Exhibit No.:	
Issue(s):	*Storm Costs, Vegetation Management, Rush Island, NSR Reserve, Meramec Tracker*
Witness:	*Keith Majors*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Direct Testimony*
Case No.:	*ER-2024-0319*
Date Testimony Prepared:	*December 3, 2024*

MISSOURI PUBLIC SERVICE COMMISSION

FINANCIAL AND BUSINESS ANALYSIS DIVISION

AUDITING DEPARTMENT

DIRECT TESTIMONY

OF

KEITH MAJORS

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

CASE NO. ER-2024-0319

Jefferson City, Missouri
December 2024

TABLE OF CONTENTS OF

DIRECT TESTIMONY OF

KEITH MAJORS

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

CASE NO. ER-2024-0319

DIRECT TESTIMONY

OF

KEITH MAJORS

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

CASE NO. ER-2024-0319

Q. Please state your name and business address.

A. Keith Majors, Fletcher Daniels Office Building, 615 East 13th Street, Room 201, Kansas City, Missouri, 64106.

Q. By whom are you employed and in what capacity?

A. I am a Utility Regulatory Audit Unit Supervisor employed by the Staff ("Staff") of the Missouri Public Service Commission ("Commission").

Q. What is your educational background and work experience?

A. I attended Truman State University in Kirksville, Missouri, where I earned a Bachelor of Science degree in Accounting in 2007. I have been employed by the Commission since June 2007 within the Auditing Department.

Q. Have you previously filed testimony before this Commission?

A. Yes. A listing of the cases in which I have previously testified, or authored a Staff recommendation or memorandum, and the issues which I addressed in those filings, is attached as Schedule KM-d1 to this direct testimony.

Q. What knowledge, skills, experience, training and education do you have in the areas of which you are testifying here?

A. I have acquired knowledge of the ratemaking and regulatory process through my employment with the Commission and through my experience and analyses in numerous prior

rate cases. I have assisted, conducted, and supervised audits and examinations of the books and records of public utility companies operating within the state of Missouri. I have participated in examinations of electric, industrial steam, natural gas, water, and sewer utilities, and participated in in-house and outside training and seminars on technical and general ratemaking matters while employed by the Commission.

I have been assigned to previous Ameren Missouri electric rate cases during my employment at the Commission: Case Nos. ER-2019-0335, ER-2021-0240, and ER-2022-0337.

EXECUTIVE SUMMARY

Q. What is the purpose of your direct testimony?

A. I will provide direct testimony concerning these Ameren Missouri issues:

- Storm Restoration Expenses
- Vegetation Management and Infrastructure Inspection
- Meramec Tracker and Amortization, and post-closure maintenance
- Rush Island Clean Air Act Violation Litigation
- Rush Island Retirement and post-closure maintenance
- Rush Island Clean Air Act Violation, also known as "New Source Review or NSR", Penalty Reserve

STORM COSTS

Q. How did Staff normalize storm restoration costs?

A. In order to determine a normalized level of non-labor storm restoration expenses, Staff reviewed historical non-labor major storm-related expenses for Ameren Missouri. These costs include only contracted storm restoration costs; internal labor costs are included in Staff's payroll annualization. Staff recommends inclusion of a normalized level of major storm restoration expense based upon a five-year average ending June 30, 2024, which is consistent with past practice as variability exists in the level of storm costs experienced on a

year-to-year basis. As part of its true-up audit, Staff will continue to review the actual non-labor major storm costs through December 31, 2024.

VEGETATION MANAGEMENT & INFRASTRUCTURE INSPECTION

Q. How did Staff normalize vegetation management and infrastructure inspection costs?

A. Staff reviewed the historical costs for the vegetation management program which show that the costs have decreased since Ameren Missouri implemented cost savings measures in 2019. Staff recommends inclusion of the costs incurred during the 12 months ending June 30, 2024, as the annualized level of costs for vegetation management expenses. Staff will continue to review the actual costs and cost savings implementations for each of the programs through the end of the true-up period of December 31, 2024, and make further adjustments if necessary based upon updated information.

Q. Why are storm restoration costs and vegetation management costs normalized in a different manner?

A. Storm restoration costs can be highly variable and the weather events that cause Ameren Missouri to incur these costs are entirely out of its control; therefore, it is appropriate to look at several periods of data to determine a representative ongoing expense. However, Ameren Missouri has a high degree of control over vegetation management methods and practices. Infrastructure inspections have benefitted from technological advancements such as the introduction of drone inspections. These facts warrant using the last known information to determine the ongoing expense.

MERAMEC AMORTIZATION AND ADJUSTMENTS

Q. What is the Meramec amortization?

A. Meramec was a coal-fired power plant that retired in December 2022. Pursuant to the *Unanimous Stipulation and Agreement* in Case No. ER-2021-0240, Staff has reflected 1/5th of the amortization of the $60.9 million deferral amount of residual value agreed to in that stipulation.

Q. What was the source of the total deferral and what is it comprised of?

A. The initial deferral was identified in John Riley's rebuttal testimony in Case No. ER-2021-0240. The amount was comprised of $54.5 million of unrecovered capital costs of the facility and $6.4 million of operations and maintenance costs ("O&M"). The O&M costs were representative of 10 months of operating expenses that would be incurred in the period between the effective date of rates in that case, February 28, 2022, and the retirement of the plant, December 31, 2022. The total initial deferral was $60.9 million.

