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Service Commission

Exhibit No. 200

OPC – Exhibit 200
Rebuttal Testimony of Jordan Seaver
Case No. EA-2026-0154

Exhibit No.:	_____
Issue(s):	Large Load Customers/Planning Reserve Margin/ELCC/IRP/ Decisional Prudence
Witness/Type of Exhibit:	Seaver/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	EA-2026-0154

REBUTTAL TESTIMONY

OF

JORDAN SEAVER

Submitted on Behalf of the Office of the Public Counsel

EVERGY METRO, INC. D/B/A EVERGY MISSOURI METRO

CASE NO. EA-2026-0154

** _____ **

Denotes Confidential Information that has been redacted

September 15, 2026

PUBLIC

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REBUTTAL TESTIMONY
OF
JORDAN SEAVER

Evergy Metro, Inc. d/b/a Evergy Missouri Metro

CASE No. EA-2026-0154

I. INTRODUCTION

Q. What is your name and what is your business address?

A. My name is Jordan Seaver, and my business address is 200 Madison Street, Governor Office Building, Suite 650, Jefferson City, MO 65102.

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

A. I am employed by the Office of Public Counsel ("OPC") as a Policy Analyst.

Q. Have you previously testified before the Missouri Public Service Commission ("The Commission")?

A. Yes, I have previously testified before the Missouri Public Service Commission. See Schedule JS-R-1 for my past pre-filed testimony and memoranda.

Q. What are your work and education backgrounds?

A. I have been employed as a Policy Analyst by OPC since January 2022. I have attended Michigan State University's Institute of Public Utilities ("IPU") Accounting and Ratemaking Course, as well as the National Association of Regulatory Utility Commissioners ("NARUC") Rate School. I previously worked as a Legal Assistant for Cascino Vaughan Law Offices for 7 years. I have a Master of Arts in Philosophy from the University of Wyoming, and a Bachelor of Arts in Philosophy from the University of Illinois at Chicago.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of this testimony is to respond to the direct testimony of Evergy Missouri Metro ("EMM" or "The Company") witnesses regarding the need for the Mullin Creek #2, the capacity position of the Company, and the request made for decisional prudence. The need for Mullin Creek #2 is the expected large load from data center customers in the Company's service territory.

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Company witnesses Kevin Gunn, Jason Humphrey, and Cody VandeVelde assert in their direct testimonies that the large load customers that are expected to come online are the cause of the request for a CCN for Mullin Creek #2. The Company's capacity position change from the 2024 Integrated Resource Plan ("IRP") to the 2026 IRP update filing is only explained by the projection of large load customers coming online. The prospective capacity additions went from no thermal generation being added in 2031 to adding 440 MW of simple cycle gas turbine ("SCGT") generation. In addition, the thermal generation that had been planned in the 2030's in the 2024 IRP filing was all increased and moved to earlier dates in the 2025 and 2026 IRP update filings. And because of the capacity position change due to the expected large load customers, which are the cause of the need for Mullin Creek #2, the Company's request for decisional prudence in this case should not be granted.

II. LARGE LOAD CUSTOMERS

Q. What reasons has Evergy Missouri Metro given for why it needs Mullin Creek #2?

A. Company witness Mr. Cody VandeVelde states in his direct testimony in this case that the need for the plant is "driven in significant part by committed large-load customers, including data center customers."[1] He also states that "The total combined peak of the large-load customers included in the 2026 IRP base load forecast is projected to be approximately 900 MW at steady state, with nearly 90% of that load located in EMM's service territory."[2]

Company witness Mr. Jason Humphrey states that "building now supports Governor Kehoe's economic development objectives and enables Evergy to provide safe and adequate service to large-load customers"[3] and that delaying

[1] Cody VandeVelde, Direct Testimony, Case No. EA-2026-0154, p 6.
[2] *Ibid.*
[3] Jason Humphrey, Direct Testimony, Case No. EA-2026-0154, p 5.

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the project "risks missing near-term in-service windows for announced large-load customers."[4]

Q. Have Evergy Missouri Metro witnesses given other reasons?

A. Yes. Mr. VandeVelde states that

> "the Project is forecasted to reduce costs for Evergy Metro customers and to meet their energy and capacity requirements over the twenty-year planning horizon. When it is fully operational, Mullin Creek #2 will help meet Evergy Metro's near-term requirement for capacity starting in the winter of 2030/31. This dispatchable thermal Project will be a critical element in Evergy Metro's plan to address its near-term capacity needs. Evergy Metro must secure dependable, 'steel-in-the-ground' resources to meet its capacity needs."[5]

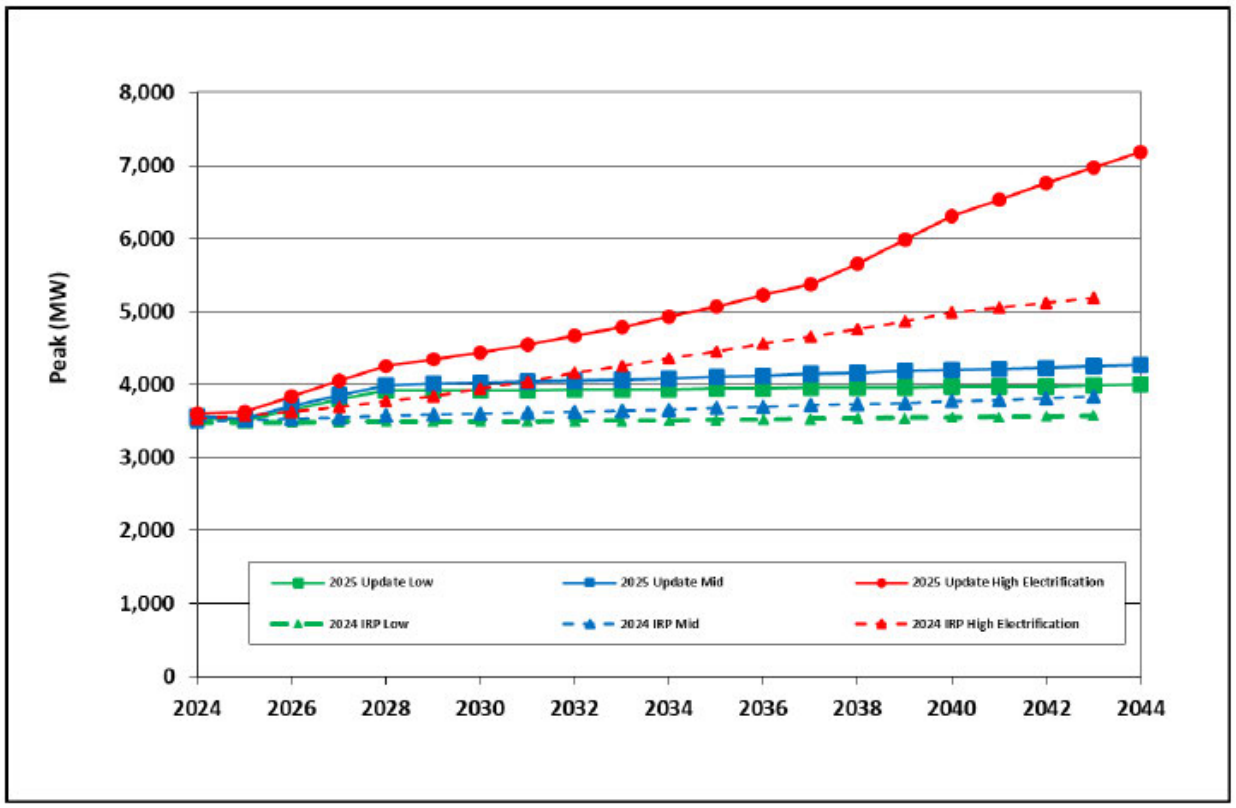
The way this is written suggests that the Company's capacity need starting in 2030/2031 is a result of even growth in all customer classes. But, as the 2026 Evergy Missouri Metro IRP Annual Update makes clear, that capacity need beginning in 2030 is caused by large load customer growth. This load growth will be "beginning in 2026 and exceeding 300 MW by 2031."[6]

The Evergy Metro 2025 Annual Update IRP report also stated with regard to large load that "Evergy Metro and the new large load customer continue to progress with negotiations and expect to have Construction and Service Agreements fully executed in the second quarter of 2025."[7] Further, the report says that "Evergy has a large pipeline of prospective new large load customers" and that a "portion of the new large load was included in the typical load

[4] *Ibid*., p 12.
[5] Cody VandeVelde, Direct Testimony, Case No. EA-2026-0154, pp 6-7.
[6] Evergy Missouri Metro 2026 Annual Update Integrated Resource Plan, Case No. EO-2026-0188, p 3.
[7] Evergy Metro 2025 Annual Update Integrated Resource Plan, Case No. EA-2025-0250, p 13.

forecast data shown in Table 4, Figure 4, and Figure 5."[8] Below, I have included Figure 4, which shows Evergy Missouri Metro's peak capacity forecasts from 2024 to 2044:

Figure 4: Peak Forecasts – 2025 Annual Update vs. 2024 Triennial IRP



It can easily be seen from this graph that even the low and mid 2025 update forecasts for peak MW are higher than the high electrification forecast from the 2024 IRP. The large rate of increase for the 2025 forecast begins in 2026 and is significantly higher than previous forecasts by 2031, which is consistent with the Company's statements regarding known large load customer ESAs and projected large load customer load growth.

[8] *Ibid.*

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Q. What is your response to Mr. VandeVelde's claim in his direct testimony that the Southwest Power Pool ("SPP") change to planning reserve margin and effective load carrying capability ("ELCC") is a major reason for the Mullin Creek #2 project?

A. Mr. VandeVelde is correct that the SPP is implementing, beginning this year, a change to its planning reserve margin for utilities, and that it is also implementing ELCC methodologies that will affect the accredited capacity of new renewable resource additions especially. But, in the Company's 2026 IRP Annual Update report, it specifies that

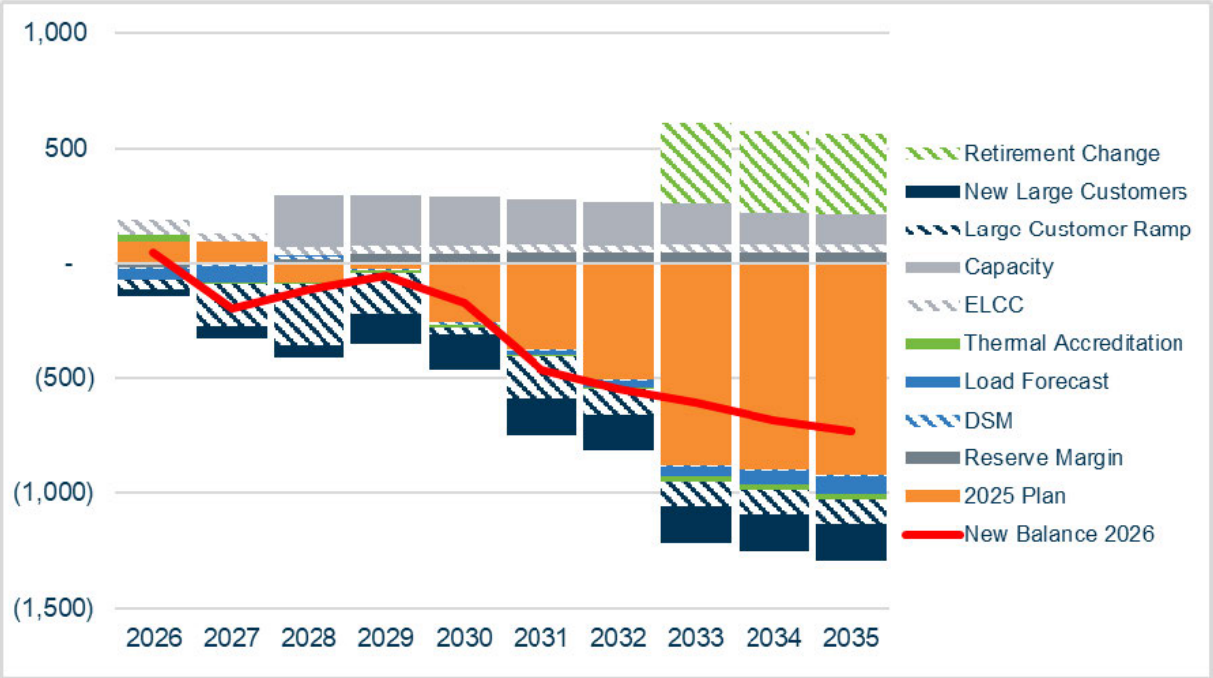
> "ELCC calculations for existing renewable resources and PPAs show a small increase in forecasted summer capacity accreditation. There is also a small increase in the capacity balance attributable to slightly lower reserve margin requirements than forecasted in the 2025 Annual Update."[9]

In addition to these explicit comments, the graph provided in that report titled "Changes to Evergy Metro Summer Capacity Balance" shows that the ELCC methodology changes at SPP only increase the reserve margin for existing resources for summer capacity out to 2035. The Large Load Customer Ramp, on the other hand, is shown as significantly reducing capacity from 2026 through 2035. I have included this graph from page 71 of the report below:

[9] Evergy Missouri Metro 2026 Annual Update Integrated Resource Plan, Case No. EO-2026-0188, p 72.

