BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2010-0036

POST-HEARING BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

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MISSOURI INDUSTRIAL ENERGY CONSUMERS' POST-HEARING BRIEF

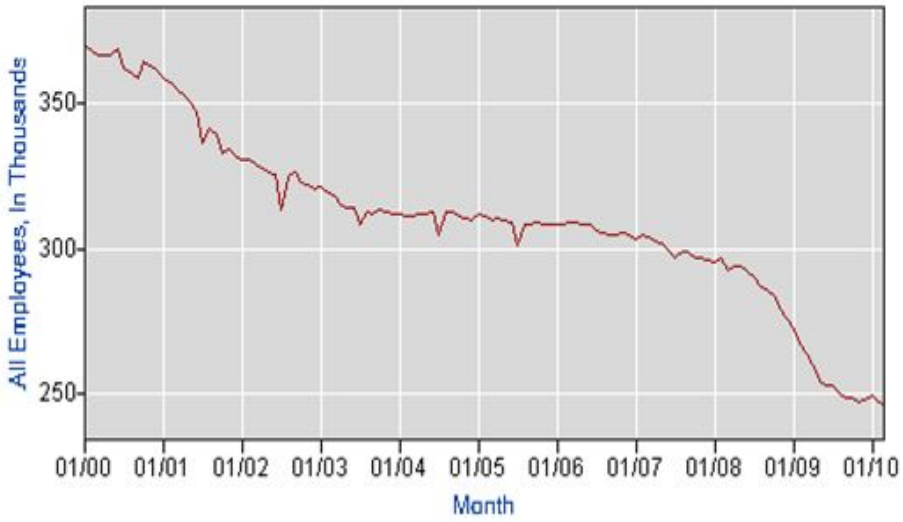
The Missouri Industrial Energy Consumers ("MIEC") respectfully submits its Post-Hearing Brief in accordance with the Commission's Order Setting Procedural Schedule in this case.

INTRODUCTION

The evidence in this case shows that AmerenUE has significantly overstated its revenue requirement. As in each one of its prior rate case, it appears that AmerenUE has exaggerated its revenue requirement as much as possible.

Missouri's economy is in a state of crisis, and the Commission should be cautious to avoid increasing rates any more than absolutely necessary. Missouri is losing jobs at an alarming rate, especially high-paying manufacturing jobs, as demonstrated by the Bureau of Labor Statistics' chart below:

Series Id: SMS29000003000000001
Seasonally Adjusted
State: Missouri
Area: Statewide
Supersector: Manufacturing
Industry: Manufacturing
Data Type: All Employees, In Thousands



Employment, Hours, and Earnings - State and Metro Area[1]

The closures of major plants has crumbled Missouri's economic base: Missouri has lost 25,300 manufacturing jobs since AmerenUE's last rate case was decided in January, 2009 and has lost 123,799 jobs in the last decade.[2] This is not the time to increase the rate burden on Missouri employers.

The Commission is part of Missouri's Department of Economic Development, and consistent with the Department's mission, should take every precaution to ensure its decisions

[1] Bureau of Labor Statistics *Employment, Hours, and Earnings - State and Metro Area* (Current Employment Statistics – CES Database), http://bls.gov/sae/ (last visited April 23, 2010).

[2] *Id.*

help Missouri attract and retain good paying jobs.[3] AmerenUE is not the driver of Missouri's economic growth. It is a monopoly service provider and its strength depends on the strength of the economic base created by its customers. Increased utility rates contribute to job loss and the closing of plants, as well as lost purchasing power of residential customers. While AmerenUE is entitled to recover its prudent costs and a fair return, the Commission should keep the dire condition of Missouri's economy in mind when balancing the interests of customers and shareholders in this case. AmerenUE always has the ability to ask this Commission for higher rates to cover its costs and make a profit, but Missouri's manufacturers do not have that luxury. If rates are excessively increased any more than is absolutely necessary in this case, the negative economic impact could be permanent, and jobs lost due to increased cost of doing business are unlikely to return to Missouri.

The MIEC submitted evidence on the following major issues in this case that were not settled and are before the Commission for decision.

I. POWER PLANT MAINTENANCE EXPENSE

Mr. Meyer's normalized level of expense analysis should be adopted because it is the only methodology that accounts for AmerenUE's fluctuation in maintenance costs from year to year.

AmerenUE's request of a $119 million dollar expense level for plant maintenance is unjustifiably inflated because it 1) is based on an anomalous test year; 2) selectively ignores those years that do not include multiple planned outages; and 3) unnecessarily exaggerates the effect of inflation on AmerenUE's expenses.

[3] Missouri Department of Economic Development, David Kerr, Director http://www.ded.mo.gov/Sitemap.aspx.

Conversely, MIEC's analysis resulting in a recommendation of $105 million expense level should be accepted because it 1) accounts for AmerenUE's fluctuations in costs; and ***

***

AmerenUE requests an abnormally high level ($119 million) of plant maintenance expenditures based on a test year where AmerenUE incurred its highest historical level of expense in at least the past ten years. AmerenUE attempts to use this anomalous year, as well as its budgeted projections for future years, to convince the Commission of its need for an unreasonably high expense level. AmerenUE derives its exaggerated expense level by selectively excluding any reference to those years where no units (or possibly only 1) are scheduled for maintenance. Indeed, AmerenUE's witness, Mr. Birk, ***

***

Furthermore, in 2009 AmerenUE spent only $96.5 million on power plant maintenance.[6] AmerenUE claims that 2009 is not a representative year for establishing maintenance expense

[4] Transcript, Page 1024, Line 8 through Page 1025, Line 3.

[5] Transcript, Page 1025, Line 20 through Page 1026, Line 15.

because of AmerenUE's decision to delay maintenance on its entire fleet. ***

***

In sum, AmerenUE would have the Commission grant it an inordinately high expense level based on one anomalously expensive year and three years of budgeted (instead of actual) numbers. AmerenUE's reasoning is as dubious as its request. This Commission has historically relied on historical data to set expense levels and there is no reason for it to deviate from that practice now.

Unlike AmerenUE's analysis, which relies on budgeted numbers, a test year with an inordinately high level of expense and the selective omission of those years where expenses will be greatly diminished, MIEC's proposed $105 million expense level relies on a careful analysis of historical data to account for both expensive and relatively inexpensive years and also takes into account the intervals between AmerenUE's planned outages.

MIEC's witness, Mr. Meyer derived his recommendation based on a careful and detailed analysis of historical data that incorporated 1) the cost of routine maintenance for the plants; 2) the cost of scheduled maintenance (or planned outages) for the plants; and 3) the intervals between the planned outages. ***

*** but it also received a ringing endorsement from AmerenUE's witness, Mr. Birk. Indeed, AmerenUE testified that the only fault it could find with MIEC's analysis was its supposed failure to account for inflation:

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[6] Birk Rebuttal, Ex. 102, Page 16; Transcript, Page 1025, Line 20 through Page 1026, Line 15; Table UEC Fossil Plants Maintenance Expenditures in Millions $.

> Q. Going back to Mr. Roam's cross-examination from yesterday, is it fair to say that your only criticisms of Mr. Meyer's methodology is that he did not account for the -- for the time value of money, you know, based on coming up with the -- the base expenses?
>
> A. My -- that -- that is correct. My biggest concern is that he did not account for escalation in coming up with the base and -- and the maintenance -- the overhaul expenses, yes, sir.[7]

AmerenUE's criticism of Mr. Meyer's analysis fails because even AmerenUE admitted that ***

*** and 2) AmerenUE's base expenditures remained flat between 2005 and 2009.

[7] Transcript, Page 1042, Lines 16-25.

[8] Transcript, Pages 1019, Line 19 through Page 1020, Line 1.

[9] Transcript, Page 1144, Line 9 through Page 1145, Line 19.

In short, AmerenUE's request is unjustifiably inflated because it 1) is based on an anomalous test year and budgeted, as opposed to historical, numbers; ***

***

Conversely, MIEC's analysis resulting in a recommendation of $105 million expense level should be accepted because it 1) accounts for AmerenUE's fluctuations in costs based on actual historical data; and ***

***

II. STORM EXPENSE AND TRACKER

The Commission should 1) allow the amount included in the last rate case ($5.2 million) as an ongoing level of storm expense for AmerenUE because that amount more than adequately covers the actual storm expenses incurred by AmerenUE since March 1, 2009; and 2) disallow the use of "tracker" as it is entirely unnecessary and deviates from the more reasonable total cost concept approach.

AmerenUE is requesting an abnormally high level of $10.4 million as an ongoing level of storm expense. This amount is in excess of $9.6 million from the level of storm expense incurred by AmerenUE since March 1, 2009. In fact, AmerenUE experienced only one major storm since March, 2009, amounting to an expense of only *** *** (non-internal labor). Further, AmerenUE admits that it should anticipate a *decrease*, not an increase, in storm expenses due to its compliance with the Commission's stricter tree trimming standards:

> If you're asking me today, if the standards were in place today or were in place then that are in place today, would it have made a difference? I think it would have made a difference. . . . [T]here would certainly in my estimation have been some outages that hadn't occurred, absolutely.[10]

[10] Transcript, Page 1586, Line 24 through Page 1587, Line 5.

While AmerenUE admits that its more aggressive tree-trimming practice should provide some savings in storm restoration costs, no party has yet proposed to lower the level of storm restoration costs to capture these savings. Furthermore, AmerenUE admitted on cross-examination that there exists cost savings in restoration expenses from lessons learned during each previous storm.[11] Therefore, we should expect the cost for storm restoration to decrease rather than increase in the future due to more aggressive tree trimming and the lessons learned from prior storms. However, no one is proposing to decrease AmerenUE's expense level to account for these decreased costs. MIEC merely proposes that the Commission maintain the current level of storm maintenance provided in the prior rate case, $5.2 million, because it is more than a sufficient level of storm expense. Thus, the Commission should adopt MIEC's proposal because there is absolutely no need to increase AmerenUE's storm expense level and doing so would be unreasonable and imprudent.

Additionally, the Commission should deny AmerenUE's request for a storm tracker because a tracker unnecessarily deviates from the more reasonable all relevant factor concept approach, and unnecessarily supplants the more reasonable accounting mechanisms for storm recovery like interim/emergency rate relief and accounting authority orders. Implementing a storm tracker would unfairly and unreasonably require ratepayers to pay for storms that could have been covered by excessive profits or other expense reductions experienced by AmerenUE in a given year (all relevant factor concept). Moreover, AmerenUE's own witness, Mr. Wakeman, admitted that the implementation of a tracker would make no difference in AmerenUE's ability to robustly respond to damages incurred in a storm.[12] Rather, he testified

[11] Transcript, Page 1584, Lines 9-13.

[12] Transcript, Page 1595, Lines 11-16.

that AmerenUE prefers a tracker due to regulatory lag and the certainty of relief.[13] These concerns are not valid. First, there is absolutely no difference in terms of "regulatory lag" between the relief offered by a tracker and the relief offered by an accounting authority order. Both mechanisms provide relief in the subsequent rate case. When pressed, AmerenUE admitted that the "regulatory lag" concern was a non-issue:

> Q. Do rates change outside of a rate case with a tracker?
>
> A. No, I don't believe so.
>
> Q. Okay. Do they change outside of a rate case with an Accounting Authority Order?
>
> A. No.
>
> Q. So in either circumstance, you have to wait 'til the rate case following the event to recover costs associated with that event; is that correct?
>
> A. That's my understanding, yes, sir.[14]

Second, AmerenUE can point to no instance where it was denied storm expense relief under an accounting authority order for reasonable and prudent costs it incurred for storm recovery efforts.[15] Therefore, a tracker offers no legitimate advantage to AmerenUE or to Missouri rate payers, and an accounting authority order provides a better and more equitable means for AmerenUE to recover its storm relief expenses.

Additionally, AmerenUE's own expert admits that the use of a tracker would adversely effect its shareholders, to whom AmerenUE has a fiduciary duty:

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[13] Transcript, Page 1594, Line 15 through Page 1595, Line 7.

