BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company	)	
d/b/a Ameren Missouri's Tariffs To	)	Case No. ER-2012-0166
Increase Its Revenue for Electric Service	)	

INITIAL POST-HEARING BRIEF OF THE MISSOURI INDUSTRIAL ENERGY CONSUMERS

Diana Vuylsteke, #42419
Brent Roam, #60666
BRYAN CAVE, LLP
One Metropolitan Square, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
dmvuylsteke@bryancave.com
brent.roam@bryancave.com

Edward F. Downey, #28866
Carole L. Iles, #33821
BRYAN CAVE, LLP
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6620
Facsimile: (573) 556-6630
efdowney@bryancave.com
carole.iles@bryancave.com

Attorneys for the
Missouri Industrial Energy Consumers

November 5, 2012

TABLE OF CONTENTS

Page

I. Policy Considerations Regarding Ameren Missouri's Request for Extraordinary Regulatory Changes

Ameren Missouri has requested and this Commission has already granted the following enhancements to the traditional regulatory framework for Ameren Missouri: (1) a fuel adjustment clause that allows Ameren Missouri to automatically receive increases in rates when its fuel and net purchased energy costs increase; (2) a vegetation management and infrastructure inspection tracker that allows Ameren Missouri to track and recover differences between rate cases in those costs compared to base levels of those costs; (3) a pension/OPEB tracker that allows Ameren Missouri to track and recover differences between rate cases in those costs compared to a base level of those costs; (4) a FIN 48 tracker that allows Ameren Missouri to postpone rate recognition of tax savings associated with uncertain tax positions until they are resolved with the Internal Revenue Service; (5) the use of true-ups that allows Ameren Missouri to update its costs beyond the test year; and (6) a cost recovery mechanism to recover Ameren Missouri's Missouri Energy Efficiency Investment Act expenditures incurred between rate cases. Ameren Missouri seeks to have the Commission retain all of these regulatory mechanisms. In addition, Ameren Missouri now seeks to expand on these existing regulatory enhancements by adding the following extraordinary regulatory changes: (1) Plant in Service Accounting ("PISA"); (2) a transmission cost tracker; and (3) a storm restoration tracker. Last, Ameren Missouri expects to give the Commission the "opportunit[y]" to even "further improve the regulatory framework in the future."[1]

Ameren Missouri's asserted factual basis for now expanding upon previously granted extraordinary regulatory relief ("enhancing the regulatory framework") is its claim that, because of regulatory lag, it has systematically and chronically been unable to earn its authorized ROE.[2] In support of that factual assertion, Ameren Missouri cited graphs purporting to show its actual

[1] Baxter Direct, Ex. 1, p. 6, l. 11- p. 7, l. 2, p.22, l. 13- p. 23, l. 21; and p. 28, ll. 15-17. Haro Sur-Surrebuttal, Ex. 26, p. 23, l. 1- p. 27, l. 17.

[2] Reed Direct, Ex. 3, p. 21, ll. 4-11.

weather normalized earned ROE since June of 2007.[3] However, as the evidence clearly shows, under Missouri's supposedly outdated regulatory paradigm, Ameren Missouri was systematically and chronically earning more than its authorized return for well over a decade prior to 2006.[4] Moreover, as the much discussed June FAC Surveillance Monitoring Report shows, Ameren Missouri reported its ROE as 10.53 percent for the then most recent 12-month period, the period ending June 30, 2012. Staff Ex. 237. The testimony showed that Exhibit 237 was not reporting revenue on a weather normalized basis, nor did it exclude certain unusual items of expense and revenue such as the Entergy refund, certain parts of Callaway refueling costs, incentive compensation costs, advertising costs, or lobbying costs.[5] But the testimony showed that those revenues and expenses would roughly offset each other and that Exhibit 237 was "fair" to show Ameren Missouri's most recent actual return on a regulatory basis of accounting (not including expenses--like Taum Sauk rebuilding expense--that were determined to be imprudent).[6] The reported return of 10.53 percent was higher than Ameren Missouri's authorized return for that period. Remarkably, this most recent earned ROE was reported during a pending rate case review when earnings are expected to be insufficient, before any consideration is given to the earnings improvement that will be directly caused by the rate increase ordered in this case.

The undisputed evidence also shows that Ameren Missouri's customers, the people and businesses in Missouri, have suffered under one of the worst financial periods in recent history. It just so happens that Ameren Missouri's cherry-picked period of review for its evidence of an alleged defective regulatory system (2007-2012) closely coincides with that economic downturn. During the period from 2006 through 2011, the unemployment rate has increased in every county that Ameren

---

[3] Baxter Surrebuttal, Ex. 2, Schedules WLB-ES1-ES4.
[4] MIEC Ex. 532.
[5] Cassidy testimony, Tr. 751.
[6] *Id.*

Missouri serves.[7] And while those who are still working have seen their wages increase by an average of about 11 percent over that six-year period Ameren Missouri's rate increases over that period are more than double that rate.[8] The economic downturn, rather than a defective regulatory system, is more likely to blame for Ameren Missouri's miss on earnings under a regulatory basis of accounting (although it did not even miss its earnings for the most recent twelve-month period on that basis of accounting). One must also observe that a regulatory authorized return is just that, an opportunity through prudent management and cost control to achieve certain earnings. Utility management in this case offers no showing that its own performance has nothing to do with its achieved ROE levels.

Ameren Missouri's indictment of the regulatory framework appears particularly inappropriate and overreaching when one considers all of the "regulatory sweeteners" the Commission has already generously bestowed upon Ameren Missouri in the recent past. Each of these sweeteners benefits Ameren Missouri's bottom line, while at the same time, dips deeper into ratepayers' pockets: (1) a fuel adjustment clause that allows Ameren Missouri to automatically receive increases in rates when its fuel costs increase; (2) a vegetation management and infrastructure inspection tracker that allows Ameren Missouri to track and recover differences between rate cases in those costs compared to base levels of those costs; (3) a pension/OPEB tracker that allows Ameren Missouri to track and recover differences between rate cases in those costs compared to a base level of those costs; (4) a FIN 48 tracker that allows Ameren Missouri to postpone rate recognition of tax savings associated with uncertain tax positions until they are resolved with the Internal Revenue Service; (5) the use of true-ups that allows Ameren Missouri to update its costs beyond the test year; and (6) a cost recovery mechanism to recover Ameren Missouri's Missouri

[7] Meisenheimer Direct (Economic considerations), Ex. 402, p. 6, ll. 6-14.
[8] Meisenheimer Direct (Economic considerations), Ex. 402, p. 6, l. 21- p. 7, l. 9; Brubaker Direct, Ex. 503, Ex. MEB-RR-1.

Energy Efficiency Investment Act expenditures incurred between rate cases. Granting Ameren Missouri more extraordinary regulatory mechanisms at this time would tip the scale even more in Ameren Missouri's favor at ratepayers' expense. These mechanisms do not eliminate risk to Ameren Missouri. Rather, they systematically shift business risk and costs on a piecemeal basis from Ameren Missouri, and its shareholders, to the ratepayers.[9] Ameren Missouri certainly has more control over the costs it incurs compared to the ratepayers, which have no control. The primary purpose of a properly functioning regulatory framework should be to balance the interests of shareholders and ratepayers.[10] Ameren Missouri's proposals give virtually no consideration to ratepayers while considering only the interests of shareholders.[11]

In short, the factual basis for Ameren Missouri's indictment of Missouri's regulatory paradigm is both inequitable and unfounded. Moreover, in addition to its faulty factual underpinning, Ameren Missouri's indictment of Missouri's regulatory paradigm is based upon bad public policy.

Ameren Missouri's analysis fails to recognize that utility ratemaking is concerned with current and anticipated financial conditions and is inherently prospective in nature; Ameren Missouri's historical earnings do not demonstrate anything about the adequacy of future rates.[12] Moreover, it is bad public policy to disconnect the financial result from the performance of management.[13] That is precisely what Ameren Missouri implores the Commission to do in this case by including no serious discussion of its management's good or bad decisions that impact its bottom line. For instance, part of its past revenue shortfall can be directly attributed to its grossly negligent operation, and ultimate destruction, of a major asset, the Taum Sauk reservoir. Further, Ameren

[9] Gorman Direct, Ex. 507, p. 74, ll. 1-21.
[10] Gorman Direct, Ex. 507, p. 65, ll. 3-15.
[11] Gorman Direct, Ex. 507, p. 66, ll. 14-23.
[12] Brosch Direct, Ex. 500, p. 9, ll. 1-9.
[13] Brosch Direct, Ex. 500, p. 9, ll. 17-22.

Missouri likely knew that it would be unable to recover certain incentive compensation costs, lobbying costs and advertising costs. Yet it chooses to incur those costs anyway. When these actions and choices reduce earned ROE, the Company would suggest that financial results simply require that ratepayers pay higher rates through additional regulatory framework enhancements.

Further, in Ameren Missouri's insatiable quest for formula ratemaking, it fails to appreciate a regulatory policy benefit of regulatory lag. Without regulatory lag, the utility has little motivation to reduce or eliminate costs and improve efficiency.[14] For example, if the Company is allowed through PISA to record a regulatory asset for return and depreciation on essentially all of its added net Plant in Service between rate cases, management need no longer care about how much is spent on new utility plant to protect its earnings and ROE.

Last, many of Ameren Missouri's proposals to enhance the regulatory model involve trackers that are designed to recover Ameren Missouri's cost increases between rate cases and are thus illegal single-issue ratemaking. Single-issue ratemaking is illegal because it represents bad public policy. Traditional ratemaking involves the careful analysis and "matching" of the utility's costs and its revenues within a single test year so as to balance the determination of how much more or less revenue is needed to recover all prudently incurred costs. In contrast, with automatic adjustment clauses and regulatory asset accounting, costs and revenues are not matched for the tracked periods between rate cases, and while the tracked costs cannot be recovered until the next rate case, there is never any meaningful analysis of all costs and revenues during those tracked periods.[15]

In conclusion, this Commission has already generously provided regulatory sweeteners to Ameren Missouri. It would be particularly inappropriate to further tip the scale of justice in Ameren Missouri's favor based primarily on recent historical earnings, with no analysis of management prudence or segregation of the costs of Taum Sauk and other management imprudence, during one

[14] Brosch Direct, Ex. 500, p. 5, ll. 12-23.
[15] Cassidy Surrebuttal, Ex. 208, p. 2, l. 8 – p. 3, l. 2.

of the worst economic times in our country's history, while at the same time dismissing over a decade of Ameren Missouri's "over-earnings" prior to that.

II. Cash Working Capital

This Commission should reject Ameren Missouri's proposed cash working capital requirement, because it (1) seeks recognition for fictional cash outlays, and (2) artificially inflates Ameren Missouri's collection lag. On the other hand, the MIEC's proposed cash working capital requirement comports exactly to the actual and measured collection lag experienced by Ameren Missouri and rejects any recognition of expenses that do not actually exist.

Fictional Cash Outlay

Ameren Missouri asks this Commission to recognize income tax amounts in the cost of service. The problem with recognizing that amount in cash working capital is that Ameren Missouri does not actually pay that income tax expense.[16] Due to changes in federal law, Ameren Missouri has incurred a zero dollar cash outlay for income tax expense.[17] However, despite paying zero dollars in income tax expense, it is asking this Commission to recognize approximately $2.6M of cash working capital.[18] In other words, it is asking the Commission to ignore the fact that it does not actually pay the income tax, and despite not paying it, to grant Ameren Missouri rate recognition of a cash working capital allowance for income tax as if it actually pays that amount.

