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Witness:	Lynn M. Barnes
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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. ER-2014-0258

REBUTTAL TESTIMONY

OF

LYNN M. BARNES

ON

BEHALF OF

UNION ELECTRIC COMPANY
d/b/a Ameren Missouri

St. Louis, Missouri
January, 2015

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TABLE OF CONTENTS

REBUTTAL TESTIMONY

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I. PURPOSE AND SUMMARY OF REBUTTAL TESTIMONY

Q. Please state your name and business address.

A. My name is Lynn M. Barnes. My business address is One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

Q. Are you the same Lynn M. Barnes who filed direct testimony in this docket?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my rebuttal testimony is to respond to (a) the fuel adjustment clause ("FAC")-related direct testimony of Office of the Public Counsel ("OPC") witness Lena Mantle, and the FAC-related recommendations of Staff witness Matthew Barnes, which are reflected in the Staff's Report – Revenue Requirement – Cost of Service ("Staff Report"); (b) the direct testimony of Missouri Industrial Energy Consumers ("MIEC") witness Greg Meyer in opposition to the recovery of the lost fixed costs approved by the Commission for deferral in File No. EU-2012-0027, and similar direct testimony submitted by Staff witness John Cassidy on the same issue; and (c) Staff witness Jason Kunst's testimony, which is also contained in the Staff Report, which seeks to disallow Ameren Missouri's allocation of the actual fees paid to members of the Ameren Corporation board of directors and related board of directors' expenses. I will briefly address my involvement in safety initiatives as an officer of the Company.

Q. Are there other Company witnesses that address any of these issues?

A. Yes. Company witness Jesse Francis, who has had responsibilities related to the Company's periodic FAC filings and FAC reporting since the Company's FAC was first established in 2009, will address Ms. Mantle's contentions that OPC cannot determine the costs and revenues included in the FAC. In summary, Mr. Francis will outline the significant amount of information and data supplied to the Commission, OPC and others as part of its periodic filings, monthly reports and rate case filings which, taken together, allow those parties to determine the costs and revenues included in the FAC and to otherwise verify the Company's compliance with its FAC tariff. Company witness Jeffrey S. Jones will address the significant exposure to volatility and uncertainty in coal-related components of the FAC, despite the Company's prudent hedging of coal and coal transportation. Company witness Jaime Haro will also address volatility and uncertainty in FAC components. In addition, Mr. Gary Rygh, who is a Managing Director with Barclay's Capital, Inc., and who has previously testified before the Commission on FAC-related issues, will address the extreme importance of continuing the Company's FAC in its current form from the standpoint of the investment community. Company witness John Reed will also address the lost fixed cost amortization issues noted above.

II. FUEL ADJUSTMENT CLAUSE ISSUES

Q. What is Ms. Mantle's primary position regarding the FAC?

A. Ms. Mantle indicates that she is presenting OPC's position on continuation of Ameren Missouri's FAC. OPC's primary position is that the Company should not be allowed to continue its FAC. Although nothing material has changed regarding the FAC over the past several years, Ms. Mantle, now on behalf of OPC, is taking a position that is at odds with the position Ms. Mantle herself has taken as a representative of Staff in the Company's last two rate cases, where she recommended continuation of the Company's FAC. OPC's secondary or "fallback" position is that if the FAC is continued it should be changed in certain respects.

Q. What justification does Ms. Mantle give for eliminating the Company's FAC?

A. Ms. Mantle gives one, or perhaps two, explicit justifications for eliminating the FAC, and her testimony appears to imply that there may be a third justification. Her first argument is a reiteration of the arguments reflected in OPC's September 24, 2014 *Request for Order* (and related OPC pleadings), and in data requests ("DRs") submitted to the Company by Ms. Mantle in this case. In short, she claims the Company did not comply with the Commission's minimum filing requirements ("MFRs") for continuing the FAC, which are contained in the Commission's rules, and that the remedy for the claimed lack of compliance should be termination of the FAC. Ms. Mantle's contentions are incorrect, and the Company has fully complied with all FAC-related rule requirements. Second, Ms. Mantle claims that the information that has been provided to her "suggests that the FAC should not be continued."[1] I explain below why this contention is also incorrect. Finally, Ms. Mantle's recitation of history appearing at pages three through eight of Ms. Mantle's direct testimony, particularly when placed in the context of prior testimony from Ms. Mantle

[1] Mantle Direct, p. 9.

about Ameren Missouri's utilization of a FAC, appears to be a suggestion on her part that Ameren Missouri has not been a good steward of the privilege of utilizing its FAC. I will explain why this too is not true later in my testimony.

A. <u>Minimum Filing Requirement-Related Issues.</u>

Q. Has the Company complied with the Commission's MFRs?

A. Yes, it has, and neither OPC, Ms. Mantle, the Staff nor the Commission has ever claimed otherwise, save OPC's *Request for Order* filed in this case in September 2014. Indeed, the Commission has previously ruled that explanations that are far less complete than the explanations reflected in the Company's MFRs fully complied with the Commission's FAC rules. For OPC to claim otherwise now is effectively an attempt to convince the Commission to re-write the FAC rules in the middle of the Company's rate case, all in an attempt to accomplish the obvious goal of OPC's *Request for Order* and Ms. Mantle's testimony; that is, to deprive the Company of the utilization of its FAC, even though there is a complete absence of any indication that the Company has failed to properly manage its fuel, purchased power and off-system sales.

Q. Please explain why the Company has complied with the MFRs.

A. There are two parts of the Commission's FAC rules that call for a "complete explanation" of costs and revenues in a FAC. Ms. Mantle claims that we have not complied with these provisions. The first part is found at 4 CSR 240-3.161(2)(H) and (I), and applies the first time a utility requests a FAC. The second part, which OPC has made an issue of in this case, is found in 4 CSR 240.3.161(3)(H) and (I), and applies to requests to continue a FAC. Both parts are identical, with subsection (H) in both parts calling for a complete explanation of costs and subsection (I) in both parts calling for a complete explanation of revenues. The Commission addressed the language at issue in File No. ER-2007-0004, which involved Aquila, Inc.'s request to first establish its FAC.[2]

Q. Please explain.

A. In that case, an industrial group, SIEUA[3] and another industrial customer, AG-P,[4] claimed that the information submitted by Aquila did not constitute the "complete explanation" required by the rules. In response to this contention, Aquila witness Dennis Williams submitted rebuttal testimony that included a schedule (Schedule DRW-1) consisting of a data request response Mr. Williams had provided. The data request response reflected a roadmap as to where the information required by the FAC MFRs could be found in Aquila's initial rate case filing. I have attached Mr. Williams' Schedule to my testimony and labelled it Schedule LMB-R4. Mr. Williams' Schedule pointed to his direct testimony at page 3, line 18, where Mr. Williams had listed the following information as a complete explanation of all of the costs to be included in the FAC: "Actual cost of fuel and energy for establishing the 'base cost' will be expenses recorded in FERC accounts 501, 509, 547 and 555." In ruling that this explanation, along with Aquila's FAC tariff, met the "complete explanation" requirement of the rule, the Commission flatly rejected SIEUA's and AG-P's contention that Aquila had not complied with (2)(H), stating that "Aquila's proposed fuel adjustment clause tariff contains a very thorough explanation of all costs Aquila seeks authority to flow through its proposed fuel adjustment clause . . . [and] [c]onsequently, Aquila meets the filing requirements of 4 CSR 240.3.161[(2)](H)."[5] I have attached Aquila's

[2] Aquila, Inc. is now KCP&L Greater Missouri Operations Company ("KCP&L-GMO").
[3] Sedalia Industrial Energy Users Association.
[4] Associated General Processing.
[5] *Report and Order*, Case No. ER-2007-0004, at p.22.

FAC tariff from that case as Schedule LMB-R5 to this testimony, and have highlighted the information in it about the costs that would be included in Aquila's FAC. As the Commission can see, the tariff, together with the above-quoted description in Mr. Williams' direct testimony, describes the categories of costs (e.g., fuel and energy) and lists the FERC accounts where the costs are recorded.

Q. How does the detail provided in Ameren Missouri's filing compare to what was found to be in compliance with the MFR rules in the Aquila case?

A. Ameren Missouri has provided significantly more detail than found by the Commission in the Aquila case to comply with the rule in this and in each of the other five rate cases where Ameren Missouri has submitted the required MFR information. That this is true is obvious from a review of my direct testimony Schedules LMB-1 (MFRs) and LMB-3 (FAC tariff). Not only do those schedules list fuel, purchased power, off-system sales and all of the items that Ameren Missouri's FAC has in common with the initial Aquila FAC, and all of the FERC accounts where costs and revenues are recorded, but the MFRs and the FAC tariff contain far more detail than was provided by Aquila. It is simply not possible for Aquila to have complied with the complete explanation requirements in (2)(H), as the Commission *explicitly found*, but for Ameren Missouri to not be in compliance with the same requirements found in (3)(H), as OPC alleges. This shows that OPC's interpretation of the rules is at odds with the intent of the Commission and its rules, and that what OPC really seeks is a re-write of the rules in this rate case.

Q. Is there other direct evidence that contradicts OPC's argument on this issue?

A. Yes, and it effectively comes from Ms. Mantle herself, given her position on the Commission's Staff over the past several years until her retirement from the Staff at the end of 2012. In its Cost of Service Report filed in the first case Ameren Missouri filed where it sought to continue the FAC granted in the previous rate case, the Staff (via Staff witness John Rogers) stated that "Staff has reviewed the minimum filing requirements documents AmerenUE provided in Schedule LMB-E1-1 attached to the prefiled direct testimony of AmerenUE witness Lynn M. Barnes and *believes that with these documents AmerenUE has complied with the minimum filing requirements contained in 4 CSR 240-3.161(3) . . .*" (emphasis added).[6] The documents provided as the minimum filing requirements in that case contained the same level of detail as those presented in this case. While Mr. Rogers was the affiant sponsoring the referenced pages of the Staff Report, Ms. Mantle was the Staff's FAC witness in that case and in each subsequent Ameren Missouri rate case, where the Company presented similar information in its MFRs. In fact, Ms. Mantle has touted that she was one of the "principle [sic] drafters"[7] of the FAC rules, and *she was also Mr. Rogers' supervisor* when he and the Staff confirmed that Ameren Missouri's submissions in fact do comply with the FAC rules that OPC now claims are not being followed by Ameren Missouri.

Moreover, Ms. Mantle herself was *the* Staff witness in the next two rate cases where the Company proposed to continue its FAC. Had the Company failed to comply with the FAC MFR requirements, surely the head of the Staff department responsible for all of the Commission's FAC oversight responsibilities – i.e., Ms. Mantle's department – would have

[6] *Staff Cost of Service Report*, pp. 105-106 and Affidavit of John A. Rogers (Case No. ER-2010-0036).
[7] Mantle Supp. Direct Testimony, File No. ER-2010-0036, p. 2.

claimed that there were shortcomings in the Company's filings. However, no such claim was ever made.

Q. Is your contention that the Company has always done it this way so it should be allowed to do it this way in the future, even if not in compliance with the FAC filing requirements?

A. No, not at all. My contention is that the Company has always complied with the MFRs because the Company has always provided the complete explanation contemplated by the rules. And I further contend that there is an overwhelming quantity of evidence that shows this to be true. Aside from the one Aquila case discussed earlier, no witness for any party, and certainly not the staff who is a party to every case involving a FAC, has ever claimed any deficiency about the Company's MFR compliance, including respecting the particular rule provisions OPC now raises, that is, until OPC decided to take a new position in this case and Ms. Mantle, now that she has a new employer, decided to support her new employer's position. The fact that in the entire roughly eight year administration of the FAC rules the Commission has already ruled contrary to OPC's position, that there are affirmative statements from Ms. Mantle's direct reports – under oath – that the level of detail contained in the Company's MFRs comply with the rules, and that a principal drafter of the FAC rules has testified on the FAC and has never claimed a deficiency in the Company's MFRs is highly relevant to what the Commission intended when it adopted the rules.

Q. It appears that Ms. Mantle's concerns are with the Commission's rules – is this rate case the appropriate forum for Ms. Mantle's concerns to be addressed?

A. No, it is not. Fairly evaluated, OPC's issue is not (or should not be) with the Company's MFR filings. The Company has done what the Commission's rules require it to do. The substance of what OPC is really getting at is that utilities ought to be mandated to provide more data, information and analyses as a part of the utilities' direct rate case filing. I disagree that doing so is necessary, for the reasons discussed earlier, but if such requirements were to exist they ought to arise from uniformly-applied rules. The Commission's FAC rules called for a review of the effectiveness of the rules. The Commission initiated a docket in 2010 to comply with this review requirement, and asked for comments on the rules at that time. Only Ameren Missouri, the Staff and the Missouri Industrial Energy Consumers ("MIEC") provided comments – OPC was silent. None of those comments raised any of the issues OPC now raises. Early last month, the Staff circulated a draft of very detailed suggestions for changes to the FAC rules. The electric utilities then filed a request that the Commission adopt a process of involving workshops to facilitate the Commission's review of the rules. Under that process, a series of workshops would occur over the next approximately seven months, followed by recommendations to the Commission, and, if the Commission desires, a rulemaking to consider amendments to the FAC rules. If OPC doesn't like the way FAC requests have been filed and processed, and doesn't like the Commission's interpretation of requirements of the existing rules, then OPC has a forum to air those concerns, which is not this rate case.

B. <u>Information Provided in Connection with the FAC.</u>

Q. In Ms. Mantle's claim that the information provided by the Company is not adequate to support continuation of the FAC, she justifies her argument about a "complete explanation" by pointing to 4 CSR 240-20.090(2)(A), which lists some factors the Commission looks at when considering costs to include in a FAC, claiming that

without a "complete explanation" the Commission doesn't have a basis to decide what costs to allow in the FAC.[8] How do you respond?

A. I disagree that the Commission has no basis to decide what costs to allow in the FAC. The Commission has made decisions about what costs to allow in FACs for years, and the Staff (including Ms. Mantle) and others have evaluated five prior FAC requests from the Company, verified the propriety and correctness of 17 prior FAC adjustment filings and completed three prior prudence reviews based on the cost (and revenue) information supplied by the Company. A fair reading of OPC's *Request for Order* and related filings, together with Ms. Mantle's direct testimony, reveals that what OPC is really complaining about is that the Company does not literally file, as part of its MFRs, all of the extremely detailed cost and revenue information the Company provides through its periodic FAC adjustment filings, its FAC monthly reports and otherwise in connection with every rate case the Company files. Mr. Francis discusses this information in detail in his rebuttal testimony. The bottom line is that the Commission (and the OPC) has long had the information it needs to understand the costs and revenues in the FAC and to determine if the Company is complying with its Commission-approved FAC tariff. It is simply not true that every detail that Ms. Mantle claims has to be included in what she claims is the "complete explanation" called for by the Commission's rules must be in the MFRs themselves. As Mr. Francis's rebuttal testimony discusses, it seems that neither Ms. Mantle nor OPC generally has paid much attention to the huge amount of data and information the Company has provided to them.

Q. Ms. Mantle posits an additional reason (on page 13 of her direct testimony) where she says the "complete explanation" she claims has been lacking is

[8] Mantle Direct, p. 10, l. 17-19.

important; that is, she claims a "complete explanation" of the type she says must be in the MFRs when a rate case is filed would "greatly enhance" the prudence review process. Is she right?

A. No, she is not right. When prudence reviews are conducted, the Staff and any other parties *have* all of the information that she lists in her testimony on this topic. They have all of the information needed to identify in detail the costs, revenues, calculations, etc. That information is found in the FAC adjustment filings, monthly reports, and rate case workpapers that they would have been provided well in advance of when the prudence review begins. Indeed, they have even more information. As I discuss below, for several cases now the Staff has asked the Commission to impose on us additional reporting/recordkeeping requirements that are not in the FAC rules and we have readily agreed to do so.[9] Not only is all of this information available well in advance of prudence reviews, but it is available well before any party (OPC included) has to address a FAC in a rate case. In terms of rate case reviews, OPC has FAC monthly reports and FAC adjustment filings before the rate cases are filed (after all, we must give at least 60 days' notice before a case can be filed), and has workpapers essentially concurrently with the rate case filing, and then has about five months after the rate case is filed to review workpapers, additional reports and discovery responses. OPC can then develop whatever direct testimony it wants, and propose whatever it wants.

Q. Have there been material issues or disputes about FAC data and information in prudence reviews?

[9] See the Staff Report in this case, where Staff says that these additional requirements will aid them in their review of FAC filings and in prudence reviews.

A. No. Ms. Mantle's attempt to tie her view of what "complete explanation" means in the rate case MFR rules to prudence reviews is a solution in search of a problem. Staff (and other parties) have had *all* of this information when Staff has conducted its three prior prudence reviews. Staff has conducted additional discovery in those prudence reviews, and I do not recall any disputes about that discovery. Staff has recommended just one “prudence” disallowance, and that arose from a difference of opinion on whether revenues under two wholesale contracts did or did not fit the definition of off-system sales. There was complete transparency about the difference of opinion and ultimately the Commission disagreed with us, but the Commission has been very clear – there was nothing inappropriate about the Company’s handling of its honest disagreement about the treatment of those two contracts, and it has nothing to do with the propriety of the Company’s utilization of its FAC.[10]

Q. As part of her discussion of "enhancing" the prudence review process, Ms. Mantle again suggests that Ameren Missouri "decides" what costs and revenues go in the FAC leading to after-the-fact fights. Please respond.

A. Except for the one dispute about the two wholesale contracts I just mentioned, there have been no such fights and we most certainly do not “decide" what costs and revenues are included in the FAC. The FAC tariff defines what can and cannot be included. If there were to be a dispute about this, then ultimately the Commission decides.

Q. At page 10 of her direct testimony, Ms. Mantle makes an argument about 4 CSR 240-20.090(2)(A) (addressing factors such as magnitude, control, volatility, and

[10] *Report and Order*, File No. ER-2011-0028, p. 83. (The “decision in ER-2010-0255 does not support the argument that Ameren Missouri needs a large financial incentive within the fuel adjustment clause”).

other factors the Commission may choose to consider when evaluating an FAC request), apparently suggesting that because of this rule significant data and analyses about the factors mentioned in the rule have to be included in an initial rate case filing. Do you agree?

A. No, I disagree that all of the data and analyses about various factors are required in every initial rate case filing. As my direct testimony indicates, we are requesting to continue virtually the same FAC that was approved by the Commission about 18 months before this case was filed. In fact, while the version of the FAC tariff approved in our last case contains significantly more detail than earlier versions, in substance it covers almost the same costs and revenues. What Ms. Mantle is apparently claiming is that even though the Company is simply proposing to continue the status quo, the Company should have included all sorts of data and analyses about various factors in its initial rate case filing. The FAC proposed for continuation in this case contains no material change in any cost or revenue or otherwise in the operation of the FAC. And since the last case, nothing material has changed about our fuel, purchased power, or off-system sales practices, indeed not much has changed since the case before that. The Commission has heard the very arguments Ms. Mantle is making in this case (about volatility, magnitude, control and whether those support or don't support a FAC), and those issues have been thoroughly debated several times in Ameren Missouri rate cases before the Commission. OPC has several years of actual data for all of the costs and revenues in the FAC. OPC can (and apparently has) analyze that data and Ms. Mantle is presenting her views on what the data shows and on whether the data justifies continuation of the FAC.

