

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of Proposed Rule 4 CSR 240-23.010, )  
Establishing Reliability Standards for )  
Investor-Owned Electrical Corporations. )

**Case No. EX-2008-0230**

**DISSENTING OPINION OF COMMISSIONER  
ROBERT M. CLAYTON III**

This Commissioner dissents from the majority's Final Order of Rulemaking relating to "reliability standards" for electrical corporations ("ECs").<sup>1</sup> This rule is the final leg of the "three-legged stool" to improve electrical service reliability in Missouri. The rules were originally designed to establish the most stringent standards and reporting requirements for Missouri electric utilities on behalf of ratepayers. Unfortunately, the majority promulgated a "reliability reporting" rule that fails to establish any new standards and fails to identify acceptable benchmarks. The rule further ignores other critically important reporting requirements so that the Commission staff and customers can be aware of how their utility is performing. The only customers who may expect any improvement are those receiving service in the worst-performing 5% of circuits, with the "remaining" 95% of customers experiencing no improvements in reliability. This Commissioner is left with no choice but to dissent.<sup>2</sup>

---

<sup>1</sup> The Reliability Standards and Reporting rule was originally filed under case number EX-2007-0214 along with the Vegetation Management and Infrastructure Standards and Reporting rules. The rules were subsequently filed under separate case numbers for clarity and organization purposes. The Vegetation Management rulemaking is now EX-2008-0232 and the Infrastructure rulemaking is now EX-2008-0231.

<sup>2</sup> *In the Matter of Proposed Rule 4 CSR 240-23.010, Establishing Reliability Standards for Investor-Owned Electrical Corporations*, Case No. EX-2008-0230, Opinion of Commissioner Robert M. Clayton III, Concurring in Part and Dissenting in Part, January 15, 2008.

## **BACKGROUND**

The need to improve electrical reliability for Missouri consumers became apparent following public hearings held in the St. Louis metropolitan region after significant storm outages affected the area in July 2006. Two storms ripped through the region leaving 646,000 people without power during, arguably, the hottest day of the summer. Some customers were without power for nine days with the average customer in the metro area suffering through seven days without power. Many families were unable to remain in their homes without means to cook, to keep food and medicine refrigerated, or to simply stay cool. Countless residents fled their homes for refuge with relatives or paid exorbitant rates for elusive hotel rooms. Those without the resources to travel or those without family were forced to stay at home in stifling heat or suffer the inconvenience of moving to overcrowded shelters. Millions of dollars of food spoiled and businesses were forced to close, idling workers. The most tragic result was that four Missourians lost their lives due to the storm-related electrical outages.

The July storms were not the first to hit the region and its electrical distribution system. Severe weather pounded the St. Louis area in 2004, 2005 and on April 2, 2006. In addition, these storms would not be the last, as more adverse weather conditions caused outages again on November 30, 2006, as well as in January of 2007. During the November 30<sup>th</sup> outage, thousands of residents were once again without power for up to nine days due to an ice storm that crippled the electrical distribution system. As many as 270,000 customers were left without power when the temperature fell into the teens and much of the city remained in the dark and cold.<sup>3</sup> And then within a few months, in January of the next year, another 350,000 citizens in both Missouri and Illinois were left without power for up to five days.<sup>4</sup>

---

<sup>3</sup> Ameren Storm Fact Sheet, available at <[www.ameren.com/Outage/adc\\_StormFactSheet.pdf](http://www.ameren.com/Outage/adc_StormFactSheet.pdf)>.

<sup>4</sup> *Id.*

At the heart of this discussion is whether there is a problem in electrical reliability in Missouri and whether the Commission should be satisfied that ECs are offering an acceptable level of service. Some have argued that electrical reliability performance is not only acceptable, but meets high standards.<sup>5</sup> Since Missouri has no reliability standards in place, it is difficult to make such an assessment or calculation. This Commissioner, and former Commissioner Steve Gaw,<sup>6</sup> argued that the outages in question during the summer of 2006 warranted special treatment and analysis. Following investigations of storm outages in 2004<sup>7</sup> and 2005,<sup>8</sup> these Commissioners were not satisfied that sufficient change had occurred and that the public demanded improvement, if not for convenience, for public health and welfare. The PSC investigation into the outages of 2006 was unprecedented and involved new efforts at reviewing EC performance. First, over objections of some, the Commission opened a formal working docket to fully document the investigation and all facts gathered.<sup>9</sup> Secondly, these Commissioners asked for public hearings to learn of the extent of the storm outages as well as the specific hardships endured by residents in the metro St. Louis area.<sup>10</sup>