In Case No. ER-2022-0337, Ameren Missouri deferred $4.8 million of obsolete spare parts and other inventory that were written off, net of salvage. Staff included a five-year amortization of this deferral in the cost of service. Following the 2022 Rate Case, Ameren Missouri recognized an additional $3.4 million of inventory write-offs. Ameren Missouri and Staff recommend recovery over 42 months which will be the remaining months of the initial inventory write-off amortization occurring after the true-up in this rate case.

Finally, in the current rate case, Ameren Missouri has deferred the investment balance of the basemat coal at Meramec. The basemat is the base layer of coal that is in contact with the existing substrate. The basemat contains various contaminants and is typically unsuitable for use in the boilers. Staff used an agreed upon per ton price from several prior rate cases that

was also used to value the Rush Island basemat. Ameren Missouri and Staff recommend recovery over 42 months which will be the remaining months of the initial inventory write-off amortization occurring after the true-up in this rate case.

Q. Does Staff recommend carrying costs on the unamortized balances of these deferrals?

A. No. No agreement was made concerning carrying costs in the aforementioned stipulation in Case No. ER-2021-0240. The return on retired plant assets was addressed by the Commission in a recent Evergy West rate case. In the *Amended Report and Order* in Case No. ER-2022-0130 the Commission ordered the following concerning the retired Sibley plant:

> Evergy also requests a return on the undepreciated amount of Sibley plant, acknowledging that it is no longer used and useful, and cites an academic treatise in support. Evergy also argues it should earn a return on and return of the NBV of Sibley as there is no authoritative reason not to permit it. Staff, MECG, and OPC argue against any authorized return on the undepreciated amount of Sibley.
>
> Historically, the Commission has distinguished between recovery based on prudent investment and recovery based on the asset being used and useful. The Commission is not persuaded by Evergy's argument and sees no reason to change its prior decisions. While it is appropriate to allow a utility to recover amounts prudently invested in plant, allow it a return of amounts spent, the fact that an initial investment may have been prudent when made does not support authorizing the Company to continue earning a profit/return on that investment when the plant in question is no longer used and useful. The Commission will allow recovery of the undepreciated amount of Sibley plant as the prudency of the investment in Sibley, including the 1991 and 2009 environmental retrofits, is unchallenged. The Commission will not authorize a return on that amount as none of that investment is now used and useful. Since the Commission is not allowing a return on the undepreciated amount of Sibley plant the issue on whether to use a weighted average cost of capital return on a going forward basis is moot.

> The Commission's denial of Evergy's request for a return on the undepreciated amount of Sibley plant coincides with its decision that the Sibley NBV should not continue to be included in rate base.[1]

Q. Are there any other adjustments pertaining to Meramec that you sponsor?

A. Yes. Staff has reduced the level of post-closure maintenance to those necessary on an ongoing basis including physical security and vegetation management.

RUSH ISLAND CLEAN AIR ACT LITIGATION

Q. Briefly, what is the Rush Island Clean Air Act Litigation?

A. Rush Island was a two-unit coal-fired generating facility of 1,178 megawatt ("MW") capacity completed in 1977. The facility was retired in October 2024.

In 2011, the United States Environmental Protection Agency ("EPA") filed a case against Ameren Missouri for violating the Clean Air Act ("CAA") for not having the proper emission controls at the Rush Island Power Plant following improvements made at both Rush Island units. Ameren Missouri was found in violation of the CAA and its operating permit by completing the Rush Island projects without obtaining the required permits, installing best-available pollution control technology, or otherwise meeting applicable requirements by the United States District Court, Eastern District of Missouri, Eastern Division ("District Court"). The United States Court of Appeals for the Eighth Circuit ("Court of Appeals") upheld the lower court's rulings finding that Ameren Missouri was liable under the applicable federal regulations. Consequently, Ameren Missouri made the decision to retire Rush Island.

Q. What is the current status of the litigation?

[1] *Amended Report and Order*, Case No. ER-2022-0130, page 40.

A. In August 2021, the Court of Appeals disagreed with the injunctive relief against Ameren Missouri's Labadie plant and remanded to the District Court for further proceedings. The injunctive relief against the Labadie plant was designed to remedy Ameren Missouri's excess emissions from Rush Island while in violation of the CAA. Since August 2021, the parties have convened to obtain a remedy approved by the District Court. On November 4, 2024, the parties to the case[2] filed a *Joint Notice of Lodging Proposed Stipulated Order*, supporting a proposed *Stipulated Order* that would remedy the violations found by the District Court and bring the litigation to a conclusion. I have attached the proposed *Stipulated Order* Schedule KM-d2.

Q. What are the provisions of the *Stipulated Order*?

A. Assuming the agreement is approved by the District Court, Ameren Missouri is to provide residential air purification equipment and electric buses.

Ameren Missouri is to offer $200 vouchers to at least 125,000 residential account holders for High Efficiency Particulate Air ("HEPA") purifier devices. Depending on the level of participation, Ameren Missouri may be also required to fund $5 million to a weatherization program. This program would begin no later than 120 days following the approval of the agreement.

