BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filings of Union Electric Company d/b/a Ameren Missouri, to Increase Its Revenues for Retail Electric Service.	)))	File No. ER-2012-0166

INITIAL POST-HEARING BRIEF OF AMEREN MISSOURI

Thomas M. Byrne, #33340
Managing Assoc. General Counsel
Wendy K. Tatro, #60261
Assoc. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-2514
(314) 554-3484
Facsimile (314) 554-4014
amerenmissouriservice@ameren.com

James B. Lowery, #40503
Michael R. Tripp, #41535
SMITH LEWIS, LLP
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com
tripp@smithlewis.com

L. Russell Mitten, #27881
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Phone (573) 635-7166
Facsimile (573) 634-7431
rmitten@brydonlaw.com

Attorneys for Union Electric Company
d/b/a Ameren Missouri

NP

TABLE OF CONTENTS

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filings of Union	)	
Electric Company d/b/a Ameren Missouri, to	)	File No. ER-2012-0166
Increase Its Revenues for Retail Electric Service.	)	

INITIAL POST-HEARING BRIEF OF AMEREN MISSOURI

COMES NOW Union Electric Company d/b/a Ameren Missouri (Company or Ameren Missouri), by and through counsel, and for its Initial Post-Hearing Brief states as follows:

INTRODUCTION/POLICY

Ameren Missouri has some of the lowest electric rates in the country – approximately 25% below the national average, well below the average for electric utilities located in the Midwest, and the lowest of the four investor-owned electric utilities in the state.[1] Its comparatively low rates are largely attributable to the Company's disciplined management of the costs that are within its control. Since 2008, the Company has reduced its total non-fuel expenditures every year, in spite of inflation. Total non-fuel expenditures in 2011 were a full $300 million below their level in 2008. In 2011, the Company reduced its employee headcount by offering a voluntary severance that was accepted by 340 of its employees, and the current number of employees, 4,000, is approximately 9% less than it was at the end of 2009.[2] This reduction in costs will reduce the Company's cost of service for the benefit of customers for years to come. The Company is also actively engaged in efforts to tighten its belt and reduce its costs in many other areas, as explained in Ameren Missouri CEO Warner Baxter's testimony.

But there are some costs that the Company has little or no ability to control; increases in those costs drove the need for the rate increases Ameren Missouri has sought and received

[1] Ex.1, p. 11, l. 6 - p. 12, l. 1 (Baxter Direct).
[2] *Id.*, p. 14, l. 10 - p. 15, l. 9.

in the recent past and are driving the need for the rate increase sought in this rate case. In this case, the increase the Company has experienced in net fuel costs since the true-up cutoff date in the last rate case is the single most significant factor underlying the rate increase request.[3] Capital investments that have been made to the Company's energy generation and delivery systems in order to provide safe and reliable service to our customers and meet environmental requirements are also a significant contributing factor. Finally, costs of the largest energy efficiency program in the state, as approved as part of the Company's Missouri Energy Efficiency Investment Act (MEEIA) filing, and steady inflationary pressures on operating expenses, such as pensions and medical expenses, are also factors.[4]

The rate increases the Company has received over the last five years have allowed it to continue to invest in its system to maintain and improve reliability for the benefit of customers. Specifically, the Company invested approximately $3.2 billion in capital improvements to its system between 2007 and 2011.[5] These investments have led to measurable operational improvements. Reliability (as measured by outages per customer per year) has improved 27% since 2006. Sulfur dioxide emissions have also, coincidentally, been reduced by 27% since 2006. The Company has enhanced its storm response capability, and was able to respond effectively to restore service quickly following two recent tornadoes in the St. Louis area.[6]

The availability of the Company's four base load coal plants, now an average of 45 years old, is among the industry's best. Two of the Company's coal-fired plants, the Rush

[3]Some of these fuel cost increases are already being recovered through the Company's fuel adjustment clause, but are being "re-based" in this case.
[4] Ex. 1, p. 5, l. 19 - p. 6, l. 10.
[5] *Id.*, p. 8, l. 10-12.
[6] *Id.*, p. 9, l. 13 - p. 10, l. 12.

Island and Labadie Energy Centers, recently received awards ranking them number 1 and 2 among similar coal-fired plants that were benchmarked on the basis of availability and cost. The Callaway Energy Center has run continuously for two cycles, which is extraordinary in the nuclear industry.[7] Customers reap the benefits of this favorable performance made possible by the Company's continued investment in its system, in the form of lower operating costs, improved reliability, and enhanced off-system sales.

Having the ability to continue to invest in the Company's infrastructure is especially important now for several reasons. First, because much of the system was built in the 1950's and 1960's, when the Company's customers moved to the suburbs and began using air conditioning, there is a growing need to replace and upgrade this equipment. As a consequence, Ameren Missouri, like other electric utilities across the country, faces a bow wave of investment needs just to replace the poles, lines, substations, and transformers that are serving current customers but are reaching the end of their service lives. Second, increasingly stringent federal environmental regulations continue to require the Company to make significant capital investments like the Company's recent investment of approximately $600 million in scrubbers for the Sioux Energy Center. These investments require the commitment of capital that could otherwise be used for the replacement of aging infrastructure. Third, customers' service expectations continue to increase. Customers insist on extremely reliable service, particularly since even momentary outages can disrupt digital devices. And they demand prompt restoration of service after every storm that hits the Company's service territory.[8]

[7] Tr. p. 272, l. 4-12.
[8] Ex. 1, p. 16, l. 13 - p. 17, l. 14.

A significant obstacle the Company faces in making the investments needed to meet these challenges is regulatory lag. Regulatory lag is simply the delay a utility experiences in reflecting in rates the costs that it prudently incurs to serve its customers.[9] "Regulatory lag" is actually a misnomer – costs that a utility fails to recover between rate cases are not simply delayed, they are lost forever to the utility. Under Missouri's regulatory framework, this delay and inability to recover costs has become excessive, to the ultimate detriment of utilities and their customers. Specifically, the use of historic costs to set rates applicable in the future, and the statutory prohibition of including capital investment in rates until the plant is fully operational and used for service put Missouri utilities behind in recovering ever increasing operating costs and capital investments. Although this framework may have been more balanced in the past when consistent natural growth in sales or significant cost reductions could offset cost increases, utilities – including Ameren Missouri – are now operating in an environment where costs as a whole are persistently rising, and growth in sales is expected to be flat or negative for the foreseeable future.

To partially mitigate this problem, Ameren Missouri is proposing two regulatory mechanisms in this rate case that would reduce regulatory lag associated with specific costs. First, the Company proposes to implement a two-way major storm restoration cost tracker, which would track, dollar-for-dollar, the non-labor costs the Company incurs, and the revenues it receives associated with restoration of service to customers following major storms. Storms are completely outside of the Company's control and unpredictable; restoration costs can vary wildly from year-to-year. Moreover, the Company's customers and the Commission have made it clear that when a storm hits, they want Ameren Missouri to take all steps necessary to restore service as promptly as possible. Under these circumstances, it

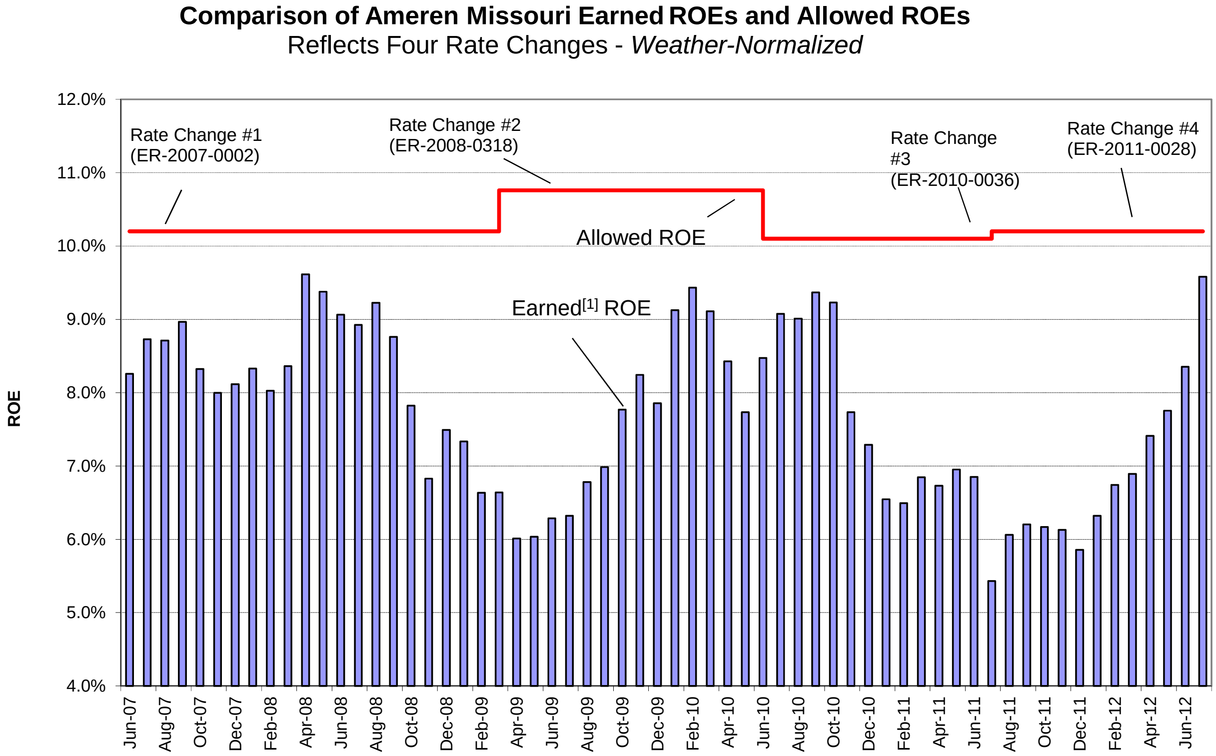
[9] *Id*., p. 17, l. 20 - p. 18, l. 1.

makes no sense to try to develop a "normal" level of storm restoration costs in base rates that will inevitably turn out to be either too high or too low in any given year. A two-way storm restoration tracker will be fairest to both customers and Ameren Missouri because it will establish a mechanism that would allow the Commission to ensure that the exact amount of prudently incurred storm restoration costs (net of any storm assistance revenues) will be recovered, not a penny more or less. Also, it will mitigate the problem of regulatory lag, at least for this one important category of expenses.[10]

The second regulatory mechanism Ameren Missouri proposes is the adoption of Plant-in-Service Accounting. This mechanism is similar to construction accounting which the Commission has previously employed with respect to large capital projects. The goal of Plant-in-Service Accounting, like construction accounting, is to permit the utility to recover the full cost of investing in capital projects, and thereby remove the significant financial disincentive to invest that is embedded in the current regulatory framework.[11]

That regulatory lag is excessive is convincingly demonstrated by the chart below which shows that on a weather-normalized basis – which is how rates are set – the Company has failed to earn the return this Commission found to be fair, just, and reasonable even one time since June 2007.[12]

[10] Ex. 30 (Wakeman Direct).
[11] Ex. 11, p. 16, l. 12 - p. 20, l. 3 (Barnes Direct).
[12] Ex. 2, Schedule WLB-ES1 (Baxter Surrebuttal).



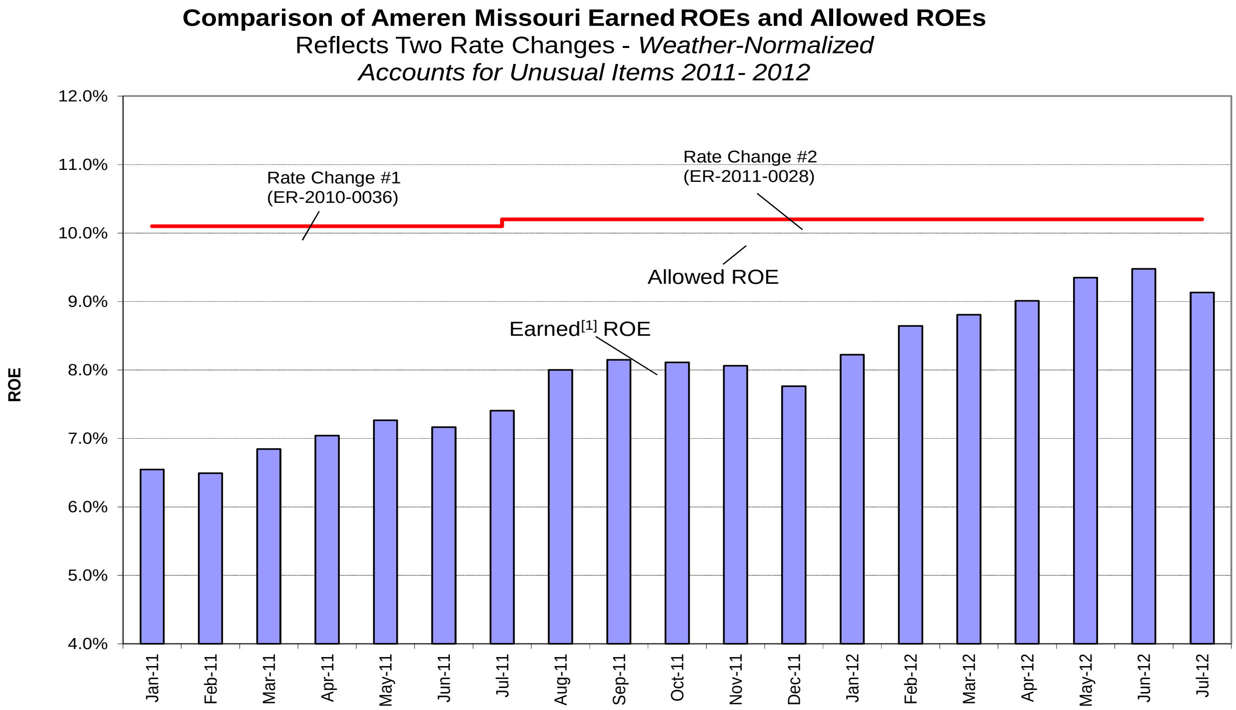
And even on a non-weather normalized basis that includes instances of extremely hot weather, the Company has failed to earn that return in 53 of those 62, 12-month periods – 85% of the time.[13] If the regulatory framework were operating as it should, there should be a roughly equal number of periods when the Company earns above and below its authorized return, at least until, over time, a rate adjustment becomes necessary. Even where the Company's earnings are adjusted to exclude the impact of unusual, non-recurring items (the Taum Sauk disallowance, the Fuel Adjustment Clause disallowance, and the one-time refund received by the Company from Entergy), the following chart shows that on a weather normalized basis, the Company has still been unable to earn its authorized return in recent periods.[14,15]

---

[13] Ex. 2, p. 3, l. 12-17.

[14] Although Ameren Missouri reported earnings of 10.53% for a recent 12-month period in one of its surveillance reports, this reflected earnings adjusted to exclude only the impact of one unusual *unfavorable* item, the Taum Sauk disallowance, but it did not exclude the impact of the one unusual *favorable* item that occurred during that period, the Entergy refund, or normalization of weather.

[15] Ex. 2, Schedule WLB-ES3.



Regulatory economist John J. Reed addressed the impact of the chronic lack of a reasonable opportunity to earn a fair return both in his pre-filed testimonies and, in particular, during questioning at the evidentiary hearings. Mr. Reed made several key points which the evidence in this case in fact indicates are true:

- There have been changes in the utility industry that have made the historic regulatory framework unworkable without modifications that account for those changes.[16]

- Because of constraints on what this Commission can do (e.g., Proposition 1), Missouri doesn't have all of the options many states have to address these changes in a way that is fair to investors and customers alike, but there are options, including those proposed by the Company in this case, that the Commission does have the ability to pursue to address the chronic lack of a reasonable opportunity to earn a fair return.[17]

[16] Tr. p. 350, l. 12 - p. 351, l. 21.
[17] Tr. p. 352, l. 4 - p. 353, l. 21.

- The balance in Missouri has swung too far in favor of keeping rates low at the expense of properly compensating those on whom utilities depend for capital.[18]

- The foregoing points are true no matter how you look at the Company's historical opportunity to earn a fair return – with "regulatory adjustments" accounted for (like Taum Sauk or the FAC prudence disallowance) or without it – the Company, with very limited exceptions in either case, has been unable to earn a compensatory ROE.[19]

- The Commission does have a choice on how it addresses these issues, but its choice has consequences. When the balance is such that access to capital is reduced, those consequences can fall on customers when investments must be deferred or not made.[20]

In summary, in this case, the Company is asking the Commission to adopt the major storm cost tracker and Plant-in-Service Accounting to help mitigate this persistent regulatory lag, to mitigate the disincentive that currently exists for the Company to continue to invest in its system, and afford the Company a more reasonable chance to earn a fair return. Moreover, the Company is also requesting that the Commission resolve the other issues in this rate case in a manner that allows it to recover its prudently incurred costs of providing service to customers. This includes allowing a fair and reasonable amount of costs that are at issue, such as property taxes, coal inventory levels, income taxes, rate case expense, the tracking of net fuel costs (in a reasonable fuel adjustment clause), and the treatment of transmission charges and revenues. In addition, in order to facilitate needed investment, the Company requests that the Commission authorize a reasonable return on equity, supported by the cost of capital analyses presented by Company witness Robert Hevert, and commensurate with returns authorized for other integrated electric utilities across the country. Only if the Commission allows the Company to fully recover its prudently incurred costs, authorizes a reasonable return on equity, and takes steps to mitigate

[18] Tr. p. 356, l. 13 - p. 357, l. 5.
[19] Tr. p. 357, l. 21 - p. 358, l. 13.
[20] Tr. p. 359, l. 11 - p. 360, l. 2.

the excessive regulatory lag that the Company is facing will the Company have a chance to actually earn its authorized return, and an incentive to continue to proactively invest in its system for the benefit of its customers.

CONTESTED ISSUES

I. RETURN ON EQUITY.

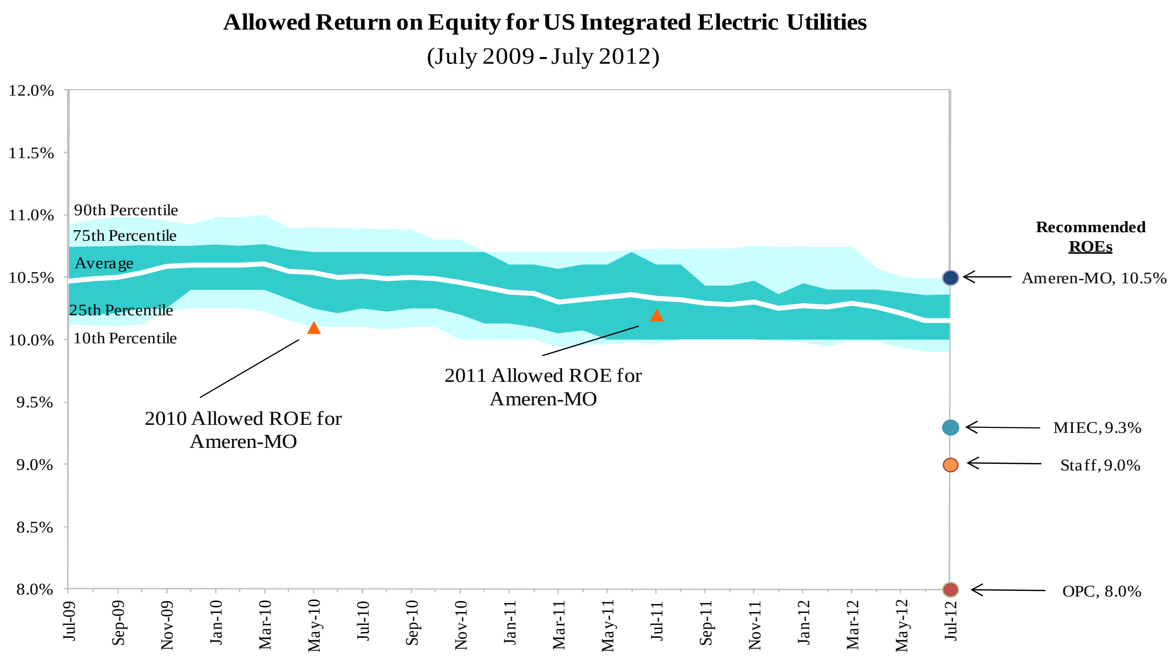
The single largest dollar value issue in this case is return on equity (ROE). Allowing the Company the opportunity to earn a fair ROE and one which is commensurate with ROEs authorized for similar integrated electric utilities with which the Company competes for capital is critical to support the Company's continued investment in its system. There are longstanding legal standards governing the appropriate return on equity for public utilities, which were developed by the U.S. Supreme Court in ***Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia***[21] and ***Federal Power Commission v. Hope Natural Gas Company***.[22] Boiled down to their essence, these cases require public utility commissions to provide electric utilities with the opportunity to earn an ROE that is: 1) adequate to attract capital on reasonable terms under a variety of financial and economic conditions, thereby enabling the utility to continue to provide safe and reliable electric service; 2) sufficient to ensure its financial integrity; and 3) commensurate with returns on investments in enterprises having corresponding risks.[23]

Four parties have taken a position on ROE in this case. Ameren Missouri's recommended ROE of 10.5% is based on several analyses conducted by Company ROE witness Robert Hevert, an expert with decades of experience providing ROE analyses across the country. The Missouri Industrial Energy Consumers' (MIEC) recommended ROE of 9.3% is supported by

---

[21] 262 U.S. 679 (1923).
[22] 320 U.S. 591 (1944).
[23] Ex. 20 p. 5, l. 10-14; p. 42, l. 20-21 (Hevert Direct).

witness Michael Gorman, and the Staff recommendation of 9% is sponsored by Staff witness David Murray. The Office of the Public Counsel (OPC) is not sponsoring a witness on this issue, but OPC has latched onto the low end of Mr. Murray's recommended range – 8%. The recommendations of each of these witnesses will be addressed in detail, but to provide some perspective it is useful to consider these recommendations in light of ROEs authorized across the country in the recent past. As the graph below shows, Mr. Hevert's recommendation of 10.5% is just above the most recent 12-month rolling average of authorized ROEs for integrated electric utilities published by Regulatory Research Associates (RRA), the organization which reports the ROE data on which the Commission has relied in past cases. In contrast, the 9.3% recommendation sponsored by the MIEC, and the 9% ROE sponsored by the Staff are far below even the 10th percentile of reported ROEs. And OPC's unsupported 8% ROE is so low as to be almost off the chart.[24]



Sources and Notes:
Analysis of data compiled by Regulatory Research Associates.
[1]: Allowed ROE calculated as 12-month rolling average of commission-approved
[2]: Average and percentiles exclude decisions that apply only to electric distribution companies or individual generating

[24] Ex. 22, p. 2, l. 6-8 (Hevert Surrebuttal).

The far-out-of-the-mainstream nature of the other parties' recommendations is not just supported by a comparison to the 12-month rolling averages for integrated electric utilities reflected in the chart above. As Mr. Hevert has testified, considering all 87 rate decisions for vertically-integrated electric utilities issued between January, 2010 through June 30, 2012, only one decision authorized an ROE below 9.4%, whereas more than one-half of the ROEs awarded during that period fell within Mr. Hevert's proposed range of 10.2%-11%.[25] The RRA data submitted in this proceeding can be sliced and diced in numerous ways, considering different time periods. Mr. Hevert has testified that the authorized ROEs for integrated electric utilities in calendar year 2011 ranged from 9.8% to 11.35%, with an average of 10.27%.[26] The average authorized return for integrated electric utilities continues to be above 10% (10.05%[27]) for the first nine months of 2012, and while in the third quarter of 2012 the average ROE for integrated electric utilities dropped to 9.9%, there were only four rate cases for integrated electric utilities decided during that quarter, a number of observations that the Commission has never considered a sufficient basis to rely upon. In any event, using any of the available RRA data for integrated electric utilities, it is clear that the recommendations of the MIEC, the Staff, and OPC fall far outside the mainstream.

The Company is not suggesting that the Commission is obligated to authorize an ROE for Ameren Missouri at exactly the national average, and the Commission itself has noted that it is not obligated to "slavishly follow the national average" in setting an authorized ROE for a Missouri utility.[28] But in numerous rate cases decided in recent years, the Commission has determined that ROEs authorized in other jurisdictions provide an important point of reference to

[25] Ex. 21, p. 11, l. 1-11 (Hevert Rebuttal).
[26] Ex. 20, p. 39, l. 9-14.
[27] Exs.530 and 531 (calculated excluding the distribution only electric utilities designated as footnote "D" in Ex. 530, Virginia decisions reflecting incentive ROEs for new generation, and those identified by Mr. Hevert as distribution only from Ex. 531 (Tr. p. 1649, l. 6 to 18)).
[28] *Report and Order*, Case No. ER-2011-0028, p. 67.

consider in determining the ROE for regulated utilities – a “reasonableness test”[29] for the competing recommendations of paid experts. And that is because Ameren Missouri must compete for capital with other integrated electric utilities. These are the “enterprises having corresponding risks” that Ameren Missouri’s return must be commensurate with according to the Supreme Court’s decisions in ***Bluefield*** and ***Hope***.

If the Commission authorizes an ROE as far outside the mainstream as those proposed by the MIEC, the Staff, or OPC, it will not meet the requirements of ***Bluefield*** and ***Hope***, it will not provide Ameren Missouri with a return commensurate with enterprises having corresponding risks, it will not ensure that Ameren Missouri has sufficient access to capital on reasonable terms, and it will further contribute to the disincentive the operation of the regulatory framework in Missouri is creating relating to proactive investment in the Company’s system. For this reason alone, the punitive ROE recommendations of the other parties must be rejected.

A. Recommendation of Company Witness Robert Hevert.

Ameren Missouri witness Robert Hevert is a well-qualified economic and financial consultant who has provided testimony on strategic and financial matters before numerous state utility commissions and the Federal Energy Regulatory Commission (FERC) on approximately 80 occasions, often addressing the cost of capital issue.[30] To develop his cost of equity recommendation, Mr. Hevert conducted several standard analyses – constant growth discounted cash flow (DCF) analyses, multi-stage DCF analyses, a capital asset pricing model (CAPM) analysis, and a Risk Premium analysis. Mr. Hevert updated his analyses in his rebuttal testimony to take into account changing capital market conditions, and he applied his analyses to two separate proxy groups, one of his choosing and another “Combined Proxy Group” consisting of

[29] *Id.*
[30] Ex. 20, p. 1, l. 13 - p. 2, l. 3.

all proxy companies recommended by any ROE witness in this case. The results of Mr. Hevert's analyses, set forth on Tables 19a and 19b on pages 113-114 of his rebuttal testimony, support his recommended ROE range of 10.2% to 11%, and his revised ROE point recommendation of 10.5%.

In addition to conducting his standard DCF, CAPM, and Risk Premium analyses, Mr. Hevert also compared the regulatory environment that Ameren Missouri operates in to the regulatory environments that exist in other states. In his direct testimony, Mr. Hevert notes that all three major credit rating agencies – Moody's, Standard and Poor's (S&P) and Fitch – recognize the importance of having a credit supportive regulatory environment. Moody's has stated: "the predictability and supportiveness of the regulatory framework in which a regulated utility operates is a key credit consideration and the one that differentiates the industry from most other corporate sectors."[31] Mr. Hevert also points out that regulatory decisions regarding the authorized ROE and capital structure can have direct consequences for the subject utility's internal cash flow generation, sometimes referred to as "Funds Flow From Operations" or "FFO," which impacts two of the most important credit metrics used to determine credit ratings and credit quality. As a consequence, the regulatory environment that a utility operates in is critical to both debt and equity investors.[32]

Recognizing the importance of the regulatory environment, Moody's gives two factors – "regulatory framework" and "the ability to recover costs and earn returns" – 50% weighting in determining the overall assessment of business and financial risk for regulated utilities. With respect to Ameren Missouri in particular, Moody's has noted that the Company "operates in what Moody's has considered to be a below average regulatory framework, which has resulted in

[31] Ex. 20, p. 40, l. 3 - p. 41, l.2.
[32] *Id.* p. 39, l. 15 - p. 41, l. 11.

significant regulatory lag and prevented the utility from earning close to its allowed return on equity." As a consequence, Moody's has assigned the Company's "regulatory framework" factor a rating of Ba, which corresponds to a below-investment-grade rating for that factor. Moody's explained that this rating reflects "lengthy 11 month base rate case timelines; the lack of interim rate relief; the use of historical test years; and the less than full recovery of fuel costs in rates."[33]

Mr. Hevert also analyzed the regulatory environments of the companies that comprised his proxy group. First, using the S&P ratings of the regulatory jurisdictions each of the proxy group companies operate in, Mr. Hevert determined that on S&P's scale of 1-5 (5 being the most credit supportive), the average rating for the proxy group jurisdictions was 2.93, whereas the rating for Ameren Missouri was 2.00. In other words, the jurisdictions of the proxy group companies are viewed as more credit supportive than average, and Missouri is viewed as less credit supportive than average.[34] Second, Mr. Hevert exhaustively examined the regulatory mechanisms of Ameren Missouri and compared them to the regulatory mechanisms of the proxy group companies. The results of this analysis are provided in Schedule RBH-E7, attached to Mr. Hevert's direct testimony (Exhibit 20). In general, Mr. Hevert found that the regulatory/cost recovery mechanisms available to the proxy companies were better than those available to Ameren Missouri. For example, Ameren Missouri's fuel adjustment clause allows for the recovery of 95% of the incremental fuel costs incurred between rate cases, whereas the vast majority of operating utilities within the proxy group are allowed to recover 100% of their prudently incurred fuel and purchased power costs. Mr. Hevert testified that "[o]n balance, Schedule RBH-E7 demonstrates that the proxy group companies operating in other jurisdictions,

[33] *Id*., p. 41, l. 12 - p. 42, l. 9.
[34] *Id*., p. 43, l. 8-19.

have rate mechanisms that provide for more timely recovery of capital costs than does Ameren Missouri."[35]

Finally, Mr. Hevert compared Ameren Missouri to the proxy group of companies based on three other factors: (1) the ability to earn a cash return on construction work in progress (CWIP) by placing it in rate base; (2) the type of test year used (e.g., historical, forecasted, hybrid, etc.) by the Commission to establish base rates; and (3) whether the utility is allowed to request interim rates to mitigate the effects of regulatory lag while a rate case is pending. Mr. Hevert found that 64.71% of the operating subsidiaries of the proxy group are allowed to place CWIP in rate base; 55.8% are allowed to use a forecasted or partially forecasted test year; and interim rate relief is commonly available to operating subsidiaries in certain jurisdictions. "Consequently," Mr. Hevert testified, "the proxy group companies have substantially more protection against regulatory lag than does Ameren Missouri, and therefore a better opportunity to earn their authorized ROE than does Ameren Missouri."[36]

The fact that Missouri's regulatory framework is less credit supportive than other states is not the consequence of anything that this Commission has done. Indeed, as Ameren Missouri CEO Warner Baxter testified, this Commission's actions since 2007 have improved the environment in Missouri through the implementation of fuel adjustment clauses, cost tracking mechanisms, and rate case decisions that the credit ratings agencies have viewed as supportive.[37] But the reality that even the improved regulatory environment in Missouri remains less credit supportive than other jurisdictions must be recognized, and it suggests, as Mr. Hevert has testified, that the mean result of the various ROE analyses – the DCF, CAPM, and Risk Premium analyses – based as they are on proxy group companies operating in more credit supportive

---

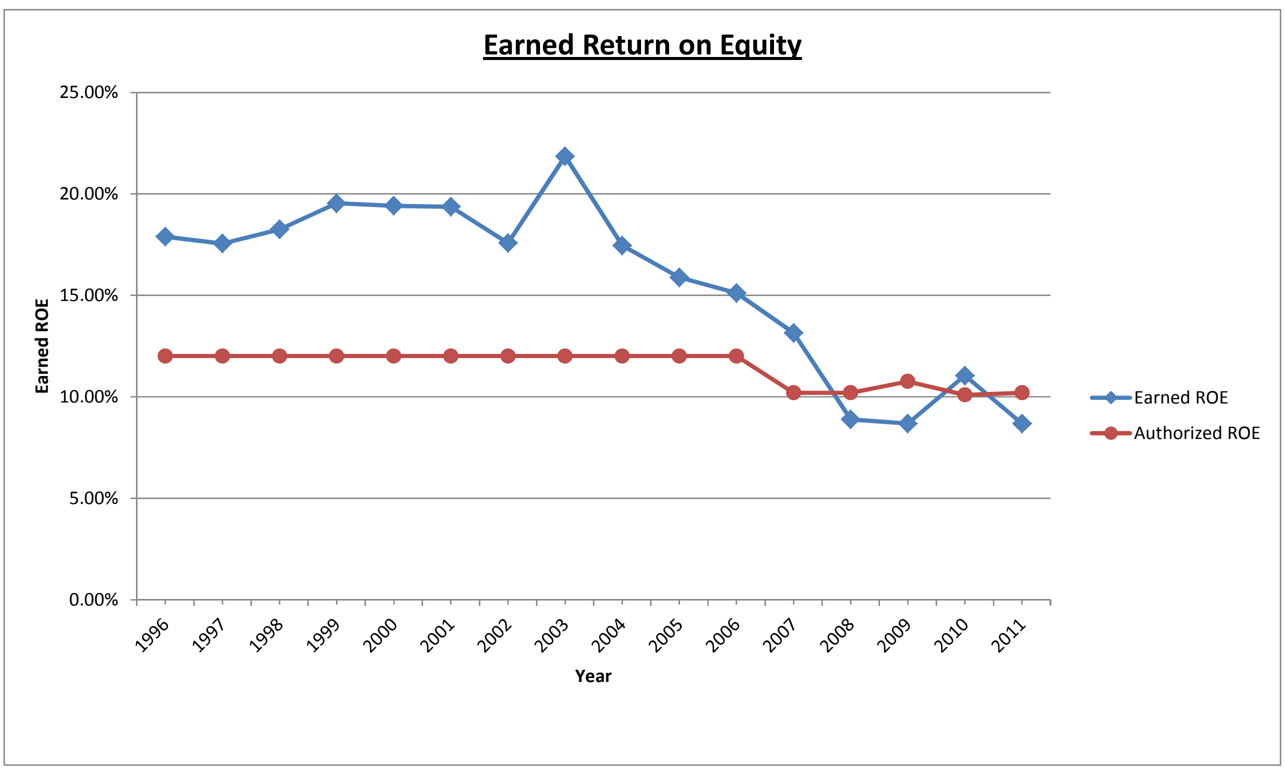
[35] *Id.*, p. 45, l. 18-20.
[36] *Id*., p. 46, l. 19-21.
[37] Tr. p. 262, l. 19 - p. 263, l. 12.

jurisdictions, do not necessarily provide an appropriate estimate of Ameren Missouri's cost of equity.[38] This consideration suggests that Ameren Missouri should be authorized a higher ROE than these analyses would otherwise suggest, and it should have an authorized return higher than the national average.

