BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Tariff Filings of Union Electric Company, d/b/a AmerenUE, to Increase Its Revenues for Retail Electric Service.	))))	**Case No. ER-2010-0036** Tariff Nos. YE-2010-0054 and YE-2010-0055

POST-HEARING REPLY BRIEF OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION

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In 1930 May Department Stores commenced a suit in equity seeking an accounting for alleged overcharges by Union Electric Light & Power Company for electric service. The suit was not finally resolved until 1937 when the Missouri Supreme Court issued its opinion. Briefly, Union Electric acquired the utility that was providing electricity to May Department Stores in downtown St. Louis in 1923, but kept it as a subsidiary and charged May Department Stores under the subsidiary's contract rate rather than Union Electric's lower tariff rate. The Missouri Supreme Court held that Union Electric operated the subsidiary in economic unity with Union Electric's other operations and that May Department Stores was obligated to pay only Union Electric's tariff rate, not the subsidiary's contract rate.[1] Union Electric in that case is the same Union Electric Company that is now doing business as AmerenUE, and AmerenUE is still, even in its briefing in this case, as aggressively seeking to maximize its profits.

In this reply brief Staff has limited its responses to the issues it perceives in the initial briefs of other parties it views to be of sufficient importance to merit reply; however, not responding to a position taken or statement made by another party in that party's brief is not an indication Staff agrees with the position or statement—silence is not acquiescence.

[1] *May Department Stores Company v. Union Electric & Light Company*, 341 Mo. 299, 107 S.W.2d 41 (1937).

EARNINGS OPPORTUNITY

AmerenUE spends much of its brief, as it has spent much of this case, complaining that it has been unable to earn over the past approximately three years the rate of return the Commission used in its rate cases for determining its revenue requirement. AmerenUE is correct that its new capital investments, the general financial climate and its increased operating costs all contribute to a basis for seeking to recover additional revenues from its retail customers. So do reduced off-system sales margins—one of the major factors driving the about $116 million increase in AmerenUE's fuel costs in this case. The Commission does not set rates to guarantee a utility gets the revenue requirement the Commission determines, it sets those rates to give the utility an opportunity to get that revenue requirement from its retail customers. Unless someone files a complaint case, it is AmerenUE who decides if and when to file its next general rate case. And it has done so, filing three rate cases over about the last three years—Case Nos. ER-2007-0002, ER-2008-0318 and this case. Not insignificantly, in January 2009 AmerenUE lost Noranda's significant load for an extended period of time due to a severe storm[2] and AmerenUE also had significant storm damage and outages due to storms that occurred in July 2006, January 2007 and December 2007.[3]

While AmerenUE now complains about regulatory lag, it did not do so at least for a long time before its 2006 rate case, Case No. ER-2007-0002. Prior to that case the Commission had not increased AmerenUE's electric rates since 1988, and that increase was part of a rate increase phase-in the Commission ordered in 1985. The last time the Commission ordered a reduction in AmerenUE's electric rates was in 2002 when it approved a settlement agreement reached after the Staff filed a complaint in which it asserted AmerenUE's rates were too high. That case was Case No. EC-2002-1. Further, in its last rate case, Case No. ER-2008-0318, the Commission

[2] Ex.134 AmerenUE witness Cooper Direct Testimony p. 26.
[3] See EO-2007-0037 (July 2006), EU-2008-0141 (January 2007) and EO-2008-0218 (December 2007 and January 2009).

authorized AmerenUE to use a fuel adjustment clause. Despite having a fuel adjustment clause where it recovers 95% of its fuel-related cost increases AmerenUE chose to file this rate case which will result in it recovering 100% of those costs—which the Staff has valued at about $116 million—and to recover them 16 to 20 months sooner than it would have under its fuel adjustment clause.

AmerenUE did not implement its voluntary and involuntary employee separation plans until September and October of 2009 without explaining why it did not implement either of those cost-cutting measures earlier in an effort to cut its costs—and concomitantly increase its earnings—during the three-year period starting in 2007 it complains it should have had more retail customer revenues.

AmerenUE has not shown the rate process in Missouri is not working as intended or that it is "unfair."

RATE OF RETURN

In its brief AmerenUE draws a distinction between an "expected" return and a "required" return. According to AmerenUE an "expected" return is "what equity analyst reports address" and a "required" return, which it defines as "the cost of equity or ROE," is "what this Commission must address," and the two are often "different."[4] While equity analysts are attempting to determine an expected return based on the current stock price, AmerenUE is wrong that equity analysts don't use a required return on equity, *i.e.*, cost of equity, to determine if the expected return for a stock may be higher or lower than the investors' required return. In the utility ratemaking arena, rate of return (ROR) witnesses present their estimates of investors' required returns on common equity. Therefore, the required returns equity analysts use to discount future expected cash flows are a reflection of the return these equity analysts believe

[4] AmerenUE brief p. 27.

should be required to accept the risks of an investment in a regulated electric utility company. In a rate case the Commission is attempting to divine what return a company should be allowed to earn in the future, which each ROR witness in this case agrees should be based on the cost of equity. By their very nature both the required returns equity analysts use to determine expected returns on stock and the required returns this Commission uses to determine revenue requirements are projections, and both are based on investors' expectations implied in market data. Since the whole purpose of the mathematical gymnastics rate of return witnesses use with their informed judgment to make recommendations to the Commission of appropriate returns on equity and rates of return for specific regulated utilities is an effort to gauge investors' expectations of what returns they should get in the future, what possibly could be more informative as a touchstone for the reasonableness of these recommendations than the views of the investment community? Their livelihoods are dependent on their views—they have "skin in the game." Certainly the views of the investment community are a better touchstone for reasonableness than the narrower, and often politicized, viewpoints of state utility commissions expressed by their authorized returns.

