithmetic is demonstrably simple: ($1.2 million + $8.1 million) / 23 months = $404,000 x 12 months = $4.9 million.

Finally, Ameren Missouri argues that MIEC "asks the Commission to look at a single item of expense, storm costs, and compare the Company's actual experience to the amount allowed in rates in the last rate case, while ignoring the fact that there were differences between allowed and incurred costs for most, if not all, of the categories of expense used to set rates in that case."[54] This argument is incredible. Ameren Missouri is seeking a $1 million amortization over the next five years for storm costs <u>that it has already recovered</u>. MIEC merely highlighted the difference between actual verses allowed costs to demonstrate the absurdity of Ameren Missouri's amortization request in light of Ameren Missouri's recovery of every dollar it has incurred in storm costs since the beginning of the test year in this case.[55] In other words, MIEC offers the testimony regarding the amount allowed versus the amount incurred in storm costs to demonstrate that Ameren Missouri has inflated its request for storm recovery costs by proposing an amortization.

Indeed, on cross-examination, Ameren Missouri witness Ms. Barnes admitted that Ameren Missouri over-collected for storm costs through the end of the true-up period in this case.[56] She then attempted to justify the over-collection by recommending that the period for consideration should be extended to the end of the operation of law date in this case.[57] Ms.

---

[54] Ameren Missouri Brief, p. 114.

[55] Meyer Surrebuttal, Ex. 401 at p. 23, ll. 4-10.

[56] Tr. 350, ll. 1-14.

[57] *Id.*

Barnes' admission demonstrates that Ameren Missouri's request for an amortization lacks any merit.

In short, Ameren Missouri's request for $7.1 in storm recovery costs is indefensible and its criticism of MIEC's position is unfounded and its request for a $1 million amortization is absurd in light of the fact that it has over-collected in storm recovery costs through the true-up period year in this case. As such, the Commission should adopt the methodology employed by MIEC and allow $4.9 million in storm recovery costs.

IV. PROPERTY TAXES

The Commission should categorically deny Ameren Missouri's indefensible request for an additional $10.8 million dollars in rates relating to the estimated property taxes for the Sioux Scrubbers and the Taum Sauk additions, because 1) Ameren Missouri's projected "estimate" of possible future property taxes are not known and measurable as that term is repeatedly and unequivocally defined by this Commission; and 2) the projected "estimate" of property taxes would occur (if ever) far beyond the scope of this case.

The Commission should deny Ameren Missouri's request for an additional $10.8 million in rates for Ameren Missouri's "estimated" property taxes, because estimated projections of possible future property taxes do not constitute "known and measureable" costs recoverable in rates. Ameren Missouri admits that it arrived at its estimated future property taxes without any knowledge of the assessed value of the property at issue and without any knowledge of the tax rate applicable to the subject property.[58] Indeed Mr. Weiss' own work paper provides an unequivocal admission that Ameren Missouri "cannot determine with accuracy the anticipated

[58] Tr. 1305, l. 14 through p. 1306, l. 13.

2011 property taxes. . . ."[59] Mr. Weiss attempted to downplay the force of this admission by characterizing it as merely an inconsequential "disclaimer" that the tax department puts on anything they give him.[60] However, in the more than 500 work papers sponsored by Mr. Weiss in this case (many of which are tax related), none of them other than this one contain any disclaimers. When pressed, Mr. Weiss went as far as to say that he did not agree with the disclaimer, despite the fact that it was found on his own work paper.[61] The admission on Mr. Weiss' work paper speaks for itself: Ameren Missouri cannot determine with accuracy its anticipated 2011 property taxes.

