

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

In the Matter of Proposed Rule 4 CSR 240-23.030,)
Establishing Vegetation Management Standards for)
Investor-Owned Electrical Corporations.)

Case No. EX-2008-0232

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

This Commissioner dissents from the majority's Final Order of Rulemaking relating to vegetation management for electrical corporations ("ECs").¹ The Commission missed its opportunity to implement real change to improve electrical service reliability. Customers have experienced far too many instances of storm-related outages which, in some cases, have been frequent in number and lengthy in duration. Additionally, recent investigations have suggested that non-weather-related interruptions of service have become far too commonplace. This Commission has a responsibility to act in the presence of poor performance yet these rules will only marginally affect reliability. The initially published rules were intended to take vegetation management in an all-new direction. Questionable reliability demands a fresh approach with aggressive policies that mandate improvement for poorly performing electrical corporations or face stiff penalties. Instead, the final rules were watered down with reductions in utility obligation. While this Commissioner acknowledges that this rule "is better than nothing," it could have been drafted to implement real improvement. Regretfully, Missouri consumers should not anticipate the level of improved reliability they deserve.

¹ The Vegetation Management rule was originally filed under case number EX-2007-0214 along with the Infrastructure and Reliability rules. The rules were subsequently filed under separate case numbers for clarity and organization purposes. The Infrastructure rulemaking is now EX-2008-0231 and the Reliability rulemaking is now EX-2008-0230.

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 occurring 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 while the average customer in the metro area suffered 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. The St. Louis metro area experienced storms and resulting electrical outages 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 30th outage, thousands of residents were once again without power for up to nine days due to an ice storm which 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.² And then again, within a few months, in January of the next

² Ameren Storm Fact Sheet, available at www.ameren.com/Outage/adc_StormFactSheet.pdf.

year, another 350,000 citizens in both Missouri and Illinois were left without power for up to five days.³

At the heart of this discussion is whether there is a problem in electrical reliability in Missouri and whether the Commission is 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.⁴ Since Missouri has no reliability standards in place, it is difficult to make such an assessment or calculation. This Commissioner, and former Commissioner Gaw,⁵ argued that the outages in question during the summer of 2006 warranted special treatment and analysis. Following investigations of storm outages in 2004⁶ and 2005,⁷ these Commissioners were not satisfied that sufficient change had occurred and that the public interest demanded improvement, if not for convenience, for public health and welfare. The PSC investigation into the outages of 2006 were 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.⁸ 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.⁹

Eventually, six hearings were scheduled throughout the metro area. Hundreds of citizens attended the public meetings and more than 125 indicated a willingness to speak on the record.

³ *Id.*

⁴ See "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," January 11, 2007.

⁵ The term of former Commissioner Steve Gaw ended upon the appointment of his successor on September 18, 2007.

⁶ Case No. EW-2004-0583.

⁷ Informal investigation report available at <www.psc.mo.gov/electric/UE_Storm_Rest_Report_2005.pdf>.

⁸ 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, and Murray, dissenting)

⁹ *Id.* See Commissioners' Request for Local Public Hearings, filed by Commissioners Clayton and Gaw on July 28, 2006.

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. 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 offer 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.

The public hearing effort revealed a great deal about the outages, the expectations of customers and the hardship many of them experienced. Witnesses testified of being without power for three, four, five, six and seven days.¹⁰ One witness testified to not having power for a total of nine days.¹¹ 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.¹² Communications were difficult without power and some claimed that the information handed out by the company was not helpful.¹³ 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.¹⁴

¹⁰ See, Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 42, Oct. 3 2006 Public Hearing in Hazelwood East High School, 25, Oct. 5, 2006 Public Hearing in Farmington, 6, Oct. 4, 2006 Public Hearing in St. Louis County Library, 56, Oct. 4, 2006 Public Hearing in Wohl Community Center, 68.

¹¹ 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, 69.

¹² 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, 103.

¹³ 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, 39.

¹⁴ 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, 94.

The power outages caused more than simple frustration and imposed real hardship. Some customers with special medical needs spoke of hardships caused by the outages.¹⁵ One family offered troubling concerns relating to their disabled child, a quadriplegic in need of a respirator. . Because of the person's disability, he required the use of a special mattress when sleeping and 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.¹⁶

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.¹⁷ 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.¹⁸ 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.¹⁹ 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.²⁰

¹⁵ See, 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, 8-13, 28-31.