Ameren Missouri is required to deposit $36 million in an escrow account to be used to procure eighty (80) all-electric buses to replace diesel school buses. The initial or lump-sum deposit into the escrow account is due within 30 days following the approval of the agreement.

Ameren Missouri's total monetary exposure is $61 million, not including shipping and taxes for the HEPA devices.

[2] The parties to the case are the United States (The Department of Justice representing the Environmental Protection Agency), Ameren Missouri, and the Sierra Club.

Q. Ameren Missouri is in the process of securitizing the net investment balance of Rush Island, along with other costs related to its retirement in Case No. EF-2024-0021. Are any of the costs of the litigation of the CAA violation case, or the remedy pending approval, included in the amounts to be securitized?

A. No. The litigation costs incurred while the CAA violation is pending were $470,164 which remains in the test year. The pending remedy of $61 million is not included in the test year other than the estimate booked as the "NSR Reserve", which I discuss later in this testimony. The legal and consulting expenses included in the securitization principal exclusively relate to the securitization application in Case No. EF-2024-0021. These costs are not included in the "above the line" costs for ratemaking purposes.

Q. What is Staff's recommendation concerning the legal and consulting fees associated with the litigation in furtherance of determining a remedy?

A. Staff recommends removal of these expenses from the cost of service. The expenses incurred for the Rush Island litigation are non-recurring and are related to a remedy penalty that Staff recommends should not be included in the cost of service.

Q. What is Staff's recommendation regarding the pending remedy of $61 million?

A. Staff recommends no inclusion of any of the $61 million, the costs of litigation, or any cost of administrating the HEPA filter program or the electric bus program. There is a chance, albeit low, that Ameren Missouri will begin to incur in part the $61 million prior to the end of the true-up in this case. Therefore, Staff recommends the Commission to provide guidance to Ameren Missouri as to the recoverability through cost of service of the remedy.

Q. Please identify the reasons why ratepayers should not be responsible for the remedy for the CAA violations.

A. There are several reasons:

- The Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA") requires the remedy to be recorded in Account 426.3 – Penalties. This account is "below the line" and not included in the cost of service.

- The remedy is not being paid in the furtherance of the provision of utility service.

- Prior examples of settlements or judgements incurred by utilities have not been included in the cost of service.

- Concerning the circumstances Ameren Missouri finds itself in, Staff has alleged, in both Case No. ER-2022-0337, the last prior Ameren Missouri Rate Case, and the Rush Island securitization docket, Case No. EF-2024-0021, that Ameren Missouri acted with imprudence leading to violation of the CAA.

Q. For your first reason, how does the accounting of the remedy affect rate recovery?

A. FERC Account 426.3 – Penalties, is defined as follows: "This account shall include payments by the company for penalties or fines for violation of any regulatory statutes by the company or its officials." FERC Account 426.3 is a "below the line" account and not included in the cost of service for ratemaking purposes.

Q. Do you consider the remedy a "penalty or fine"?

A. Yes. The remedy, assuming it is approved, is a negotiated mitigation to redress a violation of the CAA. If there were no agreement between the parties, it would be assumed the judge presiding in the case would be required to determine the penalty after the remand from the Court of Appeals. Absent the $61 million agreement, I would assume the penalty or fine would be something greater. The remedy is a "negotiated penalty or fine".

Q. Would FERC Account 925 – Injuries and Damages be a more appropriate account to record the cost of the remedy?

A. No. The definition for FERC Account 925 is lengthier and more detailed than that of 426.3. I have listed the definition below:

925 Injuries and Damages

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. For Major utilities, it shall also include the cost of labor and related supplies and expenses incurred in injuries and damages activities.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

Items

1. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to account 228.2, Accumulated Provision for Injuries and Damages, for similar protection.

2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

3. Fees and expenses of claim investigators.

4. Payment of awards to claimants for court costs and attorneys' services.

5. Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.

6. Compensation payments under workmen's compensation laws.

7. Compensation paid while incapacitated as the result of occupational injuries. (See Note A.)

8. Cost of safety, accident prevention and similar educational activities.

Q. Do you consider the remedy costs as "injuries and damages"?

A. No. The violations of law in this case resulted from excess emissions starting at the date of the Notice of Violation ("NOV"). There were no specific injuries or damages specific to any claimant in the litigation. The beneficiaries of the HEPA devices and electric buses were not plaintiffs in the litigation. The remedy costs are more akin to civil penalties levied by a governmental entity such as the Internal Revenue Service ("IRS") or the Securities Exchange Commission ("SEC"), which would clearly be chargeable to FERC Account 426.3.

Q. For your second reason, why are these payments not related to the provision of utility service?

A. The remedy payments resolve current and future litigation and the risk of some greater penalty. The negotiated payments do not benefit Ameren Missouri or the provision of safe and adequate service; they are a redress of prior actions that the EPA, and ultimately the District Court, found were in violation of government regulations. I would draw the comparison to civil penalties for tax fraud which would also not be included in the cost of service. If a utility were found to have committed tax fraud, the civil penalty would be levied to discourage such behavior and has ostensibly no other purpose. The remedy here, in part, is to discourage behavior that creates the situation in which Ameren Missouri finds itself, and in part to provide some societal benefit resulting from the provision of air filters and electric buses. There is simply no link between these payments and the provision of electric service.