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Figure 23: Changes to Evergy Metro Summer Capacity Balance



Regarding the winter capacity position of Evergy Missouri Metro, the report states

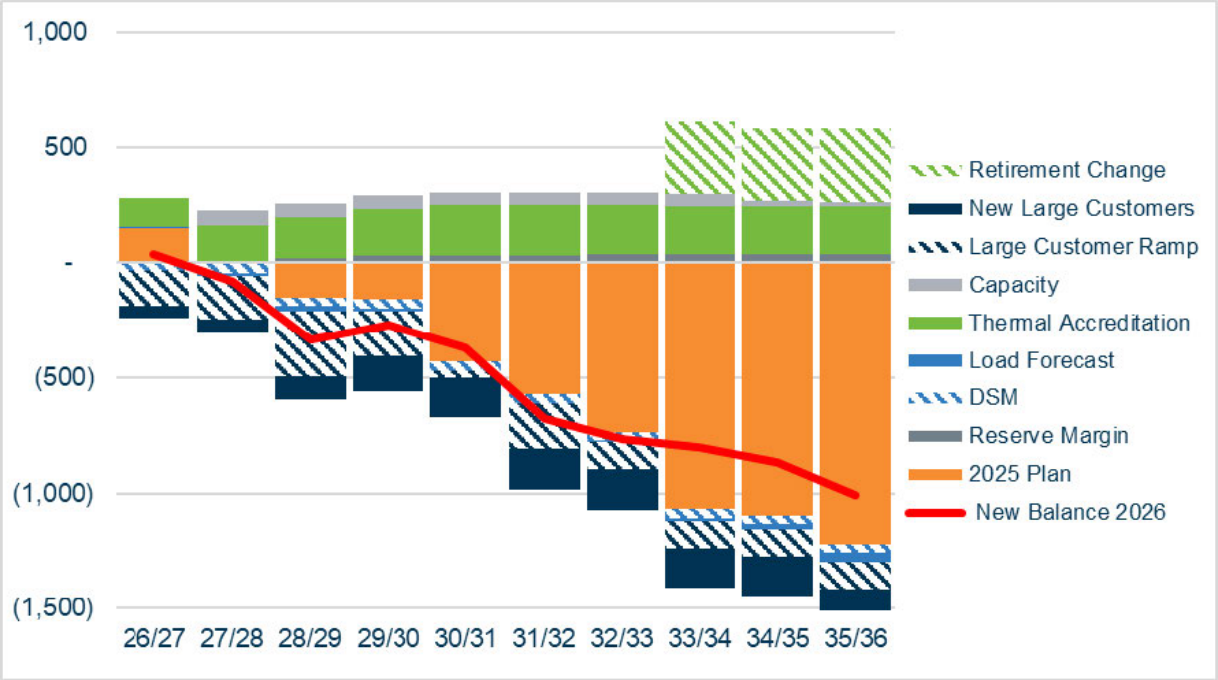
> "Evergy Metro's revised winter capacity balance reflects gains from increased accreditation from existing thermal resources – primarily due to firming of natural gas supply which is expected to reduce outage risk. Evergy Metro's winter capacity position benefitted from the executed market-capacity purchases, however the contribution to winter capacity was lower than summer due to ties to solar resource accreditation. **Higher large load forecasts outweighed these capacity additions, leaving Evergy Metro shorter winter capacity in most years through winter 32/33**."[10]

[10] Evergy Missouri Metro 2026 Annual Update Integrated Resource Plan, Case No. EO-2026-0188, p 73, emphasis mine.

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As shown above, the Company's winter capacity position was being supported by market purchases, but what is causing the projected deficits is the expected large load additions. The graph titled, "Changes to Evergy Metro Winter Capacity Balance," also shows that a significant reduction in capacity is the large load additions, not the ELCC or planning reserve margin changes (I have included this graph from page 72 of the report below). Again, this shows that the planning reserve margin ELCC changes at SPP are not the main cause of the capacity deficit for Evergy Missouri Metro. The addition of the expected large load is the cause of the deficit, which means that the Mullin Creek #2 plant is principally needed because of the expected large load customers.

Figure 24: Changes to Evergy Metro Winter Capacity Balance



Q. Is Mr. VandeVelde the only Evergy Missouri Metro witness who testifies about why Evergy Missouri Metro needs Mullin Creek #2?

A. No. Mr. Humphrey does also. He states in his direct testimony that

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> "Both the 2024 Triennial IRP and the subsequent 2025 and 2026 annual IRP updates of the Company have included simple-cycle natural gas generation. Specifically, EMM's preferred plan identified 440 MW of simple-cycle capacity in 2031. The CCN before the commission here is intended to address that need with the addition of Mullin Creek #2"[11].

And further:

> "The 2026 Preferred Plan represents an efficient and effective mix of generation assets that the Company can utilize to meet the demands of customers over multiple futures…This plan takes an 'all-of-the-above' approach to a resource mix which allows EMM to satisfy the resource adequacy requirements of Southwest Power Pool, Inc. ('SPP') through a diversified portfolio of supply-side and demand-side assets. Moreover, the Mullin Creek #2 is an important near-term step in that long-term plan, enhancing flexible, reliable, and dispatchable generation that complements renewables and helps ensure EMM has steel-in-the-ground capacity."[12]

Not only do both of these quoted passages suggest that the need for the Mullin Creek #2 plant is all customers' needs, plus backup generation for intermittent renewables, but the first quoted passage is misleading. The 2024 IRP Preferred Plan had no thermal additions in 2031, and, with the exception of 415 MW scheduled for 2032, had no consistent thermal additions until 2036, 2038, 2039, and finally 2041. See the table below taken from the 2024 IRP Vol. 1 report:

[11] Jason Humphrey, Direct Testimony, Case No. EA-2026-0154, p 16.
[12] *Ibid.*, pp 17-18.

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Table 3: Evergy Metro Preferred Plan

Year	Wind (MW)	Solar (MW)	Battery (MW)	Thermal (MW)	Capacity Only (Summer MW)	DSM (Summer MW)	Retirements (MW)
2024	0	0	0	0	0	65	0
2025	0	0	0	0	0	130	0
2026	0	0	0	0	126	181	0
2027	0	300	0	0	34	231	0
2028	0	150	0	0	26	272	0
2029	150	0	0	0	0	294	0
2030	150	0	0	0	0	326	0
2031	150	0	0	0	0	355	0
2032	0	0	0	415	0	375	0
2033	150	0	0	0	0	395	375
2034	150	0	0	0	0	417	0
2035	150	0	0	0	0	435	0
2036	0	0	0	325	10	451	0
2037	0	0	0	0	0	464	0
2038	0	0	0	325	0	476	0
2039	0	0	0	325	0	491	0
2040	0	150	0	0	34	508	832
2041	0	0	0	325	47	524	0
2042	150	0	0	0	0	539	0
2043	0	0	0	0	0	552	0

The 2025 IRP Annual Update Preferred Plan moved the 415 MW of thermal generation from 2032 to 2031 and added 25 MW, making it 440 MW. It also moved up the rest of the thermal additions and increased their capacity by 30 MW, making them 355 MW additions in 2032, 2033, 2037, 2039, and adding one to 2040. The table from the 2025 IRP Annual Update showing these is below[13]:

[13] Taken from the Evergy Metro 2025 Annual Update Integrated Resource Plan, Case No. EA-2025-0250, p 4.

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Table 3: Evergy Metro Preferred Plan Comparison

Note: All retirement dates were assumed to be end of year for 2024 Triennial, but end of winter season for 2025 Annual Update.

	2024 Triennial IRP	2025 IRP Annual Update
Retirements	LaCygne 1 in 2032 LaCygne 2 in 2039 Iatan 1 in 2039	LaCygne 1 in 2032 LaCygne 2 in 2039 Iatan 1 in 2039
Wind Additions	150 MW in 2029 150 MW in 2030 150 MW in 2031 150 MW in 2033 150 MW in 2034 150 MW in 2035 150 MW in 2042	150 MW in 2028 150 MW in 2029 150 MW in 2034 150 MW in 2035 150 MW in 2044
Solar Additions	300 MW in 2027 150 MW in 2028 150 MW in 2040	300 MW in 2027 150 MW in 2030 300 MW in 2036 300 MW in 2038 300 MW in 2041 300 MW in 2042 300 MW in 2043
Battery Additions	n/a	150 MW in 2030
Thermal Additions	415 MW CT in 2032 325 MW CC in 2036 325 MW CC in 2038 325 MW CC in 2039 325 MW CC in 2041	440 MW CT in 2031 355 MW CC in 2032 355 MW CC in 2033 355 MW CC in 2037 355 MW CC in 2039 355 MW CC in 2040
New DSM Programs	RAP+	MEEIA

Then, in the 2026 IRP Annual Update, the Company increased the thermal additions to include two more simple cycle gas turbines ("SCGT") of 440 MW in 2035 and 2038. Additions of combined cycle gas turbines ("CCGT") of 355 MW were still scheduled for 2032, 2040, and 2042. There is also an addition of 148 MW of reciprocating internal combustion engine generation in 2044. Below is the table showing the 2026 IRP Preferred Plan update[14]:

[14] Taken from the Evergy Missouri Metro 2026 Annual Update Integrated Resource Plan, Case No. EA-2026-0188, p 6.

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Table 3: Evergy Metro Preferred Plan Comparison

	2025 IRP Annual Update	2026 IRP Annual Update
Retirements	La Cygne 1 March 2033 La Cygne 2 March 2040 Iatan 1 March 2040	La Cygne 1 March 2038
Wind Additions	150 MW in 2028 150 MW in 2029 150 MW in 2034 150 MW in 2035 150 MW in 2044	
Solar Additions	300 MW in 2027 150 MW in 2030 300 MW in 2036 300 MW in 2038 300 MW in 2041 300 MW in 2042 300 MW in 2043	150 MW in 2028
Battery Additions	150 MW in 2030	150 MW in 2030
Thermal Additions	440 MW CT in 2031 355 MW CC in 2032 355 MW CC in 2033 355 MW CC in 2037 355 MW CC in 2039 355 MW CC in 2040	440 MW CT in 2031 355 MW CC in 2032 440 MW CT in 2035 440 MW CT in 2038 355 MW CC in 2040 355 MW CC in 2042 148 MW RICE in 2044
New DSM Programs	MEEIA Cycle 4 Extended Demand Response	Continuation of Demand Response

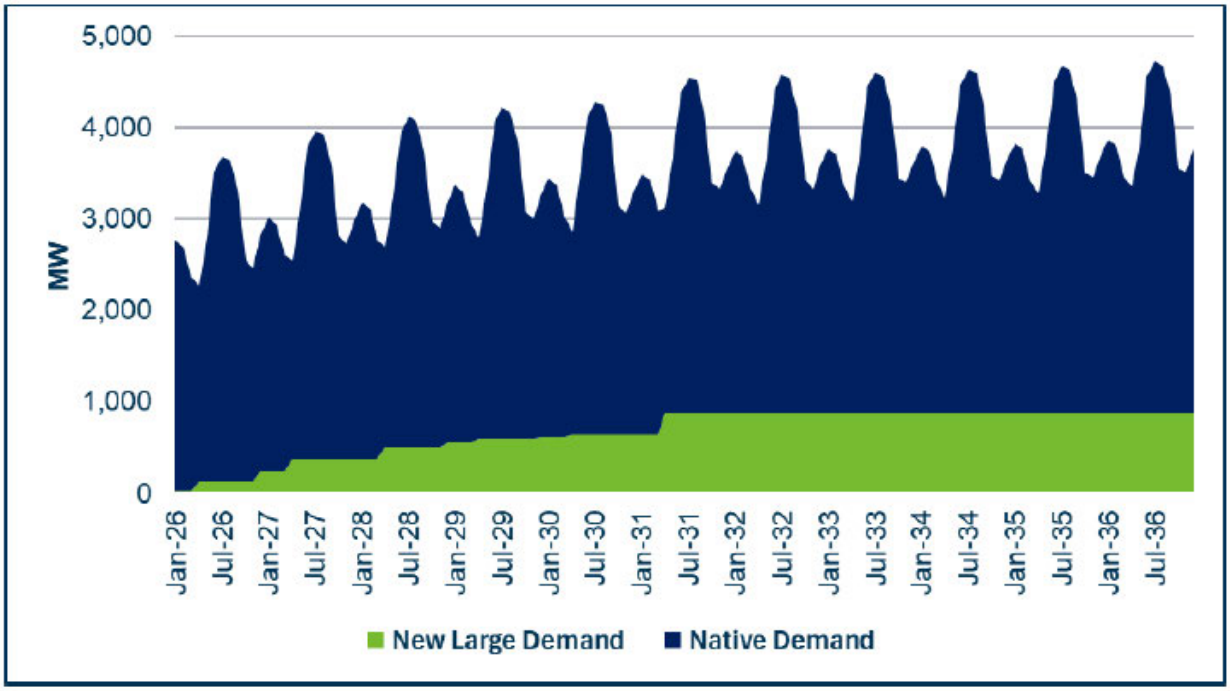
**CCGT = CC, SCGT = CT, Natural Gas = NG*

So, the total change in scheduled thermal addition MWs from 2024 to 2026 is 818 MW.[15] The difference between the scheduled thermal additions in the 2024 and 2026 IRPs by 2035 is 820 MW. Most of the change in the thermal additions comes from the years between 2030 and 2036. There is a large projected capacity and energy increase in that same period according to the Evergy Missouri Metro 2026 IRP Annual Update. I have included the graphs showing this below[16]:

[15] This is the result of subtracting the total 1,715 MW of scheduled thermal generation in the 2024 IRP from the total 2,533 MW of scheduled thermal generation in the 2026 IRP Annual Update.
[16] Both taken from the Evergy Missouri Metro 2026 Annual Update Integrated Resource Plan, Case No. EA-2026-0188, pp 25 and 26, respectively.