Q. Are you suggesting that the Company need not re-do all of the analyses that may have been presented in prior cases and include them with its rate case filing every time a new rate case is filed?

A. Yes, particularly when the rate cases are relatively close together and where nothing material has changed, and particularly where, as here, the parties receive on an ongoing basis significant data and information about the mechanism at issue. Recall my earlier reference to the Company's three FAC adjustment filings each year, and its monthly filing of extremely detailed reports. OPC receives those. Moreover, OPC is a party to every FAC prudence review. Since our last rate case ended, we have submitted more than 20 monthly reports and have made six FAC adjustment filings, which include detailed workpapers. The third prudence review of our FAC was also completed about 10 months after our last rate case ended. OPC's position implies that when we come in for a rate case seeking to continue a FAC that the Commission and the parties are operating in total darkness, with no understanding of the FAC or the costs and revenues included in it. Any such implication is simply not true.

Here, it is OPC that is proposing to change the status quo – continuation of a FAC for Ameren Missouri that has now been in place for nearly six years, and that is materially the same as it was when it was first established. There is nothing unfair (as OPC suggests) about expecting OPC or any other party to use the vast amount of information it already had when the rate case was filed or before, or additional information it can obtain in discovery, to develop a position advocating a change in the status quo, if they claim a change is needed.

Q. Are there examples of other instances in rate case filings where repeated positions are not required to be explained in the level of detail proposed here for the FAC?

A. Yes. The Commission has been processing rate cases for decades, including several for Ameren Missouri and all of the other major utilities in the past several years. There are many – perhaps dozens or several dozen – costs and revenues that other parties may claim ought to be disallowed, normalized, or annualized. There are existing regulatory mechanisms (e.g., the Pension/OPEB tracker the Company has employed for years; certain tariffs that have been in place for years) about which testimony is typically not filed when the rate case is filed. The Commission has never expected the Company to assume that it must provide substantial evidence on each intricate detail of each item that might, or might not, become a rate case issue. As currently structured, the Commission's rate case process is that other parties can affirmatively file direct testimony proposing any number of changes to the utility's filed case, with the utility then afforded an opportunity to provide rebuttal testimony (e.g., to justify why a change should not be made) and the other parties getting the last word in surrebuttal testimony. And the other parties' direct case filings allow what is usually about four and one-half to five months of time to conduct discovery needed to evaluate and take whatever position they might want to take. As noted, in the case of the FAC, the parties have a mountain of data and information before the rate case is even filed, with more being provided concurrently with the rate case filing and continuing as the rate case progresses.

Q. Has the Commission required exhaustive analyses on the factors mentioned in the cited rule in order for the Commission to consider those factors?

A. No, it has not. In its *Report and Order* issued in December 2012 in the Company's last rate case, the Commission specifically found that "[n]othing has changed in the years since the Commission established Ameren Missouri's fuel adjustment clause."[11] The Commission went on to discuss how substantial the costs (and revenues) were, why they are outside management's control and why they are volatile.[12] While there were contested FAC issues in that case (involving the sharing percentage and whether certain costs should be tracked in the FAC), extensive data and analyses bearing on the three items focused on here by OPC were not included. I testified then, as I have in this case, that all of the factors the Commission has typically looked at (which include the three pointed to by OPC) support continuing the FAC. Now that OPC is challenging those issues, I will address them in more detail later in my testimony and, as noted, OPC will have an opportunity to respond when it files surrebuttal testimony.

Q. To be clear, did OPC have all of the data it needed to analyze magnitude of the various costs and revenues in the FAC and how uncertain/volatile they are?

A. Yes, it did, as Mr. Francis explains in more detail in his rebuttal testimony.

Q. But Ms. Mantle complains that there is insufficient detail which "deprives the parties and the Commission of a reasonable opportunity to review the [FAC] submission . . .." She goes on to make some strong allegations, such as claiming parties are "deprived" of a reasonable opportunity to review the FAC submission; that they are left at a "disadvantage with respect to providing recommendations to the Commission"; and that they must "guess" as to what the proposal includes. She even

[11] *Report and Order,* File No. ER-2012-0166, p. 75.
[12] *Id.*

claims that "only Ameren Missouri knows which costs and revenues" are included.[13] How do you respond to these charges?

A. I disagree that there is insufficient detail available for the parties to review to make a determination on whether to continue the FAC or to otherwise review FAC submissions in rate cases or otherwise. Ms. Mantle is repeating one of OPC's themes from its *Request for Order*. As that request made clear, what OPC is really complaining about is that there should be some kind of very detailed description of every single component (e.g., every MISO[14] cost and revenue) in the MFRs themselves. As I discussed above, not only do the rules not require that, but the information *is* already in OPC's hands, regardless of what is in the MFRs. Mr. Francis explains this in more detail in his rebuttal testimony.

Q. Ms. Mantle links her earlier-cited statements about the claimed lack of information in OPC's possession in her testimony about transmission costs, starting at line 7 on page 12 of her direct testimony and continuing through the end of that page. Does her testimony accurately characterize the transmission cost issue?

A. No, it does not, and in fact I find her testimony to be misleading. Let me explain why. Ms. Mantle strongly implies that the Company hid the fact that certain transmission charges had been included in the FAC. She made this argument in the Company's last rate case, and the Commission rejected it when it concluded that these charges are transmission charges that have always been included in the Company's FAC and that it was appropriate for the Company to do so.[15] In fact, it is beyond debate that the very

[13] Mantle Direct, pp. 11-12.
[14] Midcontinent Independent System Operator, Inc.
[15] *Report and Order*, File No. ER-2012-0166, p. 85 ("Under the . . . Uniform System of Accounts, transmission charges . . . are to be recorded in account 565. Since the tariff specifically provides that costs of purchased power reflected in account 565 are to be flowed through the fuel adjustment clause, Ameren Missouri acted

first set of MFRs submitted by the Company, and the very first FAC tariff submitted by the Company – and all of the MFRs and FAC tariffs since then – expressly stated that transmission charges recorded to FERC account 565 are included in the FAC. And in the Company's last rate case, the Commission took official notice of the fact that transmission charges are recorded in account 565.[16] During cross-examination in that case, Ms. Mantle admitted that Ameren Missouri's FAC has, from its inception in 2009, included charges in account 565 (i.e., has included transmission charges).[17] Moreover, the FAC reports we submit to the Commission/Staff every month had called-out Schedule 26 transmission charges (which are some of the charges she was complaining about) for several years. The Company can't be convicted of a "deficient" filing when in fact it has complied with the Commission's rules and provided the information it is supposed to provide, when, where and how it is supposed to provide it.[18]

appropriately in doing so. Indeed, Staff agrees that account 565 costs were to be passed through the fuel adjustment clause . . .").

16 *Order Granting Motion to Take Official Notice and Admitting Late-Filed Exhibit*, File No. ER-2012-0166.

17 File No. ER-2012-0166, Tr. p. 1243, l. 6-21 (Charges in account 565 have always been in the FAC; Staff hasn't claimed they should not be; Ms. Mantle wasn't claiming they should not be now). In fact, Ms. Mantle acknowledged that some of the charges she claimed should not be in the FAC, which led to the issue coming up late in the case, had been charged to Ameren Missouri since the inception of the FAC and thus had been properly included in the FAC as part of the account 565 charges. Tr., File No. ER-2012-0166, p. 1241, l. 15, to p. 1242, l. 20 and Exhs. 56, 57 and 58.

18 For example, the Staff asked a data request in the last rate case (Data Request No. 554) regarding where transmission costs are recorded. Ameren Missouri explained that the information is in the required monthly FAC reports, pointing out that there is a tab in those reports for Account 565 (transmission) costs, plus additional details later in the report that is referenced in the Account 565 tab. Had the Staff looked at the reports they would have known this. File No. ER-2012-0166, Tr. p. 1239, l. 5 – 18. In our last rate case, Ms. Mantle admitted that monthly FAC report calls out the Schedule 26 charges and that a data request response we provided explained in detail where to find the charges. Tr., File No. ER-2012-0166, p. 1213, l. 22 to p. 1214, l. 9 (Where Ms. Mantle, in response to Commissioner questions, admitted that the Staff's review of the monthly reports is less thorough than when the Staff conducts prudence reviews, and that the Staff may "change that and start looking at them a little quicker").

Q. Could Ms. Mantle have asked discovery questions to "fully develop" positions on transmission charges and other costs for her direct testimony in the last case?

A. She certainly could have. As I noted above and as Mr. Francis explains in more detail, she had the data and information to identify and examine the costs and revenues that had been included in the FAC and that were being proposed for inclusion (there was little difference in the last case) in the FAC.

Q. Is it true, as Ms. Mantle alleges, that the only opportunity for her to present positions on the transmission charges issue in the last case was in surrebuttal testimony?

A. No, it is not true, for the same reasons. As I explained, Staff knew or should have known for years the nature of the transmission charges that had been included in the FAC from its inception. Ms. Mantle and her department apparently didn't pay attention to the monthly reports, and apparently didn't pay attention to the charges from MISO that were properly recorded to account 565, as the Commission found. Had the Staff paid attention to these reports, and if Ms. Mantle had an issue with it, she could have not only have brought it up when the Staff filed its direct testimony in our last rate case, but could have brought it up in an earlier rate case or FAC prudence proceeding.

Q. Please explain.

A. After Ms. Mantle (and MIEC witness Dauphinais) filed surrebuttal testimony on the issue, the Company believed that evidence and issues should have been raised earlier but if the Commission was going to allow the issue to come up at that point the Company argued that this warranted affording the Company an opportunity to respond. The

Commission decided the issues could be included in the surrebuttal testimony, but agreed that additional testimony was appropriate. In its order, the Commission gave Ameren Missouri six days to file such testimony and ruled that the issues relating to it were not to be heard until at least seven days later. Thereafter, MIEC moved to strike Ameren Missouri's additional testimony, and Staff concurred in the motion. The Commission declined to strike the testimony, and rejected Ms. Mantle's contention that the Company's testimony was improper, concluding it was "appropriate responsive testimony."[19] Moreover, the Commission afforded Staff and MIEC yet another opportunity to respond.[20] Ms. Mantle makes no mention of any of these facts[21] or of the information that was available to her before the case was even filed and at its inception, painting instead an inaccurate picture suggesting that the Company unilaterally forced her to file surrebuttal and that this was somehow unfair.

The Commission never agreed that anything about Ameren Missouri's FAC filing in the last case (or any other case for that matter) was "deficient," and, in fact, the Commission's orders suggest otherwise by concluding that Ameren Missouri had appropriately included transmission charges in the FAC and should be allowed to file additional responsive testimony.

Q. You earlier explained why the Company's initial filing did not go into detail about the magnitude of the costs and revenues included in the FAC, or about their volatility or how controllable they are. Ms. Mantle addresses those factors in some detail in her direct testimony. Please respond to Ms. Mantle's contentions.

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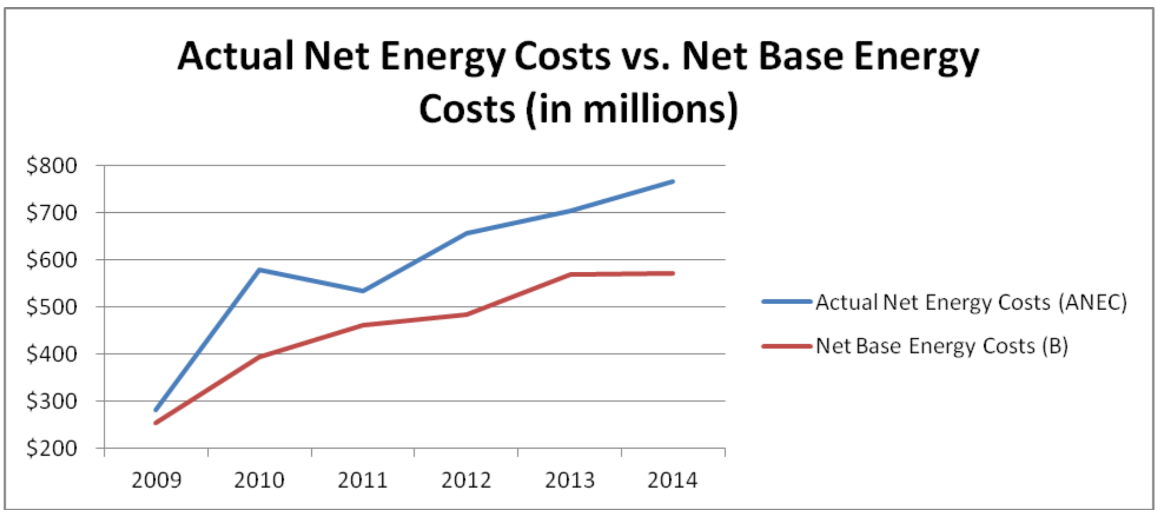
[19] *Order Denying Motion to Strike But Offering Opportunity to Respond*, File No. ER-2012-0166, p. 2.
[20] *Id.*
[21] She also did not take advantage of the further opportunity to file testimony the Commission gave her.

A. I will first address the magnitude of the costs and revenues in the FAC. As our initial rate case filing reflects, the Company's fuel and purchased power costs, including transportation (reflected in Factors FC and P in the FAC tariff) are still the Company's largest operating and maintenance ("O&M") expense, representing approximately 51% of its total O&M costs. In addition, the Company's net energy costs (the sum of Factors FC, P and E less OSSR in the FAC tariff) have risen substantially from the normalized level established in the Company's last rate case ($566 million per year at that time) to approximately $696 million—an approximately 23% increase.[22] This demonstrates that the magnitude of the FAC costs and revenues continue to show the appropriateness of the FAC. The rise in our actual net energy costs is depicted in the chart below:



Q. Can the Company control these costs and revenues?

[22] These figures are based upon the Staff's December 5, 2014 filing and the Company's July 3, 2014 filing. The final net fuel cost figure will be determined as part of the true-up, but net energy costs will undoubtedly be substantially higher than the $566 million of net energy costs established in the Company's last rate case.

A. Not significantly, and nothing has changed with respect to the question of control over the past four rate cases (with this being the fifth) where the Commission approved the FAC and its continuation. The Company still lacks control over the national and international fuel and power markets which dictate what its net energy costs will be.[23] I would note that Ms. Mantle has been making these same arguments for years, and the Commission has consistently rejected them. For example, she has argued before that hedging equates to "control" but the Commission has recognized that this is not true. Why? Because as noted the Company doesn't control the national and international markets in which Ameren Missouri must buy fuel and sell power. If it did, Ameren Missouri's fuel costs would not have gone up, and prices realized for off-system sales would not have gone down over the past few years. In fact, consider that delivered coal costs increased by approximately $39.8 million in 2013 as compared to 2012, and $25.3 million in 2014 as compared to 2013. Off-system sales were also down substantially in 2013 as compared to 2012 and in 2014 as compared to 2013. In addition, delivered coal price increases effective January 1, 2015, are also expected to increase 2015 coal costs by approximately $18.9 million over 2014 levels. Further, increases in delivered coal costs, driven by price alone, will occur in 2016 and 2017 by **[redacted]** million and **[redacted]** million, respectively, over the prior year's level. In terms of future off-system sales, as Mr. Haro testifies in his rebuttal testimony, it is very difficult to predict what prices will be and therefore what off-system

[23] The Commission has recognized this for years: "[M]ost of the costs that comprise [Ameren Missouri's] fuel costs, the costs that would be tracked in a fuel adjustment clause, are dictated by national and international markets, including competing purchases by China and India, far beyond the control of [Ameren Missouri]." *Report and Order*, Case No. ER-2008-0318, p. 63. The Commission went on to also recognize that Ameren Missouri can't control the price of power. *Id.* The Commission essentially repeated these findings in its *Report and Order* in Case No. ER-2012-0166 (at page 75). The facts recognized by the Commission hold today.

sales revenues will be because we simply do not control those prices, which are set by the market.

Q. How do you respond to Ms. Mantle's contention that volatility is lacking due to the Company's hedging of, primarily, its coal costs.

A. My response is that even with our hedging program, we still face volatility and uncertainty in our net energy costs and the main components of them, including our fuel. This can be observed in the charts shown below and in Mr. Haro's testimony. With respect to coal costs, even though we made the prudent decision in 2012 to enter into five-year coal and coal transportation contracts (which run through 2017), and therefore price-hedged our expected coal needs, as noted above we still face significant increases in those costs, which itself makes them volatile, and other uncertainty due to variation in coal burn and exposure to fuel surcharges contained in the transportation contracts. Mr. Haro and Ameren Missouri witness Jeffrey S. Jones discuss these issues in more detail in their rebuttal testimony.

Not only are we exposed to significant increases in coal commodity costs, but there is a significant potential variation (up or down) in what the total delivered coal costs will be. As Mr. Jones testifies, recent history suggests that there could be a more than **[redacted]** million change from year-to-year in delivered coal costs caused solely by volumetrically-driven variations in coal commodity costs, volumetrically-driven variations in coal transportation costs and volumetrically-driven variations in rail fuel surcharge costs. This potential variability exists despite our robust hedging practices, and even if the variability were only one-half or one-third of that sum, it still would amount to tens of millions of dollars.

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As Mr. Haro also points out, we face significant volatility in transmission charges as well due to the uncertainty of what those charges will ultimately turn out to be, and due to the expected (though uncertain) significant increases in those charges over the next several years.