¹⁶ 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, 28-31.

¹⁷ Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 66-67.

¹⁸ 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, 85.

¹⁹ Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 29-30.

²⁰ 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, 31 and 55-56.

The outages also had an impact economically. Businesses were forced to shut down or reduce their hours.²¹ 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.²² Some witnesses expressed a need for more resources to address electrical back up systems.²³ Some described increases in crime due to darkened streets and neighborhoods.²⁴

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.²⁵ 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."²⁶ Her concern was echoed by another witness whose continuous loss of service, including loss of service on Thanksgiving morning, has caused her to consider moving.²⁷ 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

²¹ Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 11, and Oct. 3, 2006 Public Hearing in Hazelwood East High School, 61.

²² Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 39-41.

²³ 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, 76.

²⁴ 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, 104.

²⁵ See 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, 65, 84, 92, and 119-20, Oct. 4, 2006 Public Hearing in St. Louis County Library, 9, 25, 32, 42, 56, 80-81, 89, and 110, Oct. 4, 2006 Public Hearing in Wohl Community Center, 32, 59, 68, and 110, Oct. 5, 2006 Public Hearing in Farmington, 8-9, and 11, Oct. 5, 2006 Public Hearing in Potosi, 8, 33, 36, 45, 50, 67-68, and 70, Oct. 18, 2006 Public Hearing in Hillsboro, 5-9, and 21-23.

²⁶ 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, 84.

²⁷ 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, 106.

electricity losses that are at least long enough to reset clocks.²⁸ 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 had added another two outages to the list in a short period of time.²⁹

Despite the overwhelming evidence of questionable service and significant suffering 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.”³⁰ Mixed in with that praise, staff also saw fit to recommend three rulemakings relating to reporting requirements for ECs.³¹ Those rulemakings mandated new, but insufficient, levels of reporting of vegetation management plans, for infrastructure inspection plans and reporting on reliability performance. Curiously, while the staff supposedly recognized the evidence of poor reliability and evidence of inadequate tree trimming,³² staff did not mandate new clearance standards in vegetation management, did not mandate minimum intervals for infrastructure inspection and replacement, and 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 additional need for new rules. Outages in 2007 occurred in Southwest Missouri in the Empire service area. Additionally, major outages throughout Missouri occurred again in 2007 in the service areas of Empire,³³ AmerenUE,³⁴

²⁸ 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, 56.

²⁹ Union Electric Company’s Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 70, and Oct 18, 2006 Public Hearing in Hillsboro, 5-9.

³⁰ Report on AmerenUE’s Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006, Case No. EO-2007-0037, at 5, 23; *see also* “PSC Compliments Ameren,” Kansas City Star, November 18, 2006.

³¹ Report on AmerenUE’s Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006, Case No. EO-2007-0037, Appendices D, E, and F.

³² Jonsson, Greg, “Customers Berate AmerenUE as Regulators Listen,” St. Louis Post-Dispatch, October 3, 2006.

³³ EO-2008-0215, *see also* Concurring Opinion of Commissioner Robert M. Clayton III.

Aquila³⁵ and KCPL.³⁶ Investigations have been opened into each electrical corporation's performance before, during and after the storms and requests for local public hearings have been made.³⁷ Because the data and testimony has not been compiled, this opinion focuses on the testimony and evidence in the 2006 storm investigation.³⁸

This Commissioner, and 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. The "three-legged stool" approach involves three different rules to address the shortcomings found in the storm outage investigation. Unfortunately, these proposals must be stronger than simply reporting as proposed by staff. First, this Commissioner 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 in poor condition and plant 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.³⁹

This dissent outlines how the majority missed an opportunity on the vegetation management rulemakings by approving a watered-down version that does little more than codify

³⁴ EO-2008-0218, *see also* Concurring Opinion of Commissioner Robert M. Clayton III.

³⁵ EO-2008-0220, *see also* Concurring Opinion of Commissioner Robert M. Clayton III.

³⁶ EO-2008-0219, *see also* Concurring Opinion of Commissioner Robert M. Clayton III.

