Exhibit No.: _____
Issue(s): High Prairie Wind Farm/Rush Island Power Plant/Blues Power Play Goal For Kids/Private LTE Network & Tripsavers/ Dues and Donations/Income Eligible Programs/ Rate Design
Witness/Type of Exhibit: Marke/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: ER-2022-0337

SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

Submitted on Behalf of the Office of the Public Counsel

UNION ELECTRIC COMPANY
D/B/A AMEREN MISSOURI

CASE NO. ER-2022-0337

** _____ **
Denotes Confidential Information that has been redacted

March 13, 2023

PUBLIC

TABLE OF CONTENTS

SURREBUTTAL TESTIMONY

OF

GEOFF MARKE

UNION ELECTRIC COMPANY

D/B/A AMEREN MISSOURI

CASE NO. ER-2022-0337

I. INTRODUCTION

Q. Please state your name, title, and business address

A. Geoff Marke, PhD, Chief Economist, Office of the Public Counsel (OPC or Public Counsel), P.O. Box 2230, Jefferson City, Missouri 65102.

Q. Are you the same Dr. Marke that filed direct testimony revenue requirement in this case?

A. I am.

Q. What is the purpose of your surrebuttal testimony?

A. I am responding to the rebuttal testimony of other parties' witnesses on select topics. The following is a list of those topics and the witnesses:

- High Prairie Wind Farm
  - Ameren Missouri witnesses Ajay Arora and John J. Reed
  - Missouri Public Service Commission Staff ("Staff") witness Claire M. Eubanks
  - Midwest Energy Consumers Group ("MECG") witness Greg R. Meyer
- Rush Island Power Plant
  - Ameren Missouri witness John J. Reed
  - Staff witnesses Claire M. Eubanks and Keith Majors
- Blues Power Play Goal For Kids
  - Ameren Missouri witness Mitchell Lansford
  - Staff witness Antonia Nieto
- Private LTE Network & Tripsavers
  - Ameren Missouri witness James Huss

- Dues and Donations
    - Ameren Missouri witness Charles Steib
    - Staff witness Antonia Nieto
- Income Eligible Programs
    - Ameren Missouri witness Michael W. Harding
    - Staff witness Amy L. Eichholz
    - Consumer Council of Missouri ("CCM") witness Jacqueline A. Hutchinson
- Rate Design
    - Ameren Missouri witnesses Nicholas Bowden, Tom Hickman, Steven M. Wills, and Michael W. Harding
    - Missouri Industrial Energy Consumers ("MIEC") witness Maurice Brubaker
    - MECG witness Steve W. Chriss
    - Staff witness Sarah L. K. Lange
    - Renew Missouri ("Renew") witness James Owen
    - CCM witness Jacqueline A. Hutchinson

My silence regarding any issue should not be construed as an endorsement of, agreement with, or consent to any party's filed position.

II. HIGH PRAIRIE WIND FARM

Q. What was Ameren Missouri's response to your recommendation for a cost disallowance related to the High Prairie Wind Farm due to prolonged curtailments related to excess taking of federally endangered and protected species?

A. Much the same as it was in Ameren Missouri's last general rate case, Case No. ER-2021-0240. In that case, High Prairie's failure to meet the regulatory principle of used and useful was never explicitly addressed because:

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The Signatories agreed to the settled "black box" revenue requirement increase amount using their own assumptions.[1]

Ameren Missouri witnesses Ajay Arora and John J. Reed rejected my recommendation regarding cost recovery of the High Prairie Wind Farm. Mr. Arora's testimony generally focused on the issue of managerial prudency as he presents a retrospective examination of the High Prairie Certificate of Convenience of Necessity ("CCN") Case where he accuses me of going back on the stipulation and agreement that OPC entered into.

Mr. Reed's testimony takes on a different approach by providing a history with select abbreviated case studies of two variations of the "used and useful" and the "prudence" principle and his opinion on their appropriateness as it applies to this case. I will respond to each in turn.

Q. Has anything substantively changed regarding High Prairie's operations since the last rate case?

A. No. Ameren Missouri has continued its forced seasonal curtailment due to the risk of exceeding the take rate of endangered Indiana Bats. My arguments made in Case No. ER-2021-0240 are as true today as they were then. The continued seasonal curtailment for an additional year of operation continues to reinforce my earlier position that a level of cost disallowance is warranted.

Additionally, there remains (and likely always will) the continued threat that any further incremental killing of an endangered Indian Bat could result in more punitive measures for a wind farm that has already been sporadically operational for its two years of existence.

[1] Case No. Er-2021-0240 Unanimous Stipulation and Agreement p. 2.

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Response to Mr. Arora

Q. Mr. Arora accuses you of going back on the stipulation and agreement OPC entered into. What is your response?

A. To be clear, I am challenging the lack of output of the High Prairie Wind Farm, not the prudency of Ameren's decision to acquire it. Customers paid for a fully operational wind farm not 71% of an operational wind farm. My recommendation is based on facts that are still in development but are grounded on an adherence to the regulatory compact and the used and useful principle. I also have a great deal of concern about risk exposure moving forward regarding this asset. As Mr. Arora (and many others) has pointed out, I can't make, nor am I making a prudency argument. Any contextual information I provided (or will provide) is just that—contextual information for the Commission to consider in weighing the balancing act inherent in supporting the regulatory compact and setting rates that are just and reasonable for an asset that was not needed to meet load, provides little accredited capacity, and that has seemingly failed (conceded by Mr. Arora in rebuttal testimony) in producing enough renewable energy credits to meet the Missouri Renewable Energy Standard requirement as it was set out to do. As it presently stands, the High Prairie Wind Farm:

- Has killed more Indiana Bats (federally protected endangered species) than any wind farm operating in the world in less than a year of limited operation;
- Is only operating 71% of the year;
- Is only being awarded 66.4MW of accredited capacity in MISO (out of the 400MW of nameplate capacity) ;
- Was put forward to meet RES requirements but will fail to cover its projected amount;
- Is losing out on production tax credits that should be flown back to customers;
- Will continue to incur future costs related to mitigation measures, be exposed to increased public scrutiny, and possible future legal challenges; and

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- Will be included in rate base in this case where the Company will earn a return on an investment that is neither fully operational nor necessary to provide safe and adequate service.

Q. Why did OPC sign onto a stipulation and agreement that forfeited its future rights to challenge the managerial prudency of siting a wind farm in the middle of the roosting habitat of an endangered species?

A. I have no idea. I was not involved in the drafting of that stipulation. Regardless, the stipulation and agreement has no bearing on the basis of the recommendation I have put forward.

Q. To be clear you are not raising a prudency argument?

I am not raising a prudency disallowance argument. My argument rests on adhering to the principle supporting the regulatory compact, the used and useful principle, and ensuring rates are "just and reasonable." The issue before the Commission is one of equity and fairness surrounding a long-term capital investment that (barring some extraordinary technological breakthrough) will almost assuredly get worse over time.

