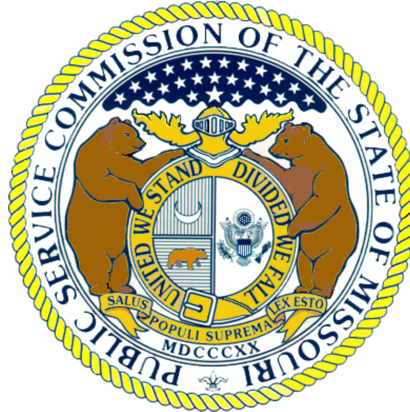
BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI



In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service	)))	File No. ER-2011-0028 Tariff No. YE-2011-0116

REPORT AND ORDER

Issue Date: July 13, 2011

Effective Date: July 23, 2011

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In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service	)))	File No. ER-2011-0028 Tariff No. YE-2011-0116

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For the Missouri Retailers Association.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

This order allows Ameren Missouri to increase the revenue it may collect from its Missouri customers by approximately $172 million based on the data contained in the Revised True-up Reconciliation filed by the Missouri Public Service Commission Staff on May 16, 2011.

Procedural History

On September 3, 2010, Union Electric Company, d/b/a Ameren Missouri filed tariff sheets designed to implement a general rate increase for electric service. The tariff would

have increased Ameren Missouri's annual electric revenues by approximately $263 million. The tariff revisions carried an effective date of October 3, 2010.

By order issued on September 7, 2010, the Commission suspended Ameren Missouri's general rate increase tariff until July 31, 2011, the maximum amount of time allowed by the controlling statute.[1] In the same order, the Commission directed that notice of Ameren Missouri's tariff filing be provided to interested parties and the public. The Commission also established October 4, 2010, as the deadline for submission of applications to intervene. The following parties filed applications and were allowed to intervene: The International Brotherhood of Electrical Workers Locals 2, 309, 649, 702, 1439, and 1455, AFL-CIO and International Union of Operating Engineers Local 148 AFL-CIO (collectively the Unions); The Missouri Industrial Energy Consumers (MIEC);[2] The Missouri Energy Group (MEG);[3] The Missouri Department of Natural Resources (MDNR); Missouri-American Water Company; The Consumers Council of Missouri; AARP; The Missouri Retailers Association; The Natural Resources Defense Council; the Missouri Coalition for the Environment, d/b/a Renew Missouri; the Cities of O'Fallon, Creve Coeur, University City, Olivette, St. Ann, Kirkwood, Bellfontaine Neighbors, Florissant, Richmond Heights, Ballwin, Brentwood, St. John, Sunset Hills, the Village of Twin Oaks, the Village of

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[1] Section 393.150, RSMo 2000.

[2] The following members of MIEC were allowed to intervene as individual entities and as an association: Anheuser-Busch Companies, Inc.; BioKyowa, Inc.; The Boeing Company; Doe Run; Enbridge; Explorer Pipeline; General Motors Corporation; GKN Aerospace; Hussmann Corporation; JW Aluminum; Monsanto; Precoat Metals; Proctor & Gamble Company; Nestlé Purina PetCare; Noranda Aluminum; Saint Gobain; Solutia; and U.S. Silica Company.

[3] The members of MEG are Barnes–Jewish Hospital; Buzzi Unicem USA, Inc.; and SSM HealthCare.

Riverview, and the St. Louis County Municipal League (the Municipal Group); the Midwest Energy Users' Association (MEUA);[4] and Charter Communications, Inc.

On November 10, 2010, the Commission established the test year for this case as the 12-month period ending March 31, 2010, trued-up as of February 28, 2011. In its November 10 order, the Commission established a procedural schedule leading to an evidentiary hearing regarding Ameren Missouri's general rate increase tariff.

In February and March 2011, the Commission conducted fourteen local public hearings at various sites around Ameren Missouri's service area. At those hearings, the Commission heard comments from Ameren Missouri's customers and the public regarding Ameren Missouri's request for a rate increase.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing began on April 26, 2011, and continued through May 20. The parties indicated they had no contested true-up issues and the Commission cancelled the scheduled true-up hearing. The parties filed post-hearing briefs on June 1, 2011, with reply briefs following on June 13. Based on the revised true-up reconciliation filed by Staff on May 16, Ameren Missouri has reduced its rate increase request to $211,183,446.

Admission of True-Up Document into Evidence

A true-up hearing was originally scheduled for May 23 and 24. On May 16, Gary Weiss filed true-up direct testimony consisting of many pages of accounting schedules detailing true-up numbers. There were no true-up issues and on May 20, the Commission cancelled the true-up hearing. Through an oversight, Mr. Weiss's true-up testimony was

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[4] The only member of MEUA for this case is Wal-Mart Stores, Inc.

never admitted into evidence. However, the accounting schedules attached to that testimony are cited in the briefs and in this report and order. Therefore, the Commission will admit the True-Up Direct Testimony of Gary S. Weiss into evidence and will assign that document exhibit number 174.

The Partial Stipulations and Agreements

During the course of the evidentiary hearing, various parties filed three nonunanimous partial stipulations and agreements resolving issues that would otherwise have been the subject of testimony at the hearing. No party opposed those partial stipulations and agreements. As permitted by its regulations, the Commission treated the unopposed partial stipulations and agreements as unanimous.[5] After considering the stipulations and agreements, the Commission approved them as a resolution of the issues addressed in those agreements.[6] The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

On May 12, 2011, Public Counsel, MIEC, AARP, the Consumers Council of Missouri, the Missouri Retailers, MEUA, and MEG filed a non-unanimous stipulation and agreement that would have resolved various class cost of service and rate design issues. The Municipal Group opposed that non-unanimous stipulation and agreement. Similarly, on May 18, Ameren Missouri and MDNR filed a non-unanimous stipulation and agreement regarding evaluation of the low-income weatherization program. Public Counsel opposed that stipulation and agreement. As provided in the Commission's rules, the Commission will consider those stipulations and agreements to be merely a position of the signatory

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[5] Commission Rule 4 CSR 240-2.115(C).

[6] The Commission issued its *Order Approving Stipulations and Agreements* on June 1, 2011.

parties to which no party is bound.[7] The issues that were the subject of those stipulations and agreements will be determined in this report and order.

Overview

Ameren Missouri is an investor-owned integrated electric utility providing retail electric service to large portions of Missouri, including the St. Louis Metropolitan area. Ameren Missouri has approximately 1.2 million retail electric customers in Missouri, more than 1 million of whom are residential customers.[8] Ameren Missouri also operates a natural gas utility in Missouri but the rates it charges for natural gas are not at issue in this case.

Ameren Missouri began the rate case process when it filed its tariff on September 3, 2010. In doing so, Ameren Missouri asserted it was entitled to increase its retail rates by $263 million per year, an increase of approximately 11 percent.[9] Ameren Missouri attributed approximately $200 million of the proposed increase to energy infrastructure investments, environmental controls and other reliability costs to meet customers' expectations for more reliable and cleaner energy.[10] The company attributed another $70 million of that increase to the rebasing of fuel costs that would otherwise be passed through to customers by operation of the company's existing fuel adjustment clause.[11]

Ameren Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariff on September 3, 2010. In addition to its filed testimony, Ameren Missouri provided work papers and other detailed information and records to the Staff of

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[7] Commission Rule 4 CSR 240-2.115(2)(D).

[8] Baxter Direct, Ex. 100, Page 4, Lines 19-20.

[9] Baxter Direct, Ex. 100, Page 5, Lines 16-17.

[10] Baxter Direct, Ex. 100, Page 5, Lines 20-22.

[11] Baxter Direct, Ex. 100, Page 6, Lines 19-23.

the Commission, Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Ameren Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On April 21, the parties filed a list of the issues they asked the Commission to resolve. The Commission will address those issues in the order submitted by the parties.

Conclusions of Law Regarding Jurisdiction

A. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Section 386.020(43) and (15), RSMo (Supp. 2010). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

B. Section 393.140(11), RSMo 2000, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electricity. When Ameren Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

Conclusions of Law Regarding the Determination of Just and Reasonable Rates

A. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.[12] Ameren Missouri has the burden of proving its proposed rates are just and reasonable.[13]

B. In determining whether the rates proposed by Ameren Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer.[14] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[15]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become

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[12] Section 393.150.2, RSMo 2000.

[13] *Id.*

[14] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

[15] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[16]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[17]

C. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[18]

D. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[19]

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[16] *Id.* at 692-93.

[17] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).

[18] *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

[19] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

The Rate Making Process

The rates Ameren Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. Ameren Missouri's revenue requirement is calculated by adding the company's operating expenses, its depreciation on plant in rate base, taxes, and its rate of return multiplied by its rate base. The revenue requirement can be expressed as the following formula:

Revenue Requirement = E + D + T + R(V-AD+A)
Where: E = Operating expense requirement
D = Depreciation on plant in rate base
T = Taxes including income tax related to return
R = Return requirement
(V-AD+A) = Rate base
For the rate base calculation:
V = Gross Plant
AD = Accumulated depreciation
A = Other rate base items

All parties accept the basic formula. Disagreements arise over the amounts that should be included in the formula.

The Issues

1. Overview and Policy:

A. What "cost of service" and/or regulatory policy considerations, if any, should guide the Commission's decision of the issues in this case?

B. Can the Commission consider and rely on the testimony of ratepayers at local public hearings in determining just and reasonable rates? If so, how should the Commission take this testimony into account, if at all?

Although this was identified as an issue by the parties, there is no actual overview and policy issue that will require resolution by the Commission. Rather, some of the parties ask the Commission to explain how it views its role as a regulator and in particular, explain how it deals with the testimony it receives from ratepayers at local public hearings. The

Commission will accept this invitation to explain its role.

As its name implies, the Public Service Commission was created and exists primarily to serve the public. In a case decided just a few years after this Commission was created, the Missouri Supreme Court stated that the spirit of the act establishing the Public Service Commission is to protect the public. In the words of the court, "[t]he protection given the utility is incidental."[20]

Some parties suggest that if the Commission is to serve the public interest, it must bow to the popular will expressed at the various local public hearings and eliminate or reduce as far as possible any rate increase requested by the utility. However, that is not the law under which the Commission operates. Furthermore, a Commission policy that destroyed the profitability of the utility would ultimately harm the public the Commission is obligated to serve.

As the Commission indicated in a previous section of this Report and Order, it is required to balance the interests of the ratepayers and the utility's shareholders to establish rates that are just and reasonable. Many witnesses who testify at local public hearings offer heartfelt and frequently heartbreaking accounts of how they are suffering from the economy in general and high utility rates in particular. As the Commission heard frequently at those hearings, many customers want the Commission to "just say no" to any proposed rate increase.

The Commission hears the public's testimony and takes it into account when deciding this or any other utility rate case. However, the Commission cannot simply "just say no" to a rate increase. The utility is entitled to charge rates sufficient to cover its costs

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[20] *State ex rel. Electric Co. of Missouri v. Atkinson et al.*, 275 Mo. 325, 204 S.W. 897, 899 (Mo banc 1918).

and to yield a reasonable return on its investment. That is why the Commission took and considered extensive testimony offered by multiple parties before making the difficult decisions that are set forth and explained in this report and order.

Even if the Commission had the legal authority to "just say no" to a rate increase, doing so could cause great harm to the public. No one benefits when a utility is deprived of the ability to charge its customers a just and reasonable rate. Customers may initially be happy when the rates they pay are kept low, but as a utility's income is reduced beyond a reasonable level, it must begin to cut corners to reduce its expenses. When that happens, the reliability of the service offered by the utility will suffer. While ratepayers do not like to pay increased rates, they also do not like to sit in the cold and dark when the power goes out.

The Commission can and does consider all the testimony offered in this case, including the testimony offered by the public at the local public hearings. However, public sentiment is only part of the equation the Commission must consider when fulfilling its responsibility to establish just and reasonable rates.

2. Storm Costs/Vegetation-Infrastructure Trackers

A. Vegetation-Infrastructure:

(1) Should the Commission authorize Ameren Missouri to continue the current tracking mechanism for vegetation management and infrastructure inspections?

Findings of Fact:

Introduction:

1. Ameren Missouri's vegetation management and infrastructure inspection expense is closely associated with two Commission rules. Following extensive storm related service outages in 2006, the Commission promulgated new rules designed to compel Missouri's

electric utilities to do a better job of maintaining their electric distribution systems. Those rules, entitled Electrical Corporation Infrastructure Standards[21] and Electrical Corporation Vegetation Management Standards and Reporting Requirements,[22] became effective on June 30, 2008.

2. The rules establish specific standards requiring electric utilities to inspect and replace old and damaged infrastructure, such as poles and transformers. In addition, electric utilities are required to more aggressively trim tree branches and other vegetation that encroaches on transmission lines. In promulgating the stricter standards, the Commission anticipated utilities would have to spend more money to comply. Therefore, both rules include provisions that allow a utility the means to recover the extra costs it incurs to comply with the requirements of the rule.

3. In ER-2008-0318, the Commission allowed Ameren Missouri to recover a set amount in its base rates for vegetation management and infrastructure inspection costs. However, since the rules were new, the Commission found that Ameren Missouri had too little experience to reasonably know how much it would need to spend to comply with the vegetation management and infrastructure inspection rules. Because of that uncertainty, the Commission established a two-way tracking mechanism to allow Ameren Missouri to track its vegetation management and infrastructure costs.

4. The order required Ameren Missouri to track actual expenditures around the base level. In any year in which Ameren Missouri spent below that base level, a regulatory liability would be created. In any year in which Ameren Missouri's spending exceeded the base level, a regulatory asset would be created. The regulatory assets and liabilities would

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[21] Commission Rule 4 CSR 240-23.020.

[22] Commission Rule 4 CSR 240-23.030.

then be netted against each other and would be considered in Ameren Missouri's future rate case. The tracking mechanism contained a 10 percent cap so if Ameren Missouri's expenditures exceeded the base level by more than 10 percent it could not defer those costs under the tracking mechanism, but would need to apply for an additional accounting authority order. The Commission's order indicated that the tracking mechanism would operate until new rates were established in Ameren Missouri's next rate case.[23]

5. The Commission renewed the tracking mechanism in Ameren Missouri's next rate case, ER-2010-0036, finding that Ameren Missouri's costs to comply with the vegetation management and infrastructure inspection rules were still uncertain as the company had not yet completed a full four/six year vegetation management cycle on its entire system.[24]

6. Ameren Missouri asks that the tracker be continued. Staff does not oppose the continuation of the tracker, but MIEC contends the tracker is no longer necessary and urges the Commission to end it.

Specific Findings of Fact:

7. Ameren Missouri has now been operating under the Commission's vegetation management and infrastructure inspection rules for several years. However, Ameren Missouri will not complete its first four-year cycle for vegetation management work on urban circuits under the requirements of the new rules until December 31, 2011. It will not complete the six-year cycle of work on rural circuits until December 31, 2013.[25]

8. Ameren Missouri's actual expenditures for vegetation management and

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[23] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 48-49.

[24] In the Matter of Union Electric Company, d/b/a Ameren UE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order, File No. ER-2010-0036, May 28, 2010.

[25] Wakeman Rebuttal, Ex. 105, Page 9, Lines 19-21.

infrastructure inspection have not been extremely volatile over the last two rate cases, but they have consistently increased. Furthermore, Ameren Missouri has consistently spent more than the base amount allowed in rates.[26] For example, the base amount allowed in rates in the last rate case was $50.4 million for vegetation management and $7.6 million for infrastructure inspections. For the twelve months ending in February 2011, the company actually spent $52.2 million on vegetation management and $7.7 million on infrastructure inspections.[27]

9. In a stipulation and agreement that has been approved by the Commission, the parties have agreed that the vegetation management and infrastructure actual expenses through the February 28, 2011 true-up of $52.2 million and $7.7 million will be established as the base amount allowed in rates for this case.[28]

Conclusions of Law:

A. Commission Rule 4 CSR 240-23.020 establishes standards requiring electrical corporations, including Ameren Missouri, to inspect its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.020(3)(A) establishes a four-year cycle for inspection of urban infrastructure and a six-year cycle for inspection of rural infrastructure.

B. Commission Rule 4 CSR 240-23.020(4) establishes a procedure by which an electric utility may recover expenses it incurs because of the rule. Specifically, that section states as follows:

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[26] Meyer Surrebuttal, Ex. 401, Chart at Page 13.

[27] Wakeman Rebuttal, Ex. 105, Page 9, Lines 7-10.

[28] First Nonunanimous Stipulation and Agreement – Miscellaneous Revenue Requirement Items, paragraph 20, filed on May 3, 2011, and approved by order of the Commission on June 1, 2011.

> In the event an electrical corporation incurs expenses as a result of this rule in excess of the costs included in current rates, the corporation may submit a request to the commission for accounting authorization to defer recognition and possible recovery of these excess expenses until the effective date of rates resulting from its next general rate case, filed after the effective date of this rule, using a tracking mechanism to record the difference between the actually incurred expenses as a result of this rule and the amount included in the corporation's rates … .

C. Commission Rule 4 CSR 240-23.030 establishes standards requiring electrical corporations, including Ameren Missouri, to trim trees and otherwise manage the growth of vegetation around its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.030(9) establishes a four-year cycle for vegetation management of urban infrastructure and a six-year cycle for vegetation management of rural infrastructure. The vegetation management rule also includes a provision that would allow Ameren Missouri to ask the Commission for authority to accumulate and recover its cost of compliance in its next rate case.[29]

Decision:

Ameren Missouri's system reliability has improved since the new rules went into effect and the Commission believes that vegetation management and infrastructure inspection is very important to that improved reliability. The Commission wants to encourage Ameren Missouri to continue to spend the money needed to improve reliability. Although Ameren Missouri now has more experience in complying with the rules, it still has not completed a single cycle on inspections for its urban or rural circuits. The Commission finds that because of that remaining uncertainty the tracker is still needed. However, as the Commission has indicated in previous rate cases, it does not intend for this tracker to

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

become permanent. For this case, the Commission will renew the existing vegetation management and infrastructure inspection tracker.

Ameren Missouri shall establish a tracking mechanism to track future vegetation management and infrastructure costs. That tracking mechanism shall include a base level of $59.9 million ($52.2 million vegetation management + $7.7 million infrastructure = $59.9 million). Actual expenditures shall be tracked around that base level with the creation of a regulatory liability in any year where Ameren Missouri spends less than the base amount and a regulatory asset in any year where Ameren Missouri spends more than the base amount. The assets and liabilities shall be netted against each other and shall be considered in Ameren Missouri's next rate case. The tracking mechanism shall contain a ten percent cap so expenditures exceeding the base level by more than ten percent shall not be deferred under the tracking mechanism. If Ameren Missouri's vegetation management and infrastructure inspection costs exceed the ten percent cap, it may request additional accounting authority from the Commission in a separate proceeding. The tracking mechanism shall operate until the Commission establishes new rates in Ameren Missouri's next rate case.

B. Normalized Level of Non-Labor Storm Costs:

(1) How should the Commission calculate Ameren Missouri's normalized, non-labor storm costs to be included in the revenue requirement for ratemaking purposes?

(2) Should the difference between the amount of non-labor storm costs that Ameren Missouri incurred during the true-up period and the normalized level of non-labor storm costs included in the revenue requirement for ratemaking purposes be amortized over five (5) years or should that difference be included in the normalized costs used for ratemaking purposes?

Findings of Fact:

Introduction:

10. For time to time, Ameren Missouri experiences the effects of severe storms in its service territory. Those can be severe windstorms, usually in the spring or summer, or severe ice storms in the winter. Of course, such storms are unpredictable and do not occur in any recognizable pattern. As a result, storm costs can vary greatly from year to year.

11. For example, Ameren Missouri incurred $6 million in non-labor related storm restoration costs in the nine months ending December 31, 2007, $4.8 million in 2008, $9 million in 2009, but only $38,000 in 2010. However, the company then incurred $8.1 million in such costs in February 2011.[30]

12. In the past, the Commission has dealt with storm costs by allowing the utility to recover an amount in rates based on a historic average of the storm costs incurred. For costs that exceed the average level of costs recovered through rates, the utility is generally allowed to accumulate and defer those costs through an accounting authority order, an AAO. The accumulated and deferred costs are then considered in the utility's next rate case. Generally, the Commission allows the utility to recover those costs amortized over a five-year period.[31] Using those practices, the Commission has allowed Ameren Missouri to recover every single dollar expensed for storms since April 1, 2007.[32]

Specific Findings of Fact:

13. Ameren Missouri proposes to set the amount of storm costs it will be allowed to

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[30] Ex. 151.

[31] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, File No. ER-2010-0036, Report and Order, May 28, 2010, Page 66.

[32] Transcript, Page 391, Lines 1-14, *see also*, Meyer Surrebuttal, Ex. 401, Page 24, Lines 1-6.

recover prospectively in rates by compiling a 47-month (April 2007 through February 2011) average of storm costs to obtain an average annual storm cost amount of $7,096,592. Ameren Missouri would then use this normalized amount as the amount it would recover in rates.[33]

14. Staff used the same 47-month period used by Ameren Missouri to calculate a normalized average annual storm cost. However, before calculating the average annual storm cost, Staff removed $8.8 million of storm costs that the Commission has previously allowed Ameren Missouri to recover by amortization.[34] Using its adjusted figures, Staff calculated an average annual storm cost of $4.8 million and proposes to allow Ameren Missouri to recover that amount in its rates.