In summary, our net energy costs (in general terms, fuel and purchased power costs, including transportation, less off-system sales revenues) continue to be very large, beyond our control and volatile, a fact with which the Commission's Staff agrees.[24]

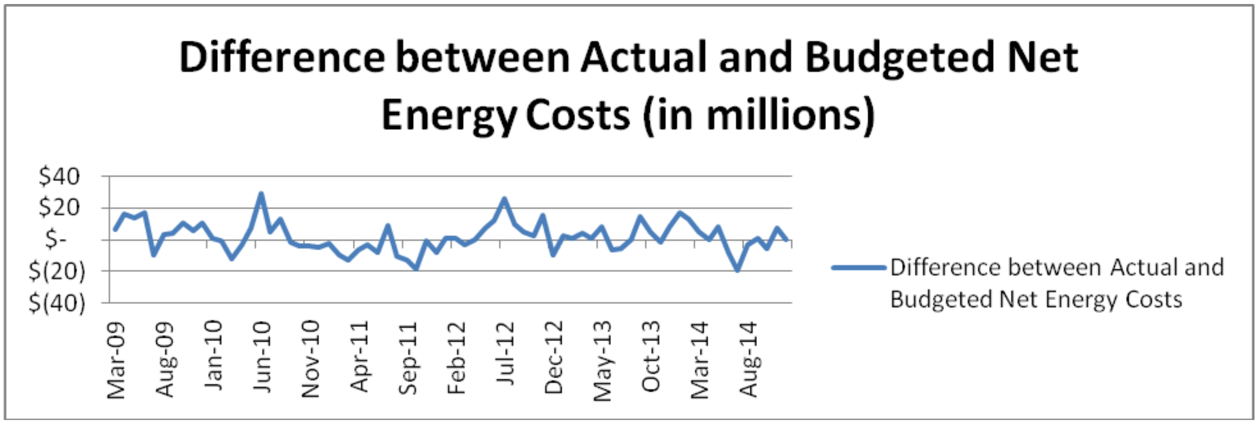
Q. Does volatility and uncertainty continue to exist?

A. Yes, and nothing has changed over the years regarding the continuing volatility of the Company's net energy costs, as is clearly shown by the substantial change in the Company's net fuel costs in the last year and for several years. As the chart above shows, the trend in actual net energy costs has been upward, which itself shows volatility and uncertainty, but the actual net energy costs have gone down as well as up (e.g., from 2010 to 2011). Moreover, the national and international markets that set the prices for fuel and power also continue to be volatile. The volatility we see in the FAC could result in higher charges to customers, but it could result in lower charges to customers as well, depending on volumes of fuel burned, prices for power, etc. As the Commission knows, 95% of any such reduction as compared to the net base energy costs established in this case will be passed-through to customers.

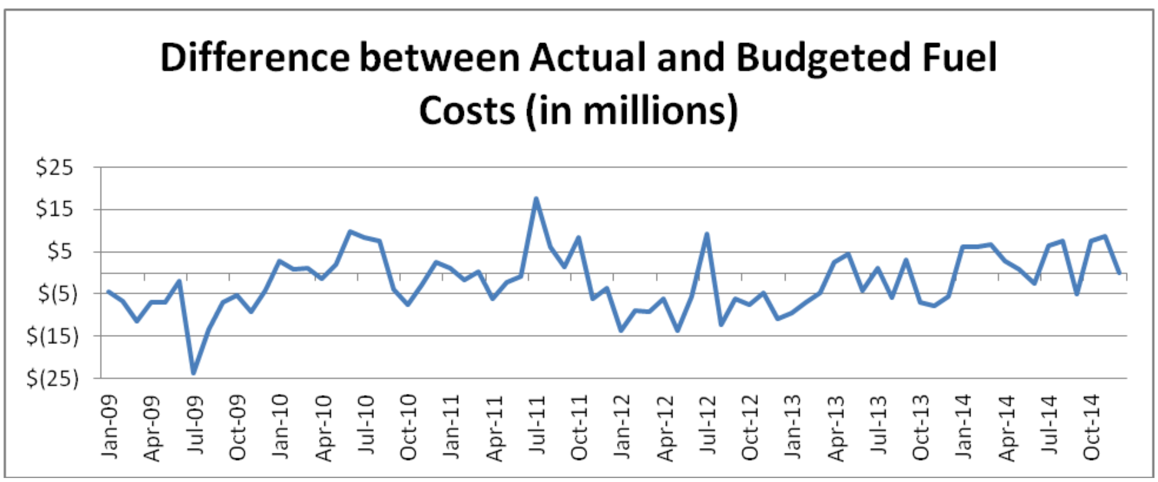
Q. Are there other indicia of volatility and uncertainty?

[24] Staff Report, p. 169.

A. Yes. The charts below show the variance between what we expected our actual net energy costs to be (per our budget) and what they actually were since the inception of our FAC.



The second chart below shows the same thing just for our fuel costs:



One can readily see the uncertainty – both up and down. As noted, overall our net energy costs have increased over this period, as have our fuel costs.

In summary, the large fuel and purchased power costs and significant off-system sales revenues that we track in the FAC cannot be controlled by the Company, and are volatile and uncertain.

Q. As you point out, the actual net energy costs, including delivered fuel costs, have been rising. Ms. Mantle contends rising costs are a poor reason to allow a utility to have a FAC. Do you agree?

A. No, I do not and, for several years, neither has the Commission. Ms. Mantle bases her argument on a 2007 statement in the Commission's *Report and Order* in Ameren Missouri's 2006-2007 rate case, when the Commission decided, on the facts of that case, not to approve a FAC for Ameren Missouri at that time. The Commission did indicate that rising but known fuel costs are the "worst reason" to allow a FAC, relying on State of Missouri witness Brosch's statement to the same effect in that case. However, in the Company's next rate case, the Commission stated that the passage from the earlier order that Ms. Mantle relies upon is "simply, wrong,"[25] recognizing, as it has in every case since then, that rising fuel costs (and as has been the case for several years, falling off-system sales revenues) would create, without a FAC, significant regulatory lag that would deprive the Company of a reasonable opportunity to earn a fair return. In our last rate case, the Commission also concluded that transmission charges should remain in the FAC based upon a record that showed that they were expected to increase (and only increase) approximately 24% per year, noting that the transmission charges were "volatile in that they are not only rapidly rising, but are also uncertain in amount."[26] The same thing is true of coal-related costs.

[25] *Report and Order*, File No. ER-2008-0318, p. 67.
[26] *Report and Order,* File No. ER-2012-0166, p. 87-89.

Q. Could the Company time its rate cases to prevent the financial harm caused by increases in fuel costs or net energy costs as a whole?

A. I've addressed this very issue before, and the answer is "no." Focusing solely on coal costs, contracted-for coal and coal transportation cost increases that occurred on January 1, 2015 and that will occur on January 1, 2016 and 2017 would not be recovered without an FAC between the date of increase (January 1) and the date new rates would take effect (in June of this year, for the January 1, 2015 increases [also Jan. 1 2014 increases], and in June of 2016 for the January 1, 2016 increases and the same for the next year's increases, even if one assumed hypothetically that Ameren Missouri would file another rate case on July 1 of every year starting with this one).[27] For coal costs alone, the unrecovered costs would have totaled approximately **[redacted]** million in 2015 had the current FAC not been in place, and would total approximately **[redacted]** million in 2016 and **[redacted]** million in 2017, without an FAC. This would simply reflect an under-recovery of approximately **[redacted]** million of *prudently incurred* coal and coal transportation costs. In summary, the evidence now is essentially the same as the evidence in prior cases: timing rate cases simply cannot be counted on to recover these contracted-for fuel cost increases.

Q. Putting aside the three factors (magnitude/control/volatility-uncertainty) discussed above, are there other important reasons why continuation of the Company's FAC is appropriate and necessary?

A. Yes, there are. Ameren Missouri's FAC remains critical to maintaining the Company's credit quality and keeping the Company's risk profile (with regard to this issue)

[27] Note that another filing on July 1, 2015 is simply illustrative, and this would reflect the minimal amount of lag relating to a subsequent rate case. Thus, the losses for 2015 if a FAC were not in place could be higher if a rate case were filed later than July 1.

essentially on par with the 98% of integrated electric utilities across the country that operate with an FAC (including the two other electric utilities in Missouri who are eligible to have FACs). The Commission has previously recognized that "[i]ncreased financial risk results in an increase in a company's cost of borrowing, ultimately increasing costs that will be passed on to ratepayers."[28] In addition, both debt and equity investors value consistency in regulation. Ameren Missouri witness Gary P. Rygh, on whose testimony the Commission has relied in the past, discusses the critical importance of continuing the Company's FAC in its current form.

C. <u>FAC Changes</u>.

Q. Does Ms. Mantle's testimony at page 13 relate to statements earlier in her testimony (primarily on pages 7 and 8) to the effect that the Company has "significantly" changed costs and revenues included in the FAC?

A. I believe it does.

Q. Does Ms. Mantle fairly characterize the history of Ameren Missouri's FAC?

A. In my opinion, she does not.

Q. **Why not?**

A. I have been involved in the FAC for the Company from early-on in the FAC's history, and have been the Company's primary FAC witness in its last four rate cases, plus this one. Fundamentally, the FAC has always included the same costs and revenues, that is, fuel and purchased power costs, including transportation, offset by off-system sales revenues. There have always been certain exclusions that would otherwise fall into the FERC accounts

[28] *Report and Order*, File No. ER-2010-0036, p. 78.

where the costs and revenues mentioned in the prior sentence are recorded – specified MISO administrative costs arising under specified MISO administrative cost schedules, and generating capacity charges if associated with capacity of more than one year. From the inception of the FAC, there have only been two arguably material changes to the costs and revenues included in the FAC: the addition of consumable costs related to air quality control systems and the inclusion of transmission revenues. With respect to the latter item, I would note that early-on in the FAC's history, the transmission revenues varied very little and were credited through base rates instead of through the FAC. The transmission revenues lower actual net energy costs tracked in the FAC, and that the consumable costs for air quality control systems are a minor component of the FAC, totaling less than one-half of one percent of the actual net energy costs.

Q. How did these two additions to the FAC occur?

A. We specifically proposed to include them in a rate case and the Commission approved FAC tariff revisions so that they could be included; i.e., the Commission expressly approved their inclusion and in fact no party, including Staff/Ms. Mantle, opposed their inclusion. In the case of the consumables for air quality control systems, the Commission had earlier approved essentially the same language in The Empire District Electric Company's FAC tariff, and thereafter we asked for an amendment to our FAC tariff. In the case of the transmission revenues, parties in our last rate case had previously said that if transmission costs were to be included in the FAC, then revenues should be included as well, so we proposed to include them.

Q. The current FAC tariff, approved in the Company's last rate case, seems to have far more items than prior tariffs. Are those new costs and revenues?

A. No, they are not. As Ms. Mantle indicated in our last rate case, the parties were "still working out the fuel adjustment clause in Missouri."[29] I agree. While we are starting to develop several years of history with FACs in Missouri, we are only just now approaching the end of the first decade after FACs were authorized by statute, and Ameren Missouri's FAC is only in its sixth year. In regulatory terms, that is not a very long period of time when one considers that the Company has been regulated by the Commission for more than 100 years. Consistent with "still working through" the FAC, it is true that the current FAC tariff contains significantly more details than it did when it started six years ago. And that detail is detail that the Company *agreed* to include in the last case. Ms. Mantle seems to imply that if other parties raise a concern about the level of detail in a tariff or a report and then the Company actually agrees to enhance the details that this shows some kind of untoward behavior on the Company's part. To the contrary, what it shows is that the Company is willing to try to work with other parties when legitimate questions or concerns are raised. As Mr. Francis indicates in his rebuttal testimony, keep in mind that from the Company's perspective others receive tremendous details about costs and revenues in each and every FAC monthly report. Those, together with FAC filings and rate case workpapers, from the Company's perspective, allowed others to determine costs and revenues in the FAC, verify calculations, etc. Nonetheless, at various times over the past few years the Staff has wanted additional reporting and more tariff detail, and in virtually every case the Company

[29] Mantle Deposition, File No. ER-2012-0166, p. 17, l. 23-24.

has agreed. I was not directly involved, but I would direct your attention to Mr. Francis's discussion of the request by the Staff, OPC and MIEC for a significant redesign of the monthly FAC reports which the Company agreed to undertake in connection with its 2010-2011 rate case. The claim by Staff and others was not that the Company's FAC reports prior to the redesign did not comply with the Commission's rules, but rather, that it would be helpful to the Staff and others for the Company to provide more and different information. We have done so. That does not mean we have "decided" what costs and revenues can be included in the FAC without proper Commission oversight, or that we have "significantly changed" the FAC. It means we have been willing to "continue to work through" the FAC as appropriate.

Q. Ms. Mantle suggests otherwise, claiming that Ameren Missouri is allowed to "add new costs or revenues" under certain circumstances (Mantle Direct, p. 8, l. 16-21). Is she correct?

A. Not entirely, and reading of her testimony reflects only part of the story. Ameren Missouri, with the Commission's repeated permission, is a participant in MISO and therefore sells and buys its power to/from the MISO market. There are a myriad of costs and revenues that relate to the power it buys from the market or the off-system sales it makes in the market, all of which arise from the MISO tariffs that the Company is required by law to follow when it makes those sales and purchases. If those costs and revenues are recorded in the FERC accounts specified in the FAC tariff (unless they are excluded by the tariff), then they have always been included in the FAC. There has never been a claim that this has been handled improperly by Ameren Missouri, and as noted earlier, the costs/revenues have basically not changed during the entire time the Company has had a FAC. As I noted above, in our last case, Staff and others wanted to include in the tariff itself very significant details about these costs and revenues and under the new tariff's terms if the cost or revenue did not literally fit exactly what was listed, the cost (which customers would pay) or revenue (which customers would get) had to be excluded. This would be true even if MISO moved the cost and revenue to a different category and even if a new cost or revenue arose that was very much of the same nature as other purchased power or off-system sales-related costs or revenues that the literal descriptions in the tariff covered. To address this problem, all parties to the Stipulation and Agreement resolving the FAC issues in that case *agreed* that it was appropriate to include the language Ms. Mantle refers to at line 17 on page 8 of her direct testimony.

Q. How does this language work?

A. The language is rather simple. If MISO institutes a new charge type (which, despite its label ("charge type") could also cover a revenue, not a cost) involving moving a cost or revenue already being included in the FAC to a new type, or if MISO starts charging/providing a new cost/revenue under a new charge type that is very much in the nature of an existing cost or revenue already being included in the FAC, the Company can include the cost or revenue in its FAC. However, before it can do so the Company must *specifically call it out and explain it* in its monthly FAC report (at least 60 days in advance). Moreover, there is a specific process prescribed in the FAC tariff that allows a party to challenge the inclusion of the new charge type, or the exclusion of the new charge type (presumably if it involves revenues). If such a challenge is made, the *Company bears the burden of proof* to justify the inclusion/exclusion. If a party challenges the inclusion/exclusion of a new charge type, and if in the Commission's view the Company fails to carry the burden of proof, the Company must refund charges/provide revenues (as the case may be) with interest. This is hardly a case, as Ms. Mantle's testimony implies, of a utility pushing costs (or excluding revenues) that properly belong in the FAC into the FAC in the dark of night, without Commission oversight.

Q. What about her allegation that "Ameren Missouri, alone – as is its current practice – [can] decide what costs and revenues go into its FAC, not the Commission."[30] Is that true?

A. No, it is absolutely not true, as I explained above. We have followed the tariff to the letter. Under the process explained above, MISO has added five new charge types since the current version of the FAC tariff took effect. Two of them provide revenues that are credited to customers in the FAC. The Company has reported all five of them as the FAC tariff requires. No party, including OPC, expressed any concerns with them and in fact, while Ms. Mantle complains about the process the Commission approved and everyone agreed to (including the Staff and indirectly I would think Ms. Mantle, who was Staff's FAC witness), OPC even today isn't suggesting there is anything wrong with including the charges and revenues under these new charge/revenue types.

Q. You indicated that no one had complained about those five charge types. Please address the motion OPC filed on December 23, 2014.

A. In addition to the five charge types (again, two of which actually pertain to revenues that would lower actual net energy costs), the Company also notified those who receive the FAC monthly reports that the Southwest Power Pool ("SPP") was going to start

[30] Mantle Direct, p. 13, l. 13-14.

market operations (the noticed was first included in the Company's February 2014 monthly report). This notice was not required, because there were no new charge types, but the Company felt it appropriate to let parties know that at some point charges (or revenues) from SPP could arise if the Company transacted in the SPP market.

Q. What does this have to do with OPC's motion?

A. As explained in our January 5, 2015 response to the motion, OPC filed a motion that accused the Company of improperly including new SPP charge type costs in its FAC during the four-month accumulation period underlying our most recent FAC adjustment filing without having followed the process outlined in the tariff, which I described earlier. In fact, we have included no such SPP charges in the FAC and will not do so unless and until we provide the at least 60 days of notice called for by the tariff.[31]

Q. What about the transmission revenues Ms. Mantle mentions on page 7?

A. As earlier noted, when the FAC was first approved, transmission revenues were not included in the FAC. No party suggested that they should be. As I understand it, at that time and for several years thereafter, transmission revenues were basically flat, and they were simply included in base rates as an offset to the total revenue requirement. As the MISO's transmission cost allocation and charge processes evolved, there were certain transmission charges (in that case, under MISO Schedule 26) that arose from projects that provided a mix of local and regional benefits, and starting in June 2011 some new transmission revenues started to be received because of projects constructed by Ameren Missouri and the regional benefits those projects provided. The sum of these new revenues

[31] OPC withdrew its request on January 12, 2015.

grew in 2012, and, as noted earlier, the Company agreed to include them in the FAC in its rate case decided in 2012. Ms. Mantle's point is apparently that the $9.2 million of revenues received in the test year of the prior rate case were retained by the Company and not flowed through the FAC, and that is true.[32] It is also true that the Commission determined, based on a true-up through July 31, 2012, that the Company's rates in that case were too low by approximately $260 million annually (or more than $20 million per month) as far back as from July 2011 to June 2012, continuing until new rates took effect on January 2, 2013. At best, that $9.2 million helped offset other cost increases or revenue decreases between rate cases that had caused Ameren Missouri's then-existing rates to be too low. As the Commission knows, sometimes utilities can gain increased revenues between rate cases above the level assumed when rates were set (e.g., from abnormally hot weather, a large new customer, and here, new transmission revenues), and sometimes revenues drop (from abnormally cool weather, load losses), or costs may increase between rate cases. As other parties have pointed out to us many times, traditional ratemaking is not "perfect." As the Commission itself has recognized, utilities sometimes earn more and sometimes less than their "authorized return."

Q. Has the Company included new revenues in the FAC that were not included when the FAC was last approved?

A. Yes, it has. It has included revenues under the two new MISO charge types (dealing with revenues), as I explained earlier. As I also explained earlier, Ms. Mantle's

[32] As a point of clarification, one cannot compare the $22.8 million of transmission charges and the $9.2 million of transmission revenues to determine the impact of transmission charges/revenues in the FAC. For the test year, transmission revenues in total exceeded transmission charges in total by about $3.6 million ($36.9 million of charges versus $33.3 million of revenues).

claim that the Company has added six new charge types (implying they are all costs) is incorrect – there are five new "charge types," two of which actually deal with revenues.[33]

D. <u>OPC's Fallback Position – More Sharing</u>.

Q. OPC also has what might be properly characterized as a "fallback" position premised on continuation of the FAC. What is your understanding of its fallback position?

