

**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 Increase Its                )  
Annual Revenues for Electric Service.                    )        **Case No. ER-2014-0258**

**THE OFFICE OF THE PUBLIC COUNSEL’S AMENDED  
STATEMENT OF POSITION**

COMES NOW the Office of the Public Counsel (Public Counsel) and presents its Amended Statement of Position as follows:

**1. Regulatory Policy and Economic Considerations**

Statistical information regarding the recovery of Ameren Missouri residential ratepayers from the recession suggests that while electric rate increases have exceeded 40% in recent years, inflation-adjusted income has actually fallen. Moreover, proposals suggesting an equal increase to the charges of each customer class are equitable in appearance only. Such an approach fails to give proper consideration to the differences in impact experienced by each rate class as a result of any increased rate; and that impact will be far from equitable. Finally, residential rate payers utilizing Ameren Missouri’s services already experience increases from surcharges on their electric bills. Additional rate increases on top of the interim adjustments they currently experience will only exacerbate the economic hardship for many families. Public Counsel continues to urge that the Commission strongly consider the affordability of service, rate impacts and rate continuity as the Commission examines this case. (Marke Surrebuttal, pg. 13)

**2. Advertising & Communications**

A. What amount of advertising or communications expense should be included in Ameren Missouri's revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. What amount, if any, of the costs incurred by Ameren Missouri for its Community Lights campaign should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. What amount, if any, of the costs incurred by Ameren Missouri for its Social Media campaign should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

D. What amount, if any, of the costs incurred by Ameren Missouri for its Energy Efficiency campaign should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

E. What amount, if any, of the costs incurred by Ameren Missouri for its Cardinal Digital Outdoor Signs should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

F. What amount, if any, of the costs incurred by Ameren Missouri for its Storm Response campaign should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

G. What amount, if any, of the costs incurred by Ameren Missouri for its Reliability Fair should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

H. What amount, if any, of the costs incurred by Ameren Missouri for its Solar Energy Center Artwork should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

I. What amount, if any, of the costs incurred by Ameren Missouri for its Downtown Banners should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

J. What amount, if any, of the costs incurred by Ameren Missouri for its Louie the Lightning Bug balloon should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position

on the testimony provided at hearing.

### **3. Dues, including EEI and Environmental Working Groups Dues**

A. What amount should be included in Ameren Missouri's revenue requirement for dues?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. What amount, if any, of the dues paid by Ameren Missouri to EEI should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. What amount, if any, of the dues paid by Ameren Missouri to the Utility Water Act Group should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

D. What amount, if any, of the dues paid by Ameren Missouri to the Utility Air Regulatory Group should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

E. What amount, if any, of the dues paid by Ameren Missouri to the United Solid Waste Activities Group should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

F. What amount, if any, of the dues paid by Ameren Missouri to the Midwest Ozone Group should be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

### **4. Weather Normalization**

A. What level of weather normalized sales should be used to establish the billing units used to set rates?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. How should the LGS and SPS weather normalization adjustments be allocated to the various rate blocks in order to establish normalized revenues at present rates?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. What capacity factor should be used for solar distributed generation systems for purposes of calculating the solar annualization adjustment to test year billing units proposed by the Company and Staff?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

D. What level of sales to Noranda should be assumed for the test year for purposes of establishing billing units?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **5. Income Tax**

A. Should Ameren Missouri's Net Operating Loss Carryforward Related to ADIT be included in Ameren Missouri's rate base?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should the Company's IRC Section 199 Deduction be computed without regard to Net Operating Loss Carryovers from prior years in determining the Company's income tax expense?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **6. Coal Issues**

A. Should the value of Ameren Missouri's coal inventory include the value of coal in transit?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. What amount should be included in the revenue requirement for coal refinements revenues for the Labadie Energy Center?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **7. Amortizations**

A. 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?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should the amount of pre-MEEIA energy efficiency expenditures incurred by Ameren Missouri and recorded to a regulatory asset through the end of the true-up period be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. Should the amount of Fukushima flood study costs incurred by Ameren Missouri and recorded to a regulatory asset be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **8. Noranda AAO**

Should the sums authorized for deferral in Case No. EU-2012-0027 be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Public Counsel recommends that the Commission deny any Company request to recover the purported "costs" deferred by the Company pursuant to Case No. EU-2012-0027. It is Public Counsel's position that the Company incurred no costs from the ice storm and that its request is really to recover unearned income. In 2008, the Commission authorized the Company to receive a certain level of revenue requirement; due to the ice storm, the Company did not collect from Noranda, and/or from every other customer on the Company's system that were subject to the tariffed rates, that revenue requirement. As the Commission has recently recognized, utilities will experience episodes of under and over earning as part of the regulatory process. Ameren's request for the Commission to authorize recovery in the current case of underearnings that occurred in a prior year is not reasonable or appropriate, and should be disallowed. (Robertson Surrebuttal, pg. 3)

Importantly, in all prior ice storm AAO cases of which Public Counsel is aware, the costs authorized for deferral were related directly to repairing of infrastructure damage that the utility actually incurred. The costs deferred included, in most cases, a return on and of new investment until the plant could be included in rate base in a subsequent general rate increase case along with incremental labor and incremental other miscellaneous costs. However, in this situation, the Company did not incur any infrastructure damage to its system pursuant to the ice storm. The storm damage that actually occurred was to transmission lines operated by Associated Electric Cooperative – not Ameren. The Company incurred no storm damage to its systems, and none of the purported “expenses” deferred with the Noranda Ice Storm AAO represent costs usually deferred in an ice storm AAO. What they do represent is revenue requirement not earned. (Robertson Surrebuttal, pg. 5). It is Public Counsel’s position that authorizing recovery of the lost revenues from ratepayers is not just and reasonable and would constitute a violation of the retroactive ratemaking principle. (Robertson Direct, pg. 13-14)

## **9. Board of Directors-Related Expenditures**

Should Ameren Missouri’s allocated share of compensation paid to Ameren Corporation directors be included in revenue requirement?