[14] Transcript, Page 1614, Lines 14-23.

[15] Transcript, Page 1619, Lines 15-18.

Q. Let me . . .put some numbers in and see if I can help you out. Say you've got a base amount of $10 million and you spend only $8 million in that given year. In that situation, without a tracker, what do the shareholders get?

A. The $2 million.

Q. If there is a tracker, what do shareholders get?

A. The $2 million for the short term until it's trued up age

Q. So whatever the value is of holding that $2 million for a period –

A. Right.

Q. -- and then giving it back?

A. That's fair. Yes.

Q. Isn't it always going to be the case that that is less value to the shareholders than actually getting the entire $2 million?

A. Sure.

Q. Okay. Do you have a fiduciary duty to maximize return to shareholders?

A. Yes.[16]

Moreover, the current mechanisms for recovery of storm relief expenses are fair, reasonable and require no alterations. Indeed, as was testified to by Staff's witness, Mr. Rackers, an accounting authority order is the middle ground which the Commission seeks in terms of providing storm recovery relief.[17]

On the other hand, the implementation of a tracker would provide no benefit to Missouri rate payers, would not address AmerenUE's alleged concerns about regulatory lag and certainty of recovery, and would materially and adversely effect AmerenUE shareholders to whom

[16] Transcript, Page 1618, Line 12 through Page 1619, Line 8.

[17] Transcript, Page 1662, Line 1 through Page 1663, Line 9.

AmerenUE has a fiduciary duty. Thus, implementing a storm tracker would constitute an unfair, unreasonable and wholly unnecessary deviation from the current regulatory mechanisms for providing storm relief recovery.

For the foregoing reasons, the Commission should maintain the current expense level for storms in rates and deny AmerenUE's request for a storm expense tracker.

III. INFRASTRUCTURE INSPECTION EXPENSE AND TRACKER

The Commission should 1) establish $7.6 million as the level of expense for infrastructure inspections because this amount reflects the actual expenses incurred by AmerenUE in the twelve months ending January 31, 2010; and 2) deny AmerenUE's request for an extension of an inspection expense tracker because it is unnecessary and unreasonable.

AmerenUE admits that it has been complying with the Commission's new infrastructure inspection rules since July, 2008.[18] During the twelve months ending January 31, 2010, AmerenUE's infrastructure inspection expenses totaled $7.6 million.[19] AmerenUE appears to maintain that it cannot establish a sufficient historical expense level until it has inspected its entire system (12 years). AmerenUE's argument should be disregarded, because 18 months of compliance with the Commission's new infrastructure inspection rules constitutes more than enough time to establish adequate historical data for the purposes of normalizing expense levels.[20] Furthermore, AmerenUE had been performing many of these inspections prior to the rule implementation and thus possesses even more cost history to establish the proper level of expense. *Id.* This Commission has historically relied on actual costs (as opposed to forecasted

[18] Transcript, Page 1716, Lines 2-13.

[19] Meyer Surrebuttal, Ex. 402, Page 14, Lines 2-4.

[20] Transcript, Page 1769, Line 12 through Page 1771, Line 8.

costs) to establish infrastructure expense levels. AmerenUE has offered no compelling reason to deviate from the Commission's long established practice.

Additionally, AmerenUE's request for the continued use of a tracker should be denied because AmerenUE has access to perfectly adequate relief mechanisms such as accounting authority orders. The Commission Rules regarding infrastructure inspections allows a utility to file for an accounting authority order if the expenses to comply with the rules are greater than the amount currently included in rates.[21] The protection provided in the Commission's Rules does not appear to satisfy AmerenUE, which seeks to have a tracker established even before knowing whether the level of expense determined by the Commission in this case is sufficient. AmerenUE's request is premature and overreaching.

Furthermore, while trackers may be useful when historical levels of expense are unknown, they are inappropriate when adequate historical data exists by which to establish a normalized expense level. Thus the continued use of a tracker in this case would constitute an unnecessary, unfair an unreasonable burden on rate payers. For these reasons, the Commission should establish a $7.6 million expense level for infrastructure inspection and deny AmerenUE's request for a tracker.

IV. VEGETATION MANAGEMENT EXPENSE AND TRACKER

The Commission should 1) establish a vegetation management expense level of $50.4 million based on the actual costs incurred by AmerenUE for vegetation management; and 2) deny AmerenUE's request for a tracker, because a tracker is entirely unnecessary in this case.

[21] Commission Rule 4 CSR 240-23.020(4).

AmerenUE requests an abnormally high level of $53.7 million for vegetation management.[22] The Commission should reject AmerenUE's request because two periods of historical data indicates that AmerenUE's actual costs approximate $50.35 million annually, or in excess of $3 million less than AmerenUE's request. In the test year ending March 31, 2009, AmerenUE's costs came to $50.3 million, or $3.4 million less than the level AmerenUE now seeks. Similarly, in the true-up period ending January 31, 2010, AmerenUE's costs came to $50.4 million, or $3.3 million less than the level AmerenUE now seeks.[23] The data from these two annual periods demonstrates that AmerenUE's expenses for vegetation management are relatively constant.

AmerenUE argues that two years of historical data is insufficient because maintaining the entire route requires four to six years for urban and rural circuits respectively, and AmerenUE has no way of knowing whether upcoming circuits will cost more to maintain than previous circuits.[24] AmerenUE's argument is logically flawed. AmerenUE began more aggressive clearance trimming in 2004.[25] These more aggressive standards were not as aggressive as the 2008 standards, but were more aggressive than previous programs. So by November 2008, AmerenUE had trimmed all urban and rural circuits with the more aggressive 2004 standard.[26] AmerenUE admits that it began complying with the Commission's even stricter vegetation

[22] Wakeman Rebuttal, Ex. 109, Page 10, Line 17.

[23] Meyer Surrebuttal, Ex. 402, Page 10, Lines 9-10.

[24] Wakeman Rebuttal, Ex. 109, Page 7, Lines 11-14.

[25] Transcript, Page 1713, Lines 13-17.

[26] Zdellar Direct, Ex. 157, Page 14, Lines 14-16.

management rules as early as January of 2008.[27] Thus, all of the remaining circuits have already undergone a more aggressive trimming than in previous years (pursuant to the 2004 and /or 2008 standards) and thus will be easier and less expensive to trim than they were during the previous cycle. As such, it would be patently unreasonable to rely on AmerenUE's projected costs when the evidence and historical data clearly indicates that AmerenUE's costs will be significantly lower than AmerenUE's request. For these reasons, the Commission should deny AmerenUE's inflated request and set an expense level of $50.4 million, a more than sufficient amount for vegetation management.

AmerenUE also requests the continued use of a tracker to gauge vegetation management expenses.[28] While a tracker may have been appropriate when there was insufficient historical data to designate a normalized expense level, it is no longer appropriate because two years of historical data provides more than enough information to normalize an expense level for vegetation management. AmerenUE also argues that a tracker is needed to avoid the adverse effect of regulatory lag.[29] As discussed in Section II above, this argument is incredible because a tracker has no effect on the so-called "regulatory lag" issue that seems to concern AmerenUE. That is, relief from a tracker is recovered no earlier than relief from the more reasonable regulatory mechanism of an accounting authority order. In addition, as discussed in Section III above regarding Infrastructure Inspection, the Commission's Rules provide AmerenUE an opportunity to request an accounting authority order in the event its expenses to comply with the

[27] Transcript, Page 1716, Lines 16-17.

[28] Transcript, Page 1715, Line 22 – Page 1716, Line 1.

[29] Transcript, Page 1704, Lines 1-14.

Commission's Rules exceed the level of expense included in rates.[30] Therefore, AmerenUE's request for a tracker should be denied because it is unfair, unreasonable and entirely unnecessary.

V. DEPRECIATION

Introduction

The Commission should continue using the whole life approach for calculating depreciation for steam and hydraulic production plants. It should also continue using the whole life approach for calculating depreciation for the gas turbine plants, as all parties agree. For the nuclear plant, the Commission should continue depreciating the plant over a sixty year operating life. AmerenUE differs with the MIEC and Staff over the depreciation approach for the steam production and hydraulic production accounts. AmerenUE believes that the investment in these accounts should be depreciated using the life span approach, while the MIEC and the Staff both believe that the Commission should continue to use the mass property approach as it did in case number ER-2007-0002.

Both AmerenUE and Staff performed depreciation studies for the steam and hydraulic production accounts using the whole life approach. AmerenUE contends that its whole life study should only be used to develop interim retirement activity while the Staff uses its study to determine average service life estimates. The Staff's position under its study is that AmerenUE's proposed depreciation accruals should be reduced by $17.7M for steam production accounts ($23.7M decrease for life and $6.0M increase for net salvage). The Staff generally prepared a good study, however, that study contained certain flaws that benefit AmerenUE to the detriment of ratepayers and, consequently, this Commission should accept that study with certain

[30] Commission Rule 4 CSR 240-23.030 (10).

modifications. These modifications are reflected in the whole life study performed by Ameren. Specifically, those modifications are the following:

(1) The Staff used the retirement data of Mound, Cahokia and Venice to develop depreciation rates for the steam production accounts. The retirement experience of those steam production plants are not indicative of the expected retirements of the existing steam plants and should not have been included in the life analysis because they were: oil/gas fueled rather than fueled by coal; retired due to a fire; had heat rates that are significantly higher than the existing steam plant; and/or were used on a cycling basis. Most of those attributes are not held by the existing steam plants. The removal of the Mound, Cahokia and Venice retirements in the life study will cause a decrease in the depreciation accrual of $20.5M.[31] The AmerenUE whole life study did not reflect the Mound, Cahokia and Venice final retirement data.

(2) Because of the way the Staff's study was performed, for steam production plant the Staff's salvage rates include $5.8M annually for removal costs for the final retirement of generation plant (terminal net salvage).[32] Terminal net salvage has not been allowed by this Commission because fossil fuel plants can be rehabilitated and retained in use and, because no production plant retirements are imminent, their removal costs are speculative.[33] Indeed, the record in this case contains a picture of the still standing Cahokia steam plant, which was retired

[31] Selecky Surrebuttal, Ex. 406, Page 10, Lines 9-10.

[32] Dunkel Rebuttal, Ex. 407, Page 14, Lines 14-16.

[33] *In the Matter of Empire District Electric Company*, Case No ER-2004-0570, Report & Order (March 10, 2005), Pages 29 and 53.

30 years ago. Neither AmerenUE nor any Ameren affiliate now owns that plant, so AmerenUE will never have to demolish it.[34]

For Transmission and Distribution (T&D) accounts, there is a current accrual in the depreciation reserve of $582M for future net salvage costs.[35] AmerenUE proposes to accrue $55M a year for T&D net salvage costs even though, over the next 10 years, it is projected to spend only $19M a year for net salvage costs. This means that the balance of accruals for future net salvage costs will increase by approximately $360M, to $942M, over the next 10 years. The MIEC suggests an annual offset of $25M in the net salvage cost accrual to slow the growth in the accrual balance for future T&D net salvage costs. The MIEC does not suggest, as AmerenUE and Laclede Gas incorrectly assert, that the Commission use expense accounting. Under the MIEC approach, AmerenUE will still continue to accrue T&D future net salvage expense by $10M a year more than it will incur ($55M requested - $25M annual offset proposed by the MIEC - $20M estimated annual expense).

The Staff and AmerenUE used the final retirements of the Callaway steam generators to develop depreciation rates for Account 322 Reactor Plant Equipment. ***

*** Including the short lived steam generators in the future life and net salvage analysis effectively shortens the average remaining

[34] Dunkel Rebuttal, Ex. 407, Ex. WWD-1.

[35] Selecky Surrebuttal, Ex. 406, Pages 16, Lines 13-4.

[36] AmerenUE Settlement Agreement, Ex. 438.

life and overstates the net salvage ratio. This results in producing a depreciation rate that is higher than it should be. Excluding these retirements from the analysis reduces both AmerenUE's and Staff's depreciation expense by $5M annually.