Q. For your third reason, what are some prior examples of settlements or judgements incurred by utilities that have not been included in the cost of service?

A. There are three examples that come to mind.

First, Staff removed both the damages amount and litigation expenses related to the "Philpott" lawsuit. This suit was brought against Evergy Metro, then Kansas City Power & Light Company ("KCPL"), by an employee claiming personal injury from occupational hazards at the Montrose Generating Station. In 2017, the court found that KCPL was liable for compensatory and punitive damages of over $10 million. The Commission did not specifically rule on the recoverability of these expenses through the cost of service as Case No. ER-2018-0145 was concluded by a Stipulation and Agreement.

Second, Staff removed the litigation expenses and did not include in cost of service damages related to the "McGaughy" lawsuit. This suit was brought against Spire Missouri by an employee claiming race discrimination, hostile work environment, and retaliation. In 2018, a jury awarded the plaintiff $8.5 million for compensatory and punitive damages. Again, the Commission did not specifically rule on the recoverability of these expenses through the cost of service as Case No. GR-2021-0108 was concluded in part by a Stipulation and Agreement.

Lastly, and most relevant, Evergy West, then known as KCPL Greater Missouri Operations ("GMO") incurred a portion of a $3 million civil penalty in relation to NSR permitting requirements. The violation was in relation to modifications to the Jeffrey Energy Center beginning in 1994 without first obtaining appropriate permits authorizing this construction and without installing and operating best available control technology to control emissions. In January 2010, Westar[3], Jeffrey's majority owner, entered into a settlement agreement requiring the penalty and installation of a selective catalytic reduction ("SCR") at one of the Jeffrey units.

[3] Now known as Evergy Kansas Central.

Evergy West correctly recorded the civil penalty "below the line" and did not seek recovery of this cost. I have attached a data request supporting this accounting as Schedule KM-d3. This example is the most relevant as 1) the circumstances were similar; that is, both the Jeffrey and Rush Island violations resulted from modifications to the units that increased emissions and triggered NSR, and 2) both the $3 million penalty to Jeffrey and the $61 million remedy for the Rush Island violations were within the context of settlement agreements.

Q. For your fourth reason, has Staff taken issue with the prudence of Ameren Missouri's decision-making concerning the Rush Island CAA violations?

A. Yes, this is the third case in which I have filed testimony concerning this issue. In Ameren Missouri's last rate case, Case No. ER-2022-0337, Staff removed a portion of the investment value of Rush Island due to the fact that the plant was acting as a Midcontinent Independent System Operator ("MISO") System Support Resource ("SSR") at a reduced capacity. Staff also presented arguments concerning Rush Island prudence in that case. Concurrently, the Commission established a docket requiring monthly reports concerning the status of the litigation, the status of the retirement, and the status of transmission and distribution improvements and additions to mitigate the impact of the retirement. This case is designated as EO-2022-0215.

As the Commission is aware, Ameren Missouri was approved to issue securitization bonds pursuant to the orders in Case No. EF-2024-0021. These bonds have not been issued at the time of this filing. Staff, Ameren Missouri, and the Office of the Public Counsel ("OPC") filed extensive testimony concerning the Rush Island retirement in that case.

Q. Did the Commission determine the reasonableness and prudence of Ameren Missouri's decisions concerning the CAA violations at Rush Island?

A. No. As the Commission determined in the *Amended Report and Order* on August 7 of this year, the prudence of Ameren Missouri's decision making in this matter is relevant only when the District Court has determined the remedies for the violations:

> Decision:
>
> > The Securitization Statute, Section 393.1700.1(7)(a), RSMo, requires that the Commission determine whether it was reasonable and prudent for Ameren Missouri to retire Rush Island. This is the only decision for which the Commission is required to determine prudence. If the Commission were to determine that it was unreasonable or imprudent for Ameren Missouri to retire Rush Island from September 1 through October 15 of 2024, then Rush Island's retirement costs could not be securitized.
> >
> > Some of the parties in this securitization proceeding have asked the Commission to determine the reasonableness and prudence of Ameren Missouri's decisions that ultimately led to its litigation before the District Court for violations of the Clean Air Act. None of those decisions Ameren Missouri made in the past concerning its resource planning or whether to seek NSR permits or install FGD equipment during the 2007 and 2010 projects involved a decision to retire Rush Island.
> >
> > The District Court has determined that Ameren Missouri violated the Clean Air Act with respect to the 2007 and 2010 Rush Island Projects, and the District Court will determine an appropriate consequence for that violation. Any consequences for harms that may have been caused by Ameren Missouri's violations are unknown at this time because future harm related to potential capacity shortfalls are not yet known and the District Court has not determined the remedy for Ameren Missouri's violation as of the issuance of this Financing Order. [4]

The Commission again identified that prudence would be relevant in a future case where a remedy is known:

[4] *Amended Report and Order*, Case No. EF-2024-0021, page 33.