Although Dr. Morin does not introduce equity analysts' cost of equity estimates (perhaps because he couldn't find any that support even his revised 10.80 percent cost of common equity estimate), Dr. Morin relies *exclusively* on equity analysts' five-year earnings per share (EPS) forecasts for purposes of his constant-growth discounted cash flow (DCF) analysis. Since Dr. Morin gave a 57 percent (57%) weighting to his constant-growth DCF results in determining his final recommended ROE,[5] AmerenUE's own cost of capital witness has relied heavily on these equity analysts' projections. However, Dr. Morin has neither shown he understands nor explained why his common equity estimates derived with equity analysts' projections is so

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[5] Ex. 219 Staff witness Murray rebuttal testimony p. 4 ll.6-9.

different from the cost of common equity these very same analysts use for determining a fair utility stock price.

AmerenUE's argument in its post-hearing brief that using equity analysts' reports as a source of projected earnings is "novel" and should be rejected appears premised on an assumption Staff witness Mr. Murray used these reports to determine the projected earnings of various utilities. Not so, Staff witness Mr. Murray primarily reviewed equity research reports for the required returns used for discounting expected cash flows, in turn to use them to verify the reasonableness of Staff's ROE recommendation. In any event, AmerenUE's argument against using equity analysts' reports projections, if accepted, would mean that at least all rate of return recommendations based on constant-growth DCF estimates, which rely entirely on analysts' EPS growth forecasts, should be disregarded. AmerenUE witness Dr. Morin and Public Counsel witness Mr. Lawton both relied exclusively on analysts' projections in their DCF analyses. Based on AmerenUE's argument, their DCF analyses should be disregarded.

Staff agrees with AmerenUE that:

1) it is inappropriate to rely on earnings as the primary driver for estimating the cost of common equity—however, earnings are not irrelevant and should be considered; and
2) that investors do not rely on near-term equity analysts' low or high earning per share (EPS) forecasts to discount future cash flows because many times they are not sustainable and because they do not indicate the marketplace cost of common equity—this is why Staff primarily relied on a multi-stage discounted cash flow (DCF) analysis for deriving an appropriate return on equity for AmerenUE.

Because they do not rely on near-term equity analysts' low or high earning per share (EPS) forecasts to discount future cash flows for each utility stock analyzed, the cost of common equity that equity analysts use do not vary widely. While they are not the same due to discounts and premiums applied, the costs of equity for stable utility companies are not vastly different; therefore, for example, Goldman Sachs used a nine percent (9%) cost of common equity in its September 29, 2009 and January 15, 2010 analysts' reports[6] for *all* of the regulated electric utility companies it covered in them.

Public Counsel witness Lawton's assertion investors do not have access to the equity research reports Mr. Murray reviewed is contradicted by AmerenUE witness Ms. Cannell who stated that equity analyst reports are freely exchanged within the investment community and that retail investors are influenced by institutional investors who have ready access to these reports.[7]

As discussed previously, Ms. Cannell has testified that she is not a cost of capital expert,[8] but AmerenUE decided to introduce as an exhibit a simple line graph in attempt to discredit the nine percent (9%) cost of equity Goldman Sachs applied to regulated electric utility operations.[9] If Ms. Cannell had taken the time to review the Goldman Sachs reports that she attempts to address in her graph, she would have discovered that the analysts apply the nine percent (9%) cost of common equity Mr. Murray cited only to regulated electric utility operations, not to diversified companies such as Ameren that have significant merchant generation operations.[10] This Commission is determining an appropriate cost of common equity for AmerenUE, not Ameren. Consequently, even if AmerenUE were correct that an expected return is synonymous with a required return in the investment community; its argument would be applicable to Ameren, not AmerenUE. Consequently, the performance of Ameren's stock price is not only affected by AmerenUE, but also by Ameren's merchant generation operations in Illinois. Those operations have recently significantly lowered Ameren's share value because these operations have experienced low profitability during the approximately the same three-year period

[6] Ex. 233 p. 20 and Ex. 234 p. 25 respectively.
[7] Tr. Vol. p. 2287 l. 23 to p. 2288 l. 15.
[8] Tr. Vol. 28 p. 2282 l. 16 to p. 2283 l. 5.
[9] Ex. 177.
[10] Ex. 234 at Ex. 3 p. 6.

AmerenUE presents for AmerenUE having earned below its allowed ROE.[11] Regardless, an analyst stock "sell" recommendation is not an indication that a company's cost of equity is higher than it is for the other companies in that industry. It may be that the stock of this company is priced higher than some investors consider fair. Assuming that the current stock price reflects consistent growth expectations, this indicates that the market cost of equity is lower than that used by the equity analyst. This fundamental misunderstanding of the interaction of stock prices and the cost of equity should be considered by the Commission in the weight it gives to this testimony and exhibit[12] of Ms. Cannell.