15. MIEC also proposed to allow Ameren Missouri to recover in rates an amount based on its normalized annual storm costs. However, MIEC proposed to calculate that annual storm cost on only 23 months of costs, beginning with the start of the test year and running through the end of the true-up period (April 2009 through February 2011). On that basis, MIEC proposed to allow Ameren Missouri to recover $4.9 million.[35]

16. The purpose of a normalization is to determine a reasonable expectation of what costs a utility is likely to experience in the future so that rates can be set to allow the utility a reasonable opportunity to recover those costs. For that reason, a normalization over a nearly four-year period is likely to be a better predictor of the future than is a normalization over approximately two years. That is particularly true were, as here, the company

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[33] Barnes Rebuttal, Ex. 103, Page 14, Lines 8-16.

[34] Cassidy Surrebuttal, Ex. 207, Page 8, Lines 7-16. $4,857,000 was removed for the amortization in ER-2008-0318 and $3,977,675 for the amortization in ER-2010-0036.

[35] Meyer Surrebuttal, Ex. 401, Page 23, Lines 20-22.

experienced a very low level of storm costs during one year of the studied period.[36]

17. Of course, the average over a shorter period may be a better predictor than a longer period if for some reason the costs experienced are trending in a certain direction. MIEC defended its use of the shorter period by arguing that Ameren Missouri's recent increases in vegetation management spending should have the effect of decreasing the damages that result from storms.[37] However, MIEC did not attempt to quantify any such effect and its argument is little more than speculation. The Commission finds that MIEC's calculation of average annual storm costs based on 23 months of experience is not as reliable as the same calculation over 47 months of experience.

18. Staff calculates average annual storm costs over the same 47 months of experience as Ameren Missouri, but it would exclude from that average a portion of the actual costs Ameren Missouri incurred because the Commission previously allowed the company to recover those costs by amortization.

19. As previously indicated, the purpose of a normalization is to attempt to predict the amount of expenses the company is likely to incur in the future. Staff's calculation removes from consideration a portion of the costs the company actually incurred because of past Commission decisions about how the company would be allowed to recover those costs. No matter how those costs were recovered in the past, they were still incurred. By the logic of a normalization, they are thus likely to be incurred again in the future. Therefore, the normalized amount of storm costs proposed by Staff is not a reliable indicator of the actual storm costs Ameren Missouri is likely to incur in the future.

20. The Commission finds that Ameren Missouri's calculation of average annual storm

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[36] Ex. 151.

[37] Transcript, Page 392, Lines 9-21.

costs based on a straight 47-month average of storm costs experienced in the past is the most reliable indicator of expected future storm costs and will use that average to set future rates in this case.

21. The Commission must decide one more question. Ameren Missouri proposes that it be allowed to recover $1,037,146 through an amortization. That amount represents the difference between $8,133,738, the actual storm costs for the twelve months ending on the true-up date of February 28, 2011, and $7,096,592, the 47-month average storm costs as calculated by Ameren Missouri.[38]

22. Ameren Missouri does not explain why the 47-month average of storm costs should be the basis for determining the amount it should be allowed to amortize and that number makes no sense. Even if the 47-month average is used in this case to determine rates going forward, it bears no relationship to the amount of money Ameren Missouri was allowed to recover in rates during the period the cost was incurred. That number was set in Ameren Missouri's last rate case.

23. In Ameren Missouri's last rate case, the Commission allowed Ameren Missouri to recover $6.4 million in its cost of service for storm restoration costs.[39] Based on that amount as well as the amount Ameren Missouri was allowed to recover in the next previous rate case, ER-2008-0318, MIEC's witness, Greg Meyer, correctly calculated that from the beginning of the test year in this case (April 1, 2009) through the end of the true-up period (February 28, 2011), Ameren Missouri has recovered $10.8 million in rates for repairs from major storms. During that same time, Ameren Missouri has incurred $9.4 million in storm

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[38] Barnes Rebuttal, Ex. 103, Page 15, Lines 11-22.

[39] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, File No. ER-2010-0036, Report and Order, May 28, 2010, Page 68.

costs, including the costs for the February 2011 storm preparations for which Ameren Missouri seeks an additional amortization.

24/25. Based on those calculations, it is apparent that there is no basis for allowing Ameren Missouri to amortize $1,037,146 for storm costs relating to its preparation for the February 2011 ice storm.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall recover **$**7,096,592 in its rates for non-labor storm costs. Ameren Missouri shall not amortize an additional $1,037,146 for storm costs relating to its preparation for the February 2011 ice storm.

3. Sioux Scrubbers: Should the Commission allow in rate base $31 million in cost increases ($18 million in construction costs and $13 million in AFUDC) that were incurred as a result of Ameren Missouri's decision to temporarily suspend construction of the Sioux Plant Wet Flue Gas Desulfurization Project due to the Company's concerns about conditions in the financial markets during the period commencing in late 2008 and continuing into early 2009?

Findings of Fact:

Introduction:

1. Ameren Missouri seeks to add to its rate base the cost of constructing wet flue gas desulfurization units at both generating units at the company's coal-fired Sioux Plant. The wet flue gas desulfurization units are referred to as "scrubbers" by the witnesses and will be referred to as such in this report and order.

2. As their name implies, the scrubbers are designed to scrub sulfur dioxide gas (SO_2) from flue gases produced by burning coal. The wet scrubbers installed at the Sioux Plant remove SO_2 by passing the flue gas through a spray of limestone slurry solution in the

scrubber reaction vessel. A chemical reaction between the limestone, air, water, and SO_2 converts the SO_2 to calcium sulfate that is removed from the scrubber and pumped in slurry form to an on-site landfill for final disposal. The scrubbers are designed to remove in excess of 95 percent of the SO_2 generated by the plant.[40]

3. Ameren Missouri installed the scrubbers at the Sioux Plant to comply with various Federal clean air rules. No party has questioned the overall prudence of the decision to install the scrubbers and that decision need not be addressed in this report and order.

4. Staff undertook an audit of the project to install the scrubbers and reported the results of that audit on February 8, 2011, as part of its direct testimony. For purposes of the audit, Ameren Missouri reported $521.8 million in charges incurred for the scrubbers project through September 30, 2010.[41] Staff's audit recommended that $31.6 million of those costs be excluded from rate base because of Ameren Missouri's decision to slowdown construction in November 2008.[42]

5. Ameren Missouri challenges Staff's recommendation to disallow its costs, but does not challenge the amount of the disallowance. In other words, Staff and Ameren Missouri agree that the amount in dispute is $31.8 million.

6. Although the amount in dispute is $31.8 million, that is the amount that Staff proposes be excluded from the company's rate base. That exclusion would reduce Ameren Missouri's revenue requirement in this case by approximately $4.6 million,[43] and would continue to reduce Ameren Missouri's revenue requirement in future rate cases as

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[40] Birk Direct, Ex. 106, Page 3, Lines 8-19.

[41] Staff's Construction Audit and Prudence Review, Ex. 200, Page 1, Lines 20-21.

[42] Staff's Construction Audit and Prudence Review, Ex. 200, Page 2, Lines 14-16.

[43] Reconciliation, Ex. 230.

the property is depreciated.

7. Staff asserts that a disallowance is necessary because of Ameren Missouri's decision to "slow down construction and ultimately shift the in-service dates to fall 2010 from fall 2009 because of this delay."[44]

Specific Findings of Fact:

8. In the fall of 2008, this country and the rest of the world was facing a financial crisis. On September 6, 2008, the United States government took over Fannie Mae and Freddie Mac. Nine days later Bank of America acquired Merrill Lynch and Lehman Brothers filed for bankruptcy. The largest bank failure in history occurred on September 26, 2008, when regulators seized Washington Mutual. The stock market plummeted throughout October and November of 2008. Because of these volatile financial conditions a credit freeze developed.[45]

9. During the credit freeze, the banking sector severely restricted the channels of credit that are needed by consumers and businesses for normal working capital and expansion needs. Banks chose to hold on to any capital they had to decrease their own leverage rather than lend money to even large, credit worthy businesses.[46]

10. The electric utility industry is heavily capital-intensive. Therefore, electric utilities, including Ameren Missouri, must be concerned about their current liquidity and their ability to obtain necessary capital through their credit facilities.[47]

11. Liquidity is the ability to meet expected and unexpected demands for cash at an

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[44] Staff's Construction Audit and Prudence Review, Ex. 200, Page 42, Lines 18-19.

[45] Birdsong Rebuttal, Ex. 109, Pages 7 and 8.

[46] Birdsong Rebuttal, Ex. 109, Page 9, Lines 4-13.

[47] Birdsong Rebuttal, Ex. 109, Page 11, Lines 11-14.

acceptable cost at the time when needed. Electric utilities, as well as other companies, use credit facilities as a means of borrowing the cash they need to maintain liquidity.[48]

12. A bank credit facility is a committed revolving bank credit line under which a company can borrow on a short-term basis, typically 30 days. Such credit facilities are syndicated by a group of bank lenders that lend by funding borrowing requests under the credit facility on a pro-rata basis.[49]

13. In 2008, Ameren Missouri had access to a credit facility under which it could borrow up to $500 million. At the end of October 2008, Ameren Missouri had approximately $380 million of its own credit facility available. In addition, Ameren Missouri had access to part of the credit facility of its corporate parent, Ameren Corporation. In total, at that time, Ameren Missouri had access to credit facilities totaling 1.45 billion.[50]

14. Ameren Missouri's credit facility was supported by a syndicate of 18 banks. $171 million of the total was offered by Lehman Brothers Bank and $121 million of that was no longer available after Lehman Brothers went broke. Wachovia had $156 million, Citibank had $167 million, and National City had $45 million. That means $529 million of the available credit facility was held by banks that were rumored to be in financial distress.[51]

15. At that time, Ameren Missouri was operating with negative free cash flow, meaning its capital expenditures were larger than the net cash flows provided by rate revenues. As a result, credit was vital to the continuation of Ameren Missouri's operations.[52]

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[48] Birdsong Rebuttal, Ex. 109, Page 11, Lines 11-15.

[49] O'Bryan Direct, Ex. 147, Page 8, Lines 18-23.

[50] Transcript, Page 515, Lines 17-25.

[51] Transcript, Page 516, Lines 4-21, *see also*, Birdsong Rebuttal, Ex. 109, Page 12, Lines 9-22.

[52] Birdsong Rebuttal, Ex. 109, Page 12, Lines 4-8.

16. Very bad things happen to a utility that runs out of cash liquidity. As cash becomes short, the company will actually need more cash because suppliers will demand more payments and may require advanced payments before products are supplied. If payments are not made, the suppliers may cut off their supplies and services, such as coal and natural gas supplies, making it difficult for the utility to continue to provide electric service to its customers.[53]

17. Faced with a perceived liquidity problem in October 2008, Ameren Missouri, along with Ameren Corp. and the Illinois affiliates, began looking for ways to reduce capital expenditures, primarily by focusing on reductions in larger projects that could be made quickly, had minimal impact on employees, did not impact safety, would not result in the violation of any law or regulation, did not impact the actual delivery of utility service to customers, and involved heavy use of contractors.[54]

18. Following its review, Ameren Missouri deferred all 2009 planned generating plant outages and plant upgrades, reduced expenditures on the undergrounding portion of the Power On initiative, deferred some fleet acquisitions, and deferred certain Energy Delivery Technical Services capital projects. Along with the other deferred projects, Ameren Missouri decided to delay the Sioux scrubber project. In total, Ameren Missouri planned to reduce its capital expenditures by approximately $420 million through 2009.[55]

19. At the time, Ameren Missouri was spending $17 million per month on the Sioux scrubber project. It planned to reduce its cash expenditures for that project to $2 million

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[53] Transcript, Pages 517-518, Lines 8-25, 1-9.

[54] Birdsong Rebuttal, Ex. 109, Page 15, Lines 16-20.

[55] Birdsong Rebuttal, Ex. 109, Page 16, Lines 2-9.

per month.[56]

20. By late January, 2009, Ameren Missouri decided that its liquidity situation had improved enough to allow it to again ramp up its spending on the Sioux scrubber project.[57]

21. The delay of the Sioux scrubber project had at least one unforeseen benefit for Ameren Missouri and its ratepayers. Ameren's installation of scrubbers at its unregulated generating plants at Duck Creek and Coffeen in Illinois, which were completed while the Sioux project was delayed, experienced quality issues with the flake glass lining system that was originally planned for the Sioux scrubbers. Because of the delay, Ameren Missouri was able to draw on that experience in Illinois to install a Stebbins glass tile lining at Sioux, thereby improving long-term reliability and decreasing maintenance costs.[58]

22. Exhibit 155, which Ameren Missouri filed at the request of a Commissioner, demonstrates that it would have cost $3.47 million dollars to replace a flake glass liner at the Sioux scrubber if the Stebbins tile lining had not been used. The exhibit also demonstrates that the cumulative present worth of the revenue requirements to replace the flake glass lining range up to $33.3 million depending upon various assumptions.

23. Staff's recommendation to disallow $31.8 million of costs incurred because of the delay in completing the Sioux scrubber project is based on Staff's determination that Ameren Missouri had sufficient credit available to it under its credit facilities to avoid having to delay the project.[59] Staff supported that recommendation by citing Ameren's issuance of common equity in September 2009 and Ameren Missouri's issuance of First Mortgage

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[56] Transcript, Page 443, Lines 10-12.

[57] Birdsong Rebuttal, Ex. 109, Page 18, Lines 1-5.

[58] Birk Rebuttal, Ex. 107, Page 20, Lines 2-9.

[59] Staff's Construction Audit and Prudence Review, Ex. 200, Page 42, Lines 7-11.

Bonds in March 2009 to show Ameren Missouri's ability to raise additional capital if it had chosen to do so.[60]

24. Staff never performed a liquidity analysis to determine whether Ameren Missouri had sufficient cash liquidity to avoid slowing down work on the Sioux scrubber project. Indeed, on cross-examination, Staff's witness conceded that she had no idea whether Ameren Missouri had sufficient liquidity in 2008 to continue construction and meet its daily operational needs.[61]

25. Staff's analysis focused only on whether Ameren Missouri had access to sufficient cash and credit to continue work on the Sioux scrubber project and did not look at any other expenditures the company would also need to make at the time.[62]

26. Ameren Missouri's issuance of additional bonds in March 2009 does not demonstrate that the company could have easily issued such bonds in November 2008, when it made the decision to slow down work on the Sioux scrubbers. By January 2009, the financial crisis had begun to ease and Ameren Missouri had taken other steps, including a reduction in its dividends, to improve its liquidity. Indeed, by that time, Ameren Missouri had made the decision to ramp up the pace of work on the scrubbers.[63]

27. In October 2008, Ameren Missouri had discussions with Staff regarding the possibility of an additional bond issue by Ameren Missouri to try to improve its liquidity position. Staff told the company it would oppose that request and Ameren Missouri chose

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[60] Staff's Construction Audit and Prudence Review, Ex. 200, Page 42, Lines 11-15.

[61] Transcript, Pages 608-609, Lines 19-25, 1-2.

[62] Transcript, Page 604, Lines 7-20.

[63] Birdsong Rebuttal, Ex. 109, Page 18, Lines 1-18.

not to seek the required financing authority from the Commission at that time.[64] Both Staff and Ameren Missouri spent a great deal of hearing and briefing time arguing about the details of that dispute, but most of those details are classified as proprietary or highly confidential so they cannot be disclosed in this report and order. The Commission will not take the unusual step of issuing a highly confidential or proprietary version of this report and order to discuss the details of that disagreement because it is of very little relevance to the Commission's decision. As Ameren Missouri's witness indicated, around the time of that meeting, Ameren Missouri's management had already decided to slow down spending on the Sioux scrubber project and "there was never, ever any indication that by approving this financing we would not have to slow down projects, including the Sioux scrubber."[65]

Conclusions of Law:

A. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision regarding Union Electric's construction of the Callaway nuclear plant. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, then the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.[66]

B. The 1985 Union Electric decision also established the standard by which the prudence of a utility's decision would be evaluated when it said:

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[64] Murray Surrebuttal, Ex.220, Page 28, Lines 3-15.

[65] Transcript, Page 503, Lines 5-7.

[66] *In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues. And In the matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the company.* 27 Mo. P.S.C. (N.S.) 183, 193 (1985).

> In reviewing UE's management of the Callaway project, the Commission will not rely on hindsight. The Commission will assess management decisions at the time they were made and ask the question, 'Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?'[67]

C. The Commission's use of that prudence standard is consistent with judicial precedent[68] and has been accepted and applied by reviewing courts.[69]

D. In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that the utility acted imprudently and that such imprudence resulted in harm to the utility's ratepayers.[70]

E. Applying the prudence standard as it has been defined by the Commission, the first step is to determine whether any party has raised a serious doubt about the prudence of Ameren Missouri's decision to slow down the Sioux scrubber project to preserve cash in the face of the global economic crisis of 2008. That raises the question of what is a "serious doubt?"

F. In its reply brief, Staff suggests that the presumption of prudence is only a matter of convenience designed to focus attention on those items that are subject to challenge by

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[67] *In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues. And In the matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the company.* 27 Mo. P.S.C. (N.S.) 183, 194 (1985).

[68] "Good faith is to be presumed on the part of the managers of a business. In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay." *West Ohio Gas Co. v. Pub. Util. Com'n of Ohio*, 294 U.S. 63, 72, 55 S.Ct. 316, 321 (1935)

[69] *For example see, State ex rel. Assoc. Natural Gas Co. v. Public Serv. Com'n, 954 S.W.2d 520 (Mo. App. W.D. 1997).*

[70] *State ex rel. Assoc. Natural Gas Co. v. Public Serv. Com'n, 954 S.W.2d 520 (Mo. App. W.D. 1997).*

any party on grounds that are reasonable on their face.[71] If as Staff suggests, the presumption of prudence is only a matter of convenience, then it could be overcome by a simple statement by a party that it wants to challenge a particular decision on some reasonable basis without presenting a shred of evidence to show that the utility did anything wrong.

G. Staff's suggestion is not correct, the presumption of prudence is not just a matter of convenience. The United States Supreme Court in the *West Ohio Gas* case indicated that the presumption of prudence is real and is not overcome absent a showing of inefficiency or improvidence.[72] That is what "serious doubt" means. By statute, the utility has the burden of proving that its proposed rates are just and reasonable. However, before the presumption of prudence is overcome, the challenging party must present sufficient evidence to create a serious doubt about a decision of the utility. Staff failed to create a serious doubt in this case.

Decision:

Staff's recommendation to disallow $31.8 million of costs incurred because of the delay in completing the Sioux scrubber project is based on Staff's determination that Ameren Missouri had sufficient credit available to it under its credit facilities to avoid having to delay the project. But Staff never undertook any sort of liquidity analysis to determine whether Ameren Missouri actually had reliable access to sufficient cash to continue to pay $17 million per month for the Sioux scrubber project while also meeting all its other needs and contingencies. Instead, Staff seems to have naively assumed that if Ameren Missouri

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[71] Staff's Reply Brief, Page 4.

[72] *West Ohio Gas Co. v. Pub. Util. Com'n of Ohio*, 294 U.S. 63, 72, 55 S.Ct. 316, 321 (1935)

had $31.8 million in available cash or credit in November 2008 it should have used those funds to continue forward with the Sioux scrubber project without taking into account the very real uncertainties facing the company because of the financial crisis.

Even assuming that Staff was able to raise a serious doubt about the prudence of Ameren Missouri's decision to slow down work on the Sioux scrubbers at the height of the global financial crisis, Ameren Missouri presented more than enough evidence to dispel those doubts and to prove that the questioned expenditure was prudent. Ameren Missouri demonstrated that measured by what it knew at the time, without the benefit of hindsight, it was justifiably concerned that it faced the potentially cataclysmic danger of running out of liquidity. Under those circumstances, the decision to slow down the Sioux scrubber project for a few months was a prudent act.

Furthermore, there is little indication that Ameren Missouri's customers were actually harmed by Ameren Missouri's decision to slow down work on the Sioux scrubber project. Certain costs did increase because of the delay as Staff indicates, but the delay also gave the company an opportunity to learn from mistakes made in the construction of similar scrubbers at other power plants. In particular, Ameren Missouri learned from experience that the flake glass lining proposed for use in the Sioux scrubber was not optimal and instead installed a Stebbins glass tile lining that saved the company and its ratepayers up to $33.3 million, offsetting the additional costs associated with the delay.

In summary, Staff failed to raise a serious doubt about the prudence of Ameren Missouri's decision to slow down work on the Sioux scrubber project. Even if it is assumed that Staff was able to raise a serious doubt about the prudence of those expenditures, Ameren Missouri dispelled those doubts and proved that those expenditures were prudent.

Finally, savings that were made possible by the delay offset any costs to ratepayers that resulted from Ameren Missouri's decision to slow down the Sioux scrubber project. On those bases, the Commission will reject Staff's proposed $31.8 million disallowance.

4. Energy Efficiency/Demand Side Management (DSM):

A. Is Ameren Missouri in compliance with the Missouri Energy Efficiency Investment Act (MEEIA) regardless of whether or not proposed rules under the law are effective?

(1) What DSM programs should Ameren Missouri continue and/or implement, and at what annual expenditure level; and

(2) Should Ameren Missouri continue to ramp up its demand side management programs to pursue all cost-effective demand side savings?