Q. What do you mean get worse?

A. The U.S. Fish & Wildlife Service will continue to examine High Prairie Wind Farm and if (and/or when) the amount of endangered dead bats is exceeded, the Company will have to renegotiate with US Fish and Wildlife for new mitigation efforts (such as habitat plans and incidental take permits). This process presumably repeats ad nauseam with greater and greater imposed mitigation actions/restrictions until A.) the wind farm stops killing endangered bats (or at least enough of them to reach the end of the wind farms useful life); or B.) the wind farm stops running with progressively longer periods of full curtailment. There will almost assuredly be many more mitigation efforts in an attempt to obtain option A and this will no doubt cost more and more money that Ameren Missouri will ask ratepayers to shoulder in an attempt to stop killing this almost extinct species.

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Moreover, due to the cumulative impact of the deaths responsible by Ameren Missouri's High Prairie Wind Farm, future wind farms siting within its vicinity will have even less room for error when it comes to Indiana Bat take rates. In effect, High Prairie may have created a "poison well" scenario for future wind investments in Northern Missouri.

Q. Is this the "Parade of Horribles" that Mr. Arora accuses your testimony of saying?

A. A words search of my direct testimony resulted in no examples of me using that phrase, but I would agree that is an apt description of the situation Ameren Missouri and its ratepayers find themselves in. I would add to the "Parade of Horribles" threat list, the risk of outside legal action for violation of the Endangered Species Act of 1974 by a third party (non-governmental organization (NGO), individual, or other). The Commission need look no further than the many lawsuits brought forward related to alleged Clean Air and Clean Water Act violations as evidence that this is not just some off-handed concern. Remember this is year three of operation. It remains to be seen what will follow over the decades this wind farm is supposed to be operational.

Q. Mr. Arora accuses you of writing "I told you so" testimony. Do you have a response?

A. Despite Mr. Arora's contention, I take no satisfaction in Ameren Missouri curtailing its wind farms due to the excess taking of an endangered and protected species. I am genuinely concerned about the fate of the endangered species, the Indiana Bats, moving forward as a result of the High Prairie Wind Farm, the possibility of more prolonged curtailments and the threat of outside legal actions that may arise from excess taking. I am also concerned that the short-run legacy of High Prairie will have negative repercussions on future wind investments in the Midwest. It is an absolutely awful situation for all involved. Hopefully, if there is a lesson to be learned it would be to take greater precautions over proper siting of large-scale wind investments. Especially, when said investment was not needed to meet the resource or reserve needs of the customers it serves and now only provides 66.4MW (out of the 400MW of nameplate capacity) of accredited capacity in MISO.

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Q. Mr. Arora claims that "knowing what we know now" he would still recommend investing in the High Prairie Wind Farm. What is your response?

A. High Prairie Wind Farm is an enormous liability to ratepayers and shareholders alike and will likely negatively impact future siting of wind investment in Northern Missouri. There is no "good" outcome here. Wind farm advocates would be well advised to distance themselves from this as far as possible and let this serve as a case-book example of what not to do.

Q. Mr. Arora suggests that renewables will become "second class citizens" if the Commission disallows any costs associated with High Prairie. What is your response?

A. This is ridiculous. Fuel diversity is critically important and renewables are going to be built in the future. The enormous federal subsidies all but guarantee that to be the case. It is categorically unfair of Mr. Arora to generalize all renewables let alone Staff's and OPC's perspectives on renewables based on the critical failure of High Prairie.

I can assure Mr. Arora, that if Ameren Missouri moves forward with a future coal plant as its preferred resource selection I will have many more questions and more detailed discovery than I have issued to date over High Prairie.

Response to Mr. Reed

Q. Mr. Reed accuses you of making a flawed prudence argument. What is your response?

A. As I already explained above to Mr. Arora's argument, I am not making a prudency argument. My argument rests on adhering to the principle supporting the regulatory compact, the used and useful principle, and ensuring rates are just and reasonable. The issue before the Commission is one of equity and fairness surrounding a long-term capital investment that (barring some extraordinary technological breakthrough) will almost assuredly get worse over time.

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Q. Mr. Reed attempts to draw a distinction between "used and useful" and "economic used and useful." Do you agree with this distinction?

A. No. Mr. Reed argues for a new regulatory principle "economic used and useful," cites to select worst-case scenario utility disallowance situations where other state commissions later had to walk back on their disallowances as the basis for said principle, and then says I created this. This is a straw man argument he invented and then attempts to attribute to me. To be clear, there is only a single, broad "used and useful" regulatory principle. The term is not bifurcated nor should it be allowed to be distorted to fit a convenient narrative. My argument is not an economic used and useful argument—especially as Mr. Reed defines it.

Q. Mr. Reed claims that "used and useful" is defined exclusively by Missouri Revised Statute section 393.135. Is Mr. Reed correct?

A. Neither Mr. Reed nor I are attorneys. With that said, this is entirely a too narrow interpretation of a generalized regulatory construct. First, the phrase "used and useful" appears nowhere in that statute. 393.135 is the anti-CWIP statue passed by voter initiative in response to cost overruns related to nuclear projects, specifically Callaway. It is designed to prevent recovery of expenditures of plant before the plant is providing any benefit to customers. The statute was never meant to replace the regulatory construct of "used and useful." Second, the statute only applies to electric utilities and only applies before the plant can be put into rate base. If "used and useful" was defined by this statute then the "used and useful" methodology would only apply to electric corporations; however, the used and useful principle has been applied to non-electric utilities by both the Commission and Missouri courts. Therefore, the "used and useful" principle must be something more than just applying 393.135.

Q. Then how do you define the "used and useful" principle?

A. Simply put, ratepayers should not have to pay for plant that is not providing them a benefit. It's not limited to CWIP-like scenarios and it is certainly not limited to cherry-picked outcomes from other states where used and useful disallowance negatively impacted the

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utility in such a prohibitive manner that those commissions were forced to walk-back on their decisions. The situation before the Commission is not Callaway nor will it come close to somehow bankrupting the Company. In fact, the Company will still be better off financially with 71% of the wind farm in rate base than if the Company had merely purchased RECs to meet RES compliance. The fact that the Company will still likely have to purchase RECs to meet compliance should not be lost on this Commission. My request consists of a 29% disallowance that represents the portion of the Wind Farm that is not used and useful for its calendar year operations.

The Commission has found in the past that even plant that has already been built and partially placed in service but is not fully being used should still not be completely included in rate base

Q. Do you have any examples?

A. I do.

Case No: WR-2000-0281: The "New" St. Joseph Plant—Capacity:

> The Staff contends that not all of the capacity of the new plant and related facilities is presently used and useful and that the sum of $2,271,756 should consequently be excluded from rate base. Public Counsel proposes that 19.55 percent of the cost of the new St. Joseph plant and related facilities should be excluded from rate base, based on Mr. Biddy's estimate that only 80.45 percent of the new plant is used and useful. . . . It is within the province of the Commission to determine the methodology used for rate-making. . . . The Commission concludes that the method proposed by Staff is the better method, because not all items in rate base are equally susceptible to a straight-line percentage reduction for excess capacity. The amount of $2,171,756 shall be deducted from the value of the new St. Joseph plant included in rate base.[2]

[2] 9 Mo. P.S.C. 3d 254, 283-284.