AmerenUE states in its brief that Staff witness Mr. Murray's use of electric demand growth plus a factor for inflation was "his own idea" and that he was "unaware of any cost of capital witness, other than himself, recommending such a growth rate."[13] While using electric demand growth plus an inflation factor may seem "unconventional" to AmerenUE, this approach is conventional in the investment community for purposes of evaluating utility investments. The cost of capital is determined by investors, not ROR witnesses in rate cases. ROR witnesses are estimating the cost of common equity required by investors. The very same Goldman Sachs reports that AmerenUE had in its possession that Staff reviewed and provided as exhibits during the hearing in this case (after Dr. Morin provided Staff these reports which he received from AmerenUE), explain the importance of evaluating projected demand as a percentage of GDP to estimate future growth prospects for electric utility companies. The Goldman Sachs report identified as Exhibit 9 on page 11 of marked Exhibit 234 indicates that historically for every one percent (1%) change in gross domestic product (GDP) electric demand growth changes by approximately 60 to 70 percent (60-70%). Considering the amount of resources Goldman Sachs dedicates to its equity research, it is inconceivable that investors do not evaluate projected

[11] Ex. 234 at Ex.34 p. 30.
[12] Ex. 177.
[13] AmerenUE brief pp. 24-25.

demand growth in assessing the growth prospects of an electric utility, or any other company. Although Staff decided to work from the bottom up (electric demand plus inflation), working from the top down in this manner produces long-term growth projections very similar to Staff witness Mr. Murray's estimate. Additionally, Mr. Murray's estimate of the final stage of his discounted cash flow (DCF) methodology was very similar to approximately 50-year average DPS, EPS and BVPS growth rate for the electric utility industry shown in Exhibit 1 attached to Mr. Hill's Rebuttal Testimony which was admitted into evidence as Exhibit 212. Consequently, Mr. Murray's estimate is quite consistent with what investors expect for a long-term, perpetual growth rate, which is corroborated by the 2.5 percent (2.5%) perpetual growth rate Goldman Sachs used in its own analysis.[14]

CLASS COST OF SERVICE AND RATE DESIGN

The other parties accurately characterize in their briefs that Staff did not oppose the nonunanimous stipulation and agreement on rate design filed March 17, 2010 (Stipulation and Agreement) or the nonunanimous stipulation and agreement on rate design filed March 26, 2010 (Addendum to Stipulation and Agreement). And most point out that Staff acknowledged these agreements, if implemented, would result in just and reasonable rates.[15] These are already addressed in Staff's initial post-hearing brief. However, the Midwest Energy Users Association argues in its brief that implementation of these agreements, which are now changes of positions of the signatories to them would result in unreasonable rates. If class cost of service results were the sole basis upon which to judge the reasonableness of rates, the Staff might agree; however, they are not. As the Staff addressed in its initial post-hearing brief and in testimony, class cost-of-service studies and the results from them are a primary guiding factor in determining overall revenue neutral shifts in class revenue responsibilities; however, other factors such as shifts

[14] Ex. 234 Ex. 28 p. 25.
[15] Tr. Vol. 35 p. 3156.

made in AmerenUE's recent general electric rate cases, the rate designs of other electric utilities this Commission regulates, rate impacts to customers of changing customer charges and public acceptance of and preference for rate stability should also be considered.[16] When those factors are considered, as well as that the revenue-neutral shifts are relatively small in comparison to the overall revenues being collected from each class, and the impacts of the revenue requirement increase from this case, in Staff's opinion the resulting rates from either of these agreements would be "just and reasonable." Staff disagrees with the Midwest Energy Users Association on this point.

Having responded to Midwest Energy Users Association regarding the rate design settlement agreements, the Staff points out that while it is Staff's opinion in this case the rates that would result from either of those agreements would be just and reasonable, it is not Staff's opinion the rates that would result from them would be the optimal rates. When Staff weighed various factors such as revenue neutral shifts made in AmerenUE's recent general electric rate cases, the rate designs of other electric utilities this Commission regulates, rate impacts to customers of changing customer charges and Staff's judgment of public acceptance and preference for rate stability. Staff concluded the optimal overall revenue neutral shift in rate revenue responsibility is to reduce the revenue responsibility of the large general service (LGS) class by $3,000,000 and, concomitantly, increase the revenue responsibility of the residential (RES) class by the same $3,000,000. This, as well as Staff's other rate design recommendations are set out in Staff's initial post-hearing brief and, therefore, are not repeated here. While it is not opposing them, Staff is not supporting either of the rate design settlement agreements as the optimal rate design in this case.

[16] *Id.* pp. 25-28.

Because it may be of use to the Commission, Staff has calculated an estimated residential customer impact based on certain assumptions. Staff has assumed its recommendation for the residential class of a $3.0 million increase in revenue responsibility as part of a revenue neutral adjustment is adopted, a $165 million overall increase, $2,201,748,791 overall retail revenue. Based on those assumptions, the average percentage increase would be $165,000,000 / $2,201,748,791 = 7.494% increase. With an added assumption the average yearly bill of a typical residential customer is $959.17 the overall yearly bill increase to a typical residential customer would be $959.17 x 0.07494 = $71.88 per year or $5.99 per month. The bill impact to residential customers of Staff's recommended revenue neutral adjustment would add approximately $0.24 extra per month: $3,000,000 / 12,456,000 residential annual customers = $0.24. Based on the above assumed increase, the rate design Stipulation and Agreement would add approximately $1.16 extra per month to a residential customer's bill:

$14,500,000 / 12,456,000 residential annual customers = $1.16 per month.