For these reasons, Mr. Hevert's ROE range of 10.2%-11%, and his specific recommendation of an ROE of 10.5%, are fully supported and should be adopted.

B. Recommendation of MIEC Witness Michael Gorman.

MIEC witness Michael Gorman provided testimony on policy issues and ROE, and in this case at least, Mr. Gorman's testimony was not very credible. To begin with, in an effort to respond to Ameren Missouri's evidence that it has consistently been unable to earn close to its authorized returns since 2007, Mr. Gorman submitted the chart below, attached as Schedule MPG-21 to his direct testimony (Exhibit 508), filed on July 6, 2012:



[38] Ex. 20, p. 39, l. 15 - p. 40, l. 2.

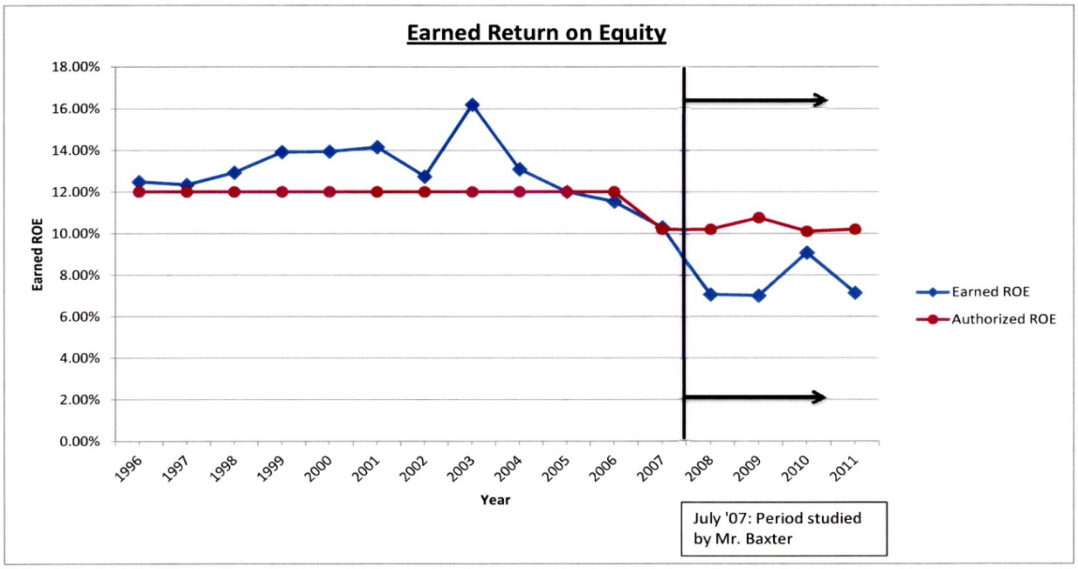
As you can see, the chart purports to show that Ameren Missouri experienced extremely high earnings levels – far above its then-authorized returns – dating back to 1996, earned returns for many of the years at nearly 20%, and in one case above 20%, when the "Authorized ROE" is depicted to be about 12%. MIEC featured this chart prominently in its opening statement for the case in which it complained of the Company's "relatively recent history of significant overearnings."[39] Mr. Gorman was unable to appear at the beginning of the hearing when the "policy" issue was scheduled to be heard, but MIEC lawyers used this chart to grill Ameren Missouri CEO Warner Baxter about the "overearnings" that it purports to show.[40] Commissioners picked up on the chart as well and asked Mr. Baxter questions about the overearnings that it purports to show.[41]

The only problem was that the chart, which had been filed by Mr. Gorman months before the hearing, was completely wrong and consequently extremely misleading. When Mr. Gorman finally arrived at the hearing, at the end of week two, he admitted he had made a huge mistake in developing his chart. In particular, Mr. Gorman admitted he used an incorrect common equity balance in his calculations, which resulted in a chart that showed significantly higher returns than had actually been earned. Mr. Gorman submitted a corrected chart (below) which shows much lower earnings as follows:[42]

[39] Tr. p. 213, l. 16 - p. 214, l. 6.
[40] Tr. p. 310, l. 8 - p. 312, l. 7.
[41] *See, e.g.* Tr. p. 276, l. 3 - p. 280, l. 6 (Chairman Gunn); Tr. p. 289, l. 2-17 (Commissioner Kenney).
[42] Ex. 532.

FILED
October 23, 2012
Data Center
Missouri Public
Service Commission

Ameren Missouri



MIEC Exhibit No. 532
Date 10/5/12 Reporter MM
File No ER-2012-0166

Schedule MPG-21
Revised

But the real truth is, even this revised chart is also incorrect and misleading. As Mr. Baxter testified, during the period from 1996 through 2001 Ameren Missouri was subject to an agreed-upon and Commission-approved earnings sharing plan. Ameren Missouri's authorized return was not 12% as the red line on the revised chart suggests. Instead, the approved plan contemplated that Ameren Missouri could retain earnings of up to 14%. So long as Ameren Missouri complied with the plan, it was impossible for the Company to have over-earned, as Mr. Gorman's revised chart incorrectly implies.[43] After the end of the earnings sharing plan, one could perhaps argue that there might have been a year or two of "over-earnings." However, this is not the case. Post-2001, there was no "authorized ROE" because the prior rate proceeding was

[43] Tr. p. 279, l. 11-15.

concluded with a black-box settlement. Second, even Mr. Gorman's "corrected" chart shows that the Company has consistently been earning less than the ROEs actually authorized by the Commission since 2006.

Mr. Gorman's presentation of misleading charts on the Company's earned ROE is relevant to the Commission's consideration of the information he has presented about his cost of equity analyses. There, too, Mr. Gorman has presented information in a way that is distorted to suggest a lower ROE than the data he examined would actually suggest. Specifically, Mr. Gorman's very low and very narrow range of 9.2% to 9.4% is bounded on the lower end by the results of his Risk Premium analyses, and at the high end by his DCF analyses, particularly his Multi-Stage DCF analysis.[44] A close examination of each of these analyses shows how Mr. Gorman selectively used data to achieve his very low results.

With regard to his Risk Premium method, Mr. Gorman conducted two separate analyses, each of which used data from 1986 through 2012. In his first analysis, set forth in Schedule MPG-11 to his direct testimony, Mr. Gorman subtracted the average Treasury Bond yield for each year from the average authorized electric utility return for that year to calculate an "Indicated Risk Premium" for each year of the 26-year period. Then he excluded from his analyses the years with the three highest and three lowest "Indicated Risk Premiums." Then he established a range of ROEs using the highest and lowest remaining risk premiums added to his risk-free rate, represented by a 3.7% current projected Treasury Bond yield. Then he weighted the high end of his range 2/3 and the low end of his range 1/3 to develop an ROE from the analysis.[45]

[44] Tr. p. 1719, l. 19-25.
[45] Tr. p. 1727, l. 4 - p.1732, l. 13.

The chart below, which is a marked up version of Schedule MPG-11 admitted as Exhibit 71, shows exactly what Mr. Gorman did:

FILED
October 22, 2012
Data Center
Missouri Public
Service Commission

Ameren Missouri

Equity Risk Premium - Treasury Bond

Line	Year	Authorized Electric Returns[1] (1)	Treasury Bond Yield[2] (2)	Indicated Risk Premium (3)
1	1986	13.93%	7.80%	6.13%
2	1987	12.99%	8.58%	4.41%
3	1988	12.79%	8.96%	3.83%
4	1989	12.97%	8.45%	4.52%
5	1990	12.70%	8.61%	4.09%
6	1991	12.55%	8.14%	4.41%
7	1992	12.09%	7.67%	4.42%
8	1993	11.41%	6.60%	4.81%
9	1994	11.34%	7.37%	3.97%
10	1995	11.55%	6.88%	4.67%
11	1996	11.39%	6.70%	4.69%
12	1997	11.40%	6.61%	4.79%
13	1998	11.66%	5.58%	6.08%
14	1999	10.77%	5.87%	4.90%
15	2000	11.43%	5.94%	5.49%
16	2001	11.09%	5.49%	5.60%
17	2002	11.16%	5.43%	5.73%
18	2003	10.97%	4.96%	6.01%
19	2004	10.75%	5.05%	5.70%
20	2005	10.54%	4.65%	5.89%
21	2006	10.36%	4.99%	5.37%
22	2007	10.36%	4.83%	5.53%
23	2008	10.46%	4.28%	6.18%
24	2009	10.48%	4.07%	6.41%
25	2010	10.34%	4.25%	6.09%
26	2011	10.22%	3.91%	6.31%
27	**Average**	**11.45%**	**6.22%**	**5.23%**

Ameren Exhibit No. 71
Date 10/5/12 Reporter MN
File No. ER-2012-0166

Sources:
[1] Regulatory Research Associates, Inc., *Regulatory Focus*, Jan. 85 - Dec. 06, and January 10, 2012.
[2] St. Louis Federal Reserve: Economic Research, http://research.stlouisfed.org/. The yields from 2002 to 2005 represent the 20-Year Treasury yields obtained from the Federal Reserve Bank.

Schedule MPG-11

The red plus signs show that Mr. Gorman excluded risk premiums for 2008, 2009, and 2011 – three of the most recent four years – because he claimed that they were too high. In contrast, the risk premiums he excluded for being too low represented by the red minus sign all occurred decades ago, in the late ’80’s and early ’90’s. The risk premiums he ultimately used for his range were from the first two years of his analysis, 1986 and 1987, and they produced an ROE of 9.26%.[46]

Mr. Gorman’s analysis is obviously flawed. It was inappropriate for him to exclude data for three of the last four years on the subjective ground that these results are “too high.” It is even more inappropriate to use risk premiums from 25 and 26 years ago to establish an ROE for Ameren Missouri today. Economic conditions are much different than they were in the mid-1980’s. Mr. Gorman’s chart itself shows that authorized electric returns hovered in the 13-14% range, far above what they are today. Treasury Bond yields were almost triple what they are today, and Mr. Gorman accepted, subject to check, that the Dow Jones Industrial Average was below 2,000 in 1986.[47] There is absolutely no basis to use outdated data from 1986 and 1987 to set an ROE today.

If Mr. Gorman had done the same analysis using all of the data in the last five years, his result would have been 9.8%; if he had done his same analysis using all of the data in the last ten years, his result would have been 9.76%. If he had used a simple average of the risk premium data for the last five years (instead of using a weighted range), his result would have been 9.8%.[48] Only by excluding data from three of the last four years, and reaching back to data from a quarter century ago, is Mr. Gorman able to produce a result that was nearly 60 basis points lower – as low as 9.26%.

The same fundamental problem applies to Mr. Gorman’s second Risk Premium analysis, which calculated risk premiums for the same 26-year period using “A” rated utility bond yields rather than Treasury Bond yields as the risk free rate. Again Mr. Gorman threw out recent risk

[46] Tr. p. 1728, l. 1 - p. 1732, l. 13.
[47] Tr. p. 1733, l. 16 - p. 1734, l. 4.
[48] Tr. p. 1735, l. 10 - p. 1736, l. 19; Tr. p. 1737, l. 2-15.

premiums (for the most recent two years plus 2005) because he claims they were too high. Again he used dated risk premiums (from 1994 and 1998) to set his range. Again he weighted the high end of the range 2/3 and the low end 1/3, which produced an ROE of 9.1%.[49] In this instance, if Mr. Gorman had done the same analysis using all of the data for the last five years, it would produce an ROE of 9.77%; if he had done the same analysis using all the data points for the last ten years, his result would have been 9.73%.[50] Again, only by excluding more current risk premium data and relying on data that is more than a decade old was Mr. Gorman able to develop his extremely low 9.1% result.

Similar selective use of data infects Mr. Gorman's DCF analyses, which provide the basis for the high end of Mr. Gorman's range – 9.4%. Here Mr. Gorman has departed from his consistent recent practice of using the median of his DCF results to using the mean of his results. Exhibit 73, reproduced below, shows that Mr. Gorman chose the median of his DCF results for each of the last 11 DCF analyses he did in Ameren Missouri rate cases.[51] But in this case, Mr. Gorman chose to use the mean of his results, as the chart below (Exhibit 73) shows:

[49] Tr. p. 1738, l. 3 - p. 1739, l. 25.
[50] Tr. p. 1740, l. 4 - p. 1741, l. 22.
[51] Tr. p. 1745, l. 5 - p. 1751, l. 10.

FILED
October 22, 2012
Data Center
Missouri Public
Service Commission

Gorman DCF Results 2010, 2011 and 2012 cases

ER-2010-0036 2010- Relied on Median	Mean	Median
Constant Growth DCF - Integrated Electric Utilities	12.02%	11.03%
Constant Growth DCF - S&P Electric Utilities	11.99%	11.01%
Constant Growth DCF - Integrated Electric Utilities (Sustainable Growth)	10.68%	10.20%
Constant Growth DCF - S&P Electric Utilities (Sustainable Growth)	11.59%	11.50%
Multi-Stage DCF - Integrated Electric Utilities	10.73%	10.25%
Multi-Stage DCF - S&P Electric Utilities	10.51%	10.06%

ER-2011-0028 2011- Relied on Median	Mean	Median
Constant Growth DCF (Earnings Growth)	10.31%	10.17%
Constant Growth DCF (Sustainable Growth)	10.26%	9.67%
Multi-Stage DCF	9.65%	9.86%

ER-2012-0166 2012- Relied on Mean	Mean	Median
Constant Growth DCF (MPG-4) (Earnings Growth)	9.30%	9.90%
Constant Growth DCF (MPG-7) (Sustainable Growth)	8.63%	8.47%
Multi-Stage DCF (MPG-9)	9.38%	9.70%

Ameren Exhibit No. 73
Date 10/5/12 Reporter MM
File No. ER-2012-0166

If Mr. Gorman had used the median result of his Multi-Stage DCF analysis, the value would have been 9.7% rather than 9.4%. If he had used the highest median DCF result, it would have been 9.9%.

In his deposition, Mr. Gorman testified that the reason to use a median rather than a mean was when there are "outlier" data points.[52] Mr. Hevert's testimony at the hearing also supported this view:

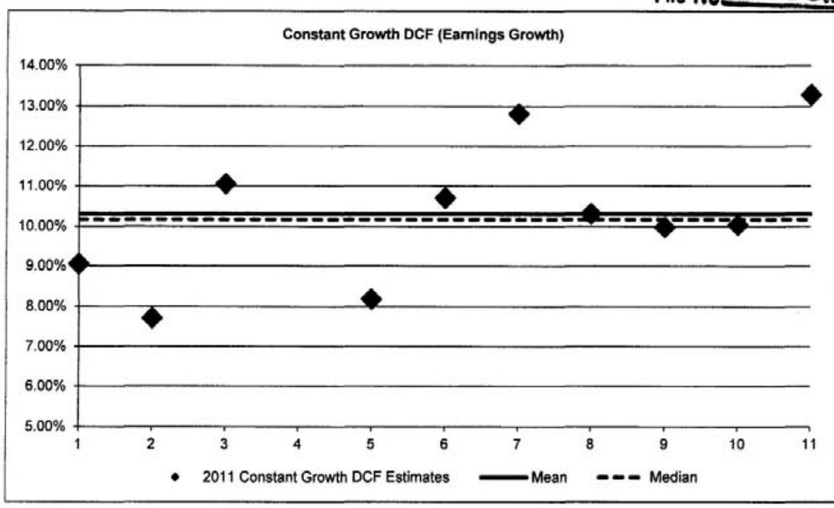
> ***Q. When would you use the mean, and when would you use the median?***
> *A. Well, the—the median, of course, is a number that takes into account the effect of outlying observations, numbers that are very high, very low relative to the average. And so to the extent that there's significant outliers, you would use the median as opposed to the mean.*
>
> ***Q. And if there are not significant outliers?***
> *A. Typically, the mean.*[53]

[52] Tr. p. 1751, l. 11-15.
[53] Tr. p. 1655, l. 7-16.

As the scatter graphs below show (Exhibits 74 and 75), there are as many, if not more outlying data points for Mr. Gorman's constant growth DCF and Multi-Stage DCF results in this case (where he chose to use the mean) than there were last case, when he chose to use the median.

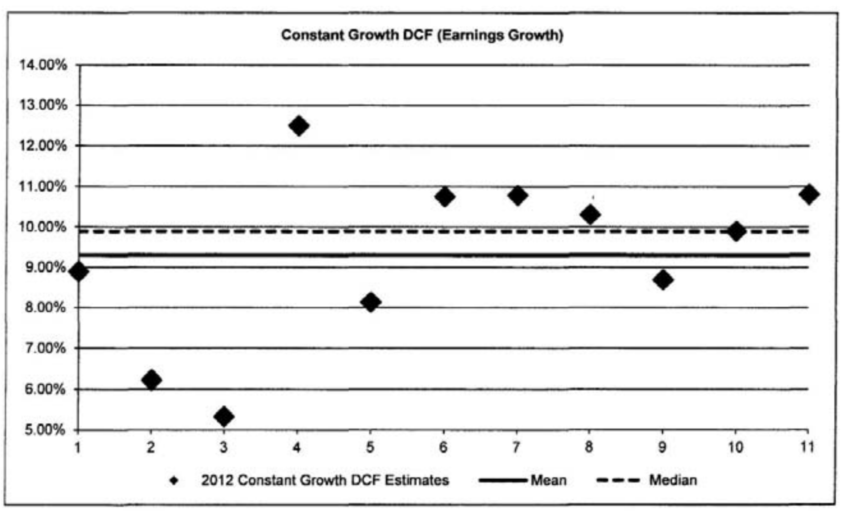
Ameren Exhibit No. 74
Date 10/5/12 Reporter MM
File No. ER-2012-0166

Case No. ER-2011-0028 (Relied on Median)



FILED
October 22, 2012
Data Center
Missouri Public
Service Commission

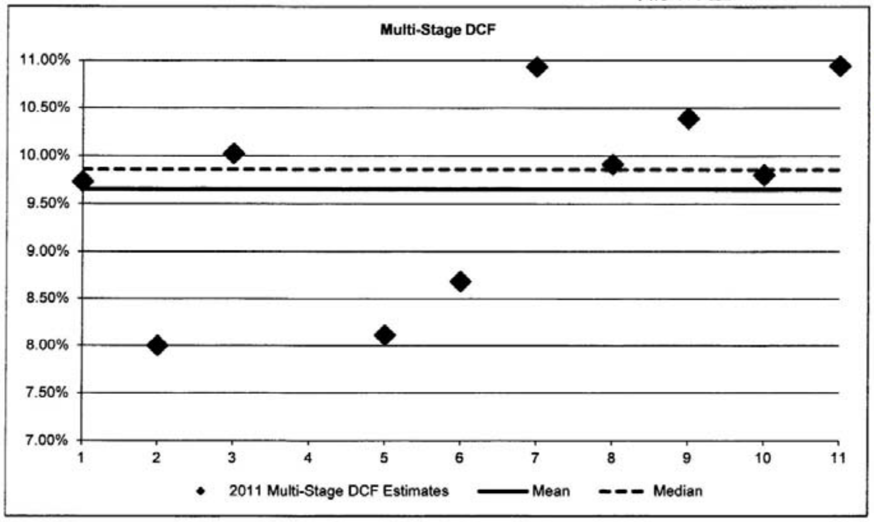
Case No. ER-2012-0166 (Relied on Mean)



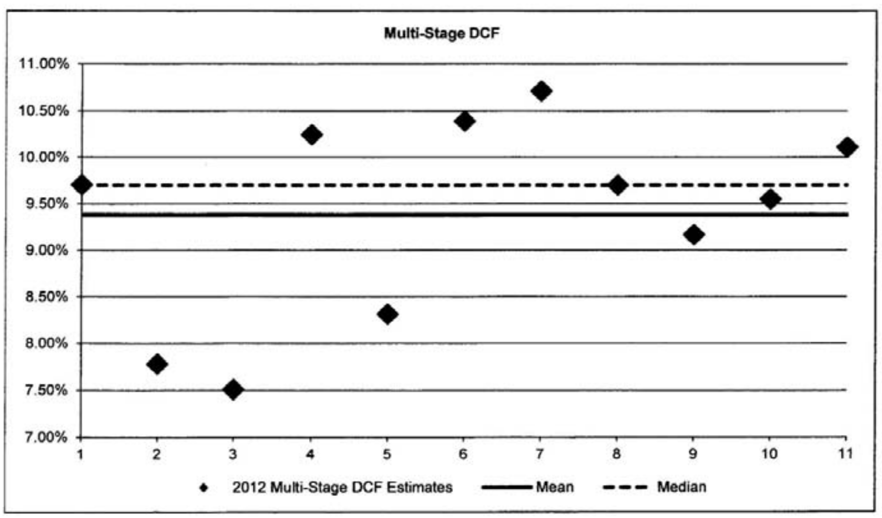
Ameren Exhibit No. 75
Date 10/5/12 Reporter MM
File No. ER-2012-0166

FILED
October 22, 2012
Data Center
Missouri Public
Service Commission

Case No. ER-2011-0028 (Relied on Median)



Case No. ER-2012-0166 (Relied on Mean)



When confronted with this inconsistency, Mr. Gorman adjusted his position to say the median was appropriate to use in the last rate case because a number of data points "kind of clustered around the median," and the mean should be used in this rate case because data points are "above and below" the median, apparently without regard to whether there are other data points that are outliers.[54] This testimony is not persuasive. Mr. Gorman's testimony in his deposition that the median should be used when there are outliers, and Mr. Hevert's testimony at the hearing that the median should be used when there are outliers, indicate that the median result should have been used in this case, just as it was in the nine most recent DCF analyses Mr. Gorman conducted in Ameren Missouri proceedings prior to this case.

Thus far, this brief has criticized some basic choices Mr. Gorman made in presenting the results of his analyses. These criticisms alone suggest that Mr. Gorman's own analyses should have produced an ROE estimate much higher than the 9.3% he is recommending, certainly in the high 9s. But Ameren Missouri witness Hevert also has suggested a number of adjustments that are warranted to Mr. Gorman's DCF analyses which would indicate his results should be above 10%.

With regard to Mr. Gorman's constant growth DCF analysis, Mr. Hevert recommended adjusting Mr. Gorman's results in four steps. First Mr. Hevert updated the market data used by Mr. Gorman. Next, he added consensus earnings growth estimates from Value Line and First Call to the estimates from Zacks, SNL Financial, and Reuters that Mr. Gorman had used. Third, Mr. Hevert added The Empire District Electric Company (Empire) to the proxy group. Mr. Hevert noted that Empire had been excluded from his own proxy group, which Mr. Gorman adopted, because it had suspended its dividend. Now that the dividend has been restored, Empire should be included in the proxy group. And finally, Mr. Hevert excluded "outlier" proxy group companies, specifically Edison International (EIX) which had an extremely low earnings per share growth rate of 1.6% and Otter Tail Corporation (OTTR) which had an extremely high earnings per share growth rate of 24%. Making these four adjustments moved Mr. Gorman's mean constant growth DCF ROE from 9.3% to 10.03%, and his median constant growth DCF

[54] Tr. p. 1776, l. 12-17.

ROE from 9.9% to 10.12%. These are far more reasonable ROEs than the extremely low mean result Mr. Gorman's analysis produced.[55]

Mr. Hevert also suggested similar adjustments to Mr. Gorman's Multi-Stage DCF analysis. This time Mr. Hevert suggested a 6-step set of adjustments.[56] In Step 1, Mr. Hevert again simply updated the data used. In Step 2, he again included consensus earnings growth estimates from Value Line and First Call. In Step 3, he again added Empire to the proxy group. In Step 4 Mr. Hevert adjusted the timing of cash flows to reflect the mid-year convention for dividend payments. As Mr. Hevert explained, Mr. Gorman's model assumes annual dividend payments are made at the end of each year, when they are actually made each quarter throughout the year. The mid-year convention credits dividend payments in the middle of each year, which is reflective of the financial impact of making quarterly dividend payments throughout the year.[57] In Step 5, Mr. Hevert adjusted dividend payout ratios to initially decline, but eventually (by Stage 3 of the Multi-Stage model, which begins in ten years) revert to the long-term industry dividend payout ratio of 66.4%. Mr. Hevert believes that when the current construction cycle is complete, dividend payouts will revert to their historical averages. In contrast, Mr. Gorman has left dividend payout ratios unchanged for the duration of his Multi-Stage analysis.[58] Finally, in Step 6, Mr. Hevert has adjusted the growth rate used in Stage 3 of Mr. Gorman's model from 4.9% (used by Mr. Gorman) to 5.67%. Mr. Hevert notes that Mr. Gorman's Stage 3 growth rate is based on five and ten-year forecasts as reported by *Blue Chip Financial Forecasts*, and that Stage 3 of the model *does not even begin* until after the period covered by these forecasts. Mr. Hevert also provided evidence that growth rates in the decade following a severe financial crisis (like the crisis which began in 2007) have consistently been lower than average, and therefore

[55] Ex. 21, p. 78, l. 15 - p. 79, l. 9.
[56] *Id.*, p. 93, l. 4-5.
[57] *Id.*, p. 84, l. 10 - p. 86, l. 16.
[58] *Id.*, p. 86, l. 17 - p. 88, l. 10.

the growth rates used by Mr. Gorman (based on five and ten-year forecasts) are likely to be lower than the growth rates that will be experienced beginning 11 years from now. For these reasons, Mr. Hevert argues that it is more reasonable to use a growth rate that reflects a reversion to the long-term average real Gross Domestic Product (GDP) rate along with largely market-based projections of the inflation rate.[59]

After making these six adjustments, Mr. Gorman's Multi-Stage DCF mean ROE is increased from 9.38% to 10.21%, and his Multi-Stage DCF median ROE is increased from 9.7% to 10.5%.

With regard to Mr. Gorman's Risk Premium approach, Mr. Hevert does not propose specific adjustments. However, he points out the flaw in Mr. Gorman's Risk Premium analyses is that he does not recognize "the well-documented fact that over time, equity risk premia are inversely related to interest rates."[60] In other words, in an environment of low interest rates (like we have now) risk premia are higher than they are during periods of high interest rates. Mr. Hevert cites extensive academic literature in support of this point, and he conducted regression analyses documented on Schedule RBH-ER28 which shows a "…highly statistically significant negative relationship between interest rates and the equity risk premium…"[61] Mr. Hevert's testimony reinforces the point that Mr. Gorman's use of risk premia from the 1980's and 1990's, when interest rates were much higher, is completely inappropriate.

C. Recommendation of Staff Witness David Murray.

Staff witness David Murray has recommended an ROE range for Ameren Missouri in this case of 8-9%, with a specific point recommendation at the high end of the range, 9%. Mr. Murray's recommendation is stunningly low. His range runs from more than 100 basis points to

---

[59] *Id.*, p. 88, l. 11 - p. 92, l. 10.
[60] *Id.*, p. 101, l. 5-6.
[61] *Id.*, p. 103, l. 22-23.

more than 200 basis points below the national average authorized returns for integrated electric utilities. His range runs from 120 to 220 basis points below the authorized return approved by this Commission for Ameren Missouri not long ago – in July, 2011. Even the high end of Mr. Murray's range, 9%, if adopted, would be the second lowest non-penalty ROE authorized in the 546 rate cases decided across the country in the past decade – from January, 1992 through June 30, 2012.[62]

Incredibly, Mr. Murray claims that Ameren Missouri's cost of equity capital is actually far lower than his very low recommended ROE range. In fact, based on his analyses, he claims that the Company's actual cost of equity capital may be as low as 7.06%.[63] Mr. Murray knows that the Commission will not accept his unconventional cost of equity analyses that produce these unreasonably low results. They are the exact same analyses based on the same flawed theories that the Commission explicitly rejected in Ameren Missouri's last rate case. So Mr. Murray has subjectively and arbitrarily adjusted his recommendation above the results his analyses suggest to the 8-9% range. Mr. Murray testified that even he does not expect the Commission to adopt his recommendation, and that the purpose of his recommendation is just to try to convince the Commission to approve an ROE in the single digits. The following sections of the transcript contain Mr. Murray's testimony on these points:

> ***Q.*** ***Okay. And my understanding is that you believe that the company's cost of equity is quite a bit lower than 9 percent; is that true?***
> *A.* *That is true.*
>
> ***Q.*** ***And in particular, you even believe, based on the results of your analyses, that it is not improbable that the company's actual cost of equity could be below 8 percent or in the 7s percent; is that correct?***
> *A.* *That is correct.*
>
> ***Q.*** ***Okay. But then isn't it true that the way you got to your recommendation is that you made a subjective decision to move your***

[62] *Id.*, p. 28, l. 7-9.
[63] Tr. p. 2004, l. 13-16.

recommendation above the results of your cost of equity analysis; is that correct?

A. Subjective based on recognition of the Commission's report and orders in the past, yes. It was recognition of the environment and the Commission's views on an acceptable allowed return on equity.

Q. I mean, would it be fair to say that you moved your return on equity up to the range of 8 to 9 percent and the specific point of 9 percent because you didn't think that the Commission would accept the very low recommendation that your cost of equity analysis would suggest is the true cost of equity?

A. I didn't believe they would use that as the allowed ROE. Maybe they would have accepted evidence that the cost of equity is lower, but that they ultimately would not allow an ROE that low.

Q. Didn't you say in your deposition that your recommendation is trying to convince the Commission to approve an ROE in the single digits?

A. I believe that's correct.

Q. Isn't it true, Mr. Murray, that even you don't expect the Commission to adopt your recommendation in this case?

A. I believe that's correct.[64]

Mr. Murray relies on a number of unconventional analyses because he believes that most other ROE experts, and all public utility commissions across the country (including this Commission) are "getting it wrong" if they are attempting to set ROE at the utility's cost of equity.[65] But a close examination of Mr. Murray's analyses reveals that they are fatally flawed, and the Commission has quite properly rejected them in past cases.

Mr. Murray primarily relies on his Multi-Stage DCF analysis, which produced a range of ROEs from 7.8%-8.6%, with a midpoint of 8.2%.[66] The results of the Multi-Stage DCF analysis are significantly influenced by the growth rate selected for Stage 3 of the analysis, which runs from Year 11 to infinity.[67] Mr. Murray selected the same extremely low growth rate for Stage 3 that he proposed in the Company's last rate case – 3-4%, and he testified that he

[64] Tr. p. 1979, l. 19 - p.1981, l. 3.
[65] Tr. p. 1984, l. 17 - p. 1985, l. 11.
[66] Ex. 202, p. 30, l. 18-20 (Staff Cost of Service Report).
[67] Tr. p. 1993, l. 22 - p. 1994, l.1.

based his selection of this growth rate on three bases that were rejected by the Commission in the Company's last rate case.

One basis Mr. Murray cited for selecting the 3-4% growth rate was a 2003 edition of the *Mergent Public Utility and Transportation Manual,* which purports to contain public utility data from 1947 through 2002-2003. The problem with this data base is that Staff could not replicate or verify the data that was contained in it. Mr. Murray addressed this issue at the hearing:

> ***Q. Okay. And my understanding is that you had a problem with that database, and the problem was that even though you tried very hard to do so, you could not independently replicate and verify the data in that report, is that correct?***
> *A. That is correct.*
>
> ***Q. Okay. And as I understand it, you spent many hours over the course of about a month trying to replicate and verify the data; is that correct?***
> *A. Yes. My own analysis, calling the sources and trying to contact the people that—say the old horses that might be aware of what happened as far as the compilation of that data. Yes, I tried.*
>
> ***Q. But in the end you were unsuccessful in replicating or verifying that data; is that correct?***
> *A. Exact data, that's correct, yes.*[68]

Obviously it is not appropriate to set the growth rate for Stage 3 of the Multi-Stage DCF based on data which cannot be replicated or verified.

A second basis for Mr. Murray's selection of his 3-4% growth rate in Stage 3 was a separate study that he himself conducted using Value Line data for utilities selected by Mr. Murray from the Central Region for the period from 1968 (which was as far back as Mr. Murray's files went) through 1999. Mr. Murray used this data to calculate rolling ten-year averages of growth in dividends per share, earnings per share, and book value per share. The overall average of all three metrics was a growth rate of 3.52%.[69] Mr. Murray admits he did not use "rigid selection criteria" in determining which Central Region utilities to include in the

[68] Tr. p. 1995, l. 10-25.
[69] Tr. p. 1998, l. 20 - p. 1999, l. 10.

study, and his data was limited to what happened to be available to him. Again, this study provides no legitimate basis for Mr. Murray's 3-4% growth rate.

Mr. Murray's third basis for the 3-4% growth rate is his "knowledge and experience," which of course is completely subjective, and provides no real quantitative support for the growth rate that Mr. Murray selected.