> Decision:
>
> These issues ask the Commission to determine the prudence of Ameren Missouri's decisions that are not the December 2021 retirement decision. The Securitization Statute requires that the Commission determine whether the early retirement of Rush Island is reasonable and prudent. The Securitization Statute does not require that the Commission determine the prudence of other Ameren Missouri decisions concerning Rush Island in determining whether to allow securitization of Rush Island's retirement costs.
>
> As discussed above in issue one, none of Ameren Missouri's decisions about its resource planning, seeking NSR permits, or installing FGD equipment are the Rush Island retirement and securitization decision. It is not unusual for the Commission to disallow costs based upon the prudence of decisions related to specific costs. However, these issues do not ask the Commission to determine the prudence of decisions related to particular costs, but of particular decisions that are not the 2021 retirement decision.
>
> The prudence of decisions leading to Ameren Missouri deciding to retire Rush Island would only be relevant as the basis for the disallowance of a portion of the amounts securitized. At this time, it is not possible to quantify the harm resulting from these decisions and the District Court has not determined what remedies will be imposed on Ameren Missouri. Even if Ameren Missouri's actions were deemed imprudent, the Commission would be unable to assess a disallowance without evidence of harm on which to base any disallowance. Any potential harm from those actions may be litigated before the Commission in future cases, but cannot be assessed now. [footnotes omitted][5]

Q. Is this the case where the potential harm, in the form a remedy for the Rush Island violations, will be realized?

A. It would depend on if the remedy is approved by the District Court and the timing of the payments. The true-up date in this case is December 31, 2024, which does not leave much time for those events to occur. It would also depend on whether or not Ameren Missouri seeks to include the $61 million remedy or some portion through December 31, 2024,

[5] Ibid, page 36.

in the cost of service. That would be a safe assumption since Ameren Missouri recorded a $15 million reserve to FERC Account 925 during the test year. I discuss this reserve later in this testimony.

Q. Concerning the prudence of Ameren Missouri's decision making in regard to the CAA violations at Rush Island, is the testimony you provide here substantially the same as the testimony you provided in Case No. EF-2024-0021?

A. Yes.

Q. Please provide your testimony regarding this issue.

A. Although lengthy, I have included the United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:11-CV-00077-RWS decision as Schedule KM-d4, referred to here as the "District Court Opinion". This case was appealed to the Court of Appeals Case No. 19-3220. The Court's opinion is attached to this document as Schedule KM-d5, and is referred to here as the "Court of Appeals Opinion". I have also attached the District Court Remedy Opinion ("Remedy Opinion") as Schedule KM-d6. This document identifies the initial remedy and how it was determined.

The District Court Opinion is the most important document relevant to this issue. This 195-page document explains in great detail how Ameren Missouri engaged in faulty and imprudent decision making given the facts and circumstances known at the time the Rush Island improvements were planned and installed.

Q. Please briefly explain the Rush Island violations of the Clean Air Act.

A. Rush Island is subject to the Clean Air Act of 1970 enacted by the United States Congress. The New Source Review ("NSR") provisions within the Clean Air Act of 1970 have authority over increases in harmful pollutants such as sulphur dioxide ("SO2"), at issue here.

The Prevention of Significant Deterioration Program ("PSD") is designed to prevent significant increases in pollution, in part, by requiring major emitters of pollution to install state-of-the-art pollution controls.

As the District Court noted,

> . . . [w]hen it enacted the PSD program, Congress required all new major-emitting facilities to comply with PSD requirements by installing state-of-the-art pollution controls at the time of construction. Recognizing the expense and burden of installing such controls, however, Congress did not require facilities then in existence to immediately install pollution controls. Rather, Congress allowed these facilities to continue to operate without installing such controls on the condition that if they ever modified their facilities, they would calculate the impact of those modifications, report the planned modifications to the EPA, obtain the requisite permits, and install the required pollution control technologies at that time. PSD rules apply to "major modifications," which occur when there is a "physical change" or change in the method of operation of a major stationary source that would significantly increase net emissions.[6]

The District Court also noted, "An increase of 40 tons or more per year of SO2, the pollutant discussed in this case, is "significant" under the regulations. 40 C.F.R. § 52.21(b)(23)(i)."[7]

The "major modifications" at issue were the 2007 and 2010 improvements to Rush Island Units 1 and 2, respectively. The specific boiler components at issue in the major modifications were the economizer, reheater, lower slopes, and air preheaters that were replaced at Rush Island Unit 1 in 2007, and the economizer, reheater, and air preheaters that were replaced at Rush Island Unit 2 in 2010.

The District Court performed a thorough examination of all the decisions made with the information known by Ameren Missouri at the time of the projects. The District Court concluded that Ameren Missouri failed to evaluate the project with the NSR and PSD

[6] District Court Opinion, page 2.
[7] Ibid.

requirements in mind. After the finding by the District Court, Ameren Missouri's two choices regarding Rush Island were to install flue gas desulphurization ("FGD") equipment to control SO2, or retire the units. Ameren Missouri chose to retire the units, which is scheduled to occur no later than October 15, 2024.

