BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminum, et al., Complainants	)	
	)	
v.	)	Case No. EC-2014-0223
	)	
Union Electric Company d/b/a Ameren	)	
Missouri, Respondent.	)	

REPLY BRIEF OF COMPLAINANTS

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ATTORNEYS FOR COMPLAINANTS

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REPLY BRIEF OF COMPLAINANTS

I. INTRODUCTION

This brief responds to all parties' briefs, but particularly the initial briefs of Staff and Union Electric Company, d/b/a Ameren Missouri ("Ameren"). As explained in Complainants' initial brief, the undisputed facts show that Ameren has been earning above its authorized return on equity ("ROE"), or "overearning,"[1] at least since the twelve months ended June 2012 and continuing through the twelve months ended March 2014. In fact, Ameren's most recent surveillance monitoring report to this Commission, filed only a few days ago, for the twelve months ending June 2014, evidences that its <u>overearnings are in fact ** **</u> (** ** actual ROE versus 9.8% authorized ROE). No party, including Ameren, disputes that Ameren is overearning. The question presented is whether Ameren is overearning because its rates are too high, or for some other reason. While Ameren is entitled to keep two plus years of overearnings, those overearnings are relevant to the rates <u>to be charged</u>, just as Staff notes in its initial brief.[2] In *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission of Missouri*, 585 S.W.2d 41, 59 (Mo. banc 1979) ("*UCCM*"), the Missouri Supreme Court explained:

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[1] Staff Br. 3 ("If the current return exceeds the Commission-approved ROE, then the company is overearning in the most basic sense.").

[2] Staff Br. 4.

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> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e., the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established, *Board of Public Utility Commissioners v. New York Telephone Co.*, 271 U.S. at 31, 46 S.Ct. 363; *Lightfoot v. Springfield*, 236 S.W.2d at 353. <u>Past expenses</u> are used as a basis for determining what rate is reasonable to be charged in the future <u>in order to avoid further excess profits</u> or future losses, but under the prospective language of the statutes, §§ 393.270(3) and 393.140(5), they cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses. (emphasis added).

Complainants seek to have this Commission do exactly what the Missouri Supreme Court contemplated in the *UCCM* case. Namely, the Commission is to consider Ameren's past expenses and revenues (from the twelve months ending December 2013) in order to set rates that will "avoid further excess profits." That is all the Complainants seek.

Complainants' witness Greg Meyer, a respected utility regulatory accountant, started with Ameren's own financial report of the values in each of the Uniform System of Accounts ("USOA") in Ameren's Surveillance Monitoring Report for the twelve months ending December 2013 ("December Report"). Indeed, Staff approves of that basic approach.[3] Meyer then annualized and normalized those values to account for a normal year and concluded that

[3] Staff Br. 4 ("Overearnings, just like underearnings, are determined on the basis of an annualized and normalized historical test year").

Ameren's rates were too high by almost $26.3 million per year.[4] This is with an adjustment for deferred solar rebate expense through 2013 and with no adjustment to lower Ameren's Return on Equity ("ROE") to 9.4 percent as suggested by Mike Gorman. With a reasonable ROE of 9.4 percent and an adjustment for deferred solar rebate expense through 2013, Ameren's rates should be decreased by $49.4 million per year.[5]

In their opening briefs, Ameren and the Staff both admit that this case is one of first impression, yet each assumes that Complainants must perform a complete audit of Ameren's books and records in order to meet their "all relevant factors" burden of proof because that is what is typically done in a rate case. Because that review apparently meets the "all relevant factors" standard, nothing less will do in the view of Staff and Ameren. However, Staff in its brief at least recognizes that it is for this Commission to determine which facts in this case are relevant and that "all relevant factors" does not mean "all possible factors."[6] Staff and *Amicus Curiae* United for Missouri all understand that if this Commission adopts the complete and comprehensive audit standard as the "all relevant factors" burden, only Staff can effectively prosecute an earnings complaint. As explained in Complainants' Initial Brief, that position renders meaningless the legal authority for consumers to bring a rate complaint.

Using Ameren's own USOA figures for 2013, Complainants made a *prima facie* case that Ameren's rates are too high by almost $50 million. The only other party to directly address this calculation was Staff. Staff's analysis of the normalized and annualized USOA figures for 2013 show that Ameren's rates are $39 million too high before adjusting for a proper ROE or making

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[4] Meyer Surrebuttal, Ex. 2, p. 4, as corrected at trial, Tr. p. 160, l. 10 – p. 161, l. 16.