The issue of whether Ameren Missouri may collect in revenue future estimated property taxes is governed by prior Commission precedent in Case No. WR-2000-844. The prior case on this issue is so analogous to the facts in this case, that it merits extended quotation:

> Should the Company recover property taxes associated with [a] plant that was placed in service during calendar year 2000? The Commission traditionally, and properly, allows recovery of cost increases that are projected to occur after the end of the test year (including any adjustment periods) only if those costs are known and measurable. A cost increase is "known" if it is certain to occur, and it is "measurable" if the Commission is able to determine the amount of the increase with reasonable precision. The Company's projected property tax increases are neither known nor measurable. While it is probable that the Company will experience an increase in property tax expense at the end of the year, it is by no

[59] Ex. 415, GSW-WP-E495.

[60] Tr. 1304, ll. 1-14.

[61] *Id.*

> means certain. Even more damaging to the Company's proposal is the fact that its best estimate of the amount of any increase is based on an assumption that finds no support in the record. Company's proposed property tax calculation assumes that the tax rates for 2000 will be the same as the tax rates for 1999. Because any increase in the Company's property tax expense is not known and measurable, the Commission will not adopt the Company's proposal. Staff's proposal to use a known amount (the last amount actually paid), while probably not a perfectly accurate representation of the property taxes that will be paid in the future, at least avoids the speculation inherent in Company's proposal.[62]

Other cases echo the Commission's adamant opposition to deviating from the core regulatory principles that traditionally guide its ratemaking decisions in favor of the novel approach recommended by Ameren Missouri:

> The Commission finds nothing in the record to convince it that the principles of (1) known and measurable and (2) contemporaneous balance between expenses, revenue, and rate base should be abandoned in favor of anticipated or future adjustments, particularly those which are not capable of accurate measurement. In addition . . . the Commission agrees, that expenditures should be certain to occur.[63]

In this case, Ameren Missouri's estimated future property tax fails to meet the "known and measurable" standard as articulated in the above cases. The facts in the current case are indistinguishable from the facts in Case No. WR-2000-844. First, like the parties to that case,

[62] Case No. WR-2000-844, 2001 Mo. PSC LEXIS 314, 31-32 (Mo. PSC 2001).

[63] Case No. WR-96-263, 1996 Mo. PSC LEXIS 99 (Mo. PSC 1996)

MIEC agreed to allow the same amount in property taxes as the prior year. Second, like the utility in Case No. WR-2000-844, Ameren Missouri seeks additional recovery based on an estimate of future unknown and immeasurable property taxes. As such, the Commission in this case should follow the precedent set by Case No. WR-2000-844 and deny Ameren Missouri's request for an additional $10.8 million based on an estimate of future unknown and immeasurable property taxes.

Like the estimated tax increase in the Case No. WR-2000-844, Ameren Missouri's 2011 property taxes cannot be determined with reasonable precision, because the Company does not know the assessed value of the property nor the 2011 tax rates applicable to the property.[64] While Mr. Weiss attempted to downplay the importance of the express admission on his work paper that Ameren Missouri cannot know with accuracy its 2011 property taxes, the facts surrounding the admission confirm the accuracy of the statement. Specifically, Ameren Missouri's lack of knowledge about the value of its assessed property and its lack of knowledge about the tax rate applicable to the property demonstrate that it would be impossible for Ameren Missouri to know what it will owe in property taxes for 2011 for the Sioux Scrubbers and Tom Sauk additions. Moreover, like the utility's rejected calculation in the Case No. WR-2000-844 above, Ameren Missouri's calculation in this case assumes that the subject tax rates will be the same as the rates from the previous year. The Commission rejected the utility's position in the 2001 case and should do the same here, because the assumption lacks any basis in fact. It is merely a guess.

The fact is that Ameren Missouri's 2011 taxes are not capable of accurate measurement at this time. Nor will they be capable of measurement when rates go into effect in this case.

[64] Tr. 1305, l. 18 through 1306, l. 10.

Like the rejected request in Case No. WR-96-263 referenced above, Ameren Missouri's request in this case should be rejected as it requires the Commission to abandon traditional regulatory principles in favor of setting rates based on anticipated or future adjustments that are not measurable. The Commission should continue rejecting such a dubious practice.