Mr. Murray's testimony regarding his 3-4% growth rate for Stage 3 is exactly the same testimony that the Commission explicitly rejected in Ameren Missouri's last rate case. In the "Specific Findings of Fact" section of the Report and Order addressing ROE, the Commission found:

> 14. In developing his recommendation for Staff, Murray gave primary weight to his multi-stage DCF analysis. Murray's multi-stage DCF analysis results in a low recommended return on equity because the third stage of his analysis relies on a low long-term growth estimate of 3 to 4 percent, with a midpoint of 3.4 percent, to derive an estimated cost of equity ranging from 8.4 percent to 9.15 percent, with a midpoint of 8.775 percent.
>
> 15. Murray initially based his long-term growth rate on a 2003 study published in Mergent *Public Utility and Transportation Manual.* Because Murray could not replicate Mergent's data, he decided to perform his own study to estimate long-term growth rates based on historical growth rates for a set of electric utilities during the period between 1968 and 1999. The study showed an average growth rate of 3.59 percent.
>
> 16. Murray admittedly did not use "rigid selection criteria" in determining which utilities to include in his study and it appears that the selection of data to study was based more on the ready availability of that information to Staff than to any rational basis for that selection.[70]

The Commission was right to reject Mr. Murray's shoddy support for his very low 3-4% growth rate in the last case, and it should do so again in this case. As a consequence, the results of his Multi-Stage DCF analysis should not be considered in setting an ROE for Ameren Missouri.

[70] *Report and Order,* Case No. ER-2011-0028, p. 68.

Mr. Murray also relies on what he calls a "Rule of Thumb" to support his ROE recommendation. Mr. Murray's "Rule of Thumb" suggests that an ROE can be determined simply by adding a 3-4% risk premium to current bond yields. There is absolutely no support for using Mr. Murray's "Rule of Thumb" to determine an authorized ROE for an electric utility. Mr. Murray admits that he is not aware of any other Commission that has used the Rule of Thumb to determine a utility's cost of equity. And he is not aware of any other analyst who supports the use of the Rule of Thumb other than himself and Mr. Atkinson, who works for Mr. Murray.[71]

When asked in a data request to provide all of the sources that endorse the use of the Rule of Thumb, Mr. Murray provided a single page in a textbook that was published in 2002, which mentioned the Rule of Thumb in terms of valuing equities outside the context of public utility regulation. Mr. Murray was unable to cite any sources that addressed the use of the Rule of Thumb in the ratemaking context.[72]

Finally, Mr. Murray relied on valuation analyses done by financial analysts outside the context of public utility ratemaking to support his recommendation. For example, Mr. Murray cited a goodwill impairment analysis done by Duff & Phelps on Ameren Corporation's assets, and he devotes an entire section of his portion of the Staff Report arguing that the Commission should take the unusual, in fact unprecedented step of using equity analysts' opinions for non-utilities to set ROEs for utilities.[73]

However, as other ROE witnesses and public utility commissions have recognized, it is not appropriate to use investment analysts' opinions on stock valuations as a basis to set an ROE for a regulated utility. At the hearing, Mr. Gorman explained some of the problems with this idea.

---

[71] Tr. p. 2009, l. 14-25.
[72] Exhibit 77; Tr. p. 2008, l. 13 - p. 2011, l. 21.
[73] Ex. 202, p. 45, l. 3-12; p. 49, l. 17 - p. 53, l. 8.

> ***Q.*** ***Mr. Murray argues in his testimony that instead of—or—or perhaps in addition to using the traditional analyses like, you know, DCF analyses we've talked about and CAPM and risk premium analyses, that cost of capital experts should look at what investment analysts are using to estimate the value of the utility stocks and even when investment analysts use to value stocks or assets outside of the regulated arena. Are you aware of that testimony of his?***
>
> *A.* *I'm aware that he considers projected returns by some money managers, yes.*
>
> ***Q.*** ***I mean, why don't you use information like that in estimating the cost of equity?***
>
> *A.* *Well, I am concerned about the reliability of the accuracy of the projections. My analysis is based to the greatest extent possible on information that is available to investors, that investors may rely on to value the prices of the securities, including companies in my proxy group.*
>
> *Because I'm trying to get a sense of what investors' expectations are in reaching the values of those prices in my proxy based on DCF studies. Because if—the available market information concerning those companies, specifically being a proxy for what investors are likely expecting from those companies, is the best information I think that's available to estimate what investors' return requirements are to assume the investment risk of the utility companies included in my proxy groups.*
>
> *So I believe that starting the analysis with observable utility stock prices for a proxy group that is measured to be reasonable and consistent with the investment risk of the underlying company or observable utility bond yields, measured beta estimates which is tied to stock price variations relative to the market. Ties the entire analysis to the focus of the proxy group, or at least focus of the industry, which I believe is—is the best estimate for capturing what investor current return requirements are.*[74]

In Ameren Missouri's last rate case, Mr. Murray also attempted to use valuation analyses done by financial analysts outside the utility ratemaking arena to support his very low recommended ROE. The Commission rejected Mr. Murray's reliance on those analyses:

> 19. In an effort to support his low recommended return on equity, Murray points to various valuation analyses regarding Ameren Missouri done by financial analysts for purposes other than the establishment of rates. Murray reports that, in general, experts in the field of asset valuation consistently apply

[74] Tr. p. 1708, l. 10 - p. 1709, l. 23.

> a much lower cost of equity to cash flows generated from regulated utility operations as compared to the estimates of cost of equity from rate of return witnesses in the utility ratemaking process. Murray's clear implication is that aside from him, all other rate of return witnesses are getting it wrong.
>
> 20. Murray's reliance on valuation analyses to support the reasonableness of his return on equity recommendation is misplaced. Murray acknowledged that he has no experience in asset valuation. In his surrebuttal, Robert Hevert explained in great detail why the valuation analyses cited by Staff are different than the analysis necessary to evaluate a reasonable return on equity in the rate making process. The Commission is persuaded by that explanation and accepts Mr. Hevert's explanation without repeating his arguments. In sum, as MEG's switness, Billie Sue LaConte, who has done asset valuation work in the past, indicated, the principles and methods involved in valuing physical assets are different than the principles and methods involved in estimating a utility's cost of equity.[75]

In summary, Mr. Murray's reliance on valuation analyses outside the context of by "money managers" outside the context of regulated utilities should be rejected as it was in Ameren Missouri's last rate case.

One final point should be made with regard to Mr. Murray's 8-9% ROE recommendation. That recommendation was filed less than six months after Staff witness Matt Barnes filed a recommended ROE in a Missouri American Water Company case 95 basis points higher than Mr. Murray's range. Specifically, Mr. Barnes' recommendation was 8.95% to 9.95%. As Mr Murray himself acknowledged, his recommendation in this case is inconsistent with Mr. Barnes' recommendation in the Missouri American case.[76] This is particularly true since Mr. Murray acknowledged that, as a general rule, water utilities are less risky than integrated electric utilities.[77]

In his opening statement on the ROE issue, Staff attorney Kevin Thompson concluded with this statement:

---

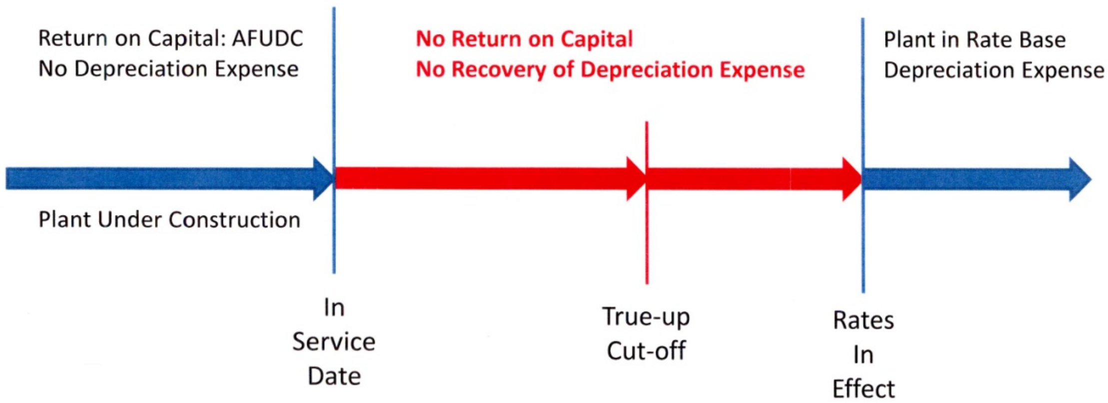
[75] *Report and Order,* Case No. ER-20011-0028, Report and Order p. 69-70 (footnotes omitted).
[76] Tr. p. 1983, l. 2-p. 1984, l. 11.
[77] Tr. p. 1982, l. 22-p. 1983, l. 1.

> It is Staff's position that 9 percent—9 percent is an appropriate ROE award. It is well above the zone of confiscation. Not much above it. In fact, at the top of it. But it satisfies the Constitutional requirements. Thank you.

Surely the Commission does not believe that setting an authorized ROE at the edge of Constitutional confiscation reflects the appropriate balance that the Commission is charged with maintaining between the interests of customers and utilities. In fact, setting an authorized ROE at such a level is in no one's interest. As discussed earlier, customers demand extremely reliable service. The Company's system is aging. The Company has many demands for the limited capital that it has, and needs to continue to attract capital – debt and equity. A near-confiscatory ROE will not allow it to do so. Such an ROE would not reflect a fair estimation of the Company's actual cost of equity, that is commensurate, on a risk adjusted basis, with ROEs authorized for similar utilities and that will attract capital needed for investment in Ameren Missouri's infrastructure for the benefit of its customers should be authorized. Consequently, the Commission should adopt the 10.5% ROE recommended by Ameren Missouri witness Hevert.

II. PLANT-IN-SERVICE ACCOUNTING

The proposed implementation of Plant-in-Service Accounting is the most significant enhancement to the regulatory framework that Ameren Missouri is requesting in this case. The problem that Plant-in-Service Accounting is designed to address is illustrated by the following chart (Exhibit 49):



As the chart shows, during the period that utility plant is being constructed (represented by the blue line on the left side of the chart), a utility company is not permitted to earn a return on the capital it has committed to the construction project. However, it is allowed to accrue an Allowance For Funds Used During Construction (AFUDC), which in theory compensates it for the cost of the capital it has committed to the project during the period of construction. Once the plant is placed in service, the entire cost of the plant, including the accrued AFUDC, is included in the plant balance.

After the plant is in service but before its costs can be reflected in rates (represented by the red line in the middle of the chart), the utility is required to stop accruing AFUDC. As a result, since the cost of the plant is not yet reflected in rates, the utility receives absolutely no compensation during that period for the cost of the capital that it has invested in the plant. To make matters worse, the utility must begin to depreciate the plant once it is in service, and since the depreciation expense is not yet reflected in rates the utility has no means of recovering that cost either. In other words, during the period represented by the red line, the utility fails to recover both the cost of the capital it has invested and the cost of depreciation for the newly-installed plant.

Finally, once a rate case can be completed and the cost of the plant can be reflected in rates (represented by the blue line on the right side of the chart), the utility begins to recover a return and depreciation on the plant. But the return on its investment and the depreciation expense that the utility lost during the period represented by the red line is permanently lost, and can never be recovered. Even if all rate base additions could be optimally timed (which is completely impractical), there would still be a five-month red-line gap represented by the period between the rate case true-up cut-off and the date that new rates take effect where these costs would remain unrecovered.[78]

The magnitude of this problem for Ameren Missouri is very significant. For example, Ameren Missouri Controller Lynn Barnes testified that the Company added approximately $637 million in plant additions that would qualify for Plant-in-Service Accounting treatment between the true-up cut-off date in the Company's last rate case (March 31, 2011) and the true-up cut-off date in this case (July 31, 2012). She calculated that the lost return and depreciation associated with those plant additions during the "red" period amounted to $37.6 million based on total investment of $637 million.[79] These are prudently incurred costs associated with plant additions that the Company will never recover.

This systematic inability of utilities to recover the full cost of their investment in plant is ultimately detrimental to customers as well as utilities. In particular, it creates a strong financial disincentive for utilities to invest in their systems during a period when additional investment is

[78] Ex. 11, p. 16, l. 20-p. 17, l. 5 (Barnes Direct).
[79] Ex. 13, p. 5, l. 14-23 (Barnes Surrebuttal).

most needed to replace aging infrastructure to maintain or improve reliability.[80] Under the current framework, the more a utility invests the more of its costs it fails to recover. In the face of this problem, utility executives ask themselves two questions: 1) How little can I invest in my system while still maintaining safe and adequate service? and 2) How quickly can I file another rate case to stop the losses I am experiencing from the plant investment that was absolutely necessary? But even where utilities file rate case after rate case (Ameren Missouri has filed five rate cases over a span of just 68 months since 2006), where there is significant investment in plant, the unrecovered costs add up to a very material amount. This unrecoverable cost of plant investment is undoubtedly a significant contributor to the Company's inability to earn the return this Commission has determined in recent years to be a fair return that the Company ought to have a reasonable opportunity to earn.[81]

To address this problem, the Company developed its Plant-in-Service Accounting proposal, which is very similar to "construction accounting" that the Commission has used to address the very same problem in the context of a single, large construction project, such as Ameren Missouri's Sioux scrubbers and the Callaway nuclear plant.[82] The Company's position is that the same logic that supports the use of construction accounting for large projects also supports the application of Plant-in-Service Accounting for smaller projects that can, in the aggregate, create the same type of problems for the utility.[83]

The proposal would work like this: Eligible plant additions would be determined by subtracting new service connections that generate revenue from gross plant additions. (Since

[80] At the hearing, Commissioner Kenney asked Ms. Barnes for some specific examples of projects where Ameren Missouri had decided not to proceed on account of the current regulatory framework. Ms. Barnes cited the acquisition of mobile substations, the replacement of stationary substations built in the 1950's and '60's, and the replacement of underground infrastructure in downtown St. Louis. Tr. p. 699, l. 9-p. 701, l. 2.
[81] Tr. p. 613, l. 12-17.
[82] Ex. 1, p. 23, l. 9-12 (Baxter Direct).
[83] The Sioux scrubbers cost just under $600 million whereas Ameren Missouri's total plant investment since the last rate case was $637 million. Ex. 13, p. 5, l. 21-22.

new service connections generate incremental revenue it is not appropriate to provide Plant-in-Service Accounting for these investments.) Then the remaining gross plant additions would be offset by retirements and increases in accumulated depreciation not already reflected in rates during the same time period. This means that Plant-in-Service Accounting would only be applied to the "net" change in plant-in-service that is not a service connection for new business.

For the eligible plant additions, the depreciation expense and a return based on the return on rate base last authorized by the Commission would be recorded as a regulatory asset and deferred until the Company's next rate case. In the next rate case, the deferred amounts would be eligible for inclusion in plant-in-service and could then be amortized over the service lives of the underlying assets in the same way that AFUDC is currently recovered. If Plant-in-Service Accounting is authorized, it will have no impact on the rates set in this case. And, because the deferred amounts would be amortized over the long service lives of the underlying assets, it will have only minimal impact on rates in the next rate case. For example, Ms. Barnes has calculated that if Plant-in-Service Accounting had been in effect starting with new rates set in the last rate case and had then been applied to the eligible plant placed in service since then, the Company's revenue requirement would be increased by only 0.239%, translating to just 21 cents per month on a typical residential customer's bill.[84]

Plant-in-Service Accounting should be adopted because it allows for fair compensation to the utility for the full cost of investing in plant needed to serve its customers, it eliminates the financial disincentive to invest which is embedded in the current regulatory framework, and it would have minimal impact on customers.

During the hearing on this issue, Commissioner Jarrett asked the parties to address two subjects in their briefs: First, whether "extraordinary circumstances" are required for the

[84] Ex. 13, p. 5, l. 14 – p. 6, l. 5.

Commission to adopt Plant-in-Service Accounting, or whether the "just and reasonable" standard applies.[85] Second, Commissioner Jarrett asked if Plant-in-Service Accounting is adopted whether it would change the Company's behavior to make rate case filings less frequent.[86]

In response to Commissioner Jarrett's first question, there are no Missouri statutes that impose any particular standards on cost deferral mechanisms that the Commission may choose to adopt. In previous cases, where the Staff and/or OPC has asked the Commission to establish rigid criteria for granting an Accounting Authority Order or other cost deferral mechanism, the Commission has declined to adopt those rigid criteria and instead has retained the discretion given it by the Public Service Commission Law.[87] The Commission itself established more flexible guidelines in the 1991 Sibley case, which was affirmed by the Missouri Court of Appeals.[88] There the Commission decided that it would consider the appropriateness of granting deferred accounting on a case-by-case basis. In doing so, it would approve an AAO for events that it found to be "extraordinary, unusual and unique, and not recurring."[89]

The classic example of an event that would meet that standard would be a fire, flood, tornado, or ice storm that causes a large amount of damage to utility property. But the Commission has never limited cost deferrals to just natural catastrophes. The Sibley case, for example, involved the deferral of costs relating to the refurbishment of the company's coal-fired generating plant. Similarly, the Commission has granted an AAO for the deferral of costs

---

[85] Tr. p. 621, l. 25-p. 622, l. 11.
[86] Tr. p. 624, l. 16-p. 625, l. 1.
[87] *See, for example, Re: Missouri American Water Company,* Case No. WO-2002-273, 2004 Mo. Lexis 1637 (November 10, 2004), wherein the Commission rejected a four-part test for issuing Accounting Authority Orders proposed by Staff, including a test that would have imposed some minimum magnitude on an item to be deferred or required that it be extraordinary.
[88] *In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations. In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments*, 1 Mo. P.S.C. 3d 200 (1991); *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806 (Mo. App. W.D. 1993).
[89] *Id.*, 1 Mo. P.S.C. 3d at 205.

relating to Ameren Missouri's compliance with changed accounting standards,[90] and for another utility's costs incurred to enhance security after the terrorist attacks of September 11, 2001.[91] On several occasions the Commission has granted AAOs authorizing deferral of incremental costs relating to actions that a utility has been required to take as a result of government orders, regulations and statutes, for example compliance with the Commission's Cold Weather Rule,[92] compliance with a gas safety line replacement program,[93] or in Ameren Missouri's case, compliance with the Commission's vegetation management and infrastructure inspection rules.[94]

In addition, the Commission has adopted trackers for pension and OPEB costs, not to mention deferrals for "construction accounting" that are very similar to the Plant-in-Service Accounting that is being requested in this case. In summary, the Commission's discretion to grant deferred accounting in an appropriate case is very broad, and the costs that Ameren Missouri is requesting to defer are no less "extraordinary" than other costs that the Commission has permitted utilities to defer in appropriate circumstances.

In contrast, Missouri statutes affirmatively require that all rates and charges by an electric utility be "just and reasonable and not more than allowed by law or by order or decision of the commission." §393.130.1 RSMo. (2000). The touchstone of "just and reasonable" rates is that they must be sufficient to allow the utility to recover its prudently incurred costs of providing service, and allow the utility a reasonable opportunity to earn a fair rate of return on its investments. Because the regulatory process in Missouri (in particular due to Proposition 1)

---

[90] *In the Matter of the Application of Union Electric Company for an Accounting Authority Order*, 1 Mo. P.S.C. 3d 328 (1992).
[91] *Re: Missouri-American Water Company, supra.*
[92] *In the Matter of the Application of UtiliCorp United, Inc., d/b/a Missouri Public Service and St. Joseph Light and Power Company for an Accounting Authority Order relating to Commission Rule 4 CSR 240-13.055(13)*, 11 Mo. P.S.C. 3d 78 (2002).
[93] *In the Matter of the Tariff Revisions of Missouri Gas Energy, a Division of Southern Union Company, Designed to Increase Rates for Natural Gas Service to Customers in the Missouri Service Area of the Company,* 10 Mo. P.S.C. 3d 369 (2001).
[94] Ex. 31, p. 2, l. 1-p. 3, l. 11 (Wakeman Rebuttal).

systematically deprives utilities of the ability to recover the full cost of their capital investments, particularly when capital investment needs are substantially in excess of depreciation expense as has been the case for some time now and as is expected to be the case for the indefinite future, adoption of Plant-in-Service Accounting would be entirely consistent with the Commission's obligation to set rates that are "just and reasonable."

With regard to Commissioner Jarrett's second question, there is no doubt that the adoption of Plant-in-Service Accounting will be a factor that will help reduce the frequency of rate case filings. Ameren Missouri's capital investments in its system have been a significant driver of recent rate case filings. However, the Commission must recognize that there are other drivers as well which will not be addressed by Plant-in-Service Accounting. For example, in this case, approximately $80 million of the rate increase is attributable to energy efficiency costs the Company will incur under MEEIA. And even where plant costs can be deferred through a tracker like the Plant-In-Service-Accounting mechanism, eventually the Company will have to file a rate case to recover those costs. So although the adoption of Plant-in-Service Accounting will mitigate the Company's need to constantly file rate cases, it will not eliminate the need for rate relief.

One other question that was raised at the hearing by more than one commissioner was whether other states have adopted Plant-in-Service Accounting.[95] Although Ameren Missouri witness John Reed cited cases in Indiana and South Carolina that allowed electric utilities to utilize post-in-service accounting that is similar to Plant-in-Service Accounting, these authorizations were limited to certain projects.[96] However, as Mr Hevert has pointed out, other

[95] Tr. p. 556, l. 22 – p. 557, l. 5.

[96] Ex. 4, p. 21, l. 4-p.22, l. 28 (Reed Rebuttal), citing Indiana Utility Regulatory Commission, Cause No. 43839, Final Order Approved April 27, 2011 at 103; Duke Energy Carolinas, LLC, Petition for Accounting Order, Docket No. 2009-55-E, Filed February 4, 2009. Mr. Reed also referenced an Ohio statute that allows gas utilities to request post-in-service accounting treatment.

states utilize other mechanisms to ensure that utilities' capital investment costs don't fall through the "donut hole" represented by the red line on the graph. For example, some states allow utilities to include CWIP in rate base. That is not possible here due to the Missouri statutes. Other states allow forward test years which would also solve the problem. For capital items, that too is problematic due to Proposition 1. Still other states, like Virginia, offer incentive ROEs for capital projects.[97] Although these states have not adopted Ameren Missouri's proposal, perhaps because they have other tools available to them to address the same or similar issues, they have recognized the problem of unrecovered investment costs and taken steps to mitigate it.

Commissioners also raised the issue of whether there should be a downward adjustment to Ameren Missouri's return on equity if Plant-in-Service Accounting is adopted. Ameren Missouri's ROE witness Hevert addressed this issue at the hearing. When asked if Plant-in-Service Accounting is taken into account in his ROE estimate, he responded:

> A. *It is. And again, going back to the notion that estimating the cost of equity is a comparative analysis, when you look at the type of mechanisms that are in place, the ability for some companies to include construction work in progress in rate base and earn a current return on it or to use a forecasted—fully or partially forecast test year for the purpose of developing the rate base, those are elements that serve the purpose of trying to have companies address the dilutive effect of making substantial capital investments between rate cases.*
> *And so when you look to the fact that a lot of these companies have that ability or have such mechanisms, by comparison, in my view, the plant in service accounting structure is not incrementally risk mitigating. It does not bring the cost of equity down.*
>
> ***Q. So how many basis points of adjustment should the return on equity be adjusted downward if—if Ameren Missouri gets plant in service accounting?***
> A. *None. Again, because the other—the proxy companies have the ability in large measure to—to have those types of mechanisms available to them.*[98]

[97] Tr. p. 1645, l. 23 – p. 1646, l. 4.
[98] Tr. p. 1654, l. 5-25.

The adoption of Plant-in-Service Accounting would not make Ameren Missouri's regulatory framework better than those in which the proxy group companies operate. Consequently, because it is those proxy group companies that were used to develop the ROE in this case, it would be inappropriate to make a downward adjustment to Ameren Missouri's ROE if the Commission elects to authorize Plant-in-Service Accounting.

III. FUEL ADJUSTMENT CLAUSE

There are two issues before the Commission relating to the Company's fuel adjustment clause, as follows: (a) whether the Commission should change the sharing mechanism under the FAC from 95%/5% to 85%/15%, as once again recommended by Staff witness Lena Mantle, and (b) whether MISO[99] transmission charges should continue to be included in Factor CPP[100] in the FAC, as they have been since its inception. With respect to issue (b), there is also a sub-issue, as follows: if the Commission were to determine that transmission charges should not be included in the FAC, should changes in those charges (and associated revenues) instead be deferred through a two-way transmission charge and revenue tracker, which would then allow the Company the opportunity to recover (or return) in a future rate case changes in net transmission charges and revenues between rate cases.

A. Nothing has changed to justify a change in the FAC sharing percentage.

In the Company's last electric rate case – decided only about 15 months ago – the Staff made the same proposal it makes in this case; that is, it proposed to change the sharing mechanism in the FAC from 95%/5% to 85%/15%. In that case the Staff promoted four reasons for making such a change, each and every one of which was rejected by the Commission:

---

[99] Midwest Independent Transmission System Operator, Inc.
[100] As part of "standardizing" FAC tariff language among utilities the terminology is being changed in this case from "CPP" to "PP."

> Staff'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.[101]

The Staff's reasons in this case also fail to withstand scrutiny. In fact, the Staff has abandoned the first three of its reasons for arguing a sharing mechanism percentage change was warranted, undoubtedly because the Commission properly recognized that those reasons provided absolutely no basis for making a change. The Staff has tried to hang onto the first reason; that is, the Staff's claim that if the sharing percentage were higher this would somehow cause the Company to do a better job of setting the base against which changes in net fuel costs are measured through the FAC. However, when pressed on this point, Ms. Mantle backed-off almost entirely, asserting that she had not claimed that the Company lacked sufficient incentive to set an accurate base, and further arguing that she only thought that a higher sharing percentage might cause the Company to look for "better predictors" – though she can't tell us what those better predictors would be.[102]

So having had its prior justifications revealed for what they are – no justifications at all – the Staff continues to cast about for *some* reason; some "hook" upon which it can "hang its hat" to support its oft-repeated refrain that the sharing percentage should be changed. And what are those reasons? In truth they are a bit vague, but it appears they boil down to one over-arching speculation on the Staff's part: that the Company *may* lack sufficient incentive to prudently manage the components of its net fuel costs and *may* do something different, better, if the sharing mechanism were changed. The problem for the Staff, however, is there is no evidence whatsoever that the Company in fact does lack sufficient incentive, but there is persuasive evidence that imposing greater sharing would do one thing: undermine what the Commission

[101] *Report and Order,* Case No. ER-2011-0028, p. 86.
[102] Tr. p. 1236, l. 17-24.

has said is the "key requirement" of the statute that authorizes FACs: that a FAC "must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity."[103] Why would it undermine this key requirement? Because, in the Commission's own words:

> [m]ost significantly, a change in the sharing mechanism to require Ameren Missouri to absorb 15 percent of net fuel cost changes instead of the current 5 percent would impose a significant financial burden on the company. If the proposed 85/15 sharing mechanism had been in place since the fuel adjustment clause was put into effect instead of the actual 95/5 sharing mechanism, Ameren Missouri would have been required to absorb an additional $22 million in net fuel costs. That would be a heavy burden on a company that is already having difficulty earning its allowed rate of return.[104]

That heavy burden has now gotten heavier because had the 85%/15% sharing mechanism been in place for accumulation periods 2 through 9 (June 2009 to January 2012, as examined by Ms. Mantle in this case), the Company would have had to absorb an additional *$30 million of <u>prudently incurred</u> fuel* costs.

The bottom line is that the Staff, through the tepid testimony of Ms. Mantle, is once again asking the Commission to experiment with the sharing mechanism and to do so at the Company's expense at a time when the Company continues – as shown by the Schedules to Mr. Baxter's surrebuttal testimony (Exhibit 2), by Exhibits 67, 68, and 69, and even by the MIEC's corrected Schedule MPG-21 (Exhibit 532) – to be unable (with very limited exceptions) to earn the just and reasonable returns this Commission has found were fair and appropriate in four prior rate cases concluded over the past approximately five years. The Staff, however, appears to care little about the heavy burden that experiment would likely impose on the Company. Moreover, the Staff appears to care little about the fact that an additional $22 million or $30 million would

[103] *Id.*, p. 78 (quoting Section 386.266.4(4)).
[104] *Report and Order,* Case No. ER-2011-0128, p. 79-80.

only serve to further widen the gap between the Company's earnings and what this Commission itself concluded the Company should have a reasonable opportunity to earn. In addition, the Staff's argument disregards or at least fails to account for – there is no mention of it in any of the Staff's testimony – what this Commission itself has recognized is *the key requirement* of the FAC statute. Finally, Staff doesn't seem to care much about the fairness of such an experiment.[105]

The Commission has already said it best when it comes to the inappropriateness of engaging in such an experiment:

> Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds that there is no reason to change the sharing percentages in the fuel adjustment clause under which Ameren Missouri has operated for the past several years.[106]

There is absolutely nothing in the record in this case that makes the foregoing statement any less true than it was just 15 months ago.

B. MISO transmission charges belong in the FAC.

In order to serve its load (and to buy power to serve its load or to make off-system sales), the Company incurs transmission charges, the vast majority of which are from the MISO. The Company also has a small amount of load in the Missouri Bootheel located within Entergy's control area, and it serves that load using Entergy's transmission system and incurs transmission charges to do so from Entergy.

i. <u>These charges have been included in the FAC since its inception.</u>

The following provision has been included in Ameren Missouri's FAC tariff since the day it was proposed (and approved by this Commission) in Case No. ER-2008-0318:

[105] As the evidence in now two cases in a row shows – and as Ms. Mantle concedes – the Staff's experiment could be very expensive for the Company. Tr. p. 1224, l. 7-9 ("Q. In fact it's an experiment that could be very expensive for the Company, isn't that right? A. It could.").
[106] *Id.*

CPP = Costs of purchased power reflected in FERC Account Numbers 555, **<u>565</u>**, and 575, excluding MISO administrative fees arising under MISO Schedules 10, 16, 17, and 24, and excluding capacity charges for contracts with terms in excess of one (1) year. Also included in factor "CPP" are insurance premiums in FERC Account Number 924 for replacement power insurance to the extent those premiums are not reflected in base rates. Additionally, costs of purchased power will be reduced by expected replacement power insurance recoveries qualifying as assets under Generally Accepted Accounting Principles (emphasis added).

And since Day One of the operation of the FAC, MISO charges for transmission service,[107] which under the FERC Uniform System of Accounts (USoA) are recorded in FERC Account 565, have been included in the FAC.[108] The Company acknowledges that the fact that transmission charges have been in the FAC from its inception is not in and of itself a conclusive reason for them to remain there. However, to argue, as the Staff now does, that including MISO transmission charges in the FAC is inappropriate (or could not have been intended) in the face of a tariff that the Staff explicitly agreed to nearly four years ago – and that contains an *explicit reference to FERC Account 565 where transmission charges are recorded* – strains credibility. The USoA is not a foreign document with which the Staff is unfamiliar. Indeed, the USoA is made applicable to electric utilities by Commission rule, a fact about which the Staff is no doubt well aware.[109] The argument the Staff has now raised ought to be about a policy decision regarding MISO transmission charges on a going-forward basis, but make no mistake – since its inception the FAC tariff has reflected a different policy than is now being advocated by the Staff. The Company had no reason to believe that the Staff held a different view of what that policy

[107] As noted, the vast majority of the transmission charges are from MISO insofar as the Company must pay transmission charges associated with all of its load, but there are some transmission charges that come from a party other than MISO; e.g., Entergy.
[108] Ex. 80.
[109] *See* 4 CSR 240-20.030, which since at least 1994, has required that electric utilities keep their books and records in accordance with the USoA.

ought to be until the Staff finally made clear its position when it filed surrebuttal testimony in this case on September 7, 2012.

ii. These transmission charges are part and parcel of the Company's MISO participation, and the benefits it brings for ratepayers.

As a MISO participant, the Company purchases 100% of its load requirement from the MISO.[110] Similarly, all of the Company's generation is sold to the MISO and settles at the MISO market price.[111] As Ameren Missouri witness Jaime Haro explained in his testimony:

> Think of the MISO market as a large pool of water. In that analogy, all of the water that we produce/sell is poured into the pool, and the entire requirement to serve our load is drawn/bought from the pool. Our load does not draw from our production facilities directly.[112]

The point is that the Company is subject to the MISO transmission charges at issue because it is subject to the provisions of the MISO's tariff as a condition of serving its load; i.e., these charges are unavoidable and must be incurred in order for the Company to provide power to its customers.[113] Moreover, the billing determinants used by the MISO to determine the amount of these charges are either a direct function of the load requirements of the Company's customers, or in the case of point-to-point transmission, are incurred to support off-system sales.[114] That is but one reason it did – and does – make sense for these charges to be in the FAC.

The Staff has provided no sound reason for excluding these charges from the FAC and has identified no problem that its proposed exclusion from the FAC is designed to solve. Indeed, the Staff's position on the issue of whether the charges should be included in the FAC, coupled with its opposition to a transmission charge and revenue tracker, would only have one impact: It would force the Company to bear increases in net transmission charges between rate cases,

[110] Ex. 26, p. 16, l. 1-2 (Haro Sur-Surrebuttal).
[111] *Id.*
[112] *Id.* p. 16, l. 4-6.
[113] *Id.*, p. 17, l. 14-19.
[114] *Id.*, p. 19, l. 12-15.

charges over which the Company has very little, if any, control and charges which the Company must incur to deliver the substantial benefits of MISO participation to customers.

Mr. Haro summarized the inequity of the Staff's position as follows:

> While I am aware that there may be differing opinions on how to measure these benefits [MISO participation benefits for customers] and that we will be performing a large scale study to again examine this very issue in the next few years, I am also aware that none of the participants in our most recent proceeding to extend the Commission's approval to remain in the MISO denied that our customers receive a substantial benefit from our MISO membership, at least for the near future. This benefit arises from the operation of the MISO market and our access to it. As net sellers, we expect to obtain a net margin for our excess generation which we could not reasonably expect to obtain as a stand-alone entity or as a member of another entity without an organized market. Since the revenues from these sales are credited against our fuel costs, our customers are receiving the benefit (or 95% of the benefit[115]) of these enhanced sales.[116]

While it may be literally true that the Company bears the "burden" of justifying the terms of all of its tariffs each time they are filed in a rate case, it is surely the case that when tariff language has been in place since the inception of a mechanism like the FAC (for about three and one-half years) and another party proposes to change it that the other party ought to have to provide a sound justification for making the change. That ought to be especially true for charges like these, which the Company cannot control, and which if not included in the FAC will likely make it even harder than it already has been for the past several years for the Company to have a reasonable opportunity to earn a fair return on equity.