[5] *Id*.

[6] Staff Br. 8, 10.

an adjustment for solar rebate expense deferrals.[7] Ameren does not offer an alternate analysis of the 2013 USOA figures. Rather, Ameren focuses on expenses that it has deferred during 2013 and 2014 (solar rebates) and capital expenditures that it is making and will make by the end of 2014.

The solar rebates are a red herring. Because those expenses are deferred, they were never intended to be recovered when incurred (2012, 2013 and 2014), but rather were to be considered for recovery in future rates (in Ameren's current rate case or in resetting Ameren's rates here—but only the amount deferred through 2013). If indeed this Commission is inclined to deny a rate decrease by treating the solar rebate expenses as if they have not been deferred, then in its order in this case this Commission should initiate the amortization of the solar rebate deferred account. To do so, this Commission should order the deferred account to an expense account for 2013 and 2014, which will curtail the recovery of that expense in Ameren's current rate case. Otherwise, Ameren will double count those expenses by using them both to avoid a rate decrease now and again as a basis for higher rates in the future.

The planned capital expenditures that Ameren emphasizes are not known and measurable, and in most cases, are for assets not placed in service at the time of trial. Using construction work in progress ("CWIP") to keep rates too high is just as much a violation of section 393.135, the anti-CWIP statute, as raising rates to recover CWIP. This Commission should not keep from lowering rates now simply because those lowered rates will need to increase in the future. That is akin to raising rates now simply because at some point in the future the current rates will be too low.

Moreover, as demonstrated in Complainants' initial brief, once Complainants made their *prima facie* case against Ameren, Ameren bore the burden to present evidence that Meyer's

[7] Cassidy Surrebuttal, Ex. 13, pp. 7-8.

normalizations for 2013 were not correct. Ameren failed in that burden. For the reasons that follow, this Commission should reduce Ameren's rates by $26.3 million per year (includes a $10 million credit for solar rebates through 2013) due to revenue requirement and another $23 million per year as a result of lowering Ameren's ROE to a reasonable 9.4 percent.

II. ARGUMENT

A. Complainants Demonstrated the Relevant Factors Showing That Ameren's Rates are Too High By at Least $26.3 Million Per Year Even if a Fair ROE Were 9.8 Percent Rather than 9.4 Percent

All parties concede that Complainants' analysis and Meyer's testimony include every account balance in Ameren's Uniform System of Accounts (USOA).[8] That is because Complainants' case relies on Ameren's December Report—a report that includes Ameren's figures for all USOA accounts for the twelve months ending December 31, 2013. The Staff concedes that an adjustment to every USOA account is not required in setting rates.[9] The Commission has before it all factors, with the additional testimony and evidence on Return on Equity, relevant in determining Ameren's revenue requirement.

Adjustments to annualize and normalize the amounts recorded in Ameren's USOA accounts improve the usefulness of the records in determining revenue requirement. Both Complainants and Staff agree on adjustments that should be made. Meyer's adjustments show rates that are over $26 million too high (including an adjustment to account for deferred solar rebate expense through 2013).[10] Staff witness Cassidy concluded that, with the agreed-upon adjustments, Ameren's rates were over $39 million too high before any adjustment for solar

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[8] Tr. p. 345, l. 23 – p. 346, l. 4.

[9] Tr. p. 344, ll. 18-21. In fact, in Ameren's current rate case, its accounting witness Moore proposes certain adjustments, but certainly did not adjust all USOA accounts.

[10] Meyer Surrebuttal, Ex. 2, p. 4, as corrected at trial, Tr. p. 160, l. 10 – p. 161, l. 16.

rebate expense.[11] In fact, in Ameren's current rate case, it did not make adjustments to all of the USOA figures found in the March 2014 surveillance report. None of the parties, in this case or likely in Ameren's current rate case, adjust all USOA accounts and Staff at least agrees that is not necessary.[12]

What is at issue however are not the adjustments that Staff and Complainants agree upon. Rather, both Staff and Ameren contend that Complainants should have performed a complete audit of all figures reported in each USOA account and adjusted other accounts. While Staff witness Cassidy rattled off a list of those accounts, and Ameren cites that testimony in its brief, neither he nor Ameren proposed any additional adjustments to any particular accounts. In other words, neither Ameren nor Staff showed that any adjustments to other accounts were required. Ameren argues that had Complainants done more discovery they would have obtained this information themselves. Ameren states "Noranda disabled itself from conducting such a study by seeking an unrealistic schedule and by failing to ask any data requests."[13] In fact, in DR 8 Complainant Noranda asked Ameren to:

> Please identify on an annual basis each and every expense or cost that was included in the determination of Ameren Missouri's current rates, and for each such expense or cost, please state whether and by how much each such expense or cost has increased or decreased on an annual basis, since the amount was reported to the Commission for determination of the current rates.