Finally, if in spite of this Commission's precedent and the Staff's and MIEC's recommendations, the Commission elects to switch depreciation methods in favor of the life span approach, it should make two adjustments to AmerenUE's calculations of the steam production depreciation rates. First, the retirement date for the Meramec plant should be 2027, rather than 2022. ***

*** This adjustment also derives from the fact that an earlier retirement scenario was due, in part, to having Meramec's capacity replaced by Callaway 2, an event not even under consideration at this time. Moreover, no current resource plan shows how Meramec's capacity is planned to be replaced. The second issue involves Account 312's net salvage. It should be -10%, and not -15% as AmerenUE asserts. AmerenUE based the -15% figure on the assumption that 60% of the retirements in that account will be interim retirements.[38] However, AmerenUE also asserts that a substantial portion, 50%-80%, of the retirements will occur one date in the future when the plant is retired.[39] That means that in one place AmerenUE states that the interim retirements will be 60% and elsewhere that they will be between 20%-50%. Because of that inconsistency, the MIEC reviewed actual removal costs over the last 10 years, and escalated that cost by 3% per year to

[37] Meramec Condition Report, Ex. 434.

[38] Wiedmayer Rebuttal, Ex. 105, Page 47, Lines 20-23.

[39] Wiedmayer Rebuttal, Ex. 105, Page 20, Lines 3-6.

project future removal costs. It then calculated a net salvage of -10%. These two adjustments represents a $13.6M reduction in the accrual for steam production (Schedule JTS-15).

The combination of the MIEC's adjustments to the Staff's proposed accruals is $56M.[40] The combination of the MIEC's adjustment to AmerenUE's proposed accruals is $73M.[41]

This portion of MIEC's brief follows the order of the issues identified by the Commission from the parties' statements of position. Although there is overlap among the various issues that the Commission has identified, this brief identifies the issues according to the specific section noted in the position statements. It should be noted that the MIEC does not take a position on all of the depreciation issues listed in the position statement.

12i. Should depreciation rates for AmerenUE's steam production and hydroelectric power plants be established using the life span approach or the mass property approach?

The Commission should continue to use the mass property approach. In Case No. ER-2007-0002, this Commission rejected AmerenUE's use of the life span approach for a number of reasons, all of which still apply today. In that case, AmerenUE first offered that all of its fossil fuel steam plants would retire on June 30, 2026, because that date was 20 years in the future and

[40] Selecky Surrebuttal, Ex. 406, Schedule JTS-15. This Schedule reflects only those depreciation categories where the MIEC differs from Staff and/or AmerenUE. Transcript 1468. Also, it does not reflect the $5.8M adjustment proposed by witness Dunkel to remove terminal net salvage from Staff's calculation of steam production depreciation. However, because Staff increased AmerenUE's net salvage accrual by $6M for steam production net salvage and Selecky had increased that accrual by only $4M, the Dunkel adjustment should be made to Staff's steam production net salvage. The net reduction is $3.8M from what is shown on Schedule JTS-15. Staff's figure of $6M – Dunkel's figure of $5.8M = $.2M, which is $3.8M lower than allowed on Schedule JTS-15. Thus, the $56M was determined from Schedule JTS-15 as follows: $298M proposed by Staff - $246M proposed by Selecky + $3.8M adjustment proposed by Dunkel = $56M. It should also be noted that the revised true-up reconciliation provided by Staff does not show the Dunkel adjustment for terminal net salvage.

[41] Selecky Surrebuttal, Ex. 406, Schedule JTS-15. The $73M was determined from Schedule JTS-15 as follows: $315M proposed by AmerenUE - $246M proposed by Selecky + $3.8M adjustment proposed by Dunkel = $73M.

operation beyond 20 years was uncertain. Recognizing how slender that reed was in supporting its position, AmerenUE later calculated different retirement dates for each steam production plant, based on "future environmental requirements, future development of new generating technologies, and the finite life of components of the plants. [Ameren] also considered the age and condition of each major component, the service history of each facility and the expected future service conditions, anticipated near term capital investment for each facility, and the time and resources required to permit and construct replacement base load production capacity."[42] After making this "careful evaluation" in Case No. ER-2007-0002, AmerenUE concluded that each of its fossil fuel steam plants would retire at age 60 in a 16 year span, from 2021 to 2037.[43] In its brief to this Commission in Case No. ER-2007-0002, AmerenUE argued that "[w]here a utility has reasonable, and reasonably supported[,] estimates of plant retirement dates, **as AmerenUE clearly has in this case**, the life span method is the most appropriate approach to depreciating components of the plants and should be used."[44]

In spite of AmerenUE's assertions of how reasonable and well-supported its retirement dates were in Case No. ER-2007-0002, this Commission rejected AmerenUE's position because it accepted Staff's position that the retirement dates of AmerenUE's base load coal-fired electric generating plants "cannot be known with any degree of certainty at this time." The Commission concluded that "[i]t is very unlikely [that] AmerenUE will actually choose to retire and replace

[42] In the Matter of AmerenUE, Case No ER-2007-0002, *Report & Order* (May 22, 2007), Pages 81-2.

[43] *Id*.

[44] In the Matter of AmerenUE, Case No ER-2007-0002, Post-Hearing Brief of AmerenUE, Page 132. (emphasis added)

such a large percentage of its base load generation capacity within the short span of 16 years between 2021 and 2037."[45]

To support its proposed lives for its steam production plants in this case, AmerenUE relies on a study performed by AmerenUE witness Loos. Mr. Loos proposes to retire all of AmerenUE's coal-fired steam plants in a span of 24 years, from 2022 to 2046.[46] If the Meramec retirement is pushed back 5 years, as the MIEC suggests is warranted under the life span approach, all of the coal-fired steam plants will be retired in 19 years. While that is longer than the 16 years in Case No. ER-2007-0002, it is not longer by much. And AmerenUE is proposing to retire 84% of its steam production capacity (Sioux, Labadie and Rush Island) in a span of only 13 years.[47] AmerenUE again argues that its retirement dates are reasonable and well-supported, but they are just as speculative now as they were in Case No. ER-2007-0002.

The retirement dates essentially are derived from concluding that the plants will retire 20 years after AmerenUE installs additional pollution controls.[48] AmerenUE concludes that economic considerations, rather than physical deterioration, will dictate the retirement dates.[49] Yet, nowhere did AmerenUE perform an economic analysis of the generating facilities that will replace the retiring units.[50] Nor did AmerenUE conduct much analysis of whether and how the existing units' lives could be extended:

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[45] *Id*. at Page 84.

[46] Loos Direct, Ex. 107, Page 14, Lines 4-8.

[47] Transcript, Page 1293, Line 11 through Page 1294, Line 9.

[48] Transcript, Page 1280, Lines 13-14.

[49] Transcript, Page 1278, Lines 10-13.

[50] *Id*.

> No, I [Mr. Loos] did not … attempt to estimate what the cost of rehabilitation upgrades, restoration efficiencies, all the various factors that would go into the life extension to compare against what the alternatives are and what the efficiencies of these plants would be relative to what the alternative – the efficiency of alternative is[,] nor an exhaustive … investigation of what the technology might be.[51]

Moreover, the Loos study of the retirements of 586 production units supposedly supporting AmerenUE's steam production units' retirement dates is of limited use as the analysis of those units was like studying the lives of a large fleet of Yugos in order to determine the life of over-the-road diesel trucks. While the average capacity of the AmerenUE production units under consideration is 470 MW, the mean capacity of the units in the Loos study was only 33.12 MW and the median was only 12.25 MW.[52] And the heat rates of the 586 units studied (median of 12,359 BTU/kWh and mean of 12,323 BTU/kWh) were much higher than the heat rates of the AmerenUE units under consideration (mean of 10,125 BTU/kWh).[53] The record is clear that the more efficient units will typically have longer lives than the less efficient units. Indeed, in arguing against a 5 year extension of the retirement date for Meramec, AmerenUE witness Birk stated that Meramec's heat rates of 10,400-11,800 Btu/kWh are a basis for its earlier retirement relative to the other steam plants,[54] yet its heat rates are significantly lower than the average heat rates of plants included in the Loos study. Further, the study did consider retirements of coal-fired steam units in many western states, but did not consider whether those states had higher levels of environmental regulation or more viable wind or solar renewable energy sources than in

[51] Transcript, Page 1281, Lines 3-11.

[52] Determined from Loos Direct, Ex. 107, Table 2-1, column C, and Appendix A-2 column C; Transcript, Page 1285, Lines 9-15.

[53] Determined from comparison of Heat Rates & Fuel Type, Ex. 437, and Response to Data Request MIEC 4-21, Ex. 442, Lines 4-5.

[54] Birk Rebuttal, Ex. 103, Page 12, Lines 5-9.

Missouri.[55] Those considerations certainly would have been relevant in determining why the plants in the study retired when they did.

Last, Mr. Loos based his 2022 retirement date of the Meramec plant on AmerenUE's Integrated Resource Plan, or IRP, which included plans for obtaining capacity from a now-abandoned Callaway 2 plant.[56] Obviously, the assumption that Callaway 2's capacity will replace the Meramec capacity is unfounded.

While a slick study looks good, the underlying information in this study is not a reliable gauge for the projected retirements of AmerenUE's coal-fired steam plant. Therefore, the Loos' study provides no meaningful support for projecting the life spans of AmerenUE's steam production generating plants.

In its position statement, AmerenUE argues that Staff's position in this case, and by implication this Commission's decision in Case No. ER-2007-0002, cannot be reconciled with 4 CSR 240-3.175. That regulation requires electric utilities to report an estimated final retirement date for "each warehouse, electric generating facility, **combustion turbine**, general office building or other large structure."[57] The subject regulation has no bearing on whether this Commission should use the mass property or life span approach. AmerenUE agrees that its combustion turbines should be depreciated under the mass property approach even though it is required to report an estimated final retirement date for each unit.

Given that the retirement dates for the coal-fired and hydraulic production units are not clear, particularly since there is no plan showing how their substantial capacity will be replaced,

[55] Transcript, Page 1282, Line 14 through Page 1283, Line 3.

[56] Transcript, Page 1281, Line 23 through Page 1282, Line 9.

[57] Emphasis added.

this Commission should follow its reasoning in Case No. ER-2007-0002. It should not impose large rate increases upon today's consumers based upon speculative retirement dates for the majority of AmerenUE's generation fleet.

12 i.a. If the life span approach is used, what are the appropriate depreciation rates?

Should the Commission use the life span approach for coal-fired and hydraulic production units, it should make the adjustments suggested by the MIEC leading to the depreciation expense shown in Selecky Schedule JTS-15.[58] It should use 2027 as the retirement date of the Meramec plant and it should use a -10% salvage factor for Account 312.[59]

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*** The MIEC notes that the lives of the other coal-fired steam units were 5 years longer than Meramec in any event. AmerenUE cites environmental and space considerations in dismissing the MIEC's adjustment, but admitted that conversion from coal to natural gas would address most of the space and

[58] Selecky Surrebuttal, Ex. 406.

[59] The MIEC notes that the correct depreciation allowances under the life span approach shown in Schedule JTS-15 include other adjustments (T&D Net Salvage and Account 320) discussed below.

[60] Meramec Condition Assessment Report, Ex. 434, Pages 1-1 and 5-2.

environmental concerns if the size of the gas distribution line were expanded.[61] AmerenUE witness Birk admitted that Meramec could be extended beyond 2022 ***

*** Given that the planned addition of Callaway 2 in 2021 or 2025 was in part the basis for retiring Meramec in 2022, it is unreasonable to assume that it will be retired in 2022, particularly with no current plan to replace its capacity. It is also unreasonable to over-recover depreciation from current customers given that fact.