MPSC Staff witness, Mr. Jason Kunst, recommends an updated adjustment to disallow approximately \$1,604,015 related to Ameren Corporation Board of Directors costs. Company witness, Ms. Lynn Barnes, agrees that Company will withdraw its request to recover private aircraft and hotel expenses included in Mr. Kunst adjustment. (Barnes Surrebuttal, p. 20) Public Counsel supports the adjustments proposed by Staff. (Robertson Rebuttal, pg. 3-4)

## **10. Uncollectibles**

What level of uncollectible accounts expense should be included in the revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **11. Storm Expense and Two-Way Storm Costs Tracker**

A. Should the Commission continue a two-way storm restoration cost tracker whereby storm-related non-labor operations and maintenance (“O&M”) expenses for major storms would be tracked against the base amount with expenditures below the base creating a regulatory liability and expenditures above the base creating a regulatory asset, in each case along with interest at the Company’s AFUDC rate?

It is Public Counsel’s position that that the Commission should not continue a storm cost tracker in this case. Trackers, if properly and judiciously used, can be a useful ratemaking tool in the regulator's toolbox, but a tracker is not a surrogate for cost-of-service ratemaking. Proper use of a tracker can occur in relatively temporary situations where the development of an annualization for new costs which are expected to recur annually is not possible because historical data upon

which to rely does not exist, or because of legislative actions such as changes in the law or rulemaking of governing regulatory bodies. However, once a reasonable historical record for the costs becomes available to develop an annualization of the costs, the use of the tracker should cease. As utilized for this issue, the tracker mechanism has supplanted cost-of-service ratemaking and that should not be allowed to continue.

Further, Public Counsel believes that the premise that the Company's incentive to control costs is not impacted with the use of a tracker is incorrect. In fact, Public Counsel believes that exactly the opposite is true. Cost-of-service ratemaking, not the use of trackers, is what provides monopoly utilities with the incentive to control costs. The use of trackers deprives monopoly utilities of any incentive to drive down costs. (Robertson Direct, pg. 20-21)

Public Counsel also believes the annualized level of major storm costs recommended in this case is relatively insignificant when compared to the company's total annual operating expenses. Comparing the annual level of major storm expense going forward, as recommended by Ameren witness Moore (i.e., \$4,600,000), to the Company's total operating expense developed by the MPSC Staff (source: Staff Direct Staff Accounting Schedules - \$2,437,489,272), shows that Ms. Moore's recommended annual expense amount represents less than 2/10ths of 1% of the Company's total operating expenses (i.e., \$4,600,000 divided by \$2,437,489,272). Certainly, the \$4.6 million dollars Ms. Moore recommends as an annualized level of expense is not an immaterial amount of money. But Public Counsel does not believe that \$4.6 million is a significant enough amount to justify a special tracker mechanism to replace the normal regulatory ratemaking processes and procedures, particularly given that a sufficient database of historical costs now exists upon which the Commission can rely in order to develop an annual level of expenses to include in the development of rates. (Robertson Surrebuttal, pg. 10-11)

- B. If the storm cost tracker is not continued, what annualized level of major storm costs should the Commission approve in this case?

It is Public Counsel's recommendation that the base amount of non-labor O&M major storm cost allowed in this case be \$4,600,000. (Robertson Surrebuttal, pg. 7)

- C. Should an amount of major storm cost over-recovery by Ameren Missouri be included in Ameren Missouri's revenue requirement and, if so, over what period should it be amortized?

Yes. It is Public Counsel's recommendation that the over-recoveries should be returned to customers. The 2006, 2007, and 2008 deferrals will be recovered fully by the utility by the end of calendar year 2014, but the amortization expense associated with those deferrals remains included in current rates until the effective date of the current case rate change. Public Counsel recommends that the over-recovered amount associated with those deferrals be returned to ratepayers via an offset to amortization expense as soon as possible.

Further, the 2009 deferral will be fully recovered by the utility by the end of June 2015, thus leaving only one month's amortization to be recovered after the operation of law date of this rate

case. Public Counsel recommends that the one month's amortization be combined, or netted, with the over-recoveries described above to derive the annual amount to be returned to ratepayers.

The 2013 deferral has a large liability balance as of December, 2014, which is likely to continue to increase through and including May 31, 2015.

The 2013 liability balance when netted with the other described over-recoveries and under-recovery results in a total over-recovery of \$7,822,626. Based on a review of recent rate changes for the Company, Public Counsel recommends that the amount be returned to ratepayers over two (2) years. The average period of time before a change in tariff effective dates for the Company's last five general rate increase cases (i.e., ER-2007-0002, ER-2008-0318, ER-2010-0036, ER-2011-0028, and ER-2012-0166) was approximately sixteen (16) months or 1.34 years. Thus, Public Counsel believes that a two-year time period represents a reasonable amount of time in which to return the ratepayers' own monies back to them. It would also help to mitigate intergenerational inequities that will occur if a longer timeframe is chosen. Spread over two years, the reduction in the total over-recovered liability balance when compared to test year costs recorded results in a \$(10,758,494) decrease to expense.

Finally, it is Public Counsel's recommendation that the Commission cease to authorize any new major storm trackers for the Company.

## **12. Vegetation Management and Infrastructure Inspection Trackers**

### **A. What amount should be included in the revenue requirement for Vegetation Management and Infrastructure Inspection?**

It is Public Counsel's position that the base amount of non-labor O&M vegetation management and infrastructure inspection costs authorized in the development of rates, in the current case, be \$52,422,026 and \$5,648,808, respectively. (Robertson Direct, pg. 23) The base amount of vegetation management and infrastructure inspection costs authorized in the Company's prior rate case, Case No. ER-2012-0166, was \$54,100,000 and \$6,200,000, respectively (Report and Order, p. 107).