This makes absolutely no sense. Why should Ameren Missouri customers provide cash working capital for an expense that Ameren Missouri does not currently pay? The fact that the expense is recognized as a component of Ameren Missouri's cost of service is irrelevant to the issue of cash working capital, because cash working capital is only concerned with providing the cash

---

16 Meyer Direct, Ex. 510, p. 19, ll. 9-19.
17 *Id.*
18 Weiss True-Up Direct, Docket Item 375, Schedule GSW-TE 19-1. The Income Tax Calculation included in Ameren Missouri's cost of service does not reflect the tax law changes that would result in zero current income taxes.

necessary to fund the day to day expenses that result in inflows and outflows of cash, not with whether an item is specifically recognized in Ameren Missouri's cost of service. Accordingly, Ameren Missouri's request for $2.6M of cash working capital for income taxes should be denied, as such an expense is not currently paid and does not require cash funding.

Inflated Collection Lag

Ameren Missouri's cash working capital request should be denied because Ameren Missouri has presented the Commission with a lead lag study that artificially inflates the collection lag experienced by Ameren Missouri, which if accepted would result in an over-collection by Ameren Missouri.

For twenty-five years, Ameren Missouri used the CURST Report to establish the Company's collection lag.[19] The CURST Report was specifically designed to establish Ameren Missouri's collection lag, and does so by measuring actual customer payment habits. That is, the CURST Report measures the actual length of time it takes all of Ameren Missouri's customers to pay their bills in a given year. Based on the CURST Report, Ameren Missouri customers pay their bills in 21.1 days on average.[20]

However, Ameren Missouri proposes to abandon the CURST Report, and to employ an accounts receivable aging analysis designed by Ameren Missouri's outside consultant, Mr. Adams, that increases Ameren Missouri's collection lag by 33% or seven days. Ameren Missouri's request is based on the ambiguous allegation that the results of the CURST Report, which was designed specifically to measure collection lag and was used for twenty-five years, are "unverifiable."[21] However, when pressed, Ameren Missouri's witness could not cite to even a single customer that was not accounted for in the CURST Report:

[19] Tr. 456, ll. 1-5.
[20] Meyer Direct, Ex. 510, p. 21, ll. 11-14.
[21] Tr. 465, l. 9 - 466, l. 4.

Q [I]f you're looking at CURST report and you want to know if it's accurate, wouldn't you want to know if it incorporates all of the accounts of Ameren customers?

A Yes.

Q And you couldn't find a single account that was not accounted for in that report?

A As I said, I did not look at it.

Q And IT didn't present with you a single account that was not contemplated in that report?

A But if they identified any, I can't tell you that. But they did not tell me that they didn't find any.[22]

Not only was Ameren Missouri's witness unable to point to a single customer who was not accounted for in the CURST Report, he did not even know how Ameren Missouri arrived at its collection lag estimate that formed the basis of his lead lag study:

Q [I]f I understood what you just said to Commissioner Kenney, the removal of uncollectibles was based on be [sic] estimates of people who don't pay, that – and those estimates were given to you by the company, and you don't know how they arrived at those percentage estimates, correct?

A I was told how they -- how they calculated them. We provided a Data Request response. I don't recall that particular response. But it was based upon historical experience. I mean, I cannot identify a specific account within the accounts receivable that won't pay. I mean, you can't do that.

[22] Tr. 473, ll. 12-23.

There are percentages based upon -- upon experience of customers that are likely not to pay.

Q So the accounts receivables can't actually show you or can't actually give you direct information about whether or not a particular person is going to pay or not?

A It's not at the individual customer level. I would agree. That's it's based upon experience that the company has as far as the percentages that are likely not to pay.

Q And those percentages, which you're not sure how the company derived were used by you to calculate uncollectibles?

A Yes.[23]

In other words, Ameren Missouri proposes to abandon a long-standing report specifically designed to measure Ameren Missouri's actual collection lag, and replace it with an accounts receivable aging report analysis designed by Ameren Missouri's consultant based on a collection lag estimate that the consultant himself cannot even verify. Ameren Missouri's analysis should be seen for what it is, an artifice that allows Ameren Missouri to inflate its collection lag to the detriment of Missouri ratepayers. Ameren Missouri's analysis fails to properly measure real customer behavior, and instead provides distorted estimates that overcharge customers. Further, Ameren Missouri's lead lag study seeks recovery for income taxes that the Company does currently pay. As such, Ameren Missouri's cash working capital request should be denied.

[23] Tr. 474, l. 3 - 475, l. 2.

III. Income Tax Issues

Income Tax Benefit of Ameren Corporation Paying Dividends to ESOP Plans of Ameren Missouri Employees

The facts are undisputed on this issue.[24] Ameren Missouri includes and recovers in revenue requirement the costs of Ameren Missouri's employees' benefits. Those benefits include, among many other things, the employer match when Ameren Missouri employees contribute to their ESOP plans and buy Ameren Corporation stock. Ameren Missouri employees cannot buy stock in Ameren Missouri since Ameren Corporation is the sole shareholder of Ameren Missouri. Ameren Corporation earns its income in the form of dividends paid by Ameren Missouri to it, as well as from other utility and non-utility subsidiaries. Ameren Corporation also pays dividends to its shareholders, including dividends on the shares held in the Ameren Missouri ESOP plan accounts. The Internal Revenue Code allows a deduction from income for dividends paid on shares held in employee ESOP accounts. That deduction leads to an income tax savings that Ameren Corporation realizes. While the cost of the Ameren Missouri employees' benefits, including the employer match on the 401K ESOP plans, are included in revenue requirement and borne by ratepayers, and while the overall income that Ameren Corporation receives closely tracks dividends that Ameren Missouri pays to it,[25] again derived from ROE that Ameren Missouri ratepayers pay through utility rates, Ameren Corporation proposes to keep the entire tax benefit of paying dividends on its stock held in Ameren Missouri employees' ESOP plans.[26]

MIEC Witness Brosch, with the support of Staff and the OPC, proposes a roughly $2.8 million adjustment to the income tax expense included in revenue requirement.[27] Ameren Missouri

[24] Brosch Direct, Ex. 500, pp. 26-27; Brosch Surrebuttal, Ex. 502, p. 16, ll. 5-12.
[25] Brosch Surrebuttal, Ex. 502, p. 18.
[26] Brosch Direct, Ex. 500, p. 28, ll. 4-20.
[27] Brosch Direct, Ex. 500, pp. 4 and 28-9, and Sch. MLB-2; Brosch Surrebuttal, Ex. 502, pp. 16, l. 21 – p. 17, l. 23.

does not dispute the amount of the adjustment should the Commission agree that it is warranted.[28] That is only an allocated portion of the income tax savings to Ameren Corporation solely on those dividends paid to Ameren Missouri employees' ESOP plans. His basis for the adjustment is simple and straightforward. In matching costs and benefits, the income tax benefit directly results from revenue requirement and ROE that Ameren Missouri's ratepayers bear, so the corresponding portion of the resulting income tax benefit attributable to revenue requirement and ROE paid by Ameren Missouri's ratepayers should be included as an adjustment to income tax expense.[29] Staff witness Cassidy agrees with this adjustment for those reasons.[30]

Ameren Missouri argues in response that Ameren Corporation, not Ameren Missouri, actually declares and pays the dividend and therefore it should retain all of the tax benefit. Ameren Missouri argues that once Ameren Missouri receives its income that becomes its property.[31] Ameren Missouri talks out of both sides of its mouth in this regard. The proposed adjustment is to the federal income tax expense that Ameren Missouri includes in revenue requirement.[32] Ameren Missouri is part of a consolidated federal income tax return and, as such, does not directly pay the federal income tax any more than it directly paid the dividend at issue.[33] Ameren Corporation pays the tax. Yet Ameren Missouri has no trouble figuring its apportioned share of that tax and charging that portion to Ameren Missouri's revenue requirement for payment by Ameren Missouri ratepayers.[34] Witness Brosch merely proposes exactly that type of allocation, only for the tax benefit derived from the ESOP dividend. Moreover, Ameren Missouri concedes the need for Brosch's suggested adjustment for the dividends that Ameren Missouri pays to preferred shareholders when that tax deduction is included within the same consolidated Ameren Corporation tax return. Those

---

28 Brosch Surrebuttal, Ex. 502, p. 22, ll. 18-20.
29 Brosch Direct, Ex. 500, p. 27, ll. 4-10.
30 Cassidy Surrebuttal, Ex. 234, pp. 8-11.
31 Warren Rebuttal, Ex. 10, p. 5, l.16- p. 6, l. 21.
32 Brosch Direct, Ex. 500, p. 3, ll. 18-9.
33 Brosch Direct, Ex. 500, p. 27, ll. 17-20.
34 Brosch Surrebuttal, Ex. 502, p. 17, ll. 15-23.

"[p]referred dividends are declared and paid out of retained earnings balances that belong to shareholders, just like the ESOP dividends on common stock, yet [Ameren Missouri] has properly credited the tax deduction benefits for these preferred dividend payments[.]"[35]

In conclusion, Ameren Missouri challenges whether an adjustment to the income tax expense is warranted, not the amount of the adjustment. Ameren Missouri does not dispute the facts underlying the proposed adjustment. Rather, Ameren Missouri's primary objection is that Ameren Corporation, rather than Ameren Missouri, directly paid the dividend at issue. But that argument is disingenuous because the adjustment at issue is to an Ameren Missouri income tax expense, even though Ameren Missouri pays no income tax directly; Ameren Corporation does. No party disputes that Ameren Missouri's share of the income tax Ameren Corporation pays can and should be attributed to Ameren Missouri for ratemaking purposes. But it is only fair to similarly attribute that portion of an income tax benefit from a deduction that is in part enabled by the ratepayers' payment of rates used to fund the ESOP that holds the shares upon which the subject dividends were paid.

<u>Accumulated Deferred Income Taxes ("ADIT")</u>

This issue arises from the fact that the Internal Revenue Code ("Code") allows for accelerated and bonus depreciation and immediate expensing as "repairs" for tax purposes when the per books accounting for utility plant involves straight line depreciation over many years. Thus, while an asset may be depreciated over its 30 or 40 year useful life for book purposes, the Code allows either immediate expense treatment or rapid depreciation of that asset for tax purposes. The result is that the taxpayer puts off, or defers, its income tax liability for many years because, for tax purposes it is reporting depreciation expense that greatly exceeds the actual depreciation of the

[35] Brosch Surrebuttal, Ex. 502, p. 20, l. 19 – p. 21, l. 5.

assets.[36] "ADIT balances represent a form of zero-cost capital to the utility created by the income tax savings permitted under tax laws and regulations where such savings are not immediately 'flowed through' to ratepayers and would benefit only shareholders unless properly recognized as a rate base deduction."[37] Ameren Missouri estimated that through July 2012, Missouri's net ADIT balance for inclusion in rate base will exceed $2 billion.[38] However, Ameren Missouri has excluded from its ADIT balance the ADIT that was related to CWIP ($6.3 million revenue requirement), Sioux construction accounting ($1 million in revenue requirement), and Taum Sauk ($1 million in revenue requirement).[39] Ameren Missouri now agrees with the Sioux and Taum Sauk adjustments.[40] In Ameren Missouri's prior rate case it agreed with Staff to reduce its rate base by the amount of the ADIT for these accounts.[41] There are no changed circumstances that support Ameren Missouri's departure from the last rate case in its treatment of ADIT in this case.[42] In this case, Staff did not timely address the issue in its direct filed case, due to an oversight, but does fully support witness Brosch in his proposal to continue to reduce rate base by the amount of ADIT for CWIP.[43]

Ameren Missouri does not identify any FERC authority or other state rate order supportive of its position to change this commission's previous treatment of CWIP-related ADIT balances. It should be noted that Ameren Missouri's sister company, Ameren Illinois, proposes no similar adjustment to exclude CWIP-related ADIT in its pending rate case.[44] Ameren Missouri has failed to show that any changed circumstances now justify excluding these ADIT balances in computing Ameren Missouri's Missouri rate base.