AmerenUE determined a -15% salvage value for Account 312. MIEC determined a -10% salvage figure for Account 312 by considering actual removal costs over a 10-year period and by escalating those costs by 3% per year. It then determined a salvage cost that was 63% of the cost determined by AmerenUE, which works out to -10% (-15% x .63).[62] AmerenUE's calculation was not reliable because its calculation assumed that 60% of removal costs would be from interim retirements.[63] Yet, elsewhere its witnesses indicated that interim retirements were only 20%-50%.[64] Because of this inconsistency, the Commission should rely on MIEC's net salvage analysis because it reflects actual net salvage experience escalated over the remaining lives of the steam production plants.

[61] Transcript, Page 2705, Line 8 through Page 2721, Line 9.

[62] Selecky Direct, Ex. 403, Page 24, Lines 15-20.

[63] *Id*.

[64] Wiedmayer Rebuttal, Ex. 105, Page 20, Lines 3-6.

In summary, if the life span approach is selected, the depreciation rates for production plant should be as reflected on Schedule JTS-7 with the depreciation expense as shown on JTS-15.[65] That would result in a reduction in depreciation expense of $44M ($315M - $271M).

12i.b. If the mass property approach is used, what are the appropriate depreciation rates?

The Commission should adopt the depreciation allowances in Schedule JTS-13 to the Selecky Surrebuttal, with a $3.8M adjustment to remove the impact of terminal net salvage in the depreciation rates for the steam production plant.[66] That schedule reflects modifications to the mass property study conducted by Staff, other than the previously discussed $5.8M adjustment proposed by witness Dunkel for steam production plant that, when plugged into the Selecky calculations becomes a $3.8M adjustment.[67]

Among other things, Schedule JTS-13 shows the depreciation allowances after adjustments to exclude the retirement data of Mound, Cahokia and Venice from the life analysis. The Staff used the final retirements of Mound, Cahokia and Venice to develop depreciation rates for the steam production accounts. The Mound, Cahokia and Venice I plants were very inefficient units. In response to Data Request MIEC No. 16-1, AmerenUE indicated that the heat rates of the Mound, Cahokia and Venice I were 23,676 BTU/kWh, 22,655 BTU/kWh and 36,482

[65] Selecky Direct, Ex. 403; Selecky Surrebuttal, Ex. 406.

[66] Selecky Surrebuttal, Ex. 406, Schedule JTS-13. This Schedule does not reflect the $5.8M adjustment proposed by witness Dunkel to remove terminal net salvage from Staff's calculation of steam production depreciation. However, because Staff increased AmerenUE's net salvage accrual by $6M for steam production net salvage and Selecky had increased that accrual by only $4M, the Dunkel adjustment should be made to Staff's steam production net salvage. The net reduction is $3.8M from what is shown on Schedule JTS-15. Staff's figure of $6M – Dunkel's figure of $5.8M = $.2M, which is $3.8M lower than allowed on Schedule JTS-15.

[67] The MIEC notes that the correct depreciation allowances under the mass property approach shown in Schedule JTS-13 include other adjustments (T&D Net Salvage and Account 320) discussed below.

BTU/kWh, respectively.[68] The heat rates for the current fleet of coal fired units that are subject of the depreciation rates approved in this case range from 9,100 to 9,715 BTU/kWh for the larger units and 10,750 to 12,450 BTU/kWh for the smaller units.[69] This indicates that all other things being equal, the variable cost or fuel cost to generate electricity from the existing fleet is less than half the cost that would be incurred if electricity was generated from Mound, Cahokia and Venice. Therefore, it is very likely that Mound, Cahokia and Venice were retired for economic reasons as opposed to the units simply wearing out.

By way of an analogy, this is like retiring a gas-guzzling SUV that is two years old with 10,000 miles on it. If the price of gasoline was $10/gallon, people would retire the SUV well before they might retire a fuel efficient car. During a time of $10/gallon gas, we should not be using the retirement experience of SUVs to estimate retirements of fuel efficient vehicles. Here, the coal-fired plants at issue are more fuel efficient than the gas-fired plants whose retirements the MIEC suggests excluding from the analysis. Therefore, it is inappropriate to utilize these retirement data in the life analysis since they are not representative of the type of units now in service for which depreciation rates are being developed.

Moreover, the Venice II power plant, which was retired in 2002, experienced a fire in August 2000. As a result of this fire, AmerenUE retired certain units of Venice II and expected to return other of its units to service. As a result of the fire, AmerenUE received insurance proceeds, net of deductibility, in the amount of $22.2 million. A review of the use of those funds indicates that approximately $8.5 million of these funds were used for repairs of several of the

[68] Comparison of Heat Rates & Fuel Types, Ex. 437, Page 1.

[69] Loos Direct, Ex. 107, Page 9, Lines 9-16.

Venice II units.[70] However, despite those repairs, Venice II was retired two years later in 2002. If these dollars were capitalized and are reflected in the life analysis, this would give these dollars a life of only approximately two years. Those retirements alone would unduly influence the life analysis and shorten the average service life. Therefore, the final retirement activity of Venice II should have been removed from the steam production life analysis.

The Mound, Cahokia and Venice lives are not indicative of the expected lives of the existing steam plant and should not have been considered in the life analysis because they were: oil/gas fueled rather than fueled by coal; retired due to a fire; had higher heat rates than the existing steam plant; and/or were used on a cycling basis. Most of those attributes are not held by the existing steam plants, which can be expected to have longer lives as a result. AmerenUE, which does not agree with using the mass property approach, stated:

> In fairness to Mr. Selecky, the reason why he excluded Venice, Mound and Cahokia is that they were older and smaller plants whose service lives he claims are not representative of the current plants in service. This is a valid reason.[71]

The Staff's depreciation study includes terminal net salvage and it should not.[72] Although the Staff denies that terminal net salvage is included by design, in effect it was included. That is because Staff determined an interim net salvage from past interim net salvage data, but applied that to the all investments in the accounts, rather than just to investments expected to retire as interim retirements.[73] That application was also wrong because it assumes

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[70] Selecky Rebuttal, Ex. 405, Page 4, Line 18 through Page 5, Line 5.

[71] Wiedmayer Rebuttal, Ex. 105, Page 44, Lines 8-10.

[72] In the Matter of Empire District Electric Company, Case No ER-2004-0570, *Report & Order* (March 10, 2005), Pages 29 and 53.

[73] Dunkel Rebuttal, Ex. 407, Page 6, Line 13 through Page 7, Line 16.

that the interim net salvage factor is the same as the terminal net salvage factor, an assumption that is not supported by fact.[74] AmerenUE recognized this when it calculated interim removal costs by applying the salvage rate only to property expected to retire as part of interim retirements.[75]

In summary, the appropriate depreciation rates under the mass property approach for production plant are found on Schedule JTS-15, with a $3.8M additional adjustment to exclude the impact of terminal net salvage.[76]

12.iii. What approach should be used to determine the net salvage component of the depreciation rates for AmerenUE's transmission and distribution facilities and, therefore, the resultant depreciation rates for transmission and distribution facilities?

As indicated above, the MIEC proposes that the T&D depreciation accruals be reduced by $25M annually to reflect the significant over-accrual for T&D net salvage that currently exists. AmerenUE has for the T&D plant accounts provided the cost of removal and gross salvage that is currently included in its book depreciation reserve. As of March 31, 2009, AmerenUE has accrued $582M of net salvage expense for future retirements. That is, AmerenUE's past depreciation rates have allowed it to accrue $582 million of net salvage in excess of the level of cost that it actually incurred. This represents approximately 30% of the accrued depreciation reserve for the T&D investment.[77] By comparison, AmerenUE has accrued $293M for the final decommissioning of Callaway.[78]

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[74] *Id*. Page 11, Lines 6-18.

[75] *Id*. Page 7, Line 17 through Page 8, Line 6.

[76] Selecky Surrebuttal, Ex. 406.

[77] Selecky Direct, Ex. 403, Page 29, Lines 11-21.

[78] Selecky Surrebuttal, Ex. 406, Page 16, Lines 15-16.

As indicated in the rebuttal testimony of AmerenUE witness Wiedmayer, AmerenUE's proposed T&D depreciation rates contain an annual provision for net salvage expense of $53.68M.[79] In addition, the Staff's proposed T&D depreciation rates contain a provision for net salvage of $55.8M. However, a review of AmerenUE's actual history indicates that on average, over the last 5 years, AmerenUE's actual net salvage experience has been approximately $15.1M per year and over the last 10 years, it has been $11.8M per year. *See* Schedule JTS-10.[80] In addition, the Staff estimated the expected annual net salvage expense for the T&D accounts for the next 10 years will be approximately $19.2M.[81] That is, AmerenUE's and Staff's proposed depreciation rates contain a provision for net salvage that will exceed its annual cost by approximately $35M. Therefore, if either the Staff's or AmerenUE's proposed net T&D depreciation rates are approved by the Commission, it is conceivable that over the next 5 years, **AmerenUE** will have accrued approximately $762M for future removal costs.[82] This amount is excessive.

Therefore, the Commission should reduce or limit the amount of this excessive accrual, and the MIEC suggests that the reduction be $25M per year. The MIEC does not suggest, as AmerenUE and Laclede Gas incorrectly assert, that the Commission use expense accounting. If that were the case, the MIEC would not be suggesting a remedy that still allows the accrual for future T&D removal costs to continue to increase by over $10M per year.

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[79] Wiedmayer Rebuttal, Ex. 105, Page 55, Lines 20-22.

[80] Selecky Direct, Ex. 403.

[81] Selecky Rebuttal, Ex. 405, Page 9, Lines 1-5.

[82] Selecky Rebuttal, Ex. 405, Page 10, Lines 4-8.

AmerenUE witness Mr. Wiedmayer presented an analysis indicating that MIEC's proposal regarding its proposed offset of $25M will cause the depreciation recovery to fall short of the amount needed to remove assets in Plant Accounts 364-Poles and Fixtures and 365-Overhead Conductors and Devices.[83] First, AmerenUE has not provided any evidence whatsoever that it has under-accrued any net salvage in its depreciation rates in recent history. Mr. Selecky in Schedule JTS-10[84] shows that AmerenUE has been over-accruing net salvage expense in its T&D depreciation rates since at least 1999. Second, Schedule JTS-12[85] compares AmerenUE's actual annual retirements for Accounts 364 and 365 over the last 5 years with 5 years of projections provided by Mr. Wiedmayer. As Schedule JTS-12 shows, Mr. Wiedmayer is projecting a significant increase in annual retirements for each of these accounts, which produces a significant increase of net salvage expense. The significant increase in the projected retirement activity clearly raises the question of the reliability of Mr. Wiedmayer's analysis.

Finally, it is a common practice in the utility industry to update depreciation rates at least every 5 years. In fact, AmerenUE filed a depreciation study in 2007 and filed an additional one in this case. Moreover, regulation 4 CSR 240-3.175 requires a depreciation study every 5 years. What MIEC is proposing is that the Commission allow the MIEC's suggested offset now but monitor the impact of that offset. If it appears that this offset is not allowing AmerenUE to accrue sufficient net salvage, the offset could be modified or eliminated.

[83] Wiedmayer Rebuttal, Ex. 105, Pages 57, Line 3 through Page 58, Line 16.

[84] Selecky Direct, Ex. 403.

[85] Selecky Surrebuttal, Ex. 406.

In summary, the appropriate depreciation rates for transmission and distribution plant should be as shown on Schedule JTS-14.[86]

12.iv. Should the retirement of the Callaway steam generators be included in the life and net salvage analysis?

The 2005 retirement of the steam generators at Callaway should be removed from the life and net salvage analysis for Account 322 because those retirements were atypical In 2005, Account 322 experienced a retirement of $81 million. This retirement is associated with the retirement of four steam generators.[87] This retirement represents approximately 46% of the total retirements that occurred from 1986 through 2008. The net salvage expense associated with this retirement is approximately $25 million or 80% of the total net salvage expense that this account has incurred since 1986.[88]

Because this retirement is not typical and dominates the history, it should be excluded from the life and net salvage analyses. Excluding this retirement from the analysis impacts both the remaining life and net salvage ratio that is used to calculate the depreciation rates.