Beginning on page 31, line 20, of her rebuttal testimony, Ameren Witness Moore states that the Company now proposes to use the actual incurred amounts through the true-up for the base level of expenses because that is consistent with the treatment of the base level expenses used in the Company's last three rate cases. (Robertson Surrebuttal, pg. 11) Public Counsel disagrees with the Company's proposal for several reasons: 1) the test year expenses identified by Ms. Moore are not accurate, 2) the annual level of expenses incurred for vegetation management since 2009 have shown no significant trending either increasing or decreasing, while the infrastructure inspections annual level of expenses have steadily decreased until the test year of the current case, and 3) what occurred in prior rate cases is not relevant going forward since the setting of the base level expense in those cases was merely a prelude to the tracking of any difference in actual costs incurred from the base level expense authorized. (Robertson Surrebuttal, pg. 12)



In the current case, Public Counsel, the MPSC Staff and MIEC witnesses all recommend that a sufficient database of historical actual costs exists upon which to determine an annualized level of costs to include in the development of rates. The trackers authorized by the Commission were setup to protect both shareholders and ratepayers because the new rules associated with the programs had no history upon which to base an annual level of costs with any accuracy. Public Counsel believes that a credible historical database of actual costs is now available, and so, it is time to move the development of these costs to a normal regulatory ratemaking process and eliminate the abnormal tracker mechanism. (Robertson Surrebuttal, pg. 15-16)

B. Should the vegetation management and infrastructure inspection trackers be continued?

It is Public Counsel's position that no new vegetation management and infrastructure inspection costs tracker be authorized in the current case. In Case No. ER-2012-0166 (Report and Order, p. 102 & 103), the Commission recognized that the vegetation management and infrastructure rules which became effective in June 2008 would lead to increased compliance costs for utilities. Since the rules were new and the ultimate costs to comply were unknown, the Commission authorized a series of trackers in order to assist the utility to recover the costs it incurred. However, the tracker mechanism was never meant to be permanent. The annual costs for compliance for the vegetation management activities are fluctuating up and down, as is normal with many costs under the control of the utility's management, while those of the infrastructure inspection program have dropped significantly. Public Counsel now believes both the Company and the Commission should recognize that, as of the operation of law date of the current case, there will be nearly seven (7) years of experience upon which the Company can rely for the setting of a base level of costs in rates, thus eliminating the need for the continued use of the tracker mechanism. The continued use of the tracker mechanism is no substitute for proper historical cost-of-service regulatory ratemaking. (Robertson Direct, pg. 29-31)

C. If the vegetation management and infrastructure inspection trackers are not continued, what annualized level of vegetation management and infrastructure-inspection costs should the Commission approve in this case?

Public Counsel recommends that the base amount of non-labor O&M vegetation management and infrastructure inspection costs authorized in the development of rates, in the current case, be \$52,422,026 and \$5,648,808, respectively. (Robertson Direct, pg. 23)

D. Should an amount of vegetation management and infrastructure inspection cost over-recovery by Ameren Missouri be included in Ameren Missouri's revenue requirement and, if so, over what period should they be amortized?

Public Counsel's recommendation is that the over or under recovered balances that exist as of May 31, 2015, be determined and included in the development of rates in the current case as an amortization to expense over two (2) years. Based on the cost data known at this time, the under recovered balance will approximate \$1,540,078. Spread over 2 years, the annualized amortization would be \$770,039.

Second, Public Counsel recommends that the Commission cease to authorize any new vegetation management and infrastructure inspection trackers for the Company. Because Public Counsel's recommendation includes known costs through the operation of law date of the case, May 31, 2015, it recognizes the continued amortization of tracker costs included in current rates along with tracker costs not yet included in rates. The net result is an increase of \$497,411 to the actual test year amortization expense.

### **13. Union Proposals**

- A. Can the Commission mandate or require that the Company address its workforce needs in a particular manner and, if so, should it do so?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- B. Should the Commission require the additional reporting requested by Mr. Walters?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

### **14. Rate Case Expense**

What is the appropriate amount to include in Ameren Missouri's revenue requirement for Rate Case Expense?

Public Counsel believes that most of the rate case costs the Company incurred to process the recent Rate Design Complaint Case, No. EC-2014-0224, were arguably booked to the wrong Uniform System of Accounts (USOA) Account, and that a majority of the total costs were imprudently incurred. Public Counsel believes that the booking issue is a minor issue with no ratemaking effect; however, ratepayers should not be required to reimburse the Company for the imprudent costs. Thus, Public Counsel recommends that the imprudent costs should be disallowed from the development of rates in the instant case. (Robertson Surrebuttal, pg. 19-20)

The Company booked its legal and consultant costs to a legal reserve liability account, but the Company stated that the offsetting expense entry was charged to USOA Account 923 - Outside Services. Public Counsel believes that the costs incurred, both legal and consulting, should have been booked to USOA Account 928 Regulatory Expenses. (Robertson Surrebuttal, pg. 20)

Public Counsel believes that the overwhelming majority of the costs related to EC-2014-0224 are imprudent and should have never been incurred. Because this was a complaint case filed against the Company, the Company was certainly required to participate, but because the issues to be determined in the case had little or no impact on the Company or its shareholders, the extent to which the Company participated far outweighed what should be considered reasonable and necessary. (Robertson Surrebuttal, pg. 21)

Regarding legal costs, the Company incurred the services of two separate firms: 1) Brydon,