---

36 Brosch Direct, Ex. 500, pp. 30-32.
37 Brosch Direct, Ex. 500, p. 32, ll. 17-20.
38 Brosch Direct, Ex. 500, p. 32, ll. 112-5.
39 Brosch Direct, Ex. 500, p. 4, p. 34, ll. 15-19.
40 Warren Surrebuttal, Ex. 225, p. 13, l. 15 – p. 14, l. 3.
41 Cassidy Surrebuttal, Ex. 235, pp. 11-2; Brosch Direct, Ex. 500, p. 34, ll. 15-19.
42 Brosch Direct, Ex. 500, p. 35, ll. 1-4.
43 Cassidy Surrebuttal, Ex. 235, pp. 11-2.
44 Brosch Direct, Ex. 500, p. 39, ll. 13-17.

Ameren Missouri seeks to exclude CWIP-related ADIT on the basis that CWIP-related ADIT should be treated in the same manner as CWIP plant ("Since CWIP is excluded from rate base, CWIP-related ADIT should be excluded as well").[45] Stated simply, Ameren Missouri's exclusion of CWIP-related ADIT is unfounded because CWIP does earn an allowance for funds used during construction ("AFUDC"). The AFUDC fully compensates Ameren Missouri for its investment in construction projects prior to their placement in service.[46] A simple example demonstrates the error of Ameren Missouri's proposed departure from the last rate case:

> Consider a simplified example, where a utility is assumed to be constructing a single asset costing $1 million over a construction period of one year that will be funded fully at the beginning of construction, but will remain in CWIP and earning AFUDC at an assumed 10 percent rate throughout the year of construction. Assume also that the utility has elected "repairs" tax accounting for this asset, allowing the full cost of the asset to be immediately deducted for income tax purposes in the current tax year. The value of the income tax deduction for this project being treated as a deductible "repair" at a 38 percent federal/state tax rate would result in an immediate $380,000 income tax deferral to the utility, requiring the accrual of CWIP-related ADIT that reduces the utility's actual out-of-pocket investment in the new asset to only $620,000 after taxes.
>
> However, AFUDC will be accrued at 10 percent on the gross CWIP cost for the full year the asset is in CWIP, resulting in Plant-in-Service added to rate base of $1.1 million ($1 million plus $100,000 of AFUDC) with no recognition given to the CWIP-related ADIT in accruing AFUDC. Clearly, when the AFUDC rate is applied to the entire $1 million of gross investment, with no reduction for CWIP-related

[45] Brosch Direct, Ex. 500, p. 4, p. 35, ll. 18-23.
[46] Brosch Direct, Ex. 500, p. 4, p. 36, ll. 1-6, 18- p. 37, l. 4.

AFUDC, the utility is fully compensated for its gross investment in this asset. In this example, the $100,000 of allowed AFUDC on a gross $1 million investment, when the utility's after-tax net investment is only $620,000, would significantly overstate AFUDC and future rate base. This is why CWIP-related ADIT balances must be recognized immediately in rate base, even though the CWIP investment not included in rate base earns an AFUDC return.[47]

In order for established AFUDC to work correctly, CWIP-related ADIT balances must be included in rate base and Ameren Missouri's proposed departure from the last rate case should be rejected.[48]

IV. Ameren Missouri's Proposed Plant in Service Accounting ("PISA") Treatment

Ameren Missouri's proposed PISA treatment would allow it to defer, and later recover in a rate case: (1) a return on plant that it has placed in service but not yet included in rate base; and (2) that plant's depreciation expense between the time that the plant is placed in service and the time that it is included in rate base. The Staff, the MIEC, the OPC, and other consumer groups oppose this extraordinary regulatory treatment. Allowing such extraordinary regulatory treatment is bad public policy as evidenced by the fact that no other utility in Missouri, and in fact, no other utility in the country has been granted this extraordinary regulatory treatment,[49] nor is it discussed in any treatise, authoritative text, journal article, PSC decision, or court case.[50]

The proposed PISA accounting treatment would apply only to <u>certain</u> plant placed in service but not yet included in rate base. It would apply only to non-revenue producing plant--plant that

[47] Brosch Direct, Ex. 500, p. 37, l. 13 – p. 38, l. 9.
[48] Brosch Direct, Ex. 500, p. 38, ll. 13-6.
[49] Barnes testimony, Tr. 580.
[50] Barnes testimony, Tr. 582-3.

replaces existing plant and that does not create a new revenue stream.[51] The PISA accounting treatment would not track either the cost of new revenue producing plant nor the revenues that plant creates.[52] Although historically Ameren Missouri has greatly benefited from revenues created by new revenue producing plant prior to the plant's inclusion in rate base, Ameren Missouri never proposed PISA-type accounting treatment to record those revenues for the benefit of ratepayers in a later rate case.[53] Unlike cost tracker mechanisms, the PISA proposal can never benefit ratepayers; it can only cause rates to increase.[54] Moreover, unlike other trackers, the cost tracked is not volatile.[55] PISA also does not fit the traditional standard for other trackers because the costs of newly installed utility plant is not beyond the control of management.

The increased revenue requirement PISA will cause ratepayers to incur starting with the next rate case will be approximately $6 million per year for 30 or 40 years. But that is only the first iteration of PISA. Ratepayers can expect pancaked PISA increases, whether similar, higher or lower, in each subsequent rate case with the increases stacked on top of each other.[56] Imagine how many rate cases will be filed before ratepayers would be relieved of the first iteration of cost, $6 million per year, that PISA would trigger in the next rate case.

PISA accounting would be a departure from traditional cost of service ratemaking.[57] The testimony is virtually devoid of any testimony regarding plant that Ameren Missouri did not build, but would have, had it already enjoyed PISA accounting treatment. Ameren Missouri is already encouraged by the Tax Code to invest in plant. Indeed, Ameren Missouri conceded that the Accumulated Deferred Income Taxes ("ADIT") benefits serve the same purpose as the proposed

---

[51] Barnes testimony, Tr. 583.
[52] Barnes testimony, Tr. 583.
[53] Barnes testimony, Tr. 583.
[54] Barnes testimony, Tr. 584; Cassidy testimony, Tr. 744.
[55] Barnes testimony, Tr. 621.
[56] Barnes testimony, Tr. 674-5.
[57] Barnes testimony, Tr. 606.

PISA accounting, namely to encourage investment.[58] That is because the Code allows assets to be depreciated much quicker for tax depreciation than for book depreciation, having the impact of increasing cash flows by deferring income taxes, working as an interest-free loan from the government. Ultimately, the historical adequacy of utility investment levels is revealed in the quality of service that is provided to ratepayers. On this point, Ameren Missouri indicates that its service quality in Missouri is good [cite], suggesting that the absence of PISA has not discouraged management from making the investments actually needed to provide safe and adequate service.

If this Commission concludes that Ameren Missouri's current rate of investment in plant is optimal, then even Ameren Missouri concedes that there is no need for PISA, at least from the ratepayers' perspective. At that point, it is simply just another request to the Commission to allow it more revenue and higher earnings.[59] It would be no different than asking the Commission to simply award Ameren Missouri a higher ROE, and that is no doubt why the witnesses almost uniformly believe that the allowance of PISA accounting should accompany a reduction in allowed ROE.[60]

As explained in the Policy section of this brief, Ameren Missouri has not demonstrated a need for further regulatory enhancements at this time. It apparently has no trouble selling its bonds.[61] Utilities are viewed at this time as a quality investment to which investors are fleeing from other investments.[62] And the costs addressed in the PISA proposal are costs that Ameren Missouri can recover under traditional ratemaking by correctly timing its rate cases.[63] Once it places significant plant in service, Ameren Missouri can determine whether it needs to recover a return on, and depreciation of, those assets or whether its other costs have declined, or revenues increased, sufficient to obviate the need to file a rate case. The very real basis for mischief under the PISA

---

[58] Barnes testimony, Tr. 593.
[59] Barnes testimony, Tr. 591.
[60] Cassidy testimony, Tr. 742; Brosch testimony, Tr. 793; Robertson testimony, Tr. 772-5.
[61] Barnes testimony, Tr. 609.
[62] Barnes testimony, Tr. 610.
[63] Barnes testimony, Tr. 603; Cassidy testimony, Tr. 741, 755.

proposal, is that Ameren Missouri could be over-earning between rate cases (with or without weather normalization), then put off the filing of the next rate case, all while it still defers and accrues PISA qualifying costs that it will pass through to ratepayers during the next rate case. This mischief occurs precisely because of the lack of proper matching of changed expenses and revenues during that period in the absence of traditional rate case review.

The PISA proposal is bad public policy because it involves single-issue ratemaking—it tracks, between rate cases, only the known-to-be increasing carrying cost and depreciation of newly added non-revenue producing assets, while ignoring other costs that may be declining or revenues that may be increasing. Indeed, multiple witnesses noted that O&M expenses may be declining as the result of replacing old, outdated assets with new, more efficient and reliable, assets.[64] Witness Brosch said it best in response to a question from the bench:

> **Q. I think I also heard you say, though, that once that asset is placed in service, there may be some countervailing expense that's offset because of that new piece of equipment being in service?**
>
> A. There can be incremental expenses. There can be cost savings. There can be -- there often is in a replacement scenario the retirement of an existing asset, the capitalization of a new asset, the cessation of depreciation on the old asset, the commencement of depreciation on the new asset. The elegance of the traditional model is, we provide an opportunity, indeed an obligation[,] to quantify and update all of those things instead of looking in isolation at this one known increase in costs and picking it out for preferential or extraordinary rate treatment, and that's why it's objectionable.[65]

[64] Cassidy testimony, Tr. 738; Brosch Direct, Ex. 500, p. 22, ll. 12-18.
[65] Brosch testimony, Tr. 797.

All witnesses on this issue, other than Ameren Missouri witnesses, agreed that PISA accounting would lower Ameren Missouri's risk by shifting that risk from shareholders to ratepayers. Accordingly, they all agreed that if PISA accounting were adopted, the Commission should grant Ameren Missouri a lower ROE than it otherwise would grant.[66] Admittedly, no witness proposed a particular adjustment to ROE.[67]

Another argument that Ameren Missouri advances in support of its PISA proposal involves its currently allowed recovery of Allowance For Funds Used During Construction ("AFUDC").[68] Under FERC accounting standards, a utility is allowed to accumulate and defer AFUDC, which is a calculation of its construction carrying costs up to the point where the constructed plant is placed into service.[69] Ameren Missouri argues that it is unfair to allow it a return on the plant while under construction but then allow no return until the next rate case once the plant is placed in service. In response, witnesses noted that under Missouri law, utilities cannot recover costs of assets until they are placed in service, and anytime thereafter, the utility may file a rate case to include those newly constructed assets in rate base for recovery. At that time, the utility controls when it will recover the cost of those assets by filing its rate case.[70] Witness Brosch explained why Ameren Missouri is wrong on this argument:

> **Q. And she [Lynn Barnes] makes the argument that it doesn't really make sense to allow that accrual during that period but then not allow for it from the time that the plant's in service to the time that the new rates are set. And it's a fairness argument. How do you respond to why is it fair to allow the**

---

[66] Cassidy testimony, Tr. 742; Brosch testimony, Tr. 793; Robertson testimony, Tr. 772-5.
[67] *Id.*
[68] Barnes Rebuttal, Ex. 12 NP, p. 20, ll. 4-23.
[69] Cassidy testimony, Tr. 756.
[70] Cassidy testimony, Tr. 755.