³⁷ *See* notes 33-36, *supra*.

³⁸ EO-2007-0037.

³⁹ 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 ministerial review. *See also* Dissenting Opinions of Commissioner Robert M. Clayton III in EX-2008-0105 and EX-2008-0230.

existing practice. This rule will not result in the broad and comprehensive change that the public not only desires, but deserves.

VEGETATION MANAGEMENT RULE

Staff initially suggested a tree trimming reporting rule so that the staff could track how ECs are performing their vegetation management plans.⁴⁰ The draft contained no mandates on clearances, no provisions addressing right of way issues and no guidance on storm-related vegetation management. While ECs would be required to report their plans to the staff, ECs would not be required to modify their trimming practices.

During the public hearings related to case number EO-2007-0037, the Commission heard testimony about areas where tree trimming crews had not been seen in some time.⁴¹ Out of the 79 witnesses that testified on the record, 31 complained about the lack of tree trimming or the reduced tree trimming in their areas. One witness proclaimed, "There's [sic] trees bigger than my arm laying on [the lines] as I speak. The lines are holding them up."⁴² Another customer stated she cut down the trees in her yard because AmerenUE no longer trimmed them regularly and they were causing power outages.⁴³

This Commissioner and former Commissioner Gaw, after surveying and reviewing vegetation management rules of many states,⁴⁴ determined that the most effective process of

⁴⁰ Report on AmerenUE's Storm Outage Planning and Restoration Effort Following the Storms on July 19 and 21, 2006, Case No. EO-2007-0037, Appendix D.

⁴¹ See, 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, 6, 21, 51, 102 and , 107, Oct. 4, 2006 Public Hearing in St. Louis County Library, 34-36, 66, 78-79, and 117-118, Oct. 4, 2006 Public Hearing in Wohl Community Center, 10, 44, 46-47, 56, 59, 73, and 82-83, Dec. 27, 2006 On-the-Record Presentation, 104.

⁴² Union Electric Company's Storm Preparation and Restoration Efforts in Eastern Missouri, Case No. EO-2007-0037, Oct. 5, 2006 Public Hearing in Potosi, 6-7.

⁴³ 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, 46-47.

⁴⁴ The review focused on rules passed by Delaware (order 7002, 2006 DE Reg Text 1893 (SN)), California (Decision 97-01-044), Illinois (83 IL Adm. Code §411.190), and New Jersey (NJAC 14:5-8). The presentation by Robert E. Burns at the NARUC Staff Subcommittee on Electric Reliability Panel revealed 10 states that had vegetation management standards as of June 2001. Those standards ranged from requiring the utility to maintain a

addressing vegetation management in an EC's service area was to draft a rule establishing minimum clearance standards. The intent of establishing such clearances was to set a minimum distance from the electrical conductors that must be maintained at all times, not just during a three or four year cycle. Minimum clearance standards are the most thorough and comprehensive method of ensuring that vegetation does not interfere with the efficient and reliable operation of the electrical infrastructure. This is because minimum clearance standards define the amount of air space needed in order to prevent flashover or electrical disruption between the wire and trees. Unless minimum clearance standards are enforceable at all times, rather than just during a periodic trimming cycle, disruptions and outages will continue. Because this change would have been a significant change in policy, this Commissioner's draft rule would have allowed ECs three years to comply with these minimum clearances.

Unfortunately, the Final Order of Rulemaking completely abandons the minimum clearance standards and instead directs ECs to only meet minimum clearances on four and six year cycles. Some ECs currently utilize a four and six year cycle system and at least one is currently taking remedial steps to accomplish backlogged trimming that it did not do in compliance with its own plan. The actual physical distance of the minimum clearances is less important – what is important is that reasonable minimum clearances are established and the ECs are required to maintain them at all times. The cyclical process in the Final Order of Rulemaking means that tree trimming and minimum clearances are only important at the time they are required to be completed, which ignores the condition of the vegetation during the interim. Furthermore, section 9(B)(4) of the rule permits an EC to determine, unilaterally, that a tree is of sufficient maturity with the strength and rigidity to not fall on a conductor of 35 kv. Once that

vegetation management plan to Commission-set standards the company must follow. Delaware and New Jersey published regulations subsequent to Burns' presentation, and California was not included in Burns' data.

subjective determination is made, the EC may disregard every standard set out in section nine. At the very least, the Commission should be involved in this evaluation process.