B. Does Ameren Missouri's request for demand-side management programs' cost recovery in this case comply with MEEIA requirements?

(1) Should the Commission approve a cost recovery mechanism for Ameren Missouri DSM programs as part of this case? If so,

(a) Over what period should DSM program costs incurred after December 31, 2010, be amortized?

(b) Should the mechanism include an adjustment of kWh billing determinants?

(c) How much should the Commission reduce the billing determinants?

(d) If billing units are adjusted for demand side savings, how should the NBFC rates be calculated?

Findings of Fact:

Introduction:

1. Energy Efficiency and Demand Side Management (DSM) programs are designed to encourage an electric utility's customers to reduce their use of electricity. In recent years, Ameren Missouri has undertaken a number of residential and business energy efficiency and DSM programs. The particular programs are listed and described in the direct

testimony of MDNR's witness Laura Wolfe[73]

2. Ameren Missouri has not submitted those programs to the Commission for approval under the Missouri Energy Efficiency Investment Act.[74]

3. Ameren Missouri has spent significant amounts of money to support those energy efficiency and DSM programs in recent years. Those expenditures rose from $13.5 million in 2008 and 2009, to $23 million in 2010, to an anticipated spending level of $33 million in 2011.[75] All parties agree that those energy efficiency and DSM initiatives have been effective in reducing energy usage and would like to see them continue. However, Ameren Missouri's electric energy efficiency programs offered under the existing tariffs end on September 30, 2011,[76] and Ameren Missouri may significantly reduce its energy efficiency expenditures in the future.[77]

4. Ameren Missouri indicates it would like to continue its current slate of programs at current funding levels, but is willing to do so only if the Commission approves its proposals to establish a mechanism to allow it to recover the revenue it will lose because of reduced sales of electricity as customers reduce their use of electricity as a result of the energy efficiency programs.[78]

5. Ameren Missouri describes the problem of declining sales as the throughput disincentive and the issue is about how the Commission should address that disincentive.

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[73] Wolfe Direct, Ex.800, Pages 3-4.

[74] Section 393.1075, RSMo (Supp. 2010).

[75] Mark Surrebuttal, Ex. 111, Page 4, Lines 4-6.

[76] Laurent Surrebuttal, Ex. 113, Page 4, Lines 12-15.

[77] Mark Rebuttal, Ex. 110, Page 8, Lines 7-12.

[78] Laurent Surrebuttal, Ex. 113, Page 4, Lines 16-21.

Specific Findings of Fact:

6. The throughput disincentive results from the traditional regulated utility business model in which a utility earns revenues by selling electricity. Under that model, the more electricity it sells, the more revenue the utility earns to cover its fixed costs and to provide a profit for its shareholders.[79] Energy efficiency programs are designed to reduce electricity sales. Thus, by implementing energy efficiency programs, the utility is knowingly causing financial harm to itself. Understandably, utility companies are reluctant to reduce their earnings, resulting in a strong incentive for the company to spend as little as possible on energy efficiency programs.[80]

7. The throughput disincentive has a real effect on Ameren Missouri's earnings. Ameren Missouri estimated that if it were to continue to spend $25 million per year on energy efficiency over the next two years without a rate case, it would lose about $53 million in additional revenue.[81]

8. Advocates for energy efficiency are of course aware of this disincentive and search for the means to realign the utility's interests to more closely match the goal of increasing energy efficiency to reduce the use of electricity. In Missouri, the Missouri Energy Efficiency Investment Act (MEEIA) makes that realignment the policy of this state.[82]

9. Ameren Missouri asks the Commission to address the throughput disincentive in this case by implementing an adjustment to decrease the billing units used to set rates in

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[79] Davis Rebuttal, Ex. 115, Page 1, Lines 20-23.

[80] Davis Rebuttal, Ex. 115, Page 3, Lines 11-13.

[81] Davis Rebuttal, Ex. 115, Page 5, Lines 1-5.

[82] Section 393.0175, RSMo (Supp. 2010).

anticipation of reduced sales resulting from energy efficiency programs.[83] However, Ameren Missouri did not propose its billing unit adjustment plan until it filed the rebuttal testimony of William Davis on March 25, 2011.

10. Ameren Missouri's proposed billing unit adjustment is a new and novel idea that to the knowledge of the Ameren Missouri witness who proposed it, has never been tried anywhere else in the country.[84] Because Ameren Missouri did not file its "new and novel idea until its rebuttal testimony, the other parties had a very limited amount of time to evaluate that idea before filing their surrebuttal testimony two weeks later.

11. The proposed billing rate unit adjustment would have the effect of increasing rates by allowing the company to recover its revenue requirement over a smaller number of units. For example if the revenue requirement is $100 and the normalized, annualized billing unit is 1,000 kWh, then the rate would be $0.10 per kWh ($100 divided by 1,000 kWh) and the company would collect its $100 revenue requirement after selling 1,000 kWh of electricity. If in the same example the billing units were reduced to 800 kWh, the resulting rate would be $0.125 per kWh and the company would collect $125 when it sells 1,000 kWh of electricity.[85] Staying with the example, Ameren Missouri's justification for this adjustment is that because of energy efficiency programs it anticipates selling only 800 kWh, meaning it will in fact collect only its $100 revenue requirement.

12. Despite Ameren Missouri's protests to the contrary, the proposed billing units adjustment is a mechanism that attempts to compensate the company for lost revenue. It just tries to accomplish that compensation before the revenue is lost, which is a distinction

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[83] Davis Rebuttal, Ex. 115, Pages 6-7.

[84] Transcript, Page 1911, Lines 1-12.

[85] Mantle Supplemental Testimony, Ex. 247, Page 2, Lines 8-20.

without meaning. As Ameren Missouri's witness, William Davis, indicated in the following exchange at the hearing:

> Q. Isn't the whole purpose of the billing unit adjustment to recover future lost sales revenue?
> A. Associated with fixed costs, yes, and a reduction in sales associated with our energy efficiency programs.[86]

13. As a lost revenue recovery mechanism, Ameren Missouri's proposed lost revenue mechanism must comply with the requirements of the Commission's rule regarding Demand-Side Programs Investment Mechanisms.[87] The Commission will discuss the application of that rule in its Conclusions of Law regarding this issue.

14. Most significantly, the proposed billing units adjustment does not eliminate the throughput disincentive. It would guarantee the company a greater recovery, but the company would continue to benefit from increases in energy sales and suffer a loss of income when sales drop just as it would without the adjustment.[88] In other words, despite the use of the billing units adjustment, Ameren Missouri would still have just as much incentive to maximize its sales of electricity and minimize energy efficiency programs.

15. William Davis, Ameren Missouri's witness who proposed the billing units adjustment, admitted on the stand that his plan did not decrease the company incentive to increase sales. His only defense was to indicate that he was not aware of any plans by Ameren Missouri to implement any programs to increase its sales.[89]

16. In effect, Ameren Missouri's proposed billing units adjustment relies on the willingness of the Commission and ratepayers to hand the company extra money while

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[86] Transcript, Page 1878, Lines 5-9.

[87] 4 CSR 240-20.093, *See Also*, Rogers Supplemental Testimony, Ex. 246, Page 2, Lines 21-25.

[88] Rogers Surrebuttal, Ex. 222, Page 14, Lines 6-10.

[89] Transcript, Page 1878, Lines 10-21.

trusting to the good intentions of the company to avoid acting in compliance with its throughput incentive by maximizing sales while minimizing energy efficiency efforts.

17. The Commission finds that Ameren Missouri's proposed billing units adjustment is a hastily proposed and ill-conceived lost revenue recovery mechanism that the Commission is not willing to adopt in its present form.

18. Aside from consideration of the proposed billing units adjustment, there is one other matter related to energy efficiency and DSM programs that the Commission needs to address. Currently, between rate cases, Ameren Missouri is allowed to book its direct costs incurred while implementing energy efficiency and DSM programs to a regulatory asset. In the rate case, the amount in the regulatory asset is added to the company's rate base and is amortized over a six-year period. That procedure was established by a stipulation and agreement in Ameren Missouri's last rate case.[90]

19. Ameren Missouri initially proposed that the amortization period be decreased from six years to three.[91] Subsequently, Ameren Missouri dropped its proposal to decrease the amortization period to concentrate on dealing with the throughput disincentive.[92] MDNR continues to support at least a decreased amortization period and suggests that such expenses should be expensed and recovered immediately instead of amortized.[93] MIEC goes the other direction and argues the amortization period should be increased to ten years.[94]

20. MIEC's argument for a ten-year amortization period is that demand-side resources

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[90] Davis Direct, Ex. 114, Pages 3-4, Lines 19-24, 1-5.

[91] Davis Direct, Ex. 114, Page 5, Lines 10-13.

[92] Transcript, Page 1867, Lines 15-22.

[93] Wolfe Direct, Ex. 800, Page 11, Lines 13-16.

[94] Brubaker Direct, Ex. 403, Page 14, Lines 12-18.

are to be treated comparably with supply-side resources. A utility recovers its supply-side costs through depreciation over the useful life of the asset. For a demand-side asset, the equivalent asset is a "regulatory asset" that is recovered through an amortization. Ameren Missouri would recover the cost of supply-side assets that are displaced by demand-side resources through depreciation over twelve years. On that basis, MIEC's witness argues Ameren Missouri should recover the cost of its demand-side resources over at least a ten-year period.[95]

21. As Ameren Missouri's witness explained, there is no objective basis for the six-year amortization period currently in use. It was simply the product of negotiations in Ameren Missouri's last rate case.[96] Similarly, there is no objective basis to return to a ten-year amortization period other than it was used before the six-year amortization period was instituted. MIEC comparison of the amortization period to the depreciation period of displaced supply-side resources is not convincing. The real reason to stay with a six-year amortization period is to continue to allow Ameren Missouri a reasonable incentive to make demand-side expenditures.

22. A lengthy amortization period for Ameren Missouri's DSM costs would provide a strong disincentive for the utility to incur those costs and would be inconsistent with the policy established by MEEIA that favor timely recovery cost recovery for utilities. The Commission does not want to send that signal and will not alter the current six-year amortization period.

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[95] Brubaker Direct, Ex. 403, Pages 11-14.

[96] Davis Direct, Ex. 114, Page 4, Lines 10-12.

Conclusions of Law:

A. The Missouri Energy Efficiency Investment Act (MEEIA) provides in part as follows:

> 3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy the commission shall:
> (1) Provide timely cost recovery for utilities;
> (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
> (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.[97]

In this section, the legislature has set out the policy considerations that must guide the Commission in reaching its decision on this issue.

B. The Commission has established rules to implement MEEIA. 4 CSR 240-20.093 establishes specific requirements for the creation of Demand-Side Programs Investment Mechanisms. 4 CSR 240-20.094 establishes procedures for filing and processing applications for approval, modification, and discontinuance of electric utility demand-side programs.

C. Section 4 of MEEIA requires the Commission to permit electric corporations to implement "commission approved demand-side programs." That section also provides "[R]ecovery for such programs shall not be permitted unless the programs are approved by the commission, …" Ameren Missouri has not submitted an application pursuant to MEEIA or the MEEIA rules for approval of any of its demand-side programs.[98]

D. Commission Rule 4 CSR 240-20.093(1)(Y) defines lost revenue as:

> the net reduction in utility retail revenue, … that occurs when utility demand-side programs approved by the commission in accordance with 4 CSR 240-

[97] 393.1075.3, RSMo (Supp. 2010).

[98] Rogers Surrebuttal, Ex. 222, Page 6, Lines 36-37.

> 20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates.

By that definition, lost revenue would include only revenue losses that exceed net gains in sales from other sources. That definition is inconsistent with Ameren Missouri's billing units adjustment proposal that would allow the company to recover for any potential lost revenue, even if its net revenue was rising from another source.

E. The rule's definition of lost revenue goes on to say:

> Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-094 Demand-Side Programs and measured and verified through EM&V. (evaluation, measurement and verification)

That definition once again allows recovery only for demand-side programs approved by the Commission. It also means that recovery is not allowed until the program has been evaluated to "estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost-effectiveness, and other effects from demand-side programs."[99] Ameren Missouri's billing units adjustment proposal would not comply with either aspect of the definition and could allow Ameren Missouri to recover revenue in the future that is in excess of the rule's definition of lost revenue.

F. Section 393.1075.13 of MEEIA requires that "[c]harges attributable to demand-side programs under this section shall be clearly shown as a separate line item on bills to the electrical corporation's customers." Ameren Missouri's billing units adjustment proposal would raise customer rates without disclosing that increase to customers and would therefore be inconsistent with MEEIA.

G. Ameren Missouri has indicated its intention to significantly reduce its spending on

[99] 4 CSR 240-20.093(1)(V), the definition of evaluation, measurement, and verification.

energy efficiency and DSM programs if the Commission does not approve its billing units adjustment proposal. Some parties suggest that the Commission simply order Ameren Missouri to continue spending for those programs at their current levels. However, the Commission, while it has the power to regulate Ameren Missouri, does not have the power to take over management of the utility.[100] MEEIA does not contain any language that requires utilities, or allows the Commission to require utilities, to spend any particular level of dollars on energy efficiency, or to achieve any particular amount of MWh savings through energy efficiency. Therefore, the Commission cannot order Ameren Missouri to continue spending money on energy efficiency and DSM programs.

H. Ameren Missouri indicates that it wants to continue to offer energy efficiency and DSM programs. Once Ameren Missouri files an application for approval of its programs under MEEIA, perhaps a cost recovery mechanism satisfactory to Ameren Missouri and its ratepayers can be worked out. But the Commission cannot bridge that gap between this rate case and the company's MEEIA application by approving a cost recovery mechanism that is wholly inconsistent with MEEIA and the implementing regulations. Therefore, the Commission must reject Ameren Missouri's billing units adjustment proposal.

Decision:

For the reasons set forth in its findings of fact and conclusions of law, the Commission rejects Ameren Missouri's billing units adjustment proposal. The Commission also directs that DSM program costs incurred after December 31, 2010, shall continue to be amortized over a period of six years.

C. Should a portion of the low-income weatherization program funds be utilized to engage an independent third party to evaluate the program?

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[100] *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177,182 (Mo. App. 1960).

Findings of Fact:

Introduction:

1. Ameren Missouri currently funds a low-income weatherization program at a rate of $1.2 million per year. MDNR asked that the company continue to fund the program at that level.[101] Ameren Missouri agreed.[102]

2. Following the evidentiary hearing, on May 18, 2011, Ameren Missouri and MDNR filed a nonunanimous stipulation and agreement by which the company agreed to continue funding the low-income weatherization program at $1.2 million per year. The signatories also agreed that Ameren Missouri would contract with an independent third party contractor to conduct both a process and impact evaluation of the low-income weatherization program every two years. The independent evaluation was to be funded by withholding up to $60,000 per year from Ameren Missouri's payment to the program.

3. Public Counsel filed a written objection to the nonunanimous stipulation and agreement on May 25. Public Counsel objected that the recurring evaluation would consume money that would otherwise be used to provide weatherization services.

4. Because the nonunanimous stipulation and agreement was objected to, it becomes just a joint position of the signatory parties.

Specific Findings of Fact:

5. As Ameren Missouri's witness indicates, the low-income weatherization program should have more transparent reporting and should be evaluated as are other energy

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[101] Wolfe Direct, Ex. 800, Page 5, Lines 1-2.

[102] Laurent Rebuttal, Ex. 112, Page 8, Lines 6-8.

efficiency programs.[103]

6. The impact evaluation contemplated by Ameren Missouri and MDNR's joint position would determine the energy and demand savings of the program. Process evaluation would assess the effectiveness of the program implementation processes.[104]

6. Setting aside $60,000 per year to evaluate a multi-million dollar program is reasonable and prudent.

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) provides that a nonunanimous stipulation and agreement to which an objection is made is to be treated as a joint position of the signatory parties, except that no party is bound by the agreement.

B. The approach the Commission must take when considering a nonunanimous stipulation and agreement to which an objection is made is further described in a 1982 decision of the Missouri Court of Appeals. In *State ex rel. Fischer v. Public Service Commission*,[105] the Court held that when considering a nonunanimous stipulation and agreement the Commission must recognize all statutory requirements, including the right to be heard and to introduce evidence. Furthermore, the Commission's decision must be in writing and must include adequate findings of fact.

Decision:

Ameren Missouri shall continue its annual payments of $1,200,000 to the Environmental Improvement and Energy Resources Authority ("EIERA") for the purposes of funding weatherization of homes owned by qualified low-income Ameren Missouri electric

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[103] Laurent Rebuttal, Ex. 112, Page 8, Lines 8-10.

[104] Laurent Rebuttal, Ex. 112, Page 4, FN 1.

[105] 645 S.W.2d 39 (Mo. App. W.D. 1982)

customers (“Low Income Weatherization Program”), less an amount set aside for evaluation of the Low Income Weatherization Program.

Ameren Missouri shall contract with an independent third party contractor to conduct both a process and impact evaluation (“evaluation”) of the Low Income Weatherization program in Ameren Missouri’s service territory as follows:

A. The first evaluation under this agreement will be completed by April 30, 2012.
B. The first evaluation will cover the time period of January 1, 2010 through December 31, 2011.
C. Evaluations will be conducted every two years thereafter.

The evaluation is to be funded from Ameren Missouri’s withholding from Ameren Missouri’s annual payment to EIERA of a maximum amount of $60,000 annually. This is intended to provide $120,000 as the maximum funding for each evaluation. In the event an evaluation costs less than $120,000, the remaining funds will serve to reduce the next annual $60,000 withholding.

5. Taum Sauk: What amount, if any, of Ameren Missouri’s investment related to the reconstruction of Taum Sauk should be included in rate base for ratemaking purposes?

Findings of Fact:

Introduction:

1. The Taum Sauk plant is a pumped storage facility located in Reynolds County, Missouri. It consists of an upper reservoir located on the top of a mountain, a shaft and tunnel conduit, two 220-megawatt pump-turbine units, and a lower reservoir. When the cost of electricity to run the pumps is low, water is pumped from the lower reservoir to the upper reservoir. When demand for electricity and the resulting price of that electricity is

high, the water in the upper reservoir is allowed to drain down through the tunnel conduit to turn the turbines to generate electricity. When the price of electricity again drops, the water is pumped back up and the cycle is repeated.[106]

2. In the early morning of December 14, 2005, a portion of the parapet wall and the northwest corner of the dike around the upper reservoir breached, causing an uncontrolled, rapid release of water down the mountain. The flood swept through Johnson's Shut-ins State Park and Campground, devastating the park and washing away the home of the park superintendent. Fortunately, no one was killed.[107]

3. The Commission's Staff investigated the failure of the upper reservoir and issued a report in 2007. That report concluded:

> [t]he Upper Reservoir at the Taum Sauk Pumped Storage Project breached on the early morning of December 14, 2005, because the reservoir overtopped when more water was pumped into the Upper Reservoir than it could hold. The overtopping occurred because (1) the plant was customarily operated with an insufficient margin of safety, (2) the water level sensors were unreliable because they had broken free from their anchoring system, and (3) the emergency back-up sensors, intended to prevent the exact chain of events that in fact occurred, had been improperly set too high. The breach was entirely avoidable in that the Company knew for over two months that the water level sensors were unreliable, as they had broken free from their anchoring system, but unaccountably failed to make repairs. The failure was a management failure in that Ameren had organized the operation of its plants and the performance of maintenance, repair and improvement activities at its plants in such a way that overall direction was lacking and crucial information was not shared.[108]

Based on its findings, Staff recommended:

> [t]hat any and all costs, direct and indirect, associated with the Taum Sauk

[106] Birk Direct, Ex. 106, Page 23, Lines 3-22.

[107] Birk Direct, Ex. 106, Page 24, Lines 17-23.

[108] *In the Matter of an Investigation Into an Incident in December 2005 at the Taum Sauk Pumped Storage Project Owned and Operated by the Union Electric Company, doing business as AmerenUE*, Case No. ES-2007-0474, Staff's Initial Incident Report, October 24, 2007, Pages 4-5.

> incident be excluded from rates on an ongoing basis. This includes, but is not limited to, the exclusion of rebuilding costs and treating the facility as though its capacity is available for dispatch modeling.[109]

4. Ameren Missouri has accepted full responsibility for the failure of the upper reservoir.[110] Up until now, the company's ratepayers have not been asked to pay any of the cost of cleaning up after the breach or the cost of rebuilding the upper reservoir.

5. Ameren Missouri has now rebuilt the upper reservoir and the Taum Sauk unit is once again producing electricity. In this case, it is asking the Commission to include $89 million in its rate base for construction of "enhancements" to the upper reservoir because of the rebuild.[111] The $89 million figure was derived by subtracting the $400 million in insurance proceeds received by Ameren Missouri from the $489 million total cost to rebuild the upper reservoir.[112]

6. Although Ameren Missouri's proposal would allow it to recover all rebuilding costs not covered by insurance, it has absorbed approximately $94 million in insurance deductibles, fines, lost energy and capacity, and other expenses resulting from the collapse for which it has not sought recovery from ratepayers.[113]

Specific Findings of Fact:

7. The Commission's Staff conducted an audit of Ameren Missouri's rebuild of the

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[109] *In the Matter of an Investigation Into an Incident in December 2005 at the Taum Sauk Pumped Storage Project Owned and Operated by the Union Electric Company, doing business as AmerenUE*, Case No. ES-2007-0474, Staff's Initial Incident Report, October 24, 2007, Pages 82.