AFUDC accrual at one period but not for that period once the plant's in service?

A. It seems intuitively correct, but it's absolutely wrong. The AFUDC return is allowed on CWIP investment because CWIP investment is not eligible for rate case inclusion particularly in Missouri by act of law. In many other states it's not included -- CWIP is not included in rate base as a matter of regulatory policy. AFUDC provides a return during that period of construction.

Then when construction is completed and the asset is placed in service, everything changes. When I say everything changes, what I mean is when you complete construction on an asset that's replacing another asset, there's a retirement of the old asset, installation of the new asset. If the old asset was creating or contributing to maintenance problems, there may be O&M savings. If the new asset is the installation of new technology that brings new efficiencies to the business, there may be displacement of operating expenses.

So the general ratemaking framework says for assets that are completed and in service they are eligible to be considered along with the rest of rate base whenever the utility elects to bring a rate case. **The importance of that election is when the utility brings a rate case, they have to make accounting for everything that changed. They have to update the billing determinants, the sales volumes and revenues. They have to tell you about how many employees they have today, what the labor and non-labor costs are today. They have to update the full gamut of what touches the revenue requirement, and that achieves the matching that's important**.

> If you look in isolation at a particular asset, this pattern is routine and recurring literally continuously. Utilities are in both the construction business and the utility business. They're constantly building and replacing assets. AFUDC answers the problem of those assets not being includable and able to earn a return through rate base. That problem stops when the asset is placed in service and the utility can make the decision to bring a rate case forward, account for all of the changes in its costs and revenues and tell you what its revenue requirement is.[71]

In conclusion, Ameren Missouri has not demonstrated a need for departure from traditional cost of service ratemaking, a process that has allowed Ameren Missouri to over-earn since the early 90s through 2006, and as recently as the 12-month period ending June 2012. The Commission recently has generously bestowed a number of trackers, an FAC, and true-up accounting to address Ameren Missouri's concerns. All of the parties should give these extraordinary mechanisms some time to see how they impact Ameren Missouri. Ameren Missouri's under-earning for some recent periods is more likely the result of an anemic economy and the choices made by utility management rather than an indictment of the regulatory compact that has served Missouri for over one hundred years. Last, and most significantly, the PISA proposal is bad public policy in that it involves single-issue ratemaking and should not be allowed for this or other Missouri utilities for this reason alone.

V. Property Tax Refund

As Chairman Gunn succinctly noted at the hearing in this case, it takes a lot of "chutzpah" for Ameren Missouri to argue with a straight face that it should not be required to reimburse ratepayers the $2.9M it received as a 2010 property tax refund.[72] In the last rate case, ER-2011-0028,

[71] Brosch testimony, Tr. 795-7. (emphasis added)
[72] Tr. 973, ll. 16-17.

Ameren Missouri requested and received a property tax level of $129M.[73] However, the Commission expressly noted in that case's Report and Order:

> 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.[74]

It is undisputed that as a result of its 2010 property tax appeal, Ameren Missouri received a $2.9M refund.[75] It is also undisputed that Ameren Missouri was aware of the Commission's expectation that it would both track and reimburse Missouri ratepayers in the amount of any refund.[76] It is also undisputed that Ameren Missouri has failed to provide any evidence of the hard-to-imagine circumstance that would justify its refusal to reimburse customers the refunded amount. Accordingly, Ameren Missouri should be ordered to refund to Missouri rate payers $2.9M, which constitutes the amount of Ameren Missouri's 2010 property tax refund.

VI. Property Tax

Ameren Missouri's Property Tax request violates several fundamental ratemaking principles including the "known and measurable" standard, the test-year and true-up standard, and the "all relevant factors" principle. At the hearing in this case, counsel for Ameren Missouri urged the Commission to carefully consider the testimony of Ms. Cudney, Ameren Missouri's witness on this issue, and to take full advantage of her expertise on property taxes. However, when Ms. Cudney took the stand, it became apparent that Ms. Cudney had little to no knowledge of how property taxes should be addressed within the arena of ratemaking. That is, Ms. Cudney was unfamiliar with

---

[73] Report and Order, ER-2011-0028, pp. 109-10.
[74] *Id.*
[75] Tr. 973, l. 16 - 974, l. 6.
[76] Tr. 971, l. 16 - 972, l. 14.

the concept of a test year, did not know what the test year is in this case, did not understand the concept of a true-up period, was not familiar with the concept of "all relevant factors" and had only a cursory understanding of the principle of "known and measurable."[77] In other words, while Ms. Cudney may possess a level of expertise on property taxes in general, she possessed little understanding of how property taxes should be addressed within the ratemaking process.

In this case, Ameren Missouri is seeking a property tax level between $128M and $130M. There are at least three major problems with Ameren Missouri's request: (1) the true-up problem; (2) the known and measurable problem; and (3) the all relevant factors problem. First, Ameren Missouri is advocating for an estimated property tax level that will be paid on December 31, 2012, which is six months after the true-up period in this case. Such a request expressly violates the cut-off period for the true up. Second, Ameren Missouri does not know the 2012 tax rates that will be applied to the properties at issue in this case. As such, Ameren Missouri's request fails to satisfy the longstanding principle of setting rates based only upon known and measurable items. And third, Ameren Missouri's request fails to contemplate all relevant factors. That is, Ameren Missouri's CEO and President, Mr. Warner Baxter admitted that Ameren Missouri has refinanced a large amount of outstanding debt, and anticipates that Ameren Missouri will incur a large savings beginning in 2013. Indeed, Ameren Missouri witness Mr. Martin testified that the anticipated annual savings from this transaction "should generate annual savings of up to $5M."[78] However, when asked by MIEC to reveal the impact of the savings on Ameren Missouri revenue requirement, Ameren Missouri responded as follows: "Ameren Missouri's recent debt issuance occurred after the true up cut-off date in this case. Consequently, the debt issuance <u>has no impact on the revenue requirement in this case</u>."[79] That is, Ameren Missouri contends that <u>savings</u> outside the true-up date

[77] Tr. 1009, l. 25 - p. 1011, l. 20.
[78] Tr. 1509, ll. 21-25.
[79] Ameren Missouri Response to MIEC Data Request 24.3, Ex. 528 (emphasis added).

in this case have no impact on revenue requirement, but expenses incurred outside the true-up period in this case *should* impact the Company's revenue requirement. Ameren Missouri's proposed double standard is untenable.

In other words, Ameren Missouri wants to have its cake and eat it too. Ameren Missouri asks this Commission to consider an immeasurable expense it may incur outside the true-up period in this case, but does not want the Commission to contemplate known savings that it will incur outside the true-up period. In other words, Ameren Missouri seeks to violate the true-up period to reflect expenses, while invoking the true-up period to avoid reflecting debt savings. Ameren Missouri cannot have it both ways.

MIEC's position is much simpler than Ameren Missouri's and comports perfectly with standard ratemaking procedure. That is, MIEC asks this Commission to set the property tax level in this case on the known and measurable property tax expenses incurred by Ameren Missouri in 2011. Moreover, the MIEC proposes that the Commission should not include taxes that will be paid beyond the true-up period in this case, as such expenses fall outside of the cut-off for inclusion in this case. Nor does MIEC ask the Commission to reach out beyond the cut-off for debt refinancing that will reduce the cost of service. MIEC asks the Commission to uphold the cost measurement boundaries it established for consideration through the approval of a July 31, 2012 true-up cut-off date.

VII. Renewable Energy Standard ("RES") Costs

Ameren Missouri's request to include a level $7.8M as an ongoing level of expense for its Renewable Energy Standard ("RES") costs directly violates Commission Rule 4 CSR 240-20.100, and as such, should be denied. Moreover, Ameren Missouri's request to amortize the expenses incurred through the true-up period over two years with the unamortized balance included in rate base is unreasonable in light of the Commission's Rules and the Commission's Report and Order in ER-2011-0028. Accordingly, for the reasons set forth below, the Commission should include the prudently incurred RES costs (in excess of the amount of solar rebate expense established in the last rate case) through the July 31, 2012 true-up period.[80] Moreover, Ameren Missouri's operating expenses should reflect an amortization of this amount over a six-year period. Any RES costs incurred after July 31, 2012 should be deferred through the next general rate proceeding as contemplated by 4 CSR 240-20.100(6)(D).[81]

Proper Recognition of RES Costs

In this case, Ameren Missouri proposes to include in base rates $7.8 million of RES costs as an ongoing level of expense. Including an ongoing level of expense could be permissible under the Commission Rules if Ameren Missouri had filed for a Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM").[82] However, Ameren Missouri has not filed for a RESRAM.[83] Under 4 CSR 240-20.100, if a utility has not filed a RESRAM, the utility can only collect RES costs in rates through a second alternative. The second alternative, based on the Commission Rule, specifies the following:

> (D) Alternatively, an electric utility may recover RES compliance costs without use of 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

[80] Meyer Direct, Ex. 510, p. 7, ll. 18-27.
[81] Meyer Direct, Ex. 510, p. 7, l. 18 - p. 8, l. 8.
[82] 4 CSR 240-20.100
[83] Meyer Direct, Ex. 510, p. 6, ll. 15-16.

> 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.[84]

Ameren Missouri interprets the above language as allowing a utility to establish a base level of expenses and then track that level against actual expenditures between rate cases. Ameren Missouri's interpretation, however, finds no basis in the above language. The rule expressly contemplates that a utility can defer RES costs in between rate proceedings in a regulatory asset and calculate a carrying charge on the balance. There is absolutely no mention of tracking the actual level of costs included against the level included in rates. Ameren Missouri cannot point to any language in the rule that supports its request.

Moreover, Ameren Missouri's interpretation of the rule is illogical.[85] If rates already included an expense level, it would be inappropriate to defer the total cost of RES and calculate a carrying cost on the balance. If a tracker were intended by the Rule, only the difference between the amount included in expense and actual RES costs would be accumulated between cases. A carrying cost would be calculated on only the difference. The Rule is devoid of any language describing the mechanics of tracking RES cost.

It also should be noted that On page 133 of the Staff's Revenue Requirement Cost of Service Report in this case, Staff agrees with MIEC's contention that Ameren Missouri's proposed ratemaking treatment is not in compliance with the rules. Quoting from the Report, staff states: "Ameren Missouri's direct filed case differs from either of the two options discussed above and proposes a treatment not authorized by rule."[86] Accordingly, both the MIEC and Staff agree that

---

[84] Code of State Regulations, 4 CSR 240-20.100 Electric Utility Renewable Energy Standard Requirements.
[85] See Generally Meyer Surrebuttal, Ex. 511, p. 3, l. 7 - p. 4, l. 16.
[86] Staff Cost of Service Report, Ex. 202.

Ameren Missouri's proposed ratemaking treatment for RES costs will violate Commission Rule. While it is true that in the last rate case, the issue of compliance with the Commission Rule was not challenged by any party, prior to this case, it was discovered that Ameren Missouri's proposal violates the Commission Rule, and therefore the issue has been brought to the Commission's attention. MIEC proposes that in this case and going forward, Ameren Missouri be directed to recover RES costs in a way that is contemplated by the Commission's Rule.

In sum, Ameren Missouri's proposal violates Commission Rule and thus should be denied. On the other hand, the MIEC's proposal is in total compliance with Commission Rule, and thus, should be adopted in this case.