Eventually, six hearings attracted hundreds of citizens and more than 125 indicated a willingness to speak on the record. Taking time from family and work, over the course of the twelve hours of testimony, more than 75 witnesses related complaints and concerns regarding utility service. Typically, public hearings attract very few witnesses. However in this

---

<sup>5</sup> "PSC Holds Public Hearing On Ameren's Handling of July's Power Outages," *KMOV*, October 3, 2006; Levins, Harry, "Surprise: Ameren Is Honored for Its Post-Storm Effort," *St. Louis Post-Dispatch*, January 11, 2007.

<sup>6</sup> The term of former Commissioner Gaw ended upon the appointment of his successor on September 18, 2007.

<sup>7</sup> *In the Matter of an Investigation into the Tree Trimming Policies of Union Electric Company, d/b/a AmerenUE*, Case No. EW-2004-0583.

<sup>8</sup> Informal investigation report is available at <[www.psc.mo.gov/electric/UE\\_Storm\\_Rest\\_Report\\_2005.pdf](http://www.psc.mo.gov/electric/UE_Storm_Rest_Report_2005.pdf)>.

<sup>9</sup> *In the Matter of an Investigation of Union Electric Company, d/b/a AmerenUE's Storm Restoration Efforts in the St. Louis Area*, Case No. EO-2007-0037, Order Directing Staff to Investigate Union Electric Company, d/b/a AmerenUE and Setting Intervention Deadline (Clayton and Gaw, Concurring, July 27, 2006, and Murray, Dissenting, July 28, 2006).

<sup>10</sup> *Id.*, see also Commissioners' Request for Local Public Hearings, July 28, 2006.

proceeding, many citizens utilized the public hearing process to communicate their displeasure with both the company and the PSC, to learn what the PSC and AmerenUE planned for improvements and to provide anecdotal testimonials of heroics and failures during the storm outages. The process proved to be an exceptional exercise in democracy as the Commission gained specific evidence of how people were affected by the outages.

Witnesses testified of being without power for three, four, five, six and seven days.<sup>11</sup> One witness testified to not having power for a total of nine days.<sup>12</sup> Witnesses expressed frustration that on the night of the storm one side of the street would have power, while the other side of the street would not.<sup>13</sup> Communications were difficult without power and some claimed that the information handed out by the company was not helpful.<sup>14</sup> Phone lines were jammed and those who were able to make contact with a company representative were upset with the questionable accuracy of the information given. One witness became so frustrated when cleaning up the mess of rotting food in her refrigerator that she contemplated committing harm on company executives by use of a rotten pot roast.<sup>15</sup>

The power outages caused more than simple frustration but imposed real hardship.<sup>16</sup> One family offered troubling concerns relating to their disabled child, a quadriplegic in need of a respirator. Because of his disability, he required the use of a special mattress when sleeping and

---

<sup>11</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, p. 42, Oct. 3 2006 Public Hearing in Hazelwood East High School, p. 25, Oct. 5, 2006 Public Hearing in Farmington, p. 6, Oct. 4, 2006 Public Hearing in St. Louis County Library, p. 56, Oct. 4, 2006 Public Hearing in Wohl Community Center, p. 68.

<sup>12</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 69.

<sup>13</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in Wohl Community Center, p. 103.

<sup>14</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 39.

<sup>15</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in St. Louis County Library, p. 94.