In response to Data Request MIEC No. 16-4,[89] AmerenUE stated that the expected design life of the original steam generator was 40 years. This steam generator was retired after a service life of only 19.5 years. That is, the steam generator's service life was approximately half of what was expected.

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[86] Selecky Surrebuttal, Ex. 406.

[87] Selecky Direct, Ex. 403, Page 18, Lines 3-16, referencing Response to MIEC 4-5.

[88] *Id*.

[89] Selecky Rebuttal, Ex. 405, Page 6, Lines 13-22.

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AmerenUE apparently takes no issue with the fact that the generators retired 50% earlier than they should and that AmerenUE obtained a settlement payment as a result. Rather, AmerenUE argues that most nuclear power plants have experienced problems with their steam generators. The fact still remains that the average service life of these generators is not typical and including it in the analysis assumes that the remainder of the plant will have similar defects. By including these premature retirements, AmerenUE and the Staff artificially lowered the average remaining life of the plant so that today's ratepayers will pay more than their fair share of depreciation costs.

AmerenUE appears to argue that because there are significant retirements planned in the next 5 years, there is no harm to ratepayers from considering these premature retirements.[91] But that is not the correct way to calculate depreciation. The NARUC manual recognizes that one characteristic of using the life span approach is that depreciation rates gradually increase as property ages.[92] AmerenUE refuses to wait until future retirement studies are performed to reflect that higher depreciation.[93] AmerenUE also takes issue with the resultant decrease in

[90] Ameren Settlement Agreement, Ex. 438, Pages 3-5.

[91] Wiedmayer Rebuttal, Ex. 105, Page 39, Line 10 through Page 40, Line 7.

[92] Selecky Surrebuttal, Ex. 406, Page 11, Line 4 through Page 12, Line 5.

[93] *Id.*

removal costs as reflected on Schedule JTS-4,[94] but again that criticism is based not upon historical data, but projections of future removal costs.[95]

The suggested removal would extend the life for Callaway by 2.8 years and would adjust the salvage value from -10% to -1.2%.

Other discussion

AmerenUE argues that under the MIEC adjustments it will have one of the lowest depreciation rates in the country.[96] However, under the MIEC approach, the depreciation accrual for steam production plant will decrease from the currently authorized accruals by only approximately $6M.[97] As for distribution plant, AmerenUE's depreciation rates would be higher than 20 of 50 utilities surveyed and its transmission rates would be higher than 21 of 48 utilities surveyed.[98] Those results are certainly not the lowest. This Commission should rule on the depreciation issues as they pertain to this case and not rely on other states' comparisons. As has been discussed previously, there are many factors that can lead to different depreciation rates and variances between utilities and states are to be expected.

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[94] Selecky Direct, Ex. 403.

[95] Wiedmayer Rebuttal, Ex. 105, Page 39, Line 10 through Page 40, Line 7.

[96] Wiedmayer Rebuttal, Ex. 105, Page 5, Lines 11-21.

[97] Selecky Surrebuttal, Ex. 406, Page 20, Lines 5-7, showing an impact of $2.3M. However, that testimony did not include the $3.8M impact from Dunkel's adjustment to remove terminal net salvage.

[98] Selecky Surrebuttal, Ex. 406, Page 20, Line 13-25.

VI. RETURN ON EQUITY

Introduction

Based on the evidence presented in this case, the Commission should find that 10.0% is the appropriate return on equity ("ROE") for AmerenUE. This is consistent with the recommendation of MIEC's expert witness, Michael Gorman. Gorman and the three other expert witnesses who testified in this case all performed similar analyses. Unlike AmerenUE's expert witness, Dr. Roger Morin, Gorman provided the Commission with detailed calculations to support his recommendation. Gorman refined his analysis by considering a number of different possible growth rates in his discounted cash flow (DCF) analysis, and this degree of detail sets his analysis apart from the other witnesses in this case. In addition, Gorman properly excluded a 20 basis point adjustment for quarterly dividend payments—which Dr. Morin's recommendations erroneously included. For these reasons, Gorman's recommendations provide a sound basis for the Commission's ruling on this issue.

It is appropriate that Gorman's recommendation of 10.0% is lower than the ROE established by the Commission in AmerenUE's last rate case. The record in this case shows that the current condition of the financial markets support a downward adjustment of AmerenUE's ROE. Although the recent global financial crisis caused significant increases in the cost of capital in the last two quarters of 2008, utility bond yields have recovered dramatically.[99] The current market cost of capital is now significantly lower than it was at the time of AmerenUE's last rate case. In that case, the Commission authorized an ROE of 10.76%, the highest ROE awarded a regulated electric utility during the first quarter of 2009.[100] In fact, the record in this

[99] Gorman Direct, Ex. 408, Page 5, Lines 9 through Page 6, Line 15, Schedule MPG-2, Page 4.

[100] Morin Direct, Ex. 111, RAM-ER 11-5.

case reveals that the current market cost of capital is even lower than at the time of AmerenUE's 2007 rate case in which this Commission authorized an ROE of 10.2%.[101] It follows that an ROE of 10.0% in this case is consistent with just and reasonable rates, given current market conditions.

Capital Structure

AmerenUE presented evidence to show that its common equity balance as of 12/31/2009 was $3,944,011,192. This represents just over half, or more precisely 51.126% of AmerenUE's capital structure. The components of AmerenUE's capital structure are:

Long-term Debt	47.390%
Short-term Debt	0.000%
Preferred Stock	1.484%
Common Equity	51.126%[102]

The only disputed cost of capital issue before the Commission is the cost to be assigned to AmerenUE's common equity. That cost turns on the appropriate ROE to be attributed to AmerenUE's common equity.

Return on Equity – General Considerations

The cost of equity for a regulated utility like AmerenUE is the return investors require for taking the risk of investing in AmerenUE's common stock.[103] The U.S. Supreme Court has ruled that the general standards to be applied in determining an appropriate ROE are that the authorized return should: (1) be sufficient to maintain the utility's financial integrity; (2) attract

[101] Gorman Direct, Ex. 408, Page 4, Table 1, Page 4 Line 1 through Page 5, Line 8; *see also* Lawton Direct, Ex. 304, Page 16, Lines 8-10, 17-18.

[102] O'Bryan Rebuttal, Ex. 116, Page 2, Line 16, Schedule MGO-ER5.

[103] Gorman Direct, Ex. 408, Page 15, Lines 8-12.

capital under reasonable terms; and (3) provide investors with a return commensurate with the returns obtainable from investments in businesses with comparable risk.[104] In addition, Missouri law requires that the Commission's findings concerning ROE, like all of its determinations, be supported by competent and substantial evidence and must not be arbitrary or capricious.[105] These requirements preclude the Commission from basing its decision solely on a "zone of reasonableness" test. The "zone of reasonableness" standard, which has been cited by the Commission in prior cases and was the subject of cross examination by the Commissioners in the instant case, presumes that any rate within 100 basis points of the national average is a "reasonable" rate.[106] The Commission should not rely on this test in establishing the ROE in this case. As the experts in this case explained, this test is not a substitute for the accepted methods of analysis for determining the appropriate ROE.[107] That is, the average ROE awards of other regulatory agencies should not be considered competent and substantial evidence of the ROE required by AmerenUE's investors.

The expert witnesses in this case agreed on the general approach to determining the appropriate ROE for AmerenUE. All of the expert witnesses in this case based their

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[104] *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); Gorman Direct, Page 16, Lines 1-11.

[105] *See* Sections 386.420.2, 536.090, and 536.140, RSMo 2000; *State ex reline GTE North, Inc. v. Mo. Public Service Comm'n*, 835 S.W.2d 356, 370 (Mo. App. 1992).

[106] Transcript, Page 1891, Line 5 through Page 1893, Line 19 (Morin cross examination), Page 1999, Line 15 through Page 2001, Line 1 (Gorman cross examination), and Page 2241, Line 12 through Page 2242, Line 18 (Lawton cross examination).

[107] Transcript, Page 1892, Line 5 through Page 1893, Line 19, Page 2000, Line 12 through Page 2001, Line 1, Page 2242, Lines 12-18.

recommendations on discounted cash flow ("DCF") and capital asset pricing model ("CAPM") analyses and, all of the witnesses except Murray included a risk premium study in their analyses.

The DCF model is based on the discounted present value of the investment's expected future cash flow.[108] The Risk Premium model is based on the principle that investors require a higher return to assume greater risk.[109] Finally, the CAPM analysis is a type of risk premium model that is "based upon the theory that the market required rate of return for a security is equal to the risk-free rate, plus a risk premium associated with the specific security."[110] Although the witnesses in this case agreed that these are accepted methods of estimating an appropriate ROE for AmerenUE, their results varied due to differences in the inputs included in their analyses.

Expert Testimony

The ROE recommendations of the expert witnesses in this case are summarized below:

[108] Gorman Direct, Ex. 408, Page 20, Lines 4-22.

[109] Gorman Direct, Ex. 408, Page 38, Lines 11-18.

[110] Gorman Direct, Ex. 408, Page 43, Lines 12-24, Page 44, Lines 1-2.

Party	Witness	Range	Recommendation
AmerenUE	Dr. Roger Morin	9.4% - 11.5%[111]	10.8%[112]
OPC	Daniel Lawton	9.3% - 10.9%[113]	10.1%[114]
MIEC	Michael Gorman	9.5% - 10.5%[115]	10.00%[116]
Staff	David Murray	9.0% – 9.7%[117]	9.35%[118]

AmerenUE's Recommended ROE is Unreasonably High

AmerenUE's expert witness, Dr. Roger Morin, was the only expert to recommend an ROE above the ROE approved in AmerenUE's prior rate case. As explained above, current financial market conditions are not consistent with the conclusion that the cost of capital has increased since AmerenUE's last rate case. Indeed, this shift in the capital markets is underscored by the fact that Dr. Morin made a significant downward adjustment to his ROE recommendations during pendency of this case due to changing market conditions. In his direct testimony submitted in July, 2009, Dr. Morin recommended an ROE of 11.5%.[119] He reduced

[111] Morin Rebuttal, Ex. 112, Page 55, Lines 8-14.

[112] Morin Rebuttal, Ex. 112, Page 52, Line 13, Page 55, Line 16.

[113] Lawton Direct, Ex. 304, Page 31, Line 14.

[114] Lawton Surrebuttal, Ex. 306, Page 2, Line 16.

[115] Gorman Direct, Ex. 408, Page 2, Line 11.

[116] *Id.,* Line 10.

[117] Staff Report Revenue Requirement Cost of Service NP, Ex. 200, page 36, Lines 9-10, Appendix 2, Schedule 20.

[118] *Id.;* Transcript, Page 2022, Lines 20-25.

[119] Morin Direct, Ex. 111, Page 5, Line 17.

this recommendation by seventy basis points to 10.8% in his February 11, 2010 Rebuttal Testimony.[120]

Dr. Morin was also the only expert witness to include a 20 basis point adjustment to his DCF analysis for quarterly dividend payments.[121] Although AmerenUE makes quarterly dividend payments, this adjustment overestimates the cost of capital for AmerenUE as Mr. Gorman, Mr. Lawton, and Staff witness Stephen Hill all explained.[122] Investors receiving quarterly dividends may realize additional earnings as a result of the re-investment of the dividends. These additional earnings are obviously not a part of AmerenUE's cost of capital, however, since their source is another investment—not AmerenUE stock. Moreover, as Gorman explained, AmerenUE's shareholders own the company's earnings even during the time they are held by AmerenUE, so it is not appropriate to attribute a lost "opportunity cost" to AmerenUE for paying out dividends on a quarterly basis rather than annually.[123] When asked to explain the reasoning behind his inclusion of the quarterly dividend adjustment, Dr. Morin stated that he did so "because the Commission in the past has expressed a preference for a quarterly DCF adjustment. That's the only reason."[124] As this candid admission demonstrates, the quarterly dividend adjustment is not well-founded in this case.

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[120] Morin Rebuttal, Ex. 112, Page 52 through Page 53, Line 19; Transcript, Page 1849, Lines 2-8.