Amortization

The Commission should adopt MIEC's recommendation for a six-year amortization and rate base inclusion of the unamortized balance of Ameren Missouri's RES costs, as such a recommendation reflects the reasoning in the Commission's Order in ER-2011-0028. Ameren Missouri proposes to amortize the RES expenses incurred through the true-up period ($7.8 million) over two years with the unamortized balance included in rate base.[87] The Staff has proposed two alternatives. One alternative is to amortize the expenses incurred through the true-up over a three-year period with no rate base recognition of the unamortized balance. The second alternative, which is the same as MIEC, is to amortize the expenses over six years with rate base recognition of the unamortized balance.[88]

In the last case, the MIEC proposed a ten-year amortization for RES expense.[89] Ten years was advocated by MIEC as that was the period that the Commission Rule noted was the appropriate

[87] Meyer Surrebuttal, Ex. 511, p. 5, ll. 11-21.
[88] *Id.*
[89] Meyer Surrebuttal, Ex. 511, p. 5, l. 22 - p. 6, l. 15.

life for solar projects.[90] However, the Commission noted in its last Report and Order that ten years was too long. Therefore, the MIEC has recommended a six-year amortization consistent with the Commission's Order regarding Ameren Missouri's energy efficiency program.[91] Ameren Missouri's proposed two-year amortization is simply too short, given the Commission's determination regarding energy efficiency costs, and Ameren Missouri has provided no support for such a short period of time.

The MIEC has presented the RES issue in a way that is consistent with the Commission Rule. The Staff agrees that Ameren Missouri's proposal violates the Commission Rule. The MIEC thus proposes that the Commission enforce its Rule and reject Ameren Missouri's proposal to establish a base level of expense for RES costs. The MIEC also believes a six-year amortization period is appropriate in light of the Commission Rule and prior orders. Ameren Missouri's two-year amortization period for these expenses is not justified and should be denied.

VIII. Coal In Transit

The Commission should reject Ameren Missouri's request for an additional $7M in revenue requirement for Ameren Missouri's coal-in-transit, because such a request would result in double recovery, and Ameren Missouri cannot present any evidence that this additional amount is justified even by its own internal inventory models. In addition to the 43% increases over and above the "least cost inventory" amount as determined by Ameren Missouri's own inventory model, Ameren Missouri, in what can only be described as an unreasonable grab for additional revenue, is asking to include in its coal inventory, coal for which it has not paid that is in transit from the mine to the generating plant.

---

90 *Id.*
91 *Id.*

Ameren Missouri employs a Utility Fuel Inventory Model ("UFIM") to develop reasonable low-cost inventory policies.[92] The goal of UFIM is to balance the cost of building and maintaining fuel reserves with the risk of running out of fuel.[93] UFIM requires a number of inputs to generate a reasonable level of coal inventory, including power prices, fuel cost, holding cost of fuel, fuel supply and demand, and disruptions in fuel supply. All of those key inputs were factored into UFIM's analysis.[94] Ameren Missouri seeks, and the MIEC does not object to a level of coal inventory that far exceeds the least cost inventory amount established by Ameren's own UFIM.[95]

However, in addition to this large increase over and above Ameren Missouri's own model, Ameren Missouri seeks an additional $7M for coal in transit, or coal that has not yet arrived at Ameren Missouri's generating plants. Ameren Missouri's request would result in double recovery, because Ameren Missouri's own witness admits that it does not pay for the coal until approximately two weeks after it takes possession of the coal when it is loaded into the rail cars.[96] This interval of time is captured in the Company's and staff's cash working capital analysis.[97] Separately requesting coal in transit as coal in inventory would result in double recovery for the period of transit. As such, Ameren Missouri's request for recognition of coal in transit should be denied, as it makes no sense, would result in double recovery, and is far in excess of the Company's own coal inventory policy. As such, Ameren Missouri's request for a revenue requirement for coal in transit should be denied.

---

[92] Meyer Surrebuttal, Ex. 510, p. 27, ll. 15-20.
[93] *Id.*
[94] Tr. 1393, l. 8 - 1394, l. 15.; 1395, l. 19 - 1396, l. 5.
[95] Tr. 1399, l. 21 - 1400, l. 11.
[96] Tr. 1401, ll. 10-17.
[97] Tr. 1440, ll. 2 - 24.

IX. The Commission Should Deny Ameren Missouri's Request for Special Accounting to Recover Ameren Missouri's Voluntary Separation Expenses Incurred Between Rate Cases ("VS11")

This is a simple and straightforward issue. None of the facts are in dispute.[98] Between rate cases, and starting in late 2011, Ameren Missouri offered its employees various incentives to voluntarily separate from employment with Ameren Missouri.[99] As a result, beginning in late 2011 and continuing through 2012, 341 employees terminated their employment with Ameren Missouri.[100] The cost of the incentives offered to these employees was almost $26 million.[101] The savings that Ameren Missouri will have realized between rate cases (until January 3, 2013), and thus not reflected in its rates in effect at the time of the savings, will be approximately $26 million.[102] Thus, there was no net cost to Ameren Missouri from VS11.[103] Ameren Missouri does not dispute that fact.[104] Nevertheless, Ameren Missouri argues that it should be allowed a recovery of the $26 million gross cost of VS11, to be amortized over 3 years.[105] Ameren Missouri's bases for the requested $26 million bonus are: (1) that if Ameren Missouri derives no benefit to its bottom line from cutting its work force, it will have no incentive to lower its payroll costs; and (2) under its approved rates at the time, it under-recovered its other payroll costs.[106]

Ameren Missouri's arguments are unfounded. Ameren Missouri is already required to prudently incur costs and is thus incented by law to avoid incurring costs that are unnecessary.[107] Moreover, its request to the Commission that it grant Ameren Missouri a bonus at the expense of

---

[98] Brosch Direct, Ex. 500, p. 38, ll. 13-6.
[99] Carver Direct, Ex. 513, p. 28, ll. 4 – 27.
[100] Carver Direct, Ex. 513, p. 38, ll. 13-6.
[101] Carver Direct, Ex. 513, p. 26, ll. 16-18.
[102] Ferguson testimony, Tr. p. 1660.
[103] Ferguson testimony, Tr. p. 1659.
[104] Barnes Rebuttal, Ex. 012HC, p. 17, l. 1.
[105] Carver Direct, Ex. 513, p. 25, ll. 16–20.
[106] Barnes Rebuttal, Ex. 012HC, p. 17, ll. 9-14.
[107] Carver testimony, Tr. pp. 1813-4.

tomorrow's ratepayers to retroactively compensate it for its alleged under-recovery from yesterday's ratepayers reeks of illegal retroactive ratemaking.[108]

Ameren Missouri presents this issue as one purely of policy and that the Commission has every right to grant this bonus to Ameren Missouri.[109] But Ameren Missouri cites no law creating an exception to cost of service ratemaking. By definition, Ameren Missouri is seeking to recover from tomorrow's ratepayers $26 million more than the demonstrated cost to serve them, and indeed $26 million more than the net past cost to Ameren Missouri for this one expense. Moreover, the policy that Ameren Missouri advances is ill-advised to say the least. Regulated utilities are required to incur their costs prudently.[110] That is part of the regulatory compact that they accept. To reward utilities with bonuses for doing what the law already requires them to do is bad public policy that could easily lead to mischief.

Last, this Commission has already addressed this issue and rejected a similar claim in Case No. GR-96-285, Missouri Gas Energy ("MGE"). There, like here, the utility proposed to recover severance costs over three years. There, like here, the utility had already offset those costs with payroll savings. This Commission soundly rejected the requested bonus:

> The Commission finds that MGE's position is based upon fallacious reasoning. … MGE overlooks the substantial cash flow savings that it has achieved by terminating the employees. The Commission will not allow MGE to charge ratepayers the cost associated with employee severances where MGE has already recovered those costs.[111]

---

[108] Carver Surrebuttal, Ex. 515, p. 6. 1. 1 – p. 7, l. 10.
[109] Ameren Missouri Opening Statement, Tr. 1793.
[110] 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. Case Nos. EO-85-17 and ER-85-160, 27 Mo. P.S.C. (N.S.) 183, 193 (Mo. PSC 1985) (finding that approximately $383,716,000 of the Callaway-related rate base expenditures and associated AFUDC should not be recovered from ratepayers since they represent inefficient, imprudent, unreasonable or unexplained costs).
[111] In the Matter of Missouri Gas Energy's Tariff Sheets Designed to Increase Rates for Gas Service in the

In conclusion, there are no net severance costs for Ameren Missouri to recover from ratepayers. As a matter of policy, the Commission should not award a bonus to Ameren Missouri, at the expense of ratepayers, to reward Ameren Missouri for prudently incurring its payroll costs.

X. Return on Equity ("ROE")

Ameren Missouri's capital structure, as described in the testimony of Ryan J. Martin is comprised of long-term debt (46.802%), preferred stock (1.062%), and common equity (52.136%).[112] There is no dispute in this case concerning the Company's proposed capital structure or the costs associated with its long-term debt and preferred stock. The cost attributable to the Company's common equity, on the other hand, must be set by the Commission based on a determination of the reasonable expectations of investors. As MIEC witness Michael Gorman explained, "[a] utility's cost of common equity is the return investors require on an investment in the utility. Investors expect to achieve their return requirement from receiving dividends and stock price appreciation."[113]

In Ameren Missouri's last rate case, the Commission found that the appropriate return on equity ("ROE") for Ameren Missouri was 10.2%.[114] Since the Commission issued this report and order on July 13, 2011, the cost of capital—including the cost of common equity—has decreased. As Mr. Gorman explained, there is "clear evidence that capital market costs today are much lower than they were in 2011 when Ameren Missouri's rates were approved."[115] Ameren Missouri's witness Robert Hevert agreed that the cost of equity has decreased since the Commission issued the

Company's Service Area, Case No. GR-96-285 at pp. 28-9.

[112] Martin Direct, Ex. 23, Schedule RJM-E1.

[113] Gorman Direct, Ex. 507, p. 11, ll. 4-6.

[114] Report and Order, File No. ER-2011-0028, p. 74.

[115] Gorman Direct, Ex. 507, p. 4, ll. 8-11.

2011 order. As Mr. Hevert stated on cross examination, "I don't disagree that the cost of equity has gone down since the last rate case. The question is by how much."[116]

Despite this acknowledgement that the cost of equity has gone down since the last rate case, Ameren Missouri is recommending in this case that the Commission *increase* the allowed ROE for Ameren Missouri—from 10.2% to 10.5%.[117] This recommended return on equity is excessive and ignores the clear evidence that capital market costs have declined.[118] As explained below, Mr. Hevert's methodology and assumptions are flawed in several respects.

The appropriate ROE for determining Ameren Missouri's revenue requirement in this case is 9.3%, which is supported by Mr. Gorman's analysis.[119] Ameren Missouri challenged Mr. Gorman's conclusion in cross examination, asking him to make a number of adjustments to the risk premium calculations he used to estimate the cost of common equity.[120] But even with these adjustments (which for the reasons explained in Mr. Gorman's re-direct testimony are not reasonable), Mr. Gorman's analysis clearly indicates that the cost of common equity for Ameren Missouri is currently below 10%.[121] An ROE below 10% in this case would be consistent with the average ROE's awarded to integrated electric utilities in the second and third quarters of 2012, and the current downward trend of ROE awards.[122] The record in this case simply does not support Ameren Missouri's assertion that its ROE should be well above 10%. Moreover, if the Commission determines that it is appropriate to grant Ameren Missouri's request for plant in service accounting, the Company's ROE should be reduced to 9.2% which is at the lower end of Mr. Gorman's recommended range, to reflect the reduced investment risk associated with this change.[123]

---

116 Tr. 1548, ll. 2-4.
117 Hevert Surrebuttal, Ex. 22, p. 38, ll. 13-14.
118 Gorman Surrebuttal, Ex. 509, p. 2, ll. 11-12.
119 Gorman Direct, Ex. 507, p. 36, ll. 11-13.
120 Tr. 1736-1742.
121 Tr. 1771, ll. 8-25.
122 Ex. 530; Ex. 531; Commission Ex. A; Commission Ex. B; Tr. 1599, ll. 17-23; Tr. 1604, ll. 19-24; Tr. 1610, ll. 22-24.
123 Tr. 1687, l. 16 – 1688, l. 14.