[115] Customers receive 100% of the historic benefit each time net base fuel costs are reset, and receive 95% of the change in the benefit between rate cases.
[116] Ex. 25, p. 23, l. 5-15 (Haro Rebuttal).

iii. The MIEC's claim that capacity charges under capacity contracts with a term of one year or less refers to transmission charges is not borne out by the evidence; it is the MIEC (and the Staff) that seek to change the status quo.

Perhaps recognizing that the argument that transmission charges were not contemplated by the FAC is problematic (given that the FAC does and always has *explicitly* included transmission charges in Account 565), the MIEC has come up with the argument that the language in bold from the original and existing FAC tariff below refers to "transmission capacity":

> CPP = Costs of purchased power reflected in FERC account Numbers 555, 565, and 575, excluding MISO administrative fees arising under MISO Schedules 10, 16, 17, and 24, and **excluding capacity charges for contracts with terms in excess of one (1) year**, incurred to support sales to all Missouri retail customers and Off-System Sales allocated to Missouri retail electric operations. Also included in factor "CPP" are insurance premiums in FERC Account Number 924 for replacement power insurance to the extent those premiums are not reflected in base rates. Changes in replacement power insurance premiums from the level reflected in base rates shall increase or decrease purchased power costs. Additionally, costs of purchased power will be reduced by expected replacement power insurance recoveries qualifying as assets under Generally Accepted Accounting Principles.

There are several significant flaws in the MIEC's argument.

First, MISO transmission charges arise under MISO Schedules 7, 8, 26, and 26-A. None of those schedules are listed as exclusions from the express inclusion of charges reflected in Accounts 555, 565, and 575. It makes absolutely no sense for the parties to have listed, by MISO schedule, specific MISO schedules whose charges are to be excluded (even though they are reflected in Accounts 555, 565 or 575), but fail to list among those exclusions charges under schedules 7, 8, and 26.[117] Had the intention been to exclude charges under those three Schedules one would have expected them to be listed.

[117] Schedule 26-A did not arise until after this tariff language was adopted.

Second, what the phrase "excluding capacity charges for contracts with terms in excess of one (1) year" means must be determined by reference to the circumstances that existed when the Commission approved this language back in 2008-2009, and must be based upon what the Company and the Commission intended by it. ***Laclede Gas Co., v. Pub. Serv. Comm'n***, 156 S.W.3d 513, 521 (Mo. App. W.D. 2005) (Utility tariffs, which have the force and effect of law, are to be interpreted like statutes; that is, the intention of the legislature must be determined. In the context of tariff interpretation, the intent of the "legislature" is found by determining the intention of the subject utility and the Commission at the time of the tariff's approval).[118]

As Commissioner Kenney's questioning of the MIEC's counsel suggested,[119] if, as the MIEC argues, there are multiple kinds of capacity (transmission, generation), then indeed that does mean the term "capacity" by itself is ambiguous. *See, e.g.*, ***State ex rel. School Dist. of Kansas City v. Young***, 519 S.W.2d 328, 331 (Mo. App. 1975) (A statute (or here, a tariff) or a portion thereof is ambiguous if it is capable of being understood by reasonably well-informed persons in either of two or more senses). And that means that the information the Company and the Commission had when the FAC tariff was proposed and approved in 2008 – 2009 is particularly relevant to what the subject phrase means. What was that information?

Since at least the early 1990s, the Commission's own rules, most notably 4 CSR 240-3.190(F), have required that the Company report on a monthly basis its "capacity purchases."

---

[118] MIEC will almost certainly argue that if the exclusion for "capacity" is ambiguous then the ambiguity should be construed against the Company (MIEC's counsel suggested as much during the evidentiary hearings). This is not, however, the law in Missouri. As it has done in other cases, MIEC will almost certainly cite *federal* court cases construing *federal* principles regarding a railroad's tariff approved by the United States Interstate Commerce Commission.[118] It appears that *federal law* views a carrier's tariffs to be "no different from any contract," which causes those courts to construe such tariffs strictly against the carrier that drafted them.[118] But under Missouri state law governing the interpretation of tariffs are not equated with contracts. Instead, because a tariff, once approved, has the same force and effect as a statute adopted by the Legislature, state courts consistently have held that tariffs should be interpreted in the same manner as statutes. ***Laclede Gas***, 156 S.W.3d at 521.

[119] Tr. p. 1134, l. 11-14.

That rule has always been applied to require the reporting of purchases of *generation* capacity.[120] Not only has the Commission historically and generally viewed "capacity" as a reference to "generating capacity," but in the context of fuel adjustment clauses – just the year before the Company proposed its FAC – the Commission had the occasion to discuss what "capacity" means *in the context of an FAC tariff*:

> Staff witness Cary Featherstone argues only variable fuel and purchased power costs, including variable transportation costs, should be included in a fuel adjustment clause. Specifically, Mr. Featherstone contends it is inappropriate to include demand charges for any capacity contracts, regardless of their duration, for two reasons. First, Mr. Featherstone points to the fact that demand charges are fixed costs to reserve capacity, and as such are more like plant investment cost than fuel or purchased power cost. Second, Staff opposes Aquila's use of short-term contracts *to meet its growing capacity needs*. Staff argues that allowing Aquila to pass on this type of cost would allow Aquila to meet its growing load requirements through short-term capacity, thus *creating another disincentive for it to build generating units* and placing all the risk of future fuel and purchased power cost increases on its customers. Mr. Featherstone's analysis is persuasive (emphasis added).[121]

And while the MIEC's counsel can claim that the Commission's examination of this issue – and what it had to say – is "totally irrelevant," his assertion that this is so doesn't make it so. It is not only relevant, but it is highly relevant that the Commission expressly decided that *generation* capacity charges, if the charges were under a *generation* capacity contract and were for a term of more than one year, were excluded from Aquila's FAC – an FAC approved by the Commission immediately before it approved an FAC for the Company.

The MISO itself has a capacity market, but it is not a "transmission capacity" market. To the contrary, it is a market for *generation* capacity.[122]

---

[120] Ex. 26, p. 11, l. 6-9.
[121] Quoted in Ex. 26, p. 11, l. 14-28 (footnote admitted).
[122] Ex. 26, p. 12, l. 7-11; Tr. p. 1199, l. 6-10.

Finally, the Staff's FAC witness in the case when the FAC tariff was first approved and in this case, Ms. Mantle, agrees that the reference to "capacity" in the FAC tariff is a reference to generation capacity.[123]

iv. These transmission charges also have the characteristics of charges that should be included in the FAC.

While a cost is not required to have the characteristics discussed below to be included in an FAC, when the Commission has considered whether a cost should be included in an FAC, the Commission has historically given some consideration to (a) the ability of the utility to control the cost, (b) the cost's volatility, and (c) the cost's magnitude. All of those criteria strongly suggest that these costs belong in the FAC.

The MIEC argues that the Company has some control over these MISO transmission charges stemming from its membership in MISO. The MIEC's argument that this "control" exists is based upon vague and conclusory statements in Mr. Dauphinais' sur-sur-surrebuttal testimony about influence or pressure the Company supposedly could bring to bear at the MISO or actions the Company purportedly could take at the FERC. The MIEC's attorney in his mini-opening statement on the FAC urged the Commission to carefully consider Mr. Dauphinais' sur-sur-surrebuttal testimony on this point. We urge the Commission to review it as well, because that review will reveal that Mr. Dauphinais provides no support for his contentions. Instead, Mr. Dauphinais speculates about "opportunities" he claims the Company has, but his testimony amounts to nothing more than his own speculative conclusions about what Ameren Missouri could do to impact transmission charges derived from the construction of billions of multi-value projects across the MISO's large footprint.

[123] Tr. p. 1254, l. 10-17.

Yet it is undeniable that Ameren Missouri is but one of many transmission owners in MISO, and that the MISO Advisory Committee, which would be expected to have the most input on transmission projects on which many of the MISO transmission charges are based, state regulators have just as many votes as do all of the transmission owners *combined* (neither "Ameren" as a whole nor Ameren Missouri has a vote at all).[124] And even the Staff, which in general supports the same *result* the MIEC argues for (removal of transmission costs from the FAC and no tracker), agrees that "for the most part" Ameren Missouri has no control over these costs,[125] and that "in general [the Company] . . . has [the] lowest control over these particular costs than most of its other costs."[126] The MIEC's "control" argument is a red herring.

The MIEC also argues that these charges are not volatile. However, the best information available to us at this time indicates that year-over-year, over the next three years these costs will increase, on average, by *24% per year*.[127] Moreover, there is considerable uncertainty about those estimates, as the Staff at least acknowledged.[128] While Mr. Dauphinais and his Brubaker and Associates colleagues may prefer a different definition of the term "volatility," the plain meaning of the term "volatile" is something that is characterized by a rapid *or* unexpected change.[129] Mr. Dauphinais agrees that the 24% average increase in these charges in the coming years is rapid. Consequently, under the plain meaning of the term, the charges are volatile. Moreover, the high level of uncertainty surrounding what these charges will actually turn out to be also makes it difficult to know what to expect in terms of the level of these charges, also making them volatile.

[124] Tr. p. 1179, l. 4-20.
[125] Tr. p. 1246, l. 6-14 (Ms. Mantle).
[126] Tr. p. 1291, l. 3-5 (Mr. Oligschlaeger).
[127] Tr. p. 1362, l. 18-24; p. 1293, l. 23 to p. 1294, l. 2.
[128] Tr. p. 1290, l. 1-19.
[129] Tr. p. 1363, l. 23 to p. 1364, l. 2.

With regard to the magnitude of these charges, the latest estimates we have indicate they are expected to double, from net charges of approximately $25.7 million as of July 31, 2012 to $49.5 million by 2015.[130] Increases of that magnitude are certainly material, and they could unquestionably have a material impact on the Company's opportunity to earn a fair return, which, as noted earlier, is one of the key aspects the Commission considers when examining FACs. Given the asymmetry the last several years of results has shown to exist in the ratemaking process (and ignoring the tracker issue) means that the impact of removing these charges from the FAC is very likely to undermine that reasonable opportunity to earn a fair return and thus undermine one of the key functions of an FAC.[131]

In short, these transmission charges, whether judged under the "key requirement" of the FAC statute (that the FAC should be reasonably designed to provide an opportunity to earn a fair return), or whether judged under these other non-mandatory criteria that have been discussed in connection with whether a cost should be tracked in the FAC, are obviously appropriate for inclusion in the FAC, as they have been from day one of its operation.

C. If, despite the appropriateness of continuing to include the transmission charges in the FAC, the Commission decides they should not be included, the Company should be authorized to defer changes in net transmission charges/revenues in a transmission cost and revenue tracker.

It is expected that the transmission charges from the MISO, primarily driven by large regionally-beneficial multi-value transmission projects (MVPs), will increase substantially in the near- and intermediate-term, while transmission revenues will remain flat. Ameren Missouri is requesting that if transmission charges and revenues are not to be included in the FAC, a

[130] Tr. p. 1184, l. 22-23; p. Tr. p. 1204, l. 20-21; p. 1205, l. 1-3.
[131] For example, if the Company were to come back and file yet another rate case in early 2014, based on the current estimate of transmission charge increases, the Company would stand to lose $11-12 million of increased MISO transmission charges between rate cases. Tr. p. 1168, l. 3-9; p. 1304, l. 10-16. While it is not known when another rate case would be filed, a loss of this magnitude certainly enhances the chance of filing another rate case sooner than one might otherwise be filed if these transmission charges continued to be included in the FAC.

transmission charge and revenue tracker be established so that the Company can request recovery of higher net transmission charges in a future rate case.

i. <u>A tracker is a deferral accounting mechanism. It does not constitute ratemaking.</u>

Somewhat surprisingly, given that the Staff has previously proposed just such a tracker, the Company's alternative request that a tracker be established if a change to the FAC regarding transmission charges were to be made is opposed by the Staff. The MIEC, perhaps as much for reasons of principle as anything, also opposes the request.[132] Notably, the MIEC claims trackers are illegal (single-issue ratemaking) and also claims they are bad policy.

The courts have uniformly rejected MIEC's claims that trackers are illegal. This is because trackers do not involve ratemaking at all. *See, e.g.* ***State ex rel. Noranda Aluminum, Inc. et al. v. Pub. Serv. Comm'n***, 356 S.W.3d 293 (Mo. App. S.D. 2011). Trackers are established in a general rate proceeding at which time all relevant factors are considered.[133] And before any changes tracked in the tracker can later be taken into account in setting rates *in the future*, the Commission will again consider all relevant factors. Prohibited single-issue ratemaking occurs only if a "public utility [is allowed] to *change* an existing rate without consideration of all relevant factors . . ." (emphasis added)."[134]

In ***State ex rel. Office of the Public Counsel v. Pub. Serv. Comm'n***, 858 S.W.2d 806, 812-13 (Mo. App. W.D. 1993), the argument was made that it constitutes impermissible single-issue ratemaking to authorize a utility to defer depreciation expenses between rate cases associated with construction projects at the utility's power plants. Specifically, Public Counsel

[132] Others, such as OPC, predictably oppose a tracker. With respect to MIEC's arguments based on principle, it is well-understood that MIEC in general opposes trackers. MIEC's counsel in effect stated as much during his mine-opening on the FAC issues. Tr. p. 1130, l. 23 to p. 1131, l. 13.
[133] In fact, a tracker is no different than an accounting authority order, which is not set in a general rate proceeding where all relevant factors must be considered.
[134] ***State ex rel. Sprint Spectrum L.P. v. Pub. Serv. Comm'n***, 112 S.W.3d 20, 28 (Mo. App. W.D. 2003).

argued that "by granting [the utility] authority to defer certain costs . . . the Commission is permitting '[the utility] to isolate individual costs [sic] of service components for future ratemaking recovery by preserving these costs by means of deferral, without proper consideration of concurrent relevant factors.'"[135] This argument is extremely similar to the one the MIEC's counsel made in his mini-opening statement on this issue. In rejecting OPC's contention, the Court of Appeals indicated that the "Commission did not grant rate relief to [the utility]."[136] Rather, the Court recognized that the Commission "stated in its Report and Order that the amount of the deferred cost to be recovered as well as other ratemaking issues would be determined in a later rate case."[137] In summary,

> The Commission's order did not presume to determine a new rate [using the deferred costs] but effectively permitted [the utility] . . . to file a rate case . . . and then to present evidence and argue that the deferred costs . . . should be considered by the Commission in approving a [future] rate change. The Commission's order does not preclude consideration of other relevant factors when the Commission considers the appropriate rate to be charged the utility's customers. The Commission's order . . . does not constitute single-issue ratemaking.[138]

The same thing is true here. The difference between the base level of net charges (transmission charges net of transmission revenues) and the actual net level of transmission charges and revenues would be tracked.[139] The Company can ask that the net change be considered for later recovery in future rates, but that will only occur in the context of a general rate proceeding where all relevant factors are considered.

---

[135] *Id.* at 812.
[136] *Id.*
[137] *Id.*
[138] *Id.* at 813.
[139] Pursuant to the Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinant, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets submitted on November 2, 2012 in this case, the Staff, and Company and the MIEC have agreed that the trued-up test year sums for transmission charges and revenues, which would form the base in the tracker if they are not in the FAC. Those levels are: $25.7 million as a base level of expenses in a tracker and $33.1 million as a base level of revenues in a tracker, for a net base of -$7.4 million.

The Staff recognizes that the MIEC's illegality argument is wrong, having affirmatively recommended a transmission charge and revenue tracker for Kansas City Power & Light Company (KCPL) and KCPL-Greater Missouri Operations Company (KCPL-GMO) in 2010,[140] and having affirmatively recommended in this case (if a tracker is adopted) that the Commission include in its Report and Order the standard "no ratemaking is occurring" disclaimer that is typical of Commission orders that authorize deferred accounting.[141] Even MIEC witness Dauphinais concedes that before a single dollar of any changes in transmission charges and revenues are accounted for in rates in the future, the Company will have to file an additional rate case, where, of course, the Commission will then consider the tracked sums, along with all other relevant factors.[142]

The bottom line is that the Commission has full authority to authorize the Company to defer changes in these net charges via a tracker. If a change to the FAC is to be made regarding transmission charges, the Commission should do so as discussed below.

ii. <u>The facts, policy considerations, and basic fairness all support authorizing Ameren Missouri to track net transmission charges/revenues if a change to the FAC is to be made</u>.

Unrefuted Facts.

- *Net* transmission charges were, as of the time Mr. Haro filed his supplemental surrebuttal testimony, estimated to increase by approximately 70% by 2015 versus their level as of the end of the true-up period in this case.

- At the time of the hearing, after it was learned MISO had changed its estimates, the estimated increases were greater, with the net charges expected to rise approximately 83% (approximately $2.5 million in 2013, approximately $8 million more in 2014, and approximately $11million more in 2015 – to

---

[140] Exs. 59, 60 & 61.
[141] Ex. 240, p. 10, l. 5-8 (Oligschlaeger Responsive Testimony).
[142] Ex. 527, p. 4, l. 19-25 (Mr. Dauphinais' original testimony claimed that the Company would not have to file another rate case, but he corrected that mis-statement when he took the witness stand. Tr. p. 1348, l. 9-18. Mr. Dauphinais also admits that it is in that later rate case where the Commission will make a decision regarding how to handle the deferrals, and can review the prudence of the expenditures that were deferred. Tr. p. 1360, l. 18 to p. 1361, l. 4.

approximately $47.3).[143] That increase is, on average, 24% per year through 2015.

- Of the $5.6 billion of estimated costs for MVP projects approved by the MISO's MTEP 11,[144] less than 5 % - less than $250 million - is planned in Missouri.

- No one – not even the MIEC – claims Ameren Missouri has "control"[145] of MISO transmission charges in the sense that it has control, or some control, over many of its costs; the charges will be primarily driven by the billions of dollars of MVPs to be constructed across the MISO's footprint.

- No deferred changes in net transmission charges can be included in rates until after an additional rate case is filed where the deferred sums will be considered by the Commission.

- Ameren Missouri has not earned its authorized return on a weather-normalized basis even once since 2006.

- The Staff previously supported a transmission charge and revenue tracker for KCP&L and KCPL-GMO, noting that the large sum of Southwest Power Pool (SPP) projects (similar to MISO's MVPs) would lead to an increase in transmission expense.[146]

- It is reasonable to expect the same thing will occur due to the MISO MVPs.[147] Staff characterizes it as a "universal expectation that [transmission charges] . . . would grow probably significantly."[148]

- There is considerable uncertainty regarding what the future transmission charge levels will be.[149]

Stripped to their core, the positions of the Staff and the MIEC – that a tracker should not be approved – amount to the claim that the Company ought to have its earnings reduced because of transmission charge increases driven primarily by MVP projects it will not be building because, to use a colloquial phrase, "that's just life in the ratemaking world." As Mr. Baxter discusses in his surrebuttal testimony, "life in the ratemaking world" in decades past might have

[143] As of the end of the true-up period the net transmission charges/revenues were $25.8 million.
[144] "MTEP 11" stands for "MISO Transmission Expansion Plan 2011, approved by the MISO Board of Directors.
[145] MIEC does argue that the Company has some control, or has opportunities to exercise some control.
[146] Tr, p. 1287, l. 18-22.
[147] *Id.*, p. 1287, l. 23 to p. 1288, l. 1.
[148] *Id.*, p. 1294, l. 3-6.
[149] *Id.*, p. 1290, l. 13-19.

been such that as some costs increased materially (like these transmission charges) other costs might decrease and/or revenues might increase. In that prior world, there was in general symmetry in the ratemaking process – those charts Mr. Baxter sponsored would have been expected to show a different pattern with earnings being below and then above and then below those authorized return lines. But that is not the world utilities (including the Company) live in today.

The Company concedes that it is for the most part true that the Commission could choose to deny the Company's alternative request that it be authorized to defer increases in net transmission costs/revenues in a transmission cost and revenue tracker. But the question that must be asked is: Why would the Commission change the FAC and then deny the tracker request? Why would the Commission today, in this rate case – given the facts listed above; given that the Company has no choice but to pay these charges; given that customers get nearly all of the benefits of MISO participation – why then would the Commission both require these transmission charges to be removed from the FAC *and* then deny the ability to defer them so they can be considered in a future rate case? Other than the "that's just life" view of things, the Company can think of no legitimate reason.

If these charges are not in the FAC, the Company should be authorized to track them (and transmission revenues).

iii. The proposed conditions – Generally.

Conditions 1), 3) and 5).[150]

The Company has no objection to conditioning its authorization to defer net transmission charges/revenues via a tracker on the Company's acceptance of conditions 1), 3) and 5)[151];

[150] Ex. 240, p. 9, l. 14-18; p. 10, l. 5 – 8; p. 10, l. 14-21.

provided, that the reference to "next general rate proceeding" at page 10, line 21 of Mr. Oligschlaeger's testimony should be modified to read next "general *electric* rate proceeding," since none of these issues have anything to do with the Company's natural gas operations.

Condition 2)

The Company has no objection to condition 2),[152] *as it was clarified* by Mr. Oligschlaeger during his testimony, as follows:

> ***Q.*** ***And regarding the second sentence [of condition 2)] you clarified for me the other day that when you refer to internal management reports what you are getting at is if there is a report generated that breaks out transmission costs and revenues in detail by line item a part [sic] from all the other costs and revenues, non-transmission costs and revenues the Company has and if it's a periodically prepared report that Ameren Missouri's management gets that's what you're looking for when you refer to internal management reports, is that right?***
> *A.* *I think that's close, yes.*
>
> ***Q.*** ***What part of it did I miss?***
> *A.* *Well, I mean we're talking about hypothetical reports. I think in terms of the, a general description of what it is we're seeking I think what you said was accurate.*
>
> ***Q.*** ***If there is such a report and we give you that that would satisfy the second sentence of your condition 2, is that fair to say?***
> *A.* *From my perspective, yes.*
>
> ***Q.*** ***Well.***
> *A.* *Okay. From Staff's perspective.*
>
> ***Q.*** ***You are speaking for Staff on this, right?***
> *A.* *Yes.*

* * *

[151] Conditions 1), 3), and 5) are set forth in Mr. Oligschlaeger's responsive testimony (Ex. 240), at page 9, l. 14-18, p. 10, l. 5-8, and p. 10, l. 14-21.

[152] Condition 2) reads: "That Ameren Missouri will provide to all parties in this case on a monthly basis copies of billings from MISO for all MISO rate schedules that contain charges and revenues that will be included in the tracker and will report, per its general ledger, all expenses and revenues included in the tracker by month by FERC USOA account and Ameren Missouri minor account. Ameren shall also provide, on no less than a quarterly basis, the internally generated reports it relies upon for management of its ongoing levels of transmission expenses and revenues. Ameren Missouri should also commit to notify the parties to this case of any changes to its existing reporting or additional internal reporting instituted to manage its transmission revenues and expenses;"

Q. Well you're not actually asking us to create something that doesn't exist, isn't that fair to say?
A. That's fair to say.

Q. Okay. So my question was if that kind of report exists and we give it to you it would satisfy your condition true?
A. Yes.[153]

Consequently, Condition 2) is acceptable (and the above-testimony indicates this is the Staff's intention) if it reads as follows:

> 2) [No changes to the first sentence]. Ameren [Missouri] shall also provide, on no less than a quarterly basis, the periodically prepared report (if one exists) that is provided to Ameren Missouri's management that breaks out transmission costs and revenues in detail by line item apart from non-transmission costs and revenues. [No changes to the third sentence].

Conditions 4) and 6)

For the reasons discussed below, neither condition 4) nor condition 6) is appropriate.[154] In fact, they attempt to do what condition 3) (the "all ratemaking considerations are reserved to a future rate case condition") says should *not* be done in this case; that is, they reflect a pre-judgment of *ratemaking* issues relating to the authorization of deferrals of net transmission charge changes in a tracker. As is always the case, ratemaking considerations relating to deferred expenses should be left for the rate case when any such deferrals are considered. We will address this and other reasons why both conditions are inappropriate, below.

---

[153] Tr. p. 1311, l. 15 to p. 1313, l. 2.
[154] Condition 4) reads: "4) That Ameren Missouri must impute the level of transmission revenues earned by ATX, ATXI or other unregulated affiliate for facilities in Ameren Missouri's service territory into its tracker mechanism to the extent necessary to ensure that no additional revenue requirement resulting from Ameren Corporation's decision to transfer responsibility for transmission construction activity from Ameren Missouri's regulated business is passed on to retail customers through the tracker;" Ex. 240, p. 10, l. 9-13, as corrected during the evidentiary hearing at Tr. p. 1283, l. 22 to p. 1284, l. 5. Condition 6) reads: "6) That deferrals resulting from the transmission tracker mechanism cease under certain circumstances depending upon Ameren's reported return on equity (ROE) level."

iv. <u>Proposed condition 4) is unlawful, unnecessary, not supported by competent and substantial evidence, and unreasonable.</u>

Commission decisions must be lawful and must be reasonable. ***State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n***, 103 S.W.3d 753, 759 (Mo. banc 2003); ***State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n***, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). A Commission decision is reasonable only if supported by competent and substantial evidence of record. ***Alma***, 40 S.W.3d at 387. Put another way, a Commission decision that is not supported by competent and substantial evidence of record is unreasonable as a matter of law and must be reversed. Moreover, because the Commission has no power to declare or enforce principles of law or equity,[155] its application of legal principles will be reviewed by the courts *de novo*. ***State ex rel. Utility Consumers Council v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 47 (Mo. banc 1979).

Consequently, if the Commission fails to follow governing law, its decisions will be reversed. As discussed below, adoption of proposed condition 4) would be unlawful, unreasonable, and would reflect a misapplication of the governing law.

a. There is absolutely no competent and substantial evidence of record that supports proposed condition 4).

The Staff has obviously *assumed* that prior to *Ameren Corporation's* (not Ameren Missouri's) formation of Ameren Transmission Company and Ameren Transmission Company of Illinois (ATX and ATXi, respectively (collectively, ATX)), if an MVP was to be built in the area, Ameren Missouri would build it. Yet the Staff admits that it does not know if that in fact would have been the case:

> ***Q. You also say that prior to the creation of ATX it was quote, expected that Ameren Missouri would build new required MISO projects like MVPs, right?***
> *A. That's what I stated.*

[155] ***State ex rel. Utility Consumers Council v. Pub. Serv. Comm'n***, 585 S.W.2d 41, 47 (Mo. banc 1979).

Q. ***And that was the Staff's expectation, right?***
A. *Yes.*

Q. ***In fact neither you nor the Staff actually know for a fact whether Ameren Missouri would have build any of these MVPs, isn't that fair?***
A. *It was an expectation, it is not an established fact.*[156]

There are other things that the Staff does not know, and that it certainly has not proven. Whether the Staff's assumption – that Ameren Missouri would (or could) have built MVPs, or whether Ameren Missouri would be prudent in doing so – depends on several unknown and unproven factors, including:

- Does Ameren Missouri have a right to build the MVP at issue?
- Does Ameren Missouri have the funds needed to build it?
- If Ameren Missouri doesn't have the funds, can it get them, or would it be prudent to do so (e.g., should it increase its borrowings; should it increase the proportion of equity in its capital structure)?
- Even if Ameren Missouri literally has or could get the funds, would it be prudent for Ameren Missouri to use funds to build MVPs – might it in fact be imprudent to divert those funds to an MVP when Ameren Missouri's generation or distribution system needs the investment?
- Might Ameren Missouri simply not have sufficient capital to prudently maintain the reliability of its generation, transmission[157] and distribution systems *and* to build MVP projects?

In addition to not knowing if Ameren Missouri would have built MVPs at all (regardless of the formation of ATX), the following demonstrates that the Staff doesn't know, and has not even attempted to establish, the necessary answers to any of the foregoing questions:

Q. ***And you're not contending for example that Ameren Missouri has a right to build these MVPs that is superior to ATX's right or any***

[156] Tr. p. 1308, l. 12-23.
[157] In this context we are referring to Ameren Missouri's transmission system needed to serve its retail load, not to an MVP that Ameren Missouri in theory could own that is not needed to reliably serve its load, but rather, is an enhancement to the regional grid with regional benefits.

other company's right for that matter, you are not contending that, are you?

A. *I am not.*

Q. ***You aren't aware of Ameren Missouri having any ability to control what ATX does or does not build, is that true?***

A. *I am not aware of that ability.*

Q. ***And you realize that Ameren Missouri can not dictate to Ameren Corporation what it does either, isn't that true?***

A. *That would be reasonable, yes.*

Q. ***You contend that your conditions 4 and 5 are justified because of a quote transfer of some right to build MVPs in Ameren Missouri service territory, right?***

A. *Correct.*

Q. ***But if Ameren Missouri was not going to build the projects anyway then nothing has been transferred, isn't that true?***

A. *Under that hypothetical yeah, that is true.*

Q. ***It's a hypothetical that as far as you know it could be true, right?***

A. *I don't know for a fact that it's not true.*

Q. ***Okay. You agree do you not Mr. Oligschlaeger that Ameren Missouri does not have an unlimited amount of capital that it can invest at any given period of time?***

A. *It only has the capital allocated to it by its parent company.*

Q. ***And that's not unlimited, is that fair to say?***

A. *That's fair to say.*

* * *

Q. ***You agree that because reliability is among the highest priority of any utility that if Ameren Missouri has projects related to the reliability of its generators, its distribution system, its transmission system that in total are more than the capital it has available at the time it should be putting money in to those projects and not in to MISO MVPs if those projects are needed for reliability, you agree with that, do you not?***

A. *I believe if there is a direct conflict, not enough capital to accomplish both purposes that reliability of service to customers as it should be a very high priority for the Company.*[158]

[158] Tr. p. 1308, l. 24 – p. 1310, l. 25.

The foregoing testimony shows without a doubt that the very premise of the proposed condition – the *assumptions* at the heart of it – is completely unproven and speculative. Not only is the Staff's proposal to adopt condition 4) an exercise in pure speculation, even worse, the Staff is asking the Commission to speculate along with it by imposing conditions the Staff has not justified.

That the Commission is not empowered to make decisions based on speculation is embodied in the requirement that Commission decisions be supported by competent and substantial evidence of record. If the Commission were to decide to adopt condition 4) on a record lacking in that evidentiary support – and there is no such evidentiary support in this record – the decision would be unreasonable as a matter of law. Effectively, the Staff is inviting the Commission to commit reversible error by adopting the Staff's proposed condition 4).

b. The Staff is also asking the Commission to misapply the governing law.

Not only is the Staff asking the Commission to adopt a condition that is totally lacking in evidentiary support, but the Staff is asking the Commission to impose a condition that if adopted would necessarily rest on an implicit, unproven, and completely unlawful determination that the Company has acted imprudently and that the imprudence has harmed customers. This too is an invitation to commit reversible error.[159]

There are two distinct legal requirements respecting prudence that bind the Commission in the discharge of its authority. First, in the context of a complaint, where the complainant alleges that a utility is "violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions," the burden of proof rests with the complainant. ***AG Processing, Pub.***

[159] The Staff hasn't been reluctant to do just that in the past, as evidenced by the Staff's urging the Commission to disgorge profits Atmos' marketing affiliate AEM made on a competitively-bid gas sales contract. The Commission wisely recognized the inappropriateness of the Staff's contention in that case, which was confirmed by the Court of Appeals a few weeks ago. We discuss the ***Atmos*** case further, below.

Serv. Comm'n, OPC v. KCP&L Greater Missouri Operations Company, Slip. Op., p. 5 (Mo. App. W.D. Oct. 23, 2012) (*quoting* ***State ex rel. GS Technologies Operating Co. v. Pub. Serv. Comm'n,*** 116 S.W.3d 680 (Mo. App. W.D. 2003)).

The second context where the law governing how the Commission can judge a utility's prudence arises in a ratemaking proceeding, where the utility is asking for a rate increase. In that context, the utility's decisions are presumed to have been prudent. ***Id.***, pp. 5-6 (citing ***State ex rel. Assoc. Nat'l Gas Co. v. Pub. Serv. Comm'n,***, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997)).

If it is the Staff's theory that Ameren Missouri has made a decision not to construct MVPs in its service territory, that the decision was imprudent, unjust or unreasonable (or all three), and this has resulted in harm, then presumably the Staff should be bringing a complaint against the Company. In such a complaint, the Staff would bear the burden of proof. But it can't assume, as Mr. Oligschlaeger did, that Ameren Missouri "would have" built MVPs if ATX had not been formed; it can't assume that Ameren Missouri can or should build MVPs when there are no facts of record establishing what Ameren Missouri can or should do on a particular project, or if faced with competing demands for different projects; and it can't assume Ameren Missouri has the funds to build a particular MVP or all MVPs that might happen to be located in its service territory. To the contrary, the Staff would at a minimum have to prove those contentions. But under the Staff's proposed condition 4), the Company is convicted of imprudence in the absence of any evidence whatsoever.[160]

Even if a complaint is not needed; that is, even if the Staff's contentions could be properly raised in a rate case where the Staff could go forward with evidence creating a serious

[160] It is not clear that a public utility providing retail service to customers is ever "required" to build transmission projects like MVPs, which are by their very nature interstate, regionally-beneficial projects unrelated to a utility's obligation to provide safe and adequate service to retail customers. Regardless, at a minimum adverse, ratemaking consequences could not be imposed on the public utility in the absence of proof of imprudence and resulting harm.

doubt about the prudence of Ameren Missouri's decision not to build MVP project, this case is *not* the proper rate case to raise the issue for two reasons.[161]

First, there has been no impact (direct or indirect) to Ameren Missouri's costs or rates relating to decisions about who will construct MVPs or even relating to the construction of an MVP by any entity – ATX or otherwise. Second, the proposed condition imputes revenues that the Staff is claiming that Ameren Missouri itself would not have received based upon a decision – not to build MVPs – that no one has proven was imprudent and that no one has proven has harmed customers, and in fact about MVPs that have not even been started yet. For example, assume that in a future proceeding Ameren Missouri's net transmission charges increase by $10 million. Assume further that ATX receives revenues from an MVP project in Ameren Missouri's service territory. Assume further that if one compares this one component of the revenue requirement had Ameren Missouri built the MVP versus what it is since ATX built it one would find that revenue requirement is higher by $1 million. Under the Staff's proposal, the allowed deferrals in the tracker *automatically* will be lower by that $1 million. But before deferrals could arguably be reduced, at least the following question must be asked and answered: "Was it imprudent that Ameren Missouri didn't build the line and did that imprudence cause harm?"[162] But even if the answer is "no," under the Staff's proposed condition, Ameren Missouri will be unable to defer $1 million of higher transmission charges – and can never even ask for rate recovery of them – without it ever having been shown that Ameren Missouri *did anything wrong* or that there was any harm to customers because of any wrongdoing on the

[161] It doesn't, because as we pointed out earlier, a tracker is not a ratemaking mechanism. Ratemaking treatment would only be sought in a later rate case and it would be then that the Company would be entitled to a presumption of prudence, but others would be free to put on evidence raising a serious doubt about the prudence of a Company decision.
[162] And did that imprudence cause harm?