Swearngen & England P.C. and 2) Smith Lewis, LLP. Public Counsel believes that these large costs should never have been incurred because the Company's own in-house legal staff could have been utilized to process the case. (Robertson Surrebuttal, pg. 21-22)

Public Counsel believes that all of the charges for the three outside expert firms were imprudently incurred given the limited rate design issues to be determined in the case. That is, the services of the three outside expert firms were unnecessary. As the Commission has noted before, when the Company has internal expertise capable of being brought to bear in a case more affordably than the use of outside expertise, the Company should employ the internal expertise. A Company of Ameren's size retains employees capable of understanding and presenting testimony on the relevant issues that were to be determined in that case. Had the Company utilized their own employees, the outside expert charges would not have been incurred. Thus, they should be disallowed. (Robertson Surrebuttal, pg. 22-23)

Public Counsel believes that some portion of the total miscellaneous charges relate to either the legal or outside service providers identified above, but because the amount is relatively immaterial and cannot be accurately determined from the Company's data request response, and it likely that the Company's personnel would have incurred similar costs, no disallowance is required for these charges. (Robertson Surrebuttal, pg. 23)

Public Counsel recommends that the Commission disallow the legal and outside expert charges the Company incurred in Case No. EC-2014-0224 because the charges were imprudently incurred. To the extent that the test year includes a portion of the costs identified, those costs should be removed from the annual level of costs for the accounts where they were booked. If the accounts in which these costs were booked are either updated or included in the true-up, the charges included in those periods should be disallowed. Robertson (Surrebuttal, pg. 23)

## **15. Miscellaneous Revenue Requirement Issues**

- A. What amount of corporate franchise tax should be included in the revenue requirement?

Public Counsel recommends that the 2015 corporate franchise tax liability less tax credits be used for revenue requirement and normalized over a period of 18 months. (Robertson Surrebuttal, pg. 25)

Public Counsel believes its recommendation is fair to both the Company and ratepayers since it is Public Counsel's understanding that the Company intends to file for a new general rate increase case within months after the finalization of the current case. If the Company does, indeed, file a new rate case as expected, it is likely that rates developed in that subsequent case will be authorized near the end of the 18-month timeframe of the recommended normalization period, thus allowing the Company to recover fully its actual incurred cost while not over-recovering the cost by any significant amount. Furthermore, since applicable legislation eliminated any future corporate franchise tax subsequent to 2015, there is no reason to include the entire 2015 corporate franchise tax liability as the expected level of annual ongoing expense. (Robertson Surrebuttal, pg. 25-26)

Company witness, Ms. Laura M. Moore, recognizes that corporate franchise taxes will be decreasing in the future. Ameren Missouri is willing to use the 2015 franchise tax liability of \$334,000 in its revenue requirement (Moore Surrebuttal, p. 8)

Public Counsel recommends that the electric portion of the Missouri 2015 tax liability \$306,536 ((Missouri tax liability \$334,151 less tax credits \$17,154) multiplied by 96.70%) be normalized over 18 months. The normalized amount of \$204,357 when compared to the actual test year cost recorded results in a \$449,498 decrease to expense.

- B. Should the investment through December 31, 2014, in an extension of the Nuclear Regulatory Commission ("NRC") license for the Callaway Energy Center be included in rate base if the extension is issued by the NRC by the filing of reply briefs in this case?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- C. How should the DOE breach-of-contract settlement amounts be treated in this case?

MPSC Staff witness, Ms. Lisa M. Ferguson, presented direct testimony that additional refunds were forthcoming (i.e., Staff Report Revenue Requirement Cost of Service, page 86). Her testimony is corroborated by the Company's response to MPSC Staff DR No. 353 which states that the Company anticipates an additional fourth quarter 2014 reimbursement of \$14,933,364 that it will record as a reduction of construction work in process ("CWIP) similar to the 2012 and 2013 reimbursements it received. The same response included an Addendum to Settlement Agreement between the parties which: extended the termination date of the current settlement agreement to December 31, 2016; provided allocations for evaluations of claims; and provided that the parties may extend the termination date for the agreement by mutual written agreement. (Robertson Rebuttal, pg. 11-12)

Public Counsel agrees with the MPSC Staff and the Company that the reimbursements should flow back directly to ratepayers via a reduction of the costs which the Company incurred because of the contract breach. (Robertson Rebuttal, pg. 12) The Company's response to Public Counsel Data Request No. 1041 and MPSC Staff Data Request No. 353s1 stated that the reimbursement was received in December 2014. The proceeds were booked to cash and as an offset to Nuclear Construction Work In Process (CWIP) accounts as a reimbursement for the Dry Cask Storage Project costs. (Robertson Surrebuttal, pg. 16)

Public Counsel believes that all DOE reimbursements related to this issue should flow back directly to ratepayers via a reduction of the plant investment cost the Company incurs because of the contract breach. It is a common concept of regulatory ratemaking theory that a regulated utility is only allowed to earn a return on and return of investment for which it actually incurs a cost. If the cost of an investment is reduced by a ratepayer contribution or proceeds from another entity, shareholders are not allowed to earn any return on or of the portion of the investment not paid for by the Company. The Company should not be allowed to treat the DOE reimbursements

as unregulated revenues because they are directly related to reducing the cost of the plant investment related to the DOE breach of contract settlement. (Robertson Surrebuttal, pg. 19)

Public Counsel is not opposed to reducing the amount of future reimbursements returned to ratepayers for prudent and reasonable incremental costs incurred by the company to obtain the reimbursements. (Robertson Surrebuttal, pg. 19)

## **16. 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?

It is Public Counsel's position that the Company's proposed capital structure at 12/31/2014 is just and reasonable. (Schafer Direct, pg. 3) Public Counsel's recommendation of Ameren Missouri's required return on common equity is 9.01%. This recommendation is the average of the three estimates Public Counsel witness Lance Schafer derived from his CAPM, constant-growth DCF and three-stage DCF models. The range established by these estimates is 8.74% to 9.22%. (Schafer Direct, pg. 3) Using Public Counsel's recommended return on equity of 9.01% as the cost of common equity and the Company's capital structure and embedded costs of long-term debt, short-term debt and preferred equity, Public Counsel's recommendation of Ameren Missouri's weighted average cost of capital is 7.327%. (Schafer Direct, pg. 4)

## **17. Lobbying Expenditures**

Should rent allocated to Ameren Missouri for Ameren Services' office in Washington D.C. be included in the revenue requirement?