As an aside, Ameren Missouri attempts to argue that the extra $10.8 million should be included in rates because Ameren Missouri "has been accruing it on its books."[65] This argument lacks merit. The Commission sets rates based on the actual historical costs of service incurred by Ameren Missouri. As such, the "accrual" argument carries little weight.

Similarly, Ameren Missouri argues that its 2011 property tax estimate is no different than estimates derived from normalized levels of expenses that are used by the Commission to set rates for weather or payroll.[66] This argument is false. Ameren Missouri's estimated 2011 tax increase is not a normalization of historical *known and measurable* events or an annualization of a *known and measurable* test year event; rather it is merely a projected estimate, the accuracy of which is disclaimed in Mr. Weiss' own work paper and belied by Ameren Missouri's lack of any knowledge about the amount of its 2011 property taxes.

Additionally, Ameren Missouri submits to this Commission the groundless argument that "if MIEC's position is adopted and none of the tax costs related to the Sioux Scrubbers and the Taum Sauk additions are allowed in rates, the funds necessary to pay those rates will have to come from earnings."[67] This is mere conjecture. Ameren Missouri has presented no analysis of the Company's overall operating revenues and expense as of December, 2011 when property

[65] Ameren Missouri Brief, p. 88

[66] *Id.*, at p. 89.

[67] *Id.*, at p. 92.

taxes are due. As such, Ameren Missouri has no basis to assert that the Commission's refusal to grant its unwarranted request will result in a denial of a reasonable opportunity to earn the Commission's authorized rate in this case.

Finally, Ameren mistakenly argues that it should be allowed to recover in rates the estimated cost of property taxes that will be due in December of this year because that amount is "attributable to the period from January 2011 through August 2011."[68] This argument barely merits rebuttal as it is based on the false premise that ratepayers should be forced to advance monies to Ameren Missouri for costs that it has not incurred, and indeed may not ever incur in the future.

As such, the Commission should deny Ameren Missouri's request for an additional $10.8 million in property taxes, because the estimated tax increase fails to meet the well established regulatory standard of allowing recovery only for "known and measurable" costs.

In addition to the fact that Ameren Missouri's request for an additional $10.8 million in property taxes fails the "known and measurable" test, it should be rejected because it refers to possible costs that occur (if ever) far beyond the scope of this case. Ameren Missouri's witness Mr. Weiss admitted that Ameren Missouri's property taxes will not be due until five months after the operation of law date and ten months after the true-up period in this case.[69] Missouri law does not provide that costs incurred beyond the operation of law are recoverable in a utility's rates.

[68] *Id.*, at p. 92, f. 386.

[69] Tr. 1307, ll. 1-23.

> In Missouri, rates are set using a historical test year. The Commission examines the utility's revenues and expenses for that test year and uses that information to set rates to be charged in the future. The Commission does not use a forward-looking test year based on budgets and projections to set those rates. If it did, AmerenUE would no doubt appreciate an opportunity to base its rates on what it believes will be higher . . . costs in the coming years. Since the Commission uses historical expenses and revenues to set rates, it would be fundamentally unfair to reach forward to grab a single budget item to reduce AmerenUE's cost of service, while ignoring other anticipated costs that might increase that cost of service.[70]

Ameren Missouri's request that the Commission base rates on possible future costs beyond the operation of law date defies Commission precedent:

> The Commission agrees that only those costs which are known and measurable through the true-up period should be included in cost of service. . . . Projected and estimated costs are not definite and are capable of increasing or decreasing. As such, the costs are not known and measurable and should not be included in cost of service.[71]

In this case, Ameren Missouri has failed to offer any facts or legal arguments to support its request to recover in rates costs that it may or may not incur beyond the operation of law date. While under limited circumstances, the Commission may allow the recovery of costs beyond the true-up period, as in Case No. ER-2010-0036, Ameren Missouri has failed to offer any support for its position that it should be allowed to recover costs that it incurs beyond the true-up period.

[70] Commission Report and Order, Case No. ER-2007-0002.