While the parties focus on rate designs, the Missouri Industrial Energy Consumers also attack Staff's class cost of service study in their brief. They assert the 4CP Average and Peak (A&P) method is inappropriate because it double counts average demand and effectively gives a 55% weighting to energy. The issue of double counting by the 4CP average and peak method would only have validity if one accepts utilities only build new generation to meet peak load demand. In the past, at the urging of Dr. Proctor, this Commission has appropriately rejected that peak responsibility theory in recognition that utilities build generation to meet load at all times, not just for system peaks—the capacity utilization approach.[17] Dr. Proctor's capacity utilization approach adopted by this Commission is presented in Schedule MSS-4 to Staff's Class Cost-of-Service and Rate Design Report (Ex. 205).

[17] Ex. 208 Staff witness Scheperle surrebuttal testimony pp. 8-9.

They also assert Staff's alternative Capacity Utilization method uses demand from all 12 months, and only gives 7% weightings 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. They are wrong. As Staff witness Scheperle testified in surrebuttal:[18]

> AmerenUE is a summer peaking utility. In AmerenUE's territory, the highest peak demands have typically occurred in the summer due to air conditioning load. Both of Staff's CCOS 4 studies (4CP A&P; Capacity Utilization A&P) give more weight to the summer months in deriving allocation factors. The production-capacity "Peak" component of the 4 CP A&P method provides a 100% "Peak" component as it considers the four months with the highest peak demand, which occur during the summer months (June – September). The Capacity Utilization A&P method also considers the summer months by allocating approximately 48% of costs to the summer months (June – September).

Finally, they assert that Staff's alternative capacity utilization method also double counts, and has never been adopted by this or any other Commission. Staff already addressed the assertion of double counting above. Their assertion this Commission has never adopted the Staff's capacity utilization method is wrong. The Commission did so in at least the following cases: *Re Kansas City Power & Light Company,* Case No. EO-78-161, February 28, 1983, (Report and Order); *Re Arkansas Power & Light Company,* Case No. ER-81-364, 25 Mo.P.S.C.(N.S.) 101 Report and Order (1982); and *Re Union Electric Company,* Case Nos. EO-85-17 and ER-85-160, 27 Mo.P.S.C.(N.S.) 183 (Report and Order) (1985).[19]

DEPRECIATION

AmerenUE makes much of Staff's witness use of an adjective, claiming that Staff has created some sort of new "true mass property" approach. This blatant overreaching is typical of AmerenUE's brief in the area of depreciation expense. AmerenUE's life span-based study is like a car without an engine. No amount of anti-company conspiracy theories can counteract the

[18] Ex. 208 Staff witness Scheperle surrebuttal testimony pp. 9-10.
[19] Ex. 208 Staff witness Scheperle surrebuttal testimony pp. 8-9.

simple fact that AmerenUE's expense request relies on dates that have no basis in economics. No amount of anti-company conspiracy theories can counteract the simple fact that AmerenUE refused to evaluate the economic feasibility of the dates that it relies on for its depreciation expense request. AmerenUE's depreciation expense request does have its basis in some non-objectionable elements; however, none of the things AmerenUE did correctly can overcome the insurmountable flaw of relying on retirement dates that fail to consider the economics of the retirement. Staff's study, which makes use of the best data available, for the reasons described in its initial brief, is the preferable choice for establishing the level of depreciation expense to be included in the rates resulting from this case.

AmerenUE apparently is of the belief that the thought of good regulatory practice regarding depreciation does not cross the Staff's mind outside of the context of an AmerenUE rate case. Of course Staff is aware of the fundamental difficulty of reliably projecting the future retirement of plants. Any question Staff may have had about whether AmerenUE would actually produce a competent study in this case was answered when AmerenUE witnesses indicated their stubborn refusal to consider the economic feasibility of the assumed retirement dates.

To use the hypothetical power plant described on page 48 of AmerenUE's initial brief as an example, assume a power plant is installed in 1970, retires in 2030, and that at 10-year intervals between those dates substantial additions to the plant are made. If in 2010, a retirement date of 2020 is used for purposes of determining depreciation expense, the ratepayers in the 2010 – 2020 timeframe will pay DOUBLE their share of depreciation expense. If in 2010, a retirement date of 2040 is estimated, then ratepayers in the 2010 – 2020 timeframe would underpay. Clearly, then, there is no inherent superior reliability to the life span approach. Consideration of that 1970 plant in the context of a generation fleet - especially for a utility with a fleet the size of AmerenUE's - does not require the level of precision necessary for a valid life span study, and lessens the opportunity for error, miscalculation, misestimation, and purposeful manipulation.

AmerenUE raised the 1970 plant example in apparent support of its non-sequitor claim that a mass property study will always short change AmerenUE, stating "[y]et the Staff uses the same average service life for all plant components, regardless of at what point in the life of the plant they were installed. The Staff's method simply does not recognize the obvious fact that when the plant is ultimately retired, all plant components of all vintages will be simultaneously retired." This blatant mischaracterization ignores the fact that Staff's mass property study is based on AmerenUE's actual retirement history, which includes retirements of entire plants. The average service life of Venice – which was included in Staff's study – is not the total length of time that the Venice site was in service. The average service life of Venice is the average of the services lives of each plant component of the Venice site. Including retired plants, such as Venice, in the retirement history studied by Staff accounts for the truncation of the lives of recently-installed plant when that plant is retired.