Company's part. Indeed, the Staff's proposed condition amounts to a Staff-made presumption of *imprudence*. The law is just the opposite.

Third, the proposed condition is unlawful for another reason; that is, it is an obvious attempt (another one) by the Staff to take away the profit an unregulated affiliate of a regulated public utility makes by taking dollars away from the regulated utility. Only about five weeks ago the Missouri Court of Appeals once again made clear that the Commission has no power to disgorge profits from an unregulated affiliate by taking adverse action against the utility that it regulates. *See* ***Office of Public Counsel v. Pub. Serv. Comm'n***, Case No. WD 74714, Slip. Op. (Sept. 18, 2012). In that case, involving Atmos Energy's ACA, the Staff sought to disallow approximately $300,000 of purchased gas costs. Staff calculated the $300,000 by determining the profit Atmos' marketing affiliate, AEM, made on a gas supply contract with Atmos. Certainly if Atmos had been imprudent in buying gas from AEM (e.g., by paying AEM too much, or buying an inferior supply), a disallowance could have been sustained, *if proven*. But the only proof the Staff proffered was that AEM made a profit on the transaction. The Commission properly recognized that the presumption of prudence applied even though Atmos had bought gas from its affiliate, and since neither the Staff (nor OPC, which pursued the appeal) presented any evidence that created a serious doubt about the prudence of the affiliated purchase, the Commission rightly ruled in Atmos' favor.

The Western District of the Court of Appeals rejected the Staff's attempt to disgorge profit from the unregulated affiliate, and affirmed the Commission's rejection of this attempt, stating: "[T]he OPC cites no cases holding that a utility acts imprudently in transacting business with its affiliate simply because the affiliate earns a profit on the transaction." ***Id.***, Slip op. p. 13.

c. The Staff's proposed condition 4) is also completely unnecessary and makes a premature and inappropriate ratemaking determination in this case.

As discussed earlier, because of the nature of a tracker like the proposed transmission charge and revenue tracker, adoption of the tracker does not determine the ratemaking treatment of the sums to be tracked (deferred). It has always been the case with trackers – whether created in the context of a rate case or via a separate accounting authority order case – that the Commission could, for example, judge the prudence of the deferred costs and decline to allow costs incurred as the result of an imprudent decision to be reflected in rates in a future rate case.[163] It is only at *that time* that ratemaking would occur.

The point of the Staff's proposed condition 3) is to make that point crystal clear, and, as earlier noted, the Company has no objection to that condition. Yet Staff's proposed condition 4) is an attempt to require the Commission to make a ratemaking pre-judgment, today. Limiting the actual net transmission charge changes that can be deferred to a sum that is less than those actual changes does make the ratemaking determination now because some net transmission charge changes can then never even be *considered* for recovery later.

As also discussed earlier, if the Staff is right; if it is proven that the Company has imprudently declined to build an MVP project in its service territory and that decision results in harm to customers, then the Staff can ask the Commission to decline to allow recovery in rates of a portion of the deferred sums. But it is not necessary or appropriate, today; nor is it possible, today, to determine whether there is or will be any such imprudence or harm, or what that harm may be.

[163] ***State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n***, 210 S.W.3d 330, 336 (Mo. App. W.D. 2006 (At a later time deferred amounts along with any other factors may be considered to set rates to be charged in the future).

Perhaps even more fundamentally, imputation of a lower Ameren Missouri revenue requirement in a future rate case because of what Ameren Missouri did or did not decide to do regarding MVP projects in its service territory need not have anything at all to do with a tracker that tracks transmission charges to Ameren Missouri and transmission revenues paid to Ameren Missouri. Even if there were no transmission charge and revenue tracker, if in the next rate case or the next rate case or the one after that the Staff contends that Ameren Missouri is losing out on transmission revenues that it would have received had it built a particular MVP project because Ameren Missouri imprudently didn't build the project when it could and should have, then the Staff can request the Commission in that (or those) rate cases to impute those revenues into the revenue requirement, thus lowering it. What the Commission most certainly should not be doing in this case is imputing revenues to reduce deferrals which will deprive the Company of the ability to defer and to later *seek* recovery, when there is no proof of imprudence, or harm, when all of the facts relating to a particular MVP (none have been built in Ameren Missouri's service territory yet) have been developed. The Staff has gotten the proverbial cart ahead of the horse.

d. The Staff's proposed condition 6) is inappropriate, unnecessary, and completely unworkable.

i. <u>The proposed condition is inappropriate and unfair.</u>

Under the Staff's proposed condition 6), the Staff proposes to "turn off" the ability to defer net transmission cost increases in the quarter following any quarter when the Company's quarterly surveillance reports[164] reflect an earned ROE that is greater than its last authorized ROE. The Staff's premise is that if the quarterly surveillance report has a reported ROE above that level, then the Company has "over-earned." In addition to the Staff's condition being totally unworkable and unfair, the very premise behind it is flawed for several reasons.

[164] These are standardized, quarterly reports filed by any utility that has a Commission-approved fuel adjustment clause. See 4 CSR 240-3.161(6).

Just because the ROE reported on a quarterly surveillance report is higher than the last-authorized ROE does not mean the Company is "over-earning"; that is, it does not mean that its rates are unjustly and unreasonably too high. As Mr. Baxter discussed in his surrebuttal testimony (and as discussed during the evidentiary hearings), even if one assumes that the last authorized ROE is the "right" ROE against which to judge "over- or under-earnings," (an assumption that may or may not be true – the cost of equity – can go up or down, or both, between rate cases) it is not true that on an actual, *non*-weather normalized basis a utility is "over-earning" if it happens in a given period to show an ROE on a surveillance report higher than its last allowed ROE. The June 2012 surveillance report (Exhibit 66) shows an earned ROE of 10.53%, and it illustrates this point.

The 10.53% figure shown on that report is not weather-normalized, and it is significantly impacted by a one-time refund from Entergy received in June 2012. No one would seriously contend that it means that Ameren Missouri's current rates are unjustly too high and thus reflect "over-earnings"; indeed, the Staff at this moment agrees Ameren Missouri deserves a rate increase of approximately $209 million,[165] so it can't be that just because for the 12 months ending June 2012 Ameren Missouri's surveillance reports showed an ROE that was 33 basis points above its last-authorized ROE means that Ameren Missouri is over-earning or has over-earned.

Surveillance reports are useful for one purpose and one purpose alone: to monitor *trends* over an *extended period of time* in order to obtain some information about whether it appears that something may have changed in a utility's revenue requirement that warrants an investigation into the utility's earnings. For example, in a given 12-month period extremely hot weather could

[165] Even ignoring the MEEIA costs embedded in the rate increase, Staff agrees a rate increase of approximately $129 million is warranted.

materially increase (or cold weather could decrease) a utility's ROE and this could result in surveillance reports with ROEs above the last-authorized ROE, but that doesn't mean there were "over-earnings." Or, in the case of a utility like the Company that owns a nuclear plant, in some 12-month periods there will have been no expenses associated with a Callaway outage, yet in those 12-month periods when a Callaway outage does occur there will be substantial costs that only occur every 18 months. But because the surveillance reports are not "normalized" for weather or Callaway outages, surveillance report ROEs are skewed. They simply cannot be relied upon, in a vacuum, to judge whether the Company is or is not "over-earning." When one-time events like the Entergy refund come along (the Entergy refund, which was approximately $30 million, raised the ROE for the 12-month period reported in June 2012 by more than 50 basis points[166]), the surveillance report results are also skewed. And while we would submit that weather, Callaway refueling costs,[167] and unusual one-time occurrences like the Entergy refund would likely overwhelm other "moving parts" that would have to be accounted for if one were to actually perform a test year analysis to see if a utility is "over- or under-earning," the point is that the surveillance reports take *no* moving parts into account. Consequently, even over time, they can't be strictly relied upon to "determine" if there are over-earnings. *A fortiori*, a single quarter's surveillance report is totally unreliable for that purpose. Yet the Staff's proposed condition 6) inappropriately relies on them for that very purpose.

The Staff might say then "Why did Mr. Baxter show us all of those charts? Those charts aren't normalized for all of these items either. If the charts are good enough for Mr. Baxter – the non-weather normalized charts are after all based on this surveillance data – then they ought to be good enough for our proposed condition 6)." The answer: Mr. Baxter did not show charts for

[166] Tr. p. 1452, l. 12 - p. 1453, l. 18.
[167] Mr. Oligschlaeger agrees that failing to normalize weather and Callaway outages can have a significant effect on the reported ROE because they are fairly large items. Tr. p. 1341, l. 7-11.

a quarter, or even just two or three quarters. Mr. Baxter showed charts covering several *years*. It is true that one cannot take Mr. Baxter's charts and calculate the difference between the earned ROEs shown on them and the last-authorized ROEs and then definitively say that the Company "under-earned" by those exact dollars in a given quarter or even over time. Doing so would be inappropriate, just as the Staff's proposed use of the surveillance reports is inappropriate. But what one can do with years' worth of data covering many, many quarters is see a pattern; a trend. And when you couple that pattern, that trend, with five rate case filings, four rate increases thus far, and this pending case where there is no dispute but that a rate increase is needed, the conclusion is absolutely unmistakable that the Company has systematically been under-earning. Understanding this long-standing trend is meaningful, and it is relevant to some of the requests the Company has made in this case, including frankly its request for the transmission cost and revenue tracker that is the subject of this discussion, and it is for that reason that Mr. Baxter presented the charts that he did.

At bottom, the point respecting the Staff's inappropriate use of these surveillance reports is that a snapshot of a quarter or two or three doesn't tell one much, and it certainly doesn't answer the question of whether there were or were not over-earnings. To answer that question in effect a "mini-rate case" must be conducted – because one doesn't know what the revenue requirement is until you do so. This is an impossible task to complete quarter after quarter after quarter. Consider just a couple of examples of key, complicated issues that would have to be resolved four times per year to *fairly* determine if in fact there were "over-earnings" that even in theory ought to require that the tracker be "turned off." In order to determine what a utility's regulated earned ROE (that is, a normalized ROE is for ratemaking purposes) is at a given moment, kilowatt-hour sales must be weather normalized. But weather normalization is a complex process that can't be done the day after the quarter ends. Data must be compiled on sales and on the weather, temperatures must be ranked, averaged and analyzed, and after many weeks, weather normalized sales will be determined (assuming there is agreement on the weather normalization methodology and results, which may or may not be the case). And at the end of a given quarter how do we know what a fair ROE is? As of the end of any given quarter what is an appropriate ROE is the function of many variables in the financial markets, including interest rates, dividend levels, growth rates, and other factors which, as the Commission is well aware, require extensive and complicated financial analyses from experts and that change over time. Many other examples could be cited, including the need to normalize Callaway outages and to account for one-time events (expense or revenue) as noted earlier.

Staff may argue that there is no "perfect" way to do this, and that this is why it is proposing to use the surveillance reports and that last-authorized ROE from this rate case. But this approach is tantamount to saying "it's too hard to do it right, so we'll just take what we all know is a flawed shot at it and hope for the best." Of course it's easy for the Staff to take such an approach. It is the Company that will bear the expected higher net transmission charges that under the Staff's approach it could not defer simply because in a given quarter the surveillance report showed an earned ROE higher than the last-authorized ROE.

The Commission has a policy decision to make here. The question is this: is it fair and appropriate for the Company to be exposed to net transmission charge increases expected to be, on average, 24% per year over just the next three years,[168] that it must pay in order to gain the benefits of MISO participation *for customers*, that despite MIEC's protestations it is obvious that it can't control to any meaningful degree, without affording the Company a regulatory mechanism – a transmission charge and revenue tracker – that will allow the Company to request

[168] Tr. p. 1362, l. 18-23.

and the Commission to consider recovery of the changes between rate cases?[169] And to put a finer point on it, is it fair and appropriate for the Commission to adopt an arbitrary and inaccurate measure of so-called "over-earnings" that in effect would act as a cap on the transmission charge increases the Company can even ask for in a future rate case, when the measure is inherently unreliable for the purpose the Staff is proposing to use it? We respectfully submit that the answer to those questions is "no."

ii. The Staff's proposal is also arbitrary and illogical.

Staff's proposed condition 6) suffers from other inherent flaws. Even if one accepted the premise that a quarterly surveillance report ought to be used to measure "over-earnings" and to then somehow limit deferrals in a transmission charge tracker, the manner in which the Staff is proposing to do so is arbitrary and illogical. That this is true is demonstrated by the evidentiary record in this case.

Exhibit 65 (reproduced below) depicts the hypothetical operation of Staff's proposed condition 6).

[169] A regulatory mechanism already exists – the FAC. This discussion is of course premised on a scenario where the Commission elects to exclude the transmission charges from the FAC.

12 mos. ending 7-31-12		ROE (%)	$$ of Return (in millions)	Net Cum. Transmission Cost Revenue Change	Allowed Deferral Staff Proposal
Base Cost in Trkr	25,000,000				
Base Rev in Trkr	26,000,000				
Base cost/mo	2,083,333				
Base rev/mo	2,166,667				
Period ending 3-31-13					
Tx. Costs	9,000,000		11		
Tx. Revenues	6,500,000				
Regulatory Asset				2,750,000	2,750,000
Period ending 6-30-13		10.2	0		
Tx. Costs	10,000,000				
Tx. Revenues	6,500,000				
Regulatory Asset	3,750,000			6,500,000	0
Period ending 9-30-13		10	-11		
Tx. Costs	12,000,000				
Tx. Revenues	6,500,000				
Regulatory Asset	5,750,000			12,250,000	5,750,000
Period ending 12-31-13		9.8			
Tx. Costs	13,000,000				
Tx. Revenues	6,500,000		-22		
Regulatory Asset	6,750,000			19,000,000	6,750,000
Total Over-Under Earnings for 12-month period when Reg. Asset/Liab. Arose			-22		
TOTAL Allowed Deferral Staff Proposal					15,250,000

FILED
October 22, 2012
Data Center
Missouri Public
Service Commission

UE Exhibit No. 65
Date 10/31/12 Reporter SB
File No. ER-2012-0166

While Mr. Oligschlaeger took issue with the realism of the hypothetical earned ROE figures on Exhibit 64, he agreed that the assumptions on Exhibit 65 were more realistic.[170] He also agreed that given that Exhibit 65 is a more realistic example it does accurately depict how his proposed condition 6) would work.[171] The bottom line is that Exhibit 65 shows the arbitrary and illogical nature of proposed condition 6). If, for example, the Company has surveillance reporting results that show an earned ROE higher than last authorized ROE (say early-on after this rate case is over when new rates take effect), but then has a series of surveillance reports where the ROE is lower such that over the entire period examined, the Company actually "under-earns" in total, the Company would lose the ability to ask for recovery of a portion of the

[170] Tr. p. 1337, l. 19 to p. 1338, l. 3; p. 1343, l. 3-5. While Exhibit 65 is one realistic scenario that could occur, there are obviously many, many others. The point is not if the hypothetical numbers are "right." The point is to show the mechanics of Mr. Oligschlaeger's approach and the illogical results it could lead to. Exhibit 65 does that.
[171] Tr. p. 1338, l. 18- 24.

transmission cost increases in a future case *even though its overall "under-earnings" were more than the increases in transmission costs.* On the hypothetical facts depicted on Exhibit 65, the Company "under-earned" according to the surveillance reports as compared to the last-authorized ROE by a total of $22 million during the 12-month period depicted thereon. However, because of the operation of the Staff's proposed condition, even though the net transmission costs increased less than the "under-earnings" – by $19 million during that same period – the Company not only is prohibited from deferring the $19 million, but in fact is only allowed to defer $15.25 million.

This is completely arbitrary and illogical.

IV. VOLUNTARY SEVERANCE PROGRAM COSTS

A. Background.

In late 2011, the Company took the extraordinary and prudent step of reducing its workforce by offering one-time lump sum severance payments to several hundred of its employees (and Ameren Services Company employees that provide services to the Company). Approximately 340 employees accepted the severance, with the vast majority of them leaving as of the end of 2011. The one-time costs, which are at issue in this case, totaled approximately $25.8 million. While there is some dispute about whether the cumulative payroll and benefit savings through the end of 2012 (or until January 2, 2013, when new rates are expected to take effect) equal or exceed the $25.8 million of one-time costs, the Company would agree that the cumulative payroll and benefit savings total nearly $25 million.[172]

The Company has proposed that one-third of these extraordinary one-time costs, approximately $8.6 million, be reflected in rates in this case ($25.8 million amortized over three

[172] The Company does not agree that *if* its rate base is lower because capital dollars are being invested at a slower pace due to there being fewer employees working on capital projects that the *lost return* is a "savings" to the Company, as Staff auditor Lisa Ferguson curiously contends. Approximately $900,000 of Ms. Ferguson's approximately $26 million of "savings" consists of this lost return. Tr. p. 1660, l. 18-19; p. 1681, l. 2-9.

years). It is undisputed that the payroll and benefit costs reflected in the revenue requirement in this case will be approximately $24 million lower than had the Company not spent that $25.8 million to induce those 340 employees to leave. It is undisputed that this $24 million in lower revenue requirement will produce rates that are $24 million lower year after year,[173] unless and until another rate case is filed and new rates again take effect, and even then the rates may very well be lower unless the Company were to increase its workforce by the equivalent of those 340 employees.[174] There is no indication that anyone expects the Company to do so. What this means is that customer rates set in this case would be higher by approximately $8.6 million if the one-time severance costs are amortized, but on a net basis, payroll and benefit costs will be lower by more than $15 million annually than they would have been without the severance program.

B. The Commission should make a policy decision that allows amortization of these extraordinary costs over a period of three years.

On some things the Commission's discretion is limited. The Commission does not have discretion to make decisions not supported by competent and substantial evidence of record; the Commission cannot make decisions that do not follow the law. But on some things the Commission has very broad discretion. The severance issue in this case is one of those issues.

The facts on this issue are largely undisputed. The question for the Commission is: on this record; given Ameren Missouri's circumstances, over the past few years and currently, is it the better policy to allow the Company to gain a benefit – a benefit regulatory lag in this instance would give the Company if the Commission rules in the Company's favor on this issue – or is it better policy to adopt the Staff's and MIEC's view that the Company "already recovered" the severance costs? We submit that the former is the better policy.

[173] Tr. p. 1667, l. 7-13.
[174] Tr. p. 1667, l.14 to p. 1668, l. 5.

No one claims the program was imprudent. No one claims it will not benefit customers. No one claims the Company had to sever these 340 employees. No matter how the other witnesses in this case try to couch their arguments, the mathematics tell us that the Company took a charge to earnings of nearly $26 million in order to induce these employees to leave, and that it is true the Company's earnings were benefitted by a roughly like amount. Minus approximately $26 million plus a positive approximately $26 million = zero benefit.[175]

Because of the extraordinary nature of these costs and their magnitude, and because the Company did not have to implement the program at all, the Company indeed is asking the Commission to allow it to benefit from regulatory lag in this instance. Its "benefit" will only be partial and temporary. Others couch the payroll and benefit savings produced by the program as "recovery" of those costs. While that is not literally true (customers do not "pay for" particular costs; to the contrary, they pay for service), if one wants to look at it that way one must look at *overall* payroll and benefit costs, not just those associated with these 340 severed employees. From March 1, 2009 (the effective date of new rates in the ER-2008-0318 rate case) until the true-up cutoff date in this case, the Company's rates assumed payroll and benefit cost levels (less incentive compensation cost that the Company has not asked for in rates) that were approximately $51 million *less* than the payroll and benefit costs actually incurred.[176] Consequently, looking at this as a "cost recovery" issue will certainly not mean that the Company will be made whole for payroll and benefit cost "under-recoveries" in the past, even if

---

[175] Ms. Ferguson's claim that there may be pension and OPEB savings not accounted for is wrong – the Company has and has had for many years a pension and OPEB tracker, implemented by agreement. Under that tracker the Company is committed to including any regulatory asset or regulatory asset balance that arises because of the tracker in its rate filings. The pension and OPEB tracker balance is being trued-up in this case. To the extent pension and OPEB expenses are lower because these 340 employees left, those lower expenses are *already reflected* in the lower pension/OPEB expenses used to set rates in this case, and they are *already reflected* in the regulatory asset/liability arising from the tracker. Surely this is the case, or else the Staff would have objected to the Company' true-up filing for having "left out" lower pension/OPEB costs. Because of how the tracker operates it is customers that get 100% of the benefit of lower pension/OPEB costs associated with these employees.
[176] Ex. 12, p. 17. l. 5-14.

the Company were able to "retain" nearly $25 million of lower payroll and benefit savings through the time new rates take effect in this case as a result of the departure of those 340 employees.

In summary, allowing the Company to amortize the severance costs will allow the Company to temporarily gain a benefit from regulatory lag. Customers will undoubtedly gain a greater benefit through ongoing payroll and benefit cost savings. This is a win-win, and it is a win-win this Commission has full power, authority, and discretion to implement. The Company urges the Commission to do so.

V. STORM COSTS AND STORM COST AND REVENUE TRACKER

In addition to adopting Plant-in-Service Accounting, another step Ameren Missouri requests the Commission take in this case in order to mitigate excessive regulatory lag is approval of a two-way tracking mechanism for major storm restoration costs. As an offset to expenditures, the Company agrees it is appropriate to include in the tracker any storm assistance revenues that it receives for the mutual aid work it may provide during the year. Given the importance of restoring power after a storm and the volatility of the cost to do so, this request is both reasonable and appropriate.

Restoring the service of customers after a storm has been given the highest priority by Ameren Missouri because the Company's customers have very high expectations for its storm restoration efforts. The Company has worked hard to improve its storm restoration processes over the past several years (Ameren Missouri witness and Vice President of Energy Delivery Dave Wakeman's direct testimony details many of the improvements), and it has been successful with these improvements – for example, allowing the Company to successfully restore service to Lambert Airport just 24 hours after it had been devastated by a tornado.[177]

There is no dispute that Ameren Missouri must restore service to its customers after a storm.[178] There is no dispute that the Commission cannot know what the Company will be required to spend on storm restoration each year.[179] Given those facts, implementing a storm restoration cost tracker is the appropriate mechanism that will enable the Commission to ensure customers pay no more and no less than the cost incurred by the Company in restoring service after major storms.

Staff opposes this request not because the Staff, in general, is opposed to full (eventually) recovery of storm costs, but because, they argue, the Company has generally recovered these costs either through an amortization when the cost falls within a rate case test year or by requesting an Accounting Authority Order (AAO) to allow the Company to defer those costs until its next rate case. The balance in the AAO is then amortized over some number of years. The problem is that the Staff's approach is flawed, and in fact proves the appropriateness of implementing a tracker instead of relying on piecemeal amortizations as has been done in the recent past.

Starting with the test year argument - by definition, not every major storm will fall into a test year. Sometimes they do, which is why the Company currently has four storm restoration cost amortizations currently on its books.[180] The mere fact that four different amortizations exist does more to justify the use of a permanent tracker than to prove Staff witness Boateng's argument against it. If Mr. Boateng is correct, then a tracker mechanism is merely formalizing what is already occurring. The question must be asked: Why are we using piecemeal

[177] Ex. 30, p. 8, l. 5-10 (Wakeman direct).
[178] Ex. 30, p. 2, l. 19-23.
[179] Tr. p. 1901, l. 21-22.
[180] Ex. 32, p. 3, l. 1-4 (Wakeman Surrebuttal).

amortizations to address this issue when a two-way storm restoration cost tracker would accomplish the same thing in a more logical manner, in a manner that is less administratively burdensome, and in a manner that works both ways – for customers and for the utility?

Staff's suggestion that the Company simply file for an AAO (if a storm happens to fall outside a test year) is also is not a workable solution, that is if it is to be limited as Mr. Boateng suggests. To this point, Mr. Boateng admitted that Staff would only support an AAO request when the cost of the storm restoration exceeded 5% of the Company's net income,[181] and also admitted that he hadn't seen any storm restoration cost rise to the 5% level.[182] But if the approach is to promote regulatory treatment that does not put the Company at risk for failing to recover its storm restoration costs – and the Commission has suggested that it believes the Company should recover those costs – then Mr. Boateng's alternative solution is not really a solution at all. Further, even if an AAO were available in each case, we again ask: why impose the administrative burden of filing for an AAO and then deferring the costs and then amortizing those costs separately in a future rate case if one can simply create a two-way storm restoration cost tracker to accomplish the same thing?[183]

Moreover, if the base level of storm restoration costs used to set rates is greater than the actual level of expense incurred, without a tracker there will be no deferral of the underage to a regulatory liability, and thus no opportunity for an amortization of funds back to customers in a later rate case.

The establishment of a two-way storm cost restoration tracker is a regulatory framework improvement which is within the authority of the Commission. Storm restoration costs are particularly appropriate for a tracker – they are outside of the control of Ameren Missouri, they

[181] Tr. p. 1919, l. 13 - p. 1920, l. 19.
[182] Tr. p. 1920, l. 20-25.
[183] The MIEC's witness on this issue, Greg Meyer, also points to the AAO process in his opposition to the storm cost tracker.

are unpredictable, and they can be quite large. A two-way storm restoration cost tracker is a mechanism designed to balance the interests of the Company with its customers. It provides a means by which the Commission can make sure that customers will pay no more and no less than the amount the Company spends on storm restoration work, and it removes from the storm restoration response equation the concern the Company could have if it is faced with responding to a storm with uncertainty about how its storm response costs may be treated in future rate cases. Removing that concern creates a powerful incentive for the Company to continue to do what it has been doing: aggressively responding to storms.

For these reasons, the Commission should authorize the establishment of a two-way storm restoration cost tracker.

The next question is what base amount should be established for this tracker. Ameren Missouri has accepted the recommendation of Staff to use a five-year average of storm restoration costs, which would mean that $6.8 million should be included in the Company's revenue requirement set in this case.[184]

The final question to be answered is whether the base in the tracker should include some sum for storm assistance revenues. These are revenues paid by other utilities to Ameren Missouri because Ameren Missouri has sent employees to help with restoration work after a major storm. This is part of the mutual assistance agreement that the Company has with other utilities.[185] There is no consistency as to how often Ameren Missouri provides assistance under the mutual assistance agreement. In fact, there is tremendous variation.

For example, there were no instances where personnel were sent to aid other utilities in 2007, 2009 or 2010. In contrast, 2005 and 2011 were unusually active, with three instances in

[184] Tr. p. 1916, l. 16-21. This is the five-year average, based upon true-up numbers.
[185] Ex. 31, p. 5, l. 16-23 (Wakeman Rebuttal).

2005 and four instances in 2011, which means that more than half of the eleven instances of providing aid to other utilities occurred in just two years.[186] Staff and MIEC propose dealing with that variation by using a simple average over the past six years. While that may be a traditional approach to dealing with a cost that varies, it is inappropriate for this particular revenue stream, which is extremely variable, causing a simple average to result in a grossly overstated base.

This is because the simple average is pushed higher due to *just one year* where there were abnormally high revenues. By including that one year in the calculation of the average (producing a simple average of $581,189),[187] it creates an extremely high likelihood that Ameren Missouri will almost never actually "earn" that level of revenue. This was aptly demonstrated at the hearing, during the questioning of Staff witness John Cassidy.

> ***Q. Can you tell me, did the company receive storm assistance revenues equal to or more than $581,000 in 2007?***
> *A. During calendar 2007, it received less than that amount.*
>
> ***Q. In fact, there was none, correct?***
> *A. That's correct.*
>
> ***Q. Okay. How about for 2008, did the company receive equal to or more than 581,000?***
> *A. It received something less than that amount.*
>
> ***Q. Okay. And, in fact, it was 265,000, approximately?***
> *A. Approximately, yes.*
>
> ***Q. Okay. Did the company receive 581,000 or more in 2009?***
> *A. It did not. It received zero revenue.*
>
> ***Q. Same question for 2010.***
> *A. Same question, same answer.*
>
> ***Q. And that's because the company received no revenue for 2010 –***
> *A. That's correct.*

[186] Ex. 31, p. 6, l. 6-10.
[187] Tr. p. 1928, l. 20-21.

Q. ***– for that? All right. How about for 2011?***
A. *In 2011, it received more.*

Q. ***And how much did it receive in 2011? …***
A. *…Approximately 2.6 million.*

Q. ***Okay and then for 2012, do you know that amount?***
A. *In 2012, it was approximately $669,000.*

Q. ***All right. So if the Commission set rates in this case crediting customers $581,000 for storm assistance revenues, the company would not have met, have achieved that level or earned that level of revenue in 2007, 2008, 2009 or 2010, right?***
A. *That's correct.*[188]

In fact, if Staff were to recognize 2011 as the outlier that it is and would calculate the average without that year, the average drops from $581,000 to $52,000.[189] Again, this demonstrates that the proposed average from Staff (and MIEC, which advocates for an even higher number) is too high and should be rejected.

The better way to resolve this issue is to not include any revenue in the storm restoration cost tracker base and instead order the Company to credit any storm assistance revenue against the expenses recorded in the tracker. This solution ensures customers are credited with all storm assistance revenues received without imposing upon the Company the risk of it not being able to "earn" the normalized (but in fact abnormal) level of revenue produced by the simple average the Staff has calculated. This proposal makes sense for all involved and should be adopted by the Commission.

VI. INCOME TAX

There are two separate income tax issues in this case – (1) MIEC witness Michael Brosch's attempt to impute into Ameren Missouri's cost of service Ameren Corporation's tax deduction resulting from its payment of dividends on Ameren Corporation stock held in the

[188] Tr. p. 1931, l. 14 - p. 1933, l. 2.
[189] Tr. p. 1934, l. 18-22.

Employee Stock Ownership Plan (ESOP), and (2) Mr. Brosch's attempt to include Accumulated Deferred Income Taxes (ADIT) associated with Construction Work in Progress (CWIP) in the rate base calculation, even though the CWIP to which this ADIT relates is, itself, excluded from rate base. We will address each issue separately.

A. The ESOP dividends paid deduction.

Ameren Corporation operates a 401(k) plan that is available to the employees of all of its subsidiaries, including Ameren Missouri. Under the plan, every year each eligible employee has the discretion to have a designated percentage of his or her salary, up to a limit, withheld and contributed to the plan. The employee's employer (e.g. Ameren Missouri) will then match a percentage of that contribution, also up to a limit. The employee has the right to select investments for these 401(k) contributions from among 21 investment funds. One of these investment options is Ameren Corporation common stock, provided through an ESOP. Thus, the employees can invest none, some, or all of their contributions to the 401(k) plan in Ameren Corporation stock. The employee can change his or her investment decision periodically.[190]

As the Commission is no doubt aware, 401(k) plans provide tax benefits to both employees and employers. From the employee's perspective, income taxes on the employee's contributions and any employer matched amounts, plus any earnings on those amounts, are deferred until funds are withdrawn, typically after the employee retires. At the same time, the employer (Ameren Missouri here) gets a tax deduction for all of the compensation paid to its employee, including both the portion of the employee's compensation that he or she contributes to the 401(k) plan and any matching amounts contributed to that plan by the employer. The

[190] Ex. 10, p. 4, l. 9-23 (Warren Rebuttal).

benefits of the tax deductions associated with ***all*** compensation paid by Ameren Missouri to its employees are fully reflected in Ameren Missouri's rates.[191]

However, there is an additional tax deduction that Ameren Corporation receives whenever it pays dividends on any Ameren Corporation stock that happens to be held in the ESOP account of any employee of any Ameren Group company – including Ameren Missouri. It is this "ESOP dividends paid" deduction that *Ameren Corporation* receives that is at issue in this case.

Contrary to MIEC witness Brosch's assertions, Ameren Missouri customers have absolutely no entitlement to any credit for Ameren Corporation's ESOP dividends paid deduction. Ameren Corporation pays dividends out of its after-tax profits that belong to it and it alone, and Ameren Missouri customers have no claim on any benefits derived from that ownership. Ameren Corporation, like any holding company that is the shareholder in various subsidiaries, obtains the funds it uses to pay its dividends from numerous sources. These sources include dividends paid to it by all of its subsidiaries – its gas and electric subsidiary in Illinois and its unregulated affiliate, as well as Ameren Missouri. Ameren Corporation also has the discretion to borrow money to pay its dividends. So the money used to pay Ameren Corporation dividends doesn't necessarily have any relationship at all to Ameren Missouri or its operations.[192]

Nonetheless, even if every dollar Ameren Corporation paid to its shareholders came from dividends it received from Ameren Missouri, Ameren Missouri's customers would still have no entitlement whatsoever to credit for this Ameren Corporation tax deduction. The reason is that the money Ameren Corporation uses to pay the dividend belongs to Ameren Corporation, not to

---

[191] *Id.*, p. 5, l. 1 - p. 6, 1. 21.
[192] Ex. 10, p. 8, l. 1-10.

Ameren Missouri customers, and all of the incidents of ownership of that money, including tax benefits that might be derived from its disposition, are owned by Ameren Corporation, not Ameren Missouri customers.