<sup>16</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in St. Louis County Library, pp. 8-13, 28-31.

had no body temperature control. He was forced to sleep multiple nights in his wheel chair because of overcrowding at shelters and because elevators at the care facilities did not have sufficient electricity to move the wheelchair upstairs.<sup>17</sup>

With electricity shut off, other critical services were also affected, leading to a potential public health crisis. Some rural and urban customers lost water service when back up pumps did not operate.<sup>18</sup> In one instance, water became contaminated and the city issued a boil order, yet many were not even aware of the existence of the boil order until the day of the hearing, almost three months later.<sup>19</sup> One witness related that his home lost both power and water at a very awkward time while he was in the restroom, leaving him with a number of less than desirable decisions to make.<sup>20</sup> Additionally, with no electrical service, many communications systems did not function properly and phone service in some areas was disrupted due to jammed phone lines.<sup>21</sup>

The outages also had an impact economically. Businesses were forced to shut down or reduce their hours.<sup>22</sup> In one instance, a local restaurant owner lost \$1,500 in food from the freezer and \$1,900 in lost sales only to face having her utilities disconnected for non-payment due to a \$50 arrearage on a \$1,400 July 2006 electric bill.<sup>23</sup> Some witnesses expressed a need for

---

<sup>17</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in St. Louis County Library, pp. 28-31.

<sup>18</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Oct. 5, 2006 Public Hearing in Potosi, pp. 66-67.

<sup>19</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 85.

<sup>20</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, pp. 29-30.

<sup>21</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, pp. 31, 55-56.

<sup>22</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, p. 11, and Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 61.

<sup>23</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, pp. 39-41.

more resources to address electrical back up systems.<sup>24</sup> Some described increases in crime due to darkened streets and neighborhoods.<sup>25</sup>

The most surprising aspect of the local public hearing process involved reliability issues during normal weather conditions and without the presence of storms and strong winds.<sup>26</sup> One customer testified that her four-year old subdivision loses power so often that she is “afraid to sneeze in the house because the lights may go off.”<sup>27</sup> Her concern was echoed by another witness whose continuous loss of service, including loss of service on Thanksgiving morning, caused her to consider moving.<sup>28</sup> Many groups have become so frustrated by the unreliable service that they have found ways to track outages. One neighborhood of 900 residences has set up a system that tracks power outages electronically. They have recorded over 300 instances of electricity losses that are at least long enough to reset clocks.<sup>29</sup> Another family has a specific list of dates and times of power outages from 1999 until present. In fact, the family appeared at two local public hearings and added two more outages to the list in a short period of time.<sup>30</sup>

Despite the overwhelming evidence of questionable service and significant suffering

---

<sup>24</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 76.

<sup>25</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in Wohl Community Center, p. 104.

<sup>26</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Oct. 3 2006 Public Hearing in Hazelwood East High School, pp. 65, 84, 92, 119-20, Oct. 4, 2006 Public Hearing in St. Louis County Library, pp. 9, 25, 32, 42, 56, 80-81, 89, 110, Oct. 4, 2006 Public Hearing in Wohl Community Center, pp. 32, 59, 68, 110, Oct. 5, 2006 Public Hearing in Farmington, pp. 8-9, 11, Oct. 5, 2006 Public Hearing in Potosi, pp. 8, 33, 36, 45, 50, 67-68, 70, Oct. 18, 2006 Hearing in Hillsboro, pp. 5-9, 21-23.

<sup>27</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 84.

<sup>28</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 3, 2006 Public Hearing in Hazelwood East High School, p. 106.

<sup>29</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 4, 2006 Public Hearing in St. Louis County Library, p. 56.

<sup>30</sup> *Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri*, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, p. 70, and Oct 18, 2006 Public Hearing in Hillsboro, pp. 5-9.

experienced in the region, after conducting its investigation, staff offered very little in terms of specific suggestions or mandates for improvement. The staff praised AmerenUE for a restoration plan that was "well-executed."<sup>31</sup> Mixed in with that praise, staff also saw fit to recommend three "reporting" rulemakings.<sup>32</sup> Those rulemakings mandated new, but insufficient, levels of reporting of vegetation management plans, for reporting infrastructure inspection plans and reporting on reliability performance. Curiously, while staff supposedly recognized the evidence of poor reliability and evidence of inadequate tree trimming,<sup>33</sup> staff did not mandate new clearance standards in vegetation management; it did not mandate minimum intervals for infrastructure inspection and replacement; and it did not mandate sufficiently acceptable measures of reliability performance and reporting.