MPSC Staff witness, Mr. Jason Kunst, proposes an adjustment to disallow the cost of the office space in Washington D.C. Public Counsel supports the adjustments proposed by Staff.

## **18. Incentive Compensation**

A. Should the safety component of the EIP-O incentive compensation plan be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should payments made under the BNA program be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

C. Should payments made to non-union employees made under the BBI program be included in revenue requirement?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

### **19. Class Cost of Service, Revenue Allocation and Rate Design**

- A. What methodology should the Commission use to allocate generation fixed costs among customer classes?

Public Counsel submitted two studies: The preferred method, “average and 4CP,” and an additional study for consideration the “average and excess 4NCP” if the Commission rejects Public Counsel’s preferred method.

Public Counsel suggests that the Commission strongly consider the affordability of service, rate impacts and rate continuity as they examine this case. (Marke Surrebuttal, pg. 2-3)

- B. How should the non-fuel, non-labor components of production, operation and maintenance expense be classified and allocated?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- C. How should any rate increase be collected from the several customer classes?

Public Counsel believes that an equal increase to the charges for each customer class as proposed by Ameren Missouri (as well as modified variations of equal spread in positions by other parties) only appears equitable. Such an approach fails to give proper consideration to the differences in impact experienced by each rate class as a result of any increased rate. That impact will be far from equitable. (Marke Rebuttal, pg. 15)

The results of Public Counsel’s class cost of service study indicates that in order to equalize class rates of return, the residential class would require a 0.27% revenue neutral reduction under the “average and 4CP” method or a 3.42% increase under the “average & excess 4NCP” method. To equalize class rates of return, the SGS class would require a 2.35% revenue neutral reduction under the “average & 4CP” method or a 0.33% revenue neutral increase under the “average and excess 4NCP” method. According to both versions of the CCOS study, the LGS/SPS class would need to be reduced, the LPS class would need to be increased, the LTS class would need to be increased, and the lighting class would need to be reduced. (Marke Direct, pg. 31)

Public Counsel’s CCOS study shows that both the residential and small general service classes are near the system average and should not receive a revenue neutral rate increase. (Marke Direct, pg. 31)

Residential ratepayers’ wages are not keeping up with Ameren’s rate increases. Public Counsel suggests that the Commission strongly consider the affordability of service, rate impacts and rate continuity as they examine this case. (Marke Rebuttal, pg. 22)

Public Counsel does not believe it is appropriate for an individual household to be assigned the

same costs as a large industrial or large commercial customer. It is incorrect to assume that these facilities and their related non-demand allocation costs are equal. A large industrial or large commercial customer is much more likely to have a larger lot size, higher clearance poles, heavier conductors, larger conduits and a more costly transformer. Using a weighted meter allocation for the non-demand related allocation to reflect these realities is appropriate. (Marke Surrebuttal, pg. 8)

D. What should the Residential Class customer charge be?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

E. Should the Commission approve Wal-Mart's proposed shift to increase the demand component of the hours-use rate design for Large General Service and Small Primary Service?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

F. Should the Commission approve Wal-Mart's recommendation to require the Company to present analyses of alternatives to the hours-use rate design in its next rate case?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

G. What methodology should the Commission use to allocate off-system sales revenues among customer classes?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

H. What methodology should the Commission use to allocate income tax expense among customer classes?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

I. What methodology should the Commission use to allocate fuel and purchased power costs among customer classes?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **20. Depreciation**

- A. What amount of depreciation expense, including for the Meramec Energy Center retirement, should be included in Ameren Missouri's revenue requirement?

Ameren testimony indicates the Company could change its mind, at any time, on the retirement date of the Meramec Plant. (Robertson Rebuttal, pg. 21)

The Company's proposal, if authorized by the Commission, will result in a \$17,000,000 increase in the annual depreciation expense recovered from ratepayers each year going forward. However, authorization for the recovery of the \$17,000,000 would be based solely on the Commission's acceptance of the Company's representation that it is "speeding up" the retirement date of the Meramec Plant. If the Company then, at a later date, simply changes its mind and decides to postpone the retirement date, ratepayers will have been forced to remit to the Company tens of millions of dollars sooner than required and that increased cash flow creates a large incentive for the Company's request. (Robertson Rebuttal, pg. 23)

Public Counsel believes that this issue is the same issue as was presented in the Company's 2010 case wherein the Commission required the Company to use a life span retirement date of 2027 for the Meramec plant, not 2022. Further, there appears to be no current change in circumstance on which the parties can reasonably rely to support changing this recent decision. (Robertson Rebuttal, pg. 23)

- B. What amount of depreciation expense should be included in Ameren Missouri's revenue requirement for Accounts 364 and 369 (minor account 1)?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing

## **21. Economic Development Rate Design Mechanisms**

- A. Should the Commission expand the application of Ameren Missouri's existing Economic Development Riders?