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In this case, the Commission said the company has a plant that is in-service, but there is a portion that is just not needed. The Commission ruled that customers should not have to pay for the excess capacity. In the present case, the Company built a wind farm that is also not being used at its full capacity. The only difference is the reason behind the underutilized capacity. In St. Joseph it was overbuilt. For High Prairie it's because bats are being taken. But that minor difference doesn't negate the underlying principle that customers shouldn't pay for what is not being used. The irony here is that the bat problem isn't going away. St. Joseph could have very well gained more customers. High Prairie's operation is dependent on the bats no longer "existing" in that locale.

Case No: ER-85-265: Arkansas Power & Light Company Rate Increase

> No matter what the origin of capacity the simple fact remains that the Company intentionally overbuilt its generating needs to improve its fuel diversification. The question for the Commission's resolution is whether the ratepayers suffer for the unfortunate results of increased capacity costs if the expansion was not originally imprudent. In the Commission's opinion a substantial portion of the Company's generating plant is not **used and useful** for public service.
>
> This is the heart of any excess capacity determination. It means, among other things, that the company's alternative definitions of "reliability" as fuel diversity or available capacity are peripheral. If there is excess capacity in the primary reliability sense, then the threshold condition for an adjustment has been satisfied. (Id. at 43) . . . Public Counsel's brief cites extensive authority for the proposition that the requirement that property must be used and useful in public service to be included in rate base has been followed in a long line of cases commencing with Smyth v. Ames, 69 U.S. 466 (1898). In the instant case, the generating capacity in question simply is incapable of being used for the necessity or convenience of the ratepaying public.

This case resulted in effectively the same scenario. Arkansas Power & Light Company overbuilt capacity and the Commission disallowed the exact megawatt capacity not being

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used to serve customers---1,096 MW. The Commission has made disallowances based on used and useful arguments before and it can certainly do so again. This is in line with my recommendation to disallow 29% to recognize the fact that they are not running more than 71% of the year.

Q. Would you elaborate?

A. High Prairie is not operating as it was designed to do. As more Indiana bats are found dead the mitigation measures and operating constraints will become tighter. Again, the operation of High Prairie has resulted in the largest number of "taken" Indian bats by a wind farm in North America to date while only operating at 71% of the time in under a year. The large and quick recordings of these deaths resulted in a self-imposed forced curtailment of approximately 29% of its operation throughout the calendar year to date. There is no guarantee that Ameren Missouri will be able to negotiate a successful mitigation measure that will allow greater operation or that the implementation would be successful if it was put into service. All we can go off is what occurred in the test year—which is a wind farm designed to operate at 100% of the year operated at 71% because of its negative conservation impact.

Q. Mr. Reed argues that prudent actions can produce uneconomic outcomes but that shareholders should not shoulder these costs. What is your response?

A. Again, I am not making a prudency argument. With respect to actions with uneconomic outcomes, prudent or not, the Commission has a range of options, from full recovery plus profit, to no recovery and no profit, and all points in between. What matters constitutionally, is honoring shareholders' and ratepayers legitimate expectations—as those expectations are influenced by regulatory actions.

Q. What expectations have Ameren Missouri's management signaled to its shareholders on this explicit issue (curtailment from excessive takes)?

A. Look no further than Ameren Missouri's 2022 10-K statement:

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> Our electric generation, transmission, and distribution facilities are subject to operational risks. Our financial performance depends on the successful operation of electric generation, transmission, and distribution facilities. Operation of electric generation, transmission, and distribution facilities involves many risks, including: . . . the level of wind and solar resources; inability to operate wind generation facilities at full capacity resulting from requirements to protect natural resources, including wildlife;[3]

Operational risks associated with the inability to operate wind generation at full capacity resulting from requirements concerning protected natural resources, including wildlife is articulated to Ameren's shareholders and acknowledged by Ameren's management as an explicit risk factor that can impact the Company's valuation and is fully publicly disclosed. In short, prudence does not guarantee recovery. *As Duqense Light Co. v. Barash*, 488 U.S. 299 (1989) affirmed, the Constitution does not insulate a utility from uneconomic outcomes, whether in the form of market forces, obsolescence, bad luck, or, in this case, potential violations of the US Endangered Species Act, even when the utility's managerial prudence is not being challenged. If an asset is not "used and useful," the Commission does not have to force customers to pay shareholders as if the asset is fully used and useful.

According to a leading authority on utility ratemaking and published author Scott Hempling:

> *Barasch* and its ancestors tell us that, faced with a non-used and useful asset, the regulator can choose among three results (And points in between, all dependent on the facts):
>
> 1. Full amortization plus return of the unamortized amount;
> 2. Amortization only; and
> 3. No amortization and no return

[3] Ameren Corporation (2022)10-K https://d18rn0p25nwr6d.cloudfront.net/CIK-0001002910/65fe34c4-aeb2-4942-90af-17207c3d8f2e.pdf p. 26.

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> These and various hybrids between them can satisfy both the statutory command of "just and reasonable" rates and the constitutional command of "just compensation."[4]

Despite Mr. Reed's examples and assertions to the contrary:

> [T]he Supreme Court's opinion in *Hope and Barash*, subsequent court of appeals decisions have declined to reject or anoint any specific rule. The courts will review the regulator's inclusion or exclusion of costs based on the facts, subject to the requirement that the regulator's decision be "based on substantial evidence and … adequately balance the interests of investors and ratepayers.[5]

Remember, "just and reasonable" rates give the utility a reasonable opportunity to earn a fair return (not a guarantee) on prudent, used and useful investments, while not imposing wasteful cost on customers. In my opinion, Ameren Missouri has failed the second part. Stated different, if we accept Ameren Missouri's argument the question should be, "are we going to pay the correct amount for what we got?" The answer is "No." Worse, customers will likely be exposed to greater costs moving forward.

In areas of retail competition, prices for service will drive marginal cost of production and returns toward the cost of capital; alternatively, unchecked market power seen with regulated utilities will allow service to suffer and prices to creep higher than efficient levels, resulting in both windfalls to the firm and welfare losses to society.

Q. What expectations did Ameren Missouri signal to ratepayers on this specific issue?

A. A wind farm that would be operating as designed and not killing protected endangered species. According to David Meiners, Ameren Missouri Manager of Renewable Operations:

[4] Hempling, S. (2013) *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction*. ABA. P. 252-253
[5] Ibid. 254.