Q. What is the prudence standard in Missouri?

A. There are several cases in which the Commission identifies the prudence standard. The Commission discussed the prudence standard in the *Report and Order* in Case No. ER-2010-0355, a Kansas City Power & Light Company rate case:

> 17. The prudence standard is articulated in the *Associated Natural Gas Case* as follows:
>
> [A] utility's costs are presumed to be prudently incurred.... However, the presumption does not survive "a showing of inefficiency or improvidence."
>
> . . . [W]here some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. (Citations omitted).
>
> In the [Union Electric] case, the PSC noted that this test of prudence should not be based upon hindsight, but upon a reasonableness standard:
>
> > [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.[8]

[8] See State ex. Re. Associated Natural Gas v. Public Serv. Comm'n, 954 S.W.2d 520, 528-529 (Mo. App. W.D. 1997).

The Commission continued in that *Report and Order*:

> 18. As stated above, under the prudence standard, the Commission presumes that the utility's costs were prudently incurred.[9] This means that utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent.[10]
>
> 19. Staff or any other party can challenge the presumption of prudence by creating "a serious doubt" as to the prudence of an expenditure. Once a serious doubt has been raised, then the burden shifts to KCP&L to dispel those doubts and prove that the questioned expenditure was prudent.
>
> 20. In a prior case involving a prudence review and construction audit, the Commission stated:[11]
>
> > The Federal Power Act imposes on the Company the "burden of proof to show that the increased rate or charge is just and reasonable." Edison relies on Supreme Court precedent for the proposition that a utility's cost are [sic] presumed to be prudently incurred. However, the presumption does not survive "a showing of inefficiency or improvidence." As the Commission has explained, "utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent . . . However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."
>
> 21. Thus, in the first instance, it is the parties challenging the decisions and expenditures of a utility that have the initial burden of defeating the presumption of prudence accorded the utility.[12]
>
> Under the prudence standard, the Commission looks at whether the utility's conduct was reasonable at the time, under all of the

[9] See State ex. Re. Associated Natural Gas v. Public Serv. Comm'n, 954 S.W.2d 520 (Mo. App. W.D. 1997); State ex rel. GS Technologies Operating Co. Inc. v. Public Serv. Comm'n, 116 S.W.3d 680 (Mo. App. W.D. 2003 (citations omitted).

[10] See Union Electric, 66 P.U.R.4th at 212.

[11] In the Matter of Union Electric Company, 27 Mo.P.S.C. (N.S.) 183, 193 (1985) (quoting Anaheim, Riverside, etc. v. Federal Energy Regulatory Commission, 669 F.2d 779 (D.C. Cir. 1981)) (citations omitted).

[12] State ex rel. Associated Natural Gas Company v. Public Service Commission, 954 S.W.2d 520, 528-529 (Mo. App., W.D. 1997).

circumstances. In applying this standard, the Commission presumes that the utility's costs were prudently incurred.[13]

22. Once the presumption of prudence is dispelled, the utility has the burden of showing that the challenged items were indeed prudent.[14]

23. The Commission has adopted a standard of reasonable care requiring due diligence for evaluating the prudence of a utility's conduct.[15] The Commission has described this standard as follows:[16]

> The Commission will assess management decisions at the time they are made and ask the question, "Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?"

Q. How has the Commission evaluated prudence in the past?

A. In the Union Electric Callaway rate case,[17] the Commission recognized that the prudence standard is not based on hindsight, but upon a reasonableness standard:

> The Commission determines that the appropriate standard to be used in this case was enunciated by the New York Public Service Commission in Re: *Consolidated Edison Company of New* York, Inc., 45 P.U.R., 4th, 1982. In that case at page 331, the New York Commission rejected an earlier "rational basis" standard in favor of reasonable care standard:
>
> > More recently, and in cases more directly on point, we have articulated the standard against which a utility's conduct in circumstances such as these should be measured as follows:
> >
> > …the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in the reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the

[13] State ex rel. GS Technologies Operating Company, Inc. v. Public Service Commission, 116 S.W.3d 680 (Mo. App., W.D. 2003).
[14] Associated Natural Gas, supra, 954 S.W.2d at 528-529.
[15] Union Electric, 27 Mo.P.S.C. (N.S.) at 194.
[16] Ibid.
[17] Case Nos. EO-85-17 and ER-85-160.

> company. Case 27123, Re: *Consolidated Edison Company of New York, Inc.*, Opinion 79-1, January 16, 1979.

Q. You claim that Ameren Missouri's actions or inactions were imprudent based on the opinion of the District Court. What evidence do you have of this imprudence?

A. In examination of the 195-page opinion of the District Court, the court found that Ameren Missouri chose not to consider the increase in availability and therefore increase in emissions caused by the improvements at Rush Island. This line of decision making led to the Notice of Violation from the EPA, the years of litigation of the violations, and ultimately the premature retirement of Rush Island 15 years prior to its 2039 retirement date.