If the Commission elects to move forward with an economic development/infrastructure sustainability rate design mechanism, Public Counsel suggests that the mechanism be applied to all but the residential and lighting classes. Public Counsel believes that an infrastructure-based economic development rate design mechanism that includes the residential class would likely affect too large of a range of income and consumption to justify a class-wide mechanism; too many whose income or consumption indicate they need no incentive would be afforded a rate reduction in the given geographic area. However, Public Counsel believes exclusion of the residential class from this mechanism should be married to Commission consideration of the creation of an "income eligible" residential rate mechanism for economic development purposes. In Ameren's service territory, low-income rate payers may, and likely do, utilize less power than more affluent ratepayers. If so, a low-income residential mechanism could have the dual benefit of improving electricity demand while also fomenting general economic development among users by freeing up scarce funds for other uses.



For the non-residential and non-lighting classes, Public Counsel believes that an economic development rate design mechanism should be applicable to customers whose presence (new customer) or absence (existing customers) would materially impact revenue generation from the customer's class, and/or create substantially deleterious primary and secondary externalities felt within the geographic location such that the revenue generated from the class in the geographic location is substantially likely to be negatively affected going forward. Moreover, any rate incentive should be temporal in nature, decreasing over time, and only be available in conjunction with local, regional or state governmental economic development activities where public support has been offered and accepted by the customer to locate new facilities, expand existing facilities, or retain existing facilities in the geographic location. (Marke Direct, pg. 4-5)

- B. Should the Commission modify Ameren Missouri's existing Economic Development Riders to require recipients to participate in the Company's energy efficiency programs?

Although Public Counsel has suggested additional modifications to the existing Ameren Missouri Economic Development Riders, it is in general agreement of the potential benefits of linking economic development incentives with energy efficiency programs.

- C. Should the Commission open a docket to explore the role economic development riders have across regulated industries (i.e. water, electric, natural gas) and/or to further explore issues raised by parties in this case and issues the Commission inquired about at the beginning of the case?

Public Counsel would not oppose the Commission opening such a docket.

## **22. MEEIA Low Income Exemption**

Should the Commission approve an exemption of MEEIA charges for low income customers? If so, should the cost of exemption be paid by only residential customers or all customers?

Public Counsel has some reservations on the potential unintended consequences that may result from approving the exemption of qualified low-income ratepayers from MEEIA charges as it is currently proposed by Ameren, but is generally supportive of the concept. (Marke Rebuttal, pg. 9)

Public Counsel believes one unintended consequence from this initiative would be that only certain low-income ratepayers (those who are already receiving some form of assistance) would benefit from this policy move while others (not receiving some form of assistance) would be made comparatively worse off. The Commission should be cognizant of the unintended consequences of failing to address the entire class of low-income customers with this change, and so, should tailor implementation carefully. Public Counsel suggests that interested stakeholders should explore this issue in greater detail in order to mitigate any potential burden on intra-class ratepayers. (Marke Rebuttal, pg. 10)

Information received from Ameren also shows that there are apparently two residential customers who have opted out of the MEEIA surcharge even though the Commission's rules relating to provisions for customers to opt-out of participation in utility demand-side programs do not extend to residential customers. It is unclear why Ameren Missouri has allowed two residential customers to be exempt from this surcharge, and if in violation of the law, this should be remedied.

Public Counsel supports Staff's suggestion that the costs be paid by all customers.

### **23. Street Lighting**

- A. Can the Commission mandate or require that the Company sell its street lights to the Cities?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- B. Should the Commission approve a revenue-neutral adjustment between customer-owned and Company-owned lighting rates?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- C. Should the Commission eliminate the termination fees from the Ameren Missouri-owned lighting rate?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

### **24. LED Street Lighting**

Should the Commission order Ameren Missouri to continue to study the cost-effectiveness of replacement of all or parts of existing company-owned street lights with LED lights, and, no later than twelve (12) months following the Commission's Report and Order in this case, to file either proposed LED lighting tariffs or an update to the Commission on when it will file a proposed LED lighting tariff to replace existing company-owned street lights?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

### **25. Other Tariff issues**

Should the Commission order the Company to eliminate the 7(M) lighting class (Municipal Incandescent Street Lighting)?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **26. Supplemental Service**

Should the Commission eliminate or modify the terms of Ameren Missouri's Supplemental Service tariff (aka. Rider E)?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **27. Ameren Services Allocations**

A. What level of Ameren Services Company allocations should be included in the Company's revenue requirement?

The MPSC Staff and MIEC both recommend an adjustment to disallow a Company proposed \$6,288,000 increase in annual allocation charges. In addition, the MPSC Staff states in its direct testimony (i.e., Staff Report Revenue Requirement Cost Of Service, page 61) that it has requested, but not received, cost information needed to analyze the AMS allocations. The MPSC Staff has concerns as to whether the data that will be made available will be able to answer all of the Staff's questions. Staff also recommends further review of this issue through a Cost Allocation Manual ("CAM") review. (Robertson Rebuttal, pg. 5)

Public Counsel does not agree with the MPSC Staff's recommendation for a further review of AMS operations through a CAM review. Public Counsel does not believe a CAM review would go far enough in helping to determine what the reasonable and prudent cost structure of AMS is and what portion of those reasonable and prudent costs should be allocated to Missouri ratepayers. A CAM review certainly would be helpful, but a CAM review would not answer the fundamental question of whether the actual costs being incurred and allocated by AMS are reasonable and prudent? The only way to answer those questions is for AMS to submit to a regulatory audit in the same way that Ameren Missouri is being audited in the current general rate increase case. (Robertson Rebuttal, pg. 7-8)

It is reasonable and in the public interest for a financial and operational audit of AMS to occur periodically. AMS is a large services company whose operations perform activities for Ameren Missouri that it once performed for itself. Relying solely on the mantra that AMS now provides those same services at a lower cost simply because its total costs are allocated among several entities, does nothing to verify whether the costs should have been incurred in the first place or whether they were prudent and reasonable. If those same activities necessary for the operation of Ameren Missouri were still performed by Ameren Missouri they would be subjected to financial and operational audits on a regular basis. (Robertson Rebuttal, pg. 10-11)

B. Should the Commission open a separate docket to further examine Ameren Services Company's costs after this rate case is over?

Public Counsel recommends that the Commission consider opening a docket with the goal of performing a detailed financial and operational audit of the AMS cost structure in addition to its allocation processes, procedures and controls. (Robertson Rebuttal, pg. 11)

## **28. Net Base Energy Costs**

At what level should net base energy costs be set in this case?

Public Counsel does not have a level that it recommends that base energy costs be set at in this case. It would note that maintaining an artificially low NBEC increases the differences between it and the actual net energy cost, resulting in the *appearance* that the FAC costs and revenues have substantially changed since the last rate case. In so doing, this has the subtle effect of bolstering the supposed need for an FAC the next time the electric utility comes in for a rate case.

## **29. Labadie ESPs**

A. Should the Company's investment in electrostatic precipitators installed at the Labadie Energy Center be included in the Company's rate base?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

B. Should Ameren Missouri's rate base be reduced by \$408,048 because of damage to collector plates used in the Labadie ESP project?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

## **30. Fuel Adjustment Clause ("FAC")**

A. Did the Company fail to comply with the "complete explanation" provisions of 4 CSR 240-3.161(3)(H) and (I) and, if so, would this justify the elimination of the Company's fuel adjustment clause?

The Company did not provide complete explanations of the costs and revenues that it proposes to be included in its FAC. The Commission has been given the authority to grant, or not grant, an FAC for each electric utility. An FAC is a significant deviation from the prohibition against single issue ratemaking. It is not a "right" for the electric utilities – it is discretionary.

The exercise of discretion, however, requires comprehensive scrutiny by the Commission because granting an FAC moves the risk of changes in fuel and purchased power prices from the electric utility to the customers. Ameren Missouri's filing did not meet the Commission's minimum filing requirements for FACs so that the Commission can make an informed decision regarding whether Ameren Missouri should be allowed an FAC and, if so, what costs and revenues should be included. (Mantle Direct, pg. 9)

The Commission's minimum filing requirements are not optional. A natural and appropriate consequence for failing to comply with the Commission's minimum filing requirement is to disregard the deficient, non-compliant filing, and, as a result, disallow the request for the fuel adjustment clause. In other matters before the Commission where this issue has arisen, the utility has taken steps to attempt to correct its filings in order to bring them in compliance with the Commission's rules. In this case, the Company has taken no such steps to correct its deficient filings.

- B. Did the Company fail to provide information on the magnitude, volatility and the Company's ability to manage the costs and revenues that it proposes to include in its FAC and, if so, would this justify the elimination of the Company's fuel adjustment clause?

The Company did not provide information on the magnitude, volatility and the Company's ability to manage each cost and revenue that Ameren Missouri is proposing to be included in its FAC.

- C. If the FAC continues should the sharing percentage be changed to 90%/10%?

If the FAC continues, the sharing percentage should be changed to 90%/10% for the following reasons: (1) the current FAC sharing mechanism of 95%/5% has contributed to Ameren Missouri earning above its authorized return on equity ROE; (2) Ameren Missouri has shown that it is eager to include costs and reluctant to include revenues in its FAC; (3) The 95%/5% incentive provides Ameren recovery of approximately 99% of its costs that it flows through its FAC; and (4) FAC prudence reviews are difficult due to the myriad costs and revenues included in Ameren Missouri's FAC. (Mantle Direct, pg. 21) In essence, Public Counsel believes a 90%/10% split provides a better incentive to the utility to control costs making it more just and reasonable for customers.

- D. What transmission charges should be included in the FAC?

The Commission should not continue Ameren Missouri's FAC. 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. (Mantle Rebuttal, pg. 3)

- E. If the FAC continues, what costs and revenues should be included in the Company's FAC:
1. Should only fuel and purchased power costs, transportation of the fuel commodity, transmission associated with purchased power costs and off-system sales revenues be included?

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. (Mantle Rebuttal, pg. 3)

2. If costs and revenues other than those listed in item 1 above are included in the FAC, should cost or revenue types in which the Company has incurred less than \$360,000<sup>1</sup> in the test year be included, and what charges and revenues from MISO should be included?

If the Commission decides to grant Ameren Missouri an FAC, and does not limit the cost and revenues in the FAC to 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, no cost types in which the Company has incurred less than \$390,000 should be included. (Mantle Rebuttal, pg. 3)

3. Should transmission revenues continue to be included in the FAC?

If the Commission decides to grant Ameren Missouri an FAC, and does not limit the cost and revenues in the FAC to 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, no revenue types in which the Company has received less than \$390,000 should be included. (Mantle Rebuttal, pg. 3)

### **31. Noranda Rate Proposal**

- A. Is Noranda experiencing a liquidity crisis such that it is likely to cease operations at its New Madrid smelter if it cannot obtain relief of the sort sought here?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

1. If so, would the closure of the New Madrid smelter represent a significant detriment to the economy of Southeast Missouri, to local tax revenues, and to state tax revenues?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

2. If so, can the Commission lawfully grant the requested relief?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

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<sup>1</sup> The filed question for this issue references an amount of \$360,000. The correct amount pertaining to this issue is \$390,000.