The investigation which instigated this rulemaking began in 2006 in the St. Louis region, but reliability problems elsewhere have suggested need for new rules. Additionally, major outages throughout Missouri occurred again in 2007 suggesting a need for further staff investigation, which has led to staff reports associated with the service areas of Empire,<sup>34</sup> AmerenUE,<sup>35</sup> Aquila<sup>36</sup> and KCPL.<sup>37</sup>

The local public hearings held in association with a utility's pending rate increase request were well attended with witnesses testifying to problems relating to vegetation management,

---

<sup>31</sup> *Report on AmerenUE's Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006*, Case No. EO-2007-0037, pp. 5, 23; see also "PSC Compliments Ameren," *Kansas City Star*, November 18, 2006.

<sup>32</sup> *Report on AmerenUE's Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006*, Case No. EO-2007-0037, Appendixes D, E, and F.

<sup>33</sup> Jonsson, Greg, "Customers Berate AmerenUE as Regulators Listen," *St. Louis Post-Dispatch*, October 3, 2006.

<sup>34</sup> *In the Matter of an Investigation of the Empire District Electric Company's Storm Preparation and Restoration Efforts*, EO-2008-0215, see also Concurring Opinion of Commissioner Robert M. Clayton III.

<sup>35</sup> *In the Matter of an Investigation of Union Electric Company, d/b/a AmerenUE's Storm Preparation and Restoration Efforts*, EO-2008-0218, see also Concurring Opinion of Commissioner Robert M. Clayton III.

<sup>36</sup> *In the Matter of an Investigation of Aquila, Inc.'s Storm Preparation and Restoration Efforts*, EO-2008-0220, see also Concurring Opinion of Commissioner Robert M. Clayton III.

<sup>37</sup> *In the Matter of an Investigation of Kansas City Power & Light Company's Storm Preparation and Restoration Efforts*, EO-2008-0219, see also Concurring Opinion of Commissioner Robert M. Clayton III.

infrastructure and an overall dissatisfaction with reliable electric service. Testimony included complaints of utility responsiveness as well as concerns of failing infrastructure. One resident lived in the same home for 52 years and testified to never having seen the lines replaced even though they had already broken four times.<sup>38</sup> Another resident noted that he complained of a pole that arced for two months before a utility representative came out to investigate.<sup>39</sup> The arcing was due to vines growing up the pole, but when a crew came out to examine the problem they merely sprayed weed killer on the vines but did not remove any of the vine weight.<sup>40</sup> Another resident noted the aggravation of being told by the company that the residents needed to complete their own tree trimming despite being warned on television not to get close to power lines.<sup>41</sup> Along with general problems with trimming and infrastructure, residents also felt that despite frequent momentary losses of power, calling the company to complain would do no good.<sup>42</sup>

This Commissioner as well as former Commissioner Gaw believed that unexplained and unacceptable outages demanded answers and timely action. In response, these Commissioners agreed with the three-pronged effort at improving electric service in Missouri. These proposals needed to be stronger than simple reporting as proposed by staff. First, this Commissioner

---

<sup>38</sup> *In the Matter of the Empire District Electric Company of Joplin, Missouri for Authority to file Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case ER-2008-0093, Public Hearing held at Joplin, March 26, 2008, pp. 26-27.

<sup>39</sup> *In the Matter of the Empire District Electric Company of Joplin, Missouri for Authority to file Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case ER-2008-0093, Public Hearing held at Joplin, March 26, 2008, pp. 8-9.

<sup>40</sup> *In the Matter of the Empire District Electric Company of Joplin, Missouri for Authority to file Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case ER-2008-0093, Public Hearing held at Joplin, March 26, 2008, pp. 8-9.

<sup>41</sup> *In the Matter of the Empire District Electric Company of Joplin, Missouri for Authority to file Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case ER-2008-0093, Public Hearing held at Joplin, March 26, 2008, p. 35.

<sup>42</sup> *In the Matter of the Empire District Electric Company of Joplin, Missouri for Authority to file Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Case ER-2008-0093, Public Hearing held at Joplin, March 26, 2008, p. 41.



argued for new plans in vegetation management including tough mandates in tree trimming quality and quantity in addition to comprehensive reporting. Second, this Commissioner believes that infrastructure failures and evidence of equipment and plant in poor condition require investment and attention through a mandated infrastructure inspection and replacement program, in addition to reporting. Thirdly, it is the opinion of this Commissioner that reliability can only be tracked and evaluated if high standards are in place to meet the demands of the Commission.<sup>43</sup>

This dissent outlines how the majority missed an opportunity in drafting a reliability standards rule by approving a watered-down version that will fail to bring about the broad and comprehensive change that the public not only desires, but deserves.