A. It has three aspects. First, Ms. Mantle includes a very vague recommendation that only costs and revenues falling within what OPC characterizes as a "Commission-approved description" be included in the FAC. Second, Ms. Mantle recycles the recommendation she made in the last rate case, that is, that the sharing percentage should be changed, except this time she chose to recommend a change from 95%/5% to 90%/10%, whereas in the last case her recommendation was 85%/15%. Finally, Ms. Mantle suggests that if the FAC is continued, the "Adjustment For Reduction of Service Classification 12 (M) Billing Determinants" (N Factor) be removed.

Q. Please address her first fallback recommendation.

A. I'm confused by this recommendation as the costs and revenues in the FAC *are identifiable* in the information OPC has been receiving for years, and that it has received in this case. This recommendation obviously stems from OPC's flawed contention, which I addressed earlier and which Mr. Francis addresses in more detail, to the effect that parties like OPC and the Staff cannot tell what costs and revenues are included in the FAC. The costs and revenues are substantially the same as they have always been and their magnitude,

[33] Ms. Mantle's reference to six additions is incorrect. There were only five, three new charge types involving costs and two involving revenues. The sixth notation in the reports simply advised parties that the SPP market was starting, as I addressed earlier.

volatility and the ability to control them is essentially the same as it has always been. In addition, the costs and revenues fall within the categories that OPC itself says are those the FAC was designed to address: "Fuel commodity costs, the costs of transporting the fuel commodity, purchased power costs and revenues from off-system sales."[34] I would note that Ms. Mantle's list quoted above leaves out transportation of power, which the Commission has already determined is specifically contemplated for inclusion in FACs by Section 386.266, RSMo. OPC apparently thinks that exhaustive analyses and debate must occur with respect to every line item in the FAC tariff. Notably, OPC makes no specific recommendations here at all, its position obviously being dependent upon its earlier argument that the Company did not comply with the MFRs.

Q. You indicated that the costs and revenues fall within the categories OPC lists as quoted in your prior answer. Please elaborate.

A. The costs/revenues described below have always been included in the FAC, but this level of detail was not always included in the tariff itself. These details could be found in the FAC monthly reports and workpapers discussed earlier and discussed in more detail in Mr. Francis' rebuttal testimony. The categories OPC identifies are essentially reflected by four variables in the FAC tariff, Factors FC, PP, E and OSSR. Those factors appear on proposed tariff sheet 73.1, which is included as Schedule LMB-3 to my direct testimony. You can see from Schedule LMB-3 that we are proposing virtually no changes to the FAC tariff the Commission approved in December 2012. The only changes are to include gas for the Maryland Heights landfill gas plant (as suggested by the Staff) and to

[34] Mantle Direct, p. 18, l. 16-18.

update the FAC rates (to reflect rebased net base energy costs), plus very minor housekeeping changes.

Factor FC is essentially fuel and fuel transportation. All of the items comprising Factor FC are properly recordable in FERC accounts 501, 502, 547 and 518, all of which are called out in the FAC tariff.

Factor PP reflects purchased power costs/revenues and transportation costs, except those that from the beginning of the FAC have been explicitly excluded (notably, MISO administrative costs). These are properly recorded in FERC accounts 555 and 565, also called out in the tariff.[35] Because of Ameren Missouri's participation in the MISO market (and some transactions Ameren Missouri engages in when it makes sense to do so in other markets, like PJM), and the nature of how costs and revenues are handled under the applicable FERC-approved RTO tariffs, there are a significant number of categories of RTO costs and revenues which comprise purchased power costs, including transportation. The FAC tariff has not always detailed those categories, but as noted earlier, that detail was included in the current FAC tariff in effect since January 2, 2013, by agreement of the Company, Staff, OPC and others. And, because RTOs can change or add charge/revenue types, the process for accommodating those changes/additions was also included in the FAC tariff, as earlier explained. The Commission approved these significant details and that process which is being followed.

Q. Please address the other FAC tariff factors.

[35] The FAC tariff also lists FERC account 575 as an account where purchased power costs could be recorded. This account has been listed since the inception of the FAC. However, no account 575 costs have ever been included in the FAC and, upon further review, I believe the inclusion of account 575 was a mistake initially made when the FAC was first proposed and carried forward to this day. The FAC tariff implemented in this case should only reference account 555 in connection with Factor PP.

A. Factor E reflects costs and revenues for emission allowances, properly recorded in FERC accounts 411.8, 411.9 and 509. All of the major parties to Ameren Missouri's 2009 rate case (Case No. ER-2010-0036) agreed via Stipulation that emission allowance costs and revenues should be included as part of fuel expenses in the FAC. The Commission approved the Stipulation and the FAC tariff sheet that was a part of the Stipulation during that rate case. Consequently, the emission allowance costs and revenues have been included in the FAC since June 21, 2010.[36]

Factor OSSR is the umbrella term for a number of costs and revenues properly recorded in FERC account 447. For reasons similar to those that exist for Factor PP, when dealing with RTO markets these off-system sales consist of several components, which again have now been detailed in the FAC tariff, also by agreement between the Company, Staff, OPC and others.

Q. You have now addressed how the costs and revenues in the FAC fall within the Factors specified in the FAC tariff and have explained that parties have information in their possession to identify them. Please address Ms. Mantle's comments that suggest the FAC tariff should include specific "minor accounts" and "activity codes."

A. Mr. Francis addresses this issue in more detail, but I will address it briefly here. In OPC's *Request for Order*, OPC incorrectly claimed that the MFRs required a listing of "minors." As explained in the Company's response to OPC's *Request*, an "account" (the identification of which is required by the MFR rules) is a FERC account. There are no "minors" in the FERC accounts. As I explained in my Affidavit which was an exhibit to the

[36] The Company has incurred no costs for emission allowances since that time, but has realized revenues.

Company's Reply to OPC's Reply Suggestions filed relating to OPC's *Request for Order*,[37] each utility is free to create minor accounts (which are sometimes called subaccounts) for whatever managerial reporting purposes it wants, but utilities do not have to do so and utilities do not create or use them consistently. These subaccounts may also change or be eliminated, depending on managerial accounting needs. With regard to the activity codes the Company used, they, too, are internal codes developed by accountants to facilitate their ability to make sure that costs and revenues are recorded in the right FERC accounts. We include the subaccount and activity code references in our monthly FAC reports. There is, however, no need to list these discretionary subaccounts and activity codes in the FAC tariff because their inclusion in the monthly reports allow parties to confirm what costs and revenues are in the FAC.

Q. Please address Ms. Mantle's next fallback position, that there should be a different sharing of changes in actual net energy costs in the FAC.

A. Ms. Mantle is recommending that the current sharing mechanism, which allocates 95% of the increases or decreases in net energy costs to customers and 5% of such increases or decreases to the Company, be modified to allocate 90% to customers and 10% to the Company.

Q. Please describe what is meant by the 95%/5% sharing mechanism and the potential impact of moving to a 90%/10% sharing mechanism.

A. The 95%/5% sharing mechanism simply means that if the cost of fuel and purchased power, net of off-system sales (i.e., net fuel costs), increases above or decreases below the net base energy costs against which changes in net energy costs are tracked, then

[37] My Affidavit is also attached hereto as Schedule LMB-R6.

the Company will recover 95% of the increase or refund 95% of the decrease over an eight-month period beginning four months after the end of the accumulation period. That means the Company does not recover or refund 5% of these costs, even where the costs are prudently incurred. Moving this sharing mechanism to 90%/10% would result in the Company having to absorb 10% of prudently-incurred cost increases or would retain 10% of the cost decreases, rather than 5%.

Q. What are Ms. Mantle's reasons for recommending a change to the sharing mechanism?

A. She lists her reasons on page 20 of her direct testimony. I will address reasons two to four first, and then come back to her first reason.

Q. Per Ms. Mantle's contention underlying her second reason, is it true that Ameren Missouri has shown that it is "eager" to include costs in the FAC and reluctant to include revenues?

A. No, it is not, as I addressed earlier when Ms. Mantle made similar comments in connection with her argument about the Commission's MFRs. We were not at all reluctant to include transmission revenues in the FAC. As discussed earlier, we have added "charge types" that reflect revenues and we have included other revenues, like emission allowances revenues. It is simply not true that we "regularly" are adding new costs to the FAC. Three charge types that include costs have been added in the past two years, all in strict accordance with the FAC tariff provisions everyone agreed to and the Commission approved.

Q. In supporting her third asserted reason for changing the sharing percentage, does she properly reflect how the sharing mechanism in the FAC currently works?

A. No, she does not. At lines 6 to 7 on page 23 of Ms. Mantle's direct testimony, she falsely claims that the Company is guaranteed to recover 95% of costs in the FAC. An FAC only allows a utility to recover *prudently* incurred costs and it only allows recovery of those prudently incurred costs if they are included in the FAC. Consequently, if, as a result of a prudence review, the Commission determines costs were imprudently incurred then a disallowance must be made. This is no guaranty of recovery. To the contrary, it allows recovery of costs we properly managed and that the Commission properly determined ought to be included in the FAC

Q. Please address Ms. Mantle's third reason cited by her as support for her contention that the sharing percentage should be changed; that is, her contention that Ameren Missouri does not have sufficient incentive to properly manage the costs and revenues in its FAC.

A. I disagree with Ms. Mantle's contention that Ameren Missouri isn't sufficiently incented to manage costs and revenues. There has been no evidence that the Company has mismanaged the costs and revenues in the FAC under the current sharing percentage. Ms. Mantle is making the same arguments she has made before about incentives, but unlike in prior cases, where she tried to come up with instances that she claimed showed a lack of proper incentive, she essentially comes up with no such instances here. Rather, she makes all of the (false) claims already discussed to the effect that Ameren Missouri gets to decide what costs to include without Commission oversight, tries to keep revenues out, etc.

Q. You indicated Ms. Mantle is rearguing the same points. Please explain.

A. Two rate cases ago, Ms. Mantle argued that the sharing percentages should be 85%/15%, and she argued that again in the last rate case. Two cases ago, she gave several reasons to try to justify the sharing percentage change, which the Commission itself summarized as follows:

> Staff offered four reasons why the sharing percentage should be changed. First, Staff initially gave Ameren Missouri credit for asking that its net base fuel costs be rebased in this rate case. Staff explained that the request to rebase those costs showed that Ameren Missouri has a proper incentive to avoid forfeiting the 5 percent share it would lose under the fuel adjustment clause if its net base fuel costs were not rebased. However, later in the case, Staff turned that positive factor into a negative by claiming that Ameren Missouri's willingness to agree to a level of off-system sales revenue that the company indicated was likely to be too low, showed that the company did not have a proper incentive to get it right. Second, Staff claims that the results of a recent prudence audit of Ameren Missouri's fuel adjustment clause in File No. EO-2010-0255 justify imposing a larger sharing percentage on Ameren Missouri. Third, Staff asserts that a larger sharing percentage might have provided Ameren Missouri a greater incentive to avoid the miscalculation of an input into its FAC rate that it identified in the true-up of the first recovery period of its fuel adjustment clause. Fourth, and finally, Staff claims that because Ameren Missouri's off-system sales are down since it implemented a fuel adjustment clause, perhaps it does not have sufficient incentive to maximize off-system sales.[38]

The Commission rejected each of Ms. Mantle's arguments and retained the 95%/5% sharing. The Commission specifically rejected Ms. Mantle's first argument, finding that the Company's willingness to agree to a level of off-system sales based upon use of historical prices that the Commission had always relied upon (and that Ms. Mantle herself insists must be relied upon) indicated no lack of incentive on the Company's part.

[38] *Report and Order*, File No. ER-2011-0028.

The Commission also rejected the notion that just because the Company believed the revenues from two contracts fell outside the definition of off-system sales also provided no support for Ms. Mantle's contention that a greater incentive is needed.

Ms. Mantle's third and fourth arguments in that case relating to incentives were also rejected. The third argument was based on a *mutual mistake* by both the Company and the Staff about a calculation early-on after the FAC was implemented. Based on a stipulated set of facts, the Commission ruled that both parties were mistaken about some facts that underlay the calculation and ordered it corrected. Ms. Mantle argued that had there been a greater sharing percentage the Company might have had more incentive to discover this mistake. The Commission easily saw through the fallacy of that argument, concluding that the evidence did not show that had the sharing percentage been greater the mistake would have been less likely to occur.

Ms. Mantle's fourth argument was that the mere fact that off-system sales had dropped from earlier periods meant there needed to be more incentive, but as the Commission pointed out, retail sales were higher, meaning those megawatt-hours were not available for off-system sales.

Q. Has Ms. Mantle recycled any of these justifications for imposing a greater sharing percentage in this case?

A. Yes, she has. She once again ties Ameren Missouri's honest disagreement about whether the revenues from two wholesale contracts entered into in 2009 (see Mantle Direct, p. 22, l. 12-15) into a claim that Ameren Missouri lacks sufficient incentives under the current FAC. I repeat: The Commission already rejected this argument. It is no more valid now than it was before.

Q. After all of her justifications for changing the sharing percentage two rate cases ago were rejected, did Ms. Mantle advance other justifications in the Company's last rate case?

A. Yes, she did, even though all of the conditions are the same now as they were when she previously advanced these arguments. She first pointed out the obvious – if the sharing percentage were greater and if net base energy costs go up – Ameren Missouri will experience greater financial detriment. In that case, based on the historical period Ms. Mantle examined,[39] that additional detriment would have totaled $30 million. The Commission rejected Ms. Mantle's argument, noting that $30 million is not de minimis and that in fact it represents "prudently incurred net fuel costs the company would never be able to recover."[40] The same thing is true in this case, where she makes the same proposal, only with a different percentage. That $30 million total which the Commission recognized reflected "prudently incurred net fuel costs the company would never be able to recover"[41] has now grown to $38 million based on 5% sharing. If, as the Commission recognized, $30 million is not de minimis then certainly $38 million isn't, and it is still true that parties expend much time and energy on issues worth far less than that in rate cases.[42] Ms. Mantle proposes a sharing percentage that had it been in place would have doubled those under-recoveries, to $76 million.

Q. What other arguments has Ms. Mantle made?

[39] The period was from the inception of the FAC.
[40] *Report and Order*, File No. ER-2012-0166, p. 78.
[41] *Id.*
[42] *Id.*, p. 78.

A. Ms. Mantle next argued that off-system sales revenues were more volatile than fuel costs and suggested that an increased sharing percentage would allow Ameren Missouri to keep more off-system sales margins. As I will discuss further below, the Commission found no support for changing the sharing percentage based on volatile off-system sales, instead concluding that the "volatility of off-system sales is an argument for *keeping* the sharing mechanism at 95%/5%, not changing it."[43] The Commission was right then, and that principle holds today.

Ms. Mantle's third argument in our last case was that more sharing would provide a greater incentive to minimize fuel costs/maximize off-system sales. This argument has been made in every rate case where an FAC has been considered. The Commission rejected that argument as well, finding that in general, Ameren Missouri's fuel costs are dictated by national and international markets that are beyond Ameren Missouri's control and that Ameren Missouri already sells all of its in-the money generation to the MISO market so that the opportunity for more off-system sales is limited.[44] Moreover, the Commission said there was no allegation of imprudence.[45] The same things remain true in this case.

Ms. Mantle's fourth argument was that more sharing on the Company's part would give the Company a greater incentive to accurately estimate net base energy costs when they are rebased. The Commission pointed out that the Staff knew of no better predictors than those being used by the Company (and other parties). Ms. Mantle suggests no better predictors now, and, as noted earlier, she has consistently insisted that using historical averages is the only approach she would support. Lastly, Ms. Mantle, now for the third time,

[43] *Id.*, p. 79.
[44] *Id.*
[45] *Id.*, p. 80.

attempts to claim that the treatment of the two wholesale contracts from 2009 suggested a lack of proper incentive. The Commission said: "Ameren Missouri has not misused the FAC process and Staff's argument is without merit."[46]

Q. Doesn't Ms. Mantle suggest that there is a new reason to change the sharing percentage?

A. Yes, she does come up with one new reason, claiming that if the Commission does not "limit the number of items" in the FAC, then prudence reviews will be hindered, which I assume she is suggesting means that the prudence reviews will really not create an effective incentive for Ameren Missouri to properly manage the items in the FAC. She cites to a 2007 Commission decision discussing prudence reviews and incentives as support for her argument.

Q. Before addressing her attempt to tie OPC's complaints about information to the "incentives" issue, please address the incentives the Company has to properly manage its net energy costs.

A. We have repeatedly stated and the Commission has repeatedly acknowledged that having a FAC is a privilege, and not a right, and that this provides a powerful incentive for utilities to properly manage their net fuel costs. Missouri is unique in that we have a statute that mandates we come in and file a rate case and ask to continue our FAC at least every four years. The statute also mandates regular prudence reviews – we are in the middle of our fourth such review since March 2009, when the FAC started. The bottom line is that we have plenty of incentives to properly manage the components in the FAC. We could lose the FAC entirely, we could suffer prudence disallowances, plus we have already failed to

[46] *Id.*

recover $30 million of prudently incurred changes in net energy costs and have a significant incentive to minimize the extent to which that number will grow.

Q. But is Ms. Mantle right when she suggests the Commission found that some additional incentive via sharing was warranted?

A. While it is true that when the Commission approved the first FAC (since the 2005 statute authorizing them) in Missouri, the Commission found that prudence reviews alone were not sufficient to assure that the utility will act prudently (in that case, the utility was Aquila).[47] It is also true that the Commission decided then, and has consistently concluded since then, that the 5% sharing mechanism in all the Missouri FACs is sufficient.

Q. You noted that the Commission has discussed the incentives utilities have and the sufficiency of the 5% sharing mechanism the Commission utilizes. Please elaborate.

A. When the Company's FAC was first approved, the Commission rejected various sharing percentages proposed by others, stating that the 95% pass through "provides Ameren Missouri sufficient incentive to operate at optimal efficiency" because of several incentives it had in place to minimize net fuel (now called net energy) costs.[48] With one exception,[49] all of those incentives still exist. One of the incentives specifically called out by the Commission was the existence of the prudence review process. I have included the

[47] I disagree with that conclusion, but the Company has respected it and for five cases in a row has proposed essentially the same FAC, with 95%/5% sharing, even though we do not believe there should be a sharing percentage at all (as is the case with more than 80% of the FACs utilized by the other 91 utilities with FACs).
[48] *Report and Order*, File No. ER-2008-0318, p. 73.
[49] Ameren Missouri no longer operates as part of a coal pool, nor could it since it no longer has an unregulated generation affiliate.

Commission's discussion of all of the incentives discussed by the Commission in that case as Schedule LMB-R7 to my testimony.

Q. You mentioned that Ms. Mantle herself has acknowledged that there are powerful incentives for Ameren Missouri to properly manage its net fuel costs. Please explain.