[110] Transcript, Page 209, Lines 11-14.

[111] The inclusion of $89 million in rate base does not mean that Ameren Missouri's revenue requirement would increase by that amount in this case. Ameren Missouri would include that amount in its rate base, which it will recover through depreciation over the life of the property. The impact on revenue requirement for this case would be approximately $10.4 million if Ameren Missouri is allowed to include the entire $89 million in rate base.

[112] Transcript, Page 881, Lines 10-13.

[113] Birk Direct, Ex. 106, Page 39, lines 1-15, *see also*, Transcript, Page 432.

Taum Sauk upper reservoir and reported the results of that audit in this case.[114] Staff did not recommend any disallowances as the result of its audit. That means that except for Ameren Missouri's responsibility for the breach of the reservoir in 2005, no party has questioned the specific costs of the rebuild project and those costs are not otherwise at issue. Instead, the question before the Commission is whether Ameren Missouri should be allowed to recover all, or any part of those cost due to its imprudence in causing the failure of the upper reservoir in 2005.

8. Following the failure of the upper reservoir, Ameren Missouri was sued by the State of Missouri in the Circuit Court of Reynolds County. That lawsuit resulted in the entry of a Consent Judgment.[115] Signed by Ameren Missouri and by Missouri's Attorney General on behalf of the State of Missouri, including the Missouri Department of Natural Resources, the Missouri Clean Water Commission, and the Missouri Conservation Commission, that Consent Judgment required Ameren Missouri to pay damages and to rebuild the upper reservoir.

9. The Commission was not a party to the Consent Agreement and is not bound by its terms.

10. The Consent Agreement includes the following provision under the heading "Ratepayer Protection":

> AmerenUE acknowledges that it will not attempt to recover from ratepayers in any rate increase any in-kind or monetary payments to the State Parties required by this Consent Judgment or construction cost incurred in the reconstruction of the Upper Reservoir Dam (expressly excluding, however, "allowed costs," which shall mean only enhancements, costs incurred due to circumstances or conditions that are currently not reasonably foreseeable

[114] Staff's Construction Audit and Prudence Review of Taum Sauk Project for Costs Reported as of October 31, 2010. Ex. 203.

[115] Ex. 157.

> and costs that would have been incurred absent the Occurrence as allowed by law), and further acknowledges the audit powers of the Missouri Public Service Commission to ensure that no such recovery is pursued. In the event that Ameren intends to seek recovery for allowed costs, it shall notify the State Parties in writing at least seven (7) business days in advance of its initial application for the recovery of these costs. If AmerenUE fails to provide the required notice, it shall forfeit whatever legal right it has to seek such recovery. (Emphasis added)[116]

11. Ameren Missouri provided the notice to the State Parties required by the provision on August 16, 2010.[117] None of the named state parties has objected to Ameren Missouri's attempt to recover the described costs.

12. The Missouri Department of Natural Resources is a party to this case, but has not opposed Ameren Missouri's attempt to recover the costs. MDNR is represented by the Missouri Attorney General's office. When asked about the State's position regarding the attempt to recover the costs, counsel for MDNR stated that she was authorized to say that "the Attorney General's office did review Ameren's request for reimbursement after this case was filed and we have no evidence to believe that the request is inconsistent with or in violation of the consent judgment on record in Reynolds County."[118]

13. Ameren Missouri asserts that the costs it seeks to recover are "allowed costs" under two provisions of the Consent Judgment. First it claims those costs paid for "enhancements", and second it claims those costs would have been incurred even if the reservoir had not collapsed. The Commission will address the second argument first.

14. Ameren Missouri contends all $89 million in rebuild costs not covered by insurance should be recoverable because it would have had to rebuild the upper reservoir soon even

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[116] Ex. 157.

[117] Ex. 158.

[118] Transcript, Page 2124, Lines 10-15.

if it had not collapsed in 2005.

15. Paul Rizzo, a civil engineer, offered testimony in that regard on behalf of Ameren Missouri. Ameren Missouri hired him after the collapse of the upper reservoir to perform a forensic investigation and root cause analysis regarding the collapse. He concluded that the reservoir collapsed due to over-pumping associated with faulty instrument control systems coupled with substandard construction and inadequate design.[119] Subsequently, his firm served as construction manager for the rebuild of the upper reservoir.[120]

16. The Taum Sauk plant is regulated by the FERC and has been subject to a major independent dam safety inspection every five years beginning in 1985. The old Taum Sauk plant passed its last inspection in 2003.[121]

17. Beginning in 2003, the FERC began using a new, more rigorous dam safety inspection process known as the Potential Failure Modes Analysis (PFMA) Program. Taum Sauk would have been inspected under that more rigorous process in 2008.[122]

18. Rizzo testified that if Taum Sauk had been inspected under the PFMA program, that inspection would have revealed that the old dam used the parapet wall for water retention in violation of modern safety standards,[123] the dam did not meet modern seismic standards and could not withstand a significant earthquake,[124] and due to excessive leakage from the old reservoir, there were significant voids under the concrete foundation.[125] Most

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[119] Rizzo Direct, Ex. 117, Page 2, Lines 22-25.

[120] Transcript, Page 770, Lines 17-22.

[121] Rizzo Direct, Ex. 117, Page 17, Lines 22-26.

[122] Rizzo Direct, Ex. 117, Page 18, Lines 1-14.

[123] Rizzo Direct, Ex. 117, Pages 19-20.

[124] Rizzo Direct, Ex. 117, Pages 29-30.

[125] Rizzo Direct, Ex. 117, Pages 30-32,

fundamentally, the foundation of the old upper reservoir was completely inadequate. In part that inadequacy was due to deficiencies in the way the dam was originally designed and in part because the construction of the dam did not follow the design requirements.[126]

19. In Rizzo's opinion, after seeing the results of the PFMA inspection, the FERC would have required a complete rebuild of the facility, like the rebuild that Ameren Missouri actually did, to fully address the safety risks he identified.[127]

20. Ameren Missouri argues that because the FERC would have required it to rebuild the dam in a few years anyway, all the reconstruction costs are "costs that would have been incurred absent the occurrence" and thus qualify as "allowed costs" under the Consent Agreement. The Commission does not accept that argument.

21. First, Paul Rizzo appears to be a very good civil engineer and he offered very credible evidence about the condition of the old dam, why it collapsed, and why it should have failed a FERC inspection in 2008. Of course, those problems were also present in 2003 when the Taum Sauk reservoir passed a FERC inspection. At least some of the deficiencies should have been apparent to an inspector even without the enhanced inspection required by the new PFMA process. For example, an inspector should have been able to tell that the parapet walls were being used to retain water without an extensive inspection.

22. The problem is that Rizzo is a civil engineer, not a FERC bureaucrat. While he can say with great credibility that the old reservoir should have failed a FERC inspection in 2008, he cannot say with certainty what FERC would have done with the results of that inspection. As a result, the Commission cannot conclude that the upper reservoir would

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[126] Rizzo Direct, Ex. 117, Pages 20-29.

[127] Rizzo Direct, Ex. 117, Page 32, Lines 11-25.

have had to be rebuilt even if it had not collapsed and therefore cannot conclude that the costs are "allowed costs" because they "would have been incurred absent the Occurrence."

23. The second reason the Commission will not accept the "reservoir would have had to be rebuilt anyway" argument has nothing to do with the language of the Consent Judgment. Rizzo's testimony reveals that the upper reservoir was very poorly constructed even by 1963 standards. In particular, the foundation was deficient because smaller soil particles, known as "fines" were allowed to remain in the rockfill mass comprising the dam. The people responsible for construction of the dam knew about the "fines" problem at the time, but did not fix the problem.[128] Furthermore, the design called for foundation rock to be cleaned of organic material, top soil, residual soil, and weathered rock with a bulldozer such that no more than 2 inches of such material was left in place. However, as much as 18 inches of low strength material, including top soil and vegetation was left in place under the foundation.[129] Union Electric Company, Ameren Missouri's parent company, was ultimately responsible for the construction of the upper reservoir.

24. Essentially then, Ameren Missouri's "the reservoir would have had to be rebuilt anyway" argument is that not only did the company operate the reservoir recklessly and imprudently in 2005, it also constructed it poorly fifty years ago. That is not a reasonable basis to allow the company to pass the uninsured portion of the costs of the rebuild on to its ratepayers.

25. Moving on to the other argument about the meaning of the Consent Judgment's exception, the Consent Judgment does not define the term "enhancement" in its definition of allowed costs. Furthermore, "enhancement" is not a term in general use within the field

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[128] Rizzo Direct, Ex. 117, Pages 27-29.

[129] Rizzo Direct, Ex. 117, Page 21, Lines 9-13.

of utility regulation.

26. Ameren Missouri and Staff further divide the concept of "enhancements" into discrete enhancements and non-discrete enhancements. Discrete enhancements are features in the new reservoir that were not present at all in the old. Ameren Missouri identified those discrete enhancements as an overflow release structure, a drainage and inspection gallery, a continuous upstream grout curtain, a cementitious floor, a crest concrete roadway and guardrail, crest-to-gallery and foundation drains, and new instrumentation.[130] Staff's audit report set the cost of the discrete enhancements identified by Ameren Missouri at $67 million.[131]

27. The non-discrete enhancement identified by Ameren Missouri is chiefly the new and improved foundation of the dam. The new foundation is constructed of roller compacted concrete rather than dumped rock-fill and now meets seismic standards.[132] As a result, the remaining service life of the reservoir has been extended by at least 80 years.[133]

28. Staff's audit valued the non-discrete enhancements at an amount in excess of the amount needed to allow Ameren Missouri to recover all rebuild costs not otherwise covered by insurance.[134]

29. The non-discrete enhancements clearly improve the reservoir. But are they "enhancements" within the meaning of the Consent Judgment? The Commission finds that they are not.

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[130] Birk Direct, Ex. 106, Page 32, Lines 10-13.

[131] Staffs' Construction Audit and Prudence Review of Taum Sauk Project for Costs Reported as of October 31, 2010, Ex. 203, Page 17, Chart at Line 6.

[132] Birk Direct, Ex. 106, Page 35, Liens 19-22.

[133] Transcript, Page 768, Lines 17-23.

[134] Transcript, Pages 880-881.

30. If the Consent Judgment's allowed cost exception for "enhancements" is broad enough to include non-discrete enhancement such as an improved foundation, then the exception swallows the rule and renders the Consent Judgment's restriction on recovery of rebuilding costs meaningless. Under that interpretation, the Consent Judgment might as well say that Ameren Missouri can recover all building costs not covered by insurance because that would be the result. That cannot have been the intent of the parties to the Consent Judgment, it is not good public policy, and the Commission will not accept it.

31. That leaves the $67 million that Staff and Ameren Missouri identified as discrete enhancements. In principle, those are additions to the new reservoir that were not present in the old reservoir.

32. However, the Commission finds that even the discrete enhancements described by Ameren Missouri and accepted by Staff do not match a reasonable interpretation of the meaning of an enhancement under the Consent Agreement.

33. When Ameren Missouri, then Union Electric, constructed the Taum Sauk plant in the early 1960's they constructed a reservoir that was designed to comply with the state of the art as it existed at that time.[135] The newly constructed reservoir is designed in compliance with current dam safety requirements. All the new dam safety features that Ameren Missouri and Staff describe as enhancements are required by those current dam safety requirements.[136] Thus, while those new features are certainly enhancements compared to the original dam, which was designed by 1963 standards, they are not enhancements compared to today's industry standards, as Ameren Missouri's expert witness, Paul Rizzo

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[135] As previously discussed, Ameren Missouri, then Union Electric, did not construct the dam in compliance with even 1963 standards.

[136] Transcript, Page 812, Lines 5-19.

testified.[137]

34. If "enhancement" within the meaning of the Consent Judgment is taken to mean just an improvement over the 1963 dam, then again the restriction in the Consent Judgment is essentially meaningless and Ameren Missouri would be invited to recover all its reconstruction costs not covered by insurance. Clearly that was not the intent of the Consent Judgment.

35. The Commission interprets the Consent Judgment to allow Ameren Missouri to recover for "enhancements" measured against today's dam safety standards, not against the much weaker dam safety standards of 1963. Viewed in that manner Ameren Missouri has not described any enhancements for which it can recover construction costs from its ratepayers under the Consent Judgment.

36. An interpretation of the Consent Judgment is not the only reason to disallow Ameren Missouri's recovery of any amount for the rebuild of the Taum Sauk reservoir. Remember, the Commission was not a party to the Consent Judgment and is not bound by its terms. Even if the parties to the Consent Judgment intended to allow Ameren Missouri to recover these costs, the Commission is not bound to follow that intent.

37. As previously indicated, when Staff reviewed the circumstances of the collapse of the reservoir, it concluded that Ameren Missouri's imprudence and recklessness had caused the collapse.[138] At that time, Staff recommended that Ameren Missouri not be allowed to recover any costs related to the rebuilding of Taum Sauk without any

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[137] Transcript, Page 814, Lines 1-8.

[138] *In the Matter of an Investigation Into an Incident in December 2005 at the Taum Sauk Pumped Storage Project Owned and Operated by the Union Electric Company, doing business as AmerenUE*, Case No. ES-2007-0474, Staff's Initial Incident Report, October 24, 2007, Pages 71-72, *See also*, Kind Direct, Ex. 300, Page 5, Lines 6-19.

exception.[139]

38. Similarly, after the collapse, Ameren Missouri took full responsibility and promised to protect its ratepayers from the consequence of that collapse.[140] The Commission intends to hold Ameren Missouri to that promise.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall not include any amount of the cost to rebuild the upper reservoir of the Taum Sauk plant in its rate base.

6. Municipal Lighting: What is the appropriate ratemaking treatment for Ameren Missouri's street lighting classes in this case?

Findings of Fact:

Introduction:

1. This issue concerns Ameren Missouri's street lighting class, which is comprised mostly of various municipalities who purchase electricity from Ameren Missouri to light the streets of their communities. A group of municipalities in St. Louis County intervened in this case and they are identified collectively as the Municipal Group. The Municipal Group was also a party to Ameren Missouri's last rate case, ER-2010-0036.

2. In that case, the Commission was concerned that no one could tell whether the rates being paid by the lighting class were just and reasonable because no class cost of service study had examined the lighting class for at least thirty years. Because of its concern, the

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[139] *In the Matter of an Investigation Into an Incident in December 2005 at the Taum Sauk Pumped Storage Project Owned and Operated by the Union Electric Company, doing business as AmerenUE*, Case No. ES-2007-0474, Staff's Initial Incident Report, October 24, 2007, Pages 82.

[140] Kind Direct, Ex. 300, Pages 3-4. Lines 14-23, 1-17.

Commission exempted the lighting class from the rate increase that resulted from that order.[141] As the result of a stipulation and agreement in that case, Ameren Missouri agreed to undertake a cost of service study for all rates affecting the lighting class in its next rate case.[142]

3. Ameren Missouri's cost of service study in this case indicates the lighting class as a whole is paying approximately $7 million less than the cost to serve that class. To bring the lighting class fully to its cost of service would require a rate increase of 22.41 percent beyond the overall rate increase that will result from this report and order.[143] No party has challenged the validity of Ameren Missouri's cost of service study.

Specific Findings of Fact:

4. The lighting class is divided into three classifications: Street and Outdoor Area Lighting – Company Owned (5M), Street and Outdoor Area Lighting – Customer Owned (6M), and Municipal Street Lighting – Incandescent (7M). The 5M classification is the largest, providing 89.6 percent of Ameren Missouri's total revenue from the lighting class.[144]

5. After conducting its overall class cost of service study, Ameren Missouri undertook a further study to divide the overall revenue requirement to be collected from the lighting class among the three classifications within the lighting class. Again, no party challenged the validity of that study. Instead, the disagreement arose within the 5M classification.

6. The disagreement concerns charges for company-owned distribution facilities. For

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[141] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, File No. ER-2010-0036, Report and Order, May 28, 2010, Page 100.

[142] Difani Direct, Ex. 119, Page 3, Lines 1-15.

[143] Ex. 551. In a subsequent section of this order, the Commission determines that the lighting class will receive a revenue neutral increase of 4 percent beyond the overall rate increase that will result from this order.

[144] Eastman Direct, Ex. 750, Page 5, Lines 6-7.

company-owned distribution facilities, such as poles and spans, installed before September 1988, the municipality is billed a relatively small monthly amount. After September 1988, Ameren Missouri changed its billing policy and charged a relatively large one-time, upfront fee to the municipality when it installed the new pole and span. The municipality then did not have to pay the continuing monthly charge for that pole and span.[145]

7. Not surprisingly, the municipalities that had been paying the monthly "pole and span" charge for 22 years or more compared their monthly payments to the upfront charge and started asking whether they had not fully paid for the pole and span by this time. Ameren Missouri agreed that the system should be simplified and proposed to eliminate the "pole and span" charge and instead collect that revenue from the 5M classification as a whole.[146]

8. The Municipal Group argues that the pre-1988 installation charges should be entirely removed and the revenue those charges collect should not be collected from the lighting class in general or from the 5M classification in particular, arguing that after 22 years those municipalities have surely paid for those poles.[147]

9. The Municipal Group's argument misunderstands the nature of the monthly pre-1988 installation charge (also known as the pole and span charge) and the revenue it collects for Ameren Missouri. As determined in the company's class cost of service study, it costs Ameren Missouri a certain amount of money to provide electric service to the lighting class. Similarly, it costs a certain amount of money to provide services to each of the three classifications within the lighting class. Ameren Missouri has created a number of charges by which it collects that money from those classifications and the lighting class as a whole.

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[145] Difani Direct, Ex. 119, Page 8, Lines 7-15.

[146] Difani Direct, Ex. 119, Pages 8-9, Lines 18-23, 1-6.

[147] Eastman Direct, Ex. 750, Page 9, Lines 16-22.

Many years ago, Ameren Missouri decided to collect part of the cost of serving the lighting class through the pole and span charge.

10. Payment of the pole and span charge, even for a very long time, does not mean the customer will eventually own the pole and span, just as the payment of the upfront charge after 1988 does not mean the municipality owns the pole and span. The pole and span charge is simply the device the company used to collect a portion of its cost to serve its municipal lighting customers.

11. The situation is analogous to a city government that collects part of the revenue it needs from parking meters. For various reasons, a city may decide that its parking meter rates are too high and should be reduced. However, if the city is to continue to collect the revenue it needs to operate, it may need to increase its sales tax rate to collect the revenue lost when parking meter rates are reduced.

12. Even if the company eliminates a particular charge, the amount of revenue Ameren Missouri needs to serve the lighting class in general and the 5M classification in particular does not change. If Ameren Missouri is to continue to recover its cost of service after eliminating the pole and span charge, it must increase some other charge to make up the difference.

13. The Municipal Group's suggestion that the revenue lost when the pole and span charge is eliminated not be recovered from the lighting class would mean that Ameren Missouri would have to recover the revenue from some other rate class that the class cost of service studies establish is not responsible for those costs. Such a result would be patently unfair. If the pole and span charge is eliminated, the revenue lost must be collected from the lighting class and the 5M classification in some other manner. The

question remains, should the pole and span charge be eliminated as Ameren Missouri proposes?

14. The Municipal Group explains that the elimination of the pole and span charge and the collection of that revenue from the entire 5M rate classification would have a disparate impact on newer and older municipalities. Older cities that installed most of their street lighting years ago and as a result have been paying the pole and span charges for pre-1988 poles would no longer pay that charge and could see their rates go down with the elimination of the pole and span charge. On the other hand, newly developing cities that have installed street lighting since 1998 and thus have paid an upfront charge rather than the pole and span charge, would not benefit from the elimination of the pole and span charge and would see their overall rates increase substantially.[148]

15. Staff suggests that this result is unfair to the newer municipalities and contends the pole and span charge should not be eliminated.[149] However, the same facts imply that the current arrangement is unfair to the older municipalities that have been paying the pole and span charge. Their subsidization of the newer municipalities will only grow as they continue to pay the pole and span charges and the accumulated revenue Ameren Missouri collects from that charge outstrips the revenue collected through the up-front charges paid by the newer municipalities.

16. The pole and span charge needs to be eliminated, but the rate shock that would cause the newer municipalities that paid up-front charges should also be avoided. Therefore, a gradual elimination of the charge is appropriate.

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[148] Eastman Direct, Ex. 750, Pages 6-7.

[149] Scheperle Surrebuttal, Ex. 228, Page 3, Lines 8-13.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Based on its findings of fact and conclusions of law, the Commission decides that Ameren Missouri should eliminate the pole and span charge gradually. To avoid the rate shock that would result from the complete elimination of the charge, the Commission directs Ameren Missouri to initially reduce the monthly pole and span charge by half. The reduced revenue resulting from this reduction in the pole and span charge shall be collected from the entire 5M classification within the lighting class. The Commission will consider the total elimination of the pole and span charge in Ameren Missouri's next rate case.

7. Cost of Capital: What return on equity should be used to determine Ameren Missouri's revenue requirement in this case?