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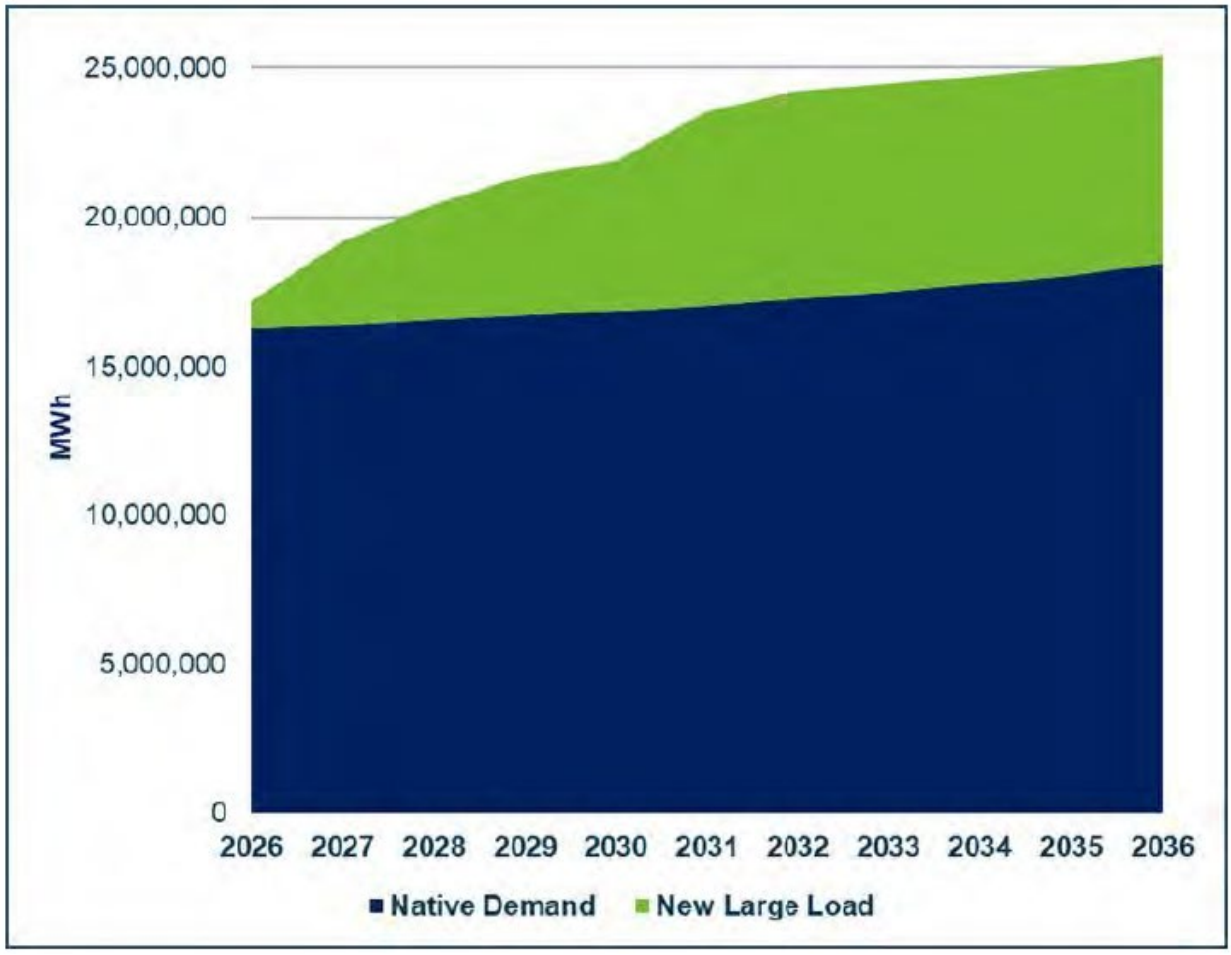
Figure 6: Evergy Metro Peak MW Load Forecast Including New Large Load



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Figure 7: Evergy Metro Peak MWh Load Forecast Including New Large Load



Q. Is Mullin Creek #2 included in this increased scheduled capacity?

A. Yes, I believe so. The Company's application for the CCN states, "As discussed in the direct testimony of Mr. VandeVelde, Evergy Missouri Metro's 100% ownership in Mullin Creek #2 corresponds to 440 MW of thermal generation for EMM by 2031, as identified in the Company's 2025 and 2026 Annual IRP Updates."[17] And in his direct testimony Mr. VandeVelde states, "Evergy Metro's

[17] Evergy Missouri Metro, Application of Evergy Missouri Metro for a Certificate of Convenience and Necessity, Case No. EA-2026-0154, p 7.

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2026 IRP forecasts winter capacity needs will exceed 300 MW by winter 2028/29, growing to almost 700 MW by winter 2031/32 and 800 MW by winter 2033/34."[18]

Q. Does this increased need for capacity depend principally on the large load customers additions that Evergy Missouri Metro expects?

A. I believe so. Mr. VandeVelde states[19] that the risks in delaying the Mullin Creek #2 project are increased costs for turbines due to a constrained turbine market, which is itself caused by data center load growth around the country, and that this in turn "could push the Project beyond the window needed to meet Metro's capacity requirements."[20] He further states that there are three large load customers that can be included in the Company's IRP planning, and that these three large load customers alone account for an increase of approximately 900 MW "at steady state," and that approximately 90% of that load is from expected large load customers in Evergy Missouri Metro's service territory.[21] He does note that "Evergy has a large pipeline of prospective new large load customers, but not all are included in base load planning until certain progress on Evergy's internal review process has been met."[22] So, in addition to the nearly 900 MW of load from expected large load customers, there is likely more load that the Company will project in its future IRP updates. Thus, the addition of the Mullin Creek #2 plant is solely due to the addition of the large load customers.

[18] Cody VandeVelde, Direct Testimony, Case No. EA-2026-0154, pp 11-12.
[19] *Ibid*., p 12.
[20] *Ibid*., pp 12-13.
[21] *Ibid*.
[22] *Ibid*.

Q. What is your assessment of how the costs of Mullin Creek #2 should be allocated, or assigned, among, or to, Evergy Missouri Metro's customer classes in the future for ratemaking purposes?

A. Because I believe that the large load customers are the cause of the need for the Mullin Creek #2 plant, I believe that the Company should declare that the costs of the project, including the requested Construction Work In Progress costs in the Evergy Missouri Metro rate case (Case No. ER-2026-0143), will be allocated entirely to the large load customers causing said costs, unless or until Evergy Missouri Metro demonstrates otherwise.

This Commission repeatedly has stated in its decisions that cost causation is a touchstone of rate design. Consistent with that sentiment, the National Association of State Utility Consumer Advocates ("NASUCA") passed Resolution 2026-02 Supporting Protections for Non-Hyperscale Load Customers From Actual and Projected Hyperscale Load Growth. The resolution includes the affirmations that "hyperscale load owners and operators should be held fully responsible for all costs as well as financial and reliability risks they create", that "non-hyperscale load consumers should not be held responsible for any incremental costs or financial risks of new infrastructure investments due to projected or actual hyperscale load growth", and that "NASUCA supports federal and state efforts to ensure that hyperscale load customers appropriately bear responsibility for capacity, energy, transmission, distribution, and related costs that these customers impose on electric systems".[23] This resolution, which the OPC supports, is in line with the commitment Governor Mike Kehoe made[24] by

[23] National Association of State Utility Consumer Advocates, *Resolution 2026-02*: NASUCA Resolution Supporting Protections for Non-Hyperscale Load Customers From Actual and Projected Hyperscale Load Growth, https://www.nasuca.org/wp-content/uploads/2026/07/2026-02-NASUCA-Hyperscale-Load-Growth-Resolution.pdf.
[24] Jason Plautz, Zack Colman, et al., "GOP governors, utilities join Trump data center pledge", Politico, July 14, 2026, https://www.politico.com/news/2026/07/14/gop-governors-utilities-join-trump-data-center-pledge-00998098.

signing the White House Ratepayer Protection Pledge, which calls on "the leading United States hyperscalers and AI companies to build, bring, or buy all of the energy needed for building and operating data centers, paying the full cost of their energy and infrastructure, no matter what."[25]

In the Commission Report and Order for Case No. ER-2014-0258 the Findings of Fact regarding cost allocation to different customer classes included finding that certain classes had returns below what they should based on the costs they caused to serve their load, and that others were contributing greater revenues than the costs they caused to serve their load.[26] In the Decision to the question "C. How should any rate increase be collected from the several customer classes", the Commission adopted Staff's proposal in the case with the intention of "moving closer toward actual cost of service"[27].

III. DECISIONAL PRUDENCE

Q. What is your response to Evergy Missouri Metro witness Mr. Kevin Gunn's testimony for Evergy Missouri Metro's request that the Commission make a finding of decisional prudence in this case?

A. I believe that the Commission should not make a finding of decisional prudence in this docket because the need for the Mullin Creek #2 plant, as I have detailed above, is for the large load customers, and said customers have not materialized yet. The load being projected for these customers in the 2026 IRP Annual Update is roughly 800 MW. This does not include the unknown amount of load from those large load customers that the Company did not include in its projections for capacity growth in the 2026 IRP Annual Update. This is a significant amount

[25] The White House, Ratepayer Protection Pledge, March 4, 2026, https://www.whitehouse.gov/releases/2026/03/ratepayer-protection-pledge/.
[26] Missouri Public Service Commission Report and Order for Case No. ER-2015-0258 attached as schedule JS-R-2. Cited information found on p 71.
[27] *Ibid.*, p 74.

of new load coming from one specific customer class. As such, the costs should be borne by that customer class.

But, the Company has not stated that it intends to seek recovery of said costs solely from that customer class, and instead has vaguely suggested that all customers will be the causers of these costs. If the Company intends to argue in a future rate case that it will burden the entirety of its customers with the high cost of **_____ ** for this project that is only needed now for a very specific class of customers, then I cannot support a finding of decisional prudence in this case.

Mr. Gunn states that a finding of decisional prudence "provides certainty that the Commission has determined building the facility to serve Evergy Metro's Missouri customers is prudent. This is crucial given the magnitude of the investment anticipated by Evergy and the risks related to such a substantial investment."[28]

Again, this suggests that the Company is claiming the need for the project is somehow related to all customers. As I have shown above, this is not the case. I believe that decisional prudence should not be granted because the large load customers are not online yet, they pose a risk to all customers in the event that their load drops off or they cannot cover costs anymore, and their needs for immediate and large amounts of new generation should not cause existing Evergy Missouri Metro customers' bills to be increased.

Q. Does this conclude your testimony?

A. Yes.

[28] Kevin Gunn, Direct Testimony, Case No. EA-2026-0154, pp 25-26.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Evergy Metro, Inc., d/b/a Evergy Missouri Metro for Permission and Approval of a Certificate of Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Manage, Maintain, and Control a Natural Gas Electrical Production Facility	))))))	Case No. EA-2026-0154

AFFIDAVIT OF JORDAN SEAVER

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Jordan Seaver, of lawful age and being first duly sworn, deposes and states:

1. My name is Jordan Seaver. I am a Chief Economist for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Jordan Seaver
Policy Analyst

Subscribed and sworn to me this 14th day of September 2026.

TIFFANY HILDEBRAND
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
MY COMMISSION EXPIRES AUGUST 8, 2027
COLE COUNTY
COMMISSION #15637121

Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.

