BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service.	)))	**File No. ER-2014-0258** Tariff No. YE-2015-0003

INITIAL BRIEF OF THE CONSUMERS COUNCIL OF MISSOURI

The Consumers Council of Missouri ("Consumers Council" or "CCM") offers this initial post-hearing brief on certain contested issues in this review of the electric rates of Ameren Missouri (also the "Utility" or the "Company"). On each of the following issues, Consumers Council asks the Missouri Public Service Commission ("Commission") to give due consideration to the sworn testimony of the customers that attended the local public hearings held in this case. Many of these customers are retired or unemployed, or for other reasons must live on fixed incomes and have no other entity to pass along increases in their household monthly expenses.

The Commission's mission is to properly balance the economic interests of these customers against the economic interests of the Utility's shareholders, and in fact, the Commission's *principal interest* is to serve and protect ratepayers.[1] Electricity is an essential service for which the vast majority of residential consumers have but one choice. These customers rely upon the Commission for protection. It is appropriate to weigh the perspectives of the Utility regarding how much compensation that it believes it

[1] State ex rel. Crown Coach v. Public Service Commission, 179 S.W.2d 123, 126 (Mo. App. 1944).

should be granted in the context of the sworn testimony of residential customers, regarding affordability of the Utility's proposed electric rates that they would be forced to pay. The Commission may only set utility rates that are "just and reasonable" to both the utility and to its customers.[2]

Since the recent economic recession, the electric rates charged to the residential class of customers of Ameren Missouri have increased by approximately 43%. During this same time period, wage growth and inflation-adjusted incomes have actually decreased.[3] Many customers appearing at the local public hearings testified that these recent electric rate increases have contributed to economic difficulties for them and for their households. Those difficulties are sharply contrasted against the over-earnings that Ameren Missouri has been experiencing. From September 2012 through September 2014, the millions of dollars in excess earnings that this electric utility has collected above its currently-approved return on equity (ROE) of 9.8% have been significant.[4]

These excess earnings are the result of an ever-expanding Fuel Adjustment Clause (FAC) and a variety of other surcharges, trackers, deferrals that have been imposed by the Commission, along with a generous allowed ROE contributing to a playing field increasingly tilted against consumers. The Consumers Council urges the Commission to take action in this rate case to scale back these extras in order to bring the ratemaking process into balance, so that this Utility's electric rates are just and reasonable for all. At the very least, the Commission has the ability to recognize that

[2] Valley Sewage Co. v. Public Service Commission, 515 S.W.2d 845, 851 (Mo. App. 1974).
[3] Staff Report, Exhibit 201, pp. 2-8.
[4] Greg Meyer Direct, Exhibit 513, Schedule GRM-4.

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special mechanisms have operated to reduce Ameren Missouri's business risk and thus adjust its allowed ROE to recognize this utility's lower risk profile.

Amortizations

Should the amount of solar rebates paid by Ameren Missouri and recorded to a solar rebate regulatory asset through the end of the true-up period be included in Ameren Missouri's revenue requirement using a 3-year amortization period?

Ameren Missouri is seeking $33,697,000 of annual amortization expense resulting from solar rebate costs that have been deferred pursuant an ordered issued within Case No. ET-2014-0085. The Consumers Council was not a party to ET-2014-0085 and did not enter into any stipulation regarding solar rebates in that case. However, Consumers Council was a party to the earnings complaint case, Case No. EC-2012-0223, when Ameren Missouri successfully argued that the same solar rebate costs at issue here were a reason to deny a rate reduction for electric consumers.[5] As such, the Utility dodged at least a $25 million dollar permanent reduction to its revenue requirement by claiming that it was incurring these solar rebate costs. Consumers have essentially paid for these solar rebate costs last year through that denial of a rate reduction. Recovery of these costs have thus already been recognized. Ameren Missouri has already played this card once; it should not be allowed to play it once again!

Yet, Ameren Missouri is attempting to recover those same solar rebate costs a second time, with its three-year amortization proposal in this case. The deferred costs at issue have been *more than recovered* through over-earnings during the period the solar

[5] EC-2014-0223, Report and Order, p. 13, Paragraph 24.