A. In her sworn deposition in Case No. ER-2011-0028, she testified as follows:

> ***Q Okay. Do you agree if there is imprudence the Commission has the power and the obligation to disallow any costs related to the imprudence?***
>
> *A Yes.*
>
> ***Q And would you agree that that is a powerful incentive for a utility to avoid imprudent behavior?***
>
> *A Yes.*
>
> ***Q Would you agree with me that the use of a fuel adjustment clause in Missouri is a privilege and not a right for utilities?***
>
> *A That is correct.*
>
> ***Q And isn't it true that the Commission can take away a utilities [sic] fuel adjustment clause if it believes the utility is misusing it?***
>
> *A Yes.*
>
> ***Q And doesn't that also provide a powerful incentive for utilities to act reasonably and prudently with respect to their FACs?***
>
> *A Yes.*[50]

I agree with her statements and they demonstrate that there is no need to double the potential loss of prudently incurred net energy costs as she is advocating in this case.

[50] Lena Mantle Deposition, File No. ER-2011-0028, April 13, 2011, p. 44, l. 7 – p. 45, l. 18.

Q. Given these incentives, please comment on Ms. Mantle's attempt to tie prudence reviews to the sharing mechanism.

A. Her attempt to tie the two together fails for the same reason as does her claim that the MFR requirements are different than they actually are and her claim that parties do not have the information needed to identify the costs and revenues in the FAC; that is, because those claims are not true. The costs and revenues are "adequately defined," Ameren Missouri does not have "discretion" as to what to include (or exclude) and it most certainly is possible for prudence reviews to be properly conducted. Staff's testimony in this or in any other Ameren Missouri rate case has never claimed an inability to conduct a proper prudence review. This argument and its tie to incentives is a red herring.

Q. Ms. Mantle makes a couple of additional points in the middle of page 23 of her testimony about the current 95%/5% sharing mechanism. Do you understand those points?

A. I'm not sure that I do, but I believe her first point is that our prudent hedging processes should disqualify us from utilizing an FAC. As I explained earlier, despite our prudent hedging programs, we still face substantial variability in our delivered fuel costs and the other components in our FAC.

Q. Is she making other points?

A. I don't know what the ability to hedge some exposure or to buy power from the MISO market has to do with incentives. For the reasons discussed earlier, we have the proper incentive to properly manage all of the components of our net base energy costs, and that is without any sharing at all. The 5% share of changes ensures that we will under-recover prudently incurred net energy costs if they rise (and ensures customers will not receive the benefit of all decreases in net base energy costs when they decline), and some contend the 5% adds to our incentive. Ms. Mantle seems to think that more and more sharing is needed, but she provides no proof. Her 90%/10% proposal is, like her last 85%/15% proposal, nothing more than an experiment – an experiment for which no need has been shown – and an experiment that had it been in place previously would have cost the Company $76 million in lost, prudently incurred net energy costs.

Q. How would an even greater sharing percentage for Ameren Missouri compare to FACs of the other 91 utilities operating in non-restructured states?

A. As noted, it would put Ameren Missouri in a very small minority of utilities that have sharing at all (only about 18%), and an even smaller minority of utilities that have FACs that track changes versus *historical* costs.

Q. What is the significance of sharing based on a comparison to historical costs?

A. More than half of all FACs track changes against projected costs. While projections are of course not perfect, in general, one can be expected to have smaller changes versus the base established for comparison in the FAC if projected costs are used to establish the base. This means that the impact of any sharing mechanism will be less. Put another way, since historical costs are used to establish the base in Missouri, a 5% share in Missouri is likely greater than a 5% share in a state where projected costs are used. Of the 41 utilities in other states (omitting Ameren Missouri, Empire and KCPL-GMO) where FACs use historical costs to establish the base, only about 32% have any sharing at all.

Q. Are there any other reasons that the sharing mechanism should not be changed?

A. Yes. Regardless of other considerations, the sharing mechanism should not be changed because inconsistent regulatory policy has the effect of eroding investor confidence in utilities and casts a shadow on the state regulatory process. Ameren Missouri witness Gary Rygh's rebuttal testimony describes how uncertainty relating to the components of the FAC in every rate case would erode investor confidence in the regulatory process. Reduced credit quality would make it more costly and potentially more difficult for Ameren Missouri to access the capital needed to fund necessary investments in the system. As Mr. Rygh discusses in detail, this would be particularly true where, as here, there has been absolutely no evidence that the Company has acted imprudently regarding its net fuel cost management.

Q. Bottom line: Is the implication that the Company needs more sharing and greater incentive to properly manage its net fuel costs true?

A. No, it is not. We are continually mindful that the FAC is a privilege granted by the Commission which can be revoked, and that fuel and purchased power costs and OSS margins are subject to prudence reviews, and those considerations provide the Company with powerful incentives to keep our net energy costs as low as possible. The Company's rigorous policies and processes for procuring fuel and purchased power and for making off-system sales did not change when the FAC was initiated nor have they changed in the five and one-half years since then. Increases in fuel and purchased power costs occur because we operate in fuel and power markets we cannot control. Off-system sales margins are impacted by several factors, including market power prices and the amount of excess generation available after our retail load needs are met, which are often impacted by uncontrollable factors such as weather.

Q. You have now addressed Ms. Mantle's reasons two through four in support of her fallback position regarding the sharing percentages. Please address her first reason, which relates to recent surveillance reports.

A. As was just debated in great detail in File No. EC-2014-0223, earnings results reported in monthly surveillance reports fall far short of telling an accurate story about whether the Company's current or past rates have become unjust or unreasonable. During our last rate case, surveillance reports showed earnings in excess of our then-authorized return. The Commission, based upon proper cost of service studies and its resolution of disputed issues, nevertheless concluded our rates were too low and needed to be raised based on a revenue requirement increase of approximately $260 million. In File No. EC-2014-0223, an over-simplified reliance on surveillance reporting would have led one to the erroneous conclusion that the Company's rates were too high; the same would be true of the latest surveillance report results submitted since that case was over. The Staff in this case, after conducting what it believes is a comprehensive cost of service study, is recommending a rate increase. The Commission explained why decisions like the one OPC wants the Commission to make regarding the sharing percentage in the FAC should not be made based upon past surveillance reports:

> However, it is important to understand that the earnings levels reported in the surveillance reports are actual per book earnings of the utility and cannot be compared directly to an authorized return on equity to determine whether a utility is overearning. Actual per book earnings are often computed differently than earnings used for the purpose of establishing rates. When setting rates, the Commission looks at "normal" levels of ongoing revenues and expenses, while book earnings can be affected by abnormal, non-recurring and extraordinary events. A good example of this is the weather. The Commission sets a utility's rates on the assumption that weather will be normal. But, of course, we all know that Missouri weather is seldom normal. If the summer is very hot and people use their air conditioners more than average, Ameren

> Missouri will sell more than the usual amount of electricity and its revenues will be higher than expected. That means its actual per book earnings will be higher than anticipated when rates were set. However, the next summer temperatures may be cooler than normal, meaning air conditioners are not turned on and Ameren Missouri's actual per book earnings will fall below expectations. As a result, a single year of data needs to be normalized to remove the effect of abnormal weather before it can be used to set rates. Weather is only one of many items that must be adjusted or normalized when setting rates.[51]

Sharing percentage changes should not be based upon past surveillance report results, both because those surveillance results do not accurately tell the Commission whether past rates were too low, too high or just right, and because if one accepts the premise behind why the Commission imposed 95%/5% sharing in the first place (and why Ms. Mantle wants to change the percentages) – that is, to provide an incentive to manage net fuel costs properly – what the earnings have been in the past has nothing to do with that premise.[52]

Q. Ms. Mantle raises one more issue as part of her fallback position, appearing at page 26 of her direct testimony. Can you please describe this issue?

A. Yes. Ms. Mantle expresses concern over the feature of the FAC tariff that would allow the Company to utilize off-system sales margins to replace retail margins from Noranda Aluminum Inc. (Ameren Missouri's largest customer) in the event that Noranda experiences a significant load reduction.

[51] *Report and Order*, File No. EC-2014-0223, pp. 8-9 (footnotes omitted). As the Commission also explained there, the surveillance data shows that the Company has experienced a much longer period of earning substantially less (even farther below) than its authorized return, than the length of the period during which it has experienced surveillance results above its authorized return.

[52] I question the relevance of surveillance reporting to the FAC at all insofar as surveillance reporting results are reporting a utility's overall earnings on a per book basis. There are a myriad of costs and revenues unrelated to FAC components that affect financial results. Surveillance reporting may be warranted so the Commission can observe trends over time, but it is not a FAC-related issue.

Q. Does Ms. Mantle correctly characterize the operation of this provision of the tariff?

A. No, she does not. Ms. Mantle claims that the Company would retain all of the incremental off-system sales revenue associated with the volume reduction from Noranda, but would also avoid significant variable costs, thereby over-collecting the fixed costs that should have been recovered from Noranda. That is simply a misreading of the tariff and is factually incorrect.

Q. Why is it misleading and incorrect?

A. The fuel costs incurred to serve Noranda would also still be incurred to serve the incremental off-system sales made in Noranda's absence. Because the Company's generating units will be dispatched even if not needed to meet retail demand, the total generation output would in all probability be materially the same with or without Noranda, and the fuel burned would also be the same. There are no variable cost savings. However, despite that fact, there would still be a basis for Ms. Mantle's concern if the Company had not explicitly addressed it already in the way that the tariff mechanism operates.

Q. Does the FAC tariff already address this issue and, if so, please explain?

A. Yes, it does. The relevant formula from the FAC tariff is the calculation of the Fuel Adjustment Rate ("FAR").

$$FAR_{RP} = [(ANEC - B) \times 95\% + I \pm P \pm T]/S_{RP}$$

To explain as simply as possible the relevant portions of this formula, I'll focus on the term ANEC-B that appears in parentheses. This term is designed to compare the actual net energy costs incurred by the Company to the net energy costs that have been billed to customers to determine the extent to which actual net energy costs have been recovered. The difference (over- or under-recovery) is the basis of the forward looking adjustment to the rate charged to customers. One component of the actual net energy costs ("ANEC") is a credit against the total fuel and purchased power expense for the total off-system sales revenue earned by the Company. If Noranda's load were reduced to the threshold that triggered this feature of the tariff, the off-system sales revenues made possible due to the excess generation that would have otherwise served Noranda would be removed from the term ANEC. Said another way, instead of that revenue being a credit to customers to reduce their future FAC charges, it is retained by the Company to recover costs that would otherwise have been recovered from Noranda.

The key to resolving Ms. Mantle's concern, however, is in the factor "B" in the term (ANEC-B). Factor B is further defined in the tariff to be the fuel rate embedded in retail rates times the volume of retail sales, hence it describes the fuel costs already billed to and recovered from customers. Later in the tariff it is clearly spelled out that if Noranda's load is reduced, the volume of off-system sales whose revenues are reclaimed by the Company are also added into the load in the calculation of factor B. What this means is that while customers lose the revenues associated with the off-system sales, they get a credit for the variable cost contribution of those revenues. So in essence, the tariff already operates as Ms. Mantle proposes. The recovery mechanism is limited to fixed costs recovery from the off-system sales made to make up for the Noranda sales reduction.

Q. Can you please provide a numerical example to demonstrate how this phenomenon works?

A. Yes. The example below assumes a 40,000 MWh load decline and further assumes that the off-system price realized for the 40,000 MWh of load is $30/MWh. It demonstrates that, while the Company initially is credited with $1.2 million in off-system sales revenue, $600,000 of that is returned to customers as a contribution to variable cost recovery while the remaining $600,000 would be retained by the Company to recover fixed costs.

Tariff Terms:
$FAR_{RP} = [(ANEC - B) \times 95\% + I \pm P \pm T]/S_{RP}$
$ANEC = FC + PP + E - OSSR$
$B = BF \times S_{AP}$

Hypothetical Noranda load reduction (MWh)	40,000	
Hypothetical Off-System Sales Rate ($/MWh)	$30.00	
Decrease to OSSR (increase to ANEC)	**$1,200,000**	OSS Revenue Retained by Company to Replace Noranda Revenues
Increase to S_{AP} due to Noranda Reduction	40,000	
BF (Summer Base Factor in current FAC tariff)	$14.96	
Increase to B	**$598,400**	Variable Component of OSS Revenue Credited Back to Customers to Contribute to Fuel Cost Recovery
ANEC-B impact of Noranda reduction	**601,600**	Fixed Cost Contribution of Off-System Sales Retained by Company

Q. Do you have any other comments on the operation of this tariff?

A. Yes. The design of the tariff ensures that the Company will never over-collect the fixed costs that would have been provided by Noranda, but leaves significant risk to the Company of under-collecting those fixed costs. There are multiple reasons for this. First, this adjustment does not apply until the load reduction at Noranda is 40,000 MWh in a month. As is evident from the example above, at this threshold level the Company is already losing over a half million dollars a month before even one dollar of revenue from off-system sales is retained to address the issue. The second way the Company still bears risk is that the tariff provides that the Company can only retain the lesser of the actual market revenues or the level of retail revenues that would have been received from Noranda. Said another way, if the market price realized for off-system sales is below Noranda's retail rate, the Company bears the shortfall in fixed cost recovery, but in no circumstance if the market price exceeds Noranda's retail rate will the Company keep any excess revenues beyond those required to be made whole to the level that Noranda would have provided. These two features ensure that the Company still bears risk of lost fixed cost recovery if Noranda's load declines, but other customers can be no worse off than if Noranda was still operating normally.

E. <u>Staff's Recommendations</u>.

Q. Please address Staff's recommendations in the Staff Report and also in the Staff's rate design report filed on December 19, 2014.

A. The Staff recommends continuation of the Company's FAC as we proposed and as reflected in the exemplar FAC tariff included with my direct testimony. The only exception is that the Staff "disagrees" with the rebased FAC rates included in that tariff on the grounds that the rebased rates were based on pro forma estimates through December 31, 2014. We agree that the final FAC rates (for both summer and winter) will be based on the actual net base energy costs determined in this case using actual data through the end of the true-up period (and the contracted-for increases in delivered coal costs as of January 1, 2015). Consequently, we do not believe we have any substantive disagreement with the Staff regarding the FAC.[53]

Staff's only other recommendation is that we provide some additional monthly reporting (see pages 170-71 of the Staff Report). This reporting is not "additional" in the sense that these are the same recommendations the Staff has previously made to which the Company has previously agreed. We remain in agreement with these recommendations.

[53] The Staff's Report also indicated that the FAC tariff should clarify that fuel costs related to our Maryland Heights landfill gas facility are excluded from the FAC. Our proposed tariff already included this clarification,

III. NORANDA AAO

Q. The Staff, the OPC, and the MIEC all oppose recovery of the amortization of certain fixed costs the Company was unable to recover from Noranda Aluminum, Inc. ("Noranda"), which the Commission authorized the Company to defer in an Accounting Authority Order ("AAO") issued in File No. EU-2012-0027. Can you please briefly explain the circumstances of that case?

A, Yes. As the Commission is aware, Noranda is Ameren Missouri's largest customer by far. Noranda purchases for its smelting facility near New Madrid in Southeast Missouri approximately 11% of the power that Ameren Missouri sells at retail, and the magnitude of Noranda's electric load is similar to that of the entire city of Springfield, Missouri. Revenues from Noranda also cover a significant share of Ameren Missouri's fixed costs, which the Commission assigned to Noranda's rate class and are recovered through variable rates due to the way electric rates are designed in Missouri. Noranda operates 24 hours a day, 7 days a week, and takes service at a near constant level.

In January, 2009, an extraordinary and devastating ice storm struck Southeast Missouri, interrupting electric service to almost all customers in the region. Electric service to Noranda was also impacted by the ice storm. Specifically, the ice severed electric transmission lines operated by Associated Electric Cooperative, Inc., the electric cooperative that transmits power from Ameren Missouri to the Noranda smelter, and electric service to the smelter was interrupted. As a consequence, molten aluminum "froze" in the potlines of the smelter, and ultimately had to be jack-hammered out. As a result of this incident,

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which I believe the Staff recognizes since the Staff suggested no further change to the tariff in the Staff's rate design report.

operations at the smelter were substantially curtailed for approximately 14 months. As an additional consequence, Ameren Missouri was unable to recover almost $36 million of fixed costs that the Commission had allocated to Noranda in a final rate case order issued just days before the ice storm struck, and which would have been recovered from Noranda in the absence of the ice storm.

Ameren Missouri initially believed it could recoup these unrecovered fixed costs by re-selling the power that Noranda was unable to take under sales contracts to AEP and Wabash that would be exempt from the Company's FAC. However, in 2011 the Commission ruled revenues received under those contracts were subject to the FAC and should be reflected in the FAC as off-system sales, which credits 95% of incremental margins earned on off-system sales to customers. In other words, only 5% of the margins from those sales could be used to offset the Company's lost fixed costs. Upon receiving that decision, in July 2011 Ameren Missouri promptly filed its application for an AAO to allow the Company to defer its unrecovered fixed costs and to permit it to seek recovery of those costs in its next rate case. The AAO application was docketed as File No. EU-2012-0027.

Q. Were other parties supportive of Ameren Missouri's application for an AAO?

A. No, they were not. The Commission Staff, the OPC, and the MIEC, in particular, opposed Ameren Missouri's application. Among other things, they argued that the application for the AAO was untimely, that it inappropriately sought recovery of un-generated revenues (rather than unrecovered fixed costs), and that it did not result in a loss to Ameren Missouri, since the Company had positive (albeit reduced) earnings during the 14-month period of the curtailment.

In a fully litigated case that took over two years to complete, Ameren Missouri vigorously defended its AAO application. With regard to the argument the application was untimely, the Company pointed out it had filed the application as soon as it could have—just weeks after the Commission ruled it could not recoup its lost fixed costs through sales of the power to AEP and Wabash. With regard to the argument the AAO sought to defer un-generated revenues, Ameren Missouri pointed out the total un-generated revenues resulting from Noranda's curtailment were much higher than the unrecovered fixed costs the Commission assigned to Noranda's rate class and which the Company sought to defer. Moreover, even if the loss were characterized as lost revenues, Ameren Missouri pointed out lost revenues could be deferred in an appropriate circumstance under the Uniform System of Accounts and consistent with prior Commission cases. Finally, with regard to the argument that the Company had not suffered a loss so long as it had any amount of positive earnings – even $1 – during the period of Noranda's outage, the Company pointed out that "any positive net earnings" has never been the standard the Commission has employed in authorizing AAOs or approving recovery of amounts deferred through an AAO. If that were the standard, no utility would ever have been able to recover extraordinary costs through the use of an AAO. Moreover, it is simply not true a utility with even one dollar of earnings has covered all of its costs.