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> It [High Prairie Wind Farm] will just sit there and, all day long, follow the direction of the wind as it moves around, and pitch the blades to spin in a controlled manner to generate.[6]

And, Terry VanDeWalle, Senior Biologist for Stantec, the third-party Company charged with studying the impact on bats due to High Prairie for Ameren Missouri:

> If the project [High Prairie Wind Farm] comes to fruition, it will have to be good for bats, too.[7]

Q. What would happen if the Commission were to ignore the economic realities facing High Prairie and the future risks associated with the farm?

A. It would effectively be shifting all risk (today and future) to ratepayers, guaranteeing Ameren Missouri full recovery of all costs incurred and ensuring realization of authorized returns, and such a ruling would absolutely negate the value of a structural model centered on private investment and provide support for those that argue the state should instead assume public ownership and operation of the utility. Why mess with paying a premium when no such risks exists? Again, under the compact, utility regulation returns (profits) are authorized but not guaranteed. Ignoring risk fundamental in the regulatory context can be perilous as it will result in shifting risk from utility investors (who are richly awarded for said "risks") to utility ratepayers through unjust increases to the overall cost of service. Lower (or no) risks to shareholders result in higher prices to ratepayers, a decrease in economic efficiency, and ultimately regulatory failure. Given the anti-competitive nature of monopolies, regulators are the only protection the public has from unfair and overly burdensome utility prices.

[6] Miller, A. (2021) 'It has been performing as designed': High Prairie wind farm up and running in northeast Missouri. *Kirksville Daily Express*. https://www.kirksvilledailyexpress.com/story/news/2021/04/29/it-has-beenperforming-designed-high-prairie-wind-farm-up-and-running-northeast-missouri/7401992002/

[7] Hunsicker, J. (2018) Proposed wind farm could drive economic development. *Kirksville Daily Express*. http://www.kirksvilledailyexpress.com/news/20180727/proposed-wind-farm-could-drive-futureeconomicdevelopment

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Q. Wouldn't less than 100% cost recovery outcome from the Missouri Public Service Commission signal to investors that Missouri is too risky to put up capital for investments unless they received full public relief for any discretions?

A. Absolutely not.

First of all, I am not advocating for full cost disallowance. Even under my recommendation, investors are still better off than they would be with no such investment in place.

Second, we already know that Ameren Missouri has signaled to investors over the past couple of years in its annual 10-K filings (as referenced earlier) that such a consequence is well within the realm of reasonable outcomes.

Third, investors seemingly have no qualms with flooding billions of dollars of investment in deregulated electricity markets where this level of competition is in play over generating units. Many well-financed organizations are clearly eager for the risks and rewards associated with providing electricity.

Fourth, Ameren Missouri investors have many mechanisms in place to simply pass costs on to customers outside of rate cases and/or to provide more regulatory certainty (through reduced regulatory lag), and increased profitability on its investments including:

- Plant-in-Service Accounting
- The Renewable Energy Standard Rate Adjustment Mechanism Rider;
- The Missouri Energy Efficiency Investment Act ("MEEIA") Rider;
- Pension and other Post Retirement Employee Benefits ("OPEBS");
- Various trackers – Regulatory Assets and Liability Deferrals and Amortizations;
- Timing of rate cases to address changes in payroll and property tax expense;
- Callaway Nuclear Power Plant Decommissioning Cost Recovery; and
- Securitization with dollar-for-dollar reinvestment on undepreciated balance of stranded asset

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So no, I do not believe Ameren Missouri will have any trouble attracting capital based on my reasonable adjustment.

Q. Do you have final comments to make on this topic?

A. Yes. Any consideration of what to do regarding the uneconomic failure of High Prairie should begin with a recognition that the competitive market would classify utility generation assets as either economic or uneconomic, in whole or in part. Under competition, utilities' recovery would not be affected by how good, or bad, or how sophisticated, or arbitrary their mistaken decisions were when made. The failure of individual firms is a notable feature of competition, part of the process through which competition selects and rewards the properly run firms.

Utility regulation is at its heart, economic regulation. In fact, this entire rate case process is supposed to provide a suitable proxy for the lack of competition associated with natural monopolies. The theoretical justification for regulatory intervention and imposed entry barriers from competition for electric utilities was to have government push prices down to the "efficient" level where excess profits would not exist and pricing would approximate marginal costs. Economic standards punish firms that make mistakes and reward those that plan well. As such, it is incumbent that the Commission issue its order with that responsibility at the forefront. Ratepayers did not pay for a wind farm to only be operating 71% of the time.

At an absolute minimum, the Commission should keep this in mind when assessing the appropriate “reward” deserved and actual “risk” incurred that Ameren Missouri experiences in setting the Company’s cost of capital.

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III. RUSH ISLAND POWER PLANT

Q. What is Staff's position on Rush Island?

A. Staff witness Ms. Eubanks argues that Rush Island is not fully available, not fully used and useful for service, and has definite limitations on its operations. As such Ms. Eubanks recommends a rate base adjustment and fuel modeling adjustment to reflect this reality.

Q. What was Ameren Missouri's response to Staff?

A. Ameren Missouri disagrees.

Q. What is your response?

A. I support Staff's position. Both Ms. Eubanks and Staff witness Keith Majors provide a compelling argument for cost disallowance today under failure to meet the used and useful principle and most certainly in the future (likely in a securitization case) largely predicated on managerial imprudence due to the fact that this issue has already played against the Company by the Eastern District of Missouri.

I have only two comments to add on the issue of cost disallowance for imprudence in the future. The first is centered on the observation that I was heavily involved in proceedings before this Commission regarding two premature coal plant retirements—Evergy West's Sibley 3 and Liberty Utilities Asbury Power Plant. Both units incurred hundreds of millions of dollars in planned environmental upgrades that extended the useful life of the units by decades, increased profits for shareholders, and (for a brief time) powered cleaner, healthier air than what has been produced by Ameren Missouri's Rush Island Power Plant.

Both units were subject to a self-imposed retirement by their respective utilities that OPC objected to. In both cases, OPC recommended a cost disallowance on the environmental upgrades that were made but not fully depreciated. In both cases the Commission rejected OPC's arguments.

Ameren Missouri's Rush Island represents an interesting contrast to Asbury and Sibley. No environmental upgrades were made at Rush Island and consequently Ameren Missouri was

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found in violation of the Clean Air Act. As a result Rush Island will also be prematurely retired.

Q. What should the Commission take away from these contrasts?

A. I do not see how utilities can have it both ways. That is, how can Evergy West and Liberty management be deemed prudent for investing in scrubbers (and immediately retiring those plants) *and* Ameren Missouri's management be deemed prudent for not investing in scrubbers and violating the law. Finding both scenarios prudent would ultimately send the message that it doesn't matter what the utilities do. There really is no risk to utility operations in Missouri and ratepayers are overpaying for electricity service insofar as any risk premium is attached to the cost of service.