Q. Did the District Court or the Appeals Court consider prudence in either of their opinions?

A. I am not an attorney, but the words "prudent" or "prudence" do not appear in either opinion. However, Judge Rodney W. Sippel found that Ameren Missouri violated the Clean Air Act under the "preponderance of the evidence" established by the United States:

> After consideration of the testimony given at trial, the exhibits introduced into evidence, the parties' briefs, and the applicable law, I make the following findings of fact and conclusions of law, which largely adopt those proposed by the United States. As discussed below, I conclude the United States has established that Ameren should have expected, and did expect, the projects at Rush Island to increase unit availability (and, for Unit 2, to increase capacity), which enabled Ameren to run its units more, generate more electricity, and emit significantly more pollution. The United States has also established that Ameren actually emitted significantly more pollution as a result of the projects. Ameren has failed to establish that either the routine maintenance or demand growth defenses apply to shield it from liability. As a result, I conclude that the United States has established by a preponderance of the evidence that Ameren violated the PSD and Title V provisions of the Clean Air Act.[18]

[18] District Court Opinion, page 5.

Therefore, while I cannot say the District Court explicitly evaluated the prudence of Ameren Missouri's decision making, the District Court did an excruciatingly thorough examination of Ameren Missouri's actions and decisions surrounding the violations of the Clean Air Act.

The District Court did find that Ameren Missouri's conduct was not reasonable as noted in Judge Sippel's September 30, 2019, *Memorandum Opinion and Order* regarding the remedy phase:[19]

> 393. I have already concluded that a reasonable power plant operator would have known that the modifications undertaken at Rush Island Units 1 and 2 would trigger PSD requirements. I have also concluded that **Ameren's failure** to obtain PSD permits **was not reasonable**. Ameren Missouri, 229 F.Supp.3d at 915-916, 1010-14.
>
> 394. After the liability trial in this case, I found that **at the time** of the Rush Island modifications, "the standard for assessing PSD applicability was well-established." It was also "well-known" that the types of unpermitted projects Ameren undertook **risked** triggering PSD requirements. Id. at 915. [Emphasis Added.]

The unfortunate outcome of this litigation has impacted and will impact Ameren Missouri and its customers for years to come. I find it somewhat hard to comprehend why five Ameren Missouri witnesses in Case No. EF-2024-0021, and the same witnesses in Case No. ER-2022-0337, recommend the Commission set aside both the District Court and the Court of Appeals rulings and find Ameren Missouri was not to blame when the District Court found Ameren Missouri's decision making was not reasonable. It is not prudent or reasonable to make decisions that lead to violations of federal law.

Q. What are some of the specific facts the District Court identified that show imprudent decision making?

[19] 421 F.Supp.3d 729 (E.D.Mo. 2019), page 794.

A. The District Court found that Ameren Missouri should have expected improvements in availability at the time NSR and PSD should have been evaluated:

> 257. Ameren also **should have expected** Unit 2's long-term average equivalent availability to increase from 92% to 95%. Because there is a 2-3% variation in long-term forecasts, Ameren understood that Unit 2's highest annual availability after the 2010 boiler upgrade would be 97-98%. Koppe Test., Tr. Vol. 3-A, 76:17-22, 79:7-14; Meiners Test., Tr. Vol. 7-B, 54:14-55:6; Hausman Test., Tr. Vol. 4-B, 65:9–19.[20] [Emphasis added.]
>
> 268. In addition to improving the availability of both units, the 2010 boiler upgrade **should have been expected** to increase the capability of Rush Island Unit 2. As described further below, because Unit 1 experienced a capability increase after the 2007 boiler upgrade, Ameren should have expected – and did expect – a similar increase to occur after the 2010 boiler upgrade at Unit 2. Koppe Test., Tr. Vol. 3-B, 19:20-25.[21] [Emphasis added.]
>
> 279. Based on his review of Ameren's documents and data, Mr. Koppe confirmed that Ameren **should have expected, and did expect,** an increase in Unit 2's capability of at least 22 MW (gross) as a result of replacing the economizer, reheater, and air preheater. That additional capability would result from eliminating the effects of pluggage and allow Unit 2 to burn more coal per hour. Koppe Test., Vol. 3-B, 33:14-34:1; *see also* Vol. 3-A, 27:18-25, 29:2-8, Vol. 4-A, 46:23- 47:18.[22] [Emphasis added.]

The District Court noted that Ameren Missouri failed to communicate with the EPA concerning the improvements:

> 394. Prior to undertaking the Unit 1 project, Ameren did not communicate with permitting authorities about whether a New Source Review permit would be required. Whitworth Test., Tr. Vol. 11-A, 106:3-7.[23]

[20] District Court Opinion, page 81.
[21] Ibid, page 84.
[22] Ibid, page 88.
[23] Ibid, page 117.

Q. What was the legal standard used by the Court of Appeals to determine PSD liability?

A. I am not an attorney, but in the Court's Opinion, the federal legal standard was summarized:

> There are two ways to establish PSD liability. The United States can satisfy its burden by proving either that: (1) the source should have expected an emissions increase related to the project (the expectations approach); or (2) an emissions increase related to the project actually occurred (the actual emissions approach). *Ameren SJ Decision*, 2016 WL 728234, at *16; *see also 40 C.F.R. § 52.21(a)(2)(iv)(b), (c).*[24]

The Court continued:

> Under the expectations approach, courts must determine what a source should have expected at the time of the project. To prevail, the United States "must show that at the time of the projects [defendant] expected, or should have expected, that its modifications would result in a significant net emissions increase." *Ameren SJ Decision*, 2016 WL 728234, at *13 (citing cases and quoting *United States v. Ala. Power Co.*, 730 F.3d 1278, 1282 (11th Cir. 2013) (internal quotations omitted)).[25]

Here, the Court specifically found Ameren Missouri should have known emissions would increase with the improvements at Rush Island:

> The core facts of this case show that before Ameren performed the challenged projects, problems with the components at issue were limiting the units' performance. Replacing those components would improve performance and result in additional use and pollution. That was what Ameren should have expected before the work began. The evidence shows that is what Ameren *did* expect. The evidence also shows that is exactly what happened.[26]

[24] Ibid, page 134.
[25] Ibid, page 135.
[26] Ibid, page 137.