Q. What was the Commission's ruling in File No. EU-2012-0027?

A. In its *Report and Order* issued on November 26, 2013, the Commission granted Ameren Missouri's application. The Commission rejected the other parties' argument the Company's application was untimely, finding "they [the other parties] made no persuasive argument supporting a calculation of the deadline for filing an application for an

AAO." The Commission also found items eligible for deferral through an AAO include an "'extraordinary item,' an item that pertains to an event that is extraordinary, unusual and infrequent, and not recurring." The Commission also specifically found revenue not collected by a utility to recover its fixed costs could be an item eligible for deferral, and cited analogous cases where it had allowed deferral of such uncollected revenues in the context of energy efficiency programs and the Cold Weather Rule. Finally the Commission found the loss of the almost $36 million in fixed costs, which constitutes 8.5% of Ameren Missouri's net income, is extraordinary and material, and can be deferred under the Uniform System of Accounts. The Commission noted that deferral preserves an item for consideration when setting just and reasonable rates in a future rate case, but it does not guarantee recovery in that case; recovery may be granted in whole, partially, or not at all. A copy of the Commission's *Report and Order* in File No. EU-2012-0027 is attached to this testimony as Schedule LMB-R8.

Q. Have there been further proceedings regarding the Commission's decision in File No. EU-2012-0027?

A. OPC and MIEC appealed the Commission's decision to the Missouri Court of Appeals. On Tuesday of this week (January 13, 2015), the Court of Appeals ruled against OPC and MIEC on their appeal and affirmed the Commission's decision. A copy of the Court of Appeals' Memorandum is attached to this testimony as Schedule LMB-R9.

Q. What is Ameren Missouri's proposed treatment in this case of the amounts deferred in File No. EU-2012-0027?

A. The Company proposes to amortize the deferred amounts over five years. We believe this is an appropriate deferral period because it mitigates the impact of this item on customer rates, and it is consistent with the amortization the Commission has employed for other extraordinary storm-related costs.

Q. Have witnesses for the Staff, OPC and MIEC presented persuasive arguments against this amortization?

A. In my opinion, no. In general, these witnesses are simply attempting to re-litigate issues that were specifically decided by the Commission in File No. EU-2012-0027, as affirmed by the Court of Appeals. For example, they are re-arguing that Ameren Missouri did not act in a timely fashion, that it is inappropriate to defer unrecovered revenues, and that so long as Ameren Missouri had any earnings at all – even $1 – it should not be allowed to recover this deferral. These arguments lack merit and they have already been explicitly rejected by the Commission. The Court of Appeals found no error on the Commission's part. I will, however, nonetheless address the specific arguments contained in each witness' testimony below.

Q. In his direct testimony, Staff witness John Cassidy states "it is inappropriate to attempt to recover lost revenues from a period approximately five years ago, and subsequent to the conclusion of three prior general rate cases." Do you agree?

A. No. The Company is requesting recovery in this case because it is the first opportunity following the Commission's November 2013 *Report and Order* granting the AAO. It would not have been possible for the Company to request recovery in any of the previous general rate cases cited by Mr. Cassidy without a Commission Order granting the AAO, and the Commission already has explicitly determined that the Company did not miss any claimed deadline for seeking the AAO.

Q. Both Mr. Cassidy and OPC witness Ted Robertson claim it is generally not appropriate to utilize an AAO to recover lost revenues. Do you agree?

A. No, and neither does the Commission or the Court of Appeals. In its *Report and Order* in Case No. EU-2012-0027, the Commission stated "[r]evenue not collected by a utility to recover its fixed costs, under some circumstances, is an 'item' that may be deferred and considered for later rate making." The Commission goes on to state "[t]his is consistent with Commission regulations regarding certain energy conservation programs which specify that lost revenue may constitute an item for recording." The Court of Appeals stated that it was logical and reasonable to compare the sums deferred pursuant to the Commission's decision in File No. EU-2012-0027 to deferrals of lost revenues previously sanctioned by the Court of Appeals (revenues lost under the Commission's Emergency Cold Weather Rule).[54]

Q. Mr. Robertson suggests the examples cited by the Commission in its Report and Order, where uncollected revenues have been deferred, are different from the circumstances in this case because those other examples have a basis in law and revenues that cannot be collected due to an extraordinary storm do not. Further, he cites a Missouri Gas Energy ("MGE") case (File No. GU-2011-0392) as support for his position that recovery should be denied. Do you agree?

A. No. The Commission denied MGE's request to recover unrecovered fixed costs in File No. GU-2011-0392 because the Commission concluded MGE's overall revenues did not decrease despite the devastation of the storm event that gave rise to MGE's AAO request. But that is not the case here. Even when including the revenues recorded from the

[54] Schedule LMB-R9, Court of Appeals' Memorandum, at p. 10.

AEP and Wabash contracts the Commission subsequently ordered to be flowed through the Company's FAC, Ameren Missouri's 2009 revenues decreased by $56 million compared to 2008. The majority of those revenue losses were attributable to the loss of the Noranda load.

In addition, Mr. Robertson's argument ignores the fact in granting the Company's AAO the Commission fully considered its order in File No. GU-2011-0392 and whether that case barred the relief Ameren Missouri was seeking. The Commission concluded it did not.

Q. Mr. Robertson goes on to suggest Ameren Missouri's proposed amortization of the regulatory asset the Commission approved through the AAO constitutes retroactive ratemaking. Do you agree?

A. No. Mr. Robertson's argument is essentially that recovery of any amount deferred through an AAO in a subsequent period constitutes retroactive ratemaking. Although I am not a lawyer, I know that the Commission has a long history of utilizing AAOs to amortize the cost of extraordinary, non-recurring events for rate recovery in future periods. If this is retroactive ratemaking, then the Commission has been issuing unlawful AAO orders for decades. The Company's attorneys will further address the lawfulness of AAOs in their briefs, including, I am sure, the Court of Appeals' reiteration in its Memorandum that granting AAOs is not retroactive ratemaking.[55]

From an accounting perspective the very nature of an AAO request results in both the deferral and subsequent amortization during a period different from the period when the event occurred. If recovery of an AAO (for revenues or expenses) constituted retroactive

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[55] *Id.*

rate making, there would also be no reason for AAOs to exist at all in the Uniform System of Accounts. Mr. Robertson's position on this issue is therefore illogical and also inconsistent with common regulatory accounting practice.

Q. MIEC witness Greg Meyer suggests Ameren Missouri hasn't provided any testimony regarding the proper recovery of the deferred amount. Is there direct testimony that addresses recovery of these costs?

A. Yes. As Mr. Meyer notes in his testimony, Ameren Missouri witness Laura Moore includes testimony recommending amortization of the deferred amount over five years. These were costs properly recorded on Ameren Missouri's books per the *Report and Order* issued by the Commission in File No. EU-2012-0027. As a result, no further explanation was required.

Q. But, hasn't the Company had positive earnings during the period the loss occurred and in subsequent periods since?

A. Yes, but the fact that the Company had positive earnings is irrelevant. As I previously mentioned, if this were the standard for recovery of amounts deferred through an AAO, no utility would ever be able to obtain an AAO or recover any deferred amounts. Ameren Missouri witness John Reed also addresses this issue in his rebuttal testimony.

Q. Mr. Meyer also asserts these costs should not be amortized because they have already been included in the determination of Ameren Missouri's revenue requirement in a past Ameren Missouri rate case. How do you respond?

A. Mr. Meyer is missing the point. The fact that these costs were included in the Company's revenue requirement in a prior rate case merely serves to underscore the legitimacy of the AAO and the Company's request to recover the deferred amount. The relevant consideration, as the Commission recognized when it granted the AAO, is that Ameren Missouri was unable to recover these costs due to the extraordinary impact of the 2009 ice storm.

Q. Are you suggesting that by granting the AAO the Commission guaranteed the Company would be able to recover these costs in rates in this case?

A. No. As the Commission recognized in its *Report and Order* in File No. EU-2012-0027, an AAO only provides the Company the opportunity to seek recovery of deferred costs in a subsequent rate case. It provides no guarantee those costs will actually be recovered. For example, parties could properly oppose recovery of deferred costs in this case on a variety of grounds. They could present evidence some or all of the deferred costs were imprudently incurred, or that the failure to recover fixed costs from Noranda was attributable to the Company's imprudent actions. They could also challenge the calculation of the costs, or the amount of revenues lost during the Noranda curtailment that would otherwise have paid those costs. However, in this case, the parties have not presented any evidence that the costs (or lost revenues) were improperly calculated or the loss was attributable to any improper actions by the Company. Instead, they have simply argued the AAO never should have been issued in the first place (the Court of Appeals disagreed), and are thus just rehashing arguments the Commission already rejected in its prior *Report and Order*. These arguments do not provide a basis for disallowing a reasonable amortization of costs that have been already been properly deferred per the Commission's order.

Q. Is the five-year amortization proposed by the Company necessary?

A. No. The amortization period proposed by the Company is somewhat arbitrary, but it is the same period the Commission has used in the past to amortize extraordinary storm costs in other circumstances. The impact of this amortization on customer rates can be reduced by extending the amortization period, and the Company would not oppose a reasonable extension of the amortization period if the Commission thought that was necessary or appropriate in this case.

IV. BOARD OF DIRECTORS' FEES

Q. Mr. Kunst opposes recovery of the portion of Ameren Corporation's Board of Directors fees and related expenses that are allocated to Ameren Missouri, claiming these represent parent company ownership costs that shouldn't be included in customer rates. Do you agree?

A. No, I do not. Ameren Missouri customers benefit from the service that Ameren Corporation's independent board of directors provide and thus a prudently allocated cost should be included in customer rates. In fact, the only reason that Ameren Missouri doesn't incur these expenses itself is because it is a subsidiary of a holding company, an arrangement approved by the Commission when Union Electric Company and Central Illinois Public Service Company were merged in 1997. The costs did not go away after the merger, but rather, are now simply incurred by our parent. We are, and should be, allocated an appropriate share of these expenses.

Q. Doesn't Ameren Missouri have a board of directors?

A. Yes, Ameren Missouri has a board of directors completely comprised of officers of Ameren Missouri, but it performs only a small portion of the functions that an independent board of a publicly traded utility holding company performs. As I discuss further below, the Ameren Missouri board of directors used to perform all of those functions before the merger and, as noted, those functions did not simply disappear.

Q. What is the significance of Ameren Corporation's board of directors being independent?

A. First of all, as a publicly-traded company traded on the New York Stock Exchange, Ameren Corporation is required under Section 303A of the NYSE Listing Manual to have a majority of its board be comprised of independent directors. In addition, Section 303A requires that certain board committees, including the audit committee, the compensation committee, and the nominating committee, be comprised entirely of independent directors. Ameren Corporation's board meets these criteria as the only non-independent member of the board is Ameren's Chairman and Chief Executive Officer, who does not serve on any of the Board committees. In addition, the Ameren Corporation Board has the following committees, comprised entirely of independent directors: the Nuclear Oversight and Environmental Committee and the Finance Committee. Both shareholders and customers benefit from the independent directors on the Board.

Q. If Ameren Corporation did not exist, would Ameren Missouri have to have a board of directors with a majority of independent directors?

A. As I noted earlier, if Ameren Missouri were a publicly traded company on the New York Stock Exchange (as it was prior to the creation of Ameren Corporation) the same requirements would apply to it. However, instead of paying an allocated share of the cost of Ameren Corporation's Board of Directors, Ameren Missouri would have to pay 100% of the cost of its own board of directors.

Q. How do Ameren Missouri customers benefit from Ameren Corporation's independent board of directors?

A. Ameren Corporation's board of directors provides management oversight in numerous areas. For example, the Ameren Corporation board oversees the Company's risk management processes and business strategy, approves management decisions around compensation, assumptions made regarding pension and benefit plans, monitors the relationship with external auditors and provides oversight of the Callaway Energy Center, among other things. In all of these cases, the customer benefits from the oversight that the independent directors provide.

Q. Couldn't those same oversight tasks be done by a non-independent board?

A. Yes they could. However, the independence of the directors adds value to this oversight role by bringing a diverse set of skills, expertise and perspective to the Company and by avoiding any conflicts of interest that could arise from a non-independent board.

Q. How are Ameren Corporation's board fees and expenses allocated to Ameren Missouri?

A. Board of director fees and expenses are allocated to the Ameren subsidiaries using an allocation factor that is based on capital structure. This method results in approximately 42% of these expenses being allocated to Ameren Missouri.

Q. In Mr. Kunst's testimony, he suggests that many of the allocated costs were duplicative since Ameren Missouri has its own board. Is that true?

A. No, it is not. Since the Ameren Missouri directors are comprised of employees of the Company who receive no additional compensation for their service as directors, there are no additional costs relating to their duties as board members.

Q. Mr. Kunst also suggests that the allocated costs are excessive. How do you respond?

A. I disagree with Mr. Kunst's statement. Director fees are reviewed annually by an independent compensation consultant who compares Ameren Corporation's board of director fees with similar fees at peer utilities. In studies performed for 2013 and 2014, Ameren Corporation's fees were around the median of the group. Travel and accommodation expenses are closely monitored. In addition, as to air travel, the Ameren Corporation board has a policy relating to private aircraft utilization, which outlines the conditions under which this mode of travel is permitted. The policy was developed with the belief that the board's time spent on company business can be better optimized and is more economical in certain cases by utilizing private aircraft in lieu of commercial travel. This has become even truer in recent years as the St. Louis Lambert airport's connections have declined.

V. SAFETY COMPONENT OF THE EIP-O PLAN

Q. Did you review the portion of the Staff Report related to the Executive Incentive Plan for Officers ("EIP-O")?

A. Yes.

Q. Staff suggests that the EIP-O does not tie officer actions to promoting safety for regulated, electric-only, Missouri operations. How do you respond?

A. I disagree. As discussed in detail in the rebuttal testimony of Ameren Missouri witness Dennis Weisenborn, a specific effort to substantially improve safety awareness has been integrated into all aspects of our business, including specifically into the responsibilities of Company officers. While the employees who work in my organization do not generally face the level of safety risks faced by employees working in generation or energy delivery, safety is nevertheless important for them. As an officer I am expected to lead on all important Company initiatives, including relating to safety. I do this by discussing potential safety hazards and pointing out emergency exits in meetings I lead in our general office building (often with participants who do not routinely work in the building). In addition, I prepare an annual safety letter that is distributed to all Ameren Missouri employees. Both types of activities reinforce a safety culture and awareness among our coworkers and contribute to a safety attitude.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service.	)))	**Case No. ER-2014-0258**

AFFIDAVIT OF LYNN M. BARNES

STATE OF MISSOURI)
) ss
CITY OF ST. LOUIS)

Lynn M. Barnes, being first duly sworn on her oath, states:

1. My name is Lynn M. Barnes. I work in the City of St. Louis, Missouri, and I am employed by Union Electric Company d/b/a Ameren Missouri as Vice President Business Planning & Controller.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Union Electric Company d/b/a Ameren Missouri consisting of 73 pages and Schedule(s) LMB-R4 TO LMB-R9, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

Lynn M Barnes
Lynn M. Barnes

Subscribed and sworn to before me this 16th day of January, 2015.

Beckie J. Eaves
Notary Public

My commission expires:

BECKIE J. EAVES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: February 21, 2018
Commission Number: 14938572

AQUILA, INC.
AQUILA NETWORKS-MISSOURI (ELECTRIC)
CASE NO. ER-2007-0004
SEDALIA INDUSTRIAL ENERGY USERS ASSOCIATION
AND AG PROCESSING INC.
DATA REQUEST NO. SIE-0195

DATE OF REQUEST: January 26, 2007

DATE RECEIVED: January 26, 2007

DATE DUE: February 7, 2007

REQUESTOR: Stuart W. Conrad

QUESTION:

Please identify where in Aquila's filing the information required by each lettered section under rule 4 CSR 240.3.161 (2) may be found.

RESPONSE:

A - See D. Williams' direct testimony page 10, line 17 references Schedule DRW-2
B - See D. Williams' direct testimony page 10, line 22 references Schedule DRW-3
C - See D. Williams' direct testimony page 3, line 13 references Schedule DRW-1
D - See D. Williams' direct testimony beginning at page 3, line 10
E - See D. Williams' direct testimony beginning at page 5, line 4
F - See D. Williams' direct testimony beginning at page 6, line 21
G - See D. Williams' direct testimony beginning at page 7, line 21
H - See D. Williams' direct testimony beginning at page 3, line 18
I - See D. Williams' direct testimony beginning at page 7, line 9
J - See D. Williams' direct testimony beginning at page 8, line 12
K - See D. Williams' direct testimony beginning at page 8, line 22
L - See D. Williams' direct testimony beginning at page 7, line 21
M - See D. Williams' direct testimony beginning at page 9, line 21
N - See D. Williams' direct testimony beginning at page 10, line 7 referencing Sam Hadaway testimony
O - See D. Williams' direct testimony beginning at page 10, line 10 referencing Davis Rooney testimony
P - See D. Williams' direct testimony beginning at page 10, line 10 referencing Davis Rooney testimony
Q - See D. Williams' direct testimony beginning at page 10, line 10 referencing Davis Rooney testimony
R - See D. Williams' direct testimony beginning at page 10, line 23 referencing Block Andrews testimony
S - Information included in surveillance reports provided to the Staff have no confidentiality restriction and may therefore be made available to other parties to this case.

ATTACHMENTS: None

ANSWERED BY: Denny Williams

DATE ANSWERED: February 14, 2007

FUEL ADJUSTMENT CLAUSE
ELECTRIC

DEFINITIONS

ACCUMULATION PERIOD:

The four three-month accumulation periods, the four three-month recovery periods and filing dates will be as follows:

Accumulation Period	**Filing Date**	**Recovery Period**
December – February	By April 1	June – August
March – May	By July 1	September – November
June – August	By October 1	December – February
September – November	By January 1	March – May

RECOVERY PERIOD:

The billing months during which the Cost Adjustment Factor (CAF) is applied to retail customer billings on a per kilowatt-hour (kWh) basis.

COSTS:

Costs eligible for Fuel Adjustment Clause (FAC) will be the Company's allocated Missouri Jurisdictional costs for fuel consumed in Company generating units, purchased power charges and emission allowance costs. Eligible costs do not include the purchased power demand costs associated with purchased power contracts with a term in excess of one (1) year.

APPLICATION

The price per kWh of electricity sold will be adjusted subject to application of the FAC mechanism and approval by the Missouri Public Service Commission. If the Cost Adjustment Factor for a given quarter is not more or less than +/- 2.0% of the Aquila Networks – L&P Residential General Use winter energy first block, then the adjustment will not be implemented, and will be included as part of the following quarter's FAC. This exception does not apply if doing so will prevent the Company from filing the FAC at least once a year. The price will reflect accumulation period Missouri Jurisdictional costs above or below base costs specified on Sheet No. 126 for:

1. fuel consumed in Company electric generating plants, plus
2. purchased power (excluding demand contracts, the term of which exceed one (1) year), and all hedge costs, settlement costs and benefits, plus
3. emission allowance costs, plus or minus
4. an adjustment for recovery period sales variation. This is based on the difference between the values of the FAC as adjusted minus actual FAC revenue during the recovery period. This amount will be collected during a succeeding recovery period.
5. Interest on deferred electric energy costs shall be determined monthly. Interest shall be calculated at a rate equal to the weighted average interest rate paid on short-term debt, applied to the month-end balance of deferred electric energy costs. The accumulated interest shall be included in the determination of the CAF.