Q. What is your recommendation to the Commission regarding Rush Island?

A. I support Staff's position. Rush Island is effectively not available (beyond its emergency status), not fully used and useful for service, and operating with severe limitations based on Ameren Missouri's managerial actions. Therefore, I support Staff's position for a fuel modeling and rate base adjustment to reflect this reality.

IV. BLUES POWER PLAY GOAL FOR KIDS

Q. What was Ameren Missouri's response to your recommended cost disallowance for the ratepayer-sponsored Blues Power Play Goal for Kids?

A. It was brief. Ameren Missouri's entire response is in its witness Mr. Lanslord's rebuttal testimony follows:

> **Q. OPC proposed an adjustment to exclude communications and sponsorship costs relating to the Company's St. Louis Blues Power Play Goals for Kids campaign from its revenue requirement. How does the Company respond?**
>
> A. Staff's proposed adjustment contains these same costs, and the Company accepts Staff's adjustment. It is inappropriate to apply both Staff's and OPC's adjustments as a result because it would remove the same costs twice.

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Q. If Ameren Missouri is removing the disputed costs do you believe the Commission still should weigh in on this topic?

A. I do.

I have no issues if Ameren Missouri wants to sponsor the Blues Power Play Goal for Kids with its profits. Nor do I have any issues if Ameren Missouri elects to **_____ _____ ** or any other event, as long as it is borne entirely below-the-line.

However, I believe the optics of this issue are bad enough that Ameren Missouri should expressly declare that they will no longer use ratepayer funds for the Blues Power Play Goal for Kids **_____ _____ **[8] If such language cannot be spelled out in a future stipulation and agreement than I recommend that the Commission either explicitly consider that fact in setting Ameren Missouri's approved earnings and/or issue an explicit order that informs Ameren Missouri that in no uncertain terms are these actions an appropriate use of ratepayer dollars.

VII. PRIVATE LTE NETWORK & TRIPSAVERS

Q. What was Ameren Missouri's response to your raising the potential of excluding from its revenue requirement costs associated with its Private LTE network?

A. In his rebuttal testimony Ameren Missouri witness James Huss provided a more detailed explanation of the use case for Ameren Missouri's Private LTE network.

Q. What is your response?

A. I appreciate the detailed response and am no longer recommending any cost disallowance associated with the private LTE network investment within the Metro-area of St. Louis. That being said, I do recommend that the Company continue meeting with OPC and Staff

[8] Keep in mind that between 2015 thru 2022 Ameren Missouri ratepayers have spent $1,819,505 on this program and amenities.

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and make the further expansion of the private LTE network a priority topic within its PISA cost-benefit framework. I still have concerns about the timing of locking into a path dependent 4G technology source as 5G capability continues to emerge, but I believe the cybersecurity and system hardening arguments are valid contributions in judging the totality of the investment for the greater Metro-area of St. Louis.

Q. What was Ameren Missouri's response to your raising the potential of excluding from its revenue requirement costs associated with Tripsavers?

A. Here again, Ameren Missouri James Huss provided a more detailed explanation of the use of Tripsavers on the distribution system.

Q. What is your response?

A. Again, I appreciate the detailed response and am no longer recommending any cost disallowance associated with the installation of Tripsavers. I would recommend that the Company continue meeting with OPC and Staff surrounding its PISA cost-benefit framework on a bi-annual basis to access the results of the historical investments and the rationale for future investments.

V. DUES AND DONATIONS

Q. Staff witnesses made a number of cost disallowances related to various dues and donations incurred by Ameren Missouri in their direct testimony. How did Ameren Missouri respond?

A. In her rebuttal testimony Ameren Missouri witness Laura M. Moore took issue with Staff's cost disallowance amount associated with Edison Electric Institute ("EEI") dues. Ms. Moore cited to EEI's Mutual Assistance Program as a large enough benefit (estimated $5 to $6 million dollars) to justify the costs incurred by ratepayers.

In his rebuttal testimony Ameren Missouri witness Charles Steib addressed the rest of the dues and donations cost disallowances that Staff witnesses had raised in their direct testimonies.

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I take issue with Ameren Missouri's positions on two specific dues and briefly reply to them—EEI and the Utility Solid Waste Activities Group ("USWAG").

Q. Do you agree with Ameren Missouri witness Ms. Moore's recommendation that the EEI's Mutual Aid Assistance program more than justifies the membership costs incurred by ratepayers?

A. I agree that the Mutual Aid Assistance program is a benefit, but it is not entirely clear to me that EEI membership is a requirement for mutual aid assistance membership. EEI is one of several partners involved in coordinating mutual assistance groups including the National Rural Electric Cooperative Association and the National Emergency Management Association. I do not believe anything is prohibiting Ameren Missouri from participating in the Midwest Mutual Assistance Group if it no longer funds EEI dues. As such, I support Staff's position that Ameren Missouri has failed to prove that the services provided by EEI are not duplicative of the services provided by other agencies or groups.

Q. Do you agree with Ameren Missouri witness Mr. Steib's recommendation that costs associated with USWAG should be allowed?

A. No, I do not. In Case No. ER-2019-0335 I wrote testimony arguing that membership dues should not be included in the revenue requirement including the following:

- The Utility Water Act Group ("UWAG") ;
- The Utility Solid Waste Activities Group ("USWAG");
- Midwest Ozone Group ("MOG");
- Regulatory Environmental Group for Missouri ("REGFORM") ;
- Illinois Environmental Regulatory Group ("IERG"); and
- Edison Electric Institute ("EEI");

In that case, I noted how Ameren Missouri had ceased requesting donations related to the Utility Air Regulatory Group ("UARG"), likely as a result of concurrent ethics investigations initiated by the U.S. House of Representatives Committee on Energy and Commerce in 2019.

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Q. Is the Utility Solid Waste Activities Group similar to UARG?

A. Yes. For all practical purposes they are the exact same except the "groups" differ in the specialized area of EPA regulations they oppose. Where UARG contested the EPA's Clean Air Act, USWAG contests the EPA's enforcement of Coal Ash Residual Rules.

Q. Did the Congressional UARG probe seek to find out whether Ameren ratepayers or shareholders were paying Ameren's dues?

A. Yes, they did. As part of the investigation, the House Committee issued the following ratepayer relevant questions to each utility that funded UARG specifically asking the following questions:

- What is the source of the funds your company contributes to UARG; are these ratepayer or shareholder monies?
- If you have used ratepayer funds, has the public utility commission in each state in which you operate specifically approved the use of such funds for this purpose?
- Please explain how your substantial annual contributions to UARG are consistent with your obligations to ratepayers.[9]

Based on my research at the time, it did not appear as though Ameren directly answered whether or not ratepayers funded UARG. The Company cited a "blackbox settlement" that left the issue unanswered in determining the specific costs used to set the revenue requirement in its last Missouri rate case.[10]

[9] US House Committee on Energy & Commerce (2019) E&C leaders launch investigation of secretive front group UARG and its ties to EPA officials. https://energycommerce.house.gov/newsroom/press-releases/ec-leaders-launch-investigation-of-secretive-front-group-uarg-and-its-ties.

[10] Gray, B. (2019) Congressional probe looks at lobbying group funded by Ameren, other utilities. https://www.stltoday.com/business/local/congressional-probe-looks-at-lobbying-group-funded-by-ameren-other/article_4c61b33d-b7fd-5e4c-9a08-d26a0d3a8486.html see also GM-7.

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In May of 2019, the UARG announced that its remaining members (including Ameren) had decided to disband after 40 years of challenging federal clean air standards.[11,12]

Q. To be clear, is Ameren requesting cost recovery for UARG membership dues?

A. No.

Q. But Ameren *is* requesting cost recovery for USWAG membership dues?

A. Yes.

Q. Do you believe membership in USWAG are necessary to provide safe and reliable service to ratepayers?

A. No.

Q. Do you believe costs related to membership in USWAG should be included in rates?

A. No. In 2019, Ameren Missouri had seemingly taken the position that it is no longer prudent to request ratepayers subsidize membership to an opaque, ethically-challenged collective that fights the EPA's Clean Air Act. Why the same argument does not apply to USWAG's attempts to fight the Coal Ash Residual Rules is unclear to me.

I struggle to find a scenario where costs are made for the best interest of ratepayers. I fully support Staff's disallowance for membership costs for USWAG or any of the other organizations I previously listed.

Q. Is there anything else the Commission should be cognizant about as it pertains to this issue of ratepayer funded membership dues?

A. Yes. The Federal Energy Regulatory Commission ("FERC") currently has a rulemaking docket (Case No. E-2-RM22-5-000) open to consider amending the Uniform Systems of Accounts ("USoA") to require that utilities record the millions paid in industry association dues as presumptively non-recoverable (i.e., below-the-line) for rate recovery purposes. I

[11] Southern Company; Utility Air Regulatory Group (2019) Statement of UARG Policy Committee. *PR Newswire*. https://www.prnewswire.com/news-releases/statement-of-uarg-policy-committee-300848377.html see also GM-9.
[12] US House Committee on Energy & Commerce (2019) Committee leaders respond to UARG dissolving in the face of Congressional scrutiny. https://energycommerce.house.gov/newsroom/press-releases/committee-leaders-respond-to-uarg-dissolving-in-the-face-of-congressional see also GM-10.

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have included the initial petition for rulemaking issued by the Center for Biological Diversity in GM-1 for further reference on this topic and why such dues should not be borne by ratepayers.

IV. LOW-INCOME PROGRAMS

Q. Were parties in favor of the recommendations you made in direct testimony regarding the Keeping Current and Keeping Cool program?

A. They did more or less. Staff witness Amy L. Eichholz supported all but one of my recommendations. Staff's specific objection was to my recommendation that would allow participants who are within $25 of their monthly bill continued enrollment.

Ameren Missouri witness Michael W. Harding supported my recommendations with the exception of the modest funding increase; however, Ameren Missouri recommended that any Keeping Current program design changes should occur outside of this rate case.

Consumer Council of Missouri witness Jacqueline A. Hutchinson supported my recommendations but suggested that funding be increased an additional $1 million under a 50/50 split (ratepayer/shareholder).

I will respond to each party in turn.

Q. What is your response to Staff's opposition to allow Keeping Current participants greater leeway on paying their bill in full for continued enrollment?

A. I understand Staff's concern that this may create a perverse incentive for participants to pay less than their actual billed amount, but disagree that will be much of a factor in practice. The more likely scenario is that this will encourage these participants to pay at least something. Ratepayers living on the margins are extremely vulnerable to budget volatility. Maintaining payments even if it not the full amount instills some amount of revenue continuity and often is only a temporary issue. I am not necessarily advocating that this feature be explicitly advertised. Rather, I believe the "within $25 of the total bill" allows

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Ameren Missouri's customer billing representatives an opportunity to extend some leeway for Keeping Current participants that have otherwise been good participants.

Q. What is your response to Ameren Missouri's opposition to your funding increase and suggestion that Keeping Current tariff changes should occur outside of this rate case?

A. Here again I understand Ameren Missouri's argument that funding should be increased when the current budget has not been fully spent down. My response is three-fold: 1.) CARES Act funding that increased LIHEAP funding and allocated money to low-income households whose breadwinners were impacted by COVID-19 or those falling under the category of low-income renters has effectively dried up. The current excess budget is a result of circumstances that are no longer going to be present in 2023; 2.) The Critical Needs Program is set to become operational in the next two weeks. As this program ramps up, stakeholders have every reason to believe that this program will be a conduit to further enrollment in all low income programs—including Keeping Current and Keeping Cool. For this reason alone, additional funding is warranted; and 3.) Ameren Missouri's rate increase and overall high levels of inflation suggest that unfortunately, more customers should qualify for this program moving forward.

As to whether a rate case is an appropriate venue to adjust the Keeping Current tariff, I absolutely believe it is and has been in every Ameren Missouri rate case that I have been a participant in.

Q. What is your response to Consumer Council of Missouri's recommendation?

A. An additional $1 million is larger than what I had contemplated, but I would not necessarily be against such an increase given the circumstances surrounding the program at the moment including those specifically laid out in CCM witness Ms. Hutchinson's rebuttal testimony.

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VIII. RATE DESIGN

Rate Shifting Tracker

Q. Ameren Missouri proposed a rate switching tracker. What was Staff's response?

A. It was an emphatic no from the Commission Staff.

Q. What is your response?

A. I agree with Staff. Perhaps not on every detail Ms. Lange articulates, but I do believe a tracker is not necessary for the Commission to order a rate modernization plan in this and future cases consistent with the large capital investment made to enable TOU rates. I believe it is entirely premature to consider trackers based on the non-substantial costs and speculative information that is currently before us today.

Class Cost of Service Studies

Q. What is the status of various parties' Class Cost of Service Studies and/or recommendations?

A. They are a mess. Volumes of testimony have been written on the issue and no doubt more will be written in surrebuttal testimony. The primary issue stems around Staff's methodology that purports to more accurately reflect the MISO market and the Company's (and other interveners') reliance on the Average and Excess methodology from the 1980 NARUC manual.

Q. What is your response?

A. OPC did not perform its own CCOS in this proceeding and will ultimately make a recommendation in its position statement based on the final responses in surrebuttal testimony and the potential overall revenue requirement impact to be experienced by customers. As it stands, I recommend against any revenue neutral shift in the context of the rate increase that is being contemplated due to the potential size. I also recommend an equivalent percentage increase in rates across all classes.

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EV Rate

Q. MECG witness Chriss recommends a modified Electric Vehicle ("EV") rate for LGS and SP customers. What were parties' responses?

A. Staff opposed MECG's rate design under the premise that it would undermine accretive earnings assumed in justifying the Charge Ahead portfolio, would not align with the principles of cost causation, and were generally against the concept of specialty end-use rates. Ameren Missouri opposed the recommendation on grounds of gradualism, complexity, and the fear that such a rate would promote free ridership at the expense of the rest of the customer classes.

Q. What is your response?

A. I agree with Staff and Ameren Missouri on this issue for the same points articulated. A greater discussion is probably warranted surrounding EV rates in the future when adoption rates start to increase.

Residential Rate Design

Q. Can you provide an overview of the residential TOU rate proposals before the Commission?

A. Staff witness Sarah L.K. Lange has proposed to eliminate the availability of the Anytime User rate for all customers with an AMI meter, and also to begin the process of defaulting customers to the Evening/Morning Savers rate one month after customers have an AMI meter installed.

Ameren Missouri witness Steven M. Wills argues that such a change from the status quo would not be economically efficient and would likely induce heightened customer confusion and complaints. Mr. Wills recommends that rates remain as is with the exception of the residential customer charge (more on that later).

CCM witness Jacqueline A. Hutchinson recommends that residential customers not be moved to any rate plan unless they formally consent ("Opt-in").

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Renew Missouri witness James Owen argues that all customers, including net metering customers, should have an option to participate in TOU rates. Mr. Owen recommends that the Commission should order Ameren to conduct a study with the final intent on executing a net metering compatible TOU option in its next rate case.

Q. What is your response to Staff and Ameren Missouri's positions?

A. This is admittedly a difficult issue to weigh in on. Given the outcome and explicit direction from the Commission in the most recent Evergy Metro and Evergy West rate cases (Case Nos. ER-2022-0130 and ER-2022-0129) I understand the position Staff has taken (above and beyond its argument for better cost causative alignment). I also believe there is merit to Mr. Wills' arguments surrounding the timing of introducing new rates to customers and the likely administrative/technical complications that may arise from that. As such, my present argument should make neither party happy. I recommend the Commission support Staff's rate design but maintain the six month phase-in currently in place. I do however reserve the right to change my position based on responses in surrebuttal testimony. OPC's position statement will reflect those changes if warranted.

Q. What is your response to CCM and Renew Missouri?

A. Due to the massive capital investment in Ameren Missouri's AMI I believe we are past the point of reasonably arguing that TOU rates should be handled on an opt-in basis. That being said, I do not oppose an opt-out option for now that could be reevaluated in the next rate case.

As it pertains to TOU rates for net metering, I agree with Mr. Owen in that I see no reason why the net metering issue cannot be resolved. I am not an attorney and will not opine on the legality of TOU net metering rates, but I do agree that this seemingly impossible problem has clearly been solved by many other states as articulated in Mr. Owen's testimony. Movement towards Staff's proposed rate design structure may help that. I disagree that "a study" needs to be performed on this topic and would object to any additional ratepayer funding for such a study. I believe the newly formed Solar Task Force Committee may be

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a more appropriate venue to address this concern if the issue remains unresolved in this rate case.

Residential Customer Charge

Q. What is the customer charge?

A. A fixed charge to customers each billing period, typically to cover metering, meter reading and billing costs that do not vary with size or usage. Also known as a basic service charge or standing charge.

Q. What kind of costs should be recovered in the customer charge?

A. To state the obvious, customer-related costs should be recovered in the customer charge. These should be costs sensitive to connecting a customer irrespective of the customer's load (e.g., meter, billing). That is, customer-related costs exist even when kW demand and kWh are zero.

When adding one or more customers on the system raises the utility's cost regardless of how much the customer uses (billing is an example) then a fixed charge to reflect that additional fixed cost the customer imposes on the system makes perfect economic sense. Utilities can justify a customer charge recovering these basic costs because they are directly related to the number of customers receiving an essential monopoly service. The idea that each household has to cover its customer-specific fixed cost also has obvious appeal on grounds of equity. This is contrasted with system-wide "fixed" costs, such as maintaining the distribution network, which do not change if one customer were to drop off the system.

Q. What is the end-result of raising or lowering the customer charge?

A. An increase to the customer charge positively impacts above-average use customers and negatively impacts below-average use customers. On the other hand, a decrease to the customer charge positively impacts below-average use customers and negatively impacts above-average use customers. Stated differently, "in general," a lower customer charge tends to favor low-income customers, renters, and customers who have invested in energy

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efficiency and solar (or plan on investing in those items).[13]In contrast, a higher customer charge favors affluent customers and electric space-heating customers. It also provides greater revenue certainty for the utility.

Q. What amount is Ameren Missouri proposing for a residential customer charge?

A. Ameren Missouri has effectively proposed a 44.44% increase to the customer charge ($9 to $13) for the majority of its customers (i.e., the "anytime user" or non-TOU plan, as well as the Evening/Morning Savers or AMI-default plan, and the Overnight Savers). Ameren Missouri has proposed a lower residential customer charge for rate plans it deems as "more risky". A breakdown of the proposed residential customer charges is as follows in Table 1 below:

Table 1: Ameren Missouri's Proposed Residential Rate Plan Customer Charge Amounts

Rate Plan Name	Proposed Customer Charge
Anytime User (non-AMI)	$13
Evening/Morning Savers	$13
Overnight Savers	$13
Smart Savers	$11
Ultimate Savers	$9

Q. What amount is Staff proposing for a residential customer charge?

A. Staff's class cost of service (CCOS) study resulted in a residential customer charge that is lower than $9. However, Staff is recommending that the customer charge remain at its current level of $9.00.

[13] I say "in general", as there will be affluent customers who have below average use and low-income customers with above-average usage.

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Q. What amount is CCM proposing for a residential customer charge?

A. Citing the importance of maintaining customer control of their bills, CCM has proposed to maintain the residential customer charge at $9.00.

Q. What amount is Renew Missouri proposing for a residential customer charge?

A. Citing the importance of maintaining customer control of their bills and the promotion of distributive energy resources, Renew Missouri has proposed to maintain the residential customer charge at $9.00.

Q. How did stakeholders reach such different conclusions?

A. Different methodologies utilized in their CCOS studies produce different results. However, this specific issue comes down to how FERC Accounts 364-368, or the fixed distribution investments, are allocated.

The appropriate allocation of these costs are not a new problem. In his 1961 seminal work, Principles of Public Utility Rates, James Bonbright concludes that there is no sound basis for the allocation of these costs as either customer or demand:

> But if the hypothetical costs of a minimum-sized distribution system is properly excluded from the demand-related costs for the reasons just given, while it also denied a place among the customer costs for the reason stated previously, to which cost function does it belong then? **The only defensible answer, in my opinion, is that it belongs to none of them. Instead, it should be recognized as a strictly unallocable portion of total costs.** And this is the disposition that it would probably receive in an estimate of long-run marginal costs. But the fully-distributed cost analyst dare not avail himself of this solution, since he is the prisoner of his own assumption that "the sum of the parts equals the whole." **He is therefore under impelling pressure to "fudge" his cost apportionments by using the category of**

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> **customer costs as a dumping ground for costs that he cannot plausibly impute to any of his other cost categories** (emphasis added).[14]

Q. Is the allocation process involved in the fixed distribution costs arbitrary?

A. Like Bonbright, I believe so. If the allocation can be dramatically changed by replacing one persuasive allocation criterion by another with no less plausibility, then the process ultimately functions as suggestive "guideposts" for the Commission to consider when setting how revenue will be collected. Economist William J. Baumol concurred:

> No form of cost allocation can pretend to be compatible, generally, with efficiency in resource allocation, no matter how sophisticated its derivation.[15]

It is also unfair to allocate these cost increases uniformly because any standard of "uniformity" inherently handicaps one class of customers to the benefit of another. As Economist Richard L. Schmalensee notes:

> It is not a matter of improving cost studies or methodologies; costs that do not vary with the volume of service cannot be allocated on a cost-causative basis to individual services. Indeed, any allocation of fixed costs is necessarily arbitrary. . . . Shippers of diamonds, coal and feathers would prefer that the railroad allocate the fixed common costs of the railroad tracks on the basis of volume, value, and weight respectively, but none of these allocators is objectively better than the others. Since these fixed costs do not vary with the volume shipped, there is no objectively 'reasonable share of the joint and common costs of facilities' to allocate, and yet each party has a passionate stake in the outcome of the allocation.[16]

[14] Bonbright, J., et al. (1988) Principles of Public Utility Rates p. 492
[15] Baumol, W.J. & D. Fischer (1986) Superfairness: Applications and Theory. Cambridge. p. 146
[16] Qtd in (1999) Federal Communications Commission filings found in: http://apps.fcc.gov/ecfs/document/view;jsessionid=yRkfTYLdrdGzpzSNVhHML9FcznF98ppyPfQ1vMgvSky3cDnL14LY!1281169505!1675925370?id=1319580003

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Q. If allocations are in part arbitrary, what should the Commission rely on?

A. I suggest that the Commission be cognizant that reasonable minds can and will differ over the appropriate allocation of the distribution system. Moreover, the Commission is not bound to set the customer charge based solely on the results of any CCOS study. Cost studies (both marginal and embedded) rely on a host of simplifying assumptions in order to produce workable results. Since one objective of regulation is to serve as a proxy for competition, to impose upon a single provider the disciplines of competitive markets, it is reasonable to consider the structure of prices in competition when pricing monopoly services. Two relevant facts emerge. The first is that goods and services in competition are invariably available and priced on a unit basis. And the second is that the extent to which more restrictive pricing schemes exist is a measure of the lack of competition in that particular market. In competition, a consumer who does not consume a product or service does not nevertheless pay for the mere ability to consume it. Thus, as a general matter, prices should be structured so that, if a consumer chooses not to purchase a good or service, he or she has no residual obligation to pay for some portion of the costs to provide that good or service. In this sense, from the consumer's perspective, costs should be "avoidable." Looking at how energy markets operate, it is apparent that the marginal cost of electricity generation goes up at higher-demand times, and all generation gets paid during those high peak prices. That means extra revenue for Ameren Missouri's baseload plants above its marginal costs, and those revenues can go to pay the fixed costs of said plants. The same argument goes for transmission lines, where price differentials between locations means that the transmission line generates revenue above its marginal cost (which is effectively zero), and can go to pay the fixed cost of transmission lines.

In fact, the fixed costs of generation and transmission should generally be covered without resorting to increased fixed monthly charges. Likewise, distribution costs are driven by demand, number of customers, and energy needs. This is true both in the short and long runs. Utilities are continually investing in distribution plants—new facilities, upgrades, and replacements—in response to changes in load, and therefore costs can be avoided.

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Collecting this revenue through a fixed customer charge suggests that on-peak consumption is less costly than in fact it is.

An efficient price signal recognizes resource allocation is most efficient when all goods and services are priced at marginal cost. For efficient electricity investments to be made, the marginal cost should be based on the appropriate timeframe. Bonbright states:

> I conclude this chapter with the opinion, which would probably represent the majority position among economists, that, as setting a general basis of minimum public utility rates and of rate relationships, the more significant marginal or incremental costs are those of a relatively long-run variety—of a variety which treats even capital costs or "capacity costs" as variable costs.[17]

A fixed charge including long-run marginal costs provides no price signal relevant to resource allocation, since customers cannot reduce consumption enough to avoid the charge. In contrast, an energy charge reflecting long-run marginal costs will encourage customers to consume electricity efficiently and, thereby avoiding inefficient future utility investments.[18]

Economist Jim Lazard provides a useful analogy for Commission consideration:

> A person living alone pays much less to the grocery store, where all fixed costs are built into the per-item prices, than a family of six, and we consider that fair," Lazar said. The per-item price is like the per-kWh price, which is where grocery store and the utility must meet their revenue requirements. A fixed charge is like a price all customers would pay to enter the store. "A market cannot charge $20 to enter the store, because the customer would go to another store," Lazar said. "The purpose of

[17] Weston F. (2000) Charging for distribution utility services: issues in rate design. The Regulatory Assistance Project. https://www.raponline.org/wp-content/uploads/2016/05/rap-weston-chargingfordistributionutilityservices-2000-12.pdf

[18] Whited, M. et al. (2016) Caught in a fix Synapse Energy Economics http://www.synapseenergy.com/sites/default/files/Caught-in-a-Fix.pdf

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regulation is to enforce on monopolies the pricing discipline that markets enforce under competition."[19]

Q. What is your recommendation?

A. Historically, distribution costs have been recovered through the energy charge in light of economic and public welfare characteristics. More recently, an emphasis on public policy goals focusing on energy efficiency and environmental stewardship have reinforced those decisions. I see very little reason to deviate from that rationale. This is especially true in light of Ameren Missouri's MEEIA Cycle III compensation, reward, two additional extensions, and upcoming filing. I recommend that the Commission maintain the $9.00 residential customer charge across each of the residential offerings.

Q. Does this conclude your testimony?

A. Yes.

[19] 6 Trabish, Herman K. (2018) Are regulators starting to rethink fixed charges? Utility Dive. https://www.utilitydive.com/news/are-regulators-starting-to-rethink-fixed-charges/530417/

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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 Adjust Its Revenues for Electric Service	)))	Case No. ER-2022-0337

AFFIDAVIT OF GEOFF MARKE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Geoff Marke, of lawful age and being first duly sworn, deposes and states:

1. My name is Geoff Marke. I am a Chief Economist for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Geoff Marke
Chief Economist

Subscribed and sworn to me this 8th day of March 2023.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

TIFFANY HILDEBRAND
My Commission Expires
August 8, 2023
Cole County
Commission #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2023.