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rebates costs were incurred. Table 1 below shows the revenue requirement that has been over collected as calculated from the rate base and achieved operating income included on the quarterly surveillance reports submitted by Ameren Missouri pursuant to Commission Rule 4 CSR 240-3.160(6)[6]:

Table 1[7]
Authorized Versus Reported Earning
And Implied Over Recovery of Revenue Requirements
During Solar Rebate Payment Deferral Period

12 Month Reporting Period Ending	Authorized ROE	Reported Achieved ROE	Calculated Over Recovery of Revenue Requirements
June 2013	9.80%	10.57%	$42.98 million
September 2013	9.80%	10.32%	$29.24 million
December 2013	9.80%	10.34%	$31.18 million
March 2014	9.80%	10.45%	$37.16 million
June 2014	9.80%	11.89%	$116.19 million
September 2014	9.80%	11.43%	$93.18 million

In Case No. ET-2014-0085, Ameren Missouri was granted authority to defer solar rebate costs starting on the date of August 1, 2013. The Stipulation approved in that case also provided that solar rebates paid through "the end of the true-up period in Ameren Missouri's next general rate proceeding, plus ten percent (10%) of that amount" could be deferred within the regulatory asset account contemplated by the Stipulation – with the total deferral balance not to exceed $101,090,000.[8] The surveillance information available by month from August 2012 through October 2014 in response to Data Request

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[6] It is important to remember that the original rulemaking purpose for requiring these surveillance reports was to ensure that the Fuel Adjustment Clause does not contribute to such over-earnings.
[7] Exhibit 910, p. 8.
[8] Page 5 of the Stipulation provides that the regulatory asset account shall not exceed $91.9 million plus ten percent – which equates to a maximum total deferral balance of $101,090,000.

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MPSC 0159s2 received in this case. Total solar rebate payments made during the noted period total to $87,388,391, and over-earnings during that period were more than sufficient for recovery of the deferred costs.[9] The Commission can readily compare these deferred costs to the numbers of Table 1 and on the other charts showing recent over-earnings by Ameren Missouri.

The Commission and Missouri appellate courts[10] have consistently stated that regulatory deferrals are not ratemaking decisions and that they do not guarantee unadjusted rate recovery. The primary concern leading to this precedent has been the concern that such deferrals could possibility contribute to over-earnings for the utility, and thus the Commission should retain the ability to offset recovery against any over-earnings.[11] Past Commission decisions have emphasized that other relevant factors, including offsets, should be considered together with previously deferred costs at the time that rates are being set.[12] That is exactly what the Commission should do with regard to this deferral, putting these principles into meaningful action for consumers.

If the Commission ignores the excessive earnings enjoyed by the Utility during the time period that the deferred costs were incurred, "all relevant factors" will cease to carrying any real meaning, and regulatory deferrals of this nature might as well be considered single-issue ratemaking or recognized as another example of a bonus profit-making scheme for a monopoly utility. Single issue ratemaking mechanisms weaken the incentives for utilities to operate efficiently and to control *overall* costs. It is important to

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[9] Exhibit 910, p 9.
[10] Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806 (Mo. Ct of App. 1993).
[11] James Dittmer Rebuttal, Exhibit 910, p. 15.
[12] Exhibit 910, pp. 13-17.

recognize that this Commission has regularly stated that deferral accounting would not prevent it from considering relevant “offsets” to the full prospective recovery of costs for which it had previously granted deferral accounting authority.[13] This rate case provides an opportunity for the Commission to prove that these statements are more than just words.

Return on Common Equity ("ROE")

In consideration of all relevant factors, what is the appropriate value for Return on Equity ("ROE") that the Commission should use in setting Ameren Missouri's Rate of Return?

The Consumers Council supports the recommendation of the Office of the Public Counsel that Ameren Missouri be allowed a return on common equity of 9.01%. This recommendation is the average of the three calculations performed by Public Counsel expert witness Lance Schafer [his Capital Asset Pricing Model, his constant-growth Discounted Cash Flow (DCF) model and his three-stage DCF model.]. The range established by these calculations is 8.74% to 9.22%.[14]

In determining the proper ROE, the Consumers Council also urges the Commission to take into account any decision it will make in this rate case to continue the Fuel Adjustment Clause, and at what sharing percentage, along with a recognition of any trackers or deferral recovery awarded to Ameren Missouri in this case which would shift the Utility’s business risk onto its ratepayers. The Commission should not allow such special mechanisms and extra recovery to foist business risk onto captive consumers

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[13] Exhibit 910, p. 16.