The Court put to rest any argument of reliance on hindsight when it stated "Ameren should have expected a significant net emissions increase and should have obtained a permit before beginning work."[27]

Q. What did the Court of Appeals find concerning Ameren Missouri's actions?

A. The Court of Appeals affirmed the findings of the United States District Court for the Eastern District of Missouri – St. Louis:[28]

> In summary, the district court "entered[ed] a finding of liability against Ameren," concluding that the Rush Island Unit 1 and 2 projects described above were major modifications under the CAA [Clean Air Act], Ameren violated the PSD [Prevention of Significant Deterioration] program's requirements "by failing to obtain a preconstruction permit and install best available pollution control technology," and Ameren violated Title V of the CAA. *Id.* At 1017.[29]

Q. Please summarize your testimony concerning the accounting for the potential remedy resulting from the CAA violations.

A. The remedy should be recorded in FERC Account 426.3 – Penalties which is a below-the-line account not includible in the cost of service. The remedy payments are not incurred in furtherance of the provision of utility service. In other prior examples, penalties and sizable injuries and damages where the utility has been adjudicated to be at fault have not been included in the cost of service. Finally, it was Ameren Missouri's imprudent decision-making that has caused it to incur a $61 million remedy. For these reasons, the remedy payments should not be included in the cost of service in this case or any future rate case, nor should the litigation expenses be included in the cost of service

[27] Ibid, page 155.
[28] *United States v. Ameren Mo. (Ameren III)*, 229 F. Supp. 3d 906 (E.D.MO.2017).
[29] Quoting *United States v. Ameren Mo. (Ameren III).*

RUSH ISLAND RETIREMENT

Q. Has Staff made adjustments to account for the retirement of Rush Island?

A. Yes. Through various Staff witnesses, Staff has sponsored adjustments to account for the retirement that occurred on or about October 15, 2024, which is after Staff's update period but before the true-up cutoff of December 13, 2024. To the extent any additional adjustments are necessary, Staff will identify those in the true-up filing in this case.

Q. Has Staff accounted for the operation and maintenance costs that were being incurred prior to retirement and included in rates but are no longer being incurred?

A. Not at this time. Ameren Missouri has established a regulatory liability account to track these expenses. Staff will examine these deferrals at the time of the true-up.

Q. Why has Ameren Missouri recorded these deferrals?

A. As part of the *Amended Report and Order* in Case No. EF-2024-0021, the Commission ordered Ameren Missouri to establish a tracking mechanism for these costs:

> The Commission also finds that a tracker would be an appropriate mechanism to track the Rush Island related costs currently recovered in rates after it terminates service, so that the Commission has an accurate accounting of Rush Island costs until rates are effective in Ameren Missouri's next general rate case. The over-collection of Rush Island related costs would be flowed back to customers through an amortization.[30]

Q. Are there any other adjustments pertaining to Rush Island that you sponsor?

A. Yes. Staff has reduced the level of post-closure maintenance to those necessary on an ongoing basis included physical security and vegetation management.

[30] *Amended Report and Order*, Case No. EF-2024-0021, pages 120-121.

NEW SOURCE REVIEW ("NSR") RESERVE

Q. What is the NSR reserve?

A. The NSR reserve is an amount charged to the test year in anticipation of the Rush Island remedy. Ameren Missouri estimated a $15 million penalty and recorded this amount as a reserve for future payments. Staff recommends removal of this amount. Ameren Missouri also removed this amount from their direct filed case.

Q. Does Staff agree with the initial accounting of the NSR reserve?

A. No. Ameren Missouri was required to record the reserve based on Generally Accepted Accounting Principles, which Staff does not dispute. This reserve was recorded to FERC Account 925 – Injuries and Damages which Staff does dispute. As I described earlier in this testimony, this amount should have been recorded to FERC Account 426.3 – Penalties. Any amounts ultimately paid should also be charged to this account.

Q. Does this conclude your direct testimony?

A. Yes, it does.

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 Adjust Its Revenues for Electric Service	)))	Case No. ER-2024-0319

AFFIDAVIT OF KEITH MAJORS

STATE OF MISSOURI)
) ss.
COUNTY OF Jackson)

COMES NOW KEITH MAJORS and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Direct Testimony of Keith Majors*; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

Keith Majors
KEITH MAJORS

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Jackson, State of Missouri, at my office in Kansas City, on this 2nd day of December 2024.

Notary Public

B. L. STIGGER
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES JANUARY 2, 2028
JACKSON COUNTY
COMMISSION #24332661