Case Participation and Presentations of Jordan Seaver

Company Name	Employed Agency	Case Number	Issues
Ameren Missouri	Office of the Public Counsel ("OPC")	EA-2026-0183	**Rebuttal:** Large Load Customers, Load Forecast, Solar Accredited Capacity, Battery Energy Storage Systems **Surrebuttal:** Project Need, Large Load, Renewable Energy Credits
Ameren Missouri	OPC	EA-2025-0239	**Rebuttal:** Large Load Customers, Senate Bill 849, Renewable Tax Credits
Ameren Missouri	OPC	EA-2025-0238	**Rebuttal:** Battery Energy Storage System, Senate Bill 4, IRP Generation Investment
Evergy Missouri West	OPC	EA-2025-0075	**Rebuttal:** Decisional Prudence, Resource Planning
Evergy Missouri West	OPC	ER-2024-0189	**Rebuttal**: Rate Design
Ameren Missouri	OPC	EO-2023-0136	**Surrebuttal**: Counterfactuals, Avoided Supply-Side Investment, Integrated Resource Planning, Capacity Accreditation
Confluence Rivers	OPC	WR-2023-0006	**Direct**: Class Cost of Service, Rate Design **Surrebuttal**: Same as Direct
Evergy Missouri West	OPC	EA-2022-0328	**Surrebuttal**: Economic Performance, Performance-Based Accreditation, Intermittent Resource Declining Marginal Value, Curtailments Related to Conservation Concerns
Ameren Missouri	OPC	ER-2022-0337	**Direct**: Utility Coordination on Excavation of Distribution Projects, Customer Account Simulator, Generating Capacity and Reliability

Case Participation and Presentations of Jordan Seaver

N/A	OPC	AW-2023-0156	Working Group Docket for a Repository of Utility Actions Related to Securing Funding from the IIJA and IRA
Spire Missouri	OPC	GR-2022-0179	**Direct**: Executive Incentive Compensation, Spire STL Pipeline **Surrebuttal**: Transportation Tariff, Operational Flow Order Penalties
Evergy Missouri West	OPC	ER-2022-0130	**Direct**: Market Based Demand Response Program and Emergency Conservation Plan Tariff Sheet Changes, Residential Battery Energy Storage Pilot Program, Low-Income Solar Subscription Pilot **Rebuttal**: Same as Direct **Surrebuttal**: Same as Direct and Rebuttal
Evergy Missouri Metro	OPC	ER-2022-0129	**Direct**: Market Based Demand Response Program and Emergency Conservation Plan Tariff Sheet Changes, Residential Battery Energy Storage Pilot Program, Low-Income Solar Subscription Pilot **Rebuttal**: Same as Direct **Surrebuttal**: Same as Direct and Rebuttal
Empire District Gas Company d/b/a Liberty	OPC	GR-2021-0320	**Rebuttal**: Weather Normalization Adjustment Rider

2015 Mo. PSC LEXIS 380; 320 P.U.R.4th 330

Public Service Commission of the State of Missouri

April 29, 2015, Issued; May 12, 2015, Effective

File No. ER-2014-0258; Tariff No. YE-2015-0003

MO Public Service Commission Decisions

Reporter
2015 Mo. PSC LEXIS 380 *; 320 P.U.R.4th 330

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service

Core Terms

cost, customer, has, company, was, electricity, rebuttal, fuel, rate case, conclusions of law, tariff, energy, cost of services, staff, infrastructure, tracker, ratepayer, storm, calculate, smelter, aluminum, defer, vegetate, rebate, plant, electric utility, amortize, solar, recommend, fixture

Panel: R. Kenney, Chm., W. Kenney, Hall, and Rupp, CC., concur; Stoll., C., dissents, with separate dissenting opinion attached

Opinion

REPORT AND ORDER

The Missouri Public Service Commission, having considered all the competent and substantialevidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

This order allows Ameren Missouri to increase the revenue it may collect from its Missouri customers by approximately $ 108 million, based on the data contained in the Revised True-up Reconciliation filed by the Missouri Public Service Commission Staff on March 28, 2015. [1] Approximately $ 103 million of that

[1] This number is only an estimate of the overall impact of the decisions described later in this report and order. This estimate does not in any way control or modify those decisions.

increase is related to Ameren Missouri's increased net fuel costs and would otherwise be recovered by the company through its fuel adjustment clause.

[*2]

Procedural History

On July 3, 2014, Union Electric Company, d/b/a Ameren Missouri filed a tariff designed to implement a general rate increase for electric service. The tariff would have increased Ameren Missouri's annual electric revenues by approximately $ 264 million. The tariff revisions carried an effective date of August 2.

By order issued on July 11, the Commission suspended Ameren Missouri's general rate increase tariff until May 30, 2015, the maximum amount of time allowed by the controlling statute. [2] In the same order, the Commission directed that notice of Ameren Missouri's tariff filing be provided to interested parties and the public. The Commission also established July 31 as the deadline for submission of applications to intervene. The following parties filed applications and were allowed to intervene: The International Brotherhood of Electrical Workers Local 1439; The Missouri Industrial Energy Consumers (MIEC); [3] The Midwest Energy Consumers Group (MECG); [4] The Missouri Department of Economic Development - Division of Energy; The Consumers Council of Missouri; The Missouri Retailers Association; Sierra Club; The City of O'Fallon and the City of Ballwin; EarthIsland **[*3]** Institute d/b/a Renew Missouri; the Natural Resources Defense Council; United for Missouri, Inc.; Wal-Mart Stores East, L.P. and Sam's East, Inc.; and United Steelworkers Union. On August 20, the Commission established the test year for this case as the 12-month period ending March 31, 2014, trued-up as of December 31, 2014. In its August 20 order, the Commission also established a procedural schedule leading to an evidentiary hearing.

[*4]

In January 2015, the Commission conducted twelve local public hearings at various sites around Ameren Missouri's service area. At those hearings, the Commission heard comments from Ameren Missouri's customers and the public regarding Ameren Missouri's request for a rate increase.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing began on February 23 and continued through March 12. The parties indicated they had no contested true-up issues and the Commission cancelled the scheduled true-up hearing. The parties filed post-hearing briefs on March 31, with reply briefs following on April 10.

The Partial Stipulations and Agreements

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[2] Section 393.150, RSMo 2000.

[3] The members of MIEC are as follows: Anheuser-Busch Companies, Inc.; Ardagh Glass; BioKyowa, Inc.; The Boeing Company; Doe Run; Enbridge Energy; General Motors Corporation; GKN Aerospace; Hussmann Corporation; JW Aluminum; Mallinckrodt; Monsanto; Nestlé Purina PetCare; Noranda Aluminum; and SunEdison Semiconductors.

[4] The members of MECG are Continental Cement Company, LLC; Buzzi Unicem USA; Missouri Ethanol LLC, d/b/a POET Biorefining - Laddonia; Cargill; Tyson Foods; Explorer Pipeline Company, Maritz Holdings, Inc.; and Wal-Mart Stores, Inc. Wal-Mart subsequently was granted intervention on its own behalf.

During the course of the evidentiary hearing, various parties filed nine non-unanimous partial stipulations and agreements resolving issues that would otherwise have been the subject of testimony at the hearing. No party opposed seven of those partial stipulations and agreements. As permitted by its regulations, the Commission treated the unopposed partial stipulations and agreements as unanimous. [5] After considering the stipulations and agreements, the Commissionapproved **[*5]** them as a reasonable resolution of the issues addressed in those agreements. The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

The other two non-unanimous stipulations and agreements were objected to by one or more parties. As provided in the Commission's rules, the Commission will treat those stipulations and agreements as merely a position of the signatory parties to which no party is bound. [6] The issues that were the subject of those stipulations and agreements will be determined in this report and order.

Pending Motion

On April 7, the Department ofEconomic Development (DED) filed an *amicus curiae* brief, accompanied by a petition seeking leave **[*6]** to file the brief. DED is not a party to this case, although the Division of Energy within the Department is a party and filed its own brief. On April 10, two parties, MECG and United for Missouri, filed pleadings opposing DED's petition.

The filing of *amicus* briefs at the Commission is governed by Commission Rule 4 CSR 240-2.075(11), which, among other things, requires that the *amicus* brief be filed no later than the initial briefs of the parties. The initial briefs were filed in this case on March 31. DED delayed filing its amicus brief until April 7; only three days before reply briefs were filed, severely limiting the other parties' opportunity to respond to the *amicus* brief. DED's motion for leave to file *amicus* brief does not comply with the Commission's rule and will be denied.

Admission of True-Up Testimony

A true-up hearing to deal with issues arising from the true-up of Ameren Missouri's costs as of the end of the true-up period on December 31, 2014, was scheduled for March 25. Laura Moore filed Revised True-UpDirect testimony on behalf of Ameren Missouri, Matthew Barnes filed Second Corrected True-Up Direct testimony on behalf of Staff, and Ted Robertson **[*7]** filed True-Up Direct testimony on behalf of Public Counsel.

No party asked to cross-examine any witness, and the true-up hearing was canceled by order issued on March 24. The true-up testimony is assigned the following exhibit numbers and is admitted into evidence.

Moore Revised True-Up Direct Exhibit 74

Barnes Second Corrected True-Up Direct Exhibit 247

Robertson True-Up Direct Exhibit 413

Overview

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[5] Commission Rule 4 CSR 240-2.115(C).

[6] Commission Rule 4 CSR 240-2.115(2)(D).

Ameren Missouri is an investor-owned integrated electric utility providing retail electric service to large portions of Missouri, including the St. Louis Metropolitan area. Ameren Missouri has approximately 1.2 million retail electric customers in Missouri, more than 1 million of whom are residential customers. [7] Ameren Missouri also operates a natural gas utility in Missouri, but the rates it charges for natural gas are not at issue in this case.

Ameren Missouri began the rate case process when it filed its tariff on July 3, 2014. In doing so, Ameren Missouri asserted it was entitled toincrease its retail rates by approximately $ 264 million per year, an increase of approximately 9.7 percent. [8] Ameren Missouri claimed a rate increase **[*8]** was necessary due to (a) increases in net fuel costs, largely driven by decreases in off-system sales due to lower power prices; (b) significant investments in infrastructure; (c) increases in income taxes and other taxes; (d) amortizations of solar rebate payments; and (e) changes in depreciation rates to reflect the retirement of the Meramec Energy Center by 2022. [9] The company attributed $ 103 million of that increase to the rebasing of fuel costs that would otherwise be passed through to customers by operation of the company's existing fuel adjustment clause. [10]

Ameren Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariff on July 3, 2014. In addition to its filed testimony, Ameren Missouri provided work papers and other detailed information and records to the Staff of the Commission, **[*9]** Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Ameren Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony - direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On February 18, the parties filed a list of the issues they asked the Commission to resolve. Some of the issues identified at that time were later resolved by unanimous stipulation and agreement. The unresolved issues will be addressed in this report and order.

Conclusions of Law Regarding Jurisdiction

A. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Section 386.020(43)and (15), RSMo (Cum. Supp. 2013). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant **[*10]** to Chapters 386 and 393, RSMo 2000.

B. Section 393.140(11), RSMo 2000, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electricity. When Ameren Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

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[7] Moehn Direct, Ex. 28, Page 4, Lines 5-6.

[8] Moehn Direct, Ex. 28, Page 5, Lines 8-9.

[9] Moehn Direct, Ex. 28, Page 5, Lines 10-20.

[10] Ameren Missouri Initial Post Hearing Brief, Page 2, Footnote 2.

Conclusions of Law Regarding the Determination of Just and Reasonable Rates

A. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable. [11] Ameren Missouri has the burden of proving its proposed rates are just and reasonable. [12]

[*11]

B. In determining whether the rates proposed by Ameren Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer. [13] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment. [14]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments **[*12]** in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally. [15]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt anddividends **[*13]** on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding

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[11] Section 393.150.2, RSMo 2000.

[12] Section 393.150.2, RSMo 2000.

[13] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603, (1944).

[14] Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679, 690 (1923).

[15] *Bluefield*, at 692-93.

> risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. [16]

C. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power hasbeen delegated **[*14]** are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. [17]

D. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts. [18]

[*15]

The Rate Making Process

The rates Ameren Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. Ameren Missouri's revenue requirement is calculated by adding the company's operating expenses, its depreciation on plant in rate base, taxes, and its rate of return multiplied by its rate base. The revenue requirement can be expressed as the following formula:

Revenue Requirement = E + D + T + R(V-AD+A)

Where:

E = Operating expense requirement

D = Depreciation on plant in rate base

T = Taxes including income tax related to return

R = Return requirement

(V-AD+A) = Rate base

For the rate base calculation:

V = Gross Plant

AD = Accumulated depreciation

A = Other rate base items

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[16] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (citations omitted).

[17] Federal Power Commission v. Natural Gas Pipeline Co. 315 U.S. 575, 586 (1942).

[18] State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

All parties accept the basic formula. Disagreements arise over the amounts that should be included in the formula.

The Issues

1. Regulatory Policy and Economic Considerations.

This is not a true issue in that the parties do not ask the Commission to resolve any questions regarding the particulars of Ameren Missouri's request for a rate increase. Instead, the parties presented testimony regarding general policy mattersthat **[*16]** affect the Commission's decision making regarding the detailed issues that will be addressed later in this report and order. Because this is only a general policy discussion, the Commission will not make findings of fact or conclusions of law about these policy matters.

Testimony was offered by the parties regarding the difficult economic situation that is currently facing individuals and businesses in Missouri in general and in Ameren Missouri's service territory in particular. Aside from the testimony offered at the evidentiary hearing, the Commission also heard that message from Ameren Missouri's customers during the twelve, well-attended, local public hearings the Commission conducted throughout Ameren Missouri's service territory.

The Commission was created to serve the public interest, and it takes that responsibility very seriously. The Commission serves the public interest by establishing just and reasonable rates, and the Commission has endeavored to do so in this report and order.

Many customers are already having a hard time paying their electric bills. Increasing Ameren Missouri's rates may make it even harder for some customers to pay their bills. However, a justand reasonable **[*17]** rate does not necessarily mean a lower rate.

2. Weather Normalization (SPS and LGS Classes)

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

Findings of Fact:

1. Although this issue is described as weather normalization, it has little to do with the weather. Rather it concerns the amount of electricity that Ameren Missouri sells to Noranda for its New Madrid smelter. Noranda is Ameren Missouri's largest customer, representing over ten percent of Ameren Missouri's retail sales. Historically, it has a very stable and consistent load that varies very little while the aluminum smelter is in full production. [19] Given its unique characteristics, Noranda has its own rate as the only member of the Large Transmission Service (LTS) rate class.

2. During the test year for this case, which was the twelve months ending March 31, 2014, Ameren Missouri sold Noranda approximately4.2 million **[*18]** mega-watt hours (MWhs) of electricity. Staff proposes to use that figure to set Ameren Missouri's rate. [20]

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[19] Wills Amended Rebuttal, Ex. 53, Pages 17-18, Lines 22-23, 1-2.

[20] Staff Report - Revenue Requirement, Ex. 202, Page 66, Lines 14-17.