Findings of Fact:

Introduction:

1. This issue concerns the rate of return Ameren Missouri will be authorized to earn on its rate base. Rate base includes things like generating plants, electric meters, wires and poles, and the trucks driven by Ameren Missouri's repair crews. In order to determine a rate of return, the Commission must determine Ameren Missouri's cost of obtaining the capital it needs.

2. The relative mixture of sources Ameren Missouri uses to obtain the capital it needs is its capital structure. Ameren Missouri's True-Up Accounting Schedules described Ameren Missouri's actual capital structure as of February 28, 2011 as:

Long-Term Debt 46.702%

Short-Term Debt	00.000%
Preferred Stock	01.063%
Common Equity	52.235%[150]

No party has raised an issue regarding capital structure so the Commission will not further address this matter.

3. Similarly, no party has raised an issue regarding Ameren Missouri's calculation of the cost of its long-term debt and preferred stock.

4. Determining an appropriate return on equity is the most difficult part of determining a rate of return. The cost of long-term debt and the cost of preferred stock are relatively easy to determine because their rate of return is specified within the instruments that create them. In contrast, in determining a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Ameren Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity that is unassailably scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors' dollar in the capital market, without permitting an excessive rate of return on equity that would drive up rates for Ameren Missouri's ratepayers. In order to obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

5. Four financial analysts offered recommendations regarding an appropriate return on equity in this case. Robert B. Hevert testified on behalf of Ameren Missouri. Hevert is President of Concentric Energy Advisors, Inc. of Marlborough, Massachusetts. He holds a

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[150] Weiss True-Up Direct, Schedule GSW-TE18-43.

Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration degree from the University of Massachusetts.[151] He recommends the Commission allow Ameren Missouri a return on equity of 10.70 percent, within a range of 10.40 percent to 11.25 percent.[152]

6. Billie Sue LaConte testified on behalf of the Missouri Energy Group. LaConte is a consultant in the field of public utility economics and regulation and is a member of the Drazen Consulting Group, Inc.[153] LaConte has a Bachelor of Arts in mathematics from Boston University, and a Master of Business Administration degree in finance from the John M. Olin School of Business, Washington University.[154] She recommends the Commission allow Ameren Missouri a return on equity within a range of 9.7 percent to 10.6 percent.[155]

7. Michael Gorman testified on behalf of MIEC. Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates.[156] He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Masters Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.[157] Gorman recommends the Commission allow Ameren

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[151] Hevert Direct, Ex. 121, Page 1, Lines 16-18.

[152] Hevert Surrebuttal, Ex. 123, Page 7, Lines 15-18.

[153] LaConte Direct, Ex. 450, Page 1, Lines 5-6.

[154] LaConte Direct, Ex. 450, Appendix A, Page 2, Lines 1-3.

[155] LaConte Surrebuttal, Ex. 452, Page 6, Lines 17-18.

[156] Gorman Direct, Ex. 407, Page 1, Lines 6-7.

[157] Gorman Direct, Ex. 407, Appendix A, Page 1, Lines 9-12.

Missouri a return on equity of 9.90 percent, within a recommended range of 9.80 percent to 10.00 percent.[158]

8. Finally, David Murray testified on behalf of Staff. Murray is the Acting Utility Regulatory Manager of the Financial Analysis Department for the Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri – Columbia, and a Masters in Business Administration from Lincoln University. Murray has been employed by the Commission since 2000 and has offered testimony in many cases before the Commission.[159] Murray recommends a return on equity within a range of 8.25 percent to 9.25 percent, with a recommended midpoint of 8.75 percent.[160]

Specific Findings of Fact:

9. A utility's cost of common equity is the return investors require on an investment in that company.[161] To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk.[162]

10. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow (DCF) method assumes the current market price of a firm's stock is equal to the discounted value of all expected future cash flows. The Risk Premium method assumes that all the investor's required return on an equity investment is equal to the interest rate on a long-term bond plus an

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[158] Gorman Surrebuttal, Ex. 409, Page 18, Line 10.

[159] Staff Report – Revenue Requirement/Cost of Service, Ex. 201, Appendix 1, Page 49.

[160] Staff Report – Revenue Requirement/Cost of Service, Ex. 201, Page 4, Lines 11-12.

[161] Gorman Direct, Ex. 407, Page 8, Lines 7-9.

[162] Gorman Direct, Ex. 407, Page 9, Lines 3-7.

additional equity risk premium to compensate the investor for the risks of investing in equities compared to bonds. The Capital Asset Pricing Method (CAPM) assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio. No one method is any more "correct" than any other method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

11. Before examining the analyst's use of these various methods to arrive at a recommended return on equity, it is important to look at another number. For 2010, the average return on equity awarded to integrated electric utilities by state commissions in this country was 10.30 percent. Among states neighboring Missouri, the average authorized return on equity over the same period was 10.23 percent.[163]

12. The Commission mentions the average allowed return on equity not because the Commission should, or would slavishly follow the national average in awarding a return on equity to Ameren Missouri. However, Ameren Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

13. The 8.75 percent return on equity recommendation offered by Staff's witness is substantially below both the national average awarded return on equity and the recommendations offered by the other expert witnesses. If the Commission were to authorize the return on equity recommended by Staff, it would apparently be the lowest

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[163] Hevert Surrebuttal, Ex. 123, Page 6, Lines 10-17.

"non-penalty" return on equity authorized in the United States in the last thirty years.[164]

14. In developing his recommendation for Staff, Murray gave primary weight to his multi-stage DCF analysis.[165] Murray's multi-stage DCF analysis results in a low recommended return on equity because the third stage of his analysis relies on a low long-term growth estimate of 3 to 4 percent, with a midpoint of 3.5 percent, to derive an estimated cost of equity ranging from 8.4 percent to 9.15 percent, with a midpoint of 8.775 percent.[166]

15. Murray initially based his long-term growth rate on a 2003 study published in Mergent *Public Utility and Transportation Manual*. Because Murray could not replicate Mergent's data, he decided to perform his own study to estimate long-term growth rates based on historical growth rates for a set of electric utilities during the period between 1968 and 1999. That study showed an average annual growth rate of 3.59 percent.[167]

16. Murray admittedly did not use "rigid selection criteria" in determining which utilities to include in his study and it appears that the selection of data to study was based more on the ready availability of that information to Staff than to any rational basis for that selection.[168]

17. In contrast to the very low long-term growth rate used by Murray, Ameren Missouri's witness, Robert Hevert, used a long-term growth rate of 5.75 percent, based on the real GDP growth rate of 3.28 percent from 1929 through 2009, plus an inflation rate of 2.40

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[164] Hevert Rebuttal, Ex. 122, Page 16, Footnote 19.

[165] Staff Report – Revenue Requirement/Cost of Service, Page 19, Lines 14-15.

[166] Staff Report – Revenue Requirement/Cost of Service, Page 20, Lines 1-10.

[167] Staff Report – Revenue Requirement/Cost of Service, Page 23, Lines 5-13.

[168] Staff Report – Revenue Requirement/Cost of Service, Page 22-23, Lines 5-26,1-4.

percent.[169] In his multi-stage DCF analysis, Michael Gorman used a long-term growth rate of 4.7 percent based on consensus economists' projected 10-year GDP growth rate as published in Blue Chip Economic Indicators.[170] Billie LaConte performed a two-stage DCF analysis, but used an average long-term growth rate of 5.57 percent based on the average 5-year growth rate for her proxy group of companies.[171] In sum, the long-term growth rates used by the other return on equity witnesses are substantially higher than the rate used by Murray.

18. In support of his use of a very low long-term growth rate, Murray points to a 2009 research report by Goldman Sachs that uses a 2.5 percent perpetual growth rate in its DCF analysis. Murray argues that such a low growth rate is consistent with what investors use in practice.[172] However, Murray conceded that the 2.5 percent growth rate used by Goldman Sachs in its report is a real growth rate in that it does not take into account inflation.[173] Analysis of growth rates for purposes of estimating the cost of equity usually looks at nominal growth rates. If a forecast of long-term inflation were added to Goldman Sachs' real growth rate to estimate a nominal growth rate, then Staff's forecasted growth rate would be more in line with the forecasts offered by the other experts.[174]

19. In an effort to support his low recommended return on equity, Murray points to various valuation analyses regarding Ameren Missouri done by financial analysts for purposes other than the establishment of rates. Murray reports that in general, experts in

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[169] Hevert Direct, Ex. 121, Page 29, Lines 3-5.

[170] Gorman Direct, Ex. 407, Page 23, Lines 14-18.

[171] LaConte Direct, Ex. 450, Page 11, Lines 1-4.

[172] Staff Report – Revenue Requirement/Cost of Service, Page 23-24, Lines 26-27, 1-13.

[173] Transcript, Page 1177, Lines 3-6.

[174] Hevert Rebuttal, Ex. 122, Pages 46-47, Lines 23-29, 1-2.

the field of asset valuation consistently apply a much lower cost of equity to cash flows generated from regulated utility operations as compared to the estimates of cost of equity from rate of return witnesses in the utility ratemaking process.[175] Murray's clear implication is that aside from him, all other rate of return witnesses are getting it wrong.[176]

20. Murray's reliance on valuation analyses to support the reasonableness of his return on equity recommendation is misplaced. Murray acknowledged that he has no experience in asset valuation.[177] In his surrebuttal testimony, Robert Hevert explained in great detail why the valuation analyses cited by Staff are different than the analysis necessary to evaluate a reasonable return on equity in the rate making process.[178] The Commission is persuaded by that explanation and accepts Mr. Hevert's explanation without repeating his arguments. In sum, as MEG's witness, Billie Sue LaConte, who has done asset valuation work in the past, indicated, the principles and methods involved in valuing physical assets are different than the principles and methods involved in estimating a utility's cost of equity.[179]

21. The Commission finds that Staff's recommended return on equity of 8.75 percent is not a reasonable return on equity for Ameren Missouri.

22. Aside from Staff's outlying recommendation, the return on equity recommendations of the other expert witnesses are fairly close together. LaConte and Gorman both recommend a return on equity near 10.0 percent. Hevert for Ameren Missouri recommends a return on equity of 10.7 percent, but no less than 10.4 percent.

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[175] Murray Rebuttal, Ex. 219, Page 13, Lines 3-9.

[176] Transcript, Page 1185, Lines 5-21.

[177] Transcript, Pages 1181-1182.

[178] Hevert Surrebuttal, Ex. 123, Pages 13-33.

[179] Transcript, Page 1215, Lines 15-21.

23. Hevert's recommended return on equity is higher than the other recommendations in large part because he over-estimates future long-term growth in his various DCF analyses, making them too high to be reasonable estimates of long-term sustainable growth.[180] When Hevert's long-term growth rates are adjusted to use more sustainable growth estimates based on published analyst's projections, his multi-stage DCF analysis produces a rate of return more in line with the estimates of LaConte and Gorman.[181]

24. MEG's witness Billie LaConte recommends an ROE within a range of 9.7 percent to 10.6 percent. In her direct testimony she recommended an ROE of 10.2 percent[182], but in her surrrebuttal testimony she recommended the allowed ROE be set at the lower end of her range between 9.7 and 10.0 percent.[183]

25. LaConte lowered her recommended ROE based on her CAPM and ECAPM studies that indicated very low numbers, a full point or more below her DCF analyses, which the Commission has usually found to be more reliable. LaConte did not explain why she decided to place greater reliance on her CAPM and ECAPM studies in her surrebuttal recommendation than she had in her direct testimony and the Commission finds no justification for doing so. At any rate, LaConte testified that any percentage within her range of 9.7 to 10.6 percent would be reasonable.[184]

26. MIEC's witness, Michael Gorman, recommended a return of 9.9 percent, within a range of 9.8 to 10.0 percent. He also over relies on his unreasonably low Sustainable Growth DCF analysis to pull down the average of his more reasonable Constant Growth

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[180] Gorman Rebuttal, Ex. 408, Pages 8-9, Lines 20-23, 1-3.

[181] Gorman Surrebuttal, Ex. 409, Page 22, Lines 1-13.

[182] LaConte Direct, Ex. 450, Page 18, Lines 16-17.

[183] LaConte Surrebuttal, Ex. 452, Page 8, Lines 10-11.

[184] Transcript, Pages 1215-1216, Lines 22-25, 1-6.

DCF and Multi-Stage DCF analyses.[185] If Gorman were to rely more heavily on his Constant Growth DCF result of 10.47 percent and his Multi-Stage Growth DCF of 10.16 percent, his analyses would indicate an allowed ROE near 10.2 percent.

27. An allowed ROE of 10.2 percent would still be below the national average allowed ROE of 10.3 percent.

Conclusions of Law:

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

> Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. … The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate to the particular application' (quoting *Southwestern Bell Telephone Company v. Arkansas Public Service Commission,* 593 S.W. 2d 434 (Ark 1980).[186]

Furthermore,

> Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.[187]

B. In another case, the Court of Appeals recognized that the establishment of an appropriate rate of return is not a "precise science":

> While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the

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[185] Gorman Surrebuttal, Ex. 409, Page 18, Table 1.

[186] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

[187] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts.[188]

C. In its brief, Staff suggests that the Commission adopt what it describes as a new paradigm to determine an appropriate authorized return on equity for Ameren Missouri. Staff contends that the United States Supreme Court's *Bluefield* decision establishes a sort of zone of reasonableness. According to the Supreme Court, rates that are insufficient to yield a reasonable return on the company's investment are confiscatory and would deprive the utility of its property in violation of the Fourteenth Amendment. Staff contends the rate that would be unconstitutionally confiscatory sets the lower bound of the zone of reasonableness. The *Bluefield* decision also states that the utility is not entitled to profits that would be realized or anticipated in highly profitable enterprises or speculative ventures. Staff claims that such a rate would be the upper bound of the zone of reasonableness.

D. Staff claims that through the testimony of David Murray it has attempted to establish the lower bound of this zone of reasonableness, in other words, the level below which the authorized rate would be unconstitutionally confiscatory. Staff claims that the rate proposed by Murray is the lowest reasonable rate at the edge of confiscation and suggests that the Commission must set Ameren Missouri's rates at that level unless it has a valid regulatory reason to award the company a higher rate. Staff contends there is no valid reason to set a rate higher than the lowest reasonable rate that it indicates is at the very edge of confiscation.

E. Staff's "new paradigm" adds nothing to the Commission's consideration of an appropriate return on equity. Of course, the Commission is trying to find the lowest

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[188] *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

reasonable rate that protects the interests of ratepayers and shareholders. That is what it has always done. In claiming that the rate proposed by its witness is the lowest reasonable rate, Staff simply begs the question of whether the rate proposed by its witness is reasonable. It is certainly the lowest rate proposed, but that does not make it a reasonable rate. Indeed, the Commission has found as a matter of fact that the rate proposed by Staff is not reasonable. Nothing is to be gained by trying to determine the edge of confiscation when under either the old or the new paradigm, the Commission is simply obligated to determine a reasonable rate for the utility.

Decision:

Based on the evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 10.2 percent is a fair and reasonable return on equity for Ameren Missouri. The Commission finds that this rate of return will allow Ameren Missouri to compete in the capital market for the funds needed to maintain its financial health.

8. Fuel Adjustment Clause Issues:

A. Should the Commission authorize Ameren Missouri to continue its current Fuel Adjustment Clause (FAC) or should the Commission discontinue or order modifications to the FAC?

Findings of Fact:

Introduction:

1. In a previous Ameren Missouri rate case, ER-2008-0318, the Commission allowed Ameren Missouri to implement a fuel adjustment clause.[189] The approved fuel adjustment

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[189] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual*

clause includes an incentive mechanism that requires Ameren Missouri to pass through to its customers 95 percent of any deviation in fuel and purchased power costs from the base level. The other 5 percent of any deviation is retained or absorbed by Ameren Missouri.[190]

2. In this case, Ameren Missouri proposed that the Commission allow it to continue to use its existing fuel adjustment clause.[191] AARP and Consumers Council urge the Commission to discontinue that fuel adjustment clause. Staff did not oppose the continuation of the fuel adjustment clause, but advises the Commission to change the sharing mechanism to create an 85/15 split, with Ameren Missouri retaining or absorbing 15 percent of any deviation from the base level of fuel and purchased power costs. Public Counsel supports Staff's position. The Commission will address the proposed modification of the sharing mechanism in the next section of this report and order.

Specific Findings of Fact:

3. In a previous Ameren Missouri rate case, ER-2008-0318, the Commission found that Ameren Missouri should be allowed to establish a fuel adjustment clause because its fuels costs were substantial, beyond the control of the company's management, and volatile in amount. The Commission also found that Ameren Missouri needed a fuel adjustment clause to have a sufficient opportunity to earn a fair return on equity and to be able to compete for capital with other utilities that have a fuel adjustment clause.[192] In the same rate case, the Commission found that a 95/5 sharing mechanism would give Ameren

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Revenues for Electric Service, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.

[190] *Id.* at Page 76.

[191] Barnes Direct, Ex. 102, Page 4, Lines 11-13.

[192] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.

Missouri a sufficient opportunity to earn a fair return on equity, while protecting customers by preserving the company's incentive to be prudent.[193]

4. Nothing has changed in the years since the Commission established Ameren Missouri's fuel adjustment clause to cause the Commission to change that decision. The Commission again finds that Ameren Missouri's fuel and purchased power costs are substantial, $888 million in the test year, comprising 49 percent of the company's total operations and maintenance expense.[194] Furthermore, the revenue the company receives from off-system sales, which is also tracked through the fuel adjustment clause, is also substantial.[195] These fuel and purchased power costs continue to be dictated by national and international markets, and thus are outside the control of Ameren Missouri's management.[196] Finally, these costs and revenues continue to be volatile. For example, the price Ameren Missouri was able to obtain in the market for off-system electricity sales decreased 45 percent from 2008 to 2009 before partially recovering during the trued-up test year.[197]

5. Furthermore, the Commission finds that Ameren Missouri still needs a fuel adjustment clause to help alleviate the effects of regulatory lag as net fuel costs continue to rise. Ameren Missouri's regulatory lag problems have not improved since its last rate case. In recent years, the company has been unable to earn its allowed rate of return,[198] and in large part, that problem is due to fuel-related issues. Even with the fuel adjustment clause

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[193] *Id.*, at Page 76.

[194] Barnes Direct, Ex. 102, Page 6, Lines 19-22.

[195] Barnes Direct, Ex. 102, Page 6, Lines 22-24.

[196] Barnes Direct, Ex. 102, Page 6, Lines 24-27.

[197] Barnes Direct, Ex. 102, Page 7, Lines 2-4.

[198] Weiss Direct, Ex. 130, Pages 33-34, Lines 12-23, 1-4.

in place, Ameren Missouri's return on equity for the year ending December 2009, was only 7.27 percent. Ameren Missouri's retail operating income for the test year would have been approximately $30 million lower if the fuel adjustment clause had not been in effect, further reducing the company's ability to earn its allowed return.[199] In addition, Ameren Missouri still must compete in the capital markets with other utilities and the vast majority of those utilities have fuel adjustment clauses.[200]

Conclusions of Law:

A. Section 386.266.1, RSMo (Supp. 2010), the statute that allows the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

Subsection 4 of that statute sets out some of the provisions that must be included in a fuel adjustment clause as follows:

> The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedule after considering all relevant factors which may affect the cost or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:
>
> *(1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;*

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[199] Barnes Direct, Ex. 102, Pages 7-8, Lines 22-23, 1-6.

[200] Transcript, Page 1516, Lines 22-24.

> (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
> (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. …
> (4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate. (emphasis added)

Subsection 4(1) is emphasized because that is the key requirement of the statute. Any fuel adjustment clause the Commission allows Ameren Missouri to implement must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity.

B. Subsection 7 of the fuel adjustment clause statute provides the Commission with further guidance, stating the Commission may:

> take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

Finally, subsection 9 of that statute requires the Commission to promulgate rules to "govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." In compliance with the requirements of the statute, the Commission promulgated Commission Rule 4 CSR 240-3.161, which establishes in detail the procedures for submission, approval, and implementation of a fuel adjustment clause.

C. Specifically, Commission Rule 4 CSR 240-3.161(3) establishes minimum filing requirements for an electric utility that wishes to continue its fuel adjustment clause in a rate case subsequent to the rate case in which the fuel adjustment clause was established. Ameren Missouri has met those filing requirements.

Decision:

Ameren Missouri still needs to have a fuel adjustment clause in place to help alleviate the effects of regulatory lag if it is to have a reasonable opportunity to earn a fair return on its investments. The Commission concludes that Ameren Missouri should be allowed to continue to implement the previously approved fuel adjustment clause.

B. Should the sharing percentage in Ameren Missouri's FAC be changed from 95/5 percent to 85/15 percent?

Findings of Fact:

Introduction:

6. While Staff did not oppose the continuation of Ameren Missouri's fuel adjustment clause, it advised the Commission to modify the sharing mechanism within the fuel adjustment clause to increase the percentage of costs and income absorbed or retained by Ameren Missouri from 5 percent to 15 percent. Public Counsel supports that proposed modification.