AmerenUE's retirement dates assumed for prior cases have varied widely, and in defense of their current request, AmerenUE can only turn to conspiracy theories. AmerenUE conjures a picture of a maniacal anti-utility Staff, conspiring to deprive AmerenUE of money, and inventing Commission orders and decades of practice out of thin air. AmerenUE also conjures dates for retirements of plants, premised on the notion that there's something magical about the twentieth anniversary of a scrubber installation. AmerenUE is driven to these lengths, apparently, by its car without an engine – its stubborn refusal to examine the economic feasibility of retiring plants, when those retirements are to be based on the economic feasibility of retiring those plants.

POWER PLANT MAINTENANCE EXPENSE

The heart of AmerenUE's position in its brief relating to power plant maintenance centers on repeated attempts to disparage and discredit Staff witness Roberta Grissum. In doing so, AmerenUE glosses over the weaknesses of its own position as well as Staff's reasonable justifications for proposing to normalize maintenance expense based on a three-year average of non-internal labor expenses incurred for the 36 months ending January 31, 2010.

The test year represents a starting point for determining the utility's existing annual revenues, operating expenses and net operating income.[20] In a prior AmerenUE rate case, the Commission stated that "[i]n Missouri, rates are set using a historical test year. The Commission examines the utility's revenues and expenses for that test year and uses that information to set rates to be charged in the future. *The Commission does not use a forward-looking test year based on budgets and projections to set those rates*." (emphasis added).[21] Yet, AmerenUE proposes to do just that by relying on budgeted numbers to support the abnormal test expense levels. As explained in Staff's initial brief, AmerenUE's 2010 budget was manipulated by the deferral of maintenance in 2009 based on financial, rather than operational concerns.[22] Indeed, Staff does not project or predict the level of annual revenues or operating expenses that a company will incur in the future.[23] Staff attempts to develop a normal level of expenses within the parameters of the cut-off dates established while maintaining the relationship between revenues, expenses and investment.[24]

An essential fact to keep in mind is that AmerenUE experienced unusually high levels of power plant maintenance because prior planned outages had been deferred under the company's

[20] Ex. 201 Staff witness Rackers direct testimony p. 5 ll. 15-17.
[21] In the Matter of Union Electric Company d/b/a AmerenUE's Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area, Case No. ER-2007-002 (Report and Order) p. 32.
[22] Staff's initial brief p. 52.
[23] Tr. p. 1232 l. 2-4.
[24] Tr. p. 1232 l. 5-8.

own discretion.[25] AmerenUE now proposes to base its rates off of these unusually high figures. In AmerenUE's initial brief, there is a section labeled "Key Facts" regarding power plant maintenance.[26] There are three additional "key facts" the Commission should consider:

1) This issue must be examined based on non- internal labor expense levels since payroll has already been annualized in other adjustments, as exhibited by the numerous payroll adjustments in the Staff's Accounting Schedule 10 – Adjustments to Income Statement. This concept is recognized by AmerenUE and other parties in the issues involving vegetation management, infrastructure inspections and storm expense.

2) The non-internal payroll coal-fired power plant maintenance expense experienced during the test year, $75,384,940, is abnormally high in comparison to historic levels and must be normalized to establish the appropriate ongoing levels. The Staff proposes to adjust this abnormal test year level by reducing it to the average level experienced during the 36 months ending on the January 31, 2010 true-up cut-off level $60,445,105.[27]

3) Even though Staff is very concerned about AmerenUE's past manipulation of its budgets and their use for establishing on-going expense levels, AmerenUE's budgets offer no cover of the abnormal test year level. The non-internal payroll coal-fired power plant maintenance expense experienced during the test year is abnormally high in comparison to AmerenUE's 2010 budget, as well as its 2011 and 2012 budgets, further evidencing the need for normalization to establish the appropriate ongoing levels. AmerenUE's 2010 budget of $66.4 million is $9 million less than the abnormal test year level.[28]

Because rates set by the Commission are intended to reflect normal, ongoing operations, Staff's proposal to normalize power plant maintenance takes into consideration a wide range of

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[25] *See* Ex. 224 Staff witness Grissum rebuttal testimony p. 6; Ex. 103 AmerenUE witness Birk rebuttal testimony p. 16 l. 6.
[26] AmerenUE initial brief p. 96.
[27] Ex. 242 Staff witness Grissum true-up testimony p. 2 l. 9.
[28] *See* Ex. 242 Staff witness Grissum true-up testimony p. 2.

factors and maintains the relationship between revenues, expenses and investments.[29] The Commission would be taking a prudent course of action for AmerenUE's power plant maintenance expenses by adopting the Staff's position.

NUCLEAR FUEL

AmerenUE heavily relies on the fact that the Commission allowed it to include nuclear fuel assemblies that were not going to be loaded into the reactor until a few weeks beyond the true-up cut-off in its last rate case, Case No. ER-2008-0318.[30] AmerenUE attempts to mischaracterize Staff's current position of not allowing nuclear fuel assemblies to be included in the instant case as inconsistent with its position in the last AmerenUE rate case.[31] These two situations, however, contain distinguishable characteristics that make inclusion of the fuel assemblies that will not be operational until well after the agreed upon true-up cut-off date inappropriate. The Staff did not "draw a line in the sand" in the previous rate case nor does it do so in this case. Moreover, the Staff does not fail to exercise judgment when analyzing the appropriate costs to include in true-up.