FUEL ADJUSTMENT CLAUSE (CONTINUED)
ELECTRIC

The FAC will be the sum of (1), (2), (3), (4) and (5), above. The Cost Adjustment Factor is the result of dividing the FAC by estimated kWh sales during the recovery period, rounded to the nearest $.0000. The formula and components are displayed below.

$$FAC = F + P + E + X - B + C + I$$

The Cost Adjustment Factor (CAF) is as follows:

$$CAF = FAC / S$$

Where:

F = Actual cost of fuel – FERC Accounts 501 & 547
P = Actual cost of purchased energy – FERC Account 555
E = Actual emission allowance cost – FERC Account 509
X = .50 x (Base off system sales margins – accumulation period off system sales margins)
B = Base cost of fuel and purchased power energy = S x $0.0215 for Aquila Networks – L&P, or S x $0.0287 for Aquila Networks – MPS
C = Under / Over recovery from prior recovery period, and modifications due to annual prudence reviews
S = Estimated sales (kWh) for the recovery period
I = Interest

The FAC will be calculated separately for Aquila Networks – L&P and Aquila Networks – MPS, and the resultant CAF's will be applied to customers in the respective divisions.

APPLICABLE BASE COST

Company generated energy and purchased energy per kWh sold, $0.0215 for Aquila Networks – L&P, and $0.0287 for Aquila Networks – MPS. (Or the amounts approved in the rate case.)

FUEL ADJUSTMENT CLAUSE (CONTINUED)
ELECTRIC

COST ADJUSTMENT FACTOR

	Aquila Networks	– L&P		– MPS
	Accumulation Period Ending	mm/dd/yy		mm/dd/yy
1.	Total energy cost (F, P, E, and X)	$xxx,xxx,xxx		$xxx,xxx,xxx
2.	Base energy cost (B) -	$xxx,xxx,xxx	-	$xxx,xxx,xxx
3.	Fuel Adjustment Clause	$xxx,xxx,xxx		$xxx,xxx,xxx
4.	Adjustment for Under / Over recovery for the recovery period ending mm/dd/yyyy +	$xxx,xxx,xxx	+	$xxx,xxx,xxx
5.	Fuel Adjustment Clause as Adjusted	$xxx,xxx,xxx		$xxx,xxx,xxx
6.	Estimated recovery period sales kWh ÷	x,xxx,xxx,xxx	÷	x,xxx,xxx,xxx
7.	Cost adjustment factor to be applied to			
	Aquila Networks – L&P bills beginning mm/dd/yyyy	$0.0000		
	Aquila Networks – MPS bills beginning mm/dd/yyyy			$0.0000

Schedule LMB-R5

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service.	)))	File No. ER-2014-0258

AFFIDAVIT OF LYNN M. BARNES

The undersigned, being first duly sworn and based upon the undersigned's knowledge, information and belief states as follows:

1. My name is Lynn M. Barnes.

2. I am employed by Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") as Vice-President, Business Planning and Controller.

3. I am a Certified Public Accountant duly licensed in the State of Missouri, and have 17 years of experience in regulatory accounting for public utilities under the Uniform System of Accounts ("USoA") and Generally Accepted Accounting Principles ("GAAP").

4. Additional information regarding my credentials and experience can be found in my prefiled direct testimony in this case.

5. I have read the entirety of the Office of the Public Counsel's ("OPC") September 24, 2014 *Request for Order*, Ameren Missouri's October 1, 2014 *Response to Request for Order*, OPC's October 9, 2014 *Suggestions* in reply to Ameren Missouri's October 1 filing, and Ameren Missouri's October 13, 2014 *Reply* to OPC's Suggestions to which this Affidavit is attached.

6. The Federal Energy Regulatory Commission's "(FERC") Uniform System of Accounts ("USoA") is codified at 18 C.F.R. Pt. 101.

7. The USoA has only one set of accounts, as defined by the definition of "account" in USoA Definition No. 1, and as listed in Pt. 101.

8. Each and every USoA account into which costs or revenues that are included in Ameren Missouri's FAC are recorded is listed in the minimum filing requirements information contained in Schedule LMB-1 to my July 3, 2014 Direct Testimony filed in this case. The pertinent part of that Schedule is attached to Ameren Missouri's October 1, 2014 *Response*.

9. Ameren Missouri utilizes certain "minor" accounts for managerial reporting purposes. For example, it utilizes minor account .001 under USoA Account 501. All headings in the ledger that reference a minor account include the USoA Account (sometimes called "FERC Majors"), as the USoA requires. Thus, minor .001 for Account 501 would always be referred to as "501.001," so that the USoA Account 501 is always listed as the USoA requires.

10. Different utilities could utilize the same minor number differently as (a) there is no requirement for the establishment of minor accounts at all, and (b) the costs or revenues segregated by a minor account are not prescribed by FERC or any other regulatory body and are entirely up to the utility using the minor account.

11. Ameren Services Company ("Ameren Services") provides accounting services to Ameren Missouri, and has done since 1998. Ameren Services uses the same accounting system (FERC USoA accounts and minors established by Ameren Services or Ameren Services) as used by Ameren Missouri. This was true in 2009 – 2010. In 2009-2010 the FERC conducted an audit of Ameren Services, as the FERC does from time-to-time. During the audit the FERC raised no questions or concerns about Ameren Services' compliance with the USoA account requirements (nor, by implication, did it find any concerns or raise questions about Ameren Missouri's compliance with USoA account requirements). Starting October 1, 2012, the FERC is conducting a similar audit of Ameren Missouri. While the audit is not complete, the FERC has

raised no issues or questions regarding Ameren Missouri's use of the accounts prescribed by the USoA or regarding Ameren Missouri's establishment of minor accounts.

12. OPC's "interpretation" of the USoA's requirements at pages 4 – 5 of OPC's October 9, 2014 *Suggestions* is inconsistent with the plain terms of the USoA and with my experience in applying the USoA over the past 17 years. In fact, as noted above it is inconsistent with the FERC's own application of the USoA, as evidenced by its audits of Ameren Services and Ameren Missouri.

13. Further affiant sayeth not.

Lynn M Barnes

Lynn M. Barnes

Subscribed and sworn to before me this 13th day of October, 2014.

Beckie J. Eaves

Notary Public

BECKIE J. EAVES
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: February 21, 2018
Commission Number: 14938572

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a	)	
AmerenUE's Tariffs to Increase Its Annual	)	**<u>Case No. ER-2008-0318</u>**
Revenues for Electric Service	)	Tariff Nos. YE-2008-0605

REPORT AND ORDER

Issue Date: January 27, 2009

Effective Date: February 6, 2009

reasonable attempts to devise an incentive mechanism. However, those proposals would still impose more costs on AmerenUE than is necessary to provide an appropriate incentive. If AmerenUE's coal costs increased by $137 million in 2009 and 2010 as anticipated, Brubaker's mechanism would still force AmerenUE's shareholders to absorb approximately $25 million in coal costs alone in 2010.[186]

A 95 percent pass through provides AmerenUE sufficient incentive to operate at optimal efficiency because the company already has several incentives in place that encourage it to minimize net fuel costs. First, AmerenUE's largest fuel cost is for the purchase of Powder River Basin coal to fire its power plants.[187] The coal AmerenUE uses is purchased by an affiliated company, AmerenEnergy Fuels and Service Company, which also purchases coal for the unregulated Ameren merchant generating companies operating in Illinois. As a result, AmerenUE pays the same price for coal as the unregulated affiliates.[188] Presumably, Ameren has a strong incentive to minimize costs for its unregulated operations, so AmerenUE would benefit from those same incentives.

Second, AmerenUE's key employees responsible for managing the company's net fuel costs all have personal financial performance incentives related to things like generation levels, generation availability, and cost of generation.[189] Thus, individual employees have a financial incentive to minimize the company's fuel costs.[190]

Third, adjustments under the fuel adjustment clause are based on historical rather projected costs. Hence, AmerenUE will not entirely escape the incentive effects of the

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[186] Lyons Rebuttal, Ex. 42, Page 24, Lines 13-16, as corrected at Transcript, Page 2141.

[187] Mantle Surrebuttal, Ex. 224, Page 2, Table LM1.

[188] Lyons Rebuttal, Ex. 42, Page 21, Lines 3-9.

[189] Transcript, Pages 2179-2180, Lines 23-25, 1-5.

[190] Lyons Rebuttal, Ex. 42, Page 23, Lines 9-17.

regulatory lag between the incurrence of its fuel costs and the recovery of those increased fuel costs from ratepayers under the fuel adjustment clause. Therefore, the company has an incentive to minimize net fuel costs to mitigate that remaining regulatory lag.[191]

Fourth, as required by the Commission's rules, AmerenUE's fuel adjustment clause includes a detailed heat rate/efficiency testing plan that will allow the Commission to guard against imprudent operation and maintenance of the company's generating units, thus controlling net fuel costs.

Fifth, AmerenUE will need to come back to the Commission in its next rate case to have its fuel adjustment clause renewed. As the Commission has previously indicated, "a fuel adjustment clause is a privilege, not a right, which can be taken away if the company does not act prudently."[192] If AmerenUE does not efficiently control its net fuel costs, the Commission could reconsider the fuel adjustment clause.

There is one additional consideration that supports the implementation of a 95 percent pass through provision in AmerenUE's fuel adjustment clause. That is the likely impact the pass through provision will have on AmerenUE credit worthiness in the eyes of Wall Street. The Commission has recently allowed two other Missouri electric utilities, Aquila and Empire, to implement a fuel adjustment clause including a 95 percent pass through provision. To now impose a less favorable pass through provision on AmerenUE would signal investors that AmerenUE was less well regarded by this regulatory agency.[193] When asked specifically about the 80 percent pass through proposal offered by MIEC,

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[191] Lyons Rebuttal, Ex. 42, Page 22, Lines 3-15.

[192] *In the Matter of The Empire District Electric Company's Tariffs to Increase Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, Case No. ER-2008-0093 July 30, 2008, Pages 45-46.

[193] Transcript, Pages 2370-2371, Lines 23-25, 1-8. Also, Transcript, Pages 2384-2385, Lines 14-25, 1-7.

AmerenUE's witness, Wall Street investment banker, Gary Rygh, said he would not be comfortable with that proposal because "the markets are looking for bad news … that would be a fairly tough thing for them to swallow."[194]

The key from the perspective of investors and the rating agencies is that AmerenUE's fuel adjustment clause must be in the mainstream of regulation. Most fuel adjustment clauses in use around the county provide for a 100 percent pass through of costs.[195] To allow substantially less than a 100 percent pass through would push AmerenUE's fuel adjustment clause out of the mainstream and hurt the company's efforts to compete for needed capital.

Some parties argue rating agencies and investors simply look to see whether a fuel adjustment clause is in place and do not concern themselves with the operational details of the clause. In support of this idea they offer the testimony of AmerenUE's rate of return witness, Dr. Roger Morin, who, when asked whether rating agencies essentially view fuel adjustment clauses as either present or not present, replied in the affirmative and indicated such agencies typically do not get into the details of the clause.[196]

However, Dr. Morin's response must be read in the context of earlier questioning regarding rating agencies concern or lack of concern about the technical details of fuel adjustment clauses such as timing and duration of accumulation and recovery periods.[197] As a result, Dr. Morin's comment should not be interpreted as suggesting something as significant as a pass through percentage would not be considered by the rating agencies.

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[194] Transcript, Page 2374, Lines 18-21.

[195] Transcript, Page 2369, Lines 22-23.

[196] Transcript, Pages 382-383, Lines 20-25, 1-2.

[197] Transcript, Pages 362-365.

Indeed, Dr. Morin also testified that the terms of a fuel adjustment clause are important to the credit rating agencies, saying, "I think they would be concerned with a marked deviation from the conventional practice of one to one (pass through of all fuel costs). They would look at the terms of the adjustment clause."[198] MIEC's rate of return witness, Michael Gorman, also testified that in his opinion, "rating agencies are capable of understanding a fuel adjustment clause and understanding the – the effect of that clause in allowing a utility to produce the cash flows necessary to support financial obligations."[199]

Conclusions of Law:

The Commission rule that requires AmerenUE to submit a heat rate/efficiency testing plan as part of its proposed fuel adjustment clause is 4 CSR 240-3.161(2)(P).

Decision:

AmerenUE's fuel adjustment charge shall include an incentive clause providing that 95 percent of any deviation in fuel and purchased power costs from the base level shall be passed to customers and 5 percent shall be retained by AmerenUE. This incentive clause will give AmerenUE a sufficient opportunity to earn a fair return on equity as required by Section 386.266 and the Hope and Bluefield decisions. At the same time, it will protect AmerenUE's customers by giving the company an incentive to be prudent in its decisions by not allowing all costs to simply be passed through to customers.

Rate Design of the Fuel Adjustment Clause:

The details of the tariff that will actually implement AmerenUE's fuel adjustment clause are established through the Stipulation and Agreement as to All FAC Tariff Rate Design Issues, which the Commission approved in an order issued on December 30, 2008.

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[198] Transcript, Page 459, Lines 14-21.

[199] Transcript, Page 545, lines 15-19.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Union Electric Company d/b/a Ameren Missouri	)	File No. EU-2012-0027
for the Issuance of an Accounting Authority	)	
Order Relating to its Electrical Operations	)	

REPORT AND ORDER

Issue Date: November 26, 2013

Effective Date: December 26, 2013

Schedule LMB-R8

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations	))))	File No. EU-2012-0027

REPORT AND ORDER

Issued: November 26, 2013 Effective: December 26, 2013

The Missouri Public Service Commission is granting the application for an accounting authority order ("AAO").[1] The AAO accounts for unexpected lost revenue to recover fixed costs. The AAO only allows for deferred recording, does not guarantee recovery, and does not in any way bind the Commission as to future rate making treatment.

Procedure

The Commission has jurisdiction to decide the application.[2] Union Electric Company ("Ameren") has the burden of proof[3] by a preponderance of the evidence[4] and reasonable inferences.[5] On that basis, the Commission finds the facts as follows.

[1] Electronic Filing and Information System ("EFIS") No. 1, *Verified Application for Accounting Authority Order*, filed on July 25, 2011. EFIS is accessible at http://psc.mo.gov/default.aspx.

[2] 4 CSR 240-20.030(1); 18 CFR 101, Account 182.3.B (emphasis added). The parties adverse to the application seek denial of the application based on late filing of the application, but they make no persuasive argument supporting a calculation of the deadline for filing an application for an AAO.

[3] *State ex rel. Tel-Central of Jefferson City, Inc. v. Pub. Serv. Comm'n of Missouri*, 806 S.W.2d 432, 435 (Mo. App., W.D. 1991).

[4] *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

[5] *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

Findings of Fact

1. Union Electric Company is a Missouri corporation doing business as "Ameren Missouri" to provide electric service for gain.[6]

2. Costs of providing electric service include fixed costs.[7] Fixed costs are expenses that Ameren incurs to be capable of delivering electricity at full capacity at any given time, even though customers may not need that entire capacity at any given time. Fixed costs do not fluctuate with the amount of electricity sold.[8]

3. In January 2008, an ice storm struck southeast Missouri,[9] cutting power to Ameren's largest customer Noranda Aluminum, damaging Noranda's operations, and reducing Noranda's purchases of electricity for 14 months.[10] As a result, Ameren collected less revenue than expected from Noranda.[11] The amount of unrecovered fixed costs attributable to serving Noranda during those 14 months is $35,561,503.[12]

4. The $35,561,503 of unrecovered fixed costs attributed to serving Noranda represented nearly 8.5% of the Company's net income in 2009.[13]

[6] EFIS No. 87, *Transcript* volume 2, page 177, lns. 12 through 16.

[7] EFIS No. 87, *Transcript* volume 2, page 176, lns. 10 through 14.

[8] EFIS No. 87, *Transcript* volume 2, page 108, lns. 11 through 16.

[9] EFIS No. 101, Ameren Exhibit No. 2, *Direct Testimony of Lynn M. Barnes*, page 3, line 3 through 12.

[10] EFIS No. 100, Ameren Exhibit No. 1, *Surrebuttal Testimony of David N. Wakeman*, page 17, lns. 5 through 12.

[11] EFIS No. 103, Ameren Exhibit No. 4, *Direct Testimony of Steven M. Wills*, page 3, lns. 1 through 6.

[12] EFIS No. 87, *Transcript* volume 2, page 17, line 2 through 20; for Ameren, $35,561,503 before taxes represents $21,909,940 after taxes, *Id.* p. 50. lns. 15 – 17.

[13] EFIS No. 102, Ameren Exhibit 3, *Surrebuttal Testimony of Lynn M. Barnes*, page 6, lns. 8 – 14.

Conclusions of Law

1. The Commission must always report its conclusions.[14]

2. An AAO is a mechanism to "defer" an item, which means to record an item to a period outside of a test year for consideration in a later rate action. Items eligible for deferral include an "extraordinary item", an item that pertains to an event that is extraordinary, unusual and infrequent,[15] and not recurring.[16]

3. Revenue not collected by a utility to recover its fixed costs, under some circumstances, is an "item" that may be deferred and considered for later rate making. This is consistent with Commission regulations regarding certain energy conservation programs which specify that lost revenue may constitute an item for recording.[17] It is also analogous to the Cold Weather Rule, created by the Commission under its statutory authority,[18] which expressly allowed for recovery of lost revenues.[19] Such a deferral under this rule does not constitute illegal retro-active ratemaking because there is no rate being set for it is merely an accounting deferral.[20]

[14] Section 386.420.2, RSMo 2000.

[15] Uniform System of Accounts ("USoA") General Instruction 7, Account 434, and Account 435.

[16] USoA, General Instruction 7.

[17] 4 CSR 240-3.164(1)(M), which relates to certain conservation programs.

[18] See 4 CSR 240-13.055, Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather; Sections 386.250, 393.140, RSMo 2000 and 393.130, RSMo Supp. 2012.

[19] *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 335-36 (Mo. App., W.D. 2006).

[20] *State ex rel. Office of Public Counsel v. Missouri Public Service Comm'n*, 301 S.W.3d 556, 571 (Mo. App., W.D. 2009).

4. Ameren has shown that its loss of $35,561,503, which constitutes 8.5% of its net income, is extraordinary and material.[21] Extraordinary items are deferred by recording them in Uniform System of Accounts ("USoA")[22] Accounts 182.3 and 254, regulatory assets and liabilities, respectively. [23]

5. Recording in these accounts is in the public interest because it preserves an item for consideration when setting just and reasonable rates. But deferred recording does not guarantee recovery in any later rate action; recovery may be granted in whole, partially, or not at all.[24]

For those reasons, the Commission makes its rulings as follows, subject to rehearing under Section 386.500, RSMo 2000.