7. Staff offered four reasons why the sharing percentage should be changed. First, Staff initially gave Ameren Missouri credit for asking that its net base fuel costs be rebased in this rate case. Staff explained that the request to rebase those costs showed that Ameren Missouri has a proper incentive to avoid forfeiting the 5 percent share it would lose

under the fuel adjustment clause if its net base fuel costs were not rebased.[201] However, later in the case, Staff turned that positive factor into a negative by claiming that Ameren Missouri's willingness to agree to a level of off-system sales revenue that the company indicated was likely to be too low, showed that the company did not have a proper incentive to get it right.[202] Second, Staff claims that the results of a recent prudence audit of Ameren Missouri's fuel adjustment clause in File No. EO-2010-0255 justify imposing a larger sharing percentage on Ameren Missouri.[203] Third, Staff asserts that a larger sharing percentage might have provided Ameren Missouri a greater incentive to avoid the miscalculation of an input into its FAC rate that it identified in the true-up of the first recovery period of its fuel adjustment clause.[204] Fourth, and finally, Staff claims that because Ameren Missouri's off-system sales are down since it implemented a fuel adjustment clause, perhaps it does not have sufficient incentive to maximize off-system sales.[205]

8. In addition to Staff's concerns, Public Counsel points out that one of the incentives Ameren Missouri has used in past cases to justify use of the 95/5 sharing mechanism has gone away. Ameren Missouri is no longer involved in a coal pool purchasing arrangement with its unregulated merchant generation plants in Illinois and thus no longer shares the unregulated affiliates' profit motive to minimize its coal costs.[206] The Commission will address each of Staff and Public Counsel's concerns in turn.

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[201] Staff Report - Revenue Requirement / Cost of Service, Ex. 201, Page 112, Lines 2-9.

[202] Mantle Surrebuttal, Ex. 218, Page 12, Lines 5-7.

[203] Staff Report – Revenue Requirement / Cost of Service, Ex. 201, Page 113, Lines 15-20.

[204] Staff Report – Revenue Requirement / Cost of Service, Ex. 201, Page 114, Lines 7-10.

[205] Staff Report – Revenue Requirement / Cost of Service, Ex. 201, Page 115, Lines 5-7.

[206] Kind Rebuttal, Ex. 302, Page 15, Lines 16-23.

Specific Findings of Fact:

9. In her rebuttal testimony, Ameren Missouri's witness, Lynn Barnes, testified that she believes the net base fuel costs used in calculating rates for this case are likely to be lower than actual future costs because the three-year historical average used to calculate those costs includes power prices that are higher than Ameren Missouri is likely to experience in the future. As a result, Ameren Missouri believes it will likely need to absorb more net fuel costs under the existing 95/5 sharing mechanism.[207] Staff turned that argument against Ameren Missouri by claiming that if the company had a sufficient incentive under the 95/5 sharing mechanism it would have fought harder to establish a proper determination of net base fuel costs.[208]

10. The fuel cost issues about which Staff expressed a concern were settled for this case by a stipulation and agreement signed by Staff and approved by the Commission.[209] Ameren Missouri's witnesses indicated that the off-system sales component of those fuel costs were based on a three-year historical average of actual off-system sales rather than a projection of future sales that the company believes would better reflect the amount of sales it is likely to make in the future. Nevertheless, Ameren Missouri accepted the use of the historical average sales as part of the settlement.

11. Staff argues that Ameren Missouri's willingness to accept what it believes to be a flawed basis for the calculation demonstrates that it does not have a sufficient incentive to "get it right." The Commission finds that Ameren Missouri's pragmatic acceptance of the

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[207] Barnes Rebuttal, Ex. 103, Page 8, Lines 1-13.

[208] Mantle Surrebuttal, Ex. 218, Page 12, Lines 5-7.

[209] Third Non-Unanimous Stipulation and Agreement, filed May 6, 2011, and approved by the Commission on June 1, 2011.

use of historical average sales in the calculation of future off-system sales simply reflects the company's acceptance of the position the Commission clearly stated in previous Ameren Missouri rate case.

12. This issue was presented to the Commission in File Number ER-2007-0002. In that case, certain parties argued the Commission should establish the amount allowed for off-system sales based on Ameren Missouri's future budgets. In refusing to allow for the use of future budgeted amounts, the Commission stated:

> [s]ince the Commission uses historical expenses and revenues to set rates, it would be fundamentally unfair to reach forward to grab a single budget item to reduce AmerenUE's cost of service, while ignoring other anticipated costs that might increase that cost of service.[210]

Far from evidencing a lack of incentive to "get it right", Ameren Missouri's decision to settle the fuel cost issue simply illustrates the company's willingness to comply with a position clearly stated in a recent Commission decision.

13. Staff's second argument asserts that an 85/15 sharing mechanism is appropriate because the Commission made a finding that Ameren Missouri acted imprudently in its review of the company's first prudence review in file number EO-2010-0255.[211] The Commission did find that Ameren Missouri acted imprudently in that prudence review. However, the imprudence that the Commission found was related to Ameren Missouri's failure to flow revenue received from certain contracts through the fuel adjustment clause. Ameren Missouri had entered into those contracts in an attempt to replace a portion of the

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[210] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area,* Case No. ER-2007-0002, Report and Order, May 22, 2007, Page 32.

[211] *In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, EO-2010-0255, Report and Order, April 27, 2011.

revenue it lost when production and the use of electricity was reduced at the Noranda aluminum smelter because of a January 2009 ice storm. Despite disagreeing with Ameren Missouri regarding the proper interpretation of a provision of the fuel adjustment clause tariff, the Commission did not find that Ameren Missouri had acted imprudently in deciding to enter into those replacement contracts. In short, the Commission's decision in EO-2010-0255 does not support the argument that Ameren Missouri needs a larger financial incentive within the fuel adjustment clause.

14. Staff's third argument is that a larger sharing percentage within the fuel adjustment clause might have provided Ameren Missouri with a greater incentive to avoid the miscalculation of an input into its fuel adjustment clause rate that was identified in the recent true-up of the first recovery period under that fuel adjustment clause. In that case, ER-2010-0274, a mutual mistake by Staff and Ameren Missouri about the proper calculation of an input resulted in Ameren Missouri collecting less money than it should have collected under the fuel adjustment clause. Extensive testimony was received regarding the details of that mistake, but that evidence did not show that giving Ameren Missouri a greater financial incentive by increasing the sharing percentage of the fuel adjustment clause would have made the mistake less likely to have occurred.

15. Staff's fourth argument asserts that a recent decline in Ameren Missouri's off-system sales might be attributable to a reduction in the company's incentive to make those sales. Staff points out that Ameren Missouri's total off-system sales decreased in four of the five accumulation periods since the Commission first approved Ameren Missouri's fuel adjustment clause.[212] However, the reduction in off-system sales that Staff notes is

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[212] Staff Report, Revenue Requirement/Cost of Service, Ex. 201, Page 115, Lines 1-4.

entirely explained by an increase in retail sales during the same period.[213] More retail sales means less power is available to sell off-system. In addition, during this period Ameren Missouri experience several major planned generator outages that reduce the amount of electricity available for off-system sales.[214] Ultimately, under cross-examination, Staff's witness conceded that she was not contending that Ameren Missouri lacks sufficient incentive to make off-system sales.[215]

16. The final argument offered to support the contention that Ameren Missouri needs additional incentives to minimize its fuel costs was initially offered by Public Counsel's witness, Ryan Kind. He pointed out that the pool arrangement for purchasing coal that Ameren Missouri formerly had with its unregulated affiliated generating company in Illinois has ended.[216] In its report and order that initially established the 95/5 sharing mechanism for Ameren Missouri's fuel adjustment clause, the Commission noted that Ameren's strong incentive to minimize coal costs for its unregulated operations would also benefit Ameren Missouri. The Commission cited that incentive as a justification for believing that a 95/5 sharing mechanism would provide the company with a sufficient incentive to minimize its fuel costs.[217]

17. Ameren Missouri is no longer in a coal pool arrangement with its Illinois affiliates because FERC rule changes have forbidden the practice and because it was no longer

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[213] Haro Rebuttal, Ex. 125, Page 19, Lines 1-8.

[214] Haro Rebuttal, Ex. 125, Pages 19-21.

[215] Transcript, Pages 1605-1606, Lines 23-25, 1.

[216] Kind Rebuttal, Ex. 302, Page 15, Lines 13-23.

[217] *In the Matter of Union Electric Company, d/b/a Ameren UE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Page 73

financially beneficial to Ameren Missouri to be involved in the coal pool.[218] Thus, one incentive to minimize one aspect of the company's fuel costs has been eliminated. However, that was only one incentive, and its elimination does not have a significant impact on Ameren Missouri's remaining overall incentive to minimize its fuel purchasing costs.

18. No other electric utility in Missouri buys coal under a coal purchasing pool arrangement and the Commission has allowed those utilities to implement their fuel adjustment clauses using a 95/5 sharing mechanism. Indeed, no other electric utility in the country buys its coal under a coal purchasing arrangement since such arrangements are no longer allowed by FERC rules, yet 90 percent of electric utilities operate using fuel adjustment clauses and the vast majority of those have no percentage sharing mechanism of any kind.[219]

19. Furthermore, changing the sharing percentage without a good reason to do so would lead investors to question the future of Ameren Missouri's fuel adjustment clause. In the words of Gary Rygh, a managing director at Barclays Capital, Inc.:

> If the Commission were willing to significantly degrade the existing FAC and pass-through mechanism apart from findings in the established review processes, and despite the lack of credible evidence that Ameren Missouri in fact is mismanaging its net fuel costs, investors would view such a change as capricious and designed to inflict significant harm on the Company.[220]

Because of investors concerns, ratepayers would be burdened with excessive costs each time Ameren Missouri accesses the capital markets.[221]

20. Most significantly, a change in the sharing mechanism to require Ameren Missouri to

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[218] Transcript, Page 1460, Lines 3-20.

[219] Rygh Rebuttal, Ex. 126, Page 16, Lines 14-15.

[220] Rygh Rebuttal, Ex. 126, Page 16, Lines 3-8.

[221] Rygh Rebuttal, Ex. 126, Page 17, Lines 3-4.

absorb 15 percent of net fuel cost changes instead of the current 5 percent would impose a significant financial burden on the company. If the proposed 85/15 sharing mechanism had been in place since the fuel adjustment clause was put into effect instead of the actual 95/5 sharing mechanism, Ameren Missouri would have been required to absorb an additional $22 million in net fuel costs.[222] That would be a heavy burden on a company that is already having difficulty earning its allowed rate of return.

Conclusions of Law:

There are no additional conclusions of law for this sub-issue.

Decision:

Staff's stated reasons for experimenting with adjusting the sharing mechanism of Ameren Missouri's fuel adjustment clause to implement an 85/15 split do not withstand scrutiny. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds that there is no reason to change the sharing percentages in the fuel adjustment clause under which Ameren Missouri has operated for the past several years. The Commission will retain the current 95/5 sharing mechanism included in Ameren Missouri's fuel adjustment clause.

C. Should the length of the recovery periods for the FAC be reduced from twelve (12) months to eight (8) months?

Findings of Fact:

Introduction:

21. Ameren Missouri's current FAC tariff provides that the company accumulates fuel costs during accumulation periods that are four months long. Two months after the end of

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[222] Transcript, Page 1583, Lines 3-10.

the accumulation period, Ameren Missouri files tariff sheets to change its fuel and purchased power adjustment (FPA) that have a 60-day effective date. The Commission must act to approve or reject that change within 60 days. Once the change in the FPA goes into effect, Ameren Missouri collects the difference between the actual total energy costs and the base energy cost over a recovery period of 12 months.[223]

22. The current process for cost recovery under the fuel adjustment clause means that Ameren Missouri must wait up to 22 months before fully recovering its net fuel costs.

23. Staff proposes to reduce that lag period by four months by shortening the cost recovery period from 12 months to 8 months. That change would allow Ameren Missouri to recover its net fuel costs more quickly.

24. Not surprisingly, Ameren Missouri supports the proposed reduction in the recovery period. MIEC however opposes that change, arguing that the 12-month recovery period moderates the adjustment by spreading any recovery or refund over a full calendar year. MIEC contends spreading the recovery or refund over a full year avoids concentrating the reconciliation in a shortened period where some classes could have a disproportionate share of usage and thereby incur a disproportionate share of the recovery costs or collect a disproportionate share of any refund.[224]

Specific Findings of Fact:

25. Changing the 12-month recovery period to an 8-month recovery period will not change the total amount of net fuel costs that Ameren Missouri will be able to recover from its customers. The change will however allow the company to recover those costs more

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[223] Staff Report, Revenue Requirement/Cost of Service, Ex. 201, Page 117, Lines 13-21.

[224] Brubaker Rebuttal, Ex. 405, Page 14, Lines 11-18.

quickly and thereby improve Ameren Missouri's cash flow.[225]

26. Improving cash flow is important to Ameren Missouri because it has been suffering from the effects of regulatory lag and as a result has failed to earn its allowed return on its investment over the past several years.[226]

27. Moving from a 12-month recovery period to an 8 month recovery period will improve Ameren Missouri's cash flow, but also has the effect of increasing the volatility of the fuel adjustment clause. In other words, the necessary adjustments will tend to be larger, either up or down, and customers will pay the adjusted rates sooner.[227]

28. MIEC suggests that changing the recovery period from 12 months to 8 months could have the effect of concentrating the reconciliation into a shortened period where some classes could have a disproportionate share of usage. For example, the residential class, which uses a lot of electricity in the summer for air conditioning, could pay a disproportionate share during an 8-month recovery period that includes the summer months. However, a chart presented by Ameren Missouri's witness, Lynn Barnes, demonstrates that there are only minimal differences in class percentages of kilowatt-hour sales regardless of whether a 12-month or 8-month recovery period is used.[228] Thus, concerns about concentration of the reconciliation are unfounded.

Conclusions of Law:

There are no additional conclusions of law for this sub-issue.

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[225] Transcript, Page 1737, Lines 15-21.

[226] Weiss Direct, Ex. 130, Pages 33-34, Lines 12-23, 1-4.

[227] Transcript, Pages 1570-1571, Lines 20-25, 1-20.

[228] Barnes Surrebuttal, Ex. 104, Pages 2-3, Lines 4-18, 1-4.

Decision:

The decision on this sub-issue comes down to a weighing of the need to increase Ameren Missouri's cash flows against the desire to reduce the volatility of recovery of net fuel costs under the fuel adjustment clause. There is nothing legally correct or preordained about either a 12-month or an 8-month recovery period, the recovery period could just as easily be set at 6, 9, or 18 months, or at some point in between. On balance, the Commission concludes that improved cash flows for Ameren Missouri outweigh concerns about an increase in volatility in recovery under the fuel adjustment clause. The recovery period shall be changed to 8 months.

D. Should the Company have the ability to adjust the FPAC rate for errors in calculations that may have occurred since the FAC Rider was granted to Ameren Missouri?

Findings of Fact:

Introduction:

29. In addition to the broad issues regarding the fuel adjustment clause tariff that have previously been discussed, Ameren Missouri has submitted specific proposed language for that tariff.[229] The exemplar tariff proposed by Ameren Missouri would add the following clause to the section regarding true-up of the FAC:

> The true-up adjustment shall be the difference between the revenue billed and the revenues authorized for collection during the Recovery Period*, plus amounts necessary to correct over- or under-collections due to errors made in calculating adjustments to the* FPA_C *rate that impacted the Recovery Period.* (new language is in *italics*.)

30. Staff objects to the inclusion of the new language proposed by Ameren Missouri because under the formula used to calculate the FAC adjustment, each succeeding FPA_C

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[229] Barnes Rebuttal, Ex. 103, Schedule LMB-ER4.

is linked to all previous FPA_Cs. Staff is concerned that the additional language proposed by Ameren Missouri would allow the company to claim an adjustment during any true-up for any perceived discrepancy in calculating the FPAs that have occurred since March 1, 2009, when Ameren Missouri's fuel adjustment clause first went into effect. Staff is concerned that this provision would complicate the true-up process and would deny finality to Commission decisions regarding the true-up.[230]

Specific Findings of Fact:

31. This disagreement between Staff and Ameren Missouri is related to a dispute pending before the Commission in a current Ameren Missouri true-up, File Number ER-2010-0274. In that case, Ameren Missouri sought to adjust its true-up amounts to collect a sum of money that it had failed to collect due to an error in calculating the FPA_C. The Commission had not yet decided that case at the time this case was heard, but on June 29, 2011, issued a Report and Order that allowed Ameren Missouri to collect the amount necessary to correct the identified error.[231]

32. The tariff language proposed by Ameren Missouri would not be limited to the particular error that the Commission found could be corrected in File Number ER-2010-0274 and would instead provide Ameren Missouri with broad authority to correct other errors that might be identified in the future.

Conclusions of Law:

There are no additional conclusions of law for this sub-issue.

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[230] Roos Surrebuttal, Ex. 225, Pages 4-5, Lines 17-24, 1-3.

[231] *In the Matter of the First True-Up Filing Under the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, File No. ER-2010-0274, Report and Order, June 29, 2011.

Decision:

The Commission has found in favor of Ameren Missouri's position in File Number ER-2010-0274, eliminating the immediate need for the language proposed by the company. The Commission is persuaded by Staff's concern that the proposed language would affect the finality of future true-up decisions and would prefer to continue to decide these matter on a case-by-case basis rather than allow Ameren Missouri's tariff to set a standard for all future cases. Therefore, the Commission will decide this issue in favor of Staff and directs Ameren Missouri to strike the disputed language from the tariff.

E. What is the appropriate tariff language to reflect any modifications or clarifications to Ameren Missouri's FAC?

Findings of Fact:

33. This sub-issue is about the choice of one word. In the fuel adjustment portion of the Ameren Missouri's tariff, which is known as a rider, Sheet 98.6 refers to prudence reviews of FAC costs and requires that costs be returned to ratepayers if the Commission determines that the costs were imprudently incurred "or incurred in violation of the terms of this *tariff*" (emphasis added).[232] Staff would change the word "tariff" in the quoted section to "rider",[233] reasoning that using the word "tariff" in that manner could be interpreted as a expansion of the true-up to include all other aspects of Ameren Missouri's broader tariff.[234]

Conclusions of Law:

There are no additional conclusions of law for this sub-issue.

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[232] Barnes Rebuttal, Ex. 103, Schedule LMB-ER4.

[233] Roos Surrebuttal, Ex. 225.

[234] Transcript, Page 1411, Lines 3-7.

Decision:

The Commission agrees with Staff that the prudence review is limited to matters addressed in this fuel adjustment rider rather than in Ameren Missouri's broader tariff. Therefore, the language proposed by Staff is more precise and shall be adopted.

9. LED Lighting: Should the Commission order Ameren Missouri, not later than twelve (12) months following the effective date of the Report & Order in this case, to complete its evaluation of LED SAL systems, and, based on the results of that evaluation, either file a proposed LED lighting tariff(s) or indicate why such tariff(s) should not be filed?

Findings of Fact:

Introduction:

1. Staff believes that Light Emitting Diode (LED) Street and Area Lighting (SAL) systems are the most energy efficient SAL fixtures currently available and would like Ameren Missouri to take steps to make this form of technology available to its customers.[235] To that end, Staff asks the Commission to order Ameren Missouri to complete its evaluation of LED SAL systems and within the next year file a proposed LED lighting tariff or provide the Commission with an update on when it will file a proposed LED lighting tariff.[236]

2. Ameren Missouri is not as enthusiastic about the future of LED lighting. While it intends to continue studying the LED alternative, it does not want the Commission to order it to file an LED tariff at this time.[237]

Specific Findings of Fact:

3. Ameren Missouri currently has approximately 212,800 SAL systems for 1,568 public street and municipal lighting customers in its service territory. Those lights use a total of

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[235] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Page 34, Lines 1-11.

[236] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Pages 32-33, Lines 11-22, 1-3.

[237] Shoff Rebuttal, Ex. 149, Page 4, Lines 1-6.

137,000 MWh. Most of the existing street lighting in Ameren Missouri's service area uses high-pressure sodium or mercury vapor lamps.[238]

4. Light Emitting Diodes are composed of a semiconducting chip complete with a junction for electrons to move across. As the electrons move across the junction, they release photons, creating light at very high efficiencies.[239]

5. LED street lighting has certain advantages over other street lighting alternatives including improved efficiency, longer lamp life, improved night visibility, reduced maintenance costs, no mercury, lead, or other known disposal hazards, and it permits the use of programmable controls.[240]

6. LED street lighting technology is still under development and technical problems remain. At the moment, energy savings benefits do not exceed the cost of the technology.[241]

7. Ameren Missouri is currently working with the Electric Power Research Institute (EPRI) to test and evaluate the potential of currently available LED lighting as part of a national demonstration project. The project started in 2009 and will end sometime in the fourth quarter of 2011.[242]

8. In the recent Kansas City Power & Light rate case, ER-2010-0355, the Commission approved a stipulation and agreement in which the signatories invited the Commission to

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[238] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Page 33, Lines 5-19.

[239] Shoff Rebuttal, Ex. 149, Page 4, Lines 8-12.

[240] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Page 34, Lines 1-11.

[241] Shoff Rebuttal, Ex. 149, Page 7, Lines 14-16.