3. Beginning in July 2014, Noranda began to experience a production slow-down due to an unusually high number of "pot" failures. The lower production means Noranda bought less electricity from Ameren Missouri during that period. However, Noranda anticipated returning to full production by the end of March 2015. [21]

4. Ameren Missouri is concerned about the drop in production and the corresponding drop in sales. In its rebuttal testimony, Ameren Missouri proposed to set the measure of sales to Noranda based on the actual sales in November and December of 2014, the last two months of the true-up period. Thatwould result **[*19]** in an annual level of approximately 3.8 million MWhs. [22]

5. At the hearing, Ameren Missouri amended its position to propose the use of a three-year average to determine the level of sales. The three-year average would include the most recent year in which Noranda saw decreased production due to the pot failures. That would result in an annual level of approximately 4.1 million MWhs. [23]

6. As an alternative for the Commission's consideration, Ameren Missouri also offered a ten-year average calculation that results in an annual level of approximately 4.0 million MWhs. [24] However, that ten year average would include 2009 when Noranda's production was cut nearly in half by a power outage resulting from a severe ice storm. [25] Ameren Missouri **[*20]** suggested the ten-year average including the reduced production due to the ice storm would be appropriate if the Commission denies the company's request to recover costs deferred under an AAO related to that ice storm. [26]

Conclusions of Law :

The Commission makes no additional conclusions of law for this issue.

Decision:

In setting Ameren Missouri's volumetric rates to allow it to recover its costs to serve Noranda, the Commission must determine how many billing units the company is likely to sell to Noranda in a year. The costs are then divided over the billing units to set the rate. If Ameren Missouri is able to sell more billing units than were factored into the rate, it collects more money than its cost to serve. Conversely, if it sells fewer units than were factored into its rate, it will not cover its full cost.

TheCommission anticipates **[*21]** that Noranda will return to full production while the rates set in this case remain in effect, which is also the production level experienced in the test year. Setting its rate based on the test year experience will allow Ameren Missouri a fair opportunity to recover its cost to serve Noranda. If the Commission were to set those rates based on an average number that includes the unusually reduced production resulting from the ice storm in 2009, or the elevated level of pot failures in

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[21] Phillips Surrebuttal, Ex. 516, Page 4, Lines 1-11.

[22] Wills Amended Rebuttal, Ex. 53, Page 20, Lines 1-11.

[23] Wills Surrebuttal, Ex. 54, Page 8, Table SMW-2.

[24] Wills Surrebuttal, Ex. 54, Page 8, Table SMW-2.

[25] Wills Surrebuttal, Ex. 54, Page 6, Table SMW-1.

[26] Wills Surrebuttal, Ex. 54, Page 7, Lines 11-16.

2014, Ameren Missouri would be in a position to collect a windfall if, as anticipated, Noranda returns to full production in 2015.

Of course, there is a possibility that Noranda will not return to full production as anticipated, but Ameren Missouri's shareholders should bear the business risk of reduced sales, not its ratepayers. The Commission will set the level of annual billing units at 4.2 million Mega-Watt hours (MWh) of electricity as recommended by Staff.

3. Income Tax

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

Findings of Fact :

1. This issue concerns Ameren Missouri's test yearNet Operating Loss Carryforward **[*22]** (NOLC) associated with its Accumulated Deferred Income Tax (ADIT) balance.

2. ADIT represents assets or liabilities for cumulative amounts of deferred income taxes resulting from differences between book accounting and income-tax accounting. [27] For example, tax law sometimes allows a company to claim accelerated depreciation in calculating its taxes. [28]

3. Since in the short term it pays less in taxes, the company is able to keep more cash. But, because the company can only depreciate its assets once, the accelerated depreciation will reduce the depreciation expense the company would otherwise use to reduce its taxes in future years. Essentially the ADIT allows the company to have the use of "free" cash between the time the ADIT is acquired and the time the increased taxes will come due. [29] Because the ADIT represents "free" cash to the company, ratepayers should not be requiredto pay for it and the company **[*23]** should not be allowed to earn a return on it. Thus ADIT is removed from the company's ratebase. [30]

4. However, when bonus depreciation and other tax deductions grow so large as to push the company's taxable income into the negative, the available tax deduction cannot offset any tax liability and no "free" cash is generated. In that circumstance, the company must record an offsetting deferred tax asset for Net Operating Loss Carryforward (NOLC). The NOLC offsets the ADIT, which would decrease the company's rate base, and therefore, the NOLC has the effect of increasing the rate base. [31]

5. For many years, Ameren Corporation, of which Ameren Missouri is an affiliate, has filed a consolidated tax return **[*24]** on behalf of itself and all its subsidiary corporations, including Ameren Missouri. Filing a consolidated return means that all tax losses of the group are used to offset the taxable income of the entire group. [32] Filing a consolidated tax return benefits Ameren Corporation and in most

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[27] Brosch Direct, Ex. 501, Page 13, Lines 4-14.

[28] Brosch Direct, Ex. 501, Page 13, Lines 15-21.

[29] Warren Rebuttal, Ex. 48, Pages 11-12.

[30] Brosch Direct, Ex. 501, Page 15, Lines 1-17.

[31] Brosch Surrebuttal, Ex. 502, Page 5, Lines 18-23.

[32] Warren Rebuttal, Ex. 48, Page 18, Lines 12-17.

years benefits Ameren Missouri as well. Furthermore, once a company chooses to file a consolidated tax return, it cannot switch to filing separate returns for its affiliates except by special permission from the IRS. [33]

6. For tax years 2008 through 2012, the calculation of NOLC allocated to Ameren Missouri through the filing of a consolidated return had the effect of substantially increasing the NOLC allocated to Ameren Missouri, and thus decreasing the company's rate base. [34] In 2013 and 2014, Ameren Missouri produced a large amount of taxable income but could not use that accumulated NOLCbecause the Ameren group as a whole **[*25]** had a tax loss. [35] As a result, the NOLC is larger than it would otherwise be and rate base is approximately $ 51.1 million larger at the end of 2014 than it would be if Ameren Missouri had filed a separate tax return. [36] However, in future years, the balance could switch back, and Ameren Missouri's ratepayers would once again benefit from the use of the consolidated return. [37]

7. Rather than use Ameren Missouri's actual NOLC that was determined using the consolidated tax return actually filed, MIEC's witness, Michael Brosch, urges the Commission to recalculate NOLC as if Ameren Missouri had filed a separate tax return. [38] However, he does not argue that the separate tax return, stand-alone, calculation should necessarily be used in future rate cases. Rather he arguesthe Commission should calculate NOLC **[*26]** in each future case by the method that creates the lowest NOLC rate base addition, to the benefit of ratepayers and the detriment of the company. [39]

8. Ameren Corporation and its affiliated companies have entered into a Tax Allocation Agreement that governs the allocation of consolidated annual income tax responsibility among the members of the consolidated tax group and defines the amounts recorded on the utility's books. [40]

9. There is no evidence in this case to show that Ameren's Tax Allocation Agreement is structured in a way that would be detrimental to Ameren Missouri and its ratepayers. Instead, for several years, Ameren Missouri's ratepayersbenefited from a lower rate base because **[*27]** of the Tax Allocation Agreement. The Tax Allocation Agreement has not changed, but in more recent years ratepayers have not benefitted from that agreement, although that may change again in the future. That fluctuation does not mean the agreement is unreasonable, and there is no evidence the fluctuation was intentionally created in order to change who benefits from the Tax Allocation Agreement.

Conclusions of Law :

A. MIEC points to the Commission's affiliate transaction rule as support for its proposal to calculate NOLC in whichever manner results in the lower rate base for the company. Commission Rule 4 CSR 240-20.015(2) says:

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[33] Warren Rebuttal, Ex. 48, Page 23, Lines 14-18.

[34] Warren Rebuttal, Ex. 48, Page 26, Table VII.

[35] Brosch Direct, Ex. 501, Page 25, Lines 16-21.

[36] Brosch Surrebuttal, Ex. 502, Schedule MLB-10, page 2.

[37] Transcript, Page 360, Lines 4-10.

[38] Brosch Direct, Ex. 501, Page 26, lines 14-18.

[39] Brosch Surrebuttal, Ex. 502, Page 6, Lines 19-25.

[40] Brosch Surrebuttal, Ex. 502, Page 6, Lines 8-12.

(2) Standards.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if -

1. It compensates an affiliated entity for good or services above the lesser of -

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation to provide thegoods or services for itself; or

2. It transfers information, assets, goods or services **[*28]** of any kind to an affiliated entity below the greater of -

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation.

B. Section 4 CSR 240-20.015(1)(B) defines affiliate transaction as:

Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, …

C. The Commission's affiliate transaction rules do not apply in this situation because there is no transaction involved. The affiliate transaction rules are intended to control transfers of goods or services between regulated utilities and their affiliates. So for example, if Ameren Missouri wants to purchase legal services from an affiliate such as Ameren Services Company, it cannot pay more than the lesser of market cost or its cost to provide the services for itself. In that context that is a reasonable restriction to ensure the regulated utility is not giving a sweetheart contractto an affiliate at the ratepayers' expense.

D. But here, where there is no transaction, the restrictions of the rule have no meaning. How **[*29]** could the fair market price or the fully distributed cost even be calculated? MIEC can only fall back to the basic policy behind the affiliate transaction rule, which reasonably states that regulated utilities should not be allowed to structure corporate arrangements in a way that disadvantages regulated utilities and thereby disadvantages ratepayers.

Decision:

Ameren Missouri proposes to use the NOLC it has actually accumulated rather than a hypothetical NOLC proposed by MIEC and supported by Staff, MIEC advocates a policy that arrangements between affiliates should always be interpreted in a manner that benefits ratepayers, even if that results in a detriment to the utility. There is no basis in law or fact for such a policy. The Commission must balance the interests of ratepayers and shareholders to set just and reasonable rates. Ameren Missouri's position is fair and will be adopted.

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?

Findings of Fact:

1. The Internal Revenue Code Section 199 deduction **[*30]** is also referred to as the domestic production deduction or DPD. The DPD is a tax incentive provided to manufacturers, including producers of electricity. It allows the tax payer to take a tax deduction equal to 9% of the lesser of certain qualified net income or the taxpayer's taxable income. Under the tax law, the DPD is calculated on a consolidated basis. [41] Recognition of a DPD would reduce Ameren Missouri's tax expense and would therefore reduce rates for ratepayers.

2. In its initial filing for this case, Ameren Missouri calculated a DPD of $ 30.8 million. [42] MIEC's witness, Michael Brosch recalculated that deduction at $ 36.9 million in his direct testimony. [43]

3. In his rebuttal testimony, **[*31]** Ameren Missouri's witness, James Warren, testified that both Mr. Brosch and Ameren Missouri's initial calculation of the DPD are incorrect. Both calculations assumed that Net Operating Loss Carryforward (NOLC) was not includable. In fact, Mr. Warren explained that Treasury Regulations applicable to the DPD do allow for the consideration of NOLC in calculating DPD. [44] Including the NOLC in the calculations would reduce Ameren Missouri's taxable income and thereby reduce the DPD. [45]

4. Ameren Missouri has not utilized NOLC in its calculation of its DPD in past rate cases and only proposed to do so in rebuttal testimony offered in this case. Both MIEC [46] and Staff [47] contend the use of NOLC should not be allowed because it has not been used in the past. MIEC's witness, **[*32]** Michael Brosch, also expressed concern that the NOLC should not be used because of the uncertainty that Ameren Missouri will even have an NOLC in future years. [48]

5. As an alternative to totally eliminating consideration of NOLC in calculating the DPD, MIEC proposed a DPD calculation that uses only the NOLC that would be calculated assuming that Ameren Missouri had filed a separate tax return rather than the consolidated return it actually files with Ameren Corporation and its affiliates. That calculation supported a DPD estimate of $ 7.9 million. [49]

[*33]

6. The use of a hypothetical stand-alone tax return in place of the actual consolidated return is the same issue as was addressed in the previous income tax issue. All parties agree the question should be resolved in the same way for both sub-issues.

Conclusions of Law:

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[41] Warren Rebuttal, Ex. 48, Page 31, Lines 6-12.

[42] Brosch Direct, Ex. 501, Page 9, Lines 21-23.

[43] Brosch Direct, Ex. 501, Schedule MLB-4, Page 2.

[44] Warren Rebuttal, Ex. 48, Pages 32-33, Lines 11-25, 1-2.

[45] Hanneken Surrebuttal, Ex. 218, Page 14, Lines 11-13. The testimony calculates an amount of the deduction that is listed as highly confidential so will not be stated in this order.

[46] Brosch Surrebuttal, Ex. 502, Page 22, lines 5-8. See also, Transcript, Pages 410-411, Lines 17-25, 1.

[47] Hanneken Surrebuttal, Ex. 218, Page 15, Lines 1-6. *See also*, Transcript, Page 375, Lines 17-22.

[48] Transcript, Page 411, Lines 2-14.

[49] Brosch Surrebuttal, Ex. 502, Page 22-23, and Schedule MLB-4 Revised.

The Commission makes no additional conclusions of law for this sub-issue.

Decision:

Ameren Missouri demonstrated that the Internal Revenue Code allows for the use of NOLC in calculating Ameren Missouri's DPD. The Internal Revenue Code does not require the Commission to allow its use for regulatory purposes, but the fact that NOLC has not been included in that calculation in past rate cases is not a persuasive reason to forbid its inclusion in this case. MIEC's suggestion that inclusion of NOLC makes the DPD uncertain because Ameren Missouri may not have NOLC in the future is based only on speculation and on MIEC's failed effort to require NOLC to be calculated on a hypothetical stand-alone basis. The Commission concludes, consistent with its decision in the previous income tax issue, that Ameren Missouri's method for calculation of its DPD is appropriate.