### **RELIABILITY STANDARDS**

Prior to this rulemaking, Missouri had no standard or definition for reliable electric service. There were no guidelines for utility performance or penalties for failing to provide acceptable service. Unhappy customers would have to complain, hope for a staff investigation and hope that some action would be taken to improve the quality of service. Many customers were not afforded that degree of assistance from the utility or from the PSC. Regardless of discussing reliability from the standpoint of outages during a storm or during periods of mild weather, the Commission could not tell a customer whether they were receiving good or bad service and had no ability to inflict any punishment if the lights were off for extended periods of time. The Commission also lacked the data necessary to conduct evaluations of service, relying on the utilities for notification of service problems.

---

<sup>43</sup> The third leg of the stool involves proposals for reliability standards and reporting. That rule is pending in Case No. EX-2008-0230. Former Commissioner Gaw and this Commissioner drafted a reliability rule which was sent to the Department of Economic Development (DED) for procedural review. DED took three months to perform its

For these reasons, this Commissioner concurred with the majority in the commencement of this rulemaking to address the need for reliability standards, but this Commissioner also dissented, in part, because the approved rule lacked many crucial elements needed to establish a meaningful reliability standards rule. Former Commissioner Gaw and this Commissioner proposed a reliability standards rule (“Dissent Rule”)<sup>44</sup> that required ECs to meet high standards for circuit areas, for operating areas, and for the entire system. These standards included establishing benchmarks based on national surveys for service levels, setting acceptable timelines for restoration of service, compiling service quality levels of performance, establishing a mechanism for enforcement through penalties and establishing a comprehensive manner of reporting so that regulators have the data to make corrections.

This Commissioner previously outlined his objections to the majority’s initial reliability rule,<sup>45</sup> and those flaws are still present in the final draft.

### **1. BENCHMARKING STANDARDS**

When this rulemaking commenced, this Commissioner assumed that the Commission would establish clear standards of reliability performance by utilizing national standards. The Dissent Rule chose the starting point as requiring utilities to operate in the top 25% of electric service, nationally. The approved rule fails to set any standards at all.<sup>46</sup> The approved rule uses each utility’s current performance level and then directs that the utility cannot fall beneath that minimal standard.<sup>47</sup> By choosing this level, the majority has failed to encourage improvement in

---

ministerial review. *See also* Dissenting Opinion of Commissioner Robert M. Clayton III in Case No. EX-2008-0105, June 2, 2008, and Case No. EX-2008-0230, January 15, 2008.

<sup>44</sup> *In the Matter of Proposed Rule 4 CSR 240-23.010, Establishing Reliability Standards for Investor-Owned Electrical Corporations*, EX-2008-0230, Proposed Rule, January 15, 2008.

<sup>45</sup> Opinion of Commissioner Robert M. Clayton III, Concurring in Part and Dissenting in Part, January 15, 2008.

<sup>46</sup> Tr. 23; Tr. 55.

<sup>47</sup> Tr. 25-26; 4 CSR 240-230.010.

electric service from the status quo. Missouri customers have demanded improvement and, if the standard is not to be in the top 25% in the country, why not another comparably high level?

Utility company officials have suggested that there are no national standards upon which any “goals” could be based, yet at the rule hearing, utility officials admitted to attending national “benchmarking conferences” and participating in workshops where companies compare levels of service quality.<sup>48</sup> This Commissioner is at a complete loss as to why information shared at these benchmarking conferences could not be used to establish standards in Missouri. Staff was aware of those “benchmarking conferences,”<sup>49</sup> yet continued to deny any need for their inclusion in the analysis.<sup>50</sup>

Some have argued that the Commission should set standards that can actually be met by Missouri’s utilities rather than identifying higher standards.<sup>51</sup> This argument is an insult to Missouri customers because it may permit the ECs to continue the status quo, rather than improve service. Instead, the majority sets the baseline of measuring service as what individual utilities are providing today, which, according to many public hearings, is not acceptable. Without establishing high, clear measures of what the Commission expects in terms of performance, the majority has promulgated a reliability reporting rule, not a rule to set standards to improve reliability. Both the staff and the ECs acknowledged this at the hearing in supporting the weaker alternative and went so far as to admit that the rule will have very little impact on reliability.<sup>52</sup>

Furthermore, by failing to establish high standards for all customers, the rule fails to

---

<sup>48</sup> Ameren Comments, March 17, 2008; MEDA Comments; March 17, 2008; *but see* Tr. 50-54.