Ameren's response was: "Subject to the Company's objection, Noranda is in possession of all such information needed to answer this question."[14] This shows: (1) that Ameren is not fairly representing facts to this Commission in its brief (claiming no DRs were issued when there were

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[11] Cassidy Surrebuttal, Ex. 13, pp. 6-7.

[12] Tr. p. 344, ll. 18-21. Since Ameren does not adjust every account in its current rate case, one can infer that Ameren agrees as well.

[13] Ameren Br. 25. This statement conflicts with Ameren's earlier admission in its brief of such DRs; Ameren Br. 7.

[14] Ex. 16.

at least eight, one of which was exactly on point); (2) Ameren is not fair in its answers to DRs (claiming that Noranda had all of the necessary information in order to perform a complete audit of all accounts when Ameren has repeatedly noted at trial and in its initial brief that the contrary is true); and, (3) significantly, Ameren was playing "hide the ball" in an effort to prevent the very complete and comprehensive audit that it criticizes Complainants for not conducting.

As indicated in Complainants' initial brief, while the burden of producing evidence rests with the Complainants, once the Complainants have offered sufficient evidence to prove that Ameren's rates are too high, Ameren must produce sufficient evidence to rebut Complainants' evidence.[15] Accordingly, Ameren, as Respondent, was compelled to controvert the evidence in Complainants' case in chief. However, Ameren proposed no adjustments to Complainants' *prima facie* case other than to introduce the testimony of Robert Hevert on the ROE issue. Particularly given Ameren's unwillingness to provide requested data in discovery, application of the shifting burden to Ameren is apt. Complainants met their burden and Ameren did not. And while Ameren and Staff were unwilling to quantify any other adjustments, some factors that they claim should have been considered would in fact have shown even higher adjusted overearnings. For instance, Cassidy noted that the number of "billing units," or quantity of power sold, was a factor that he thought should have been considered for adjustment, yet he later admitted that the number of billing units was actually increasing, meaning "downward pressure on rates."[16] He also admitted that the weather normalization that Staff conducted did not factor in the increase in revenues from the resulting increase in off-system sales. That adjustment would have increased overearnings.[17] Also, while Meyer dropped his proposed Miscellaneous and Advertising

[15] *Johnson v. Missouri Gas Energy*, 2008 WL 4922366, *13 (Mo. P.S.C. Nov. 6, 2008); *Howard v. Union Electric Company*, 2008 WL 5274284 (Mo. P.S.C. Dec. 11, 2008).

[16] Tr. p. 412, ll. 2-8.

[17] Tr. p. 362, ll. 4-10.

Expense adjustment, he was clear that such an adjustment would also have increased overearnings, and thus been a basis for further rate reduction.[18] That Complainants did not include adjustments that would call for even lower rates is hardly a basis for denying them any rate relief at all.

Both Ameren and Staff make much of solar rebate expenses that Ameren has incurred. They argue that even given that rates are too high based upon the annualized and normalized USOA reflected in the December Report, that the Commission should nevertheless deny a rate decrease because of solar rebate expenses already incurred, <u>and deferred</u>, as well as anticipated solar rebate expense. A deferred expense is one that is not recorded when incurred because it will be "placed into a regulatory account for recovery in a future case."[19] "[I]nstead of [the solar rebate expense] being an expense incurred during the period when the expenditure is made, it's put in an account and at some point in the future the dollars in that account will be amortized …[and] treated as an actual expense at the time of the amortization[.]"[20] Because of this accounting fact, it is patently unfair and unreasonable, as well as arbitrary, to use that deferred expense to both avoid or lessen a rate decrease in this case while at the same time considering that entire expense for recovery in future rates in Ameren's current rate case. Meyer's Surrebuttal recognized that Ameren incurred $30 million in deferred solar rebate expense through 2013. He thus proposed a $10 million per year reduction in the rate decrease with the understanding that $10 million per year of this deferred solar rebate expense would be amortized over three years by transferring it from the deferred account to the income statement.[21] To the extent that Ameren incurs, and defers, solar rebate expense after 2013, those expenses may be

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[18] Meyer Surrebuttal, Ex. 2, p. 14, as corrected at trial, Tr. p. 160, l. 10 – p. 161, l. 16.