[121] Transcript, Page 1862, Lines 7-8.

[122] Gorman Surrebuttal, Ex. 410, Page 14, Line 1 through Page 15, Line 2; Transcript, Pages 1989, Line 20 through Page 1994, Line 2, Page 2108, Line 20 through Page 2109, Line 18, Page 2232, Line 7 through Page 2233, Line 18.

[123] Transcript, Page 1993, Lines 9-24.

[124] Transcript, Page 1878, Lines 5-11.

A third problem with Dr. Morin's testimony is that he failed to include any supporting calculations with his revised ROE recommendation.[125] Although he included detailed schedules and workpapers with his Direct Testimony, Dr. Morin's Rebuttal Testimony did not include this level of detail. As a consequence of this omission, it is not possible for the Commission or the other parties in this case to confirm the accuracy of Dr. Morin's updated final ROE calculations.

For these reasons, Dr. Morin's estimated ROE is too high and cannot be verified, and therefore, the Commission should not base its decision in this case on Dr. Morin's testimony. If, however, the Commission chooses to take Dr. Morin's recommendations into account in its decision, the Commission should take the additional step carefully considering how Dr. Morin arrived at his recommendation of 10.8%. Dr. Morin relied on the midpoint of his results to reach his recommendation of 10.8%, but the average of his results is 10.57%.[126] Moreover, removing the erroneous quarterly dividend adjustment, combining Dr. Morin's four DCF results and averaging the resulting amount with the his other two results, reveals that Dr. Morin's analysis actually supports a recommended ROE of only 10.41% as shown by the table below.

[125] Transcript, Page 1862, Line 9 through Page 1863, Line 22.

[126] Transcript, Page 1846, Line 21 through Page 1847, Line 4. (Dr. Morin agreed that the "mean" of his results was "approximately 10.6 percent." The precise number is 10.57 percent.)

Revision of Dr. Morin's Recommended ROE

Cost of Equity Models	Morin's Updated ROE[127]	Remove Quarterly Compounding	ROE Excluding Quarterly Compounding	Average by Cost of Equity Model
CAPM	9.40%		9.40%	9.60%
Empirical CAPM	9.80%		9.80%	
Risk Premium Electric	10.82%		10.82%	10.82%
DCF Vert. Integrated Electric Utilities, Value Line Growth	11.00%	.20%	10.80%	10.80%
DCF Vert. Integrated Electric Utilities, Zacks Growth	11.00%	.20%	10.80%	
DCF S&P Electric Utilities, Value Line Growth	10.50%	.20%	10.30%	
DCF S&P Electric Utilities, Zacks Growth	11.50%	.20%	11.30%	
Average	**10.57%**		**10.46%**[128]	**10.41%**

This recalculation of Dr. Morin's recommendation gives a more appropriate weight to his various DCF analyses, and removes the quarterly compounding adjustment. For the reasons explained below, however, Mr. Gorman's recommended ROE of 10.0% is a more accurate determination of AmerenUE's ROE and should be adopted by the Commission.

MIEC's Recommended ROE of 10.0% is the Appropriate ROE for AmerenUE in this case.

DCF Analysis

[127] Morin Rebuttal, Ex. 112, Page 55, Lines 6-14.

[128] Dr. Morin confirmed the accuracy of this calculation in his cross examination testimony. Transcript, Page 1848, Lines 7-11.

As noted above, the expert witnesses in this case all used the same methodology for determining AmerenUE's appropriate ROE, that is, the DCF, CAPM and Risk Premium models. Their conclusions varied due to the inputs used in their calculations.[129] In addition, Gorman refined the DCF analysis to account for possible variations in the dividend growth rate. He did this by including: (1) a constant growth rate DCF analysis using consensus analysts' growth rate projections, (2) a constant growth rate DCF study based on an internally sustainable growth rate methodology, and (3) a multi-stage growth DCF study.[130] Notwithstanding his concerns about the shortcomings of the constant growth rate DCF model, Gorman's recommendation in this case gives each of these DCF models equal weight.[131] In addition, the growth rate calculations used in Gorman's DCF calculations were adjusted to mitigate the impact of outliers included in the proxy groups. This was accomplished by using the median growth rate estimates instead of the averages, since the medians more accurately capture the central group tendency.[132]

Dr. Morin's analysis, on the other hand, does not include any non-constant growth DCF models, and consequently gives undue weight to the constant growth DCF analysis. One of the problems with this approach, as Mr. Gorman explained, is that under current market conditions, the constant growth DCF model is producing unreasonably high and irrational results.[133] Current dividend yield and growth rates represent contradictory growth outlooks. This is a consequence

[129] Transcript, Page 1840, Lines 6-18.

[130] Gorman Direct, Ex. 408, Page 20, Line 23 through Page 21, Line 11.

[131] Gorman Direct, Ex. 408, Page 38, Lines 7-9.

[132] Gorman Direct, Ex. 408, Page 23, Lines 18-23, Page 30, Line 19, Schedules MPG-6, MPG-11, MPG-12. Although Dr. Morin stated that he too used the median growth rate in his calculations, he failed to provide the calculations to verify this claim.

[133] Gorman Direct, Ex. 408, Page 24, Line 11 through Page 27, Line 11.

of the recent distressed market conditions and continued market uncertainty.[134] Another problem with Dr. Morin's reliance on the constant growth DCF model is that it requires a growth rate that is sustainable indefinitely. But current three- to five-year growth projections are not reasonable estimates of long-term sustainable growth, since they significantly exceed the growth rate of the overall economy, as measured by the growth of gross domestic product ("GDP"). GDP growth represents the maximum sustainable growth rate in this instance—because, as Gorman explained, "a company cannot grow, indefinitely, at a faster rate than the market in which it sells its products."[135]

In his Rebuttal Testimony, Dr. Morin explained that he "generally agree[s] with the validity of" the multi-stage growth DCF analysis performed by Mr. Gorman, but took issue with the GDP estimate used by Mr. Gorman.[136] On cross-examination, however, Dr. Morin revealed that his own calculation of the GDP growth rate was not precisely accurate.[137] Moreover, unlike the GDP growth rate estimate used by Dr. Morin, the GDP forecast used by Mr. Gorman is based on a consensus of economists' forecasts.[138] As in the case of dividend growth rates (where Dr. Morin agreed that consensus analysts' growth rates were the more reliable data) consensus analysts' projections of GDP growth are more likely to be reliable and to reflect consensus investor expectations than the single growth rate projection relied on by Dr. Morin.[139] For these

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[134] *Id.*

[135] Gorman Direct, Ex. 408, Page 27, Lines 17-18.

[136] Morin Rebuttal, Ex. 112, Page 40, Line 9 through Page 41, Line 6.

[137] Transcript, Page 1867, Lines 9-19; Gorman Surrebuttal, Ex. 410, Page 13, Lines 11-16.

[138] Transcript, Page 1868, Lines 6-23, Page 1870, Lines 4-16; Ex. 441; Gorman Direct, Ex. 408, Page 33, Lines 12-16; Gorman Surrebuttal, Ex. 410, Page 10, Line 1 through Page 11, Line 3.

[139] Transcript, Page 1868, Lines 11-23.

reasons, the detailed DCF analysis provided by Mr. Gorman provides a more reliable basis for determining AmerenUE's ROE than Dr. Morin's analysis.

Risk Premium Analysis

As noted above, Gorman determined the average of his DCF results (10.46%) and then compared this amount to the results of his Risk Premium and CAPM analyses, to establish an estimated range of 9.5% to 10.5% and recommended ROE of 10.0%.[140] Gorman recommends a risk premium of 10.06% for equity over utility bonds.[141] By comparison, Dr. Morin's revised risk premium recommendation is 10.82%.[142] Mr. Gorman explained in his rebuttal testimony, however, that simply updating Dr. Morin's original risk premium study with the most recent data available for 2008 and 2009 should reduce Dr. Morin's risk premium to 10.21%.[143] Dr. Morin's analysis thus clearly overestimates the risk premium in this case.

Dr. Morin criticized Mr. Gorman's Risk Premium analysis for failing to account for the inverse relationship between equity risk premiums and interest rates.[144] This view is simplistic, and is not supported by the current academic research on this issue.[145] Instead, current research indicates that the relationship between interest rates and equity risk premiums is not constant, but can change materially over time.[146] Moreover, the change in equity risk premiums over time is

[140] Gorman Direct, Ex. 408, Page 48, Lines 12-15, Table 4.

[141] Gorman Direct, Ex. 408, Page 42, Lines 21-22.

[142] Morin Rebuttal, Ex. 112, Page 55, Line 10.

[143] Gorman Rebuttal, Ex. 409, Page 9, Lines 6-10.

[144] Morin Rebuttal, Ex. 112, Page 42, Lines 14-23.

[145] Gorman Surrebuttal, Ex. 410, Page 17, Lines 11-22.

[146] Gorman Surrebuttal, Ex. 410, Page 17, Line 17 through Page 19, Line 18.

the result of perceived changes in investment risk.[147] In short, Mr. Gorman's Risk Premium analysis is sound, and Dr. Morin's proposed changes to this analysis should be rejected.

CAPM Analysis

Mr. Gorman's CAPM study produced an ROE of 9.54%.[148] Dr. Morin's revised CAPM analysis reached an even lower result—an ROE of 9.40%.[149] The impact of this lower result on Dr. Morin's recommended ROE was mitigated by the addition of an empirical version of the CAPM model ("ECAPM") which when updated and revised by Dr. Morin yielded a result of 9.8%.[150] Dr. Morin derided Gorman's use of the CAPM model alone as being "plain vanilla."[151] As Mr. Gorman explained, however, the inclusion of the ECAPM study by Dr. Morin is flawed because it significantly overstates a utility company specific risk premium, and erroneously included adjusted utility betas—a position which is not supported by sound research.[152] In sum, Dr. Morin's ECAPM with an adjusted beta estimates overstates the CAPM return estimate for a utility company.[153] For these reasons, Dr. Morin's ECAPM analysis should not be relied on by the Commission in reaching its decision in this case.

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[147] Gorman Surrebuttal, Ex. 410, Page 19, Lines 14-16.

[148] Gorman Direct, Ex. 408, Page 48, Line 5.

[149] Morin Rebuttal, Ex. 112, Page 55, Line 8.

[150] *Id.*, Line 9.

[151] Morin Rebuttal, Ex. 112, Page 41, Lines 12-13.

[152] Gorman Rebuttal, Ex. 409, Page 6, Line 4 through Page 7, Line 9.

[153] Gorman Rebuttal, Ex. 409, Page 7, Lines 6-8.

Financial Integrity

AmerenUE's financial integrity as evidenced by its bond rating is clearly an appropriate concern for this Commission. Mr. Gorman examined the possible impact of his recommended 10.0% ROE and MIEC's recommended depreciation expense adjustment on AmerenUE's bond rating in his Direct Testimony.[154] Specifically, Mr. Gorman's analysis indicates that his recommended ROE and Mr. Selecky's depreciation expense adjustment will produce cash flow financial coverage and other credit metrics that support AmerenUE's current "BBB" investment grade utility bond rating.[155]

Conclusion

As demonstrated by the foregoing, Mr. Gorman's recommended ROE of 10.0% is sufficient to maintain AmerenUE's financial integrity; will attract capital under reasonable terms; and will provide investors with a return commensurate with the returns they could obtain from enterprises with comparable risk. It is supported by Mr. Gorman's detailed analysis, and is reasonable in light of current market conditions. This recommendation thus meets the criteria for an appropriate ROE for AmerenUE in this case and should be adopted by the Commission.

VII. FUEL ADJUSTMENT CLAUSE

MIEC did not address fuel adjustment clause (FAC) issues in its initial testimony filing. However, on February 17, 2010, the Commission on its own volition, directed the parties to submit testimony concerning the appropriateness of AmerenUE's current FAC. The filing date for the testimony was established as February 22, 2010. Because of the very short time frame allowed for the filing of testimony, and because the fundamental factors which led MIEC to the

[154] Gorman Direct, Ex. 408, Page 49, Lines 1-6, Page 51, Lines 1-6.