<sup>49</sup> Tr. 54.

<sup>50</sup> Tr. 56-59.

<sup>51</sup> Tr. 54.

<sup>52</sup> Tr. 72; Tr. 25-26.

address any improvement for reliability for any customers other than those residing in circuit areas in the worst performing 5% of circuits.<sup>53</sup> In other words, 95% of circuits or approximately 95% of customers will not see any improvement at all. As discussed in section 3, *infra*, certain customers in a small number of the worst performing circuits may experience improvement while the rest will not.

## **2. REPORTING METRICS**

The Dissent Rule identified a number of reporting criteria so that the Commission and its staff could acquire a full and complete picture of electrical service reliability. These criteria are well-known in the industry and the measurements are used with some frequency on a national level. Each is designed with a different purpose and from different perspectives in measuring reliability including that of the customer, the system, by circuit or by outage. The majority adopted metrics known as SAIDI (System Average Interruption Duration Index), SAIFI (System Average Interruption Frequency Index), CAIDI (Customer Average Interruption Duration Index) and CAIFI (Customer Average Interruption Frequency Index).

However, reporting these metrics is only mandated on a system-wide basis, which masks problem areas and problem circuits. The staff will only receive one system-wide number for each metric. Instead, the staff should be receiving a much larger report with statistics from smaller areas within a utility's service area. The staff will not be able to prescribe improvements if the problem areas are hidden in the broad numbers. These metrics should be reported at the system-wide level, the district level or sub-system level and at the circuit level.<sup>54</sup>

Furthermore, the Final Order of Rulemaking lacks reliability indices known as MAIFI (Momentary Average Interruption Event Frequency Index), CELID8 (Customers Experiencing

---

<sup>53</sup> Tr. 24-25.

<sup>54</sup> Tr. 30.

Long Interruption Durations 8) and CEMI6 (Customers Experiencing Multiple Interruptions 6). MAIFI identifies flickers or momentary losses of power that are not long in duration, but could suggest problems in the system. They are also headaches for consumers that may be faced with resetting electronic equipment and other appliances because of the outage. CELID8 addresses outages from the perspective of the customer for long periods of time while CEMI6 addresses the customer's perspective for repeated outages occurring over a particular period of time. Each of these reports has an essential role in developing quality reliability reporting and monitoring.<sup>55</sup>

Lastly, the approved rule does not take up additional reporting obligations as suggested by the Dissent Rule, which included provisions for specifically looking at storm-related outages. The Dissent Rule Section (11) mandates the utility to report specific data following a storm so staff can fully assess the success or failure of the utility's performance. It would also set out standard criteria for all utilities to use rather than allow each to have their own varying reporting methods. This report would allow for "apples to apples" utility comparisons. The Dissent Rule also sets out mandates for an Emergency Operations Plan. For obvious reasons, the Commission should be mindful of the occurrence of man-made and natural disasters that necessitate solid planning in advance. The Commission should be fully involved in the detailed organization of those plans. This mandate was also excluded from the final draft.

### **3. WORST PERFORMING CIRCUITS**

The Dissent Rule required identification of customers receiving the worst level of service in a utility's service territory. Their identification was to be accompanied by a plan of improvement for how those customers' service would be improved. The approved rule reduced that number to the bottom 5% of worst performing circuits, which amounts to approximately 180 circuits out of a total of over 36,000 circuits in all of the ECs' service territories. While those

---

<sup>55</sup> Tr. 16.

customers may receive some benefit, a customer receiving substandard service but falling in the bottom 6% or 7% of worst performing service, will receive no benefit. So, customers experiencing frequent or sustained outages should not necessarily expect an improvement in service.