Cost of Capital Decline

The record includes substantial evidence of a material decline in the cost of capital since Ameren Missouri's last rate case. Indeed, Ameren Missouri does not refute this decline in capital market costs; it simply chooses to ignore it and encourages the Commission to do the same. If, however, regulators are to consistently reflect fair returns on equity in a rate proceeding, then they must acknowledge declines in capital market costs and also increases in capital market costs. This sends a clear signal to investors and ratepayers that the earnings opportunity built into a utility's rate structure will be fair and balanced. If the Commission is not willing to decrease the authorized return on equity in the face of declining capital market costs, then it should not be willing to increase the authorized return on equity if capital market costs increase. This, of course, would threaten the financial viability of the utility which MIEC does not propose. Rather, a consistent and balanced regulatory treatment would be to reflect a fair and accurate estimate of Ameren Missouri's current market cost of equity for rate setting in this proceeding.

In this case, the evidence of declining capital costs is overwhelming. Since Ameren Missouri's last rate case, "A" rated and "Baa" rated utility bond yields have declined by 110 basis and 71 basis points, respectively.[124] Authorized returns on equity for electric utility companies have been steadily decreasing since Ameren Missouri's 2011 rate case. In the second quarter of 2012, many authorized returns on equity fell well below 10%[125], and in the third quarter of 2012 as demonstrated by MIEC's cross examination of Mr. Hevert, authorized returns on equity for many electric utilities remained well below 10%.[126] Indeed, even the Company's cost of equity analyses in this case are much lower than the results of the same analyses it offered in its last rate case. The record in this case shows that Mr. Hevert's DCF return studies in this case were 60 to 90 basis points lower than

---

[124] Gorman Direct, Ex. 507, p. 5, Table 1.
[125] Ex. 530; Tr. 1555, ll. 11-16.
[126] Ex. 531; Tr. 1557, l. 3 - 1560, l. 11.

the same studies he offered in Ameren Missouri's last rate case.[127] This is significant, because DCF studies are measured directly from utility stock prices and are a clear indication of reductions to required returns on equity based on stock investors' valuation of utility stocks.[128]

In sum, the overwhelming evidence in this case demonstrates that capital market costs have materially declined since Ameren Missouri's last rate case: Mr. Hevert's DCF return estimates are 60 to 90 basis points lower than they were in the last rate case; authorized returns on equity have declined by more than 50 basis points over the last several quarters; and utility bond yields have decreased by 70 to over 100 basis points since the last rate case. This evidence proves that the 10.2% ROE authorized by the Commission in Ameren Missouri's last case is substantially above the Company's current market cost of capital. Ameren Missouri's return on equity is now within MIEC's recommended return on equity range of 9.2% to 9.4% in this case.

Mr. Gorman's Recommendation: 9.3%

Mr. Gorman's recommended ROE for Ameren Missouri is based on several models that have been recognized by the Commission as providing a reasonable framework for determining Ameren Missouri's cost of common equity. Specifically in this case, Mr. Gorman used: (1) a constant growth Discounted Cash Flow ("DCF") model; (2) a sustainable growth DCF model; (3) a multi-stage growth DCF model; (4) a bond yield plus risk premium or "RP" model; and (5) a capital asset pricing model or "CAPM."[129] In the interest of arriving at a conservative recommendation for Ameren Missouri's ROE, Mr. Gorman relied solely on the average multi-stage growth DCF return, and not his other DCF results (which were lower), in setting the upper end of his recommended ROE range.[130] He also chose not to include his CAPM result (8.70%) in his recommended ROE

[127] Ex. 529; Tr. 1542, l. 4 – 1545, l. 23.
[128] Tr. 1546, ll. 4-20.
[129] Gorman Direct, Ex. 507, p. 11, ll. 20-23.
[130] Gorman Direct, Ex. 507, p. 26, Table 4, ll. 1-2.

range, finding it too low to be reasonable, and instead relied on his RP result of 9.2%.[131] Using these conservative assumptions, he arrived at a recommended range for Ameren Missouri's ROE is 9.2% to 9.4% with a midpoint of 9.3%.[132]

By comparing the key credit rating financial ratios for Ameren Missouri's retail cost of service in this case, adjusted for his 9.3% recommended ROE and the capital structure proposed by the Company, Mr. Gorman determined that an ROE of 9.3% will support an investment grade bond rating for Ameren Missouri.[133]

<u>Ameren Missouri's recommended ROE of 10.5% is excessive</u>

Ameren Missouri witness Hevert recommended an ROE for Ameren Missouri in the range of 10.25% to 11%, and specifically recommended that the Commission adopt an ROE of 10.5%.[134] As noted above, this represents an *increase* over the current authorized ROE of 10.2%, and in making this recommendation, Mr. Hevert "is simply ignoring relevant concrete market evidence that capital market costs have declined."[135] Mr. Gorman also noted the following flaws in Mr. Hevert's analyses: (1) he used excessive, unstable growth rates as the basis of his constant and multi-stage growth DCF results; (2) he failed to appropriately reflect the timing of dividend payments and included an unreasonable transition stage in his multi-stage growth DCF model; (3) his CAPM is based on inflated market risk premiums and beta estimates; and (4) he used an inflated utility equity risk premiums as the basis of his bond yield plus risk premium analysis.[136]

In addition, Mr. Hevert inappropriately included Empire District Electric ("EDE") in the proxy group he used in his DCF analyses. EDE eliminated its dividend payment in 2011 as a

---

131 Gorman Direct, Ex. 507, p. 36, ll. 9-13; Tr. 1720, l. 21-1721, l. 11.
132 Gorman Direct, Ex. 507, p. 36, ll. 9-13.
133 Gorman Direct, Ex. 507, p. 37, ll. 2-7.
134 Hevert Rebuttal, Ex. 21, p. 2, ll. 6-7.
135 Gorman Surrebuttal, Ex. 509, p. 2, ll. 11-12.
136 Gorman Direct, Ex. 507, p. 40 l. 17 – p. 41, l. 4.

consequence of the recent devastating tornado damage in its service territory.[137] For this reason, it should not be included in the proxy group. This error alone increased Mr. Hevert's multistage DCF results by 14-15 basis points and his constant growth DCF results by 32 basis points.[138]

Mr. Gorman revised Mr. Hevert's estimates by making "prudent and sound adjustments" to them.[139] The result of this analysis shows that Mr. Hevert's approach should have yielded an ROE recommendation in the range of 8.12% to 10.21% with a midpoint of 9.2%.[140] In addition, Mr. Hevert stated that although he could not quantify the impact, he took into consideration both regulatory lag and "earnings attrition" which had the effect of increasing his recommended ROE.[141] This assertion is not supported by the record in this case. As Mr. Gorman summed up, "Mr. Hevert's conclusion, that Ameren Missouri is less likely to earn its authorized return on equity than the companies in the proxy group, is based on flawed analysis and unsupported conjecture."[142]

For these reasons, the Commission should reject Ameren Missouri's recommendation that it be allowed an ROE of 10.5%. The Commission should authorize an ROE of 9.3% for Ameren Missouri in this case.

XI. FAC Tariff Issues

<u>The Commission Should Set the Sharing Mechanism in the FAC to 85 Percent Cost to Ameren Missouri and 15 Percent Cost to Ratepayers</u>

The MIEC supports the position of Staff that the sharing percentage in the FAC should be 85/15 and incorporates the briefing of Staff on this issue.

---

[137] Gorman Surrebuttal, Ex. 509, p. 6, ll. 2-6.
[138] Tr. 1633, l. 21 – 1634, l. 12; Tr. 1634, l. 21 – 1635, l. 20.
[139] Gorman Direct, Ex. 507, p. 41, ll. 7-12.
[140] Gorman Direct, Ex. 507, p. 42, Table 6.
[141] Tr. 1560, l. 23 – 1562, l. 23.
[142] Gorman Surrebuttal, Ex. 509, p. 18, ll. 9-11.

The Commission Should Not Allow Long Term Transmission Capacity Charge to Flow Through the FAC

At issue are MISO Schedule 26 and 26-A transmission charges and whether they currently, and in the future, are properly recovered under the FAC.[143] The Schedule 26-A charges are the most significant for the periods that will be covered under new rates.[144] Ameren Missouri did not even incur the Schedule 26-A charges until January 2012 and did not include them on any report to the Staff until March 2012.[145] And although Ameren Missouri was supposed to notify Staff of any significant changes in expenses or revenues, Ameren Missouri provided no such notice to Staff of the new Schedule 26-A charges.[146] Thus, it came as a surprise to both Staff and the MIEC when they learned that Ameren Missouri was flowing these expenses through the FAC.[147]

Ameren Missouri's current FAC tariff, and indeed the one proposed by Ameren Missouri in this case, allows recovery of certain transmission charges as the Cost of Purchased Power ("CPP") "incurred to support sales to all Missouri retail electric generations." But it excludes from such recovery "capacity charges for contracts with terms in excess of one (1) year[.]"[148] Certain MISO charges are short term charges to either support off-system sales or to support delivery of power purchases from entities not located on the MISO transmission system and, as such, are appropriate for recovery under the FAC tariff.[149] But the charges at issue are under contracts having terms of over one year.[150]

Ameren Missouri and the MIEC dispute whether the subject charges are "capacity" charges. Ameren Missouri argues that "capacity charges" means "generation capacity charges." Following the well-established rules of construction, the MIEC, unlike Ameren Missouri, does not read the

---

143 Dauphinais Surrebuttal, Ex. 519, p. 9, l. 11 – p. 13, 1. 7; Haro testimony, Tr. p. 1173.
144 Haro testimony, Tr. p. 1173.
145 Mantle testimony, Tr. p. 1214.
146 Mantle testimony, Tr. pp. 1214, 1216.
147 Dauphinais Surrebuttal, Ex. 519, p. 9, l. 16 – p. 10, l. 20.
148 Dauphinais Surrebuttal, Ex. 519, p. 13, 1l. 9-13; Barnes Direct, Ex. 011, Schedule LMB-E3, 3 0f 6.
149 Dauphinais Surrebuttal, Ex. 519, p. 13, 1l. 14-22.
150 Dauphinais Surrebuttal, Ex. 519, p. 13, 1. 8 – p. 14, l. 8.

word "generation" into the tariff. Additionally, the MISO tariff defines "capacity" as "the instantaneous rate at which energy can be delivered, received or transferred including energy associated with operating reserve measured in megawatts." The concept of energy "transfer" is entirely consistent with the concept of transmission capacity.[151] Moreover, MISO Schedule 1, 2, 7, 8 and 26 transmission charges are billed on the basis of "reserved capacity" for point-to-point transmission service and MISO Schedule 1, 2 and 26 transmission charges are billed on the basis of the transmission customer's demand at the time of the monthly system peak for Network Transmission Service. MISO Schedule 26-A transmission charges are currently recovered on the basis of energy consumption. However, that allocation method is currently the subject of a federal court challenge and the charge is associated with the recovery of fixed costs such as the capital cost for transmission facilities and fixed O&M costs for those facilities. Thus, MISO Schedule 26-A transmission charges, which only went into effect this past January, are capacity charges as well despite their current cost allocation method.[152] Thus, the plain words of the FAC tariff, both in effect now and as proposed, exclude recovery of these long term transmission charges as "capacity charges." And those plain words are entirely consistent with the technical meaning of "capacity" given in the MISO tariffs.