In addition, the majority's Final Order of Rulemaking diminishes the urgency of implementing minimum clearances by allowing the ECs four years in urban areas and six years in rural areas to comply with the cyclical, minimum clearances. While this Commissioner understands that time is necessary to satisfy new regulations, allowing four and six years is an excessive amount of time to comply with the rule. Further, it has been suggested that many of Missouri's ECs are already following these mandates. If so, why is any compliance time necessary? A worthwhile vegetation management program needs to be up and running in a more timely manner before system reliability can be swiftly improved.

The rule's shortcomings also include the following additional concerns:

- The rule will weaken the current practices of at least one EC.
- "Eleventh hour" changes to the rule confuse multi-jurisdictional obligations among distribution and transmission systems because the definition of such systems is unclear.
- The rule fails to include environmental safeguards to ensure that vegetation management plans are sensitive to the surrounding communities by mandating that a certified or accredited arborist be on staff to direct vegetation management, rather than relying on an accountant or finance staff to perform such functions.
- The rule fails to accommodate intergovernmental cooperation⁴⁵ by not including provisions that allow for municipalities to assert an exemption or waiver from certain vegetation mandates. Such a provision would permit local governments to

⁴⁵ 4 CSR 240-23.030(2)(g) in draft proposed by Commissioner Clayton and former Commissioner Gaw.

play a key role in vegetation management plans with clear guidelines for cost allocation and flexibility to respect local policies. Such provisions would have provided some relief to ECs in the event of an outage in an area if that outage is caused by the municipality's choices.⁴⁶

- The rule lacks sufficient reference to penalties, including express examples of good faith effort for compliance.

This Commissioner is keenly aware of the effect that the cost of implementing new regulations has on ratepayers and would have liked to see the results of a cost/benefit analysis of both versions of the vegetation management rule. However, EC estimates of cost appear to be designed to create fear through threats of unbridled utility rate increases to distract the public's attention.⁴⁷ Public calls for improved reliability have, in turn, sparked responses of "beware of rate increases." In years past, parties appearing before the commission, including Public Counsel, have shown great skepticism of assertions made by utilities, especially those assertions that lead to higher rates. In this case, however, Public Counsel has not only accepted as true the cost estimates prepared by ECs, but also failed to offer any alternative to improve reliability. Public Counsel, rather than acting as an advocate for the consumer pressing for improved reliability, has argued against aggressive policies to improve reliability. Indeed, Public Counsel argues both sides of the issue by claiming to be in favor of improved reliability while also opposing the rule that may or may not increase rates.

ECs have been somewhat disingenuous in arguing that costs and rates will inappropriately rise under these rules. Despite the alleged and unevaluated price tag of \$184 million per year to satisfy the rule's standards, AmerenUE has already publicly announced that it

⁴⁶ Whitney, Sarah, "AmerenUE To Begin Trimming Trees," Suburban Journal, January 30, 2008.

⁴⁷ Tomich, Jeffrey, "AmerenUE to PSC: Upgrading System Comes at a Price," St. Louis Post-Dispatch, January 5, 2007; "Chutzpah Power and Light," St. Louis Post-Dispatch, January 8, 2007.

will invest upwards of \$1 billion to improve reliability in its system in its "Project Power On" program.⁴⁸ Ameren's announcement did not say whether those costs would be included in its next rate case and appeared to be designed to enlist public support for its efforts.