In the prior AmerenUE rate case, Staff included a nuclear fuel cost increase that occurred one month beyond the true-up cut-off date. In that situation, however, Staff had determined that considering a cost that occurred one month beyond the true-up cut-off date would not materially disrupt the relationship between revenues, expenses and investments that was established during the true-up. Furthermore, AmerenUE did not have a Fuel Adjustment Clause at that time and Staff had taken a position against the Commission granting one. As previously explained in Staff's Initial Brief, the FAC will not only capture the increase in AmerenUE's nuclear fuel cost, but also increases and decreases in AmerenUE's other fuel costs and its off-system sales.[32]

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[29] Tr. p. 1232 ll. 5-8; Ex. 201, Staff witness Rackers direct testimony p. 8 ll. 16-21.
[30] *See* AmerenUE brief p. 108-09.
[31] *See* AmerenUE brief p. 108-09.
[32] Staff's initial brief p. 55.

The Commission has stated that "[t]he Company's proposal should also specify a complete list of accounts or items of expense, revenues, and rate base designed to prevent any mismatch in those areas. *The Commission will not consider a true-up of isolated adjustments, but will examine only a "package" of adjustments designed to maintain the proper revenue-expense-rate base match at a proper point in time.*" (emphasis added).[33] To allow AmerenUE to include a cost for fuel that will not be capable of generating electricity until after the reload is complete and the unit is placed back in service, four months after the true-up cut-off date, will disrupt the principle of maintaining an appropriate relationship at an appropriate point in time.

Finally, AmerenUE points out the Staff's lack of consideration of "unique facts" regarding the operating characteristics of the Callaway plant.[34] While it is true that Callaway may not share these interesting traits with fossil based generating units, these are nothing more than red herring issues that have no bearing on the issue at hand. This issue is about timing, matching (maintaining an appropriate relationship) revenues, expenses and investment at a specific point in time.

STORM EXPENSE

Staff reiterates that the Commission should deny AmerenUE's request for a storm tracker. Further, the Commission should set the level of storm expense to $6.4 million and amortize the test-year level above this amount over the next five years. AmerenUE's bases for a storm tracker are to reduce regulatory lag and increase its cash flow.[35] However, a tracker is neither going to turn on the light faster or more efficiently, nor does a tracker give the utility cash immediately. AmerenUE is only looking for a mechanism to allow it to spend freely with

[33] *In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Consolidate Rates and Implement a General Rate Increase for Natural Gas Service in the Missouri Service Area of Atmos*, Suspension Order and Notice, Order Setting Hearings and Order Directing Filing, Case No. GR-2006-0387.

[34] AmerenUE Brief at p. 111-12. AmerenUE points out the Callaway plant runs at full load 24 hours per day, 7 days per week; that the MWhs generated at Callaway do not vary based on nuclear fuel costs or demand for electricity; and that Callaway is the cheapest plant to run with the exception of hydroelectric plants.

[35] AmerenUE brief p. 120.

minimal scrutiny. Staff believes that if AmerenUE incurs significant expense due to storm restoration efforts above the baseline level set in rates that, it should seek an Accounting Authority Order (AAO) from this Commission.[36] Staff scrutinizes AAOs to a higher degree than tracking mechanisms because AAOs are reviewed independently from general rate cases.[37]

It appears that AmerenUE does not want to burden itself with having to file for an AAO or file a rate case to assure the opportunity to recover extraordinary storm costs. Part of the traditional regulatory process in Missouri is that a utility determines whether changes in its costs are significant enough to warrant filing a rate case or requesting an AAO as a means to mitigate the effect on earnings of extraordinary events. As a result, the utility has complete discretion in the decision to pursue the opportunity to gain recovery, but must at least take action and support its request. Here, AmerenUE wants a mechanism that automatically captures storms costs, accrues a carrying charge, preserves it for an unlimited time period and guarantees recovery in some unspecified future rate case.[38] AmerenUE's witness Mr. Wakeman agreed that "a tracker 'guarantees the recovery of the costs associated with all storms.'" Further, Mr. Wakeman sees no problem with providing such guarantee and sees it as a reason for the Commission to adopt the storm tracker.[39]

AmerenUE is correct that restoring services as quickly as possible after a storm might require significant expenditures.[40] AmerenUE's witness, David Wakeman, stated that expenses due to storms should decrease with its compliance with the vegetation management and infrastructure inspection programs, as well as, AmerenUE's experience with restoration efforts

[36] Tr. Vol. 26 pp. 1662-63.
[37] Tr. Vol. 26 p. 1668 l. 24 to p. 1669 l. 2.
[38] Ex. 202 Staff witness Rackers rebuttal testimony pp. 1-5.
[39] Ex. 110 AmerenUE witness Wakeman surrebuttal testimony p. 9.
[40] AmerenUE brief p. 120.

from previous storms.[41] So, AmerenUE's expenses related to storms should be decreasing rather than increasing, thus obviating the need for a tracker.