4. Amortizations

A. Should the amount **[*34]** *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?*

Findings of Fact:

1. In a non-unanimous stipulation and agreement filed in Commission File No. ET-2014-0085, Ameren Missouri, Staff, Public Counsel, MIEC, and numerous other parties agreed that Ameren Missouri would continue to make the solar rebate payments required by Missouri's Renewable Energy Standard, Section 393.1030 RSMo (Cum. Supp. 2013), until a specified level of $ 91.9 million in rebates was incurred by the company. That agreement also provides for creation of a regulatory asset to be considered for recovery in rates after December 31, 2013, in a general rate case. Ameren Missouri was required to record to that asset the actual amount of solar rebates paid, not to exceed $ 91.9 million, plus 10 percent. [50] No one objected to that stipulation and agreement, and the Commission approved it in an order issued on November 13, 2013. [51]

[*35]

2. Ameren Missouri has deferred and accumulated approximately $ 88.1 million of solar rebates through December 31, 2014. Coupled with a 10 percent added cost of $ 8.8 million as provided in the stipulation and agreement, Ameren Missouri is seeking to recover approximately $ 96.9 million. By terms of the stipulation and agreement, that amount is to be amortized over three years, so $ 32.3 million would be included in Ameren Missouri's rates to be established in this case. [52]

3. MIEC and Consumers Council contend Ameren Missouri should not be allowed to recover any additional revenues to recover any of the solar rebate expense deferred under the stipulation and agreement. They assertthat **[*36]** Ameren Missouri's earnings from retail rates during the period when the rebate costs were incurred already covered those costs. [53] Essentially, they argue that Ameren

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[50] Ex. 55.

[51] *In the Matter of Ameren Missouri's Application for Authorization to Suspend Payment of Solar Rebates* , Order Approving Stipulation and Agreement, File No. ET-2014-0085, November 13, 2013.

[52] Cassidy Surrebuttal, Ex. 211, Page 4, Lines 3-11.

Missouri over-earned during the period the costs were incurred, so it should not be allowed to again recover those costs in the rates to be established in this case.

4. As proof that Ameren Missouri has over-earned, MIEC and Consumers Council point to Ameren Missouri's raw, unadjusted surveillance reports to claim that for most of the period from August 2012 through September 2014, Ameren Missouri collected enough revenue above its authorized revenue level to fully recover its solar rebate payments. [54]

5. However, unadjusted, per-book surveillance reports have onlya limited **[*37]** value. [55] In the recent rate complaint case, the complainants attempted to use the same, slightly adjusted surveillance reports as the basis for setting new rates. In rejecting that attempt, the Commission found:

> It is important to understand that the earnings levels reported in the surveillance reports are actual per book earnings of the utility and cannot be compared directly to an authorized return on equity to determine whether a utility is overearning. Actual per book earnings are often computed differently than earnings used for the purpose of establishing rates. When setting rates, the Commission looks at "normal" levels of ongoing revenues and expenses, while book earnings can be affected by abnormal, non-recurring and extraordinary events. A good example of this is the weather. [56]

In this case, MIEC's witness, Greg Meyer simply pointed to the surveillance reports, without making any adjustments, to claim that Ameren Missouri has been over-earning. The Commission finds that the unadjusted per-book surveillance reports are not sufficient to establish that Ameren Missouri over-earned during the period of deferral.

[*38]

6. Even if the unadjusted per-book surveillance reports were accepted as the basis for a claim of over-earning, the over-earning they purport to show is not significant. For calendar year 2013, the per-book surveillance report showed that Ameren Missouri's actual earned return on equity was 10.34 percent, compared to an authorized return on equity of 9.8 percent. [57] For calendar year 2014, the per-book surveillance report showed that Ameren Missouri actual earned return on equity was 9.71 percent, again compared to an authorized return on equity of 9.8 percent. [58] Over the entire 2013 and 2014 period the per-book over-earning would amount to less than 0.50 percent. [59]

Conclusions of Law:

A. **[*39]** In 2008, Missouri voter adopted by initiative Proposition C, which creates a Renewable Energy Standard. That standard, which is codified in Sections 393.1025 and 393.1030 RSMo (Cum. Supp. 2013),

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[53] Meyer Direct, Ex. 513, Pages 11-12, Lines 18-21, 1-2.

[54] Meyer Direct, Ex. 513, Page 13 and Schedule GRM-3.

[55] Transcript, Page 536, Lines 9-10.

[56] *Noranda Aluminum, Inc., et al. v. Union Electric Company*, File No. EC-2014-0223, Report and Order, October 1, 2014, Finding of Fact No. 13, Page 8.

[57] Ex. 524.

[58] Ex. 528.

[59] Transcript, Page 585, Lines 9-14.

requires investor-owned electric utilities, such as Ameren Missouri, to obtain a specified percentage of their electric generation from renewable energy resources, provided that the cost to do so does not raise retail rates by more than one percent. More specifically, Section 393.1030.3 requires investor-owned electric utilities to pay solar rebates to their customers who choose to install new or expanded solar energy generating facilities on their property.

B. Section 393.1030.2(4), RSMo (Cum. Supp. 2013), provides that the electric utility may seek to recover the costs of complying with the Renewable Energy Standard, including solar rebate payments, outside a regular rate case by means of a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM). Ameren Missouri does not have a RESRAM, as will be explained later, **[*40]** but the inclusion of that possibility illustrates that the policy of the Renewable Energy Standard statute supports the recovery of those costs by the utility.

C. Section 393.1030.3 of the statute allows the utility to petition the Commission to cease payment of the solar rebates if paying additional rebates will cause the utility to exceed the allowable one percent increase in retail rates. Ameren Missouri filed such a petition in the fall of 2013. That petition was assigned File No. ET-2014-0085 by the Commission.

D. File No. ET-2014-0085 was ultimately resolved by a stipulation and agreement [60] that was approved by the Commission in an order issued on November 13, 2013. [61]

E. The stipulation and agreement allowed Ameren Missouri to discontinue paying solar rebates **[*41]** afterit had paid a total of $ 91.9 million for rebates incurred after July 31, 2012. It provides that such solar rebate payments, with an additional ten percent carrying charge, are to be included in a regulatory asset to be considered for recovery in rates after December 31, 2013 in a general rate case. The stipulation and agreement also provides that the costs are to be amortized over three years when they are recovered in rates.

F. In the stipulation and agreement, the signatories agree "not to object to Ameren Missouri's recovery in retail rates of prudently paid solar rebates. " There is a footnote to that statement which says:

> Given the Signatories' agreement that the specified amount should be paid, the only questions in future general rate proceedings regarding the recovery of solar rebate payments is whether the claimed solar rebate payments have been made and whether they were prudently paid under the Commission's RES rules and Ameren Missouri's tariff. 'Prudently paid' relates only to whether Ameren Missouri paid the proper amount due to an applicant for a rebate, paid it to the proper person or entity, and paid it in accordance with the Commission's RES rules and Ameren **[*42]** Missouri's tariffs.

In return, as part of the stipulation and agreement, Ameren Missouri gave up its right under the statute to seek recovery of the solar rebate costs outside a rate case through a RESRAM.

G. MIEC signed the stipulation and agreement, Consumers Council did not. Ameren Missouri contends MIEC has violated the terms of the stipulation and agreement by challenging Ameren Missouri's recovery

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[60] Ex. 55.

[61] In the Matter of Ameren Missouri's Application for Authorization to Suspend Payment of Solar Rebates, Order Approving Stipulation and Agreement, File No. ET-2014-0085, November 13, 2013.

of the solar rebate payments in this case on a basis other than prudent payment. As a remedy, it asks the Commission to strike all the testimony and argument offered by MIEC on this issue. Consumers Council did not sign the stipulation and agreement, and Ameren Missouri concedes that it can argue against recovery of the solar rebates on any basis that it wishes. However, Ameren Missouri asserts that MIEC procured the services of Consumers Council's witness, James Dittmer, on behalf of Consumers Council and, on that basis, asks the Commission to strike his testimony as well.

H. Commission rule 4 CSR 240-20.090(10) requires each electric utility with a fuel adjustment clause (a rate adjustment mechanism or RAM within the words of the regulation) to submit a quarterly Surveillance **[*43]** Monitoring Report. The required contents of the quarterly report are described by Commission rule 4 CSR 240-3.161(6). That regulation also requires that such reports be treated as highly confidential.

I. Rate making is designed to be forward looking. The goal is to choose a representative test year to estimate what costs will be when rates are in effect, not to make adjustments for past earning levels. [62] The practice of setting future rates to adjust for past earning levels is condemned as retroactive ratemaking that would deprive either the utility or its customers of their property without due process. [63]

J. The Commission only sets therates that Ameren Missouri, or any other utility, may charge its customers. It does not determine **[*44]** a maximum or minimum return the utility may earn from those rates. Sometimes, the established rate will allow the utility to earn more than was anticipated when the rate was established. Sometimes, the utility will earn less than anticipated. But the rate remains in effect until it is changed by the Commission, and so long as the utility has charged the authorized rate, it cannot be made to refund any "over-earnings," nor can it be allowed to collect any "under-earnings" from its customers. [64]

Decision:

The Commission will fully address this issue on its merits and will not strike any testimony. This is not the proper forum to determine whether MIEC violated the terms of the stipulation and agreement or the order of the Commission that directed the signatories to comply with that agreement. If Ameren Missouri wishesto further pursue a remedy for what it believes to be a breach of the stipulation and agreement it **[*45]** may do so in a new proceeding of its choosing.

This issue is about the deferral of Ameren Missouri's solar rebate costs for consideration for recovery in this rate case. Generally, the Commission uses a test year to determine which of a utility's expenses will be considered when setting just and reasonable rates for the future. But sometimes the utility incurs an expense that the Commission believes should be deferred for consideration for recovery in a future rate case. The classic example is a severe storm that causes the electric utility to incur unexpectedly large costs. If that storm occurs outside the test year for the next rate case, the company would never be able to recover those unexpected costs.

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[62] **State ex rel. Southwestern Bell Tele. Co. v. Pub. Serv. Comm'n, 645 S.W.2d 44, 48 (Mo. App. W.D. 1982)**.

[63] State ex rel. Util. Consumers Council of Mo, Inc. v. Pub. Serv. Comm'n, 585 S.W.2d 41, 58 (Mo. banc 1979).

[64] Straube v. Bowling Green Gas Co., 227 S.W.2d 666 (Mo. 1950).

But storms are not the only reason a deferral may be allowed. There may be other public or regulatory policy reasons why a utility should be allowed to defer a cost for consideration for recovery in a future rate case. For this issue, the costs that have been deferred are the costs Ameren Missouri paid to give rebates to its customers who installed home solar power generating units. The people of Missouri imposed the solar rebate requirement by voting for Proposition C because they **[*46]** believe that renewable energy in general, and solar energy in particular, is important to the well-being of our state. That legislation required Ameren Missouri and Missouri's other investor-owned electric utilities to be the conduit to encourage individuals to invest in solar energy. Therefore, it is entirely appropriate to allow Ameren Missouri to defer those costs for recovery in its next rate case.

As has been said many times, the deferral of a cost is not ratemaking treatment. That is, the deferral of a cost does not guarantee recovery of that cost in future rates. The Commission must determine within the context of a rate case whether recovery of the deferred cost is appropriate. But, usually the policy reason that justified the deferral still applies when it comes time to decide whether the deferred costs should be included when determining a future rate.

MIEC and the Consumers Council argue for what is in essence an earnings test to be applied to all deferrals. Under such a test, the Commission would have to determine by how many dollars a utility overearned during the deferraland then, dollar for dollar, the Commission would have to deny recovery of every dollar deferred **[*47]** above the return authorized in the last rate case. Such an earnings test fundamentally misunderstands the ratemaking process and would be completely unworkable in practice.

The Commission sets rates in a forward looking process using a test year to evaluate the amount of revenue the utility needs to earn to recover its costs and to have a reasonable opportunity to earn a profit. The utility is not guaranteed a profit, just an opportunity to earn that profit. Sometimes, circumstances make it difficult for the utility to earn that profit. Perhaps the summer is cooler than normal and people do not use their air conditioners so the utility does not sell as much electricity as anticipated. Or, perhaps, a generating plant goes down, resulting in unanticipated capital expenditures for the utility. Sometimes, circumstances favor the utility and it is able to earn more revenue than was anticipated when its rates were set. Whether the utility earns more or less revenue than was anticipated when the Commission set its rates does not necessarily indicate over- or under-earnings such that the utility'srate are no longer just and reasonable, though that can be one relevant factor of many to consider **[*48]** when setting new rates. Thus, in most cases, mention of over- or under-earnings is just a shorthand way of discussing whether the Commission should examine a utility's existing rates to determine if they are still just and reasonable. If Staff or some other party looks at the utility's earnings and finds that the utility is consistently earning above the benchmark return on equity established in the last rate case, they may, by filing a complaint, petition the Commission to again undertake the process of re-determining the utility's just and reasonable rates. If the utility looks at its earnings and finds it is not earning what it believes it should, it can begin the rate review process by filing a tariff to start the rate case process.

The surveillance reports that have been discussed extensively in this case were established to make that information about Ameren Missouri's earnings available to all interested stakeholders so that they could decide whether the process to establish a new rate should be undertaken. But those surveillance reports do not themselves determine what an appropriaterate should be, nor do they establish either a ceiling or a floor on the earnings of the utility. **[*49]** Most fundamentally, in isolation, surveillance reports do not establish that a utility has under or over earned for purposes of setting rates.

Ameren Missouri's solar rebate costs were appropriately deferred pursuant to the Commission order approving those costs and their deferral, and now may be recovered through the rates set in this rate case, amortized over three years. No offset for over-earnings is appropriate.