#### **4. BILL CREDITS**

The approved rule also lacks any provision for bill credits for customers who pay for electrical service only to face long or frequent periods of outages. Customers must be given an opportunity to be made whole if paying for substandard or non-existent service. Rather than working to find acceptable language to address legal concerns, the majority dropped the subject entirely leaving consumers with no tools to address poor or non-existent service.

This Commissioner proposed language to establish credits in a manner that addressed staff's concerns.<sup>56</sup> The bill credits were designed to permit consumers to, at the very least, not be required to pay for service when the power is not on for significant periods of time. The rule does not address other economic issues like financial losses for spoiled food or for alternative accommodations such as checking into a hotel during periods of inclement weather. It was a meager attempt at providing some recourse for consumers.

While it was always assumed that the ECs would be opposed to such a concept, not even the Public Counsel took up the issue as being essential for consumers.<sup>57</sup> The Dissent Rule included provisions giving the Commission discretion and flexibility when enforcing the rule and applying credits.<sup>58</sup> Section (15) addressed credits following storm outages while section (16) authorized credits for repeated outages during normal weather conditions. Section (17)

---

<sup>56</sup> Exhibit 1; Tr. 63.

<sup>57</sup> Tr. 97.

<sup>58</sup> Dissent Rule, Section 22, Section 21(E).

specifically addressed multiple credits for customers suffering through clearly, substandard electrical reliability.

## **5. PENALTIES**

Missouri statute sets out the Commission's ability to enforce its rules and regulations through penalty actions in section 386.600, RSMo. 2000. This Commissioner acknowledges that the Commission cannot promulgate a rule that increases statutory penalties. The Dissent Rule identified the Commission's penalty or enforcement authority and did not go beyond what is authorized. What the language offered was guidance to utilities of what the Commission expected of them in complying with the rule and to make clear that the Commission would not hesitate in enforcing its reliability rule with a penalty action. The additional language also provided assurances to the public of how the rule would be enforced. The language also suggested an ability of the Commission to take into consideration mitigating factors and "good faith" efforts or occurrences beyond the utility's control in making decisions relating to penalties. The provisions were designed more to place the public and the utilities on notice that the rules were meant to be followed, but that efforts at improvement, despite missing the mark, would not be penalized.<sup>59</sup>

The final rule is silent with regard to penalties and fails to set clear guidelines for what the Commission demands for compliance with its rules and orders. Benchmarks and high standards would provide objective criteria to impose penalties on a utility. This rule does not set any standards that would warrant penalties. The rule further neglects to identify the circumstances or criteria for imposing penalties for the few remaining reporting obligations.

---

<sup>59</sup> See Dissent Rule, Section 21.

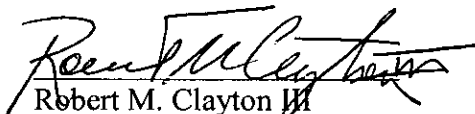
## CONCLUSION

This dissent marks the conclusion of a twenty-six month effort at improving electric reliability in Missouri. The effort began because of concerns in the St. Louis region yet subsequent electrical service outages have suggested needs for improvements in other parts of the state. This Commissioner is not satisfied that the Commission's rules will bring about the change necessary to improve service. The Vegetation Management Rule resulted in codifying the status quo in current tree trimming cycles. While the Infrastructure Inspection and Standards Rule included much of what this Commissioner suggested in his Dissent Rule, infrastructure will be inspected too infrequently to make the difference demanded by Missouri customers. And now, the most important "leg" of the three-legged stool, the Reliability Standards Rule, fails to establish any standards at all and simply asks the ECs to report what they already collect to the Commission.

The Commission has missed its opportunity to make effective changes in regulatory policy to improve reliability through new reliability benchmarks. This Commissioner is hopeful that some improvement will occur because of what has been put into place and also because of overtures of utilities in promising to improve. Only time will tell whether Missouri customers are getting what they deserve.

For the foregoing reasons, this Commissioner dissents.

Respectfully submitted,

  
Robert M. Clayton III  
Commissioner

Dated at Jefferson City, Missouri  
on this 1<sup>st</sup> day of October 2008.