[71] 1993 Mo. PSC LEXIS 34 (Mo. PSC 1993).

And even if it did offer an argument for the recovery of costs beyond the true-up period, it could not offer any reasonable argument that it should be allowed to recover costs that it may or may not incur beyond the operation of law date. Indeed, nothing in Ameren Missouri's argument would prevent it from asking for costs that it may incur in 2013, 2014 or beyond. Such an argument appears to be unprecedented. In light of Ameren Missouri's appeal of its 2010 taxes (discussed in MIEC's Initial Brief), Ameren's argument that it will owe any additional property taxes in 2011 (beyond the amount stipulated) is tenuous. That Ameren Missouri seeks recovery for the estimated property tax amount when it will not incur the cost (if ever) until beyond the operation of law date in this case is an extraordinary example of Ameren Missouri reaching far beyond this Commission's normal practice. The Commission should reject Ameren Missouri's request and refuse to set a new precedent that would facilitate recovery of possible future cost estimates that Ameren Missouri may or may not incur beyond the operation of law date.

V. FUEL ADJUSTMENT CLAUSE RECOVERY PERIOD

Ameren Missouri addresses the shortening of the recovery/refund period for under recoveries/over recoveries of costs through the FAC on pages 84 through 86 of its initial brief. Ameren's principal argument in support of Staff's proposal to shorten the recovery period from twelve months to eight months appears to be that it would reduce "regulatory lag." In considering this argument, it is important to understand that a delay in the recovery of fuel cost does not impact Ameren Missouri's earnings. Regulatory lag is typically associated with a delay between when costs are incurred and when they are recognized in rates and in earnings. The reconciliation mechanism of the FAC is explicitly designed to provide Ameren with recovery of 95% of the changes (from the base) of its incurred fuel costs, so that earnings are affected only to the extent of the 5% retention (which can either be a benefit or detriment to Ameren Missouri), and does not otherwise affect recovery or impact earnings.

In addition, interest is applied to the balance so as to recognize the time value of the funds either owed to Ameren Missouri or owed to the ratepayers. This is clearly different from the more typically cited regulatory lag in which a plant goes into service and affects earnings prior to the time that it can be incorporated into rate base. The lack of impact of the twelve-month recovery period on Ameren Missouri is underscored by the fact that Ameren Missouri did not request a reduction from twelve months to eight months. This reduction was solely the result of a Staff recommendation that was not discussed with any of the parties to the stipulation which initially specified the design of the FAC, including the twelve-month recovery period.

In an attempt to address MIEC witness Brubaker's concerns about the varying level of usage of individual classes during the recovery period, Ameren Missouri produces a comparison between class sales on a twelve-month basis and class sales during three different eight-month periods. Ameren Missouri does not explain how it selected these three eight-month periods out of twelve possible eight-month periods, nor does it compare usage patterns during the four-month accumulation periods with usage in various eight-month periods, or an annual period. As a result, Ameren Missouri's "mini-analysis" proves nothing.

As detailed on pages 24 and 25 of MIEC's initial brief, switching from a twelve-month recovery period to an eight-month recovery period would amplify the volatility of the FAC and increase the burden on ratepayers. Neither Staff nor Ameren have provided any justification for changing the recovery period from twelve months to eight months, so the existing twelve-month period should be retained.

VI. Energy Efficiency and Demand Side Management (DSM) Issues

A. The Commission Should Allow Ameren Missouri to Recover its Direct Costs for Approved DSM and Energy Efficiency Programs by Including Those Costs in Rate Base and Amortizing Them Over 10 Years

As indicated in the MIEC's opening brief, Energy Efficiency and DSM program costs (Demand Side Costs) should be treated equally with supply side resource costs, such as generating equipment, since they both benefit consumers over multiple future years, and because that equal treatment is a legal requirement under section 393.1075.3, RSMo.[72] This is consistent with the concept that regulators match the cost associated with the resource to the customers taking the service at the time the benefits of the resource are realized.[73] Also as indicated in the MIEC's initial brief in this case, the weighted average life of the demand side measures at issue is 12 years, but to be conservative, the MIEC recommended a ten-year amortization.[74]