A storm tracker is very different from the vegetation management and infrastructure inspection trackers established in Case No. ER-2008-0318. In particular, the proposed storm tracker is not "limited." The storm tracker AmerenUE is seeking would capture all costs from all storms. It would accrue a carrying charge, which is a provision the vegetation management and infrastructure inspection trackers do not have. The vegetation management and infrastructure inspections trackers were authorized for only one year and in direct response to a change in the Commission's rules for activities specifically addressed in the rule change. There is no time limitation for the storm tracker and no rule change that specifically addresses such a tracker for changes in utility operations.

AmerenUE claims that it is not requesting the Commission track all of its expenditures. However, the proper characterization is "not yet." AmerenUE is asking for a storm tracker. It currently has: a tracker for vegetation management that it wants to extend for an indefinite period; a tracker for infrastructure inspections that it wants based on future budged costs; a pension tracker, an other post-retirement employee benefits tracker, a fuel adjustment clause to track and recover changes in fuel costs; and it initially requested in this case an environmental cost recovery mechanism to track and recover the cost of environmental costs. There appears to be no limit in sight for the number of trackers AmerenUE seeks.

AmerenUE claims the storm tracker will be a two-way tracker. However, past promises for ratepayer protection are idle words compared to AmerenUE's actions. AmerenUE has overcharged, or sought to overcharge, customers for vegetation management and infrastructure inspection costs on three occasions. First, in the cost it provided to the Commission associated

[41] Tr. Vol. 26 p. 1586 l. 24 to p. 1587 l. 5; Tr. Vol. 26 p. 1584 ll. 9-13.

with the amount it identified as incurred from January 1, 2008 through October 31, 2008, again for the cost it identified as the incurred October 1, 2008 through February 28, 2009, and finally as the amount it provided to the Commission as the budgeted cost for 2009 and 2010, which were established as the amount in base rates in ER-2008-0318. Even though AmerenUE agrees that there has been overcollection, it has offered no proposal to return these monies to ratepayers.

AmerenUE witness Mr. Wakeman indicated that AmerenUE is not going to alter its storm restoration practices if the Commission denies it a storm tracking device.[42] Staff reiterates that the Commission should deny AmerenUE's request for a storm tracker. The Commission should set the base level for storm expenses to $6.4 million dollars and amortize the amount incurred in the test-year above this level, over a five year period.

VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTIONS EXPENSES

AmerenUE witness Mr. Wakeman testified he is given a budget each year to spend on projects related to his position as vice-president of energy delivery. He stated during cross-examination that he divides his budget into two categories—mandatory projects and optional projects that benefit AmerenUE's customers.[43] Mr. Wakeman further indicated that he makes his decision on funding optional projects based on the budget and not on the impact on rates,[44] and that he could continue to engage in optional projects if his budget was increased and this concept could continue indefinitely.[45]

AmerenUE witness David Wakeman contends that he decides what projects to fund given each year's budget.[46] He stated that there are programs each year which would help to improve the reliability of service to AmerenUE's customers that he cannot implement or fully fund due to

[42] Tr. Vol. 26 p. 1621 l. 14.
[43] Tr. Vol. 26 p. 1611 ll. 2-10.
[44] Tr. Vol. 26 p. 1611 ll. 18-25.
[45] Tr. Vol. 26 p. 1622 ll. 3-16.
[46] Tr. Vol. 26 p. 1611.

cash constraints.[47] Are the projects Mr. Wakeman alludes to ones that will significantly affect reliability? Are these projects in pursuit of a reliability standard that is affordable to ratepayers? Are these projects prudent expenditures? No detail of what ratepayers are missing out on is provided. However, apparently the more money the ratepayers provide, the more money AmerenUE will spend. The constraint provided by the lack of unlimited funding appears to be a necessary check to the potential for unbridled spending.

AmerenUE contends that since no party is asserting imprudence on AmerenUE's part with its vegetation management and infrastructure inspection programs that the Commission should continue the trackers. It further justifies the continuation of the trackers through claims that the programs are not fully mature and the amount expended to comply with the Commission rules has not leveled off. Staff witnesses Daniel Beck, Stephen Rackers, and MIEC witness Greg Meyer assert that the programs have reached maturity.

AmerenUE attempts to discredit Mr. Rackers and Mr. Meyer testimony on the basis they are accountants, not engineers; and, therefore, unable to determine whether these programs have reached a level of stability. However, the underlying principle behind trackers is an accounting adjustment, and not an engineering function. Furthermore, it was not until December 2009 that AmerenUE witness David Wakeman became the vice president of energy delivery.[48] Prior to his recent appointment, Mr. Wakeman was the manager of distribution operations and focused on storm response and trouble shooting.[49] When Mr. Wakeman was questioned about his familiarity with the Commission's Chapter 23 rules, his response was "[s]omewhat, yes, some of them."[50]

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[47] Tr. Vol. 26 p. 1612.
[48] Ex. 109 AmerenUE witness Wakeman rebuttal testimony p. 1 l. 22.
[49] Id. at p. 1 ll. 21-22
[50] Tr. Vol. 26 p. 1718 l. 12.