On this point, the law in Missouri could not be clearer. The Missouri Supreme Court has stated: "When the established rate of a utility has been followed, the amount so collected becomes the property of the utility, of which it cannot be deprived without violating the due process provisions of the state and federal constitutions." ***Straube v. Bowling Green Gas Co.***, 227 S.W. 2d 666 (Mo. 1950). And the Court in that case also made it clear that equitable considerations (which Mr. Brosch cites) cannot be relied upon to deprive a utility of its lawful property: "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law***So wherever the rights or the situation of the parties are clearly defined and established by law, whether it be common or statutory, equity has no power to change or unsettle those rights or that situation." *Id.* (citations omitted). If the Commission cannot take the money of the *utility it regulates* once the utility has earned it, it certainly cannot take those earnings from a holding company *it does not regulate* after they have been dividended by the utility to its parent.

But that is precisely what Mr. Brosch is suggesting that the Commission should do. He proposes that the Commission essentially take money that has already been earned by Ameren Corporation that may be, in whole or in part, derived from money that has already been earned by Ameren Missouri (or some other subsidiary of Ameren Corporation), and give it to Ameren Missouri's ratepayers. By his logic, if Ameren Corporation had, instead of paying a dividend, used its after-tax profits to purchase tax-free municipal bonds, he would contend that Ameren Missouri customers should get that tax benefit as well because some of the money used to purchase the bonds may have come from dividends paid on Ameren Corporation's shares in

Ameren Missouri, which dividends were funded from Ameren Missouri's earnings. But that position would be completely unsupportable as well. Again: once earned, money belongs to the company that earned the money, not to Ameren Missouri customers. Ameren Corporation's "dividends paid" deduction derives from its decision to dispose of its after-tax profits, which should have absolutely no impact on Ameren Missouri customers.

Mr. Brosch's position is analogous to the State of Missouri claiming that taxpayers are entitled to the mortgage interest tax deduction claimed by state employees because their taxpayer-supplied salaries were used to make their mortgage payments on their homes. Such a position would obviously be ridiculous. State employees don't necessarily pay their mortgages using their state salaries. Sometimes they use their spouse's salary, or investment income, or savings from a previous job or an inheritance to pay their mortgage. But even assuming that 100 percent of an employee's mortgage payments were made from the employee's state salary, taxpayers would still have no legal or equitable claim to the employee's mortgage interest tax deduction. That is because once earned, the salary becomes the property of the employee and taxpayers have no right to any tax benefits which might be gained through the employee's disposition of those funds.

Mr. Brosch's proposal to seize Ameren Corporation's "dividends paid" tax deduction and hand it to Ameren Missouri's customers is not supported by legal or equitable considerations, and must be rejected.

B. ADIT associated with CWIP.

Mr. Brosch also argues that Accumulated Deferred Income Taxes derived from Construction Work in Progress should be reflected as a deduction to Ameren Missouri's rate base. Ameren Missouri disagrees. Since Missouri law precludes the inclusion of the Company's investment in CWIP in rate base, it would be inappropriate, and arguably unlawful, to adjust rate base to account for the tax benefits stemming from that same investment.

Since CWIP cannot be included in rates, today's customers are paying none of the costs associated with plant under construction. Instead, the Company itself has to bear the full cost of that investment until (a) the plant is fully operational and used for service, and (b) the Company can file another rate case and have the new plant recognized in rates, months or sometimes years later. The Company has repeatedly pointed out that this framework, and the regulatory lag that results, makes it effectively impossible for the Company to recover the full cost of its capital investments and severely undermines its ability to have a reasonable opportunity to earn a fair return.

Mr. Brosch's proposal to credit the tax benefits derived from CWIP to customers would make this situation even worse for the Company. Moreover, it would unfairly provide the tax benefits associated with new construction to customers who are completely free from paying any of the costs of that construction. Proposition 1 promised that Missouri customers would not have to pay the cost of any electric plant until it was "fully operational and used for service." But if customers are protected from bearing the costs of CWIP, they shouldn't be given the tax benefits resulting from the Company's investment in CWIP.

Once the plant goes into service, then the costs of CWIP and the tax benefits derived from CWIP can both be reflected in rate base. Then customers will bear the costs and receive the burdens associated with that investment. Until that time, neither the costs nor the benefits of CWIP should be reflected in rates.

VII. PROPERTY TAXES

Ameren Missouri proposes that the Commission adopt one of two alternative methods to determine the property tax expense that should be included in the revenue requirement as a proxy for the level the Company will incur during the period rates set in this case are in effect. Each of the Company's calculations of this amount are based on the actual assessed value of Ameren Missouri's property that the State Tax Commission certified on June 28, 2012. That valuation will be used to determine the amount of property taxes the Company will be required to pay for Tax Year 2012, which Ameren Missouri will pay the last week in December 2012,[193] just before the January 2, 2013 operation of law date in this case. One alternative calculation applies the Company's actual tax rates for Tax Year 2011 to the assessed valuation for Tax Year 2012, which yields property tax expense of $128,254,011.[194] The other alternative applies an estimated tax rate, which is based on a historical average of actual increases in tax rates for Tax Years 2009 through 2011, to the assessed valuation for Tax Year 2012, which yields property tax expense of $130,382,527.[195]

The Staff and the MIEC each contend that neither of the alternative property tax calculations proposed by Ameren Missouri is "known and measureable."[196] Both parties argue that the only calculation of property tax expense that satisfies the known and measureable standard is the actual property tax expense that the Company paid for Tax Year 2011. Consequently, both parties propose that the amount of property tax expense the Commission includes in the revenue requirement used to set rates in this case should be limited to the amount of Ameren Missouri's actual property tax expense for Tax Year 2011. The Staff calculated that amount to be $127.2 million,[197] while the MIEC's calculation is $124.7 million.[198]

There are numerous flaws in the arguments made by the Staff and the MIEC in support of their property tax expense calculation. First and foremost among those is the fact that both

---

[193] Tr. p. 1012, l. 5-11.
[194] Ex. 14, p. 6, l. 17-20 (Cudney Rebuttal).
[195] *Id.*, l. 14-16.
[196] Ex. 218, p. 10, l. 3-4 (Carle Surrebuttal); *see* Ex. 512, p. 15, l. 2-11 (Meyer Surrebuttal).
[197] Ex. 218, p. 8, l. 20-22 (Carle Surrebuttal).
[198] Ex. 512, p. 15, l. 15 (Meyer Surrebuttal).

parties misinterpret and misapply past Commission decisions as to what standards must be met in order for an estimate of property tax expense to be considered known and measureable. In her surrebuttal testimony, Staff's witness Erin Carle cites a 2001 *Report and Order* in a St. Louis County Water Company rate case (Case No. WR-2000-844) as support for Staff's position on this issue. But the most relevant part of the excerpt from the order that Ms. Carle cites in her testimony actually supports Ameren Missouri's position. The Commission's *Report and Order* in that case states, in relevant part, as follows:

> 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 is known and measureable. *A cost increase is "known" if it is certain to occur, and it is "measureable" if the Commission is able to determine the amount of the increase with reasonable precision*.[199] (emphasis added)

Based on that order, an expense is known and measureable if it relates to an event that is certain to occur and can be estimated with reasonable precision.

More recently, in the portion of its *Report and Order* in Ameren Missouri's last rate case (Case No. ER-2011-0028) dealing with property tax expense, the Commission stated the following regarding what estimates qualify as known and measureable: "As a general principle, expenses must be known and measurable before a utility will be allowed to recover those expenses in rates. *That does not mean an expense must be known precisely to be included in rates*." (emphasis added)[200]

Taken together, those two Commission decisions establish that as a matter of regulatory policy in Missouri an expense is known and measureable – and can be included in the revenue

[199] *Report and Order,* Case No. WR-2000-844, 10 Mo.P.S.C.3d 259 (2001).
[200] *Report and Order,* Case No. ER-2011-0028, p. 107-108.

requirement used to set rates – even if the amount of that expense is not "known precisely." Instead, all that is required is that the amount can be estimated "with reasonable precision."

Each of Ameren Missouri's alternative estimates of property tax expense qualifies under this standard. The evidence presented in this case conclusively establishes that only two things must happen in order for the Company to determine its property tax expense for Tax Year 2012. First, the State Tax Commission must determine the assessed value of Ameren Missouri's property. Second, the various taxing authorities must set the composite tax rate.[201]

The evidence conclusively shows that the first of those two things has already occurred. Company witness Chris Cudney testified that the State Tax Commission certified the valuation of Ameren Missouri's property June of this year[202] – before the end of the true-up period in this case – and Staff's witness confirmed the accuracy of Ms. Cudney's testimony.[203] Consequently, both witnesses agreed that the assessed value that will be used to calculate Ameren Missouri's 2012 property taxes is unquestionably both known and measureable.[204]

Because of the budgeting and rate setting process followed by the various taxing authorities, the composite property tax rate that will be used for Tax Year 2012 is not yet known and will not be known until sometime in the September-December 2012 timeframe.[205] But that doesn't mean that an estimate of the composite tax rate for Tax Year 2012 can't reasonably be determined.

Ms. Cudney testified that tax rates in the recent past have increased year-to-year. For example, between 2008 and 2009, Ameren Missouri's composite property tax rate increased six cents per $100 of assessed value; between 2009 and 2010, it increased eleven cents; and between

[201] Ex. 14, p. 2, l. 20 - p. 3, l. 12.
[202] Tr. p. 1015, l. 12-25.
[203] Tr. p. 1021, l. 24 - p. 1022, l. 4.
[204] Tr. p. 1015, l. 22-25; *see* Tr. p. 1023, l. 18-22.
[205] Ex. 14, p. 3, l. 13-21.

2010 and 2011, it increased an additional seventeen cents.[206] Ms. Cudney further testified that she expects this trend of increases in the Company's tax rate will continue into the near-term future because the weakened economy has forced the various taxing authorities to look to entities such as utilities to generate needed tax revenue.[207] Therefore, although she cannot know precisely what the composite property tax rate will be for Tax Year 2012, she can estimate that rate with reasonable precision based on past tax rate increases. Using a three-year arithmetic average of tax rate increases since 2008, Ms. Cudney estimated a composite tax rate increase of eleven cents per $100 of assessed valuation for Tax Year 2012 over Tax Year 2011. She characterized her estimate as conservative because Ameren Missouri expects the actual increase in its tax rate to be closer to the seventeen cent increase it experienced between 2010 and 2011.[208]

Her alternative estimate – which was based on the property tax rates used for Tax Year 2011 – is even more conservative because it assumes no increase in tax rates between 2011 and 2012. Recent history strongly suggests such a result is highly unlikely.

Because each of the tax rate estimates developed by Ms. Cudney, which the Company applied to the assessed value of its property for Tax Year 2012 to calculate its two alternative estimates of 2012 property tax expense are reasonably precise, both estimates satisfy the Commission's known and measureable standard. Either estimate can, therefore, be used for ratemaking purposes in this case.

But beyond the known and measureable standard, there is another ratemaking principle that the Commission also must observe in determining the appropriate amount of property tax expense to be included in the revenue requirement in this case. The principle is that expense

[206] *Id.*, p. 5, l. 19 to p. 6, l. 4.
[207] *Id.*, p. 3, l. 22 to p. 5, l. 15.
[208] *Id*. p. 5, l. 19 to p. 6, l. 13.

amounts used for ratemaking should approximate as closely as possible the operating conditions that Ameren Missouri will experience during the period rates set in this case are in effect. But only the Company's estimates of property tax expense satisfy both that principle and the known and measureable standard.

As explained earlier in this section, each of Ameren Missouri's property tax expense estimates is calculated using the assessed value that will be used to determine 2012 property tax expense, which is based on the market value of that property as of January 1, 2012. In contrast, 2011 property taxes, which is the basis for Staff's and MIEC's estimate, uses an assessed value that is based on the market value of Ameren Missouri's property as of January 1, 2011 – a date that is more than two years removed from the operation of law date for rates set in this case. Moreover, because the Company paid its 2011 property taxes in December of that year, that expense amount will be more than a year old by the time rates set in this case go into effect. Since it paid its 2011 property taxes, Ameren Missouri has been accruing property tax expense – and recording those accruals on its books – based on its estimate of its property tax liability for Tax Year 2012.[209] Consequently, those estimated and accrued amounts – which are similar in amount to the two alternative estimates sponsored by Ms. Cudney – approximate more closely the estimates proposed by Staff and MIEC both the Company's current property tax expense and also its tax expense during the period rates set in this case are in effect.

VIII. 2010 PROPERTY TAX REFUND

Through its testimony in Ameren Missouri's last general rate case, the Staff alerted the Commission to the fact that the Company was appealing its property tax payment for Tax Year 2010. Ameren Missouri agreed to keep track of any refund it received, but because the outcome of the appeal was not yet known the Commission concluded in its *Report and Order* in that case

[209] Tr. p. 1021, l. 11-16.

that questions regarding the disposition of any tax refund must be deferred to a future rate case.[210] That order expressed the Commission's findings and conclusions regarding issues related to the tax appeal as follows:

> The only question before the Commission at this time is whether to order Ameren Missouri in this case to return any tax refund it may receive to its customers. There is no disagreement about Ameren Missouri's duty to track that refund. *If Ameren Missouri does receive a tax refund, then the Commission would certainly expect that the company would return that refund to its customers who are ultimately paying the tax bill. It is hard to imagine any circumstance in which such a refund would not be ordered.* (emphasis added)

The statements emphasized in the excerpt quoted above are significant to the current case for two reasons. First, those statements form the *sole* basis for the Staff's and the MIEC's proposals to require Ameren Missouri to return to customers the full amount of the $2.9 million property tax refund the Company received as a result of its appeal.[211] Second, the statements show that the Commission prejudged the issue of whether Ameren Missouri should return to its customers the property tax refund the Company received, and that the Commission based its prejudgment on two assumptions – one explicit and one implicit – which are either demonstrably false or otherwise unfounded.

Regarding the explicit assumption – that Ameren Missouri's customers paid the full amount of the Company's 2010 property tax bill – the evidence in this case conclusively shows that assumption is false. Because of the interplay between the way Ameren Missouri's property tax liability for each Tax Year is determined by the various taxing authorities and paid by the Company and the way the Commission sets Ameren Missouri rates, the Company's actual property tax expense is almost never reflected in the rates paid by customers.

[210] *Report and Order,* Case No. ER-2011-0028, p. 110.
[211] *See* Ex. 218, p. 6, l. 17 to p. 7, l. 21; Ex. 512, p. 18, l. 18 - p. 19, l. 20.

As described by Ameren Missouri's witness Chris Cudney, the process for determining the Company's property tax liability begins when the State Tax Commission determines the fair market value of Ameren Missouri's taxable property as of January 1st of each Tax Year. That process takes approximately six months and ends when the Tax Commission certifies its valuation in late June.[212]

Using the Tax Commission's certified valuation, the various taxing jurisdictions begin their respective budgeting processes in August of each Tax Year. Upon completion of the budgeting process, each taxing jurisdiction files its tax rate for the Tax Year with the State Auditor's office sometime between September and December. Following the filing of those tax rates, Ameren Missouri is able to finally determine how much its property tax expense will be for that Tax Year.[213] Sometime in the last week of December the Company pays the tax bills issued by the various taxing jurisdictions for the Tax Year.[214]

Although Ameren Missouri's property tax expense changes annually with the payment of its tax bills, the rates the Company charges for the electric service do not. Consequently, the amount of property tax expense the Company actually incurs is only infrequently reflected in the amount of property tax expense that is included in customer rates. For example, the rates set in the Company's last general rate case (Case No. ER-2011-0028) were based on adjusted property tax expense for Tax Year 2011. But those rates will be in effect into early 2013 – after Ameren Missouri pays its property taxes for Tax Year 2012. This continual mismatch between actual property tax expense and property tax expense included in rates is due primarily to three factors. First, it takes a large utility like Ameren Missouri several months to prepare a rate case filing. Second, under the process the Commission routinely utilizes for major rate cases, a utility is

[212] Ex. 14, p. 3, l. 1-12.
[213] *Id.*., l. 13-21.
[214] Tr. p. 985, l. 25 - p. 986, l. 7.

unable to implement new rates until eleven months after it files a rate case. Finally, because Ameren Missouri does not have a formal "tracker" in place for property tax expense, there is no mechanism to defer on its books increases in property tax expenses as compared to the sum assumed when rates were last set, or decreases (or refunds) that might bring actual payments to a level below the sum assumed when rates were last set. How these three factors combine to create a lack of synchronization between Ameren Missouri's actual property tax expense and the amount of property tax expense included in customer rates is graphically illustrated by Exhibit 55, which is reproduced below, and in testimony regarding that exhibit provided by Company witness Gary Weiss.

PROPERTY TAX COLLECTED THROUGH RATES vs. ACTUAL TAX EXPENSE

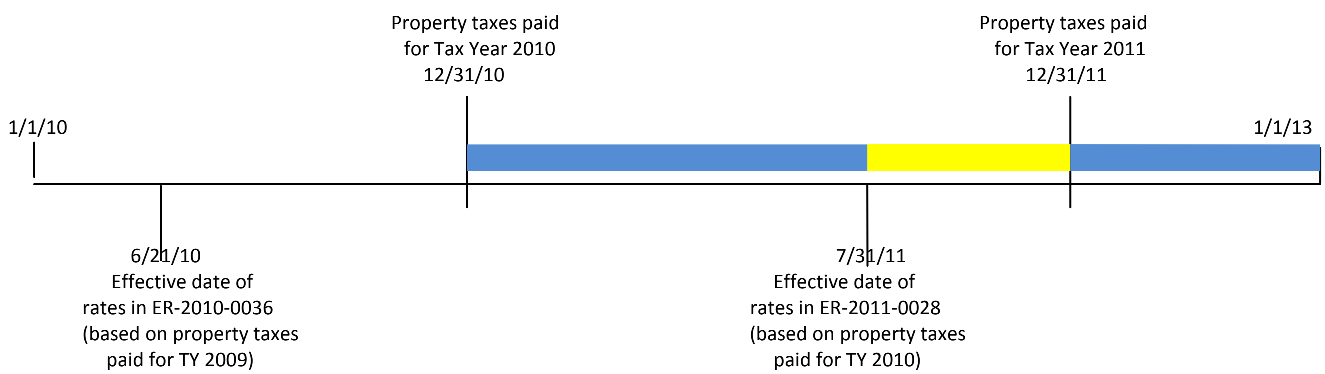


Exhibit 55 shows that from the effective date of rates set in Case No. ER-2010-0036 (June 21, 2010) until the effective date of rates set in Case No. ER-2011-0028 (July 31, 2011), customers paid rates that were based on Ameren Missouri's actual property tax expense for Tax Year 2009.[215] But on or about December 31, 2010, the Company paid its property taxes for Tax Year 2010, and even though actual property tax expense for Tax Year 2010 was approximately $9 million greater than for Tax Year 2009, Ameren Missouri did not implement new rates reflecting

[215] Tr. p. 985, l. 8-11.

that increase until July 31, 2011.[216] Consequently, throughout the period represented by the initial blue line on Exhibit 55, the Company's actual property tax expense was significantly greater than the amount of property expense included in rates.

The first blue line on Exhibit 55 clearly shows that through the first seven months of 2011 – the period immediately following the payment of the Company's property tax bills for Tax Year 2010 – Ameren Missouri's customers ***did not*** pay rates based on 2010 property tax expense. Instead, because customer rates set in Case No. ER-2010-0036 were based on 2009 property tax expense, during that seven-month period the rates paid by Ameren Missouri's customers reflected approximately $5.25 million less than the Company actually incurred in tax expense.[217] Rates set in Case No. ER-2011-0028, which were based on 2010 property tax expense, took effect July 31, 2011, thereby briefly synchronizing Ameren Missouri's actual property tax expense with the amount included in rates (the period shown in yellow on Exhibit 55), but that synchronization was short-lived because five months later the Company paid its property tax bill for Tax Year 2011 without any coincident adjustment in customer rates. That the period during which the property tax expense used to set rates in Case No. ER-2011-0028 does not match Ameren Missouri's actual, 2011 property tax expense is shown by the second blue line on Exhibit 55.

The lack of synchronization between the amount of property taxes the Company actually paid and the amount included in rates could have been avoided if a property tax tracker had been implemented in either Case No. ER-2010-0036 or Case No. ER-2011-0028. But that didn't happen. And it is important to note that a formal tracker mechanism for property taxes differs significantly from Ameren Missouri's promise to simply keep track of any refund it received as a

[216] Tr. p. 986, l. 23 - p. 987, l.8.
[217] This calculation is based on 9/12ths of the approximately $9 million difference between property taxes paid for Tax Years 2009 and 2010, exclusive of the refunded amount. Taking into account the refund, the difference would be approximately $3.56 million.

result of the 2010 tax appeal. As the Commission is well aware from its approval of formal trackers for Vegetation Management and OPEBs, formal tracker mechanisms require utilities to record differences between actual expenses and the amount of expense included in rates as either regulatory liabilities (when incurred expenses are less than the amount included in rates) or regulatory assets (when incurred expenses are greater than the amount included in rates). But the Commission's *Report and Order* in Case No. ER-2011-0028 imposed no such requirements or formalities. Consequently, Ameren Missouri did nothing more than keep track of the refund so that it could be identified in the audit conducted in the current rate case.

But beyond those formal requirements, tracker mechanisms are intended to benefit both utilities and their customers by allowing the Commission to consider the deferred sums that are tracked in a future rate case, with the effect being that the Commission has the ability to ultimately decide that only actual expenses are reflected in rates: no more, but also no less. The proposed treatment of the 2010 property tax refund that the Commission suggested in its *Report and Order* in Case No. ER-2011-0028 and that Staff and MIEC now advocate in the current case, lacks that balance. Under those positions, customers would receive all the benefits of any reductions to tax expense that result from events such as Ameren Missouri's successful tax appeal. The Company, however, would be denied similar protection from events that produce an opposite result, such as the annual changes in property tax expense that occur each December when new tax bills are paid. Put another way, without the establishment of a tracker that authorizes the deferral of such sums on its books, if the Company's property tax expense turns out to be higher than assumed when rates were set (as was the case during the first seven months of 2011)), then the Company will simply bear the higher costs due to regulatory lag. Conversely, if the actual expense turns out to be lower (as was the case for property tax expense used to set rates in Case No. ER-2011-0028), the Company may benefit from regulatory lag. That is precisely how the Staff and the MIEC, whenever they oppose trackers (e.g., the transmission charge/revenue tracker (the Staff and the MIEC) and the storm cost restoration tracker (the MIEC)), say the system is supposed to work. But in this instance, when regulatory lag works against customers, they have changed their tune.

Beyond the explicit assumption regarding the 2010 property tax appeal found in the Commission's Report and Order in Case No. ER-2011-0028 and the errors in that assumption described above, there is a second, implicit assumption that is equally erroneous. The implicit assumption is that rates paid by customers can – and should – be earmarked and traced so that when a utility's actual, incurred expense for an item included in the revenue requirement is less than that assumed amount of that expense used to set rates, the difference can be returned to customers. That assumption is erroneous for at least two reasons.

First, it ignores the fact that rates set by the Commission are for utility service. Once a utility fulfills its obligation to provide safe and adequate service to its customers and the customers pay for that service based on fair and reasonable rates set by the Commission, absent some mechanism to adjust rates in the future based on actual costs – such as a formal tracker mechanism – neither party has any further financial claim on the other.

Second, the assumption ignores the fact that over time every item of a utility's cost of service varies from the assumed levels used to set rates. Consequently, it would be "cherry picking" of the worst and most pernicious kind for the Commission to single-out an individual item of Ameren Missouri's revenue requirement, such as property tax expense, where incurred amounts are perceived to be less than those used to set rates, and order a refund of that difference, while ignoring numerous other items of the same revenue requirement where the Company's incurred costs move in the opposite direction.[218]

In considering the Staff's and the MIEC's proposal to require Ameren Missouri to return to customers the $2.9 million property tax refund, the Commission must also remember that mere assumptions, whether explicit or implicit, do not constitute competent and substantial evidence. Neither Staff nor MIEC has presented any evidence to establish (1) that customers actually paid all of Ameren Missouri's 2010 property tax expense, or (2) that the proposed refund is fair and that it constitutes sound regulatory policy. Indeed, all of the competent and substantial evidence on the record regarding this issue establishes just the opposite. Any order that ignores that evidence and that, instead, decides this issue based on Staff's and MIEC's unfounded assumptions would, therefore, be unlawful.

IX. CASH WORKING CAPITAL REQUIREMENT

For ratemaking purposes, cash working capital is the amount of funds the utility requires to finance its day-to-day operations. Ameren Missouri estimated its cash working capital requirement based upon a lead-lag study performed by witness Michael Adams using test-year data contained in the Company's current accounts receivable report. That study determined that Ameren Missouri has a positive cash working capital requirement; in other words, its day-to-day operations are financed by its investors. As such, ratemaking principles require that a positive cash working capital requirement of $44,709,751 be included in rate base so that the Company's investors have the opportunity to earn a return on their investment.

Mr. Adams' lead-lag analysis provides competent and substantial evidence of the Company's positive cash working capital requirement. In performing his lead-lag study, Mr. Adams analyzed the Company's cash transactions and invoices for the test year (the twelve-

[218] *See* Tr. p. 977, l. 16 - p. 978, l. 5.

month period ending on September 30, 2011).[219] The lead-lag study involves an analysis of the lag time between the date customers receive service and the date that customers' payments are made available to the Company; this "lag" time is then offset by a "lead" time in which the Company receives goods and services, but pays for them at a later date.[220] The lead and lag, both measured in days, are then used to determine a cash working capital factor which is applied to the Company's test year cash expenses to ultimately determine the amount of cash working capital required for operations.[221]

It is not disputed that a lead-lag study was the proper way to calculate Ameren Missouri's cash working capital requirement; in fact, both Staff and MIEC rely on the lead-lag studies that they performed in Ameren Missouri's last rate case. At issue here is one of the components of the revenue lag in the cash working capital calculation—collection lag. Collection lag refers to the average amount of time from the date when a customer receives a bill for electric service and the time the Company receives payment from the customer of that bill.[222] Witness Adams evaluated Ameren Missouri's accounts receivables during the test year and determined that Ameren Missouri's average collection lag was 28.75 days.[223]

In the opening statements on this issue, this Commission heard from the Staff attorney that the "one very serious flaw" with Mr. Adams' calculation of collection lag was the fact that it "included people who are never going to pay their bill."[224] This same criticism was echoed by the MIEC's attorney in his opening statement.[225] As this Commission discovered during the hearing, however, this charge was not supported by the actual facts. As Mr. Adams made clear

219 Ex. 8, p. 4, l. 3-4 (Adams Direct).
220 Ex. 8, p. 4, l. 11-15.
221 Ex. 8, p. 4, l. 6-19.
222 Ex. 8, p. 7, l. 7-8.
223 Ex. 8, p. 7, l. 9-12; Ex. 9, p. 19, l. 16-21 (Adams Rebuttal).
224 Tr. p. 442, l. 6-9.
225 Tr. p. 446, l. 12-15.

in his direct testimony and in cross-examination at the hearing, he had, in fact, made an allowance or adjustment for uncollectible revenues when he calculated collection lag.[226] When questioned at hearing, MIEC witness Meyer characterized his criticism of Mr. Adams' adjustment to remove uncollectibles to be that the adjustment was an estimate.[227] A few minutes later, however, Mr. Meyer admitted that you actually *have* to use estimates to remove accounts that may eventually become uncollectibles.[228] Indeed, no witness provided any specific or credible refutation of the actual bad debt percentages calculated by the Company and relied upon by Mr. Adams in making his adjustment to his collection lag analysis.[229]

At the end of the day, the primary criticism lodged by the Staff and the MIEC at Mr. Adams is that he failed to rely on the same outdated information from the outdated CURST Report that they did. Staff witness Kofi Boateng, relying on Staff witness Ferguson's recommendation in Ameren Missouri's last rate case, ER-2011-0028 (and, in large part, parroting Staff witness Ferguson's testimony from that case),[230] proposed a 21.11-day collection lag based upon data in an October 2010 CURST Report.[231] MIEC, also relying on its previous recommendation from ER-2011-0028, didn't even bother to update its initial collection lag analysis and instead re-proposed a 21.01-day collection lag based upon the March 2010 CURST Report—information completely outside the test year in this case.[232] The basis for relying on this now-defunct report, as demonstrated by the evidence in this case, can only be that it

[226] Ex. 8, p. 8, l. 4-9; Tr. p. 458, l. 1-3; p. 462, l. 11-25; Ex. 47.
[227] Tr. p. 496, l. 13-17.
[228] Tr. p. 500, l. 7-11. In fact, Staff witness Boateng admitted the obvious at hearing: that all parties are calculating cash working capital as an estimate, and that the question is really which party's estimate is most reliable. *Id.* at p. 513, l. 13 – p. 514, l.1. The substantial and competent evidence in this case demonstrates that Ameren Missouri's cash working capital recommendation is the most reasonable.
[229] Tr. p. 480, l. 16 – p. 481, l. 4; see also Tr. p. 527, l. 10-19; p. 528, l. 8-11 (Mr. Boateng admitted that he reviewed the Company's response to DR 252 (Ex. 47), which explained how the Company calculated the percentage of bad debts, and that he did not perform any independent analysis to determine whether or not they were accurate).
[230] Tr. p. 505, l. 11 – p. 510, l. 3.
[231] Ex. 231, p. 2, l. 12-20 (Boateng Surrebuttal).
[232] Tr. p. 484, l. 20 - p. 485, l. 7.

produces a lower cash working capital requirement; indeed, there is no evidence to suggest that reliance on the old data contained in the CURST Report is more reasonable than Mr. Adams' analysis of current data.

Although the CURST Report, which purported to show the cash receipts collected by the Company on a daily basis, had been in existence for 25 years at Ameren Missouri, it was not tied with any other recordkeeping, and the Company could not validate or reconcile the CURST Report with other Company records.[233] As a result of concerns about the reliability and accuracy of the CURST Report, the Company no longer compiled the report.[234] The Staff and the MIEC both justified their reliance on the CURST Report on the report's longevity; however, the witnesses for each party admitted that they had not performed any analysis to independently verify its accuracy.[235] Instead, the Staff and the MIEC spent much time at hearing defending their reliance on the CURST Report on their insistence that Mr. Adams had only just stopped relying on the report for this case.[236] Even if this were true, such a point has little relevance. However, the allegation was not true – while Mr. Adams may have relied on the CURST Report in the past, he had questioned the validity of that report as far back as the 2005 or 2006 time frame and has instead relied on the same aged accounts receivable data that he relied on in this case; moreover, he never relied on a CURST Report when performing the same analysis for Ameren Illinois since the early 2000's.[237]

---

[233] Ex. 9, p. 6, l. 14 - p. 7, l. 14. In fact, no witness at trial could even identify the meaning of the acronym "CURST." Tr. p. 498, l. 15-20; p. 524, l. 4-7.

[234] Ex. 9, p. 7, l. 3-8; Tr. p. 456, l. 13 - p. 457, l. 1; p. 459, l. 7-10; p. 465, l. 23 - p. 467, l. 16.

[235] Tr. p. 479, l. 10-13, 21-24; p. 486, l. 7-24; p. 516, l. 2-17.

[236] Actually, only Mr. Meyer was certain of this at hearing, and his testimony was based upon Mr. Boateng's surrebuttal testimony. Tr. p. 501, l. 14 - p. 502, l. 18. Despite his later responses to Mr. Roam's friendly, leading questions, Mr. Boateng first admitted that he really didn't know one way or the other what data Mr. Adams' recommendation was based on in prior rate cases. Tr. p. 521, l. 2-8; p. 526, l. 9-14; p. 529, l. 20 - p. 530, l. 11.

[237] Tr. p. 468, l. 1- p. 469, l. 11. Specifically, Mr. Adams relied on the accounts receivable report to calculate the collection lag and offered criticism of the CURST Report in the prior four electric rate cases. *See Rebuttal Testimony of Michael J. Adams* (March 25, 2011) at p. 5, l. 7 – p. 8, l. 14 (Docket No. ER-2011-0028, Item #213); *Rebuttal Testimony of Michael J. Adams* (February 11, 2010) at p. 6, l. 14 – p. 10, l. 15 (Docket No. ER-2010-0036,

In addition to the fact that the Company relied on data entirely within the test year and the Staff and the MIEC did not, there was another reason provided at hearing for the disparity between Ameren Missouri's calculation and the calculations by the Staff and the MIEC of the collection lag component of Ameren Missouri's cash working capital requirement. In the 2010 rate case, Ameren Missouri's delinquency date for non-residential customers changed from 10 days to 21 days from the date of the bill; Mr. Boateng acknowledged that although this change "might affect" the outcome of the lead-lag study, he had made no adjustment for the change in his analysis.[238] Obviously, the MIEC's recommended collection lag, relying on March 2010 data, also failed to recognize the impact of the change in the delinquency date for Ameren's non-residential customers. Because his calculation relies on data within the test year, it is only Mr. Adams' calculation that reflects the impact that this change had on Ameren Missouri's collection lag.

MIEC witness Meyer picked at Mr. Adams' collection lag calculation by offering several "concerns" of Mr. Adams' work – that the accounts receivable breakdown report did not recognize credit balances,[239] that the 30-day grouping of accounts receivables was a "concern,"[240] and that Mr. Adams' analysis includes balances that have not yet been paid.[241] Similarly, Staff witness Boateng (after attending MIEC witness Meyer's deposition) developed the criticism that Mr. Adams' calculation was suspect because he used a mid-point assumption for customer payments in each of the 30-day "buckets" – despite the fact that the Staff's own

Item #344) (criticizing Mr. Meyer's reliance on the CURST Report when Mr. Meyer was testifying on behalf of Staff); *Direct Testimony of Michael J. Adams* (April 4, 2008) at p. 6, l. 1-6 (Docket No. ER-2008-0318, Ex. 51); *Direct Testimony of Michael J. Adams* (July 5, 2006) at p. 6, l. 6-16 (Docket No. ER-2007-0003, Ex. 82).