[242] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Page 35, Lines 10-17.

host a workshop regarding LED street lighting issues.[243]

9. If Ameren Missouri were to offer company-owned LED street lighting under its tariff, it would have to maintain an inventory of LED lighting equipment for which there may be limited demand at a cost to the company and ultimately its ratepayers.[244]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The Commission agrees with Staff that LED street lighting is an exciting technology that should be examined and implemented if appropriate. Staff does not ask the Commission to order Ameren Missouri to immediately file an LED tariff and the Commission will not do so. Instead, Staff asks the Commission to order Ameren Missouri to continue examining the potential of LED lighting and to either file a tariff within one year, or file a status report indicating when it will be able to file such a tariff. Staff's request is reasonable and the Commission will direct Ameren Missouri to either file an LED street lighting tariff by July 31, 2012, or to provide a status report to Staff by that date, indicating when it will be able to file such a tariff.

The Commission emphasizes that Ameren Missouri does not have to file a tariff until it is appropriate to do so. If its further study of the potential of LED street lighting reveals that such lighting will not be a benefit to its customers, Ameren Missouri may inform the Staff of that conclusion in its status report.

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[243] Transcript, Pages 2148-2149.

[244] Cooper Rebuttal, Ex. 134, Page 15, Lines 5-21.

10. Solar Rebates Accounting Authority Order (AAO):

A. What is the appropriate method – RESRAM or an Accounting Authority Order (AAO) – for Ameren Missouri to recover the costs it incurs for compliance with the Missouri Renewable Energy Standard (RES) after the true-up date in this case (February 28, 2011)?

Findings of Fact:

Introduction:

1. As explained in more detail in the Conclusions of Law for this issue, Missouri's Renewable Energy Standard law, Section 393.1020, et seq., RSMo (Supp. 2010), requires electric utilities to incur certain costs related to the adoption of renewable energy technology. Ameren Missouri asks the Commission to grant it an accounting authority order to defer the cost of solar rebates, the cost to purchase renewable energy or renewable energy credits and other related costs incurred after February 28, 2011, the true-up date for this case, until the effective date of new rates in the company's next rate case.[245]

2. Staff does not object to Ameren Missouri's request to defer these costs for later recovery, but contends the company should be required to use a different device known as a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) for that purpose rather than an Accounting Authority Order (AAO).[246]

Specific Findings of Fact:

3. This is a legal rather than a factual issue and there are no other relevant facts.

Conclusions of Law:

A. Missouri's Renewable Energy Standard (RES) law, found at Sections 393.1020,

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[245] Weiss Direct, Ex. 130, Page 36, Lines 6-10.

[246] Taylor Rebuttal, Ex. 229, Page 3, Lines 1-9.

1025, and 1030, RSMo (Supp. 2010), require electric utilities, such as Ameren Missouri, to incur certain costs to comply with the requirements of the law.

B. Commission Rule 4 CSR 240-20.100(6) allows an electric utility to file an application and rate schedules to establish a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) that would allow the utility to recover prudently incurred costs relating to compliance with RES requirements. The regulation allows such an application to be filed either within or outside a general rate proceeding. If it had wished to do so, Ameren Missouri could have applied for a RESRAM in this case.

C. However, Commission Rule 4 CSR 240.20.100(6)(D) specifically offers the electric utility an alternative to the use of a RESRAM. That section of the regulation states:

> Alternatively, an electric utility may recover RES compliance costs without the RESRAM procedure through rates established in a general rate proceeding. In the interim between general rate proceedings the electric utility may defer the costs in a regulatory asset account, and monthly calculate a carrying charge on the balance in that regulatory asset account equal to its short-term cost of borrowing. All questions pertaining to rate recovery of the RES compliance costs in a subsequent general rate proceeding will be reserved to that proceeding, including the prudence of the costs for which rate recovery is sought and the period of time over which any costs allowed rate recovery will be amortized. Any rate recovery granted to RES compliance costs under this alternative approach will be fully subject to the retail rate impact requirements set forth in section (5) of this rule.

This section of the regulation describes exactly the alternative approach that Ameren Missouri has chosen to pursue in this rate case.

D. Ameren Missouri's decision to request an AAO in this case instead of the RESRAM that Staff would prefer it to have is in full compliance with the provisions of the Commission's rule.

E. In its reply brief, Staff sets forth an argument that Ameren Missouri's use of an AAO will allow it to recover a greater amount of carrying costs than if it were required to use a

RESRAM.[247] Staff's argument is not supported by any testimony or other evidence in the record, and furthermore it is irrelevant. The Commission's rule specifically allows Ameren Missouri to use an AAO to defer recovery of its costs as an alternative to recovering those costs through a RESRAM. Presumably, Ameren Missouri chose to use the recovery method that was most favorable to it, as it is allowed to do by the regulation. If Staff does not like the alternative allowed by the regulation, it can ask the Commission to change the regulation, but for purposes of this case, the Commission is bound by that regulation and cannot deny Ameren Missouri the use of its chosen alternative.

Decision:

Ameren Missouri may defer its RES compliance costs through an Accounting Authority Order as permitted by Commission Rule 4 CSR 240-20.100(6)(D).

B. If the Commission determines that an AAO is appropriate, should the Company be authorized in this case to implement an AAO to recover the costs it incurred for compliance with the RES before the true-up date in this case?

C. What amount of solar rebate costs should Ameren Missouri be allowed to include in the revenue requirement used to set rates in this case?

Findings of Fact:

Introduction:

1. This issue concerns the amount of RES compliance costs that Ameren Missouri should be allowed to recover in this case and means by which it should to allowed to recover those costs.

2. The renewable energy portfolio requirements of the RES law are still rather new and Ameren Missouri has not yet incurred many of the costs that it may ultimately have under that law. For purposes of this case, the only RES compliance costs in question are the cost

[247] Staff's Reply Brief, Pages 64-65.

of solar rebates paid by Ameren Missouri to its customers who have installed or expanded solar electric systems on the customer's premises.

3. Staff and Ameren Missouri agree that those solar rebate costs should be treated as an expense item and immediately recovered as an on-going operations and maintenance cost.[248] MIEC contends the solar rebate costs should be amortized over a period of ten years.[249]

4. Although they agree that the solar rebate costs should be expensed rather than amortized, Staff and Ameren Missouri disagree about the amount that Ameren Missouri should be allowed to recover.

Specific Findings of Fact:

5. MIEC's witness, Maurice Brubaker, argues that the company's expense of paying the solar rebates should be amortized over ten years to reflect the minimum ten year expected life of the installed solar equipment.[250] He reasons that the company and its ratepayers will benefit from the equipment for at least ten years and therefore the costs that make that benefit possible should be recovered over ten years.

6. Ameren Missouri does not own or operate the solar equipment for which it is required to pay a rebate. That equipment is the property of the customer who has sole control and responsibility for them and will primarily benefit from the use of the equipment.[251] Thus, to Ameren Missouri, payment of the solar rebates is simply an expense imposed upon it by the statute. For that reason, a long amortization period as

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[248] Weiss Rebuttal, Ex. 131, Page 16, Lines 2-6.

[249] Brubaker Direct, Ex. 403, Page 20, Lines 8-9.

[250] Brubaker Direct, Ex. 403, Pages 19-20.

[251] Weiss Rebuttal, Ex. 131, Page 17, Liens 6-7.

proposed by MIEC is inappropriate.

7. The other half of this issue concerns the amount that Ameren Missouri should be allowed to recover for past solar rebate payments and how much should be included in rates as a going-forward expense.

8. In the 2010 calendar year, Ameren Missouri incurred $487,782 in solar rebate costs. Staff would allow Ameren Missouri to include that amount in rates on a going forward basis.[252] During the twelve months ending on the true-up date of February 28, 2011, Ameren Missouri incurred $885,266 in solar rebate costs. Ameren Missouri asks the Commission to include that amount in rates on a going forward basis.[253]

9. The fact that solar rebate costs are substantially higher for the twelve months ending at the February 28, 2011 true-up date than they were for the 2010 calendar year indicates that such costs are increasing. For that reason, Ameren Missouri's actual expenses through the true-up period are a better indicator of the amount of expenses the company will likely incur going forward and forward looking rates should be based on that amount.

10. Another aspect of this issue concerns whether Ameren Missouri should be permitted to accumulate in its AAO the solar rebates paid from the beginning of the program until the new rates become effective in this case.

11. The treatment of its solar rebate expenses proposed by Ameren Missouri is appropriate because the company started to incur those expenses after the company's last rate case and therefore those expenses were not reflected in the rates established in that case. The recovery of those costs and the others deferred in the AAO will then be decided

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[252] Transcript, Page 2192, Lines 1-4.

[253] Weiss True-Up Direct, Ex. 174, Schedule GSW-TE18-110.

in the next rate case.[254]

12. Staff suggests that those costs should not be accumulated in the AAO but should instead be recovered in this rate case. But Staff does not offer a specific recommendation about how that recovery should be accomplished.

13. The Commission finds that Ameren Missouri shall accumulate the amount it has paid for solar rebates from the beginning of the program until new rates become effective in this case. The recovery of those costs and future costs deferred in the AAO will be decided in Ameren Missouri's next rate case.

Conclusions of Law

A. Ameren Missouri has paid rebates to its customer who have installed or expanded solar power equipment pursuant to Section 393.1030.3, RSMo (Supp. 2010), which requires electric utilities to: "make available to its retail customers a standard rebate offer of at least two dollars per installed watt for new or expanded solar electric systems sited on customers' premises, up to a maximum of twenty-five kilowatts per system, that become operational after 2009."

B. Staff argues that Ameren Missouri's solar rebate expenses for the 2010 calendar year should be used to establish the company's rates going forward because Commission Rule 4 CSR 240-20.100(5)(A) requires that the retail rate impact for purposes of determining whether the 1 percent cap has been exceeded is to be "calculated on an incremental basis for each planning year …". However, the regulations requirement for the use of a planning year to calculate retail rate impact does not mean that the Commission must also use a planning year to determine an appropriate amount of expense to include in

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[254] Weiss Rebuttal, Ex. 131, Page 16, Lines 13-23.

rates on a going forward basis.

Decision:

Ameren Missouri shall include $885,266 in its rates for ongoing solar rebate expenses. Ameren Missouri shall accumulate in an AAO the amount it has paid for solar rebates from the beginning of the program until new rates become effective in this case. The recovery of those costs and future costs deferred in the AAO will be decided in Ameren Missouri's next rate case.

11. Union Issues:

A. Does the Commission have the authority to order Ameren Missouri to do the following:

(1) Institute or expand its training programs within specified time periods as a means of investing in its employee infrastructure?

(2) Hire specific additional personnel within specified time periods as a means of investing in its employee infrastructure?

(3) Submit to a tracker for its energy delivery distribution system?

(4) Submit to a tracker to address the need and efforts to replace the aging workforce?

(5) Expend a substantial portion of the rate increase from this proceeding on investing and re-investing in its regular employee base in general, including hiring, training and utilizing its internal workforce to maintain its normal and sustained workload?

(6) Use a portion of the rate increase from this proceeding to replace equipment, wires and cable which have out lived their anticipated life?

B. If the Commission does have the authority, should it order Ameren Missouri to take one or more of the steps listed above?

Findings of Fact:

Introduction:

1. The various unions that represent some of Ameren Missouri's employees appeared at the hearing to support the company's request for a rate increase. However, they asked the Commission to order Ameren Missouri to spend more money on employee training and to take specific steps to increase its internal workforce so that it will use fewer outside contractors and to replace an aging workforce. The Unions also ask the Commission to order Ameren Missouri to spend more money to replace aging infrastructure. Ameren Missouri contends it is currently providing safe and adequate service and argues the Commission has no authority to manage the day-to-day affairs of the company.

Findings of Fact:

2. Michael Walter is the Business Manager of International Brotherhood of Electrical Workers Local 1439, AFL-CIO.[255] He testified that he is concerned about Ameren Missouri's ability to deal with an aging infrastructure and an aging workforce.[256] In particular, he is concerned that Ameren Missouri has not spent enough on training new workers and as a result has over-relied on outside contractors to perform normal and sustained work.[257] In particular, Walter is concerned that Ameren Missouri's trained work force is aging and he sees a need for increased training of new workers capable of stepping in when the current workforce retires.[258] He asks the Commission to require

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[255] Walter Direct, Ex. 650, Page 3, Lines 3-4.

[256] Walter Direct, Ex. 650, Page 3, Lines 25-26.

[257] Walter Direct, Ex. 650, Pages 5-8.

[258] Walter Direct, Ex. 650, Page 4.

Ameren Missouri to spend a portion of its rate increase to improve training and increase the portion of the workload performed by its internal workforce.[259]

3. In response to the concerns expressed by the Unions, Commissioner Davis asked Ameren Missouri's witnesses if the company could use extra money for training of its work force. The witness replied that additional money could be used to institute a heavy underground apprentice program.[260] Heavy underground training involves industrial type routing of underground electric lines in the downtown area.[261] The witness testified that $1,250,000 would be needed for that purpose and explained that that amount would buy needed equipment and would be sufficient to hire nine new journeymen, a supervisor, and a trainer.[262]

4. The Commission finds that the evidence presented by the union witnesses does not demonstrate that Ameren Missouri has failed to supply safe and adequate service to the public. Furthermore, for reasons fully explained in its Conclusions of Law, the Commission does not have the authority to dictate the manner in which Ameren Missouri conducts its business. Therefore, the Commission will not attempt to dictate to the company regarding its use of outside contractors.

5. However, the union witnesses and Ameren Missouri agree that there is a need for improved training. On that basis, the Commission finds that there is a need for additional training to meet the need for skilled heavy underground workers.

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[259] Walter Direct, Ex.650, Pages 7, Lines 28-43.

[260] Transcript, Page 2306, Lines 3-17.

[261] Transcript, Page 2278, Lines 15-18.

[262] Transcript, Page 2307-2308.

6. Therefore, the Commission will add $1.25 million to Ameren Missouri's cost of service to fund increased training staff.

7. The Commission wants to ensure that all parties are satisfied that the additional training money authorized by this order is well spent. Therefore, the Commission will create a Training Advisory Group initially including Ameren Missouri, the Unions, Staff, and Public Counsel. Other entities may also participate if they wish to do so. The Training Advisory Group will provide input to Ameren Missouri on the design, implementation, and evaluation of the company's additional training programs authorized under this and previous rate case orders. If the Training Advisory Group is unable to reach agreement on any issue related to the training programs, any member may petition the Commission for further direction.

8. The Unions also ask the Commission to require the company to compile information about its aging electric distribution system and its aging workforce and to submit periodic reports to the Commission's Staff. The Unions did not present any detailed evidence about the information that would be contained in such reports, nor did they demonstrate any need for such reports. The Commission's Staff is able to obtain any information it may want or need from the company without the need and expense of creating any additional reporting requirements.

Conclusions of Law:

A. The Commission has the authority to regulate Ameren Missouri, including the authority to ensure that the utility provides safe and adequate service. However, the Commission does not have authority to manage the company. In the words of the Missouri Court of Appeals,

> The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation, and does no harm to public welfare.[263]

Therefore, the Commission does not have the authority to dictate to the company whether it must use internal workforce rather than outside contractors to perform the work of the company, nor does the Commission have the authority to direct the company to spend a portion of the rate increase to replace specific items of equipment.

Decision:

The evidence presented by the union does not demonstrate that Ameren Missouri has failed to provide safe and adequate service and the Commission will not dictate to the company whether it must use its internal workforce or outside contractors to perform the company's work. However, the Commission will add $1,250,000 to Ameren Missouri's cost of service to fund increased training for heavy underground work.

12. Property Tax:

A. What amount of property tax expense relating to the Sioux Scrubbers and the Taum Sauk additions the Company seeks to put in rate base in this case should the Commission include in Ameren Missouri's revenue requirement for ratemaking purposes?

Findings of Fact:

Introduction:

1. Ameren Missouri pays property taxes on property it owns in Missouri, Illinois, and Iowa.[264] In a stipulation and agreement that the Commission approved in this case, the

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[263] *State ex rel. Harline v. Public Serv. Com'n*, 343 S.W.2d 177, 182 (Mo. App. 1960)

[264] Transcript, Page 1285, Lines 23-25.

parties agreed that Ameren Missouri's revenue requirement in this case would include at least $119 million for payment of such property taxes, based on the amount of property taxes the company paid in 2010.[265] That stipulation and agreement however excluded from the settlement additional property taxes related to the Sioux scrubber and Taum Sauk plant additions. Ameren Missouri and Staff propose to allow the company to include an additional $10 million in its revenue requirement for those additional property taxes. MIEC proposes to disallow $2.5 million of additional property taxes associated with the Taum Sauk rebuild and $7.5 million associated with the addition of the Sioux Scrubbers.[266] That is the basis for this issue.

2. The Sioux scrubber and the Taum Sauk plant additions went into service in 2010. That means they became subject to the state of Missouri's property tax assessment in 2011. Property tax on property owned on January 1 must be paid by December 31 of the same year.[267] That means Ameren Missouri will not pay the additional property tax associated with the Sioux scrubber and the Taum Sauk plant additions until December 31, 2011, ten months after the close of the true-up period for this case.

3. At this point Ameren Missouri cannot know the exact amount of additional taxes it will owe for the Sioux scrubber and the Taum Sauk plant additions because it has not yet received tax bills from the various county assessors. It will not receive those tax bills until September, October, and November.[268]

4. Before the Sioux scrubber and the Taum Sauk additions were put in service they

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[265] First Nonunanimous Stipulation and Agreement – Miscellaneous Revenue Requirement Items, filed May 3, 2011.

[266] Meyer Direct, Ex. 400, Page 16, Lines 1-6.

[267] Weiss Rebuttal, Ex. 131, Page 2, Lines 18-23.

[268] Transcript, Page 1306, Lines 5-10.

were subject to property tax as construction work in progress. For regulatory accounting purposes, property taxes on construction work in progress is removed from the company's expenses and instead treated as a capital item that the company recovers through depreciation over the life of the plant.[269] Since the Sioux scrubber and the Taum Sauk additions were still treated as construction work in progress for purposes of the 2010 tax assessments, they were not included in the company's $119 million property tax bill for 2010 for regulatory purposes. Thus, the Sioux scrubber and the Taum Sauk additions will be entirely new taxed items for purposes of determining the amount of Ameren Missouri's property tax bill that can be recovered as an expense.

5. Generally accepted accounting principles (GAAP) require Ameren Missouri to begin accruing its 2011 tax liabilities on its books at the beginning of the year. Thus, by December 31, 2011, the company will have expensed its entire 2011 tax payments.[270]

6. The amount Ameren Missouri expenses for taxes under the GAAP requirements is based on plant investment on January 1. Average tax rates from 2010, adjusted for estimated changes in tax rates for 2011, are applied to the plant investment amount to determine estimated total taxes for 2011. Ameren Missouri's Manager of Regulatory Accounting, Gary Weiss, testified that that amount is usually fairly accurate.[271] That is the same method that Staff and Ameren Missouri used to calculate 2011 taxes for this case.[272]

7. As a general principle, expenses must be known and measurable before a utility will be allowed to recover those expenses in rates. That does not mean an expense must be

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[269] Transcript, Page 1321, Lines 13-20.

[270] Transcript, Page 1319, Lines 17-19.

[271] Transcript, Page 1323, Lines 7-18.

[272] Weiss Rebuttal, Ex. 131, Lines 15-22.

known precisely to be included in rates. For example, on this very issue, the parties agreed that Ameren Missouri's tax expenses to be included in going forward rates would be based on the company's 2010 tax bill, even though it is apparent that those taxes may change in future years.

8. MIEC questioned Ameren Missouri's witness, Gary Weiss, about a document from his work papers pertaining to the Sioux scrubber. That document contained the following disclaimer: "We cannot determine with accuracy the anticipated 2011 property taxes pertaining to the Sioux scrubber since the accounts involved are state assessed property."[273] MIEC contends that this disclaimer is an admission by Ameren Missouri that the 2011 property taxes in question are not known and measurable, and thus not recoverable.

9. However, Weiss explained that the document that includes the disclaimer was created in early 2010. Ameren Missouri property tax department added the disclaimer at a time when the company did not yet have the 2010 assessment and tax rates. He testified that the company now has the January 1, 2011 assessment and actual taxes paid in 2010. As a result, he is now confident in the company's estimate of 2011 taxes.[274] The Commission finds that the disclaimer on the document is not dispositive of this issue.

10. In considering what expense should be treated as known and measureable, it is important to keep in mind the underlying purpose of the Commission's ratemaking process. The Commission is not setting rates designed to allow the company to recover past expenses. Rather, the Commission is using historical cost data based on a test year to determine a just and reasonable going-forward rate that will afford the company a

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[273] Ex. 415.

[274] Transcript, Page 1324, Lines 5-16.

reasonable opportunity to recover its costs and earn a profit.

11. It is known that Ameren Missouri will pay additional property tax now that the Sioux scrubbers and the Taum Sauk additions are in service and have been assessed for tax purposes. Ameren Missouri is already accruing those taxes on its books and has reasonably determined the amount accrued based on the known value of the property and adjusted 2010 tax rates. For purposes of determining a reasonable rate, the Commission finds that the additional taxes Ameren Missouri will pay for the Sioux scrubbers and the Taum Sauk additions are known and measurable. The additional $10 million in property tax expenses associated with those additions shall be included in the company's revenue requirement.

Conclusions of Law:

A. Missouri Retailers Association argues that Ameren Missouri's property taxes attributable to the Taum Sauk additions are not known and measureable because the local taxing authority may have to decrease its tax levy based on the increased valuation of the property under Section 137.073.2, RSMo 2000. However, that statute provides that a levy rollback is not required when the increased valuation results from "new construction and improvements." Thus, the levy rollback provision would not apply to the Taum Sauk addition.[275]

Decision:

The additional $10 million in property tax expenses associated with the Sioux scrubbers and the Taum Sauk additions shall be included in the company's revenue requirement.