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?

Findings of Fact:

1. In previous rate cases, the Commission allowed Ameren Missouri to defer certain pre-MEEIA energy efficiency expenditures for subsequent recovery, amortized over several years. For this case, Ameren Missouri would defer and recover an additional $ 3.3 million in expenditures incurred between the July 31, 2012 true-up cutoff date and January 2, 2013 effective date of the reportand order in Ameren Missouri's last rate case, ER-2012-0166, amortized over six years. Staff **[*50]** would also make certain adjustments to the previously allowed deferrals. [65]

2. Ameren Missouri does not contest the treatment of these costs proposed by Staff. [66] MIEC once again opposes recovery of these deferrals because of the alleged over-earnings by Ameren Missouri.

Conclusions of Law:

A. The Missouri Energy Efficiency Investment Act, [67] generally known as MEEIA, is a statute designed to encourage electric utilities to invest in energy efficiency measures that will reduce the need to invest in energy production infrastructure. The goal of the statute is to make such investments profitable, and to thatend, Section 393.1075.3 establishes the policy of **[*51]** the state to allow electric utilities to recover "all reasonable and prudent costs of delivering cost-effective demand-side programs."

Decision:

Public policy in Missouri, as indicated by MEEIA, favors allowing electric utilities to fully recover their expenditures on energy efficiency programs. As explained with regard to the Solar Rebate Payment Deferral issue, no offset for over-earnings is appropriate here. Deferral and recovery of the pre-MEEIA energy efficiency expenditures incurred by Ameren Missouri shall be made in the manner described by Staff.

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?

Findings of Fact:

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[65] Staff Report Revenue Requirement, Ex. 202, Page 58, Lines 17-20, and Pages 120-121, Lines 27-31, 1-6.

[66] Transcript, Page 543, Lines 1-7.

[67] Section 393.1075, RSMo (Cum. Supp. 2013).

1. After the Fukushima Tsunami, the Nuclear Regulatory Agency required all U.S. utilities that operate nuclear power plants **[*52]** to perform a study of the threat of flooding at those facilities. [68] Staff and Ameren Missouri agree the $ 926,561 cost of the study should be deferred for recovery over a ten-year amortization period. [69] MIEC once again opposes recovery of these deferrals because of the alleged "over-earnings" by Ameren Missouri.

2. The deferral of the cost of the study is consistent with applicable accounting standards. [70]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The deferral and recovery of the Fukushima study costs is consistent with good public andregulatory policy. Ameren Missouri may recover those costs, amortized over a ten-year period.

[*53]

5. 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?

Findings of Fact:

1. On January 27-28, 2009, a major ice storm disrupted the power supply to Noranda's aluminum smelter. The molten aluminum hardened in two of the three production lines, and Noranda's output was reduced for most of that year. As a result, Noranda bought much less electricity from Ameren Missouri than had been anticipated when Ameren Missouri's rates were set. Because Noranda purchased less power from Ameren Missouri, the company was unable to recover a portion of the revenue it would otherwise have recovered through the sale of electricity to Noranda. [71]

2. On the same day as the start of the ice storm, January 27, 2009, the Commission issueda report and order in Ameren Missouri's (then AmerenUE's) rate case. In that report and order, **[*54]** the Commission for the first time granted the company's request for a fuel adjustment clause. [72]

3. The existence of the fuel adjustment clause exacerbated the problem Ameren Missouri faced because of the Noranda outage. Ameren Missouri could resell at least part of the power it would otherwise have sold to Noranda on the off-system sales market. But as an off-system sale, 95 percent of the revenue

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[68] Transcript, Page 509, Lines 5-13.

[69] Staff Report Revenue Requirement, Ex. 202, Page 122, Lines 4-6.

[70] Transcript, Page 543, Lines 8-16.

[71] Cassidy Rebuttal, Ex. 210, Pages 2-3, Lines 15-23, 1-2.

[72] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo.P.S.C.3d 306 (2009).

derived from that sale would flow through the FAC to be netted against fuel costs, and would therefore benefit ratepayers rather than Ameren Missouri's shareholders. [73]

4. Ameren Missouri **[*55]** tried to rectify that problem by filing an application for rehearing in the rate case seeking to have the newly minted Fuel Adjustment Clause modified. That motion was opposed by the other parties, and on February 19, 2009, the Commission denied the motion for rehearing, pointing out that it was not possible to reopen the record to take additional evidence and still conclude the case before the March 1, 2009 operation of law date. [74]

5. In an attempt to get around the effect of the Fuel Adjustment Clause it had just obtained, Ameren Missouri sold part of the power it would otherwise have sold to Noranda under long-term supply contracts to American Electric Power Operating Companies (AEP) and Wabash Valley Power Association, Inc. In making thosesales, Ameren Missouri **[*56]** believed it could avoid having to run the replacement sales through its fuel adjustment clause (FAC). But in a subsequent prudence review of the Fuel Adjustment Clause the Commission disagreed, finding that the sales to AEP and Wabash were off-system sales that had to be run through the FAC. Thus, 95 percent of the benefit of those sales was allotted to Ameren Missouri's ratepayers by operation of the FAC, and was not available to allow Ameren Missouri to cover its fixed costs that would otherwise have been recovered through sales to Noranda. [75]

[*57]

6. Ameren Missouri appealed the Commission's order in the prudence review cases, but the Western District Court of Appeals affirmed the Commission's decision. [76] After the Commission issued its decision in the first prudence review, and while the appeal of that decision was pending, Ameren Missouri applied to the Commission for an Accounting Authority Order (AAO) seeking to defer fixed costs to serve Noranda that were not recovered because of the reduced sales to Noranda resulting from the ice storm. [77]

7. On November 26, 2013, the Commission issued a Report and Order granting Ameren Missouri the AAO it sought. [78] Public Counsel and MIEC appealed that decision to the Western District Court of Appeals. On January 13, 2015, the court issued a *per curium* order that affirmed the Commission. [79] An application for transfer to the MissouriSupreme **[*58]** Court was denied on April 28, 2015.

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[73] Cassidy Rebuttal, Ex. 210, Page 3, Lines 2-9.

[74] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Order Denying AmerenUE's Application for Rehearing, Case No. ER-2008-0318, 18 Mo.P.S.C.3d 441 (2009).

[75] Cassidy Rebuttal, Ex. 210, Pages 3-4, Lines 19-23, 1-8. The two prudence reviews cases in which the Commission made those rulings are: *In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, Report and Order, File No. EO-2010-0255, April 27, 2011; and *In the Matter of the Second Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company, d/b/a Ameren Missouri*, Report and Order, File No. EO-2012-0074, July 31, 2013.

[76] State ex rel. Union Elec. Co. v. Public Service Com'n, 399 S.W.3d 467 (Mo. App. W.D.2013).

[77] Barnes Rebuttal, Ex. 3, Page 61, Lines 12-15.

[78] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

[79] The Court's Order is attached to Barnes Rebuttal, Ex. 3, Schedule LMB-R9.

8. In its Report and Order granting the requested AAO, the Commission found that revenue not collected by a utility to recover its fixed costs could be an item to be deferred and considered for later ratemaking treatment. It also determined that Ameren Missouri's loss of $ 35,561,503, which constitutes 8.5 percent of its net income in that year, is extraordinary and material. However, the report and order merely grants the AAO to permit Ameren Missouri to defer the costs for consideration in a future rate case. It does not make any finding or decision that would indicate the costs will ultimately be recovered in rates. Indeed, the report and order specificallysays **[*59]** that "deferred recording does not guarantee recovery in any later rate action; recovery may be granted in whole, partially, or not at all." [80]

9. Between the time the deferred costs were incurred by Ameren Missouri and the present, the Commission has adjusted Ameren Missouri's rates in several rate cases. [81]

10. For the period between June 2007, through September 2014, Ameren Missouri has reported positive earnings. [82]

[*60]

Conclusions of Law:

A. The fact that an AAO has been granted to defer these costs for consideration in this rate case does not mean Ameren Missouri is entitled to recover those costs. The granting of an AAO is not ratemaking and creates no expectation of recovery. [83] In discussing that expectation of recovery, the Missouri Court of Appeals has said:

> The whole idea of AAOs is to defer a final decision on current extraordinary costs until a rate case is in order. At the rate case, the utility is allowed to make a case that the deferred costs should be included, but again there is no authority for the proposition put forth here that the PSC is bound by the AAO terms. [84]

B. The Commission's decision to grant the AAO is not based on the same standard it nowmust **[*61]** use to determine whether those costs should be recovered. In granting the AAO, the Commission only determined that uncollected revenue was an item that could be deferred under accounting standards and that Ameren Missouri's loss was extraordinary and material. [85] But now, in this rate case, the Commission must consider "all relevant factors," otherwise it would be engaging in impermissible single-issue ratemaking. [86]

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[80] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

[81] File Nos. ER-2010-0036 and ER-2012-0166

[82] Meyer Direct, Ex. 513, Page 16, Lines 12-13.

[83] State ex rel. Missouri Gas Energy v. Public Serv. Com'n, 210 S.W.3d 330 (Mo. App. W.D. 2006)

[84] Missouri Gas Energy v. Public Serv. Com'n, 978 S.W.2d 434, 438 (Mo. App. W.D. 1998).

[85] *In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Report and Order, File No. EU-2012-0027, November 26, 2013.

[86] State ex rel. Missouri Gas Energy v. Public Serv. Com'n, 210 S.W.3d 330 (Mo. App. W.D. 2006)

C. Staff, Public Counsel, and MIEC argue that Ameren Missouri's attempt to recover what it calls unrecovered fixed costs and what the opposing parties call unrecovered revenues or lost profit, constitutes an attempt at forbiddenretroactive **[*62]** ratemaking. In arguing that recovery should not be allowed, the opposing parties point to a decision of the Missouri Supreme Court in State ex rel. *Utility Consumers Council of Missouri, Inc*., [87] a decision that is frequently referred to as simply "*UCCM*".

D. In *UCCM*, the Supreme Court struck down a Commission decision that allowed electric utilities to implement a fuel adjustment clause without supporting statutory authority. Having declared that the fuel adjustment clause was impermissible, the Supreme Court considered the legality allowing the electric utilities to collect a surcharge from customers to recover fuel costs from ratepayers for a period between the time an earlier fuel adjustment clause expired and before the challenged FAC went into effect. In refusing to allow the utilities to keep the money collected under the surcharge, the Court said:

> The utilities take the risk that rates filed by them will be inadequate or excessive, **[*63]** each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e. the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established. [88]

The Court then went on to find that the surcharge allowed the utilities to collect monies not collectible under the rate filed at the time the expenses were incurred, and the utilities had no vested right to keep the money.

E. Although the quoted language from *UCCM* is quite broad, the Court's actual holding is more narrow. In fact, earlier in its discussion of those costs, the Supreme Court hints that if the expenses in questionhad been "'current' **[*64]** expenses reasonably anticipated and intended under the old clause, to be recovered at some point and were simply uncollected 'revenues'", they might have been recoverable. [89]

F. Certainly, in subsequent appellate decisions, the Court of Appeals has been open to the idea of allowing deferred costs to be recovered through a subsequent rate case. For example, in a 1998 case concerning legality of the Purchase Gas Adjustment (PGA) established in the tariffs of Missouri's natural gas distribution companies, the Court of Appeals held that the PGA was not improper retroactive ratemaking of the sort disapproved by the Supreme Court in *UCCM* because the rate adjustments made under the PGA are applied only to future customers on future bills. [90]

[*65]

G. Similarly, in considering an appeal of an earlier Ameren Missouri rate case, the Court of Appeals held that the future amortized recovery of costs deferred under the vegetation management tracker did not constitute retroactive rate making. [91]

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[87] 585 S.W.2d 41 (Mo banc 1979).

[88] State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n, 585 S.W.2d 41, 59, (Mo banc 1979).

[89] State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n, 585 S.W.2d 41, 59, (Mo banc 1979).

[90] State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Com'n, 976 S.W.2d 470, 481 (Mo. App. W.D. 1998).

Decision:

As explained in its Conclusions of Law, the Commission must now evaluate all relevant factors to determine whether it is appropriate to allow Ameren Missouri to recover the deferred unrecovered fixed costs in the rates that will be established in this case.

Ameren Missouri faced this problem of uncollected revenues because of the fuel adjustment clause through which it sought to reduce its risk from increasing net energy costs. If the fuel adjustment clause had not been in place following the 2009 ice storm and the resulting disruption to Noranda's production, Ameren Missouri could have recovered its fixed costs by the meansit **[*66]** originally attempted, by selling the additional available power off-system. Unfortunately for the company, the fuel adjustment clause operated, as intended, and swept up 95 percent of those sales to be netted against rising energy costs, thereby reducing any cost recovery that would have occurred through the fuel adjustment clause. Thus, the fuel adjustment clause, from which the company expected to benefit, instead worked to the benefit of ratepayers.

Ameren Missouri did not foresee that result when the fuel adjustment clause was approved, but it is neither unjust nor unreasonable. When Ameren Missouri chose to provide service to a customer the size of Noranda, it understood that the profits it could earn from the business relationship came with a substantial risk. The risk that Noranda's production would fall and that it would be unable to sell as much electricity as it anticipated was a risk the company's shareholders, who benefit from the profits earned by serving Noranda, should bear. Ratepayers are not the insurers of Ameren Missouri's profits and should not have to bear the risk that those profits are not as great as anticipated because of a drop in production at Noranda. To **[*67]** now alter the consequences of that drop in production would be to retroactively change the allocation of risk approved by the Commission for the fuel adjustment clause that was in effect at the time.