No party has through testimony, or in its initial brief, disputed that the Demand Side Costs are associated with programs that, on average, benefit consumers for twelve years. Rather, one party, the MDNR, now argues that this Commission should use a three-year amortization while the Staff, and OPC argue for a six-year amortization.[75] Ameren Missouri did not directly address this issue in its initial brief[76] and MEG argued that the amortization period should not be reduced from six years to three years, because six years was "quite generous" given Mr. Brubaker's testimony that the life span of the DSM measures was twelve years.[77]

---

[72] MIEC Brief, p. 25.

[73] Brubaker Direct, Ex. 403 at p. 11, l. 16 through p. 12, l. 8.

[74] Brubaker Direct, Ex. 403 at p. 13, ll. 8-15, p. 14, ll. 14-8; Tr. p. 2042, l. 20 through p. 2043, l. 14

[75] MDNR Brief, pp. 5-6; Staff Brief, p. 50; and OPC Brief, pp. 10-11.

[76] Ameren instead invested its argument in its "billings unit adjustment."

[77] MEG Brief, p. 3.

As support for the three-year amortization, MDNR merely argues that "from a policy perspective, [] expensing of DSM program costs is appropriate" as that will incent Ameren Missouri to maintain and expand its DSM programs.[78] While that policy may incent Ameren, that policy is in direct conflict with the policy long held by this Commission that it match the cost of resources with the benefits derived from the resources.[79] Certainly the MDNR would like to incent utilities to install expensive pollution control equipment as well, but it is accepted practice that such equipment be depreciated over its useful life. That is because to do otherwise would be to unfairly foist too much of the cost onto today's ratepayers.

As for the proposal to amortize over 6 years, the Staff's initial brief states no reasons for that treatment,[80] and OPC's initial brief merely notes that a 6-year amortization was ordered in the KCP&L case.[81] In neither case did Staff or OPC dispute that the DSM programs, on average, benefit consumers for over ten years, nor that this Commission's policy is to match costs with benefits. The six-year figure derives not from any evidence, empirical study or fact that the DSM programs benefit ratepayers for six years, but rather from a stipulation having no value as precedent.[82] Prior to that stipulation, Ameren Missouri amortized these costs over ten years.[83] Even Ameren Missouri witness Davis agreed that the stipulation was not based upon "objective criteria" because it resulted merely from a negotiation.[84]

---

[78] MDNR Brief, pp. 5-6.

[79] Brubaker Direct, Ex. 403 at p. 11, l. 16 through p. 12, l. 8.

[80] Staff Brief, p. 50.

[81] OPC Brief, pp. 10-11.

[82] Brubaker Direct, Ex. 403 at p. 10, ll. 12-15; Davis Direct, Ex. 114, p. 4, ll. 10-12.

[83] Davis Direct, Ex. 114, p. 4, ll. 1-5.

[84] Tr. 1801, ll. 15-20; Davis Direct, Ex. 114, p. 4, ll. 10-12.

Moreover, no party disputes that Section 393.1075.3, RSMo requires the Commission "to value demand-side investments equal to traditional investments in supply and delivery infrastructure[.]" As Mr. Brubaker noted, recovery of Demand Side Costs over a ten-year amortization period is superior to cost recovery of supply-side investments both from an earnings perspective and from a cash flow perspective.[85] No other party's initial brief challenged Mr. Brubaker's conclusions in this regard.

In summary, the only objective evidence in the record regarding the appropriate term of amortization of Demand Side Costs is the testimony of Mr. Brubaker. To be faithful to the principle that those realizing the benefits of a measure pay for it, and to comply with Section 393.1075.3's requirement that supply-side and demand side investments be equally valued, the Demand Side Costs should be included in rate base and amortized over ten years.