238 Tr. p. 519, l. 15 – p. 520, l. 14; *see also Tariff Revision (YE-2010-0697)* at Sheet Nos. 32.1, 34.1, 37.1, 67.1, 68.3 (Docket No. ER-2010-0036, Item #767) (June 8, 2010).

239 Tr. p. 497, l. 10-12 (the "main crux" of Mr. Meyer's criticism). As Mr. Adams points out, however, there are a limited number of credit balances, and most of those are incorrect payments that are ultimately refunded. Tr. p. 458, l. 14-20.

240 Tr. p. 497, l. 13-19.

241 Tr. p. 498, l. 1-9.

calculation of cash working capital relies on a mid-point assumption in calculating collection lag.[242] The problem here, however, is that neither Mr. Meyer nor Mr. Boateng performed any calculation to quantify for this Commission ***what difference, if any, that their criticisms would make*** to Mr. Adams' analysis.[243] The bottom line is that in addition to their failure to perform any new analysis for this rate case on the issue of collection lag, both Mr. Meyer and Mr. Boateng have failed to provide this Commission with any quantitative analysis of whether their own criticisms of Mr. Adams' analysis actually matter. Indeed, their contentions amount to nothing more than rank speculation.

Moreover, Mr. Adams' reliance on accounts receivable data to calculate collection lag again in this rate case was not a particularly peculiar method. In fact, Mr. Adams, who has testified on this issue in several different jurisdictions, reported that he had used accounts receivable analysis in six or seven other states but had never seen any other jurisdiction calculate collection lag using a report similar to the defunct CURST Report.[244] Although there is no single method that is uniformly used by Missouri or other jurisdictions to calculate collection lag (as Mr. Boateng acknowledges),[245] Mr. Adams testified that reliance on accounts receivable data was the predominant method.[246] Even Mr. Meyer, admitting that he did not have much experience in other jurisdictions on the collections lag issue because of his tenure with the Staff, acknowledged that he had seen collection lag analysis performed using accounts receivable data

[242] Tr. p. 510, l. 14 – p. 511, l. 18.
[243] Tr. p. 490, l. 12-17; p. 491, l. 12 – p. 492, l. 12; p. 499, l. 20-24; p. 511, l. 19 – p. 512, l. 7; p. 518, l. 12-16.
[244] Tr. p. 463, l. 7 – p. 464, l. 7; p. 465, l. 9-17; p. 468, l. 1-5. Similarly, Mr. Adams testified that he had never encountered lead-lag studies based on data outside the test year. Tr. p. 459, l. 24 – p. 460, l. 2.
[245] Tr. p. 518, l. 5-13.
[246] Tr. p. 464, l. 18-24.

in Illinois.[247] This is because the accounts receivable data relied upon by Mr. Adams is a valid measure of customer payment habits.[248]

To further validate his collection lag analysis, Mr. Adams examined the payment activity of ***all*** customers – all 1.2 million of them – in a five-month period during the test year; this analysis looked at the date customers were billed, the due date on the bill, and the date the bill was paid in full.[249] That analysis, from a large sample over several months using actual data, revealed a collection lag that was 32.72 days – or 27.79 days if all outstanding balances beyond 120 days were treated as if they had been outstanding no more than 120 days.[250] This analysis of the Company's ***actual*** customer billing and payment history – not undertaken, analyzed, or seriously criticized by Staff[251] or MIEC[252] – demonstrates the reliability of Mr. Adams' recommended 28.75-day collection lag.

In light of the Staff's and the MIEC's dogged insistence that the outdated CURST Report provided a more accurate picture of Ameren Missouri's collection lag,[253] Mr. Adams also tested

[247] Tr. p. 495, l. 10-15, 17-21.
[248] Tr. p. 480, l. 4-15.
[249] Ex. 9, p. 14, l. 5-8; Tr. p. 481, l. 5-10.
[250] Ex. 9, p. 14, l. 8-10.
[251] Staff witness Mr. Boateng admitted that he had not reviewed Mr. Adams' five-month study of all customers and that he had offered no criticism of that study in his testimony. Tr. p. 517, l. 10-24. Moreover, even though Mr. Boateng had collected information from Ameren Missouri to conduct his own customer sample to verify the reliability of the CURST Report, he did not complete that work. Tr. p. 516, l. 18-24.
[252] In keeping with his singular reliance on the work he did in Ameren Missouri's last rate case, Mr. Meyer acknowledged at hearing that he did not even look at the five-month study of all customers performed by Mr. Adams, nor did he perform his own calculation based upon that information. Tr. p. 490, l. 13-17. In his pre-filed testimony, Mr. Meyer offered the general criticism that Mr. Adams' customer analysis was not dollar-weighted—though he offered no quantification of what, if any, difference that made. Ex. 512, p. 20, l. 13-23. In response to this criticism, Mr. Adams looked at three months of the customer analysis and, when he applied the dollar-weighting Mr. Meyer said was necessary, the collection lag actually went up for two of the months and was slightly down for one month. Tr. p. 482, l. 5-11.
[253] To suggest that his reliance on the CURST Report was credible, Mr. Meyer points to the fact that his collection lag recommendation of 21.01 days is somehow the result of the "significant inducement" that he alleges arises from the Commission's rule allowing residential customers 21 days before their payment is declared delinquent. Ex. 510 p. 22, l. 1-8 (Meyer Direct). At hearing, Mr. Meyer admitted that he had not "specifically looked at whether the 21-day Commission rules are an inducement for them to pay or not." Tr. p. 489, l. 1-17. Had he looked at his own direct testimony, Mr. Meyer would have concluded that his opinion was without any basis: the average lag for residential customers – based on the outdated CURST Report information he relied on – was 24.94 days. Ex. 510, p. 21 (Table 1).

the accuracy of their collection lag calculations by using a methodology used by other utilities in Missouri to calculate collection lag for this Commission – the accounts receivable turnover ratio.[254] This "check" on whether the Staff and the MIEC were justified in using the outdated CURST Report data resulted in a collection lag calculation of 26.02 days – a result materially higher than the 21.11-day calculation by Staff and the 21.01-day calculation by MIEC.[255] Even though Mr. Meyer tosses out the criticism that the turnover ratio analysis is "flawed," he again cannot tell what difference, if any, that Mr. Adams' alleged "flaw" actually makes.[256]

Having analyzed the collection lag using three different methods with each method resulting in a collection lag substantially higher than those calculated using the old CURST Report, the only reasonable conclusion that can be drawn is that the Company was absolutely justified in abandoning the CURST Report back in 2010. The only competent and substantial evidence in this case demonstrates that Ameren Missouri's cash working capital should be calculated using a 28.75-day collection lag.

The only other issue in dispute with regard to Ameren Missouri's cash working capital requirement[257] is whether this Commission should adopt the recommendation supported by Mr. Meyer alone -- that tax expense should be excluded from that requirement. Mr. Meyer acknowledges that Ameren Missouri (as it has always done) uses statutory tax rates when calculating its income tax expense for revenue requirement purposes, and that he really does not take any exception to Mr. Adams' calculation of the lag for that expense.[258] Rather, his recommendation that tax expense should be removed from the cash working capital requirement is based upon his anticipation that Ameren Missouri may not have a federal or state tax

[254] Ex. 9, p. 16, l. 8-14; Tr. p. 481, l. 11-19.
[255] Ex. 9, p. 16, l. 15-20.
[256] Tr. p. 491, l. 12 – p. 492, l. 12.
[257] A concern raised by Staff regarding Mr. Adams' calculation of the expense lag for Gross Receipts Tax has been resolved, and Mr. Adams' calculation has been accepted by Staff.
[258] Tr. p. 493, l. 6-12, 21-25.

liability.[259] Because it is inappropriate to includ an income tax component in the Company's revenue requirement calculation, consistent application of ratemaking principles provides that there should be an income tax component of the cash working capital requirement.[260] As a result, Mr. Meyer's proposal should be rejected.

X. Rate Case Expense

Although its actual impact on the average utility customer is relatively small in proportion to other disputed issues in this case,[261] the issue of how much Ameren Missouri should be allowed to include in its revenue requirement for rate case expense captured much attention from Staff, OPC, and the Commission at hearing – and this despite Staff witness Hanneken's testimony that Ameren Missouri's rate case expense has decreased over the last few rate cases.[262] Why the increased focus? Perhaps it was due to KCPL's recent request for $7.7 million in rate case expense (nearly five times the sum the Company is requesting in this case)[263] and the subsequent investigatory docket opened by the Commission on the issue of rate case expense.[264] Perhaps it was the concern about the number of rate cases filed by the Company.[265] Or perhaps it was due in some respect to concerns voiced by OPC and the Commission that OPC

---

[259] Tr. p. 493, l. 13-20.
[260] Ex. 9, p. 22, l. 13 – p. 23, l.3.
[261] Assuming that Ameren Missouri's customer base is the same as it was in ER-2011-0028 case (*see* Ex. 54), the impact on the average customer of a $1.5 million annual recovery of rate case expense would be $1.26 per year, or just over 10 cents per month.
[262] Tr. p. 910, l. 5-14; 18-23 (particularly, Ms. Hanneken testified that she based her recommendation largely on the "declining balance of the historic" rate case expenses incurred by Ameren Missouri and her assumption that the Company's rate case expense would continue to decrease); Ex. 236, p. 7, l. 20-22 (Hanneken Surrebuttal).
[263] *Report and Order*, Case No. ER-2010-0355, p.159.
[264] *See Order Directing Staff to Investigate and Opening a Repository File*, Case No. AW-2011-0330 (order directing staff to investigate rate case expense policies issued approximately two weeks after the rate order was issued in the KCPL/GMO rate cases (ER-2010-0355 and ER-2010-0356) awarding KCPL/GMO approximately $7.4 million of the requested $7.8 million in rate case expense). In the order, this Commission stated that its inquiry was prompted by testimony in recent rate cases and escalating rate case expense requests and its desire to consider changing its current rules and practices whereby regulated utilities generally recover all costs; possible changes included making shareholders to bear responsibility for a portion of the rate case expense or establishing a cap on rate case expense. *Order* at 1.
[265] Ex. 406, p. 23, l. 3-5 (Robertson Direct). *See also Order Directing the Parties to File Additional Testimony* , Case No. ER-2012-0166 ("The circumstances of any general rate action include the expense to the utility, the Commission, and the public, of litigating general rate actions with increasing frequency in recent years.").

is underfunded.[266] Moreover, the fact that when OPC raised the issue at the local public hearings and, unsurprisingly, elicited comments opposing the funding of Ameren Missouri's expense in defending its request for a rate case also could have played a role. Regardless of whether it was one or all of these reasons, the ultimate question is whether Ameren Missouri's request for including $1.538 million for rate case expense in its revenue requirement reflects a prudent and reasonable level of rate case expense that is supported by competent and substantial evidence in this case. It does.

There are two aspects to the answer to this question – a policy aspect and an evidentiary aspect. In terms of policy, OPC identified three "concerns" which it contended were reasons to oppose the Company's request: (1) the "rising"[267] cost of "elaborate"[268] rate case defenses, (2) the alleged failure of the Company to control in any way rate case expense,[269] and (3) the supposition that rate case expense was somehow divisible in that discrete parts of the requested rate increase only accrued to the benefit of the Company's shareholders and, therefore, should not be borne by the ratepayer.[270,271] None of these three concerns provided a sufficient basis for this Commission to consider changing its existing treatment of rate case expense in this case.[272]

As the Commission acknowledged in its Order in the investigatory docket on rate case expense, the Commission's "current rules and practice" are such that "regulated utilities generally recover all costs they incur in presenting a rate case before the Commission."[273] While

[266] Tr. p. 837, l. 14-18; p. 844, l. 20 – p. 845, l. 19; p. 846, l. 8-15; p. 847, l. 25 – p. 848, l. 4; p. 850, l. 2-5.
[267] Ex. 406, p. 14, l. 14.
[268] Ex. 406, p. 24, l. 9-13.
[269] Ex. 406, p. 13, l. 1-13; p. 15, l. 16-20.
[270] Ex. 406, p. 21, l. 6-13; p. 25, l. 14 – p. 26, l. 7.
[271] Staff, on the other hand, identified none of these concerns but instead spoke only in terms of the "appropriateness" of the rate case expense. Tr. p. 880, l. 17-19; p. 910, l. 5-14; Ex. 236, p. 7, l. 9-14; p. 10, l. 9-12.
[272] Indeed, Commissioner Gunn raised the issue regarding the "fundamental fairness" of changing the way the Commission treats rate case expense in this docket – particularly where there was an investigatory docket opened to examine the issue and where the parties had requested that the issue of rate stabilization be considered in an investigatory docket rather than this rate case proceeding. Tr. p. 838, l. 12 – p. 840, l. 1.
[273] *Order Directing Staff to Investigate and Opening a Repository File*, Case No. AW-2011-0330.

the Company acknowledges that it should not "automatically" be able to recover rate case expenses,[274] the Commission has always recognized that "such costs are routinely accepted as a cost of doing business."[275] This view is not without a rational basis. As Staff witness Hanneken explained at hearing, under the existing regulatory system in Missouri, a utility is required to incur certain costs in attempting to establish new rate levels and, given that fact, rate case expense is a necessary cost for a utility to incur.[276] Even OPC witness Robertson acknowledges that sometimes it is necessary to raise rates and that doing so would be just and reasonable and provide a benefit to the ratepayers.[277] Obviously, a regulated utility can raise its rates – even in the instances that Mr. Robertson admits make it just and reasonable to do so—only after it has filed and prosecuted a rate case.[278]

A. The Company's rate case expense is not rising, nor has the Company put on an elaborate defense such that this Commission should abandon its traditional treatment of rate case expense.

Given that rate case expense is ordinarily – and quite fairly – considered a necessary cost recoverable by a utility, does the alleged "rising cost" of Ameren Missouri's "elaborate" rate case defense provide justification for this Commission to depart from its general practice and disallow in large part its rate case expense request? The evidence heard by this Commission at hearing clearly demonstrated that this "concern" did not apply to Ameren Missouri. While Mr.

---

[274] Indeed, as Mr. Byrne, counsel for the Company, told the Commission at hearing, Ameren Missouri does not hold the position that there should be no review of rate case expense by the Commission or the parties; he explained:

> We should be held to a strict prudence standard. If we're imprudent in how we do it, that's one thing, but it's necessary, and particularly if we filed frivolous cases that weren't justified by the costs that we're incurring, that would be a whole different thing.
>
> But in every one of the cases that we've filed, I think all the other parties have acknowledged that we need a pretty significant rate increase and then we fight about how much it is. There's no doubt that we—that we're—we need to have these rate increases. And so in that situation where the rate case is a legitimate rate case and where we're prudent in managing the costs of prosecuting that case, I believe we're entitled to 100 percent of those costs.

Tr. p. 816, l. 9-23.

[275] *Report and Order*, Case No. GR-2004-0209.

[276] Tr. p. 880, l. 6-12.

[277] Tr. p. 941, l. 17-22.

[278] Tr. p. 941, l. 23 – p. 942, l. 1.

Robertson freely testified about the "rising cost" of Ameren Missouri's rate case expense, a review of his testimony – both pre-filed and live – reveals that Mr. Robertson failed to provide ***any*** numerical or quantitative evidence that Ameren Missouri's rate case expense was somehow out of control or rising dramatically. As pointed out earlier, Staff witness Hanneken, in fact, premised her entire recommendation in this case on her analysis that Ameren Missouri's rate case expense was actually ***declining*** and would continue to do so.[279] Indeed, the Company's initial request for $1.9 million in rate case expense is comfortably within the reasonable range of its prior cases, and its revised request for $1.538 million is even more squarely within that range.[280] Simply put, there is no evidence in the record that Ameren Missouri's rate case has risen dramatically – or at all – which would require a change in the Commission's handling of rate case expense.

When Mr. Robertson charges that Ameren Missouri has staged an "elaborate" defense in this rate case, he refers to the "Company's hiring of outside legal counsel and consultant services to support its rate case when it is very likely its own and/or affiliate personnel could have done the job just as well and perhaps more effectively."[281] Mr. Robertson offers vague support for his supposition by pointing out that Ameren Missouri employs "literally hundreds of highly educated employees holding a Bachelor degree or higher – many of which are in disciplines which would ***likely be relevant*** to the preparation and defense of the Company's current rate case."[282] Likely relevant? Perhaps. After all, there are any number of degrees or fields that are "likely relevant" to a rate case – but this rather general observation does not constitute the type of substantive evidence upon which this Commission can properly rely in order to change its treatment of rate case expense mid-stream. In point of fact, Mr. Robertson admitted that he had

[279] Tr. p. 910, l. 5-14; 18-23; Ex. 236, p. 7, l. 20-22; Ex. 54.
[280] Ex. 12, p. 30, l. 3-19.
[281] Ex. 406, p. 24, l. 9-13.
[282] Ex. 406, p. 18, l. 9-14 (emphasis added).

not performed any analysis of the duties, time availability, and activities of the Company employees he says could have provided testimony in this rate case; moreover, he further admitted that these employees "likely" had duties (although he wasn't specifically certain what their duties were) unrelated to any type of rate case request which kept them busy otherwise.[283]

No doubt recognizing the vague nature of his criticism and the fact that the Company does rely on its employees (and in-house counsel) to defend its rate case,[284] OPC witness Robertson intensified his criticism of the Company and identified four outside consultants – Robert Hevert, John Reed, James K. Guest, and James I. Warren – as witnesses whose testimony was, in fact, "duplicative" of that filed by Ameren Missouri employees.[285] Despite having narrowed the realm of potential Company witnesses from hundreds with college degrees to a few specific employees who could have testified in place of these consultants, Mr. Robertson's criticism is no more compelling or substantive. Absent from his pre-filed testimony was any specific example of this purported "duplicative" testimony.[286] When given the opportunity at hearing to point out to the Commission what would be compelling evidence of the Company's failure to act prudently by hiring "outside consultants to essentially say the same thing [as Company witnesses], whether it's word for word or line by line,"[287] Mr. Robertson was wholly unable to cite even one specific instance where the outside consultant provided testimony that duplicated the testimony of a Company witness.[288]

[283] Tr. p. 926, l. 8 – p. 927, l. 5.
[284] Tr. p. 927, l. 6-10.
[285] Ex. 408, p. 8, l. 2 – p.9, l. 16 (Robertson Surrebuttal); Tr. p. 931, l. 21-24.
[286] Mr. Robertson admits that he makes no claim that the consultants were not qualified or lacked expertise to provide testimony, or that their testimony was irrelevant to the issues in this case; rather, his charge is that the consultants' testimony is "duplicative" of the testimony of Company witnesses. Tr. p. 927, l. 16 – p. 930, l. 16.
[287] Tr. p. 950, l. 16-22.
[288] Tr. p. 932, l. 4 – p. 938, l. 24; p. 950, l. 10-12. Part of the reason that Mr. Robertson cavalierly argues that an Ameren Missouri witness with a college degree can provide all the testimony the Company requires must be his view that defending rate cases is not "rocket science." Tr. p. 936, l. 20-23. It is difficult to understand, for example, how the testimony of witness Guest, who was employed by FERC for 32 years and served in various high-level roles which involved determining whether companies complied with the Uniform System of Accounts, was

The fact that Ameren Missouri and other utilities, along with the MIEC (and, on occasion, OPC itself[289]), retains outside consultants to assist in rate case testimony does not mean that the use of consultants is imprudent or even unreasonable. As Company witness Barnes explained, the use of outside consultants is both reasonable and necessary to assist in defending the Company's rate increase request because the Company must counter the testimony of outside consultants retained by the numerous other parties in the rate case, its own employees have duties far broader than supporting the Company's rate increase requests, and the expertise of the Company employees is often Company-specific rather than industry-wide; as a result, reliance on the Company's employees only would prevent the Company from being able to address the contentions of the various parties.[290] Ameren Missouri's use of outside consultants does not constitute an "elaborate" defense. To the contrary, it constitutes the ordinary prosecution of a rate case that it must file and prosecute, and an ultimate burden that it must meet, to establish that its current rates are not just and reasonable and should be raised.

OPC's criticism of Ameren Missouri's "elaborate" rate case defense does not stop at its criticism of the use of outside consultants; Mr. Robertson also trained his sights on the Company's use of outside counsel to assist it in defending this rate case.[291] His complaint was similar – as long as the Company employs in-house attorneys, it should never use outside attorneys to assist in the presentation of its rate request.[292] In holding this position, Mr.

---

duplicative in any way of the testimony of Company employee Laura Moore on the issue of Ameren Missouri's compliance with the Uniform System of Accounts. Tr. p. 933, l. 25 – p. 934, l. 19. And despite Mr. Robertson's complimentary view of Ameren Missouri witness Weiss, there is absolutely no basis to allege that testimony by consultant Warren, an attorney who has specialized in tax issues related to public utilities for 20 years and who holds a master of laws in taxation and master of science in accounting (Tr. p. 935, l. 1 – p. 936, l. 19), was duplicative of any testimony offered by Mr. Weiss or, even, that Mr. Weiss could have provided the testimony provided by Mr. Warren.

[289] Tr. p. 939, l. 9-11.

[290] Ex. 12, p. 32, l. 19 – p. 33, l. 12.

[291] Tr. p. 925, l. 4 – p. 926, l. 7.

[292] Tr. p. 925, l. 9 – p. 926, l. 7. Implicit in his opinion is Mr. Robertson's acknowledgement that more than two attorneys are necessary for Ameren Missouri to defend its rate increase request.

Robertson discounts without explanation the fact that the Company's in-house attorneys fulfill multiple functions for the various Ameren entities and that only two of them (Mr. Byrne and Ms. Tatro) have responsibility for the Company's regulatory work in Missouri (and performed much of the legal work in this rate case.)[293] That Ameren Missouri was opposed by all other parties in this rate case was a notion resisted at hearing, there is no doubt that its two in-house and three outside counsel were outnumbered by the attorneys for those parties who opposed portions of its rate increase request. According to the docket for this case, Staff alone had the same number of attorneys assigned to this case as Ameren Missouri used; in addition, two attorneys appeared at hearing on behalf of OPC, and at least four Bryan Cave attorneys appeared on behalf of MIEC. There were other intervenors represented by counsel at hearing as well.

Given this opposition and the absence of any real evidence to suggest that its other in-house counsel had the availability and the expertise to defend a rate case, an alternative to relying on outside counsel would be the Company's hiring of additional legal staff; as Ms. Barnes explained, however, it would not be prudent for the Company to employ additional attorneys solely for the purpose of defending rate cases as they occur.[294] Despite Mr. Robertson's conjecture otherwise, there is nothing "elaborate" about Ameren Missouri's use of outside counsel or outside consultants in a rate case where several complex issues are disputed by the multiple parties in this proceeding.

One last important point deserves mention. The fundamental problem with OPC's complete opposition to the Company's recovery of any costs associated with outside consultants and outside counsel (and its opposition to the company's recovery of one-half of its internal costs) is that it effectively serves to restrict the Company's ability (and right) to direct its legal

[293] Ex. 12, p. 34, l. 3-15; Ex. 13, p. 7, l. 1 – p. 8, l. 7; p. 11, l. 1-10.
[294] Ex. 13, p. 7, l. 10-16.

defense and choose its legal strategy in a forum where litigation of any rate increase request is mandated by law[295] and may deprive the Commission of having a full record before it to make its decision on that request.[296] In the past, the Commission has recognized a Company's right to make these decisions as long as its costs are prudently incurred: "The Commission is hesitant to disallow expenses incurred by MGE in prosecuting its rate case. The company is entitled to present its case as it sees fit and the Commission will not lightly intrude into the Company's decisions about how best to present its case."[297] Nothing that Ameren Missouri has done in this case (including the hiring of outside consultants and outside counsel) sounds an alarm bell that requires this Commission to change how it views the Company's right to direct its case or its ability to recover the expense in directing that case.

B. Because the Company has worked to control its rate case expense, this Commission has no reason to deviate from its traditional treatment of rate case expense.

Even though the Company's rate case expense has not been increasing and was not elaborate, does the "concern" that the Company has allegedly failed to control in any way rate case expense support a disallowance of Ameren Missouri's rate case expense request? This accusation – that Ameren Missouri has failed in any way to control its rate case expense – is again directed at the Company from OPC alone; Staff has not proposed any particular disallowance based upon a determination that the Company acted imprudently in utilizing outside consultants or outside counsel.[298] Disregarding any concern for the quality of legal services, Mr. Robertson criticizes the Company for not controlling its costs by failing to competitively bid the legal services so as to obtain them at the lowest possible cost.[299] At

---

[295] Ex. 12, p. 33, l. 13 – p. 34, l. 2.
[296] Ex. 12, p. 37, l. 3-9.
[297] *Report and Order,* Case No. GR-2004-0209, p. 75.
[298] Tr. p. 896, l. 6-24.
[299] Ex. 406, p. 13, l. 5-13.

hearing, however, Mr. Robertson admitted that there are ways for Ameren Missouri to control costs other than the use of competitive bidding.[300]

The Company has not adopted a cost-is-no-object approach to rate case expense. As Ms. Barnes made clear, Ameren Missouri has worked to control its rate case expense. In addition to the fact that it utilizes its own employees and in-house counsel and only seeks the assistance of outside consultants and attorneys where Company employees are unable to handle all of the work in defending a rate request,[301] Ameren Missouri has managed to keep its rate case expense flat by negotiating agreements with its outside counsel which holds its attorney fees at a certain level and at lower-than-normal rates.[302] Even though it utilizes outside consultants (and attorneys, for that matter), Ms. Barnes offers the reminder that in addition to the other reasons that support the Company's use of outside consultants and lawyers, they provide services that Ameren Missouri would otherwise have to provide at a cost to the ratepayer.[303] Because Ameren Missouri has taken efforts to control its rate case expense and, in fact, maintained a fairly flat rate case expense over the last several years, there is no policy concern on that ground to justify a change in this Commission's treatment of rate case expense.

C. Rate case expense is a necessary cost of doing business for a regulated utility and there is no competent and substantial evidence in the record to support moving from the Commission's traditional approach toward some kind of "cost-sharing" approach.

Finally, there is no justification for the Commission to take the unprecedented step Mr. Robertson wants the Commission to take even if shareholders do benefit from an increase in rates.[304] Put another way, despite Mr. Robertson's contentions, rate case expense should not

---

[300] Tr. p. 927, l. 11-15.
[301] Ex. 12, p. 32, l. 9 – p. 35, l. 3; Ex. 13, p. 7, l. 1 – p. 8, l. 7.
[302] Ex. 13, p. 8, 8 – p. 9, l. 14
[303] Ex. 13, p. 8, l. 8 – p. 9, l. 4
[304] While Ameren Missouri's counsel conceded at hearing that its shareholders benefit when a rate increase is granted, counsel also rejected the suggestion that rate case expense is distinguishable from the expenses normally

somehow be discretely parceled out and disallowed in some proportion so that the ratepayer does not costs that are claimed to not directly benefit him or her.[305] This should not be done even though, at first blush, Mr. Robertson's argument[306] sounds somewhat logical – that a financially-struggling ratepayer who faces increasing electric rates should not have to pay any portion of the expense to obtain an increase in those rates that benefits the person who earns money from the Company through his or her investment. But the underlying presumption of Mr. Robertson's position (that there are certain discrete rate case items that singularly benefit the shareholder) is simply not supported by the evidence.

While there is no doubt that a healthy utility benefits the shareholders who invest in that utility, Ms. Barnes explains that this benefit primarily accrues to the ratepayer:

> When the Company's costs rise, the Company's efforts to secure rates which allow it the opportunity to earn a reasonable return on the investment of the Company and its shareholders are not only entirely lawful, but necessary to customers. It is the customer who is the primary beneficiary when a utility's ability to fulfill its statutory obligation to provide adequate and reliable service is ensured because the Company is able to attract investment and maintain that investment by providing a reasonable return to its shareholders.[307]

Furthermore, even when the increase includes a recovery which allows a return on equity to the shareholder, the ratepayer benefits.[308] Even OPC acknowledges that rate increases often are necessary, just and reasonable, and provide a benefit to the ratepayer.[309]

Given these principles, is there a way to somehow parse out the benefits directly attributable to the shareholder and not the ratepayer so that rate case expense can be shared

---

thought to provide a direct benefit to the customer (i.e., generation, delivery and transmission) because both the shareholder and the ratepayer benefit from the Company's continued operation. Tr. p. 811, l. 23 – p. 812, l. 1; p. 817, l. 4-23.

[305] Ex. 406 p. 8, l. 13-18.

[306] It is not Staff's position in this rate case that rate case expense should be shared between the ratepayer and the shareholder. Tr. p. 879, l. 17-24.

[307] Ex. 12, p. 35, l. 17 – p. 36, l. 2.

[308] Ex. 13, p. 10, l. 1-12 (citing KCPL's last Report and Order at 166) (Case No. ER-2010-0355).

[309] Tr. p. 941, l. 17-22.

between the parties? Not based upon any numerical analysis, economic theory, or model from other jurisdictions. Mr. Robertson testified at hearing that he had not performed any quantitative analysis to differentiate what percentage a ratepayer benefits from a rate increase as compared to the shareholder; moreover, Mr. Robertson was unaware of any type of mathematical formula or economic theory by which such an analysis could be made.[310] In fact, the concept is so novel that Mr. Robertson was unable to identify any jurisdiction that requires – or even allows – the sharing of rate case expense between the shareholder and the ratepayer.[311] As Commissioner Jarrett pointed out in KCPL's last rate case, those who argue for singling out rate case expense from other costs with the intent of sharing those costs with the shareholder overlook the shared benefits inherent in all costs a utility incurs in providing service as well as the inequitable treatment resulting to the utility.[312] Consequently, there is nothing at all unusual or extraordinary in the record of this case to justify a wholesale change from the Commission's usual practice with regard to rate case expense.

Although these policy concerns are not supported by the facts in this case so as to justify a change to the Commission's long-standing treatment of rate case expense, two different proposals were put forth – Staff proposes to what amounts to a functional cap on rate case expense; OPC, on the other hand, seeks to preclude Ameren Missouri from recovering nearly all of its rate case expense. Neither proposal was supported by evidence in the record. In contrast, the only approach supported in the record by evidence and solid reason as a means of determining the amount of recovery for reasonable and prudent rate case expense was provided by Company witness Barnes.

[310] Tr. p. 942, l. 2-15.
[311] Tr. p. 943, l. 5-10.
[312] *Concurring Opinion of Commissioner Terry M. Jarrett*, Case No. ER-2010-0355, p. 1-5.

Despite Staff's attempt to dress up its proposal by talking about history and data, it essentially pulls a number out of the air to be an "appropriate" level for Ameren Missouri's rate case expense – $1.5 million, normalized over an 18-month period to be $1 million annual expense.[313] Staff purports to base its opinion on the fact that Ameren Missouri's actual historic rate case expense levels are on a "downward" trend and on Ameren Missouri's supposition that its next rate case filing "could be as long as twenty months."[314] While one might assume that Ms. Hanneken's look at historic numbers would be the subject of some mathematical calculation, particularly given the fact that Ms. Hanneken is an accountant, she did no mathematical calculation, nor did she apply any particular formula to arrive at her proposal.[315] She did little else. Despite the fact that Staff's Cost of Service Report indicated that it had "examined what other large utilities in Missouri have spent in order to process recent rate cases,"[316] Ms. Hanneken later claimed that she did not look at what other utilities spent in order to arrive at her number.[317] In fact, Ms. Hanneken did not look at the number of issues or the number of intervenors in this case as compared to others, and she failed to investigate whether consultant costs and attorney's fees were increasing.[318] Without any analysis to show the Commission, all Staff has to present to the Commission is its guess as to what Ameren Missouri's rate case expense will be.[319] A guess or speculation is not substantive or competent evidence.

[313] Ex. 236, p.7, l. 11-14.
[314] Ex. 236 p. 7, l. 13 – p. 8, l. 8.
[315] Tr. p. 910, l. 5-23.
[316] Ex. 202, p. 110, l. 21-22 (Staff Cost of Service Report).
[317] Tr. p. 908, l. 1-21. Incredibly, Ms. Hanneken claimed that although she had the information before her for the five large utilities, she only looked at whether or not these other utilities actually hired consultants or outside counsel—something one would expect an experienced Staff person to already know. Tr. p. 904, l. 21 – p. 906, l. 22.
[318] Tr. p. 908, l. 1 – p. 911, l. 11.
[319] In redirect examination by her attorney at hearing, Ms. Hanneken attempted to give her proposed number more weight by suggesting for the first time that her number is consistent with Ameren Missouri's historical overestimate of rate case expense by "about" twenty percent. Tr. p. 912, l. 12-23. Even then, she did not offer to demonstrate how this proves she got to her $1 million number. She can't, because it doesn't get her there.

The only other possible explanation for Staff's number is that it is intended to effectively set a cap on Ameren Missouri's rate case expense. Staff does not call it a cap – after all, Staff agreed that Ameren Missouri is entitled under traditional ratemaking concepts to recover costs incurred by the utility to set new rates.[320] Still, Ms. Hanneken admitted that, historically, Ameren Missouri has filed a rate case every 15 months on the average for this and the last three rate cases—and not the 18-month period she proposes.[321] She further admitted that if Ameren Missouri's rate case expense exceeds her $1.5 million proposal, the Company will not recover all of its rate case expense whether it is 15 months or 18 months before the next case is filed.[322] Given that Staff's determination that any rate case expense over $1.5 million is imprudent and unreasonable,[323] the only conclusion that can be drawn is that Staff's proposal is a functional cap on rate case expense.

Perhaps she did not want to call it a cap because such treatment of rate case expense would be novel. As Ms. Hanneken admitted at hearing, no other public utility commission that she knew of has set a particular dollar limit or cap on rate case expense.[324] Ameren Missouri asserts that changing the Commission's treatment of rate case expense to now set a cap on that expense is not justified by the facts in this case or by any policy considerations. Moreover, Staff's proposed rate case expense is not supported by any meaningful analysis and should be rejected.