[155] Gorman Direct, Ex. 408, Page 52, Line 22 through Page 53, Line 2.

position which it held in Case No. ER-2008-0318, MIEC re-filed the portions of the testimony of Maurice Brubaker concerning the FAC that had been submitted in that proceeding. As expressed in Mr. Brubaker's FAC testimony at page 2,[156] MIEC continues to believe that the 95%/5% sharing in the current FAC mechanism is inappropriate, and that an 80%/20% sharing mechanism with a 50 basis point annual cap on this adjustment is more appropriate. As Mr. Brubaker explained:[157]

> "I think the 80/20 provides a meaningful incentive to the utility, more meaningful in terms of exposure of earnings than a 95/5. AmerenUE's fuel costs in relation to its equity base is relatively favorable, relatively low compared to other utilities. And so where a 5 percent may be effective with its exposure to earnings for a utility that has very high fuel costs, when the fuel costs are lower, that same 5 percent doesn't provide the same earnings exposure.
>
> So that's why I come toward a 20 percent sharing or at least higher than a 5 percent sharing with my 50 percent basis point cap on financial impact in either direction to make sure we have a signal that's effective but yet is not going to be – produce a devastating result."

The relationship among Ameren's fuel costs, amount of common equity and earnings is essentially the same as it was in its last rate case, Case No. ER-2008-0318. From the true-up testimony recently filed by AmerenUE witness Weiss, the claimed common equity ratio is 51.26% and the claimed rate base is $5.965 billion. This means that the equity component supporting the rate base is $3.06 billion. At a 10% earnings rate, the return on equity would be $306 million. (At 10.5%, it would be $321 million.) According to the testimony of AmerenUE witness Barnes,[158] AmerenUE's net base fuel cost with the pro forma adjustments in this case is

[156] Brubaker Direct, Ex. 413.

[157] Transcript, Pages 2552-2553.

[158] Transcript, Page 2420.

something around $500 million. Accordingly, fuel cost as a percentage of the common equity supporting rate base is approximately 16%.

Schedule MEB-FAC-2 in Mr. Brubaker's September 11, 2008 direct testimony on fuel adjustment clauses (page 19 of Attachment 2 of Exhibit 413) indicated that base fuel cost as a percentage of common equity was 12%. While it has gone up to 16% in this case, it is still only between one-half and one-third of the percentage that base fuel costs represent as a percentage of common equity for the other utilities in the state that have an FAC (35% to 49%).

Nothing has happened to change the relationships shown on Schedule MEB-FAC-2 for Aquila and for Empire District. The Aquila information shown on Schedule MEB-FAC-2 was from Case No. ER-2007-0004. While the Commission has decided a subsequent case, ER-2009-0090, the base fuel cost was not changed in establishing the new rates in that case. Similarly, the financial data for Empire District Electric Company was taken from Case No. ER-2008-0093. Although Empire has filed a subsequent rate case, it did not propose to change its net base fuel cost factor in that case. Accordingly, all the relevant data for the other utilities remains the same, and the data for AmerenUE has changed only a relatively small amount, which means that AmerenUE's circumstances remain approximately the same relative to the other utilities.

As a result, any given percentage change in fuel cost continues to have a much smaller impact on AmerenUE's bottom line earnings than is the case for the other utilities. With $500 million of net base cost and a retention of 20% of a 35% change in fuel costs (Schedule MEB-FAC-2), the earnings impact would be $22 million,[159] or about 7% of earnings, as compared to between 16% and 22% of earnings for the other utilities. However, the 7% impact

[159] $500 x 0.35 x 0.20 ÷ 1.62 = $22

would be approximately 70 basis points on earnings, and because MIEC continues to believe that a cap of 50 basis points on earnings impact is appropriate, the actual impact would be $15 million in earnings, or 50 basis points, which would be 5% of AmerenUE's earnings.

For these reasons, MIEC urges the Commission in its Order to adopt a modification for AmerenUE's fuel adjustment clause so that AmerenUE would retain 20% of the impact of changes in net base fuel cost (increases or decreases), flowing through 80% of the changes to customers, conditioned on the extent of the retention not exceeding 50 basis points on ROE in any given calendar year.

VIII. CALLAWAY FUEL COSTS

The nuclear fuel price input for Callaway should not include the nuclear fuel being loaded during Callaway Refueling Outage Number 17. Callaway Refueling Outage Number 17 was scheduled to begin on *** ***.[160] This timeframe is *** [161]*** beyond the January 31, 2010 true-up period in this proceeding. Therefore, the nuclear fuel is an out-of-period adjustment. Furthermore, AmerenUE has a fuel adjustment clause (FAC) which was approved by this Commission in AmerenUE's last rate case to address these exact circumstances. However, in this instance, AmerenUE wants to ignore the FAC regulatory tool and instead proposes an out-of-period inclusion of nuclear fuel expense. MIEC proposes that this adjustment be denied from AmerenUE's revenue requirement.

[160]Dauphinais Direct, HC Ex. 415, Schedule 1.

[161]*** ***

IX. RATE DESIGN

Stipulation and Agreement

On March 17, 2010, after extensive negotiations taking place over a period of several months, the Office of Public Counsel (OPC), AARP, the Consumers Council of Missouri, Missouri Retailers Association and MIEC ("Signatories) filed a Non-Unanimous Stipulation and Agreement ("Agreement") resolving interclass revenue allocation issues and a number of rate design issues. The Signatories represent consumers in all of the major customer classes that are detailed in the class cost of service studies that have been presented. AARP and The Consumers Council of Missouri represent customers in the Residential class. The Missouri Retailers Association represents customers in the SGS and LGS customer classes. The MIEC represents customers mainly in the LPS and LTS customer classes. And, the OPC represents all customer classes. AmerenUE neither opposes nor supports the Agreement, but respects the decision reached by "… the representatives of a majority of our customers."[162] Similarly, Staff neither opposes nor supports the Agreement. Importantly, Staff Witness Scheperle testified that if Staff had believed that the Agreement would have resulted in rates that were not just and reasonable, the Staff would have objected to it.[163] The fact that it did not object means that Staff believes that the Agreement would result in just and reasonable rates.

With one exception, no party opposes the settlement. The only objector is the Midwest Energy Users Association (MEUA), a group which consists of three retail customers in the LGS

[162] Transcript, Page 2785, Lines 8-15.

[163] Transcript, Page 3156, Lines 1-7.

class.[164,165] However, the witness for MEUA testified to conditions that would be acceptable to the MEUA and those conditions were agreed to by the parties to the Agreement and included in the "Addendum" and discussed later in this section.

Cost of Service Evidence

The revenue adjustments in the Agreement are fully consistent with the cost of service evidence in this record. For example, MIEC's class cost of service study shows that the LTS class is the furthest above cost, that the LGS/SPS class is the next furthest above cost, followed by the LPS class and the SGS class.[166] The relative adjustments to rates in the Agreement follow that pattern. The LTS class would move the most, followed next by the LGS/SPS class. LPS and SGS are next in order in terms of the relative adjustments.[167]

Exhibit 239, sponsored by Staff witness Scheperle, includes a table which summarizes the percentage increases or decreases, on a revenue neutral basis, to achieve equal rates of return under the various cost of service studies that have been submitted in this proceeding. The following is a replication of that table, with one line added.

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[164] Transcript, Page 2844, Lines 6-8.

[165] In other words, three customers out of over 10,000 in the class are posing an objection. Notably, the many retail establishments that take service under the SGS and LGS rates are customers that are directly represented by the Missouri Retailers Association and are supporting the Agreement.

[166] *See* Schedule MEB-COS-5 in Ex. 429.

[167] Although cost of service evidence suggests decreases for SGS and several studies suggest decreases for LPS, these classes receive a slight revenue neutral increase in recognition of their relative closeness to cost of service, the need to move other classes (including LGS) toward cost of service, and the limitation on the increase to the Residential class, which all parties agree is priced below cost and should have an above-average increase.

Indicated Revenue – Neutral Adjustments to Equalize Rates of Return and the Stipulated Adjustments (Percent of Present Revenue)						
	Missouri Retail	RES	SGS	LGS	LPS	LTS
Staff (4 CP A&P)	0.00%	8.67%	-4.24%	-11.40%	-0.54%	3.57%
Staff (Capacity Utilization, 12 NCP A&P)	0.00%	8.32%	-4.28%	-11.19%	-0.10%	4.56%
AmerenUE (4 NCP A&E)	0.00%	7.99%	-7.01%	-9.74%	1.21%	1.63%
AmerenUE (4 NCP A&E) OSS Margin Alloc on Energy	0.00%	11.05%	-5.47%	-11.42%	-3.85%	-8.38%
MIEC (4 NCP A&E) - Revised	0.00%	13.27%	-4.26%	-12.72%	-7.35%	-15.52%
OPC (4 CP A&P)	0.00%	3.23%	-7.67%	-4.63%	7.38%	3.98%
OPC (TOU)	0.00%	1.19%	-9.30%	-3.68%	9.85%	13.64%
Stipulation*	0.00%	1.50%	1.50%	-0.61%	1.25%	-11.74%

*Note: Stipulation percentages based on proposed class increases adjusted to be revenue neutral based on Stipulation increase of $225 million.

The line added is the AmerenUE study with the off-system sales margin allocated on energy. It is important that the Commission consider this variation, given the influence of this allocation on the overall results, and the Commission's recent decision in a Kansas City Power & Light Company rate case affirming the allocation of off-system sales margin on an energy basis as the correct approach.[168]

The added line in the table was created by combining the AmerenUE results shown on Exhibit 239 with the dollar differences in revenue requirement resulting from allocating off-system sales on energy that AmerenUE witness Warwick reported on page 7 of Exhibit 147, his rebuttal testimony.[169]

[168] *Kansas City Power & Light Company,* Case No. ER-2006-0314, *Report and Order,* December 21, 2006, pages 37-40. In particular, at page 38, the Commission noted:

"Staff recommends that the Commission continue to use the energy allocator for revenues from non-firm off-system sales of energy, including the margin component thereof. This is the time-tested and widely accepted method for allocating such revenues in this state because it is appropriate for allocating revenues and associated costs that are purely variable with the amount of energy sold."

[169] For example, the LTS revenue neutral adjustment is derived as follows: divide the $13.940 million difference shown on page 7 of Ex. 147 by current LTS revenues of $139.156 million to produce a percentage difference of 10.01%. Subtracting this from the positive 1.63% shown on

While a decision to adopt the Agreement must be based on the record evidence, it is not necessary that the Commission adopt the results of a specific cost of service study in order to find that the Agreement is in the public interest and would result in just and reasonable rates. However, MIEC does believe it is important that the Commission, in viewing the results of the various class cost of service studies, give consideration to the acceptance that those methodologies have gained in the industry, and the reasonableness of the overall results. In this regard, MIEC believes the following factors are important:

1. The Average and Excess (A&E) methodology used by AmerenUE and by MIEC is among the most common of allocation methodologies applied in the industry and is suitable in light of AmerenUE's load characteristics.[170]

2. The Staff and OPC 4 CP Average and Peak (A&P) method is inappropriate because it double counts average demand and effectively gives a 55% weighting to energy.[171]

3. Staff's alternative Capacity Utilization method uses demands from all 12 months, and only gives 7% weighting to the demands occurring in the peak month, and only a total of 13% weighting to the demands occurring in the two peak months of July and August, which is not appropriate for a strong summer peaking utility like AmerenUE.[172]

4. Staff's alternative Capacity Utilization method also double counts, and has never been accepted by this or any other Commission.[173]

Ex. 239 produces the LTS revenue neutral decrease of 8.38% based on the results of AmerenUE's cost of service study with the off-system sales margin allocated on energy. The same approach was applied to develop the percentage changes for the other classes.

[170] *See, e.g.*, Cooper Direct, Ex. 134, Pages 112-114, and the Brubaker Revised Direct, Ex. 429 at Pages 23-26.