Ameren Missouri also accuses Staff of changing positions on this issue. But as indicated above, the majority of the expenses at issue were first included in reports filed with Staff in March 2012, and that first report did not give Staff notice that Schedule 26-A expenses were now a part of the report.

In summary, and contrary to Ameren Missouri's assertions, it is Ameren Missouri that seeks to change the status quo. The MIEC recognizes that the Commission is empowered to rewrite the FAC tariff however it sees fit, within the bounds of section 386.266.1, as part of its Report and

---

[151] Dauphinais testimony, Tr. pp. 1352-3. (emphasis added)
[152] Dauphinais testimony, Tr. pp. 1357-9.

Order in this case. For the reasons that follow, this Commission should not allow the transmission charges at issue to flow through the FAC because to do so is bad public policy and violates section 386.266.1.

Section 386.266.1 provides:

> 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.

Ameren Missouri claims that the long term transmission expenses are "transportation" costs for its purchased power, but are they? As the Office of Public Counsel noted in his opening statement, we call the mechanism at issue a "fuel adjustment clause" or FAC. We do not call it a "fuel and purchased power and regional nongovernmental agency membership cost adjustment mechanism."[153] Indeed, Mr. Haro, an electrical engineer, conceded that, in contrast to the way natural gas moves in a gas pipeline, electrons excite other electrons on the transmission line but that the original electrons coming out of the power plant do not really travel to the end of the transmission line.[154] This fact supports Staff's position that "transmission" of electricity is not the "transportation" of electricity within the meaning of section 386.266.1.[155]

Moreover, inclusion of costs of long term charges of this nature do not appear to be within the spirit and intent of the FAC, which is to allow the utility to recover its net fuel and purchased power costs. As Mr. Dauphinais explained, transmission charges associated with short-term transmission service, whether deemed "transportation" charges or not, are at least incremental costs

[153] Tr. p. 1117.
[154] Haro testimony, Tr. pp. 1189-90.
[155] Staff Opening Statement, Tr. p. 1107-8.

directly related to Ameren Missouri's fuel and purchased power costs.[156] But MISO transmission charges associated with the long-term transmission service taken for Ameren Missouri's network load are not incremental costs incurred to enable power purchases or off-system sales.[157] And, as Mr. Dauphinais explained, Ameren Missouri may be liable, under FERC ORDER No. 1000, for the particular charges at issue whether or not it participated in MISO, and thus whether or not it made purchases or sales of off-system power.[158] Staff agrees that the charges at issue should not flow through the FAC because the charges at issue are not related to fuel and purchased power costs.[159]

In summary, the subject costs should not be allowed to flow through the FAC.

The Commission Should Deny Ameren Missouri's Eleventh Hour Request for a Transmission Cost Tracker

As indicated above, the use of trackers is bad public policy because they involve single-issue ratemaking.[160] In addition, the introduction of a tracker issue at the eleventh hour of a rate case is objectionable. Mr. Haro introduced this issue in his prefiled sur-surrebuttal testimony filed on September 19, less than 10 days prior to the trial of this matter.[161] Indeed, the OPC did not have a witness on this issue and was effectively precluded from defending this issue. Moreover, a tracker is inappropriate in this case because the costs at issue are not large enough to present a threat to the financial well being of the utility, they are not volatile, and they are within some control of the utility. This is the standard and Ameren Missouri fails to meet it.[162] And the subject tracker could not benefit ratepayers because it would track an expense that is known to only be increasing. Last, as the evidence demonstrates, Ameren Missouri is not currently incurring a net expense in this regard;

---

156 Dauphinais Surrebuttal, Ex. 519, p. 13, 1. 8 – p. 14, l. 8.
157 *Id.*
158 Dauphinais Surrebuttal, Ex. 519, p. 14, l. 15 – p. 15, l. 7.
159 Mantle testimony, Tr. pp. 1208-9.
160 Dauphinais Sur-Sur-Surrebuttal, Ex. 527 (designated Sur-Surrebuttal in the docket), p. 4, ll. 8 – 16.
161 Haro Sur-Surrebuttal, Ex. 26, p. 23, l. 1- p. 27, l. 17.
162 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, pp. 20-1; Dauphinais Sur-Sur-Surrebuttal, Ex. 527, p. 5, ll. 1 - 9.

its request for a tracker is based entirely upon its anticipated increased expenses. The PSC has never granted a tracker under those circumstances.[163]

Ameren Missouri witness Haro testified that the net expenses at issue for 2012 are "even" (meaning no net cost), that they will increase by about $2 million in 2013, and by another $10 million in 2014.[164] The Fuel Stipulation filed by the parties actually shows that the net of the transmission expense and transmission revenues is a net revenue to Ameren Missouri at this time. Thus, these costs are hardly costs at a level that would compromise the financial integrity of Ameren Missouri.

As this Commission concluded in Case No. ER-2007-0002, volatile costs are those that tend to go up and down in an unpredictable manner.[165] That construction is consistent with the well-respected Public Utility Reports, Inc. definition that includes "exceptional price movements in both directions, generally driven by economic forces of supply and demand as well as world events."[166] The evidence shows that the costs at issue are not volatile. The costs at issue are steadily increasing and will continue to increase. As Mr. Dauphinais testified, the transmission costs are sufficiently predictable for Ameren Missouri to consider them in its financial and rate planning, and thus are not volatile.[167] Indeed, even Ameren Missouri witness Barnes conceded that was the case because expected price increases are not volatile.[168]

In addition, as the testimony of Mr. Dauphinais establishes, there are significant avenues available to the Company to manage its anticipated increase in transmission expenses.[169] He explained that, first and foremost, Ameren Missouri has the opportunity as a stakeholder in MISO's

---

[163] Oligschlaeger testimony, Tr. 1345-6.
[164] Haro testimony, Tr. pp. 1166-7.
[165]. 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, pp. 20-1.
[166] Dauphinais testimony, Tr. p. 1366.
[167] Dauphinais Sur-Sur-Surrebuttal, Ex. 527, p. 7, l. 1 – p. 8, l. 14; Dauphinais testimony, Tr. p. 1367.
[168] Barnes testimony, Tr. p. 1153.
[169] Dauphinais Sur-Sur-Surrebuttal, Ex. 527, p. 8, l. 15 – p. 10, l. 7.

MTEP process to help ensure the BRP, MEP and MVP transmission projects that are planned and ultimately pursued by MISO are consistent with providing reliable electric service at the lowest reasonable cost to its ratepayers. It can also participate in the MISO stakeholder process to help ensure MISO carefully monitors BRP, MEP and MVP transmission construction to ensure that construction by transmission owners is being pursued in an efficient and reasonable fashion.

Second, the Company can participate in the MISO MTEP stakeholder process to ensure previously authorized BRP, MEP and MVP projects are still needed and still consistent with providing reliable electric service to the Company's ratepayers at lowest reasonable cost. If previously authorized BRP, MEP or MVP projects are no longer needed or otherwise no longer consistent with providing reliable electric service at lowest reasonable cost, the Company can actively advocate for cancellation of such projects before unnecessary costs are incurred. Third, the Company can take action before the Federal Energy Regulatory Commission ("FERC") against MISO or transmission owners to the extent that Ameren Missouri is unsuccessful in getting relief in the MISO stakeholder process. It can also take action at FERC to challenge the reasonableness of transmission rates proposed by MISO, MISO transmission owners and non-MISO transmission providers. This also includes challenging the reasonableness of updates to the inputs of formula transmission rates including the prudence of the construction costs a transmission owner is trying to roll into its transmission rates.

Fourth, to the extent the Company itself is constructing MISO BRP, MEP or MVP transmission projects, such as the Lutesville to Heritage transmission project, the Company can directly act to reasonably and prudently manage its transmission construction costs.

In conclusion, a tracker for the expense at issue is not appropriate at this time. It is poor policy. It does not meet the Commission's standards for a tracker. The Commission has never authorized a tracker solely on the basis of projected higher future costs where the utility has not demonstrated that it already has been absorbing significant expense increases. Last, the Public Counsel should be afforded an opportunity to be heard on an issue such as this, where the tracker can only result in higher rates to ratepayers.

XII. Storm Tracker

Ameren Missouri's request for a storm tracker should be denied, as such a tracker represents bad public policy, is unnecessary, and does not promote any of the qualities for which it is ostensibly sought. Ameren Missouri seeks a storm tracker purportedly on the grounds that storm costs are unpredictable, and Ameren Missouri wants to be able to respond quickly and safely to restore service to Ameren customers. However, Ameren Missouri's grounds for seeking a tracker is based on demonstrable pretense. Ameren Missouri has not and cannot provide any evidence that a storm cost tracker would actually help Ameren Missouri respond more quickly or safely to restore service to Ameren Missouri customers. Indeed, Ameren Missouri's witness, Mr. Wakeman, admitted that even if Ameren Missouri were granted a tracker, it would not recover storm costs any more quickly than it currently recovers storm costs through an Accounting Authority Order ("AAO"):

> Q: [Y]ou wouldn't receive [storm recovery revenues] any more quickly through a tracker than you would an AAO, correct?
>
> A: I believe that's correct.[170]

It *is* correct. To the extent Ameren Missouri incurs extraordinary costs for storm recovery, it can and has filed for an AAO. Any recovery from either a tracker or an AAO is realized in the next rate case. Neither mechanism provides more prompt recovery, and neither mechanism is superior to the other with respect to Ameren Missouri's ability to respond quickly and safely to restore

[170] Tr. 1910, ll. 10-16.

service to Ameren Missouri customers. As such, Ameren Missouri's purported justification for seeking a tracker is simply pretextual.

So why does Ameren Missouri seek a tracker if it does not actually help it to quickly and safely restore service? Answer: a tracker insulates Ameren Missouri's earnings from a consideration of all relevant factors at the time the costs are incurred. In other words, Ameren Missouri seeks to exclude storm costs from the all relevant factors analysis, such that it can recover storm costs even when it is earning in excess of its authorized rate of return.

For instance, if Ameren Missouri earns in excess of it authorized rate of return in a given period (as it is currently doing), but in that same period, incurs $10M in storm costs, a tracker would allow Ameren Missouri to recover $10M in storm costs despite the fact that it is already earning above its authorized rate of return. Such a practice violates the long-standing and reliable "all relevant factors analysis" for setting rates. Moreover, such a practice provides no incentive for Ameren Missouri to control costs, as all costs will be passed on directly to Missouri ratepayers.

Moreover, the current method works. This Commission has found that Ameren Missouri has recovered every dollar it has ever spent in storm costs.[171] Ameren Missouri has always received a sufficient level of storm expense in the past, and there is no reason to believe that it will not receive an adequate level of storm expense in the future. The bottom line is that a tracker does not help Ameren Missouri recover storm cost expense more quickly -- it does not allow Ameren Missouri to more quickly or safely restore service to Ameren Missouri customers -- the only thing a tracker does is insulate and restore Ameren Missouri's earnings outside of a rate case. That is not good policy, and it does not justify Ameren Missouri's request for a tracker. As such, this Commission should deny Ameren Missouri's request for yet another unnecessary tracker.

[171] Report and Order, ER-2011-0028.