[14] Schafer Direct, Exhibit 409, p. 3

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without correspondingly adjusting the allowed ROE downward to account for such risk-shifting. It is self-evident that if rate of return ratemaking is to be applied fairly, then a lower risk of doing business should translate into a lower allowed ROE for the utility.

Rate Design

The Consumers Council supports the various class cost of service and rate design positions of the Office of the Public Counsel, including with regard to the economic development rate design proposals.

Consumers Council is a signatory to the March 10, 2014 Non-unanimous Stipulation and Agreement ("Stipulation") regarding economic development, class cost of service, revenue allocation and rate design entered into with Public Counsel, the Missouri Retailers Association, the Missouri Industrial Energy Consumers ("MEIC"), Noranda Aluminum, Inc. ("Noranda"). Since this Stipulation was objected to by certain other parties it stands as a joint position of the signatories. It represents a just and reasonable resolution of the rate design issues in this rate case. Consumers Council stands by it and hopes that the Commission appreciates that it was vigorously negotiated by representatives of each of the customer classes that will pay the electric rates approved in this case.

The Consumers Council particularly opposes the proposals to increase the fixed residential customer charge, and the part of the Stipulation that states that the current customer charge is to be retained is integral to Consumers Council's support. Applying rate increases to the fixed portion of an electric bill, beyond recognition of basic meter and

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billing costs, is unfair to low usage customers. Many vulnerable customers, including the bulk of most low-income customers use less than the average amount of electricity.

Moreover, testimony at the local public hearings contain several examples of consumers explaining how hard they work to reduce their usage in an effort to control their monthly energy expenses. Increasing the customer charge, while correspondingly lessening the increases to the volumetric portion of electric rates, takes away control from consumers.

Raising the customer charge also weakens the price signal to conserve energy, running counter to the Commission's efforts to encourage DSM programs and energy efficiency.

Fuel Adjustment Clause ("FAC")

In this general rate case, the Missouri FAC Law requires that the Commission make a determination as to whether the current Ameren Missouri FAC should be extended, modified, or discontinued. Section 386.266.5 RSMo. Consumers Council believes that the record in this case shows that the current FAC has served to shift risk from shareholders onto consumers in an unjust and unreasonable manner, and thus should be discontinued. The record of this general rate case shows that the utility does not need this piecemeal mechanism in order to have a sufficient opportunity to earn a fair return on equity.[15]

The Consumers Council recommends that the Commission discontinue the Fuel

[15] See Mantle Direct, Exhibit 400, pp.

Adjustment Clause (FAC) currently charged by Ameren Missouri, placing a reasonable amount of fuel costs in the base rates. This Utility does not need this surcharge in order to fairly recover its prudently incurred fuel costs, and the existence of the FAC has contributed to excessive earnings at ratepayer expense. Ameren Missouri has also failed to fully comply with the "complete explanation" provisions of Commission Rule 4 CSR 240-3.161(3)(H) & (I), as explained by Public Counsel.

Ameren Missouri indeed has a certain amount of control over the costs that are passed through its FAC, while its consumers have zero control over these costs. CEO Michael Moehn acknowledged that the Utility manages and controls which costs are included in its purchased power contracts, and further acknowledged that consumer have no control over the Utility's fuel costs.[16] If its FAC is allowed to continue at all, and consumers are thus forced to bear the risk of variations in such costs in between rate cases, that risk should be shared equally with a sharing mechanism that is no less than 50%/50%, embedding at least half of such costs in base rates. The slight adjustment of the incentives to a 90%/10% split would be a step in the right direction, providing an incrementally better incentive to the utility for controlling some of its largest costs.

The Missouri FAC Law provides that any FAC approved by the Commission may include "features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities". Section 386.266(1) RSMo. Consumers Council contends that holding Ameren Missouri to a mere 5% "skin in the game" through the current FAC incentive

[16] Transcript Volume 14, pp. 199-200.

mechanism has proven insufficient to encourage efficiency and cost-effectiveness with regard to Ameren Missouri's fuel and purchased-power procurement activities. The current 95%/5% split is patently unfair and has failed to produce a meaningful incentive to control costs.

If the Commission decides to grant Ameren Missouri an FAC, fuel commodity costs, purchased power costs, the cost of transporting the fuel commodity, purchased power transmission costs, off-system sales and the revenues from capacity sales should be the only costs and revenues included.