B. The Commission Should Reject Ameren Missouri's "Billing Unit Adjustment"

Ameren Missouri's brief evidences its intention to hold its future investment in energy efficiency/demand side measures hostage upon the condition that it immediately receive "constructive regulatory treatment that addresses the throughput disincentive associated with energy efficiency programs."[86] That "constructive regulatory treatment" is the approval of Ameren Missouri's unique "billing unit adjustment" ("BUI") ("There is no reason why the Commission should not approve the continuation of Ameren Missouri's [DSM] programs <u>predicated on</u> the approval of Ameren Missouri's billing unit adjustment mechanism[.]")

[85] Brubaker Direct, Ex. 403 at p. 15, l. 11 through p. 16, l. 21; Brubaker Surrebuttal, Ex. 406, p. 9, ll. 13-20.

[86] Ameren Missouri Brief, pp. 93-4.

(emphasis added).[87] Other than Ameren Missouri, all parties to address the BUA oppose it.[88] The MIEC supports the reasons for Staff's, OPC's, and MEG's opposition to the BUA.[89] Rather than reiterate them here, the MIEC incorporates them by reference. This reply brief will thus focus on Ameren Missouri's erroneous arguments in support of the BUA. The Commission should deny the requested BUA because is inconsistent with established regulations, is bad policy, is mechanically flawed, and incorrectly quantified.

1. The BUA Conflicts With the Commission's Regulations

Ameren Missouri labels the evil the BUA seeks to address as the "throughput disincentive." However, Ameren Missouri's key witness on this point readily admitted that the BUA is really designed to recover "lost revenue" as Ameren Missouri defines it, and the BUA will not remove the throughput disincentive.[90] It is readily apparent why Ameren Missouri sought to recast the issue this way when one considers the Commission's statement of general applicability embodied in regulations 4 CSR 240-20.093(1)(Y), -20.094(1)(U), and -3.164(1)(M), defining "lost revenue."

AmerenUE argues that the BUA does not conflict with the Commission's regulatory definition of "lost revenue" "because [the BUA] in fact prevents lost revenues from ever occurring in the first place, rather than seeking recovery of them after they take place."[91] That

[87] Ameren Missouri Brief, p. 94.

[88] MDNR Brief, p. 4; Staff Brief, pp. 48-52; MIEC Brief, pp. 28-32; MEG Brief, pp. 3-5, and OPC Brief, pp. 8-10.

[89] The MDNR states "[i]f MDNR and other parties' concerns with the billing unit adjustment could be resolved, MDNR would support that method[.]" MDNR Brief, p. 4. The MDNR offers no solution to the problems raised by the BUA in its brief and fails to show how such a fixed adjustment approach is effective at addressing the alleged "throughput disincentive." Thus, MDNR apparently opposes the BUA.

[90] Tr. 1869, lines 11-16; Tr. 1878, ll. 10-21

[91] Ameren Missouri Brief, p. 98.

argument is disingenuous at best. First, the regulations define recoverable "lost revenue" differently than the BUA. The regulations define "lost revenue" as the actual revenue shortfall attributable to DSM measures that cause actual sales to be below test year sales, not as the BUA proposes, the difference between estimated sales with and estimated sales without implementation of DSM measures. Thus, in an environment where sales are increasing in spite of DSM measures, there would be lost sales under the BUA while there would be no lost sales under the Commission's regulations. Second, the BUA would allow recovery of estimated lost revenue before any of the defined lost revenues were realized, while the regulations require their defined lost revenue to have been proven after the lost revenues are in fact realized. Third, the BUA violates the principle established at 4 CSR 240-20.093 (2)(G)5 that "[a]ny explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery."

The issues surrounding DSM lost revenues are not unique to Ameren Missouri and merit a coordinated and thoughtful policy debate that is consistent with the MEEIA and the Commission's regulations. If this Commission approves a piecemeal BUA for Ameren's claimed future DSM lost revenues, the Commission can safely assume that such precedent will cause other Missouri utilities to clamor for similar treatment in conflict with the established rules. That would thus render the Commission's regulations, which are statutorily defined as "statements of general applicability,"[92] applicable to no one. The Commission should deny the requested BUA because it is contrary to the policy for recovery of "lost sales" that the Commission adopted in its regulations.