Of course, OPC's proposal – that all outside costs be disallowed and that any remaining costs be shared equally between the ratepayer and the shareholder – is an even more extreme change in the treatment of rate case expense than Staff's cap. Aside from Mr. Robertson's

---

[320] Tr. p. 878, l. 6-20.
[321] Tr. p. 882, l. 13-23.
[322] Tr. p. 883, l. 12-16.
[323] Tr. p. 884, l. 17 – p. 885, l. 4.
[324] Tr. p. 885, l. 5-9.

failure to support his view that outside costs should be disallowed as discussed above, Mr. Robertson's suggestion that the remaining costs – few they would be – be split between the ratepayer and the shareholder is also unsupported. Mr. Robertson admits he has done no quantitative analysis to differentiate in any way the percentage a ratepayer benefits versus the percentage a shareholder benefits and that he was not aware of any way to actually perform such an analysis.[325] In short, Mr. Robertson's proposal is based on nothing more than his assumption that a shareholder benefits far more[326] than the ratepayer from a rate increase which allows the utility to continue providing reliable service to its customers. This is an irrational view. In fact, Mr. Robertson is unable to point to any jurisdiction that requires or even allows the sharing of rate case expense between the ratepayer and the shareholder.[327] OPC's radical proposal is not supported by the evidence, nor by any policy reason applicable to this case.

What is supported by sound reasoning and analysis is the Company's view of how rate case expense should be determined in this case. Ms. Barnes' proposal that Ameren Missouri receive $1.538 million on an annual basis is based upon the same analysis used for other components of the revenue requirement for items that vary over time – using historical data and normalizing it to set rates.[328] As Ms. Barnes explained, the Company's actual historical experience has been that the average amount spent in the last three rate cases was $1.922 million and the average gap between rate cases has been 15 months; as a result, the annualized amount of rate case expense is $1.538 million.[329] This, the Company contends, is a reasonable estimate of the expense for this rate case because it is based upon the Company's actual historical

[325] Tr. p. 942, l. 2-15.
[326] Mr. Robertson's proposal is not a true 50-50 sharing of costs. Recall that while he says a utility can hire who it wants to hire (Ex. 406, p. 22, l. 7 – p. 23, l. 5; Ex. 408, p. 6, l. 5 – p. 7, l. 13), it is the shareholders who will bear the costs of hiring outside consultants and attorneys in addition to half of the remaining costs that he says are appropriate.
[327] Tr. p. 943, l. 5-10.
[328] Tr. p. 851, l. 24 – p. 854, l. 22.
[329] Ex. 12, p. 30, l. 3-19.

experience.[330] As Ms. Barnes pointed out at hearing, there is no reason why this expense should be treated any differently than other expenses like plant maintenance, storm costs, or vegetation management costs.[331] This view is both logical and reasonable and should be adopted by this Commission.

In sum, there is no policy reason, nor any factual reason for this Commission to change its traditional practice with regard to rate case expense. Ameren Missouri's costs are not increasing; due to Ameren Missouri's cost-containment efforts, they have remained stable. Neither is Ameren Missouri retaining consultants to say the same thing as its Company witnesses, nor is it hiring outside counsel while leaving in-house counsel with nothing to do so that it can put on some elaborate rate case defense. Consequently, there is no reason to change the way the Commission historically has handled rate case expense by adopting a cap on that expense or by disallowing all outside costs and only allowing one-half of the small amount of inside costs. Because the Company's request of $1.538 million annual rate case expense is based on solid reasoning and traditional ratemaking principles, it is the proposal this Commission should adopt.

XI. COAL INVENTORY

There is general agreement on the level of coal at the Company's plants to be included in coal inventory.[332] The Company has proposed, and the Staff agrees, that the appropriate coal inventory for coal on the ground (i.e., in the "coal pile") is a 13-month average, after being adjusted for rail delays due to the flooding which occurred last summer. A 13-month average of

[330] Ex. 12, p. 30, l. 20 – p. 31, l. 14.
[331] Tr. p. 853, l. 24 – p. 854, l. 13.
[332] Coal inventory is a rate base item, upon which the Company earns a return. Coal inventory is not a cost that is recovered through the fuel adjustment clause. The cost of the coal itself is then recovered through the fuel adjustment clause after it is removed from inventory and burned at the power plant to produce electricity. Tr. 1418, l. 4-12.

the cost of the coal in the coal pile totals approximately **$__________**,[333] and produces a revenue requirement at the Company's proposed return of approximately $20 million. The question left for the Commission to determine is whether the coal in transit should also be included in the Company's coal inventory so that the carrying costs of both the coal on the ground and the coal in transit would be reflected in the Company's revenue requirement set in this case. The inventory value of the coal in transit is approximately ** $__________**,[334] and would produce an incremental revenue requirement at the Company's requested return of approximately $800,000. Because Ameren Missouri takes title to the coal when it is loaded into railcars, coal in transit is owned by Ameren Missouri. The only difference between coal in the coal pile and coal in transit is, as the label in transit suggests, coal in transit has not yet been delivered to Company, while coal in the coal pile has been delivered.[335]

While not actually challenging the Company's target coal pile level, the MIEC points to the Company's use of the Utility Fuel Inventory Model (UFIM) to determine target levels of coal at each power plant, arguing that the UFIM justifies ignoring coal in transit. The UFIM is a model designed to determine the least cost level of coal that should be maintained *at the plant*s, but as discussed below, the model is not designed to determine the proper *overall coal inventory level* that should be maintained. Nevertheless, MIEC argues that the inclusion in inventory of any amount above the UFIM level is a buffer which makes including coal in transit in inventory unnecessary.[336] This argument, of course, misses the point. If coal in the coal pile, which the Company owns, is in inventory because it is prudent to buy that coal and maintain it at the plants, then coal in transit, which the Company also owns, should also be in inventory because it is just as prudent for the Company to continue to take coal from the mines and to move it (coal in

[333] Ex. 18, p. 5, l. 1 (Neff rebuttal).
[334] Tr. p. 1419, l. 3.
[335] Ex. 18, p. 5, l. 8-13.
[336] Ex. 511HC, p. 28, l. 11-15. (Meyer surrebuttal)

NP

transit) to ensure that it can timely *replenish* the coal in the coal pile. Even Staff witness Ms. Hanneken admits that coal in transit is a prudent and necessary expenditure in order to ensure the Company can maintain its targeted coal pile level:

> ***Q.*** ***Okay. So each day coal [is] used from that plant, that [coal] pile.***
> *A.* *Correct.*
>
> ***Q.*** ***And so each day that pile is going to get smaller unless it's replenished, correct?***
> *A.* *Correct.*
>
> ***Q.*** ***Now, let's presume for a while that the coal pile isn't replenished and if the coal pile starts with some number…of days worth of coal in it and the plant runs for a day then you agree the coal pile is then one day less than what it was the day before.***
> *A.* *Yes…*
>
> ***Q.*** ***And after two days there'd be two days less of coal, right?***
> *A.* *Presumably, yes.*
>
> ***Q.*** ***So after day one the Company wouldn't have enough coal in the pile to be in compliance with its policy because it burnt a day of coal, right?***
> *A.* *Yeah, I think that's consistent with some of the minor fluctuations we see in the inventory.*
>
> ***Q.*** ***And after two days it would be two days away from its policy level.***
> *A.* *Correct.*
>
> ***Q.*** ***And after three days it would be three days away, right?***
> *A.* *Yes.*
>
> ***Q.*** ***So you agree that in order to maintain the number of days policy for a particular plant the Company has to add coal on a regular basis.***
> *A.* *I don't think Staff is disputing that fact, no.*
>
> ***Q.*** ***Okay. So Staff agrees it's necessary for the Company to have coal delivered to its plants.***
> *A.* *Yes.*
>
> ***Q.*** ***And you agree it's prudent for the Company to have coal delivered to its plants.***
> *A.* *Correct.*

Q. ***How does Ameren Missouri get coal delivered to its plants, do you know?***

A. *It's either delivered by train or barge.*

Q. ***And that's the coal in transit we're talking about here today.***

A. *I – yes.*[337]

That coal in transit, which is necessary to ensure replenishment of the coal pile, should be included in inventory is obvious when one realizes that what should be in the pile, according to the UFIM, has nothing to do with whether coal in transit should be in inventory and in fact does not purport to determine anything but the amount of coal that should be on the ground at a given moment. As Mr. Neff explained, the "least cost level" of coal at a plant is not the same as what it takes to maintain a prudent level of coal: "...[the UFIM] doesn't take into account the political and social costs of running out of fuel which could be tremendous."[338] He continued, "It [setting the Company's coal inventory level at the UFIM number] would not be prudent and even the people who make the UFIM model do not recommend that the least cost number be used as the inventory target level, they recommend it be higher than that level for all the reasons I've stated."[339]

The bottom line is that without coal in transit the UFIM least cost level could not be maintained. Instead of being a reason to exclude coal in transit from inventory, the UFIM level in fact provides a basis for the sound argument that coal in transit should be included in inventory because without it the UFIM level could not be maintained. The Company owns the coal in transit, it must buy it in order to maintain the coal pile, and consequently, coal in transit is just as much "inventory" of coal as is the coal on the ground itself.

Although the Staff did not make this argument in its pre-filed testimony, the Staff has come up with an additional "justification" for ignoring coal in transit. In its mini-opening

[337] Tr. 1432, l. 2 – p. 1433, l. 21.
[338] Tr. p. 1394, l. 7-9.
[339] Tr. p. 1417, l. 14-18.

statement on this issue, the Staff pointed out that although the Company owns coal in transit, it does not pay for the coal until two weeks later and the Staff now argues that this is a reason to reject the Company's coal in transit proposal.[340] Mr. Neff admitted the coal has not yet been paid for at the time it is in transit. To that fact we say "so what"? That fact is irrelevant because, as Mr. Neff also pointed out, up to one-fourth of the coal in the coal pile has also not been paid for at any particular time: "Since we have approximately 60 days on the ground and we don't pay for coal for two weeks at any given time, a fourth of the [on the ground] coal inventory has not been paid for."[341] Mr. Neff then pointed out that all of the parties in the case agreed that the coal pile should be allowed into coal inventory, regardless of whether the Company had paid for that coal.[342] He also points out that this is no different than how the parties determine revenues used to offset costs in the Company's revenue requirement. "…it's no different than our revenues, like we just finished the month of September and we'll book the revenues from our customers but our customers haven't paid us for the power yet but yet we put it on our books as revenue and it's very similar here."[343] The Staff's argument is like saying that revenues recorded in July should not be accounted for in determining the trued-up revenue requirement through July 31, 2012 (revenues of course lower the revenue requirement) because the Company hasn't been paid for those revenues until August or later.

XII. RENEWABLE ENERGY STANDARD COMPLIANCE COSTS

In the Company's previous rate case, Case No. ER-2011-0028, the Commission included $885,000 in the Company's revenue requirement for the expenses incurred by the Company for

[340] Tr. p. 1378, l. 14-22.
[341] Tr. p. 1421, l. 6-9.
[342] Tr. p. 1421, l. 10-11.
[343] Tr. p. 1407, l. 24 – p. 1408, l. 4.

complying with the state of Missouri's Renewable Energy Standard (RES).[344] The Commission also ordered that the Company establish an Accounting Authority Order (AAO) to accumulate in a regulatory asset any amounts the Company spent which are above the $885,000 level. Since rates were set in that case, the Company has accumulated $6.3 million in a regulatory asset.[345] The parties agree upon these numbers,[346] and there is no allegation of imprudence over these expenditures. However, the parties do not agree on how these costs should be included in the Company's revenue requirement going-forward, or about how to treat the $6.3 million regulatory asset.

Ameren Missouri proposes to include $4.7 million[347] in the calculation of its revenue requirement in this case (the $4.7 million will become the base in the AAO), an amount which is less than the actual amount spent since its last rate case, and to continue its authority to capture any difference in the Company's RES expenditures going-forward in a regulatory asset. The Company agrees to capture the difference whether it is above or below the $4.7 million. The Company's request is consistent with the treatment granted by the Commission in the Company's last rate case where a base amount was included in the revenue requirement. The Company also proposes to collect the $6.3 million regulatory asset that has already been accumulated over two years, with rate base treatment for the unamortized balance.

The Staff agrees with the proposal to include $4.7 million in the Company's revenue requirement but believes the regulatory asset should be recovered over three years or, in the alternative, over six years if rate base treatment is granted. The MIEC does not believe any

[344] Report and Order, Case No. ER-2011-0028, p. 101. Also, Order Denying Applications for Rehearing, Denying Reconsideration, Clarifying a Portion of the Commission's Report and Order, correcting the Report and Order *Nunc Pro Tunc*, Case No. ER-2011-0028, p. 2.
[345] The $6.3 million equals the RES expenditures above the $885,000 base through the true-up period in this case.
[346] Tr. p. 1069, l. 11-21.
[347] Tr. p. 1069, l. 23 – p. 1070, l. 3.

amount should be included for RES compliance in the Company's revenue requirement and that the regulatory asset should be collected over six years with rate base treatment.

Starting with the amount that should be included in the Company's revenue requirement, it is the MIEC's position that the Commission's regulations only allow for collection of costs in an AAO and do not provide for any amount to be included in the revenue requirement. The Commission obviously disagreed in the last case, and the Staff (and the Company) disagree here. A review of the Commission's regulations regarding RES compliance demonstrates that MIEC's reading of the rules is just plain wrong. The rules state:

> Alternatively, an electric utility may recover RES compliance costs without the use of the RESRAM procedure through rates established in a general rate proceeding. In the interim between general rate proceedings the electric utility may defer the costs in a regulatory asset account…[348]

The MIEC argues the second sentence means the Commission cannot include a base amount of RES compliance costs in the Company's revenue requirement. Even presuming for a moment that MIEC's argument is correct, as Chairman Gunn pointed out, the Commission has the ability to grant a waiver for this portion of the regulation, if necessary.[349] And while the Company does not believe a waiver is required, if the Commission believes such a waiver is required, then the Company respectfully requests such a waiver. However, a plain reading of the rule indicates that this action is unnecessary. All parties agree that the second sentence deals with how the utility is to capture costs in *between* rate cases. However, that sentence has nothing to do with whether an amount is included when setting the revenue requirement *in a rate case*. The relevant portion of the rule applicable to what happens in a rate case is found in the first sentence, which clearly requires RES compliance costs recovered through rates set in a general rate proceeding. This demonstrates that the rule provides that the Commission is to include an

[348] 4 CSR 240-20.100(6)(D).
[349] Tr. p. 1056, l. 9-18.

amount in the Company's revenue requirement in rate cases as a method of recovering RES compliance costs. Not only does the rule provide for this, but it is common practice for various deferred accounting mechanisms used by the Commission. When those mechanisms are used, the Commission routinely includes a base amount in the Company's revenue requirement and then tracks changes against that base. The Staff agrees that the regulation does not include any language prohibiting the inclusion of a base level of RES compliance costs in the Company's revenue requirement.[350] The Commission has the authority to include in rates a base amount and should do so, just as it has done in the Company's previous rate case, and just as its RES rule contemplates.

Next, the Commission must decide the period over which the $6.3 million regulatory asset should be amortized. There is no support in the record for the proposal to amortize over six years. As Mr. Weiss pointed out in his rebuttal testimony, in the Company's last rate case, the Commission itself expressed the inappropriateness of a long amortization period for these expenses.

> Ameren Missouri does not own or operate the solar equipment for which it is required to pay a rebate. That equipment is the property of the customer who has control and responsibility for them and will primarily benefit from the use of the equipment. Thus, to Ameren Missouri, payment of the solar rebates is simply an expense imposed upon it by the statute. For that reason, a long amortization period as proposed by MIEC is inappropriate.[351]

Although MIEC sought a ten-year amortization in the last case and seeks a six-year amortization period in this case, its recommendation in this case is still a longer amortization period than is appropriate for an ongoing, annual expense. Ameren Missouri's proposed two-year amortization (or even Staff's three-year amortization) are much more appropriate for an expense AAO.

---

[350] Tr. p. 1072, l. 10-13.
[351] Ex. 6, p. 8, l. 9-14, quoting *Report and Order*, Case No. ER-2011-0028, p. 98-99 (Weiss Rebuttal).

Finally, the Company has requested the Commission allow it to include the non-amortized portion of the regulatory asset in rate base.[352] The Staff and the MIEC oppose this unless the regulatory asset is amortized over six years instead of three. Upon questioning at the hearing, the witnesses could not offer an explanation for why rate base treatment is acceptable if the amortization period is six years but not if it is for three years. Mr. Meyer, when questioned about his rationale, could only repeat the distinction and failed to ever provide a reason why he would agree with rate base treatment for a six-year amortization but not for a shorter amortization other than the circular explanation that he would provide rate base treatment for the longer amortization period.

> ***Q.*** ***But I guess what I keep asking you is why. Why is it appropriate to put it in rate base when there's six years [amortization period]? Why?***
>
> *A.* *As I keep telling you, as the amortization period is longer, we feel it's appropriate to give you a return on that amount during the amortization period, the recovery of the amortization period.*
>
> ***Q.*** ***And is the reason that it's appropriate to give us a return, is the reason because we're incurring a cost to put that capital out or is it some other reason?***
>
> *A.* *We recognize that you spend the money, and now we're giving you the return of that money and on—I'm sorry. We're giving you an amortization of that expense, and to the extent that it's six years, we believe that it's appropriate to give you rate base recognition.*[353]

While not being able to explain why he recommended different treatment, Mr. Meyer did admit that not allowing rate base treatment would prevent the Company from being compensated for the time value of money.[354]

Mr. Cassidy, testifying for the Staff, also admitted that generally, amortization amounts are included in rate base in order to compensate the Company for the time value of money.[355]

---

[352] Ex. 6, p. 7, l. 1-10.
[353] Tr. p. 1052, l. 18 – p. 1053, l. 7.
[354] Tr. p. 1059, l. 8-21.
[355] Tr. p. 1074, l. 9-16.

However, again, Mr. Cassidy could not provide an explanation of why he opposed rate base treatment other than stating that he'd support it in exchange for a longer amortization. This answer, of course, merely begs the question:

> ***Q.*** ***Are there any other reasons [other than to compensate the Company for the time value of money?]***
> *A.* *Well, the reason Staff advocates inclusion in rate base over, you know, if you give a six-year amortization of that deferred balance, is it's – it's consistent with the energy efficiency treatment. I mean, that is – it is amortized over six years and it's included in rate base. But if you want to get that money back quicker, as Staff offers alternatively, over three years, then there really shouldn't be an additional recovery of those funds through inclusion in rate base.*
>
> ***Q.*** ***…if inclusion in rate base compensates the company for the time value of money, isn't it true that if you don't include it in rate base, the company won't be compensated for the time value of money?***
> *A.* *That's true, but there are also other amortizations that the company has that doesn't [sic] have any compensation for the time value of money.*[356]

Again, neither the Staff nor the MIEC provided a basis upon which the Commission could justify not including the unamortized amounts in rate base. These expenditures represent a cost which the Company has no choice but to incur.[357] The purpose of rate base treatment, as Mr. Cassidy and Mr. Meyer admitted at hearing, is to compensate the Company for the time value of that money between the time it is spent and when it is recovered. There is a time value of the money the RES statute requires the Company to spend regardless of whether the expenditures are recovered over three years or six years. The Commission should order the unamortized amounts to be given rate base treatment.

XIII. VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTION TRACKER

Ameren Missouri currently has a tracker for changes in the expenses it incurs to comply with the Commission's Vegetation Management and Infrastructure Inspection rules. As part of

[356] Tr. p. 1074, l. 17 – p. 1075, l. 8.
[357] Tr. p. 1043, l. 21-25; p. 1072, l. 15-20.

this rate case, the Company requests continuation of these trackers. The Staff supports the continuation of these trackers as well. The Company also proposes that any sums deferred (to a regulatory asset if the expenditures exceed the base or to a regulatory liability if the expenditures are less than the base) should be amortized over two years.

Ameren Missouri is still on its first cycle of trimming vegetation under the Vegetation Management rules and will not complete that first cycle until December of 2013.[358] Even after the first cycle has been completed, there is no assurance that the costs of the second cycle will be the same as the first. As Ameren Missouri witness David Wakeman testified, "[s]o as we go back through the second trim [cycle], it's not well known since this is our first time back through[,] what might happen and what we might encounter with trees that are diseased, trees that have insect problems, and other things that occur. As was mentioned in the opening statement about drought conditions, we could have a lot of tree removals, and in some years it could be less."[359] This is also true for the costs of the infrastructure inspection program. The Company has not yet completed the first cycle of inspections and other work required by the Commission's Infrastructure Inspection rules.[360]

This spending, necessary to comply with both the Commission's Vegetation Management and Infrastructure Inspection rules, is not discretionary on the part of the Company; it is required by Commission regulation.[361] It also is not a fixed cost which can be known ahead of time. The amount the Company actually spends on these compliance activities will vary and may increase or decrease. For that reason alone, it is appropriate that the trackers be continued by the Commission in this case.

---

[358] Ex. 31, p. 2, l. 12.
[359] Tr. p. 1952, l. 14-21.
[360] Ex. 31, p. 2, l. 10-13.
[361] Ex. 31, p. 2, l. 17-20.

Mr. Wakeman is the only person testifying on this issue with actual experience with vegetation management. He is the only witness with experience in managing a vegetation management budget. He is the only witness with experience in managing an infrastructure investment budget. His testimony on these issues should be given great weight, especially when the only contrary testimony comes from an auditor, Mr. Meyer, even if Mr. Meyer is an auditor with years of experience in utility ratemaking. These are two very different areas of utility regulation, and Mr. Wakeman is the expert in the area of what it takes to comply with the Commission's regulations.

Finally, the Commission should recognize that the relief being requested by the Company (continuation of the trackers) is beneficial to customers as well as to Ameren Missouri. There have been years in which Ameren Missouri did not spend as much as it anticipated and so money was refunded to customers. The opposite has also occurred. This result is good for both the Company and our customers.[362]

XIV. RATE DESIGN – CUSTOMER CHARGE

All of the rate design issues in this case were resolved by settlement, with the exception of the customer charge issue. Ameren Missouri proposes to increase its monthly customer charges for customers in the Residential and Small General Services rate classes. Under the Company's proposal, the monthly customer charge for the Residential rate class would increase from $8 to $12; the charge for single phase customers in the Small General Services rate class would increase from $9.74 to $14.61; and the charge for three-phase customers in the Small General Services class would increase from $19.49 to $29.24.[363] Because Ameren Missouri's proposed increases would assign a greater portion of the revenue requirement approved in this

[362] Ex. 31, p. 3, l. 1-11.
[363] Ex. 36, p. 21, l. 7 – p. 22, l. 8 (Cooper Direct).

case to a fixed monthly customer charge, a lesser portion of the revenue requirement will be left for recovery through volumetric rates. Consequently, approving the Company's proposal to increase the monthly customer charges correspondingly reduce volumetric rates compared to what those rates would have been without any increase to the customer charges.

Although for somewhat different reasons, OPC, AARP, the Consumers Council of Missouri, and the Natural Resources Defense Council (NRDC) each oppose any increase in the current monthly customer charges. Although the Staff also opposes any increase to the current monthly customer charges for the Small General Services rate class, the Staff agrees that the monthly customer charge for the Residential rate class should be increased, but the Staff proposes a more modest increase from $8 to $9.[364] No other parties to the case took a position on this issue.

The testimony and related schedules of each of Ameren Missouri's three witnesses on this issue – Wilbon Cooper, William Warwick, and William Davis – provide compelling evidence in support of the Company's proposal. For example, Mr. Cooper testified that the Company's Class Cost of Service Study (CCOSS), which was performed and sponsored by Messrs. Cooper and Warwick, fully supports the proposed customer charge increases for both the Residential and Small General Services rate classes.[365] Indeed, the CCOSS justifies an increase in the Residential customer charge to approximately $20, an amount that is well above the $12 level Ameren Missouri is requesting.[366]

But beyond the justification provided by the CCOSS, there are numerous other reasons why the Commission should grant the Company's request to increase these monthly customer charges. Mr. Davis' testimony described his analysis of actual billing and usage data for

[364] Ex. 205, p. 22, l. 17-18 (Staff Rate Design and Class Cost of Service Report).
[365] Ex. 36, p. 21, l. 16 – p. 22, l. 8.
[366] *Id*. p. 21, l. 16-18.

customers in Ameren Missouri's Residential rate class, which allowed him to reach the following conclusions regarding the impact of the proposed increases on customers:

- For those customers who do see an overall energy cost increase as a result of the increase in the Residential customer charge, most will see an *annual* increase of between \$5 and \$25;[367]

- No customer will see an *annual* increase in energy costs of more than \$48, and almost all of those will be customers who have virtually no monthly usage;[368]

- Total energy costs (comprising both the monthly customer charge and volumetric charges for energy used) will actually *decrease* for approximately half of the Company's Residential customers if the monthly customer charge is increased to \$12;[369] and

- Almost 60 percent of Ameren Missouri's LIHEAP (Low Income Home Energy Assistance Program) customers will be better off, from a total energy cost standpoint, if the customer charge is increased to \$12 than they are under the current \$8 charge.[370]

Messrs. Cooper and Davis also presented evidence showing how the Company's monthly customer charge for the Residential rate class – both as currently in effect and with the proposed increase – compares to similar customer charges for other Missouri utilities. Currently, Ameren Missouri's monthly customer charge for residential customers is lower than any other investor-owned utility in the state, and if increased to \$12 the Company's customer charge will still be lower than the \$12.52 customer charge in effect for The Empire District Electric Company.[371] In addition, Mr. Davis surveyed 38 of Missouri's electric cooperatives and found that the average monthly customer charge of those cooperatives – whose members at least indirectly set their own rates – was \$22.70, with the lowest charge within that group being \$11.79 and the highest being \$34.[372] A complete list of the cooperatives included in the study and their respective residential

[367] Ex. 39, p. 3, l. 15-16 (Davis Rebuttal).
[368] *Id*.
[369] *Id*,, p. 9, l.20 - p. 10, l. 7.
[370] *Id*. p. 12, l. 4-20.
[371] Ex. 37, p. 12, l. 19 - p. 13, l. 13 (Cooper Rebuttal).
[372] Ex. 39, p. 7, l. 7-13.

customer charges can be found at pages 14-15 of Mr. Cooper's rebuttal testimony, Exhibit 37. That list shows that customers of all but one of the 38 electric cooperatives already pay monthly customer charges that exceed the $12 Ameren Missouri is proposing in this case, with the overwhelming majority of cooperative customers paying significantly more. The reason this information is relevant is simple: If cooperative customers are able to pay monthly customer charges that greatly exceed the Company's current $8 charge, why should the Commission – or any of the parties who oppose increasing the customer charge – believe Ameren Missouri's customers can't do the same?

One of the reasons the Staff opposes the Company's proposal to increase its customer charges is the Staff's contention that increasing the charge for the Residential rate class will cause "rate shock" to customers.[373] But Mr. Davis' testimony conclusively shows that concern is both inconsistent and unfounded. In recent rate cases filed by two gas utilities, Staff has either supported or expressed no concern about increases in customer charges that were much greater than the increases proposed by Ameren Missouri in this case. And the Commission approved each of those increases. For example, in Ameren Missouri's most recent gas rate case, Case No. GR-2010-0363, Staff *proposed* to increase the monthly customer charge for residential customers from $15 to $30 – an annual increase of $180.[374] In Missouri Gas Energy's 2007 general rate case, Case No. GR-2006-0422, the Commission approved a change in that utility's monthly residential customer charge from $11.65 to $24.62 – an annual increase of almost $156.[375] As noted earlier in this brief, the comparable annual increases for the majority of Ameren Missouri's customers will be between $5 and $25, and none of the Company's customers will experience an annual increase of more than $48. Based on the comparison of the

---

[373] Ex. 205, p. 24, l. 7-10.
[374] Ex. 39, p. 10, l. 9-12.
[375] *Id.*, p. 11, l. 9-13.

Company's proposal to the positions recommended by the Staff and approved by the Commission in recent gas rate cases, "rate shock" most certainly is not a legitimate concern in this case.

The NRDC – and to a certain degree OPC as well – opposes Ameren Missouri's proposal based on concerns expressed by the NRDC's witness, Pamela Morgan. First, Ms. Morgan testified that she is concerned that increasing the monthly customer charge for customers in both the Residential and Small General Services rates classes will make those customers less likely to invest in energy efficiency measures.[376] Second, she expressed concern that increasing customer charges violates certain ratemaking objectives described in *Principles of Public Utility Rates* by James C. Bonbright.[377] But the evidence presented in this case demonstrates that both of these concerns are unfounded.

Ms. Morgan's concerns regarding the effect increasing customer charges will have on customers' willingness to invest in energy efficiency measures is based, in major part, on results published in a report entitled *AmerenUE Demand Side Management (DSM) Market Potential Study* ("Market Potential Study"), which was prepared for the Company by Global Energy Partners, LLC, in connection with the recently completed case that considered Ameren Missouri's filing to further the objectives of the Missouri Energy Efficiency Investment Act, Case No. EO-2012-0142.[378] But Ms. Morgan apparently misunderstood certain of the study results and data presented in that report. For example, although she correctly testified that the study found that Ameren Missouri's customers would be more likely to participate in energy efficiency programs with shorter rather than longer payback periods,[379] she omitted key details from the report that provide necessary context for that finding. To correct that omission, the

[376] Ex. 650, p.7, l. 1-3 (Morgan Rebuttal).
[377] *Id*., p. 9, l. 11- p. 10, l. 3.
[378] *See Id*. p. 8, footnote 1; Tr. p. 413, l. 8 - p. 414, l. 2.
[379] Ex. 650, p. 8, l. 6-7.

Company introduced Exhibit 46, which is an excerpt from the Market Potential Study, to provide the context necessary for the Commission to assess the accuracy of Ms. Morgan's testimony.

Exhibit 46 shows that even with a payback period of one year or less, no more than 45 percent of Ameren Missouri's Residential class customers and 47 percent of its Small General Services class customers expressed a willingness to make any investment in energy efficiency measures. And the percentages are even less when customers were asked about specific energy efficiency investments. For example, Exhibit 46 shows that 40 percent or less of customers in the Residential class customers would be willing to make investments in more energy-efficient heating or air conditioning equipment, color televisions, or personal computers if those investments had a payback period of one year or less. And the percentages are similar for customers in the Small General Services rate class who expressed a willingness to invest in measures such as more energy efficient personal computers, printer/copiers, refrigeration units, motors and pumps, or servers whose payback period was one year or less. Consequently, even if Ms. Morgan is correct that increased customer charges will make customers less willing to invest in energy efficiency measures, that effect would influence the behaviors of fewer than half of the customers in Ameren Missouri's Residential and Small General Services rate classes.

But there is no need for concern, because there is no evidence that increasing the monthly customer charge will have any of the negative effects that Ms. Morgan suggests on *any* of the Company's customers. Her conclusions are based on nothing more than speculation. Under cross-examination, Ms. Morgan admitted that she doesn't know what effect, if any, an increase of $48 per year – the maximum annual increase any Residential class customer will experience under Ameren Missouri's proposal – would have on customers' willingness to invest in energy efficiency measures because she did no study to determine that effect.[380] She also testified that she is not aware of any study that has examined the effect of customer charges on customers' willingness to invest in energy efficiency measures, and whether customer attitudes are positively or negatively affected by increasing or decreasing customer charges or eliminating them altogether.[381] She further stated that she has no basis to dispute Mr. Davis' findings regarding the annual cost impact to Ameren Missouri's customers of the proposed increases in monthly customer charges.[382] And in evaluating Ms. Morgan's testimony, the Commission should keep in mind that Ms. Morgan could not have considered any of Mr. Davis' findings regarding rate impact in her analysis because Mr. Davis first presented those findings in his rebuttal testimony, which was filed the same date as Ms. Morgan's testimony, and which she did not rebut.

The record in this case also shows that Ms. Morgan's concerns that the Company's proposed increases to monthly customer charges violate certain ratemaking objectives described by Professor Bonbright are equally unfounded. Under cross-examination, Ms. Morgan admitted that several of those objectives – those pertaining to increased revenue stability and predictability for Ameren Missouri and increased rate stability for its customers – actually will be furthered, not hindered, if the Commission approves the proposed customer charge increases.[383] This is true because of the effect increasing customer charges will have on the assignment of the revenue requirement in this case between fixed and variable rates. By increasing the customer charge, a lesser portion of the Company's overall revenue requirement will be left to be collected through volumetric charges. Because more of its costs are recovered through fixed monthly customer charges, Ameren Missouri' revenues – and the cost recovery those revenues represent –

[380] Tr. p. 426, l. 14-19.
[381] *Id*. p. 425, l. 14-20.
[382] *Id*. p. 426, l. 1 - p. 427, l. 6.
[383] *Id*. p. 427, l. 16 - p. 428, l. 9.

will be more stable and more predictable. In addition, shifting cost recovery from fixed to variable charges also benefits customers. Increased customer charges means that volumetric charges will be less than otherwise would be the case, so customers' overall energy costs will be less affected by fluctuations in usage due to weather or other factors. Therefore, insofar as achieving several of the ratemaking objectives described by Ms. Morgan is concerned, increasing monthly customer charges, as Ameren Missouri has proposed, will be a win/win for the Company and its customers.

Respectfully submitted:

SMITH LEWIS, LLP

/s/ James B. Lowery
James B. Lowery, #40503
Michael R. Tripp, #41535
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

Thomas M. Byrne, #33340
Managing Assoc. General Counsel
Wendy K. Tatro, #60261
Asst. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-2514
(314) 554-3484
Facsimile (314) 554-4014
AmerenUEService@ameren.com

L. Russell Mitten, #27881
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Phone (573) 635-7166
Facsimile (573) 634-7431
rmitten@brydonlaw.com

Attorneys for Union Electric Company d/b/a Ameren Missouri

Dated: November 5, 2012

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 5th day of November, 2012.

/s/James B. Lowery
James B. Lowery