And finally, Subsection 7 of the Missouri FAC Law recognizes the connection between these issues and the Commission's determination of the Return on Equity (ROE) issues, as it states:

> The commission may take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation. [386.266.7 RSMo.]

Accordingly, Consumers Council asks that if an FAC is continued for Ameren Missouri that the Commission utilize this provision of the law and order at least a 10 basis point ROE reduction be made within the zone of reasonableness to recognize the lower risk profile that the FAC provides to the Utility by transferring the risk of revenue variability onto its consumers.

Noranda Rate Proposal

Following extensive negotiations, parties representing residential customers (Consumers Council), small business customers (MRA), and large industrial customers (Noranda and MIEC) joined with the Office of the Public Counsel (OPC), in the Nonunanimous Stipulation and Agreement on Rate Design mentioned above ("Stipulation"). This agreement addresses many issues related to economic development, class cost of service, revenue allocation and rate design, including a solution for the problems created by the potential closure of the Noranda aluminum smelter. On March 10, 2015, the Division of Energy filed a statement supporting the Stipulation. The Signatories represent consumers in all of the major customer classes that would be impacted by any rate deal for Noranda.

The Stipulation would establish a base rate of $34.00/MWh for a new IAS class, higher than the original $32.50/MWh requested by Noranda. Most notably, the Stipulation would include a 50% escalator to be applied in each rate case over the next ten years. This escalator would keep Noranda engaged in the rate case process and ensure that the interests of Noranda and other ratepayers continued to be aligned. Noranda would still be making a positive contribution to the Utility's fixed costs and its continued presence as a consumer on the regulated system would remain an economic benefit to all other consumers and to the state of Missouri.

The IAS retention rate outlined in the Stipulation is supported by the evidence in this case. According to Staff witness Sarah Kleithermes, if Noranda were given a rate of $32.50 with no participation in the FAC by Noranda, based upon the test year in this case, the rates for Ameren Missouri's other consumers would still be lower with Noranda remaining a regulated customer on Ameren Missouri's system, than if Noranda closed its Missouri operations.[17] MIEC witness Maurice Brubaker also testified that a rate of $32.50 would leave other consumers better off than if Noranda left the regulated system.[18] The evidence is compelling to Consumers Council that Noranda could be forced to close its operations, and the higher Stipulation rate of $34.00 reflects a just and reasonable retention rate plan for keeping the public benefit of Noranda's continued existence in Missouri to all other consumers. Furthermore, the stipulated rate plan contains numerous consumer protections to prevent against unjust enrichment by Noranda during the ten year period if it can take advantage of the IAS rate. And as a regulated rate, the Commission and other parties will continue to have the ability to monitor the IAS rate to ensure that the benefits continue to accrue to all ratepayers.

Ameren Missouri Proposal for a Noranda Wholesale Agreement

Ameren's Wholesale Proposal to remove Noranda as a retail customer from the regulated system is not just and reasonable, and Consumers Council is steadfastly opposed to it. This proposal would undoubtedly result in higher bills for consumers.[19] For

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[17] Transcript Volume 35, p. 3003.
[18] Transcript Volume 35, pp. 2682-2683.
[19] Exhibit 402, p. 3

other customer classes, having Noranda leave the regulated system by becoming a wholesale customer is hardly different than having Noranda leave the regulated system by closing its doors. Other ratepayers suffer either way.

In 2005, several parties agreed to allow Noranda to be served pursuant to a regulated Certificate of Convenience and Necessity ("CCN") in return for allowing transfer of a large segment of Metro East customers residing in Illinois to Ameren's Illinois affiliate. The tradeoff was that Missouri would lose the Metro East's contributions towards the cost of service, in exchange for Noranda entering the system and contributing towards the cost of service. If this agreement is violated by the "wholesale solution" for Noranda, then ratepayers lose the benefit of that bargain.

This so-called wholesale solution would also run afoul of several legal impediments that Consumers Council can explain further in its Reply Brief, in response to initial brief proposals. Among the legal problems with this idea is the lack of legal authority for the Commission to cancel a CCN and the Commission's inability to force a regulated customer to become a wholesale customer.

Respectfully submitted,

/s/ John B. Coffman

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list of this case at the Missouri Public Service Commission, on this 31st day of March, 2015.

/s/ John B. Coffman