[92] Section 536.010(6), RSMo.

2. The BUA is Bad Policy

It should be understood that the BUA is bad policy from the simple fact that the Commission did not adopt any variation of the BUA in its DSM regulations and, further, from the fact that no other regulator has adopted a BUA.[93] In the rulemaking, this Commission apparently recognized a variation of the BUA for what it was, an opportunistic piecemeal increase in rates today, serving as inducement for management to continue doing the right thing regarding DSM expenditures. Ameren Missouri argues that the BUA is a "predicate" for its continued expenditures on DSM programs.[94] Yet, significantly, there is no demonstrated need for such a predicate. Even with Ameren Missouri's historical DSM expenditures, it has not shown that its sales were declining. Rather, it has merely demonstrated that its sales above the test year sales did not increase as much as they otherwise would have.

Ameren Missouri further argues that, "[a]t this time, the most critical barrier to utility energy efficiency efforts is the throughput disincentive."[95] As conceded by Ameren Missouri, the BUA does not in fact eliminate the throughput disincentive. Moreover, Ameren Missouri has since 2008 managed to deploy five different residential programs and four different business programs in spite of this supposed "most critical barrier."

Ameren Missouri argues that "[t]raditional ratemaking creates a strong disincentive for the utility to engage in any activity that could reduce sales, like promoting energy efficiency

---

[93] Tr. 1911, ll. 1-12 (Davis testimony).

[94] Ameren Missouri Brief, pp. 93-4.

[95] Ameren Missouri Brief, p. 95.

programs."[96] The Commission should not be misled by this overly simplistic rationalization of the BUA. Ameren Missouri's MWH sales volumes and other billing determinants can be expected to continuously change after the test year due to ever changing general economic conditions, weather fluctuation, growth in customers, personal income and individual customers' usage decisions.[97] If Ameren Missouri's overall sales grow in spite of DSM savings achieved by certain customers, Ameren will have a reasonable opportunity to fully recover its fixed costs on a going forward basis. This is the rationale behind the principle in the Commission's regulations requiring assessment of overall sales relative to rate case test year levels, rather than a narrow focus on only DSM impacts in isolation.

3. The BUA is Mechanically Flawed and Incorrectly Quantified

Ameren Missouri's "proactive"[98] BUA should be recognized for what it is, a subjective guess regarding how much future sales and revenue losses may result from ongoing DSM programs. The BUA will clearly result in higher electric rates today, but with no showing of the extent to which changes in other elements of Ameren Missouri's future revenue requirement may be sufficient to offset lost sales and revenues if they occur or that Ameren Missouri was otherwise unable to fully recover its fixed costs between this and its next rate case. Moreover, as the staff correctly notes, the BUA would increase rates to customers who do not even benefit from the energy efficiency measures.[99] Last, as Ms. Mantle noted, the BUA as Ameren Missouri calculated it does not accurately account for lost revenues because it uses an average cost for the

---

[96] Ameren Missouri Brief, p. 96.

[97] Brosch Supplemental, Ex. 420 at p. 2, l. 20 through p. 3, l. 8.

[98] Ameren Missouri Brief, p. 98.

[99] Staff Brief, pp. 51-2.

costs saved due to the demand side measures. In fact, utilities will avoid the marginal costs of producing power when demand is lower than it would have been, and because that marginal cost is higher than the average cost, Ameren Missouri's calculation skews the result in favor of showing more lost revenue than it should.[100]

For all of the foregoing reasons, this Commission should deny the BUA.