Recent storm outages have, in fact, suggested that the opposite may be true. If an EC is ignoring vegetation management or failing to timely inspect and replace infrastructure, it is not properly prepared for storms and the costs of recovery and restoration are intuitively going to be higher. While ECs estimate implementation costs of the Clayton and Gaw rule to exceed \$75.6 million,⁴⁹ storm outages have also caused significant costs that will ultimately be laid on the consumer's doorstep. For example, AmerenUE filed a request for an Accounting Authority Order (AAO) to defer expenses associated with the storm clean up of the January 2007 storm outage in the amount of \$24.7 million.⁵⁰ In 2006, prior to the November-December ice storm, Ameren estimated its storm recovery costs to be at least \$64 million.⁵¹

Further, as recently as February 14, 2008, a credit rating agency has suggested a lowered credit rating for Empire because of increased storm recovery costs.⁵² Empire has faced two significant storms with restoration costs in the millions of dollars.⁵³ Empire estimated the original draft of the rule to cost \$2.3 million to implement the program while it would cost an additional \$45 million per year to satisfy the rule's requirements. Empire's storm-related costs for the January 2007 storm have been estimated at \$31 million while the December 2007 storm

⁴⁸ http://www.ameren.com/AboutUs/ADC_PowerOnLaunch.asp

⁴⁹ EX-2007-0214; Fiscal Note Private Cost.

⁵⁰ EU-2008-0141.

⁵¹ Lieb, David A., "Ameren Official: Utility 'Victim' of Storm Damage To Trees," St. Louis Post-Dispatch, December 27, 2006.

⁵² See <<http://uk.reuters.com/article/oilRpt/idUKWNA136620080214>>.

⁵³ Kabel, Marcus, "Regulator: Missouri Utilities Can Do More Against Storms," Associated Press, January 18, 2007; "Power-Restoration Efforts Continue In Missouri," Columbia Tribune, December 16, 2007.

caused an estimated \$15 million in restoration and recovery costs.⁵⁴ The old adage of "an ounce of prevention is worth a pound of cure" is an appropriate conclusion to take from this analysis. The public should be assured that the Commission has the power and authority to fully evaluate all investments made by ECs for both reasonableness and prudence.

Lastly, while this Commissioner did not support the Final Order of Rulemaking for the foregoing reasons, the rule is not without some improvements that survived from the original Clayton and Gaw draft. In comparing the version staff proposed in case number EO-2007-0037 and the version initially published after these Commissioners' state-by-state analysis, one can find many important provisions worthy of note. For instance, the final rule retained many of the less controversial, but still important issues. This Commissioner must acknowledge that the majority adopted a number of provisions which are important to the public interest in terms of transparency, possible reliability improvement and communications. For example, this rule sets out standards for customer and land owner notifications. There are extensive reporting requirements and mandates regarding contractors and EC employees. Specific guidance is given on vegetation management performance and reporting so that staff can verify and approve compliance efforts. Further, the rule maintains a degree of flexibility authorizing ECs to offer alternative plans to the Commission for approval if they believe they will lead to improved reliability.⁵⁵ Those ECs that have exceptional reliability performance should be commended and allowed to continue their work. For that reason, this Commissioner offered the amendment with the hope that solid performance continues under policies that are known to be successful.⁵⁶

⁵⁴ Hadsall, Joe, "Rep. Blunt Offers Plan To Help Empire Deal With Ice-storm Costs," The Joplin Globe, December 27, 2007.

⁵⁵ 4 CSR 240-23.030(11).

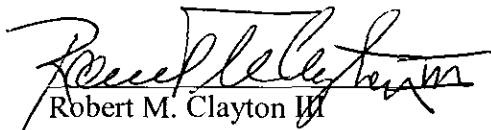
⁵⁶ This Commissioner's amendment was adopted by the Commission and is found in section 11. It reads: "Nothing in this rule shall prevent an electrical corporation from proposing and the Commission from approving an alternative vegetation management plan in variance of sections 9(B)(1) and 9(B)(2) if the electrical corporation can establish that the alternative vegetation management plan has previously produced greater reliability performance than what

CONCLUSION

In conclusion, utility regulators have precious few opportunities for improvement or change. Now is the time to act in making effective changes in regulatory policy to improve reliability through vegetation management practices. While some are better than others, this Commissioner believes that the changes made by the majority will result in far less improvement than the original proposals. The public and its elected representatives expect that the Commission will implement positive change. This Commissioner believes that the Commission has missed its opportunity to become a national leader in reliability and that electric customers will continue to receive, in some places, insufficient service.

For the foregoing reasons, this Commissioner dissents.

Respectfully submitted,


Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 4th day of March 2008.

would be produced under this rule or that the alternative vegetation management shall produce greater reliability performance in the future than what would be produced under this rule.”