[171] *See, e.g.*, Cooper Rebuttal, Ex. 135, Page 4.

[172] *See* Brubaker Rebuttal, Ex. 430, Pages 14-15.

[173] *See In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Case No. ER-2008-0318, Report and Order, January 27, 2009, Pages 119, 125.

5. OPC's alternative Time of Use allocation methodology is virtually identical to allocating costs on energy, without regard to the times that demands are placed on the system, and is inappropriate.[174]

6. For the reasons noted previously, the Commission should also consider the results of the AmerenUE cost of service study, adjusted to reflect the allocation of off-system sales margins on class energy.

The shares of AmerenUE's total revenue requirement that would be borne by the various classes of customers under the Agreement, over a wide variety of revenue requirement outcomes, are set forth on the attachments to the Agreement. The signatory parties believe that the revenue allocation contained in the Agreement achieves a movement toward cost of service to the extent achievable in this case, and on a basis consistent with the evidence of the need for movement to cost of service. In an ideal world, all classes could have rates equal to cost of service, or alternatively, all classes could make large and equal movement toward cost of service. That has never been the case in rate proceedings where a number of factors and parties must be considered in order to reach a solution which is an improvement over the current one, but still falls short of the long-term goals. The cost of service evidence, the importance of the cost of electricity in the production of aluminum, the viability of the Noranda aluminum smelter, and the breadth of support for the Agreement all favor approval by the Commission.

MIEC believes that consideration of the evidence discussed above, including the unique circumstances facing the Noranda Aluminum smelter as discussed in more detail below, fully justify the adoption by the Commission of the Agreement.

Case No. ER-2008-0318, Report and Order, January 27, 2009, Pages 124-125.

[174] *See* the comparison of allocation factors set forth in the Meisenheimer Supplemental Surrebuttal, Ex. 315, Page 3, and Cooper Rebuttal, Ex. 135, Page 7, Lines 3-8.

Addendum to the Agreement

On March 26, 2010, the Signatories parties who were signatories filed an Addendum to the Agreement. The Addendum was filed in response to the testimony given on March 25, 2010 by the witness for the MEUA. His testimony was that the LGS class should get a 20% movement toward cost of service regardless of which study the Commission picked as appropriate, and regardless of whether the Commission picked a specific study or not.[175] The witness then testified that he would be satisfied if the LGS class received a revenue neutral shift of $4.579 million.[176] The Addendum accomplishes just that result, and the Signatories, while continuing to support the original Agreement, also would support a resolution of this issue as set forth in the Addendum.

X. CLASS COST OF SERVICE / RATE DESIGN / LTS [NORANDA] SPECIFIC ISSUES

The issues of Class Cost of Service and Rate Design are readily disposed of by virtue of the Agreement. Through this Non-Unanimous Stipulation which, due to objection by one group consisting of three customers, has become a Joint Position Statement, representatives of consumers from all classes have informed this Commission of a just and reasonable rate design well supported by the evidence in this case. But should the Commission determine that adoption of the Agreement is not appropriate, substantial evidence and strong policy rationale supports moving the LTS class to its class cost of service.

While the LTS class currently consists of but one customer, the Noranda Aluminum smelter in New Madrid, its unique acquisition of electricity renders it appropriately segregated

[175] Transcript, Pages 2835-2836.

[176] Transcript, Pages 2836-2837.

from other customers. Moreover, consideration of (i) the aluminum smelter industry; (ii) the recent history of other aluminum smelters; (iii) jobs provided by the Noranda smelter; and (iv) the overall economic vitality the Noranda smelter creates, render this customer unique to the state of Missouri in ways that support a reduction of electrical costs to the point that the LTS class is moved to its cost of service as determined by the analysis proffered by MIEC and completed by Maurice Brubaker.

The Noranda smelter in New Madrid currently employs approximately 900 persons.[177] The families of these employees directly rely on the wages earned from Noranda for support. But the entire surrounding community and, in certain aspects, the entire state of Missouri receive benefits as a result of Noranda's operations of the smelter in New Madrid. Not only does Noranda pay local taxes that are estimated to be almost 25% of all taxes collected in New Madrid,[178] but the revenue generated from Noranda's consumption of local goods and services indirectly supports many more employees and families in Missouri as well.

It has been estimated that should the Noranda smelter close, the net impact in the region would be a loss of a total of approximately 3,000 jobs, with an annual loss of approximately $121 million in total employee compensation and that Missouri would lose about $16 million annually in tax revenue. On a broader scale, it has been estimated that the a closure of the smelter would result in the loss of about 3,800 jobs in Missouri and state and local governments would lose about $19 million in tax revenues annually.[179]

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[177] Smith Direct, Ex. 426, Page 3, Line 25 through Page 4, Line 7.

[178] Smith Direct, Ex. 426, Page 9, Line 24 through Page 10, Line 26.

[179] Coomes Direct, Ex. 419, Page 2, Lines 3-12; Page 3, Lines 13-19.

Others have estimated that a closure of the Noranda smelter would result in Missouri's economy losing approximately $3 billion in economic activity over the following 25 years; with a lost present value of taxes during that time well over $100 million.[180] Clearly, Noranda has a significant, positive economic impact on the region, in an area that includes two of the three poorest counties in the state.[181] It is little wonder that the Noranda smelter has been referred to as the "crown jewel" of manufacturing in the Bootheel, and it is important to the region and the state of Missouri that the smelter continue to operate and remain profitable.[182] The Noranda economic engine is an extremely positive influence on both the Bootheel region and the entire state of Missouri, as well. But that engine is threatened. And the primary threat is the cost of power.

Noranda is in a commodity business. It has very little control over the market price for its manufactured product, aluminum. As a commodity business, success is driven by managing Noranda's costs.[183] The cost of electricity is the single largest cost item for Noranda.[184] In fact, the cost of power is the single most significant cost for all aluminum smelters.[185] Had Noranda not had an operational failure at its plant triggered by the ice storm of January 2009, it is estimated that the expense item for electricity alone at Noranda for 2009 would have been

[180] Haslag Direct, Ex. 423, Page 3, Line 4 through Page 4, Line 6 (see Schedule 1).

[181] Hodges Direct, Ex. 424, Page 1, Lines, 12-16; Page 2, Line 16 through Page 3, Line 22.

[182] Mayer Direct, Ex. 425, Page 2, Lines 1 – 15.

[183] Transcript, Page 2974, Lines 2-20; Transcript, Page 2994, Lines 12 - 25.

[184] Smith Direct, Ex. 426, Page 3, Lines 13 - 23.

[185] Transcript, Page 3062, Line 25 through Page 3063, Line 7.

approximately $140 million, constituting slightly less that one third of the smelter's overall costs to produce aluminum.[186]

Noranda actively has taken steps to control other costs at the smelter in New Madrid. This has resulted in savings of tens of millions of dollars, including approximately $27 million in savings due to increased productivity.[187] Noranda has also taken what steps it can to become more energy efficient.[188] These are expense items Noranda controls. But its single biggest expense at the smelter, the cost of electricity, is effectively left to the discretion of this Commission. Due to the nature of its business, Noranda cannot simply cut back on its consumption of electricity. All that Noranda can hope to do is to merely influence the cost of that electricity by presenting evidence to this Commission in hopes that the Commission will appreciate that its decisions on requested rate increases and allocation of costs have a significant impact on Noranda's ability to continue to operate the smelter.

The risk of a smelter closing is not an idle concern. In 2009, at least four aluminum smelters in the United States ceased operating. Another smelter closed in late 2008. Although other factors were also indicated, electric prices were cited as the primary reason for the decision to cease operations in 2009.[189] Of the five smelters that recently closed, three of them were in

[186] Smith Direct, Ex. 426, Page 3, Lines 13-23.

[187] Transcript Page 2986, Lines 6-24; Transcript Page 2985, Lines 18-24.

[188] Gregston Direct, Ex. 422, Page 4, Lines 4 – 25.

[189] Transcript, Page 2990, Line 3 through Page 2991, Line 25; Transcript, Page 3064, Lines 5-14.

the third or fourth quartile when compared to other smelter's expenses.[190] The fourth smelter was on the edge between the second and third quartile.[191]

Noranda is currently a third quartile smelter.[192] In order to have some assurance of longer-term viability, Noranda needs to be, at worst, a second quartile smelter.[193] This includes a cost of power in the second quartile, which is currently at an outer boundary of approximately $31 per MWh.[194] At estimated consumption rates, this upper limit of $31 per MWh for Noranda equates to an annual cost of electricity of approximately $128,000,000. With even a modest increase in the overall revenue requirement for AmerenUE, this upper limit is not exceeded only by moving the LTS class to its class cost of service as indicated by the study of Maurice Brubaker.

Consideration by this Commission of factors of the economic impact of the smelter and the possible losses to the local and state economy if the smelter were to close as a result of unwieldy electricity costs is appropriate. As Adonis Yatchew, Ph. D. has testified, "[s]ound public and regulatory policy would strongly suggest the prevention of further job losses, where this can be reasonably achieved, should be an important objective. . . . [T]raditional principles of rate design are consistent with electricity rates targeted to retain jobs and promote economic development."[195] "Electricity rates targeted to preserve and increase employment have

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[190] Transcript, Page 2973, Line 22 through Page 2974, Line 20.

[191] *Id.*

[192] Transcript, Page 2992, Lines 1-16.

[193] Transcript, Page 2971, Lines 16-19.

[194] Transcript, Page 2991, Lines 1 - 16.

[195] Yatchew Direct, Ex. 432, Page 2, Line 21 through Page 3, Line 4.

represented a common part of the rate making process both for regulated investor-owned utilities and power suppliers."[196] Finally, as Dr. Yatchew has testified:

> "There is a strong economic rationale for considering the economic costs of lost jobs and idle capital stock when determining rates. For example, if electricity prices are leading an industrial customer to reduce output, shift production to another jurisdiction or shut down an operation entirely, then the lowering of rates to such a customer may be justified on grounds of economic efficiency. While these arguments apply generally to industrial customers, they are especially relevant in industries where electricity comprises a large proportion of total costs, such as is the case for aluminum smelting."[197]

While the current proposed Joint Position Statement on the issues of class cost of service and rate design would exceed this amount if approved, it would at least, for now, help to move Noranda forward to longer-term viability. If the Joint Position in this regard is not approved by the Commission, then substantial evidence supports moving the LTS completely to its class cost of service as a method of fairly providing for allocation by the classes and ensuring that a policy of positive economic development is fostered in Missouri. Electrical power rate relief is something that Noranda needs in order to ensure sustainability of the smelter.[198] Moving quickly to the smelter's cost of service is a key to achieving that sustainability.

[196] Yatchew Direct, Ex. 432, Page 10, Lines 6-11.

[197] Yatchew Direct, Ex. 432, Page 9, Line 22 through Page 10, Line 4.

[198] Transcript, Page 3003, Lines 7-23.

CONCLUSION

For the foregoing reasons, the MIEC respectfully requests that the Commission (1) find that $105 million is proper for plant maintenance expense; (2) maintain the current expense level for storms in rates and deny AmerenUE's request for a storm expense tracker; (3) establish a $7.6 million expense level for infrastructure inspection and deny AmerenUE's request for an infrastructure inspection tracker; (4) deny AmerenUE's request for a vegetation management tracker; (5) adopt depreciation rates as recommended by MIEC witnesses Jim Selecky and William Dunkel; (6) establish an ROE of 10.0 percent; (7) adopt an FAC employing Maurice Brubaker's recommended 80/20 sharing mechanism; (8) deny the nuclear fuel price input for Callaway for the nuclear fuel being loaded during Callaway Refueling Outage Number 17; (9) adopt the Joint Position on Rate Design reflected in the Agreement or the Addendum filed by OPC, MIEC, Consumers Council, AARP and the Missouri Retailers Association, or in the event the Commission decides to reject the Agreement and Addendum, adopt the MIEC's proposed rate design based upon the recommendations of Maurice Brubaker.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic mail this 23rd day of April, 2010, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke