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-2021-0240**

REPLY BRIEF OF STAFF

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REPLY BRIEF OF STAFF

I. Time of Use Rate Schedule Tariffs (Responds to Brief of Ameren Missouri Brief at 2-8 on Issue 17A).

The Commission has authority to review proposed changes to Ameren Missouri's tariffs, including changes to practices relating to charges and services, under Section 393.150.1, RSMo (2016). The burden of proof to justify those changes is squarely on Ameren Missouri under Section 393.150.2, RSMo (2016).

Ameren Missouri failed to file direct testimony to support the changes to its residential time of use (ToU) tariffs to change its rate schedule names.[1] The purported research it relied on is not in the record. Nor are the focus groups or presentations it refers to. Neither is the testimony from the previous case, ER-2019-0335. The only testimony in the record in this case that Ameren Missouri focuses on relates to the importance of educating customers about the opportunity for savings from time of use rate schedules. Ameren Missouri's evidence therefore ignores the importance of educating customers about the risk of higher bills from time of use rate schedules.

[1] Staff's initial Brief incorrectly stated that Ameren Missouri filed no direct testimony even acknowledging this proposed tariff change. (Staff Brief at 3). Ameren Missouri witness Steve Wills did include a footnote at page 5 of his direct testimony that the names in Ameren Missouri's proposed tariffs would be "aligned" with the names Ameren Missouri chose. (Exhibit 17 at 5 n.2). However, Mr. Wills' direct testimony merely informed the Commission of the change, rather than explaining why the change was justified as required by Commission Rules 20 CSR 4240-2.065(1) and 20 CSR 4240-3.030(3)7.

A. The Commission has authority to review Ameren Missouri's proposed changes to its regulations and practices relating to its residential time of use (ToU) rate schedules under Section 393.150.1, RSMo (2016).

The Commission has express authority over proposed changes to Ameren Missouri's tariffs, including proposed changes to any practice related to any charges and services, under Section 393.150.1, RSMo (2016), which states in relevant part:

> Whenever there shall be filed with the commission by any … electrical corporation … any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation *or practice relating to any rate, charge or service*, the commission shall have … authority … to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation, or practice…."

(emphasis added). The burden of proof falls squarely on the utility, Ameren Missouri, to justify any changes to its tariffs and practices under Section 393.150.2, RSMo (2016). Commission Rules 20 CSR 4240-2.065(1) and 20 CSR 4240-3.030(3)7 require Ameren Missouri to file direct testimony in support of any proposed tariff changes.

Regardless of the Commission's ultimate decision on this issue, the Commission should reject Ameren Missouri's attempt to evade Commission oversight of the practices relating to its residential time of use rate schedules. The case cited by Ameren Missouri, *State ex rel. Praxair, Inc.*, does not support its argument that the rate schedule names reflected in Ameren Missouri's tariffs are a management prerogative outside the Commission's authority. The language that Ameren Missouri quotes from *Praxair* is not from the court's holding in that case, but from an argument raised by the utility but rejected

by the court.[2] Moreover, both of the cases cited in *Praxair* affirm the Commission's authority in regards to public utilities, and neither case ever held that the Commission was ever "dictat[ing] the manner in which the company shall conduct its business."[3] Examples of "purely management prerogative[s]" include whether to pay dividends, who to name as president or counsel, or where to obtain materials, labor, or supplies.[4]

Here, Staff is not asking the Commission to dictate whether Ameren Missouri pays dividends, or who it names as its president, or where it obtains its materials, labor or supplies. Staff is asking the Commission to exercise its authority, plainly given under Section 393.150.1, to review Ameren Missouri's proposed change to the practices related to its residential time of use charges and rate schedules. Like the Commission in *Praxair*, *Kansas City Transit*, and *City of St. Joseph*, the Commission is squarely within its express authority under Section 393.150.1, RSMo (2016), in reviewing Ameren Missouri's practices regarding the residential time of use rate schedules reflected in Ameren Missouri's tariffs.

B. The Commission should reject Ameren Missouri's proposed changes to its tariffs and practices regarding its time of use rate schedules, order Ameren Missouri to file compliance tariffs reflecting its already approved time of use rate schedule names, and order Ameren Missouri to comply with all practices reflected in its residential time of use rate schedule, including use of the residential time of use rate schedule names in those tariffs.

The Commission's order here must be based on competent and substantial evidence on the whole record. "Substantial" evidence means "[e]vidence, which, if true,

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[2] *State ex rel. Praxair Inc. v. Pub. Serv. Comm'n*, 344 S.W.3d 178, 188 (Mo. banc 2011).
[3] *State ex rel. Kansas City Transit, Inc. v. Pub. Serv. Comm'n*, 406 S.W.2d 5, 11 (Mo. banc 1966); *State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 325 Mo. 209, 225, 30 S.W.2d 8, 15 (Mo. banc 1930) ("the action of the circuit court approving the order of the commission was proper and should be affirmed. It is so ordered. All concur.").
[4] *Kansas City Transit, Inc.*, 406 S.W.2d at 11; *City of St. Joseph*, 30 S.W.2d at 15.

has probative force upon the issues…."[5] Evidence has probative value if it tends to prove or disprove a point in issue.[6] In other words, it must be relevant.[7]

Here, Ameren Missouri proposes to update its residential time of use rate schedule tariffs by changing "Basic Service" to "Anytime Service," "Daytime/Overnight Service" to "Evening/Morning Saver" and "Time-of-Use" to "Overnight Saver."[8] Ameren Missouri has failed to meet its burden of proof with regards to its proposed changes to its residential time of use rate schedule names. As noted in Staff's initial Brief, Ameren Missouri failed to provide any direct testimony in support of these proposed tariff changes with its initial case filing.

The testimony provided by Ameren Missouri's first witness, Steve Wills, lacks probative value. Mr. Wills merely testified that Ameren Missouri performed research, conducted focus groups, and presented at a Commission Agenda.[9] Whether Ameren Missouri performed research is irrelevant. Ameren Missouri never adduced evidence demonstrating *what* its research and focus groups show. Without the actual research, focus groups, and presentation in evidence, there is no logical connection between Ameren Missouri's research and its proposed tariff changes.

Likewise, Ameren Missouri's second witness, Dr. Ahmad Faruqui, focuses on the importance of educating customers about the potential for savings under time of use rate plans.[10] Dr. Faruqui's testimony fails to address Staff's testimony that Ameren Missouri's

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[5] *Spencer v. Zobrist*, 323 S.W.3d 391, 399 (Mo. App. W.D. 2010).
[6] BLACK'S LAW DICTIONARY Evidence-Probative Evidence *(*11th ed. 2019).
[7] *Id.*
[8] *Exhibit 205* at 53:5-11; *compare* MO P.S.C. No. 6, 3rd Revised Sheet No. 53, 54, 54.4, 54.7, 54.10, and 54.13. A grandfathered Time of Day (ToD) pilot that is no longer offered for new enrollees is at MO P.S.C. No. 6, 2nd Revised Sheet No. 54.3.
[9] Exhibit 18 at 46-47 (Wills Rebuttal); Exhibit 19 at 16 (Wills Surrebuttal).
[10] Ameren Missouri Brief at 4-5.

residential customers must also be educated about the risks for higher bills under time of use rate plans if the residential customer does not shift usage patterns.[11] Neither Dr. Faruqui nor Mr. Wills testified that educating residential customers about the risks of higher bills was unimportant.

Ameren Missouri's Brief attempts to gloss over the evidentiary shortcomings identified above by improperly citing to materials outside the record of this case, making assertions of fact with no record citation, or asking the Commission to make inferences that are not supportable by the evidence cited. For example, Ameren Missouri cites at length materials from case ER-2019-0335 that are not in the record in this case.[12] For another example, Ameren Missouri asserts with no record citation that "No concern was expressed about the 'Savers' naming under the Company's plan."[13] As a final example, Ameren Missouri seems to suggest that its website has a "special yellow flag," but there is no evidence to support that assertion. Rather, the only testimony adduced by Ameren Missouri was that Staff witness Sarah Lange is not aware of a "special yellow flag" on Ameren Missouri's website.[14] Ms. Lange's testimony does not permit a reasonable inference that Ameren Missouri's website actually has a flag, what it says (if anything), when it was placed there, how it appears on the site, or any other remotely

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[11] *Id.*

[12] Ameren Missouri Brief at 2-3.

[13] Ameren Missouri Brief at 3. In fact, while not in evidence in this case, the record in ER-2019-0335 contradicts Ameren Missouri's assertion here. *See* Case No. ER-2019-0335, Staff Response to Status Report, Item No. 381 (Jul. 17, 2020) ("During this meeting, *Staff raised additional questions and provided feedback*. Although no longer required under the Stipulation, *Staff believes future discussions would be helpful, and looks forward to continuing the conversation with Ameren Missouri.*") (emphasis added); *see also* Case No. ER-2019-0335, Ameren Missouri Reply to Staff's Response, Item No. 382 (Jul. 21, 2020) (noting that Ameren Missouri was "willing to—even happy to—provide further information to Staff and all other parties regarding customer engagement plans.").

[14] Ameren Missouri Brief at 5; *Compare* Tr. at 286:15-24.

useful information about it (not even if it is yellow or special). The Commission should disregard each of these unsupported assertions in Ameren Missouri's Brief.

As a final argument to support its change, Ameren Missouri argues that the lack of consumer complaints to date somehow supports its decision to change its time of use residential rate schedule names. That argument must fail. To date, only 548 residential customers have signed up for advanced time of use "Saver" rates, and those customers did so at a time when Ameren Missouri reduced its rates.[15] The lack of any customer complaint now should therefore not be surprising. Ameren Missouri is in the process of fully implementing its AMI infrastructure and residential customers are faced an 8.8% (or more) rate increase. Without solid evidence of Ameren Missouri's research on its time of use rate schedule names, there is no evidence to indicate how many residential customers might sign up for advanced time of use rates without understanding the associated risks, out of desire or desperation to offset the effects of that large rate increase. As Staff's evidence demonstrates, the more advanced time of use "Saver" rate schedules do carry the risk of surprisingly high bills for customers that do not understand the risks,[16] and "customers don't like being told that their bill is going to go up."[17]

In summary, Ameren Missouri has failed to justify the proposed changes to its residential time of use rate schedule names. The Commission should therefore reject those proposed changes, order Ameren Missouri to file compliance tariffs with its already-approved rate schedule names, and to follow the practices relating to the residential time of use rate schedules reflected in its tariffs, including using the rate

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[15] *See*, Exhibit 17 at 50-51 (Wills Direct) ("On August 1, 2018, the Company's rates were reduced…").
[16] Tr. 275:19-276:20 (Testimony of Kliethermes).
[17] Tr. 282:23-25 (Testimony of Lange).

schedule names in its customer communications. Staff supports OPC's proposal to require Ameren Missouri to file regular reports with the Commission to disclose any customer complaints about residential time of use rate schedule marketing and communications.[18]

II. Issue 22.

A. The Commission should allocate the rate increase in this case to the classes as an equal percentage increase. (Issue 22 C, Responds to MECG Brief at 20-30, Ameren Missouri Brief at 13-14)

1. Section 393.1620, RSMo is immaterial to the outcome of this case.

Section 393.1620.1(1), RSMo[19] does not affect the outcome of this case. The unambiguous and uncontroverted evidence in this case is that Staff's analysis complies with Section 393.1620. Similarly, Ameren Missouri's average and excess (A&E) study—and therefore the derivatives of that study relied upon by MECG and MIEC—comply with the 1992 NARUC Manual and therefore Section 393.1620.[20] MECG's arguments regarding Section 393.1620 are ultimately irrelevant to how the Commission decides this case.

2. Only Staff conducted a wide variety of class cost of study analyses; Ameren Missouri, MECG, and MIEC improperly rely on a single class cost of study methodology.

Ameren Missouri improperly relies on a single allocation methodology. MECG and MIEC based their analyses on Ameren Missouri's study. Only Staff looked at a broad variety of approaches, all consistent with the 1992 NARUC Manual, and concluded that

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[18] OPC Brief at 13.
[19] 2021 Mo. Legis. Serv. H.B. 734.
[20] Exhibit 31 at 22:17-20 (Hickman Rebuttal). MECG's concession that Ameren Missouri's A&E study does not strictly comply with the definition of "Average and Excess Method" contained Section 393.1620, RSMo, is therefore immaterial. MECG Brief at 6.

there was no justification for any revenue-neutral shifts between rate classes.[21] Ameren Missouri's study supports an equal percentage rate increase for all rate classes.[22] Only after making self-serving, targeted adjustments to Ameren Missouri's study do MECG and MIEC make their recommendations to make revenue neutral shifts to Residential and Small General Service customers, resulting in a rate increase of approximately 10% for those customers.[23]

MECG's Brief cites decisions from several states, but MECG ignores the fact that Staff's approach is entirely consistent with the approach taken by the Commissions in Kentucky, Minnesota, New Mexico, and Utah. Kentucky's Commission has previously decided that, "[t]he commission reminds utilities and intervenors that it does not intend to adopt a single cost-of-service methodology. The commission views cost of service as an important element in attaining its equity objective but, it is not the only element in rate design nor is equity the commission's only regulatory objective."[24]

Minnesota's Commission has more recently decided that it will evaluate a variety of cost allocation models, concluding that doing so is "consistent with the NARUC Manual's conclusion that no single cost study method can be judged superior to all others in all contexts."[25] Just like Staff asks the Missouri Commission to do here, the Minnesota Commission decided to "consider a range of classification methods for

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[21] Exhibit 205 at 44-46 (Staff Class Cost of Service).
[22] Exhibit 215 at 2:8-10 (Lange Rebuttal).
[23] *See*, Exhibit 215 at 3:3-4 (Lange Rebuttal); MECG Statement of Positions, EFIS Item No. 213 (Dec. 7, 2021) (Table citing Exhibit 750, recommending revenue increase of 10.4% for residential customers and 9.8% for Small General Service Customers); Exhibit 500 at MEB-COS-5 and MEB-COS-6 (Brubaker Direct) (recommending 3.9% to 7.8% increase to Residential customers under Ameren Missouri's current rates, before the revenue increase ordered in this case is allocated across all classes).
[24] *Re Kentucky Utils. Co.,* 52 P.U.R.4th 408 (Mar. 18, 1983).
[25] *In the Matter of the Application of N. States power Co. for Auth. to Increase Rates for Elec. Serv.*, 337 P.U.R.4th 74 (Jun. 12, 2017).

purposes of allocating responsibility for the necessary revenues among Xcel's various customer classes."[26]

The Commission in New Mexico—with the full-throated support of its Supreme Court—has "discouraged using cost of service as a sole criterion in designing rates."[27] Over reliance on rote class cost of service methodologies can lead to orders that violate the principles of gradualism and rate stability, resulting in rate shock.[28] The New Mexico Commission found that, while some customers were being subsidized, "the 10% revenue increase for the Residential, ETS, and Irrigation Classes … are much too steep and sudden…."[29]

Utah's Commission found that class cost of service is "not an exact science," and adopted as a "regulator objective" that each customer schedule over time be brought to within a range of plus or minus 10 percent of relevant cost-of-service study results."[30]

Staff has adopted, and requests the Missouri Commission to adopt, the approaches taken in Kentucky, Minnesota, New Mexico, and Utah to look holistically at a variety of models, a broad range of perspectives, and to use them as a starting point. Like the Kentucky Commission, Staff does not rely on a single methodology. Like the Minnesota Commission, Staff's approach is consistent with the idea that "no single cost study method can be judged superior to all others in all contexts."[31] Like the Commission in New Mexico, Staff discourages using class cost of service studies as the sole criterion

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[26] *Id.*
[27] *In the Matter of the Filing of Advice Notice No. 69 by Socorro Elec. Coop., Inc.*, No. 18-00383-UT, 2019 WL 4136128 at *30 (Aug. 15, 2019).
[28] *Id.*
[29] *Id.*
[30] *Re: Utah Power & Light Co.*, 52 P.U.R.4th 436 (Mar. 7, 1983).
[31] *In the Matter of the Application of N. States power Co. for Auth. to Increase Rates for Elec. Serv.*, 337 P.U.R.4th 74 (Jun. 12, 2017).

in designing rates.[32] Like the Commission in New Mexico, Staff saw MECG and MIEC's proposal to increase rates by 10% for Residential and Small General Service Customers, and concluded that the rate shock was simply too steep and sudden. Finally, where Utahs' Commission set a regulatory goal of bringing all rate classes within a range of "plus or minus 10 percent of relevant cost of service study results," Staff here has relied on a goal of bringing all rate classes within a range of only 5 percent.[33]

3. The Commission should not rely on MECG's remaining arguments, which are based on outdated decisions, which are based on no longer relevant assumptions in Ameren Missouri's study, and which simply make no sense.

The Commission should reject the remainder of MECG's arguments. First, the Missouri Commission cases cited by MECG range from 1968 to 2014, all decided before the maturation of the MISO integrated energy market.[34] Second, MECG's table at page 26 is based on Ameren Missouri's direct-filed revenue request.[35] Applying Staff's recommended rate of return to Ameren Missouri's study would significantly reduce the class revenue responsibilities in the table on page of MECG's Brief. Likewise, the table at page 32 of MECG's Brief purports to provide the percentages of costs that are demand- and energy-related.[36] Staff disagrees with those figures, which are derived from the Ameren Missouri direct study and revenue requirement, which is not the revenue requirement ultimately agreed to and approved by the Commission in this case.

Finally, in an abundance of caution, it is unclear whether MECG's argument at footnote 9 on page 9 is an attempt at humor. Regardless, MECG's footnote 9 is just a

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[32] Exhibit 205 at 47:1-4 and 10-12 (Staff Class Cost of Service Report).
[33] Exhibit 205 at 48 (Staff Class Cost of Service Report).
[34] Exhibit 205 at 8 (Staff Class Cost of Service Report).
[35] MECG Brief at 26.
[36] MECG Breif at 32.

convoluted way of saying that Staff's approach is permitted under Section 393.1620. Replacing the words in MECG's footnote 9 with something more familiar highlights the absurd—or humorous?—nature of that footnote: "Interestingly, while [the law] does not require that [cars stop at green lights], Staff chose to [not stop at the green light]."[37] Staff's decision to do what the law allows is quite unremarkable.

In conclusion, the Commission should adopt Staff's approach to class cost of service studies, and consistent with the Commissions in Kentucky, Minnesota, New Mexico, and Utah, the Commission here should allocate the rate increase in this case to the classes as an equal percentage increase.

B. Production Costs (Responds to MECG Brief at 5-18 and Ameren Missouri Brief at 11-12 on Issue 22 A)

Courts have consistently held, and it bears repeating: the Commission is not bound by *stare decisis*.[38] The Commission is allowed to depart from prior practice.[39] The Commission always has considerable discretion in making pragmatic adjustments in designing rates.[40]

Also, before an administrative agency can promulgate a rule, it must follow the rulemaking procedures at Chapter 536, RSMo.[41] A rule is "each agency statement of *general applicability* that implements, interprets, or prescribes law or *policy*."[42]

In the Missouri Commission cases cited by MECG, the Commission rejected average and peak (A&P) methodologies based on the record in those cases. The

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[37] *Cf.* MECG Brief at 9 n.9.
[38] *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 235 (Mo. banc 2021).
[39] *Id.*
[40] *State ex rel. U.S. Water/Lexington v. Pub. Serv. Comm'n*, 795 S.W.2d 593, 597 (Mo. App. W.D. 1990).
[41] *Mo. Ass'n of Nurse Anesthetists, Inc. v. State Bd. of Registration for Healing Arts*, 343 S.W.3d 348, 356-57 (Mo. banc 2011) (citing Section 536.021, RSMo (Supp. 2004)).
[42] § 536.010(6), RSMo (2016) (emphasis added); *see also*, *Mo. Ass'n of Nurse Anesthetists, Inc.*, 343 S.W.3d at 356-57.

evidence in those cases is not the evidence in this case. The Commission is not bound by *stare decisis* to follow those decisions.

Additionally, none of the Missouri Commission cases cited by MECG were rulemaking dockets following the procedural requirements of Chapter 536. As a result, the Commission could not in those cases promulgate a statement of general applicability that implements a policy like declining to recognize A&P methodologies for production costs. Even if the Commission had promulgated such a rule, that rule would be abrogated with the passage of Section 393.1620, RSMo, which expressly authorizes the use of the A&P methodologies contained in the 1992 NARUC Manual.

MECG's Brief cites several states that have accepted the A&E approach, but those cases are irrelevant out of state decisions. To the extent it is relevant at all, MECG's Brief ignores the many states that have not adopted MECG's preferred approach, such as Arizona,[43] Florida,[44] Kansas,[45] North Carolina,[46] North Dakota,[47] South Carolina,[48] and Virginia.[49] Not all states uniformly adopt the A&E method as MECG's Brief suggests.

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[43] *In Re Arizona Pub. Serv. Co.*, 258 P.U.R.4th 353 (June 28, 2007) (while recognizing shortcomings in the A&P method, the Commission held that "We agree with Staff that an energy-weighting method for allocating production plant is appropriate for APS…. We will order that APS, in its next rate application, to propose an energy-weighting method that addresses the concerns raised in this case…..")

[44] *In re: Proposed Tariff Revisions by City of Lakeland Elec. & Water Utilities*, 89 FPSC 10:348 (Oct. 25, 1989) ("Second, the cost allocation methodology appears reasonable. Lakeland's cost of service study uses the summer and winter coincident peak and average demand during the off-peak period to allocate production and transmission plant costs to the customer classes. This methodology recognizes that energy loads are an important determinant of production plant costs.").

[45] *In Re Westar Energy, Inc.*, No. 13-WSEE-629-RTS, 2013 WL 786537 (Nov. 21, 2013) ("The allocation of the revenue requirement increase to the customer classes in the Stipulation is also supported by evidence in the record. Westar, Staff, and CURB all filed class cost of service studies. Wester filed two studies; one using Westar's traditional 4 CP method and one using Staff's traditional Peak and Average method. Staff provided a separate Peak and Average study, which differed from Westar's results. CURB provided a BIP study.").

[46] *Re Carolina Power & Light Co.*, 94 P.U.R.4th 353, 364 (Aug. 5, 1988) (basing allocation order on "summer/winter peak and average cost allocation methodology" with certain adjustments).

[47] *Re N. States Power Co.*, 91 P.U.R.4th 305, 310 (Mar. 24, 1988) ("We find the use of the peak and average method most reasonable.").

[48] *In re: Application of Duke Power Co. for Auth. to Adjust & Increase Its Elec. Rates & Charges*, No. 80-378-E, 1982 WL 991760 (Jan. 28, 1982) (adopting a coincident peak method but expressing interest in the peak and average methodology, and ordering the utility in its next general rate case to both methodologies).

[49] *In the Matter of Application of Virginia Elec. & Power Co.*, No. E-22, 2020 WL 1049147 at *138 (Feb. 24, 2020) (ordering company to "continue to annual file a cost of service study with the Commission using the Summer/Winter Peak and Average methodology.").

Ameren Missouri focuses exclusively on the 4 non-coincident peak (NCP) version of the Average and Excess (A&E) demand method to the exclusion of any other methodology.[50] But Ameren Missouri also agrees with Staff that class cost of service studies are only a starting point, and that the Commission should allocate the rate increase to each class on an equal percentage basis.[51]

The Commission must not rely on the hearsay cited by MECG at Transcript pages 315-316.[52] MECG cites transcript pages 315-16 for the proposition that "Ameren agrees that Staff's Peak & Average approach is 'inherently flawed.'"[53] But the only evidence MECG adduced at Transcript pages 315-316 is that Ameren Missouri's witness agreed that the "peak and average double counts class energy usage."[54] There is no testimony that Ameren Missouri's witness agreed the Peak & Average approach is "inherently flawed" as MECG suggests in its Brief.[55] The block quote at page 8 of MECG's Brief was *not* offered for the truth of the matter asserted.[56] Nor could it have been, because Staff objected to that testimony as hearsay,[57] and a witness reading the statement of another person (as is the case with MECG's block quote) is textbook hearsay when it is offered for the truth of the matters asserted therein.[58] It is obvious from

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[50] Ameren Missouri Brief at 11.
[51] Ameren Missouri Brief at 9, 14.
[52] MECG Brief at 5 n.1 and referenced sentence, 8 n.8 and referenced block quote, and 12 n. 18 and reference sentence.
[53] MECG Brief at 8 (quotations original).
[54] Tr. at 316:7-10.
[55] Tr. at 316:7-10.
[56] Tr. at 315:1-3 ("It sounds like it's not being offered for the truth of the matter asserted so it's not hearsay…").
[57] Tr. at 314:19-20.
[58] 22A Mo. Prac. § 800:1 (citing nine cases in footnote 29). The Supreme Court of Missouri has held unequivocally that even though the "technical" rules of evidence do not apply to administrative proceedings, "the 'fundamental rules of evidence' applicable to civil cases also are applicable in such administrative hearings." *State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 154-55 (Mo. banc 2003); *see also*, *State ex rel. Mo. Gas Energy v. Pub. Serv. Comm'n*, 186 S.W.3d 376, 382 & n.3 (Mo. App.

MECG's block quote that MECG is in fact relying on the block quote for the truth of the matters asserted therein. The Commission should not base any finding of fact based on transcript page 315 as reproduced in the block quote at MECG's Brief at page 8, because such a finding of fact would jeopardize the Commission's order as lacking basis in competent evidence.

In summary, the Commission should not rely exclusively on the A&E methodology, and should allocate the rate increase in this case to the classes as an equal percentage basis.

C. Non-labor components of production costs (Responds to MECG Brief at 19-20 and Ameren Missouri Brief at 13 on Issue 22 B).

MECG's Brief is factually incorrect on non-labor expense issues. MECG is flat wrong when it states in its Brief "Noticeably, despite the opportunity to rebut [MECG witness Maurice Brubaker's] assertion in its surrebuttal testimony, Ameren never responded."[59] In fact, Ameren Missouri witness Thomas Hickman responded at length to Mr. Brubaker's Direct Testimony[60] that:

> I do not agree with [Mr. Brubaker's] approach for a few reasons. Mr. Brubaker highlights the fact that maintenance on coal and nuclear generation units is scheduled based on the passage of time. I think focusing on how maintenance is scheduled misses the bigger point of how much non-labor material is used during each maintenance period, and what causes the need for maintenance in the first place. The fact that maintenance occurs is a significant driver of labor costs, and the Company has classified the labor portion as fixed. The extent of maintenance performed is variable in nature and can vary significantly with the amount of time and extent to which a plant has run. Further, the need for this regularly scheduled maintenance is related to utilization of the unit—the wear and

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W.D. 2005) (citing *McDonaugh* for authority that Section 490.065 applies to admission of expert testimony in administrative contested cases).

[59] MECG Brief at 19.

[60] Mr. Brubaker did not file Rebuttal Testimony, only Direct and Surrebuttal Testimony.

> tear that occurs as energy is generated, making the energy-related allocator consistent with cost causation.[61]

MECG's Brief also fails to acknowledge Staff's testimony that its Class Cost of Service studies supports an equal percentage increase to the classes.[62] Mr. Brubaker's assertion is definitely not "unrebutted" as MECG's Brief inaccurately claims.[63]

In conclusion, the Commission should not adopt MECG's inaccurate and incomplete arguments with regards to non-labor operation and maintenance expense. The Commission should adopt Staff's approach to non-labor operation and maintenance expense and allocate the rate increase in this case as an equal percentage increase.

D. Distribution Costs (Responds to MECG Brief at 37-28 and Ameren Missouri Brief at 16-17 on Issue 22 H).

MECG's approach to distribution costs is wrong, and it is inconsistent with its positions on production costs. After extolling the virtues of the 1992 NARUC Manual for production costs, MECG completely dismisses Staff's reliance on the 1992 NARUC Manual for distribution costs.[64] Specifically, Staff relied on the 1992 NARUC Manual guidance that assignment or exclusive use costs are assigned directly to the customer class or group which exclusively uses such facilities.[65]

The Commission should likewise disregard Ameren Missouri's cautions against the use of the RAP Manual with regards to distribution costs.[66] Ameren Missouri fails to account for the fact that the 1992 NARUC Manual is consistent with the RAP Manual, which states that "Direct cost assignment may be appropriate for equipment required for

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[61] Exhibit 31 at 23-24 (Hickman Rebuttal).
[62] *See* MECG Brief at 18-19.
[63] MECG Brief at 19.
[64] MECG Brief at 37.
[65] Exhibit 231 at 8 (Lange Surrebuttal) (quoting 1992 NARUC Manual at page 87, note 1).
[66] Ameren Missouri Brief at 17.

particular customers, not shared with other classes, and not double-counted in class allocation of common costs."[67]

Here, Staff's Class Cost of Service Study attempted to gather as much information as possible consistent with the 1992 NARUC Manual and RAP Manual, and in the absence of that information relied upon Ameren Missouri-derived allocators, with modifications as necessary to address errors or shortcomings in Ameren Missouri's calculations.[68] Staff's approach is consistent with the 1992 NARUC Manual, and it considers the interests of all of Ameren Missouri's customers. Unlike the self-serving approaches adopted by MIEC and MECG, Staff's approach does not adopt or reject the 1992 NARUC Manual depending on what is most expedient for one particular group of Ameren Missouri customers. The RAP Manual is consistent with the 1992 NARUC Manual's guidance on this issue.

The Commission should therefore adopt Staff's approach to distribution system cost allocation and allocate the rate increase in this case as an equal percentage increase.

E. Demand and Energy Charges (Responds to MECG's Brief at 31-35 and Ameren Missouri Brief at 14-15 on Issue 22 F)

The Commission should not adopt MECG's proposal to increase demand charges and decrease energy charges by a factor of three for LGS and SPS customers. First, MECG's proposal would be counter-productive to the goal of moving toward time-based rate structures.[69]

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[67] Exhibit 231 at 6-7 (Lange Surrebuttal) (quoting RAP Manual page 156).
[68] Exhibit 205 at 24-37 (Staff Class Cost of Service Report); *see also* Exhibit 231 at 5-6 (Lange Surrebuttal).
[69] Exhibit 231 at 11 (Lange Rebuttal).

Second, MECG's Brief does not acknowledge that demand charges for LGS and SPS customers are based on each customer's individual non-coincident peak (NCP), which is the highest usage experienced during a 15-minute interval in a given month.[70] A customer's monthly NCP is not really indicative of that customer's causation of generation, transmission, or distribution infrastructure expenses, nor is relevant to Ameren Missouri's generation capacity or MISO resource adequacy.[71] Instead, a customer's monthly NCP drives the hours-use energy charge recovery.[72] An NCP demand charge is not an ideal recovery mechanism for the costs identified in MECG's Brief.[73] Ameren Missouri similarly argues in its Brief that "the magnitude of [MECG's] proposed increase in demand charges, and the corresponding decrease in energy charges, could result in material bill impacts for some customers within those classes who may not be able to control their demand as efficiently as the members of MECG."[74] The result for some (presumably) non-MECG customers could be rate increases as high as 18%.[75] MECG's proposal could also discourage some customers from engaging in the provision of high speed electric vehicle charging services or electrifying their own fleets.[76]

Third, MECG's proposal is too extreme. MECG proposes energy charges in the summer of $0.02228/kWh and $0.01316/kWh.[77] MECG's proposal would not cover the

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[70] Exhibit 231 at 10 (Lange Rebuttal).
[71] Exhibit 231 at 10 (Lange Rebuttal).
[72] Exhibit 231 at 10 (Lange Rebuttal).
[73] Exhibit 215 at 11:4-16 (Lange Rebuttal).
[74] Ameren Missouri Brief at 14 (citing Exhibit 45 at 3 (Harding Rebuttal); Exhibit 18 at 53 (Wills Rebuttal)).
[75] Ameren Missouri Brief at 15 (citing Exhibit 18 at 53-54 (Wills Rebuttal)).
[76] Ameren Missouri Brief at 15 (citing Exhibit 18 at 55-56 (Wills Rebuttal)).
[77] MECG Brief at 32 (citing Exhibit 750 at 38 (Chriss Direct)).

cost of market energy for LGS and SPS customers, which is a year-round average of $0.0275/kWh and $0.0255/kWh, respectively.[78]

In summary, the Commission should not adopt MECG's proposal to increase demand charges and decrease energy charges for LGS and SPS customers.

F. Alternatives to Hours-Use Rate Design (Responds to MECG Brief at 35-36 and Ameren Missouri Brief at 15-16 on Issue 22 G)

MECG asks the Commission to order Ameren Missouri to "redesign LGS and SP as three part rates with unbundled demand charges and time varying energy charges for all LGS and SP customers to be transitions to those rates by 2025."[79] Ameren Missouri argues that MECG's proposal is unnecessary, and would impose an unnecessary timeframe.[80] Nevertheless, Ameren Missouri is open to contemplating future rate design changes.[81] Ameren Missouri wants to wait until AMI rollout is complete in 2024, and carefully analyze the potential bill impacts before implementing alternative rate designs.[82]

Staff agrees that the hours-use rate design is not optimal for aligning cost causation and revenue recovery.[83] Staff proposes that it is not too early to require Ameren Missouri to at least present alternatives to its hours-use rate design, and the Commission should order Ameren Missouri to present such alternatives no later than 2025.

[78] Exhibit 231 at 8 (Lange Rebuttal).
[79] MECG Brief at 36.
[80] Ameren Missouri Brief at 15.
[81] Ameren Missouri Brief at 15.
[82] Ameren Missouri Brief at 15-16.
[83] Exhibit 231 at 8 (Lange Surrebuttal).

G. Rider B Credit Levels (Responds to MECG Brief at 38-41 and Ameren Missouri Brief at 17 on Issue 22 I).

Rider B is intended to credit primary customers that own their own substations.[84] There is no dispute that customers who purchase their own substation equipment avoid *some* costs by Ameren Missouri. The problem is that Ameren Missouri's workpapers fail to reasonably establish *what* those avoided costs are because Ameren Missouri is not allocating the cost of customer-specific substations to the customer classes or customers that benefit from those customer-specific substations.[85] Not only are customer-specific costs not allocated to those classes or customers, but the imputed revenue requirement that would justify a Rider B credit is not imputed or allocated, either.[86]

Ameren Missouri and MECG focus exclusively on customers that receive Rider B credits in arguing that Staff's suggestion would be "punitive." In contrast, Staff's proposal takes into consideration all of Ameren Missouri's customers, including those that do not receive Rider B credits. Suspending or maintaining current Rider B credits avoids two problems. First, customers that do not receive the Rider B credit should not be paying for things they are not using.[87] Second, customers that own their equipment should not receive a Rider B credit in excess of any amount the customer would not otherwise be paying.[88]

Consequently, the Commission should increase the Rider B credits based on an equal percentage applies to all other rate elements if the Commission orders no shifts of revenue responsibility between classes. Otherwise, if the Commission shifts distribution

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[84] Exhibit 205 at 23 (Class Cost of Service Report).
[85] Exhibit 231 at 11 (Lange Surrebuttal).
[86] Exhibit 231 at 11 (Lange Surrebuttal).
[87] Exhibit 231 at 12 (Lange Surrebuttal).
[88] Exhibit 231 at 13 (Lange Surrebuttal).

revenue requirements (issue 22 H) away from the classes in which Rider B customers are served, then the Commission should either continue with existing Rider B credit amounts while the rest of the class receives its rate increase, or suspend Rider B credits until a study is performed that can identify a fair allocation of those distribution costs between customers that do and do not receive Rider B credits.

H. Rider B Study (responds to Ameren Missouri Brief at 18 on Issue 22 J 3).

Ameren Missouri's Brief states in conclusory fashion, without explaining in detail why, that Staff's analysis is "wrong" or "convoluted."[89] Ameren Missouri's Brief on this issue can be disregarded as incomplete.

In addition, Ameren Missouri's Brief fails to explain why "[n]o historical information has been identified" to support Rider B credits.[90] Staff explained in its testimony that Ameren Missouri's workpapers simply applied the class-average percent adjustment to the Rider B value.[91] Ameren Missouri's Brief merely repeats its over-simplified conclusion (and does so with no record citation).[92] Ameren Missouri's Brief never explains why its short-cut calculation is correct.

Similarly, Ameren Missouri's Brief fails to address why Ameren Missouri has failed to allocate the cost of customer-specific substations to the customers served by those substations.[93] The 1992 NARUC Manual provides that assignment or exclusive use costs are assigned "directly to the customer class or group which exclusively uses such

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[89] Ameren Missouri Brief at 18.
[90] Exhibit 205 at 53 (Staff Class Cost of Service Report) (quoting Ameren Missouri Response to Staff Data Request 677).
[91] Exhibit 205 at 53 (Staff Class Cost of Service Report).
[92] Ameren Missouri Brief at 18 ("The Company's CCOSS allocated 14.7% of such costs to primary customers, which include all Rider B customers").
[93] Exhibit 231 at 11 (Lange Surrebuttal).

facilities."[94] The 1992 NARUC Manual is consistent with the Regulatory Assistance Project (RAP) Manual, which provides that "[d]irect cost assignment may be appropriate for equipment required for particular customers, not shared with other classes, and not double-counted in class allocation of common costs."[95]

The Commission should order Ameren Missouri to perform a full study of the reasonableness of the calculations and assumptions underlying Rider B to be filed as part of its direct filing in its next rate case.

WHEREFORE, Staff respectfully requests the Commission to issue an order as reflected in the "Conclusion" Section of its Initial Brief in this case, and for such other and further relief as the Commission deems just and reasonable.

Respectfully submitted,

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[94] Exhibit 231 at 8 (Lange Surrebuttal) (quoting 1992 NARUC Manual at page 87, note 1).
[95] Exhibit 231 at 6-7 (Lange Surrebuttal) (quoting RAP Manual page 156).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 7th day of January, 2022, to all parties and/or counsels of records.

/s/ Curt Stokes
Curt Stokes