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[275] Transcript, Page 1293, Lines 12-21.

B. Should the Commission order Ameren Missouri to return to its customers any reductions that the Company receives in its 2010 property taxes?

Findings of Fact:

12. Ameren Missouri has appealed a portion of its 2010 state property taxes to the State Tax Commission. The company has paid the full amount of those taxes, but $28,883,742 of that payment is being held in escrow pending the results of the appeal.[276] If Ameren Missouri prevails on its appeal, its 2010 taxes, as well as future tax bills could be reduced by an unknown amount. No hearing date has yet been set on the tax appeal.[277]

13. Ameren Missouri has agreed to track any possible tax refunds. Staff asks the Commission to order Ameren Missouri in this case to credit any tax refund it ultimately receives to its ratepayers. Ameren Missouri contends the Commission should not issue such an order in this case and should instead simply allow the company to track the refund and wait until a future case to determine how any refund received should be handled.

Specific Findings of Fact:

14. The only question before the Commission at this time is whether to order Ameren Missouri in this case to return any tax refund it may receive to its customers. There is no disagreement about Ameren Missouri's duty to track that refund. If Ameren Missouri does receive a tax refund, then the Commission would certainly expect that the company would return that refund to its customers who are ultimately paying the tax bill. It is hard to imagine any circumstance in which such a refund would not be ordered. However, such an order must wait until a future rate case in which that decision will be presented to the Commission.

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[276] Staff Report – Revenue Requirement / Cost of Service, Ex. 201, Page 91, Lines 10-13.

[277] Transcript, Page 1315, Lines 13-15.

15. Any such order the Commission could issue in this case would be ineffective, as this Commission cannot bind a future Commission. At this time, the Commission can only order Ameren Missouri to track any possible refund. A decision about how any such tax refund is to be handled must be left to a future rate case.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall track any state tax refund it receives because of its appeal of its 2010 assessment. The Commission will decide in a future rate case how any such refunds are to be handled.

13. Rate Design/Class Cost of Service

A. Class Cost of Service:

(1) Which of the proposed class cost of service methodologies – the 4 NCP-A&E methodology, the Base Intermediate-Peak methodology, or the 4P-P&A methodology – should the Commission use in this case to allocate Ameren Missouri's investment and costs among the Company's various rate classes?

(2) What methodology should the Commission use in this case to allocate Ameren Missouri's fixed production plant investment and operation and maintenance costs?

B. Rate Design:

(1) To what extent should the Commission rely on the results of a class cost of service study in apportioning revenue responsibility among Ameren Missouri's customer classes in this case?

(2) What amount of increase or decrease in the revenue responsibilities of Ameren Missouri's customer classes should the Commission order in this case?

Findings of Fact:

Introduction:

1. After the Commission determines the amount of rate increase that is necessary, it must decide how that rate increase will be spread among Ameren Missouri's customer classes. The basic principle guiding that decision is that the customer class that causes a cost should pay that cost.

2. During the course of the hearing, Public Counsel, MIEC, AARP, the Consumers Council, MEUA, MEG, and the Missouri Retailers Association filed a nonunanimous stipulation and agreement that reached an agreement on how the rate increase should be allocated to the customer classes. Ameren Missouri and Staff did not sign the stipulation and agreement but do not oppose the compromise agreement. The Municipal Group, however, does oppose that stipulation and agreement.

3. Because of that opposition, the Commission cannot approve the stipulation and agreement. Nevertheless, all signatory parties testified that they continue to support the compromise described in the stipulation and agreement. That stipulation and agreement continues to represent the position of the signatory parties and the Commission can consider that position as it decides this issue.

4. Ameren Missouri has seven customer classes.[278] The Residential class is comprised of residential households. The Small General Service and Large General Service classes are comprised of commercial operations of various sizes. The first three classes receive electric service at a low secondary voltage level. The Small Primary Service and the Large Primary Service are larger industrial operations that receive their

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[278] Cooper Direct, Ex. 133, Page 4, Lines 4-18.

electric service at a high voltage level. The Large Transmission Service class takes service at a transmission voltage level. Noranda Aluminum is the only member of the Large Transmission Service class. The seventh customer class is the Lighting Service class, which includes area and street lighting.

Specific Findings of Fact:

5. To evaluate how best to allocate costs among these customer classes, four parties prepared and presented class cost of service studies. The studies presented by Ameren Missouri and MIEC used versions of the Average and Excess Demand Allocation method (A&E). Staff used a Base, Intermediate, Peak (BIP) method, and Public Counsel used a Peak and Average Demand Allocation method.

6. The following chart compares the results of each of the class cost of service studies, indicating the percent change in class revenues required to equalize class rates of return, as well as the dollar amounts needed to bring a class to its indicated cost of service. A negative number means the class is paying more than its indicated share of costs. A positive number means the class is paying less than its indicated share. All dollar figures are in millions.

Study	Residential	Small General Service	Large General Service	Large Primary Service	Large Transmission Service	Lighting
Staff [279]	13.21% $144.6	-1.78% $(5.0)	-8.52% ($60.4)	-6.42% ($11.5)	-1.64% $(2.3)	21.02% $6.6
Ameren Missouri[280]	6.95% $76.0	-8.77% ($24.6)	-8.94% ($63.7)	-1.42% ($2.6)	5.60% $7.8	22.41% $7.0
OPC[281]	3.12% $34.1	-11.22% ($31.4)	-5.69% ($40.4)	6.34% $11.3	18.85% $26.3	

[279] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Page 3, Table 1.

[280] Ex. 551.

[281] Kind Direct, Ex. 301, Attachment A.

MIEC[282]	9.7% $106.0	-7.3% ($20.5)	-10.4% ($74.3)	-6.7% ($12.2)	-5.0% ($6.9)	24.9% $7.7

For example, Staff's study indicated the Residential class is currently paying $144.6 million less than Ameren Missouri's cost to serve that class. In contrast, according to Staff's study, the Large General Service class is currently paying $60.4 million more than Ameren Missouri's cost to serve that class. Although the exact numbers vary among the various studies, all the studies agree that the Residential class is currently paying substantially less than its cost of service and that the other classes are currently paying more than their cost of service.

7. The studies presented by Staff, Ameren Missouri and MIEC show that the Large Transmission Class is currently paying rates that are near its current cost of service. Public Counsel's study however shows the Large Transmission Class as paying 18.83 percent less than its cost of service. However, Public Counsel's study uses an Average and Peak allocation method that the Commission has rejected as unreliable in previous cases.[283]

8. Noranda Aluminum, which is the sole member of the Large Transmission Class, runs its aluminum smelter at a constant rate, 24 hours a day, 7 days a week. Therefore, its usage of electricity does not vary significantly by hour or by season. Thus, while it uses a lot of electricity, that usage does not cause demand on the system to hit peaks for which the utility must build or acquire additional capacity. Another customer class, for example, the residential class, will contribute to the average amount of electricity used on the system,

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[282] Brubaker Direct, Ex. 404, Schedule MEB-COS-5.

[283] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, File Number ER-2010-0036, Report and Order, May 28, 2010, Page 85.

but it will also contribute a great deal to the peaks on system usage, as residential usage will tend to vary a great deal from season to season, day to day, and hour to hour.

9. To recognize that pattern of usage, the Average and Excess method used by Ameren Missouri and MIEC in their studies separately allocates energy cost based on the average usage of the system by the various customer classes. It then allocates the excess of the system peaks to the various customer classes by a measure of that class' contribution to the peak. In other words, the average and excess costs are each allocated to the customer classes once.

10. The Peak and Average method, in contrast, initially allocates average costs to each class, but then, instead of allocating just the excess of the peak usage period to the various cost causing classes, the method reallocates the entire peak usage to the classes that contribute to the peak. Thus, the classes that contribute a large amount to the average usage of the system but add little to the peak, have their average usage allocated to them a second time. Thus, the Peak and Average method double counts the average system usage, and for that reason is unreliable.[284] In particular, it tends to overstate the class revenue responsibility of the Large Transmission Class and therefore Public Counsel's finding that that class is significantly under contributing is especially unreliable.

11. In general, it is important that each customer class carry its own weight by paying rates sufficient to cover the cost to serve that class. That is a matter of simple fairness in that one customer class should not be required to subsidize another. Requiring each customer class to cover its actual cost of service also encourages cost effective utilization

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[284] Brubaker Rebuttal, Ex. 405, Pages 4-6.

of electricity by customers by sending correct price signals to those customers.[285] However, the Commission is not required to precisely set rates to match the indicated class cost of service. Instead, the Commission has a great deal of discretion to set just and reasonable rates, and can take into account other factors, such as public acceptance, rate stability, and revenue stability in setting rates.

12. Ameren Missouri proposed that any rate increase should be allotted equally to each customer class. In other words, each class would receive the system average percentage increase.[286] That would leave the existing disparities revealed in the class cost of service studies unchanged.

13. Staff proposed that small adjustments be made to shift revenue responsibility from the classes that are paying more than their share to those that are paying too little. Specifically, Staff recommends that the Residential and Lighting classes receive the system average percentage increase plus one percent. The Large General Service / Small Primary Service classes would receive no increase for the first $30 million in increased rates and the system average thereafter. Finally, Staff would have the Commission give the Small General Service and Large Transmission Service classes the system average increase.[287]

14. MIEC proposed that the Residential and Lighting classes receive a revenue-neutral increase with the other classes receiving decreases to bring each class closer to its actual cost of service.[288]

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[285] Cooper Direct, Ex. 133, Page 17, Lines 1-12.

[286] Cooper Direct, Ex. 133, Page 19, Lines 1-2.

[287] Staff Report -Class Cost-of-Service and Rate Design, Ex. 204, Page 1, Lines 2-20.

[288] Brubaker Direct, Ex. 404, Schedule MEB-COS-6.

15. Finally, Public Counsel recommended that the Commission make no adjustment to the residential class but proposed revenue neutral shifts sufficient to move each other class' revenues half-way toward that class' cost of service.[289]

16. The stipulation and agreement to which the Municipal Group objected would shift revenue responsibility to the Residential and Lighting classes in the following manner:

Rate Class	Current Revenues	Revenue Increase	Percent Change
Residential	$1,099,447,000	$21,989,000	+2.00%
Small Gen. Service	$278,880,000	($4,957,000)	-1.78%
Large Gen. Service / Small Primary	$710,244,000	($12,624,000)	-1.78%
Large Primary	$178,643,000	($3,175,000)	-1.78%
Large Transmission	$139,472,000	($2,479,000)	-1.78%
MSD	$64,000	----	0.00%
Lighting	$31,171,000	$1,247,000	+4.00%

In other words, the Residential class' rates would increase by 2 percent on a revenue-neutral basis and the Lighting class' rates would increase by 4 percent on a revenue-neutral basis. All other classes would see their rates decline by 1.78 percent on a revenue-neutral basis.

17. The stipulation and agreement, now the joint position of the signatory parties, further provides that any overall increase granted to Ameren Missouri as a result of this rate case would be implemented on an equal percent, across-the-board basis and added to the

[289] Kind Direct, Ex. 301, Page 7, Lines 6-22.

described revenue-neutral adjustments to determine each class' total increase relative to current rates.

18. The stipulation and agreement, now the joint position, also provides that no class should receive an overall rate decrease if any other class is receiving an overall rate increase. In such a circumstance, the class receiving that decrease would be held at its current rates with the avoided decrease spread equally among the remaining classes receiving revenue-neutral decreases.

19. The reallocation of revenue responsibility the signatories agreed to in the stipulation and agreement, now their joint position, bears some resemblance to the results of all the submitted class cost of service studies. Most notably, all the submitted studies indicate that the residential class is paying substantially less than its actual revenue responsibility. The stipulated position would bring that revenue class closer to its actual cost of service.

20. The party that objected to the stipulation and agreement, the Municipal Group, represents the members of the Lighting class, which would receive a 4 percent revenue-neutral increase under the stipulation and agreement. Understandably, the Municipal Group would prefer a system average across-the-board increase as proposed by Ameren Missouri. However, there are circumstances that justify a larger than average increase for the Lighting class.

21. In Ameren Missouri's last rate case, ER-2010-0036, the Municipal Group complained that neither Ameren Missouri, nor any other party had performed a class cost of service study that would determine the reasonableness of the rate charged to the Lighting class. For many years, Ameren Missouri and the other parties to its rate cases had ignored the Lighting class in their studies because of its insignificant size compared to Ameren

Missouri's over-all customer base. As a result, the Commission found that the Lighting class had been given rates that "may or may not bear any resemblance to the cost to serve that class."[290] On that basis, the Commission exempted the Lighting class from the rate increase that resulted from that Report and Order and directed Ameren Missouri to include the Lighting class in its next class cost of service study.

22. Ameren Missouri and the other parties included the Lighting class in their class cost of service studies for this case and those studies indicate that the Lighting class is not currently paying its full cost of service. According to Staff's study, the Lighting class' rates would have to be increased 21.02 percent to bring in sufficient revenue from that class to cover the cost to serve that class. Ameren Missouri's study sets the necessary increase at 22.41 percent, and MIEC's study was even higher at 24.9 percent. Considering the results of those studies, the 4 percent revenue-neutral increase allotted to the Lighting class by the stipulation and agreement / joint position is quite reasonable.

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) provides that a nonunanimous stipulation and agreement to which an objection is made is to be treated as a joint position of the signatory parties, except that no party is bound by the agreement.

B. The approach the Commission must take when considering a nonunanimous stipulation and agreement to which an objection is made is further described in a 1982 decision of the Missouri Court of Appeals. In *State ex rel. Fischer v. Public Service*

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[290] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, File Number ER-2010-0036, Report and Order, May 28, 2010, Page 99.

Commission,[291] the Court held that when considering a nonunanimous stipulation and agreement the Commission must recognize all statutory requirements, including the right to be heard and to introduce evidence. Furthermore, the Commission's decision must be in writing and must include adequate findings of fact.

Decision:

The Commission accepts the joint position advocated by the parties representing the vast majority of Ameren Missouri's customers and accepted by Ameren Missouri and Staff. The Commission's acceptance of that joint position will result in a reasonable adjustment of rates to bring all parties closer to their actual cost of service.

(3) What is the appropriate monthly residential customer charge that should be set for Ameren Missouri in this case?

Findings of Fact:

Introduction:

23. The monthly residential customer charge is the portion of the customer's bill that is independent of the amount of electricity used in the month. It is the amount the customer must pay just to remain a customer of Ameren Missouri. In general, consumer groups prefer a low customer charge reasoning that customers want to be able to lower their costs if they use less electricity. The utility, including Ameren Missouri, prefers a higher customer charge because the customer charge allows the company to recover its fixed costs with more certainty regardless of how much electricity the customer uses in a month. Currently Ameren Missouri's monthly residential customer charge is set at $8.00.

Specific Findings of Fact:

24. The various class cost of service studies examine the amount of charges that should

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[291] 645 S.W.2d 39 (Mo. App. W.D. 1982)

appropriately be collected from customers through the fixed monthly customer charge. Ameren Missouri indicates its study would support a residential customer charge of approximately $18. However, Ameren Missouri's witness recommended that the customer charge be increased only to $10.[292]

25. Staff's witness indicated his class cost of service study would support a monthly customer charge of $9.67, but he recommended the customer charge be increased to only $9.00 to avoid a large impact on residential customers.[293]

26. The nonunanimous stipulation and agreement on class cost of service issues provides that the residential customer charge would remain at $8.00, with the remaining revenue assigned to the residential class to be allocated to volumetric charges.

27. Although the Municipal Group objected to the stipulation and agreement, the stipulation and agreement still represents the joint position of the signatory parties. Despite their earlier positions advocating an increase in the customer charge, neither Ameren Missouri nor Staff raised any objection to the stipulation and agreement. Furthermore, although the Municipal Group objected to the stipulation and agreement as a whole, it expressed no opposition to the agreement to leave the residential customer charge at $8.00.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The current residential customer charge of $8.00 per month is reasonable and shall be continued.

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[292] Cooper Rebuttal, Ex. 134, Page 11, Lines 1-7.

[293] Staff Report – Rate Design and Class Cost of Service, Ex. 204, Pages 19-20, Lines 33-36, 1-3.

(4) Should AmerenMO be required to eliminate declining block rates for the residential winter energy charge? If so, should the declining block rates be eliminated in a revenue neutral manner?

Findings of Fact:

Introduction:

28. Ameren Missouri's current residential rate design includes a declining block element for the winter billing season only. That means that during the winter the rate paid for electricity goes down as more electricity is used. That declining block design benefits customer who use a lot of electricity in the winter, chiefly customers who use electricity for space heating in their home. That design also benefits the electric utility in that it makes electricity more competitive with other fuel sources for space heating and allows the company to sell more electricity during off-peak times.

Specific Findings of Fact:

29. A stipulation and agreement approved in Ameren Missouri's last rate case, ER-2010-0036, required Ameren Missouri to conduct a study addressing the elimination of declining block rates for residential service in a revenue neutral manner and to file the results of that study in this, its next rate case. Ameren Missouri conducted that study and reported the results in the direct testimony of Wilbon Cooper.[294]

30. Ameren Missouri reports that the elimination of the declining block rate would increase the electric bill for customers who use electricity for space heating by roughly five percent above the overall average rate increase that would otherwise result from this case.[295] If the declining block rate design were eliminated and Ameren Missouri were allowed to increase its overall rates by 10.8 percent, monthly winter bills would decrease by

[294] Cooper Direct, Ex. 133, Pages 25-26.

[295] Cooper Direct, Ex. 133, Page 25, Lines 20-23.

$1.78 per month at 700 kWh, increase by $53.85 per month at 4,000 kWh, and increase by $157.05 per month at 10,000 kWh from current rate levels. For comparison, if the same overall rate increase were allowed and the declining block rate were retained, the monthly winter bills would increase $6.20 per month at 700 kWh, $17.88 per month at 4,000 kWh, and $38.88 per month at 10,000 kWh.[296]

31. The Missouri Department of Natural Resources asks the Commission to eliminate the declining block rates to encourage energy efficiency and conservation, arguing that declining block rates do not send a signal to encourage reduced usage.[297]

32. Customers who use less than approximately 1,400 kWh per month would see their monthly bill decrease if the declining block rate was eliminated. Those who use more than 1,400 kWh per month would see their monthly bill increase.[298] An average residential customer uses approximately 1,000 to 1,100 kWh per month.[299] As a result, the customers who would see increased monthly bill would chiefly be those who use electricity for space heating.[300]

33. There is no evidence in the record to indicate how a phase-in of the elimination of declining block rates could be accomplished.[301]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

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[296] Cooper Direct, Ex. 133, Page 26, Lines 2-7.

[297] Wolfe Rebuttal, Ex. 801, Page 16, Lines 16-21.

[298] Transcript, Page 2385, Lines 13-21.

[299] Transcript, Page 2386, Lines 5-6.

[300] Transcript, Page 2393, Lines 2-6.

[301] Transcript, Page 2402, Lines 13-18.

The Commission does not like declining block rates. They do not send a proper price signal and tend to encourage the excessive consumption of electricity. In addition, declining block rates may force residential customers who conserve electricity to subsidize their neighbors who use excessive amounts.

In the last case a stipulation and agreement required Ameren Missouri to study the elimination of declining block rates. Not surprisingly, Ameren Missouri's study concluded that elimination of the declining block rate would cost the company money and would result in increased rates for the customers who currently benefit from the rate. MDNR is the only party that responded to Ameren Missouri's study, but that response dealt only in generalities and provided very little detailed information to assist the Commission in actually evaluating the merits of the elimination of the winter declining block rate.

Unfortunately, there is just not enough evidence in this record to justify a modification of the current rate design. The only thing that is clear is that the elimination of the declining block rate would have an unfortunate impact on the rates of those customers who use electricity for space heating. If any party wants to try again to eliminate the winter declining block rate in Ameren Missouri's next rate case, they will need to provide the Commission with more information to justify that change.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Union Electric Company, d/b/a Ameren Missouri on September 3, 2010, and assigned tariff number YE-2011-0116, are rejected.

2. Union Electric Company, d/b/a Ameren Missouri is authorized to file a tariff sufficient to recover revenues as determined by the Commission in this order. Ameren Missouri shall file its compliance tariff no later than July 18, 2011.

3. Governor Nixon has signed into law Missouri Senate Bill 48, which changes the procedure for parties appealing orders from the Missouri Public Service Commission. The new law took effect on July 1, 2011.

Please refer to SB 48 to become familiar with the new appellate process. An unofficial copy of the truly agreed to and finally passed SB 48 may be found at:

http://www.senate.mo.gov/11info/BTS_Web/BillText.aspx?SessionType=R&BillID=4065300

Please refer to the Supreme Court Rules for further guidance. The Commission is preparing its version of Form 8, which is required by Supreme Court Rule 81.08(a).

4. This report and order shall become effective on July 23, 2011.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

Gunn, Chm., and Jarrett, C., concur;
Clayton, C., concurs with separate concurring opinion attached;
Davis and Kenney, CC., concur with separate concurring opinions to follow.

Dated at Jefferson City, Missouri,
on this 13th day of July, 2011.