THE COMMISSION ORDERS THAT:

1. The *Verified Application for Accounting Authority Order* is granted.[25]
2. This order shall become effective December 26, 2013.

[21] To be considered an extraordinary item, the item should be more than approximately 5 percent of income, computed before extraordinary items. USoA, General Instruction 7.

[22] 18 CFR Part 101, as incorporated to this Commission's regulations at 4 CSR 240-20.030(1).

[23] USoA 407.4, "Regulatory Credits" sets forth that this account shall also be credited when appropriate, with the amounts debited to Account 182.3.

[24] *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 336 (Mo. App., W.D. 2006). *Missouri Gas Energy v. Pub. Serv. Comm'n, State of Mo.*, 978 S.W.2d 434, 438 (Mo. App., W.D. 1998); EFIS No. 91, Staff Exhibit No. 3, *Rebuttal Testimony of Mark L. Oligschlaeger*, page 6, ln 11 - 16.

[25] The Court of Appeals expressly acknowledged this possibility: "Ameren had other remedies available to it to address its unexpected retail revenue loss. [An Ameren witness] testified that Ameren could have sought an accounting authority relating to the lost revenue in a subsequent rate case." *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State*, 399 S.W.3d 467, 489-90 (Mo. App., W.D. 2013) (footnotes omitted).

3. This file shall close on December 27, 2013.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Stoll, W. Kenney, and Hall, CC, concur,
R. Kenney, Chm., dissents;
and certify compliance with the provisions of
Section 536.080, RSMo.

Jordan, Senior Regulatory Law Judge

Schedule LMB-R8

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI FOR THE ISSUANCE OF AN ACCOUNTING AUTHORITY ORDER RELATING TO ITS ELECTRICAL OPERATIONS;
Respondent,

MISSOURI PUBLIC SERVICE COMMISSION,
Respondent,
v.

OFFICE OF PUBLIC COUNSEL;
Appellant,

MIEC,
Appellant.

WD77273
WD77274

ORDER FILED:

January 13, 2015

PUBLIC SERVICE COMMISSION

Before Division One: Thomas H. Newton, P.J.,
Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

ORDER

Per Curiam:

The Office of Public Counsel and Missouri Industrial Energy Consumers appeal the decision of the Public Service Commission to issue an Accounting Authority Order to the Union Electric Company D/B/A Ameren Missouri (Ameren) for unexpected lost revenue. We affirm. Rule 84.16(b).

Schedule LMB-R9

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI FOR THE ISSUANCE OF AN ACCOUNTING AUTHORITY ORDER RELATING TO ITS ELECTRICAL OPERATIONS;	**WD77273**
Respondent,	**WD77274**
MISSOURI PUBLIC SERVICE COMMISSION,	**MEMORANDUM FILED:**
Respondent,	**January 13, 2015**
v.	
OFFICE OF PUBLIC COUNSEL;	
Appellant,	
MIEC,	
Appellant.	

MEMORANDUM PROVIDING REASONS FOR ORDER AFFIRMING JUDGMENT UNDER RULE 84.16(B)[1]

Summary

The Office of Public Counsel and Missouri Industrial Energy Consumers (MIEC) (Appellants) appeal the decision of the Public Service Commission

[1] This informal, unpublished memorandum is provided to the parties to explain the rationale for the order affirming judgment. This memorandum is not a formal opinion and is not uniformly available. It shall not be reported, cited, or used in unrelated cases before this court or any other court. A copy of this memorandum shall be attached to any motion filed for rehearing or for transfer to the Supreme Court.

(Commission) to issue an Accounting Authority Order (AAO) to the Union Electric Company D/B/A Ameren Missouri (Ameren) for unexpected lost revenue. We affirm.

Factual and Procedural Background

In January 2009, Ameren's service territory in southeast Missouri was impacted by an ice storm. *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of State*, 399 S.W.3d 467, 472 (Mo. App. W.D. 2013). Within that territory, nearly all of Ameren's retail customers lost service, including Noranda, its largest customer. *Id*. Noranda's consumption of electricity "decreased by approximately two-thirds," and it was impossible to ascertain a specific time when it would return to full service. *Id*. at 473. Because of this unexpected decrease in consumption, "retail revenue that had been presumed in setting Ameren's base rates in the 2008 general rate case was unexpectedly lost . . . ." *Id*. According to Ameren, "this revenue was $90 million annually." *Id*. at n.6. Ameren later reported $35,561,503 in unrecovered fixed costs, amounting to a loss of approximately 8.5 percent of its 2009 net income.

In July 2011, Ameren filed an application with the Commission to request an AAO for the lost revenue. A hearing was held in October 2013.

In November 2013, the Commission granted Ameren's application for an AAO. The Commission determined that

> [a]n AAO is a mechanism to 'defer' an item, which means to record an item to a period outside of a test year for consideration in a later rate action. Items eligible for deferral include an 'extraordinary item' . . . that pertains to an event that is extraordinary, unusual and infrequent, and not recurring.

It further stated that

> [r]evenue not collected by a utility to recover its fixed costs, under some circumstances, is an 'item' that may be deferred and considered for later

> rate making. This is consistent with Commission regulations regarding certain energy conservation programs which specify that lost revenue may constitute an item for recording. It is also analogous to the Cold Weather Rule, created by the Commission under its statutory authority, which expressly allowed for recovery of lost revenues. Such a deferral under this rule does not constitute illegal retro-active [sic] ratemaking because there is no rate being set[,] for it is merely an accounting deferral.

The Commission stated that "[t]he AAO accounts for unexpected lost revenue to recover fixed costs," and that it "only allows for deferred recording, does not guarantee recovery, and does not . . . bind the Commission as to future rate making treatment." It determined that "Ameren has shown that its loss . . . is extraordinary and material," and that such "items are deferred by recording them in [the] Uniform System of Accounts . . . [under the recordings of] 182.3 and 254, regulatory assets and liabilities, respectively." The Commission reasoned that

> [r]ecording in these accounts is in the public interest because it preserves an item for consideration when setting just and reasonable rates. But deferring recording does not guarantee recovery in any later rate action; recovery may be granted in whole, partially, or not at all.

The order became effective on December 26, 2013. The Appellants appeal.

In September 2014, Ameren filed a motion to dismiss, which was taken with the case, arguing that this appeal is not ripe for appellate review. Ameren argued that,

> [a]t this moment, the only result of the [Commission's] Report and Order is that Ameren has deferred . . . the sums it was authorized to defer, and has requested that the Commission allow recovery of those sums through new rates that Ameren seeks in its now-pending general rate case at the Commission, Case No. ER-2014-0258, initiated by Ameren on July 3, 2014. . . . Apart from Ameren Missouri's request to recover the deferred sums in that rate case, no evidence has been proffered on the issue [sic] in the rate case, and the [Commission] has had no opportunity to consider any such evidence. The [Commission] has not yet addressed recovery of the deferred sums.

Ameren further argued that, "[i]f an appeal is not ripe, the appellate court lacks subject matter jurisdiction to hear the appeal and it must be dismissed." It contends that "Missouri follows the same test for ripeness" with respect to "an appeal of an administrative agency's decision." Quoting *Abbott Laboratories, Inc. v. Gardner*, 387 U.S. 136, 148-49 (U.S. 1967), it argues that this ripeness requirement "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . , and also to protect agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."

"A controversy is ripe if the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a conflict that presently exists, and to grant specific relief of a conclusive character." *Lebeau v. Comm'rs of Franklin Cnty., Mo.*, 422 S.W.3d 284, 291 (Mo. banc 2014). This appeal is intended to address an existing conflict that must be resolved prior to the now-pending rate case because the validity of the AAO in question must be settled before new rates may be considered. Therefore, we deny the motion.

Standard of Review

"Our review of the Commission's order has two steps: first[,] we must determine whether the Commission's order is lawful, and second, whether the order is reasonable." *State ex rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 301 S.W.3d 556, 564 (Mo. App. W.D. 2009) (internal quotation marks and citation omitted). "Lawfulness is determined by whether or not the Commission had the statutory authority to act as it did." *Id*. A determination of reasonableness depends on whether: "(i) the order is supported by substantial and competent evidence on the whole record[;] (ii) the decision is arbitrary, capricious or unreasonable[;] or (iii) the Commission abused its discretion." *Id.* "'Substantial evidence' means evidence which, if true[,] has probative force upon the issues and implies and comprehends competent, not incompetent[,] evidence." *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Mo.*, 858 S.W.2d 806, 811 (Mo. App. W.D. 1993) (internal quotation marks and citation omitted). "The reviewing court will not weigh the evidence heard by the Commission because the Commission is a fact-finding agency." *Id.*

"The Commission's order is presumptively valid, and the burden is on those attacking it to prove its invalidity." *Id.* "The party seeking to set aside the Commission's order has the burden to prove by clear and satisfactory evidence that the order was unlawful or unreasonable." *Office of Pub. Counsel*, 301 S.W.3d at 564 (internal quotation marks omitted) (citing section 386.430 and quoting *State ex rel. BPS Tel. Co. v. Mo. Pub. Serv. Comm'n*, 285 S.W.3d 395, 401-02 (Mo. App. W.D. 2009)).

Legal Analysis

We begin with a brief overview of relevant terminology and procedures. "A regulated utility's rates are established prospectively in periodic ratemaking proceedings, based on the utility's revenues and expenses during an earlier 'test year.'"[2] *State ex rel. Aquila, Inc. v. Pub. Serv. Comm'n of State*, 326 S.W.3d 20, 27

[2] "In Missouri, rates are set using a historical test year." *State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 585 (Mo. App. W.D. 2009). "The Commission examines the utility's revenues and expenses for that test year and uses that information to set rates to be charged in the future." *Id.* at 585-86. "The [C]ommission has much discretion in determining the theory or method it uses to determine rates." *Id.* at 586.

(Mo. App. W.D. 2010). "When a utility incurs extraordinary expenses . . . outside of a 'test year,' those extraordinary expenses will not be reflected in rates (because the rates were established to allow the utility to recoup its ordinary expenses, as reflected in the 'test year')." *Id.* An AAO "permits a utility to capture those extraordinary expenses for (potential) recovery in the forward-looking rates to be established at a future rate case (even though the extraordinary expenses may occur outside the 'test year' utilized in that future rate case)." *Id.*

The Appellants raise one point. They argue that the Commission erred in granting Ameren's application for an AAO "to defer ungenerated revenue because, under sections 386.500 [and] 386.510,[3] this decision is unlawful, unreasonable[,] and unsupported by competent and substantial evidence on the record." They claim that "the Commission's finding that the ungenerated revenue is an 'extraordinary item' of unexpected expense is not supported by competent and substantial evidence, and is inconsistent with the accounting standards adopted by the Commission." They further argue that, "even assuming the ungenerated revenue is an 'extraordinary item,' the alleged 'expense' at issue did not 'occur' during the 'current period[,]'[4] as required by the Commission's accounting standards." Put more directly, the Appellants contend that

> [t]he question is whether Ameren is to be afforded an [AAO] allowing it to 'defer' approximately $36 million of the approximately $43 million in revenue that it planned to receive from Noranda Aluminum, but

[3] Statutory references are to RSMo 2000 and the Cumulative Supplement 2013, unless otherwise stated. Section 386.500 stipulates the terms for a Commission rehearing, while section 386.510 governs the parameters of appellate court review.

[4] The term, "current period," refers to the period during which the event occurred. *State ex rel. Office of Pub. Counsel v. Pub. Serv. Comm'n of Mo.*, 858 S.W.2d 806, 810 (Mo. App. W.D. 1993); *see also* 18 C.F.R. pt. 101, General Instruction 7.

> instead received from other parties[5] . . . during the 14[-]month period following an ice storm that hit southeast Missouri in January 2009.

The Appellants argue that the AAO granted to Ameren includes a "deferral" that will allow it "to 'book' the $36 million in ungenerated revenue at issue to a particular account on its balance sheet for consideration in a subsequent rate case," at which point "Ameren will urge the Commission to set rates higher than Ameren needs to recover its anticipated costs of operation plus a reasonable return on equity." The Appellants claim that this deferral would violate the Commission's adopted[6] accounting standards, the Uniform System of Accounts. The Appellants further argue that the Commission's finding of the existence of an extraordinary item of unexpected expense was not supported by competent and substantial evidence.

Within the Uniform System of Accounts, "extraordinary items" are defined as

> [t]hose items related to the effects of events and transactions which have ***occurred during the current period*** and which are not typical or customary business activities of the company. . . . Accordingly, they will be events and ***transactions of significant effect which would not be expected to recur frequently*** and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business. . . . To be considered extraordinary under the above guidelines, an item should be ***more than approximately 5 percent of income***, computed before extraordinary items.

Office of Pub. Counsel, 858 S.W.2d at 810 (internal quotation marks omitted) (emphasis added). The Appellants argue that the AAO was "untimely," based on the

[5] "In the spring of 2009, . . . Ameren entered into two contracts to sell the unused Noranda load." *State ex rel. Union Elec. Co. v. Pub. Serv. Comm'n of Mo.*, 399 S.W.3d 467, 474 (Mo. App. W.D. 2013). The contracts were with AEP Operating Companies and Wabash Valley Power Association, Inc. *Id.* "According to Ameren, the contracts simply allowed Ameren to recover costs that had previously been allocated to Noranda sales." *Id.* (internal quotation marks, citation, and brackets omitted).

[6] The Commission adopted the Uniform System of Accounts in the Code of State Regulations at 4 CSR 240-4.040. *State ex rel. Office of Pub. Counsel v. Mo. Pub. Serv. Comm'n*, 301 S.W.3d 556, 560 (Mo. App. W.D. 2009).

aforementioned provisions within the Uniform System of Accounts "and the Commission's decision in GU-2011-0392."

In GU-2011-0392, the Commission granted an AAO in 2012, based on ungenerated revenue that resulted from damages caused by a tornado that occurred in 2011. Specifically, this order states that the "[Uniform System of Accounts] 'defaults' to current recording." In making this determination, the Commission reasoned that

> [t]he year in which a utility records an item is important because of Commission practice in setting utility rates. Commission practice is to project a utility's future cost of service from a historic test year. If that test year does not include a certain item, that item will not count in setting the rates.

The Commission granted the AAO in that instance, based on three aspects: "Time (during current period); Rarity (unusual, infrequent, not foreseeably recurring . . .); and Effect (significant)." The Appellants claim that the Commission's failure to address the issue of timeliness in the current case and its "failure to render finding and analysis is grounds for reversal." They further assert that "[a] simple comparison of the subject to the order issued in its 2012 case concerning this issue . . . shows that the Commission knew that this issue was important[] and should have addressed it."

In response to the Appellants' assertion that an AAO may only be granted for extraordinary items within the current period, Ameren argues that "the [Commission] is not bound to only grant AAOs according to the definitions and instructions in the [Uniform System of Accounts]." In support of this contention, Ameren cites to the following subsection within the *Code of State Regulations*:[7] "In prescribing [for electric utilities] this system of accounts, the commission does not commit itself to

[7] Code of State Regulations (2003).

the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining other matters before the commission." 4 CSR 240-20.030(4).

Ameren insists that "AAOs have routinely been approved where the event giving rise to the sum to be deferred occurred in one period and the AAO order occurred in another." To illustrate its point as to the potential constraints with respect to the timeliness of applying for an AAO, it described the following hypothetical scenario:

> Imagine if the ice storm that occurred here had caused horrible damage from December 29 to 31, 2008 (instead of exactly one month later), with the financial impacts of the storm continuing to be felt for many months into 2009, with an AAO application filed late in 2009 and then not approved until the following year. In that case, the 2008 books would have been closed early in 2009, yet the deferral would not occur until 2010. Based on [the] Appellants' argument, the [Commission] would be prohibited from granting an AAO. We know this because [the] Appellants argue that the 'current period' was 2009, when the ice storm actually occurred, that the 2009 books were closed in early 2010, and that therefore the [Commission] was powerless to allow the deferral pursuant to an AAO request filed in 2011 (which was not granted until 2013).

Ameren claims that "such an interpretation of the [Uniform System of Accounts would] lead to absurd results," and that "the [Commission] has never applied such unreasonably strict timing standards to AAO requests in past cases." It contends that, by granting the AAO, "the Commission has recognized . . . the reality that the impact of an extraordinary occurrence that may ultimately justify the granting of an AAO . . . may . . . be initially felt on the utility's financial statements in one period[,] and that the deferral will not impact the utility's financial statements until a later period." It explained:

> [B]ecause the Company believed that it had mitigated the impact of the ice storm using the revenues from the AEP and Wabash contracts[8] to cover the lost fixed costs, the Company's financial statements were not immediately impacted in 2009. Instead[,] they were impacted in 2011, when the [Commission] ruled that Ameren was wrong when it excluded the AEP and Wabash revenues from the [fuel adjustment clause].

Ameren claims that "it was at that point that it no longer had recovered the fixed costs Noranda did not pay, and . . . the Company requested the AAO."

In granting the order, the Commission stated that "[r]evenue not collected by a utility to recover its fixed costs, under some circumstances, is an 'item' that may be deferred and considered for later rate making," and reasoned that the rationale for granting the AAO to Ameren in this case is "analogous" to its reasoning for allowing for similar recoveries under the Emergency Cold Weather Rule (ECWR). This comparison is logical and reasonable. In instances where the ECWR has been invoked, "[t]his court has held that it is permissible to defer the final decision on current extraordinary costs until a rate case is in order." *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 210 S.W.3d 330, 335-36 (Mo. App. W.D. 2006) (internal quotation marks and citation omitted). "Although recovery under [an] AAO is conditioned on filing a subsequent rate case, this is not . . . retroactive ratemaking." *Id.* at 335. Additionally, "AAOs are not the same as ratemaking[] and create no expectation of recovery." *Id.* Furthermore, "[d]eferrals of extraordinary costs to AAOs have been approved in the past." *Id.* So, "it is permissible to allow the deferrals." *Id.* Therefore, it follows that

> [t]he AAO is only available for the costs resulting from [the ice storm] that would not have occurred otherwise. Thus, it complies with the statutory requirement that an emergency rule only address the problems associated with the emergency and nothing else.

[8] *See supra* note 5.

Id. (citing section 536.025).

It is clear that the Commission's decision to grant the AAO was based on its determination that Ameren's unexpected revenue loss was caused by the 2009 ice storm, an extraordinary event that is not recurring, which resulted in an 8.5 percent loss of net income. The Commission stated that granting the AAO was in the public's interest, and that "deferring recording does not guarantee recovery in any later rate action"; it further stated that "recovery may be granted in whole, partially, or not at all." Thus, the Appellants have failed to prove by clear and satisfactory evidence that the Commission's decision to grant the AAO was unlawful or unreasonable. The Appellants' sole point is denied.

Conclusion

For the above reasons, we affirm the Commission's decision.