XIII. Storm Costs

The Commission should deny Ameren Missouri's inflated storm cost level, and adopt the level proposed by the MIEC, as it embodies the Commission's reasoning and holding in ER-2011-0028. In a remarkable about-face, Ameren Missouri has abandoned both the methodology it used in ER-2011-0028 and the methodology it first employed in this case to arrive at a level of requested storm expense that is far in excess of a reasonable amount. On the other hand, the MIEC employed the methodology adopted by the Commission in ER-2011-0028 (and espoused by Ameren Missouri in that case) to arrive at a reasonable level of storm expense in this case.

In ER-2011-0028, Ameren Missouri Witness Lynn Barnes filed testimony seeking a level of storm expense based on normalizing all of the known storm expense data, beginning April 2007 through the time she filed her testimony in that case.[172] Ms. Barnes normalized the annual expense level by adding up the entire amount of storm costs for that period, dividing the sum by the number of months, and multiplying by twelve.[173]

Remarkably, when MIEC witness Greg Meyer employed the exact same methodology in this case, using the exact same set of data, Ms. Barnes testified that Mr. Meyer's methodology was "inappropriate" and constituted an "unusual time span."[174] It became apparent at the hearing that Ms. Barnes' criticism of Mr. Meyer's methodology resulted from the fact that she had apparently forgotten that she used precisely the same methodology in the previous case:

> Q: Ms. Barnes, you used precisely the same methodology in the last rate case that Mr. Meyer used in this case; isn't that correct?

[172] Barnes Rebuttal, Ex. 103, p. 14, ll. 15-16.
[173] *Id.*
[174] Tr. 1894, ll. 1-5.

A: If you say so. I don't really recall what I did last time. I had testimony from this case on my mind and really didn't go back and look at what my testimony was in the last case.[175]

Fortunately, Ms. Barnes' written testimony from the prior rate case is available for review and confirms the fact that Ms. Barnes indeed used precisely the same methodology and data set in the previous case that she criticizes Mr. Meyer for using in this case.[176] Indeed, by criticizing Mr. Meyer's testimony, Ms. Barnes criticizes the methodology that the Commission approved and adopted on page 21 of its Report and Order in ER-2011-0028. In that case, the Commission reasoned that a longer time span provided a better basis for normalizing storm costs than a shorter time span, and as such adopted the methodology of normalizing storm costs beginning April 2007 to the most recent storm cost data (i.e. the methodology employed by MIEC in this case).[177]

Furthermore, not only did Ameren Missouri abandon the methodology for which it successfully advocated in the prior case, it also abandoned the methodology it initially supported in this case. In this case, Ameren Missouri first proposed a 36-month normalization period.[178] However, Ameren Missouri abandoned that position when the storm costs data through July 2012 became available, because Ameren Missouri's updated 36-month period would have resulted in a $4.7M level of storm costs. Notably, Ms. Barnes admitted that a party could "pick and choose the period to work the way you want it to work to make the higher or lower, just depending."[179] In this case, Ameren Missouri picked a 36-month normalization period until it resulted in a number that Ameren Missouri did not like, and then it picked another period. Specifically, when its proposed 36-month period reflected a level of $4.7M, Ameren Missouri abandoned that methodology, and

---

[175] Tr. 1894, ll. 6-12.
[176] Compare Barnes Rebuttal in ER-2011-0028, Ex. 103, p. 14, ll. 15-16 with Meyer's Surrebuttal Testimony in this case, Ex. 511, p. 7, l. 1 - p. 9, l. 2.
[177] Report and Order, ER-2011-0028, p. 21.
[178] Tr. 1899, ll. 4-6.
[179] Tr. 1901, ll. 22-25.

adopted the position of Staff, which employs a 5-year normalization period.[180] Staff's position of a 5-year normalization period is certainly superior to Ameren Missouri's initial proposal, but still fails to include the most recent storm cost data from May through July 2012.

Unlike Ameren Missouri, the MIEC did *not* pick and choose a period that would result in an unreasonably high or unreasonably low level of expense. On the contrary, the MIEC employed the Commission's preferred methodology as described in ER-2011-0028, and used the entire period of known storm costs (April 2007 through May 2012).[181] MIEC normalized that data in the exact same fashion as it was normalized in the previous case, and arrived at a $6.5M level of storm expense. However, after filing its direct testimony, the MIEC was provided by Ameren Missouri with updated storm cost data that included Ameren Missouri's storm costs for June and July 2012. After factoring Ameren Missouri's storm cost data from June and July 2012 into the normalization period, the normalization level drops to **$6.3M**.[182] Accordingly, the MIEC proposes that Ameren Missouri be granted an annual level of storm expense of $6.3M based upon normalizing the entire known period from April 2007 through July 2012 ($33,805,426 divided by 64 = 528,209.781 x 12 = **$6,338,517)**. This was the methodology and data set the Commission adopted in the last case, and it should be adopted again.

In keeping with the Commission's preferred methodology as described in its Report and Order in ER-2011-0028 of normalizing the entire known period beginning April 2007, Ameren Missouri should be granted $6.3M in annual storm expense, as such an amount is reasonable, and reflects a normalized level based upon all known storm data from April 2007 to the present.

---

180 Tr. 1902, l. 20 - 1903, l. 4.
181 Meyer Surrebuttal, Ex. 511, p. 7, l. 1 - p. 9, l. 2.
182 Tr. 1903, ll. 12-25.

XIV. Storm Assistance Revenue

The Commission should set a level of $800,000 for storm assistance revenue in this case. On eleven different occasions since July 2005, Ameren Missouri has provided other utility companies with storm recovery assistance, and in turn, has received significant revenues for providing the service. [183] Ameren Missouri's ability to provide such service (and to earn the associated revenues) is directly funded by the rates paid by Missouri ratepayers.[184] And yet despite using resources provided by Missouri ratepayers to generate storm assistance revenue, Ameren Missouri has failed to disgorge any of those revenues to the people who paid to make it happen. In other words, Missouri ratepayers are covering the cost for Ameren Missouri to assist other utilities with storm recovery, but Missouri ratepayers are not receiving a dime of the revenues generated by Ameren Missouri's storm assistance. This practice is fundamentally unfair, and should be addressed by establishing a level of $800,000 for storm assistance revenue.

Ameren Missouri's only counter-argument to the inherent inequity in this scenario is that there appears to be a variation in the number of storm assistance occurrences between years.[185] In other words, some years, Ameren Missouri receives large amounts of storm assistance revenue at the expense of Missouri ratepayers, and some years it receives little or no storm assistance revenue at the expense of Missouri ratepayers. This fact does not provide a basis for failing to recognize a normalized level of storm assistance revenue. On the contrary, this fact supports MIEC's proposal of establishing a normalized level of storm assistance revenue in the amount of $800,000, based on normalizing the amount of revenue Ameren Missouri received for its eleven prior occasions of providing storm assistance.[186] Indeed the proposed $800,000 normalized level of miscellaneous

[183] Meyer Direct, Ex. 510, p. 12, ll. 12-22.
[184] Meyer Surrebuttal, Ex. 511, p. 10, ll. 16-21.
[185] Wakeman Rebuttal, Ex. 31, p. 6, ll. 4-14.
[186] Meyer Direct, Ex. 510, p. 12, l. 12 - p. 13, l. 15.

revenues is conservative when compared to the actual level of revenues recorded by Ameren Missouri for the eleven occasions it provided storm assistance, which was $1.1M annually.[187]

In sum, Ameren Missouri has provided storm assistance in the past and can be reasonably expected to provide it in the future. For example, even as this brief is being drafted, Ameren Missouri is providing storm assistance to the utility companies affected by Hurricane Sandy.[188] Therefore, storm assistance is a recurring item for which Missouri ratepayers should receive some corresponding benefit. And the $800,000 proposed level of miscellaneous revenue is a fair and reasonable level based on the eleven known instances of Ameren Missouri's storm recovery assistance to other utilities.

XV. Vegetation Management and Infrastructure Inspections Tracker

Like a house guest who has worn out his welcome, it is finally time for Ameren Missouri's vegetation management and infrastructure inspections tracker to go away. This tracker has been hanging around since ER-2008-0318, when it was initially established because of the uncertainty surrounding Ameren Missouri's costs to comply with the new vegetation management and infrastructure inspection rules.[189] Despite the fact that Ameren Missouri's costs related to complying with the new rules remained constant, Ameren Missouri sought and received the continuation of the tracker in two subsequent rate cases.[190] However, any justification that may have supported the tracker's initial implementation has now long evaporated.

The cost associated with vegetation management and infrastructure inspections has shown little volatility since the tracker was put in place.[191] Indeed any variation in expense levels from year

---

[187] Meyer Surrebuttal, Ex. 511, p. 10, l. 16 - p. 11, l. 2.
[188] http://www.ameren.com/OutageCenter/Pages/HurricaneSandyMoreSupport.aspx.
[189] Meyer Direct, Ex. 510, p. 28, ll. 10-20.
[190] *Id.*
[191] Meyer Surrebuttal, Ex. 511, p. 23, l. 1 - p. 24, l. 6.

to year have been immaterial.[192] Moreover, Ameren Missouri completed its entire urban trim cycle almost a year ago, and its 6-year rural trim cycle and infrastructure inspections are 78% completed.[193] The Company has nearly 5 years of expense data on this issue, and the data demonstrates unequivocally that the tracker is simply no longer needed.[194]

Moreover, at the time this particular tracker was implemented, the Commission clarified that it "did not intend to allow the overuse of tracking mechanisms in this case, or in future rate cases."[195] When the Commission approved the continuation of this tracker in the next rate case, ER-2010-0036, it further clarified its position on trackers as follows:

> As the Commission has previously indicated, trackers should be used sparingly because they tend to limit a utility's incentive to prudently manage its costs. If all such costs can simply be passed on to ratepayers, there is a natural incentive for the company to simply incur the cost. If the company must consider whether it will be able to recover a cost, it is more likely to think before it spends and maximize any possible cost savings.[196]

Ameren Missouri makes a feeble attempt to justify the continuation of the tracker on the grounds that "it's not fully understood what the . . . costs will be going forward . . . through the second trim."[197] However, this purported rationale for the continuation of the tracker is belied by the facts. The costs are *not* volatile. The five years of historical data is more than sufficient to establish a normalized level. Trackers are disfavored as they tend to thwart the all relevant factors principle, and fail to provide an incentive for a utility to control its costs. In this case, there simply remains no rational justification for the continued use of the vegetation management and

---

[192] *Id.*
[193] Meyer Surrebuttal, Ex. 511, p. 24, l. 7 - p. 25, l. 6.
[194] *Id.*
[195] Report and Order, ER-2008-0318, p. 41.
[196] Report and Order, ER-2010-0036, p. 68.
[197] Tr. 1952, ll. 10-16.

infrastructure inspections tracker. Accordingly, MIEC respectfully requests that this Commission send this long overdue house guest packing.

Respectfully submitted,

BRYAN CAVE, LLP

By: */s/ Diana Vuylsteke*

Diana M. Vuylsteke, # 42419
Brent Roam, #60666
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Telephone: (314) 259-2543
Facsimile: (314) 259-2020
E-mail: dmvuylsteke@bryancave.com
brent.roam@bryancave.com

Edward F. Downey, #28866
Carole L. Iles, #33821
221 Bolivar Street, Suite 101
Jefferson City, MO 65101
Telephone: (573) 556-6620
Facsimile: (573) 556-6630
E-mail: efdowney@bryancave.com
carole.iles@bryancave.com

Attorneys for the Missouri Industrial Energy Consumers

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been transmitted by electronic mail this 5th day of November, 2012, to all parties on the Commission's service list in this case.

/s/ Diana Vuylsteke