3. If so, should the Commission grant the requested relief?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- B. Would rates for Ameren Missouri's ratepayers other than Noranda be lower if Noranda remains on Ameren Missouri's system at the reduced rate?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- C. Would it be more beneficial to Ameren Missouri's ratepayers other than Noranda for Noranda to remain on Ameren Missouri's system at the requested reduced rate than for Noranda to leave Ameren Missouri's system entirely?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- D. Is it appropriate to redesign Ameren Missouri's tariffs and rates on the basis of Noranda's proposal, as described in its Direct Testimony and updated in its Surrebuttal Testimony?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

1. If so, should Noranda be exempted from the FAC?

No, it should not. Noranda, like every other Ameren Missouri customer, is served by an integrated production system with varied resources ideally designed and built to meet that load. Resource variety is the key to providing a low cost, reliable supply of energy to all customers; even customers as large as Noranda. The energy used by Noranda contributes to the cost of fuel to meet Ameren Missouri's system requirements just as the usage of Ameren Missouri's other customers contributes to the cost of fuel. And just as the existence of the other customers reduces the amount of energy and capacity Ameren Missouri can sell on the market, the existence of Noranda as a customer of Ameren Missouri reduces the amount of energy and capacity that Ameren Missouri can sell as purchased power. Therefore, neither Noranda nor any other Ameren Missouri customer should be excluded from the FAC, should the Commission determine that the FAC should continue for Ameren Missouri. (Mantle Rebuttal, pg. 34)

2. If so, should Noranda's rate increases be capped in any manner?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

3. If so, can the Commission change the terms of Noranda's service obligation to Ameren Missouri and of Ameren Missouri's service obligation to Noranda?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

4. If so, should the resulting revenue deficiency be made up by other rate payers in whole or in part?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

5. If so, how should the amount of the resulting revenue deficiency be calculated?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

6. If so, can the resulting revenue deficiency lawfully be allocated between ratepayers and Ameren Missouri's shareholders?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- i. How should the revenue deficiency allocated to other ratepayers be allocated on an interclass basis?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- ii. How should the revenue deficiency allocated to other ratepayers be allocated on an intra-class basis?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

7. If so, what, if any, conditions or commitments should the Commission require of Noranda?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

E. What is Ameren Missouri's variable cost of service to Noranda?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

1. Should this quantification of variable cost be offset by an allowance for Off-System Sales Margin Revenue?

Public Counsel did not file testimony on this issue and reserves the right to base a final position



on the testimony provided at hearing.

2. What revenue benefit or detriment does the Ameren Missouri system receive from provision of service to Noranda at a rate of \$32.50/MWh?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- F. Should Noranda be served at rate materially different than Ameren Missouri's fully distributed cost to serve them? If so, at what rate?

Public Counsel did not file testimony on this issue and reserves the right to base a final position on the testimony provided at hearing.

- G. Is it appropriate to remove Noranda as a retail customer as proposed by Ameren Missouri in its Rebuttal Testimony?

No. It would be inappropriate and illegal to remove Noranda as a retail customer as proposed by Ameren Missouri. The revenues that Ameren Missouri would receive from Noranda under Ameren Missouri's proposal would not cover its cost of providing service to Noranda, and Ameren Missouri's proposal would result in higher bills for its other customers. In addition, there is no assurance that Noranda's New Madrid smelter could continue operation under this proposal. Finally, the Fuel Adjustment Clause was not created to operate in the manner contemplated by Ameren Missouri's proposal. (Mantle Surrebuttal, pg. 2)

1. Can the Commission cancel the Certificate of Convenience and Necessity that was granted for Ameren Missouri to provide service to Noranda and, if so, would the cancellation of the CCN be in the public interests?

The Commission does not have the statutory authority to cancel a Certificate of Convenience and Necessity ("CCN"). Moreover, canceling the CCN granted for Ameren Missouri to serve Noranda is detrimental to the public interest. (Mantle Surrebuttal, pg.4)

2. Can the Commission grant Ameren Missouri's proposal since notification regarding the impact of this proposal on its other customers' bills was not provided to Ameren Missouri's customers?

No. Ameren Missouri first provided its proposal in its rebuttal testimony in response to Noranda's rate design request. No notice of its proposal or the potential impact on its customers' bills has been provided to its customers. (Mantle Surrebuttal, pg. 10)

3. If the Commission grants Ameren Missouri's proposal, should the costs and revenues flow through the FAC?

No. According to Section 386.266, the FAC is to reflect increases and decreases in prudently incurred fuel and purchased power costs, including transportation. In addition, the proposed contract between Noranda and Ameren Missouri would create an Ameren Missouri customer that

is very different from Ameren Missouri's current wholesale customers and cost recovery and revenues received should not be treated as Ameren Missouri's current wholesale customers are treated. (Mantle Surrebuttal, pg. 17)

4. Can Ameren Missouri and Noranda end their current contract without approval of all of the parties to the Unanimous Stipulation and Agreement in the case in which Ameren Missouri was granted the CCN to serve Noranda?

No. The parties to the Unanimous Stipulation and Agreement are legally bound by the terms of that agreement. The current contract was integral to the agreement by the Commission Staff ("Staff"), Public Counsel, Missouri Industrial Energy Consumers, and Missouri Energy Group regarding the Noranda CCN. These parties based their agreement in good faith on the fifteen-year current contract between Noranda and Ameren Missouri. Among other factors, the parties weighed the benefit of Noranda as a retail customer contributing to the increased fixed costs incurred by Ameren Missouri in the next fifteen years against the detriment of off-system sales that Ameren Missouri would not be able to make given the massive amounts of energy that Noranda would consume and the additional need for additional capacity due to Noranda's large load. In the end, the parties came to an agreement that balanced, for the next fifteen years, their interests. Even if legal, ending the contract after ten years upsets that balance.

**WHEREFORE**, Public Counsel respectfully submits its amended position.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Dustin J. Allison**

By: \_\_\_\_\_

Dustin J. Allison (#54013)

Acting Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-4857

(573) 751-5562 FAX

Dustin.Allison@ded.mo.gov

marc.poston@ded.mo.gov

christina.baker@ded.mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 20<sup>th</sup> day of February 2015:

***/s/ Dustin J. Allison***

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