VII. Solar Rebate Costs

A. Solar Rebate Costs Should be Capitalized, Included in Rate Base, and Amortized Over a 10-year Period

No party's brief disputes that Ameren Missouri's rider "SR" (for Solar Rider) requires any customer seeking a solar rebate to "declare [that] the solar electric system will remain in place on the account holder's premise for the duration of its useful life[,] which shall be deemed to be a minimum of ten (10) years."[101] Likewise, no party's brief disputed that the rider requires the "solar modules and inverters [to] be new equipment and include a manufacturer[']s warranty of ten (10) years."[102] Moreover, no party's brief disputes the basic principle that the customers receiving the benefit of an expenditure should bear their share of the costs. Yet, many of the parties believe that Ameren Missouri should expense its solar rebate expenditures or amortize them over a period of less than ten years. The two stated bases for this claim, that Ameren Missouri does not own the solar generating equipment and that payments of the rebate are legally required, are fully addressed and discredited in the MIEC's initial brief. The Commission should allow Ameren Missouri to amortize this expenditure over ten years.

---

[100] Mantle Supplemental, Ex. 247 at p. 6, ll. 3-14.

[101] Brubaker Direct, Ex. 403 at p. 19, l. 17- p. 20, l. 4.

[102] Brubaker Direct, Ex. 403 at p. 20, ll. 5-7.

VIII. COST OF SERVICE AND REVENUE ALLOCATION

All the parties who supported the non-unanimous Stipulation and Agreement ("Agreement"), including AARP, the Consumer Counsel of Missouri, the Missouri Retailer's Association, the Midwest Energy Users Association, the Missouri Energy Group and the MIEC, reiterated their support for that Agreement in their initial briefs. Furthermore, Ameren Missouri and the Commission Staff reiterated their non-opposition. This leaves the Municipal Group as the only objecting party.

While the Municipal Group objects to the Agreement, it provides no evidence and takes no positions in its brief which would support a rejection of the Agreement. In fact, on page 3 of its opening brief, the Municipal Group, in referring to the class cost of service study provided by Ameren Missouri, admits that it "…must accept this study for this record." The Ameren Missouri study that the Municipal Group accepts shows that the Lighting class rates would require a 22% increase on a revenue neutral basis to move the Lighting class to a level where it would produce a system average rate of return. Thus, the Municipal Group has admitted that its rates are woefully inadequate, and are much further below cost of service than the Residential class, which Ameren Missouri's study says needs a 7% increase on a revenue neutral basis. Yet the Municipal Group continues to argue for an average increase.

There is absolutely no support for an average increase to the Lighting class. Not only does the Municipal Group not contest Ameren Missouri's class cost of service study, but as noted above, it accepts the study. As a result, the only evidence of record supporting the level of increase for the Lighting class that is different from the 4% revenue neutral adjustment contained in the Agreement, is class cost of service studies which show that the Lighting class needs at least a 17% increase (Commission Staff Study). The cost of service studies submitted by other parties support increases on a revenue neutral basis that are greater than 20%.

Most of the Municipal Group's initial brief is devoted to explaining its position with respect to pole installation charges. The Municipal Group apparently fails to recognize that changes in the method of collecting costs within the Lighting class have no impact on the amount of revenue requirement of the Lighting class. That issue is simply a matter of arranging who pays the lighting-related costs, and how those charges are structured. The total cost of providing lighting service does not change because the internal rate design is rearranged.

It is clear that the 4% revenue neutral adjustment contained in the Agreement is reasonable, and that the objections of the Municipal Group are without merit.

Respectfully submitted,

BRYAN CAVE, LLP

By: */s/ Diana Vuylsteke*________
Diana M. Vuylsteke, # 42419
Brent Roam, #60666
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
E-mail: dmvuylsteke@bryancave.com
brent.roam@bryancave.com

Edward F. Downey, #28866
Carole L. Iles, #33821
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6620
Facsimile: (573) 556-6630
E-mail: efdowney@bryancave.com
carole.iles@bryancave.com

Attorneys for the Missouri Industrial Energy Consumers

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been transmitted by electronic mail this 13th day of June, 2011, to all parties on the Commission's service list in this case.

__________*s/ Diana Vuylsteke*________