Unfamiliarity with the specific details of the vegetation management and infrastructure inspection operations does not mask the following facts regarding the costs of these programs. AmerenUE did not spend as much during the first year of operation of the vegetation management and infrastructure inspection trackers as the Commission authorized in Case No. ER-2009-0318. Even after reducing the amount authorized by the Commission for AmerenUE's errant inclusion of internal labor, AmerenUE did not spend as much as the Commission authorized in Case No. ER-2009-0318.[51] In fact, the amount AmerenUE spent during the twelve months ending January 31, 2010 is less than the amount AmerenUE spent during the twelve months ending September 30, 2009, which Staff used in its direct filing. Familiarity with the actual costs experienced indicates a decline rather than an increase in vegetation management and infrastructure inspection expenditures.[52]

There is no need to resort to budgeted numbers when determining the appropriate level to include in AmerenUE's cost of service. AmerenUE's expenditures for 2008 and 2009, are not significantly different from the 2010 and 2011 budget numbers, which include inflation.[53] While the budgeted numbers for the infrastructure inspection program vary a little more than the vegetation management program, they still are an extremely small part of AmerenUE's total revenues. Even more, the reduction in the infrastructure inspection base level, is in part a result of AmerenUE's mistake of including labor in the previous base level established in Case No. ER-2008-0318.[54] If AmerenUE truly does not know how much it will spend, why should AmerenUE be allowed to use its budgets as a basis for the amount included in rates and as a base amount for the tracker in reliance on its budget? Surely the actual level of cost experienced for

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[51] Ex. 109 Wakeman rebuttal testimony p. 5.
[52] Ex. 203 Rackers surrebuttal testimony p. 2.
[53] Tr. Vol. 26 p. 1729 l. 9.
[54] Tr. Vol. 26 p. 1723 l. 4.

the twelve months ending January 31, 2010 is a more reliable number, especially when the expenditures are declining.[55]

Traditional ratemaking uses cost incurred from the test-year, either normalized or annualized, to set rates on an ongoing basis. Here Mr. Beck, Mr. Rackers, and Mr. Meyer determined that there is enough information available regarding the cost of these programs for the Commission to set rates based upon costs incurred during the test-year and true-up period. Thus, returning to traditional ratemaking principles alleviates any need for a tracker.

AmerenUE states that the better course of action is to examine AmerenUE's vegetation management and infrastructure inspection programs, which clearly shows that the test year cannot be considered representative of what AmerenUE may spend in the future. However, no party is proposing to use the test year. The Staff and MIEC are proposing to increase the test year levels by approximately $1.9 million.

AmerenUE claims that if the Commission continues the trackers, it should also credit the amount of overcollection that occurred during the first year of operation of the trackers back to customers, amortized over three years, just as it amortized the amount under-collected between January 1, 2008 and October 1, 2008. AmerenUE **never** made such a proposal on the record to address the return to ratepayers of the amount it over-recovered as a result of the vegetation management and infrastructure inspection trackers. An examination of the cite provided by the attorney who authored AmerenUE's brief refers to a discussion of the amount incurred between January 1, 2008 and October 1, 2008, which AmerenUE provided to the Commission in Case No. ER-2008-0318 and which the Commission ordered to be amortized over 3 years. This reference is completely unrelated to the amount of overcollection that resulted from the operation of the vegetation management and infrastructure inspection trackers. In fact, this discussion

[55] Ex. 203 Rackers surrebuttal testimony p. 2.

deals with an error AmerenUE made regarding the mistaken inclusion of internal labor in the amounts AmerenUE provided to the Commission. When Mr. Wakeman was specifically asked about returning the overcollection from the trackers to ratepayers, he made no proposal or commitment to do so as shown by his following testimony during the evidentiary hearing:

> Q. Now, in the last rate case, didn't the Commission's order say that any over or undercollection would be considered in UE's next rate case?
> A. Yes, I believe that's true.
> Q. And that would be right now?
> A. Yes.
> Q. So when is the company going to tell us what it's going to do with its overcollection? Are you just going to put that money in your pocket?
> A. No. I would say a two-way tracker is -- would have the opportunity -- I mean, I don't think it was spelled out explicitly how this would be handled at the end, but I think it **could be returned to ratepayers** as an overcollection like it would have expected to be if it was undercollected.[56] (emphasis added)

AmerenUE's commitment to squeeze every dollar of cash flow out of this rate case even extends to keeping tracker overcollections, while at the same time touting the protection that trackers offer to ratepayers.

AmerenUE has not provided any evidence to justify the need for an increase in the base level for vegetation management or infrastructure inspection programs above the levels experienced during the twelve months ending January 31, 2010, or to continue the tracking mechanism. AmerenUE's tacking mechanism for the vegetation management and infrastructure inspection programs should be terminated and the base level for the programs respectively should be set at $50.4 million and $7.6 million.

CONCLUSION

Having replied to issues raised by other parties in their briefs, Staff continues to recommend the Commission: 1) keep in mind during its deliberations that the dominant thought and purpose of the policy embodied in the law that authorized the creation of the Commission

[56] Tr. Vol. 26 p. 1721 l. 19 to p. 1722 l. 8.

and first conferred the powers it is exercising in this case is the protection of the public, while the protection it gives utilities is merely incidental; 2) carefully consider all the evidence adduced in this case on each of the issues remaining before it for decision, including not only the testimony of the expert witnesses, but also the testimony the Commission heard directly from members of the public in the local hearings; 3) based on the law and the evidence adopt Staff's position on each issue as set forth in its briefs and testimony; and 4) issue a report and order that is both reasonable and lawful with regard to each of the issues.

WHEREFORE, the Staff submits the foregoing as its post-hearing reply brief in this matter.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30th day of April 2010.

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