[19] Cassidy Cross, Tr. p. 403, ll. 14-17.

[20] *Id.*, Tr. p. 403, l. 22 – p. 404, l. 9.

[21] Meyer Surrebuttal, Ex. 2, p. 4, Table 1, p. 5, ll. 31-33, p. 11, ll. 1-12.

considered for recovery and amortization in Ameren's pending rate case. This is obviously the correct way to address the deferred solar rebate expenses.

Ameren and Staff argue that Ameren's substantial investments in plant since its last rate case demonstrate that no rate decrease is due. Such a position is contrary to Missouri law. Section 393.135 provides:

> Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

Ameren's and Staff's position in this regard contravenes the anti-CWIP statute. Each argues that the Commission should refrain from reducing rates now "based on the costs of construction in progress" for plant not yet in service but promised to be in service later. Such action is not only unreasonable, but illegal as well. Moreover, as Meyer noted in his testimony, he did consider Ameren's plant additions. And through March 2014, after much of Ameren's investment, its rate base was actually $180 million lower than the rate base used to set its current rates.[22] That in part is why Ameren was still significantly overearning as of March. As noted above, Ameren's most recent surveillance report, for the twelve months ending June 2014, should include even more of its plant investments. However, as shown in that report, Ameren's rate base as of the end of June 2014 was ** ** than the rate base used to set its current rates. That report shows the highest level of overearnings of the last nine reports (** ** actual

[22] Tr. p. 178, l. 21 – p. 180, l. 12.

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ROE versus 9.8% authorized ROE).[23] This lower rate base total in part explains why Ameren refused to answer Noranda's discovery on this issue.[24]

As Meyer noted in his testimony, and this Commission frequently notes in its decisions, ROE is always a critical issue.[25] Yet Staff, knowing that its recommended ROE would likely be lower than Gorman's, as recognized on page 14 of Staff's initial brief, did not even bother to address this issue in the case. After failing to address one of the more important issues, Staff claims, and Ameren has picked up on this claim, that the amount of overearnings is not material. First, had Staff performed an ROE analysis as it typically does, and particularly if that analysis showed an ROE at or below that recommended by Gorman, as it typically does, the overearnings would be **material** even under Staff's standard of materiality. Second, Staff and Ameren can cite no law making any level of over or under earnings relevant. Indeed, Staff acknowledged at hearing that it would be obliged to review a rate case filed by Ameren even if the level of increase sought was not material in Staff's view.[26] Whatever level this Commission determines that Ameren's rates exceed just and reasonable rates is fair game for rate reduction. That is because the law requires just and reasonable rates.

As Complainants explained in their initial brief, the "all relevant factors" requirement does not mean that every USOA account must be audited and adjusted. Meyer noted that no party other than Staff (not even OPC) could ever bring an overearnings rate complaint if the "all relevant factors" requirement can only be met by conducting a time-consuming, comprehensive, and complete audit of Ameren's books and records.[27] *Amicus Curiae* United for Missouri

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[23] Ex. 18. This exhibit shows the previous eight reports.

[24] Tr. p. 180, ll. 2-10.

[25] Tr. p. 175, ll. 16-18.

[26] Tr. p. 396, l. 18 – p. 397, l. 11.

[27] Tr. p. 219, l. 16 – p. 220, l. 15, p. 244, ll. 20-25.

apparently concurs with Meyer.[28] Meyer noted that most consumers have no or limited access to the utility's key financial information.[29] As Complainants explained, Staff's and Ameren's construction of "all relevant factors" renders the right of customers to bring rate complaints an illusory right. Section 386.390.1 expressly allows customers to file complaint cases "as to the reasonableness of any rates or charges[.]" Similarly, section 393.260.1 allows customers to file a complaint "as to the price of electricity[.]" Likewise, this Commission's regulation 4 CSR 240-2.070(4) and (5) also allows for complaints "as to the reasonableness of any rates[.]" So while the law expressly allows these rate complaints, Staff's and Ameren's interpretation of the "all relevant factors" requirement effectively precludes any consumers from ever successfully prosecuting such a complaint. The Chairman correctly observed, "[t]hat would be an absurd result."[30] Recognizing the absurdity of the position of Staff and Ameren in this regard, Meyer noted that it was for the Commission, not the Staff or Ameren, to determine which factors are relevant in this case and, in Meyer's opinion, he presented all of the relevant factors.[31] Staff's initial brief at least agrees that what is relevant is up to the Commission to determine.[32]

In arguing for the position that a complete and comprehensive audit must be conducted, Staff and Ameren argue that the statutes authorizing complaints contemplate that only the Staff would perform this analysis. Their construction of the law is incorrect. Section 393.270 provides:

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[28] United for Missouri Br. 8.

[29] Tr. p. 172, ll. 5-8.

[30] Tr. p. 220, l. 15.

[31] Tr. p. 219, ll. 20-24.

[32] Staff Br. 8 ("Of course, it is up to the Commission to determine which factors are relevant. 'All relevant factors' does not mean 'all possible factors.'").

> 1. Before proceeding under a complaint presented as provided in sections 393.110 to 393.285, the commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the commission as to any matter of which complaint may be made as provided in sections 393.110 to 393.285, or to enable it to ascertain the facts requisite to the exercise of any power conferred upon it.
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> 2. After a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas, electricity, water or sewer service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished; and may order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, in the distribution or supply of water, in the collection, carriage, treatment and disposal of sewage, or in the methods employed by such persons or corporation as will in its judgment be adequate, just and reasonable. (emphasis added).

Both Staff and Ameren argue that the statute contemplates that Complainants must rely on Staff to perform the comprehensive audit. The problem with that argument is that the statute contemplates both a hearing and an investigation by Staff, and whether Staff performs such an investigation is discretionary with the Commission ("may"). So if the Commission decides without a hearing to refrain from ordering a Staff investigation, the statute still contemplates a remedy for a ratepayer complainant by presenting its evidence at hearing. But, as noted in Complainants' initial brief, that remedy is illusory if the standard is not achievable. As the parties all seem to recognize, Complainants cannot practically meet an "all relevant factors" test **if** that test requires a complete audit of the utility.

In conclusion, Ameren's rates are too high and its overearnings are real. There is no materiality standard under the law, and even if there was, the level of excessive rates easily meets any reasonable materiality standard.

B. A Fair Return on Equity is 9.4 Percent

As the Staff correctly states at the outset of its brief "[t]his case is a general rate case, initiated by customer complaint."[33] Complainants have asked the Commission to find Ameren's current rates unjust and unreasonable, and reset those rates to "avoid further excess profits"[34] on Ameren's part. As in every rate case, the Commission must determine the appropriate ROE for Ameren. This determination is essential to the Commission's evaluation of Ameren's current rates, as well as its re-setting of Ameren's future rates. Contrary to Ameren and Staff's assertions, the Commission's approach to this issue should be exactly the same as in any other rate case. No party has cited any authority that requires the Commission to do otherwise.

The factors this Commission should consider in determining the appropriate ROE for Ameren in this case are correctly summarized in Staff's brief.[35] Indeed, the discussion included in Staff's brief offers a compelling argument in support of the conclusion that Ameren's current authorized 9.8 percent ROE is too high. As Staff notes, Ameren has consistently earned more than its Commission-authorized ROE since at least June 30, 2012.[36] This timing coincides with an "important change" in "the risk environment in which Ameren Missouri functions" brought about by the Commission's approval of "risk-reducing mechanisms" including Ameren's FAC.[37] Notwithstanding this recognition of Ameren's decreased business risk, Staff's brief concludes its discussion of the ROE issue by recommending that the Commission *not* adjust Ameren's ROE in

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[33] Staff Br. 1.

[34] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission of Missouri*, 585 S.W.2d 41, 59 (Mo. banc 1979).

[35] Staff Br. 16-19.

[36] Staff Br. 19.

[37] Staff Br. 19.

this case.[38]

Not surprisingly, Ameren also asserts that the Commission should not reduce its authorized ROE. In support of its position, Ameren cites the testimony of Staff witness Oligschlaeger, who suggested in his rebuttal testimony that this Commission should not decide this issue because Complainants' evidence does not establish "that the factors affecting the calculation of an appropriate ROE for Ameren Missouri have materially changed since the time of Case No. ER-2012-0166."[39] In essence, Oligschlaeger felt it was just too soon after Ameren's last rate case for the Commission to consider the cost of equity.[40] But as Oligschlaeger readily agreed during cross examination by Complainants' counsel, Ameren's 2011 rate case (ER-2011-0028) was filed less than 14 months after its 2010 case (ER-2010-0036), Ameren's 2012 case (ER-2012-0166) followed the 2011 case by just 17 months, and yet in all three cases, Staff performed an ROE analysis and presented that evidence to the Commission for consideration.[41] It was apparently not "too soon" for the Commission to consider changing Ameren's ROE in any of those cases. The current case was filed more than *two years* after Ameren's last rate case was initiated.[42]

The Commission should determine Ameren's current cost of equity based on the expert testimony presented—just as it did in all of the past Ameren rate cases cited in Oligschlaeger's testimony. Both Ameren and Complainants provided the Commission with exactly the same type of evidence that was presented to the Commission in these rate cases concerning ROE.[43] Indeed,

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[38] Staff Br. 20.

[39] Oligschlaeger Rebuttal, Ex. 11, p. 12, ll. 12-14.

[40] Tr. p. 428, l. 20 – p. 429, l. 2,

[41] Tr. p. 430, ll. 4-21; Oligschlaeger Rebuttal, Ex. 11, p. 10, ll. 3-16.

[42] Tr. p. 430, l. 22 – p. 431, l. 2.

[43] *See* Tr. p. 312, l. 25 – p. 313, l. 13.

the Commission considered expert testimony of both Gorman and Hevert in determining the appropriate ROE for Ameren in the last two Ameren rate cases decided by the Commission.[44] Ameren's current cost of common equity is relevant to the issue of whether its current rates are just and reasonable, and also relevant to the determination of its rates going forward. The assertion by Ameren and Staff that Ameren's ROE may not be reduced in this case is groundless.

Ameren also asserts that authorized ROEs have increased since the last rate case and that Hevert's testimony demonstrates that Ameren's current cost of equity is actually 10.4 percent.[45] As explained in Complainants' opening brief, authorized ROEs have declined since 2012 when Ameren's last rate case was considered by this Commission and Hevert's testimony concerning Ameren's current cost of equity is not reliable.[46] Complainants will not repeat those arguments here.

Finally, Ameren asserts that because its currently authorized ROE is within Gorman's range of the estimated cost of equity in this case, Ameren's ROE should remain at 9.8 percent.[47] This assertion misinterprets Gorman's testimony. Gorman testified that it would *not* be reasonable for the Commission to set rates in this case based on an ROE of 9.8 percent, even though this amount falls within his estimated range.[48] As he explained, the midpoint of his range, 9.4 percent, is the appropriate ROE for rate setting in this case because it "is intended to balance the interests of customers and shareholders."[49] Using the high end of his range as

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[44] *See* File No. ER-2011-0028, Report and Order, pp. 64-65; File No. ER-2012-0166, Report and Order, p. 65

[45] Ameren Br. 21-22.

[46] Complainants Br. 17-26.

[47] Ameren Br. 21.

[48] Tr. p. 311, l. 12 – p. 312, l. 1.

[49] Tr. p. 312, ll. 2-6.

Ameren advocates, "would tilt the balance in favor of investors."[50] In this case there are no extenuating circumstances that warrant using the high end of the range of ROEs.[51] As Gorman summarized, "for rate setting the most balanced and reasonable return on equity is the midpoint of the range, not the high end of the range."[52] Based on the evidence presented in this case, the Commission should find that 9.4 percent is the appropriate ROE for Ameren. And based on this finding, the Commission should conclude that Ameren's current rates are unjust and unreasonable and should reduce Ameren's rates accordingly.[53]

III. CONCLUSION

The Commission has before it all relevant factors that establish that Ameren Missouri's current rates allow it to recover $49,442,000 per year in excess of a reasonable ROE. No regulatory principle precludes granting the Complainants the relief that they seek. The Commission's statutory obligation to set just and reasonable rates that balance the interests of utilities and their subscribers favor reducing Ameren Missouri's revenues to better match rate base expenses, revenues, and returns until the Commission orders new rates in Case No. ER-2014-0258.

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[50] Tr. p. 312, ll. 6-7.

[51] Tr. p. 312, ll. 6-16.

[52] Tr. p. 312, ll. 20-22.

[53] Complainants' request to reduce rates based on an ROE of 9.4 percent is supported by the briefs filed by Missouri Retailers Association ("MRA"), Office of Public Counsel ("OPC") and AARP and the Consumers Council of Missouri ("AARP & CCM"). *See* MRA Br. 1; OPC Br. 14; AARP & CCM Br. 7.

Respectfully submitted,

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ATTORNEYS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 29th day of August, 2014, to all counsel of record.

/s/ Edward F. Downey