In addition to this concern, the AAO granting deferral of these costs is unique in that Ameren Missouri has pursued and been granted a rate increase between this case and the losses at issue in this AAO. In that rate case, all relevant factors were considered, and rates for the future were set based on a period of time. It is not preferable to set rates in this case based on losses that are separated from the current test year by a number of years and by an intervening rate case.

Finally, Ameren Missouri experienced more than sufficient earnings to cover its fixed costs during all time periods between the ice storm and this rate case. While not a determinative factor alone in deciding whether to grant recovery of any AAO, this is one of the relevant factors the Commission must consider in setting just and reasonable rates in this case.

After considering all relevant factors, the Commission decides that recovery of the amounts deferred under the previously established accounting authorityorder **[*68]** is not appropriate.

6. 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

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[91] State ex rel. Noranda Aluminum, Inc. v. Pub. Serv. Com'n 356 S.W.3d 293, 319 (Mo. App. S.D. 2011).

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?

Findings of Fact:

1. In Ameren Missouri's last rate case, the Commission established a two-way tracker for recovery of major storm related non-labor operations and maintenance expenses that would be tracked around a base level. If costs exceeded the base level, Ameren Missouri would be allowed to defer them for future recovery. If costs fell below the base level, Ameren Missouri would return the difference to ratepayers in a future rate case. [92]

2. In establishing the major storm cost tracker **[*69]** in the last rate case, the Commission expressed general skepticism of proposed tracking mechanisms, and noted there is a legitimate concern that a tracker can reduce a company's incentive to aggressively control costs. At that time, the Commission believed that those concerns were outweighed by the benefits of the two-way tracker. [93]

3. Ameren Missouri contends the tracker has worked as anticipated and asks that it be continued in this case. [94] Staff, Public Counsel, and MIEC all oppose continuation of the tracker.

4. Standard ratemaking methods already exist apartfrom the tracker **[*70]** to address these non-labor operations and maintenance major storm costs without the need for a tracker. The standard practice is to establish an average amount of storm costs to be included in rates to cover the company's costs. If the actually incurred costs are less than that amount, the company gets to keep the difference. If the actually incurred costs are more than that amount, the company is at risk of suffering a shortfall. But if an extraordinary storm event occurs between rate cases, the company can request an accounting authority order to defer those extraordinary costs for possible inclusion in rates in a subsequent rate case. [95]

5. Using this combination of methods, before the tracker was implemented, Ameren Missouri was able to recover every dollar of expenses incurred for storm restorations between April 1, 2007, and September 30, 2014. [96]

[*71]

6. Major storm costs are only a small part of Ameren Missouri's overall costs. During the test year, Ameren Missouri experienced approximately $ 6.8 million of non-labor storm restoration costs in comparison to approximately $ 2.6 billion of total operating expenses. That means the storm restoration costs are only 0.0026 percent of the company's total operating expenses. [97]

7. None of the other investor-owned electric utilities in Missouri have a storm restoration cost tracker. [98]

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[92] Boateng Rebuttal, Ex. 205, Page 3, Lines 17-26.

[93] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2012-0166, Report and Order, December 12, 2012, Page 96, Finding of Fact 11.

[94] Wakeman Rebuttal, Ex. 46, Page 4, Lines 7-17.

[95] Boateng Rebuttal, Ex. 205, Pages 4-5, Lines 12-22, 1-2.

[96] Boateng Rebuttal, Ex. 205, Page 8, Lines 11-13.

[97] Boateng Rebuttal, Ex. 205, Page 9, Lines 4-14.

8. By their nature, cost trackers tend to reduce a utility's incentive to aggressively control costs by ensuring that all costs will be recovered. [99] Under a tracker, such costs would be subject to a prudence review, but a prudence review cannot control costs as efficientlyas **[*72]** a strong economic incentive. Ameren Missouri obviously cannot control when its service area may be hit by a major storm, but it has at least some control over how it spends money in response to such storms. [100]

9. Ameren Missouri indicates it will continue to provide prompt and efficient storm restoration services with or without a tracker, [101] and there have been no allegations that it has not provided good storm restoration services in the past. Nevertheless, good public policy still requires the extra incentive a utility faces without the protection of a tracker.

Conclusions of Law:

The Commission makes no additional conclusions of lawfor **[*73]** this issue.

Decision:

Storm costs have been shown to be relatively small and predictable. An exception to traditional ratemaking is not necessary to recover those costs. The Commission finds that eliminating the major storms cost tracker is good public policy.

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

Findings of Fact:

1. With the major storm cost tracker having been eliminated, the Commission must now determine the amount of anticipated costs to be included in Ameren Missouri's rates. All parties agree the amount of major storm costs to be included in rates is $ 4.6 million, which is based on a 60-month normalization of such costs.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission accepts the recommendation of the parties and will set the amount of major storm costs to be included in rates at $ 4.6 million.

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?

Findings [*74] of Fact:

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[98] Boateng Rebuttal, Ex. 205, Page 10, Lines 19-23.

[99] Transcript, Page 853, Lines 9-12.

[100] Robertson Surrebuttal, Ex. 408, Page 9, Lines 2-14. See also, Boateng Surrebuttal, Ex. 206, Page 5, Lines 6-23..

[101] Transcript, Page 843, Lines 13-23.

1. During the test year, Ameren Missouri spent less on major storm restoration costs than the base amount that was included in the tracker. All parties agree the amount of over-recovery should be returned to ratepayers.

2. Public Counsel recommends the over-recovery be returned to ratepayers amortized over two years. Staff and Ameren Missouri recommend the over-recovery be amortized and returned over five years, which is the length of time generally used for such amortizations.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission finds that a five year amortization is appropriate as that is the length of time that has generally been used for storm expense amortizations.

7. Vegetation Management and Infrastructure Inspection Trackers

B. Should the vegetation management and infrastructure inspection trackers be continued? [102]

[*75] Findings of Fact:

1. Ameren Missouri's vegetation management and infrastructure inspection expense is closely associated with two Commission rules. Following extensive storm related service outages in 2006, the Commission promulgated new rules designed to compel Missouri's electric utilities to do a better job of maintaining their electric distribution systems. Those rules, entitled Electrical Corporation Infrastructure Standards [103] and Electrical Corporation Vegetation Management Standards and Reporting Requirements, [104] became effective on June 30, 2008.

2. The rules establish specific standards requiring electric utilities to inspect and replace old and damaged infrastructure, such as poles and transformers. In addition, electric utilities are required to more aggressively trim tree branches and other vegetation that encroaches on transmission lines. In promulgating the stricter standards, the Commission anticipated utilities **[*76]** would have to spend more money to comply. Therefore, both rules include provisions that allow a utility the means to recover the extra costs it incurs to comply with the requirements of the rule.

3. In an earlier rate case, ER-2008-0318, [105] the Commission allowed Ameren Missouri to recover a set amount in its base rates for vegetation management and infrastructure inspection costs. However, since the rules were new, the Commission found that Ameren Missouri had too little experience to know how much it would need to spend to comply with the vegetation management and infrastructure inspection

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[102] For the sake of clarity, the Commission is addressing sub-issue B before sub-issue A.

[103] Commission Rule 4 CSR 240-23.020.

[104] Commission Rule 4 CSR 240-23.030.

[105] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306 (2009).

rules. Because of that uncertainty, the Commission established a two-way tracking mechanism to allow Ameren Missouri to track its vegetation management and infrastructure costs.

4. The order required Ameren **[*77]** Missouri to track actual expenditures over and under the base level. In any year in which Ameren Missouri spent below that base level, a regulatory liability would be created. In any year in which Ameren Missouri's spending exceeded the base level, a regulatory asset would be created. The regulatory assets and liabilities would be netted against each other and would be considered in a future rate case. The tracking mechanism contained a 10 percent cap so if Ameren Missouri's expenditures exceeded the base level by more than 10 percent it could not defer those costs under the tracking mechanism, but would need to apply for an additional accounting authority order. The Commission's order indicated the tracking mechanism would operate until new rates were established in Ameren Missouri's next rate case. [106]

[*78]

5. The Commission renewed the tracking mechanism in Ameren Missouri's next three rate cases, ER-2010-0036, ER-2011-0028, and ER-2012-0166, finding that Ameren Missouri's costs to comply with the vegetation management and infrastructure inspection rules were still uncertain, as the company had not yet completed a full four/six year vegetation management cycle on its entire system. But in each case, the Commission indicated it did not intend to make the tracker permanent. [107]

[*79]

6. Ameren Missouri asks that the tracker be continued. Staff, Public Counsel, MIEC, and MECG contend the tracker is no longer necessary and urge the Commission to end it.

7. Ameren Missouri has been operating under the Commission's vegetation management and infrastructure inspection rules for over seven years and has completed its first four-year cycle for vegetation management work on urban circuits and its first six-year cycle of work on rural circuits under the requirements of the rules. [108]

8. Tracker mechanisms can be a useful regulatory tool in the correct circumstances, but they should be used sparingly because they can reduce the incentive of the utility to closely control its costs. [109]

Conclusions [*80] of Law:

A. Commission Rule 4 CSR 240-23.020 establishes standards requiring electrical corporations, including Ameren Missouri, to inspect its transmission and distribution facilities as necessary to provide safe and

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[106] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 339 (2009).

[107] *In the Matter of Union Electric Company, d/b/a Ameren UE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order*, File No. ER-2010-0036, 19 Mo. P.S.C. 3d 376 (2010); *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, Report and Order, File No. ER-2011-0028, July 13, 2011; and *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, Report and Order, File No. ER-2012-0166, December 12, 2012.

[108] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 15-18.

[109] Robertson Direct, Ex. 406, Pages 20-21, Lines 22-18, 1-10.

adequate service to its customers. Specifically, 4 CSR 240-23.020(3)(A) establishes a four-year cycle for inspection of urban infrastructure and a six-year cycle for inspection of rural infrastructure.

B. Commission Rule 4 CSR 240-23.020(4) establishes a procedure by which an electric utility may recover expenses it incurs because of the rule. Specifically, that section states as follows:

> In the event an electrical corporation incurs expenses as a result of this rule in excess of the costs included in current rates, the corporation may submit a request to the commission for accounting authorization to defer recognition and possible recovery of these excess expenses until the effective date of rates resulting from its next general rate case, filed after the effective date of this rule, using a tracking mechanism to record the difference between the actually incurred expenses as a result of this rule and the amount included in the corporation's rates … In the event **[*81]** that such authorization is granted, the next general rate case must be filed no later than five (5) years after the effective date of this rule. …

Ameren Missouri points to the mention of a tracking mechanism in this regulation to argue that the regulation recognizes the appropriateness of a tracker for the recovery of these costs. However, when read in context, it is clear that the tracker mentioned in the rule is intended to deal with the uncertainty of the cost of compliance with the new rule. The Commission established a tracker for just that purpose, but now the costs are well known and the tracker is no longer needed.

C. Commission Rule 4 CSR 240-23.030 establishes standards requiring electrical corporations, including Ameren Missouri, to trim trees and otherwise manage the growth of vegetation around its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.030(9) establishes a four-year cycle for vegetation management of urban infrastructure and a six-year cycle for vegetation management of rural infrastructure. The vegetation management rule also includes a provision that allows Ameren **[*82]** Missouri to ask the Commission for authority to accumulate and recover its cost of compliance in its next rate case. [110]

Decision:

From the time this tracker was created, the Commission has said that it would only be a temporary expedient, needed only until a sufficient cost history could develop to allow for the accurate determination of normalized costs. A sufficient cost history now exists and the need for the tracker is at an end. The Commission finds that the vegetation management and the infrastructure inspection tracker are discontinued.

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

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?

Findings of Fact:

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[110] Commission Rule 4 CSR 240-23.030(10).

1. With the tracker having been eliminated, the Commission **[*83]** now must carefully establish the amount that Ameren Missouri may recover in its base rates for its vegetation management and infrastructure inspection costs.

2. Ameren Missouri proposes that the base rate level for vegetation management costs be set at approximately $ 56 million, with the base rate level for infrastructure inspections costs set at approximately $ 6.4 million. Those numbers are the actual incurred amount of costs through the true-up period. [111]

3. Staff proposes to use a three-year average of expenses to set the base rate cost level for vegetation management at $ 54,504,662 and $ 5,827,267 for infrastructure inspections. [112]

4. MIEC proposed a vegetation management cost level of $ 54 million, with $ 5.8 million allowed for **[*84]** infrastructure inspections. [113]

5. Public Counsel proposes to use a 62-months average covering the period of February 2009, through March 2014, adjusted for the true-up figures through December 31, 2014, to set the base level at $ 53,114,501 for vegetation management. Public Counsel used a two-year average, adjusted for true-up figures to set the base level at $ 6,149,077 for infrastructure inspections. [114]

6. This is a chart of Ameren Missouri's annual vegetation management costs since 2008:

2008 $ 49.2 million

2009 $ 50.9 million

2010 $ 50.4 million

2011 $ 52.9 million

2012 $ 52.3 million

2013 $ 55.2 million [115]

2014 $ 56.0 million[116]

The chart shows some up and down variation from year to year, but it also shows a definite upward **[*85]** trend. An average of all years of cost as proposed by Public Counsel and MIEC would not be a good representation of future costs since it would not recognize the upward trend. On the other hand, Ameren Missouri's proposal to just use the updated test year amounts is also not reasonable because it fails to recognize that the costs do not increase in a straight line. Staff's three-year average recognizes both aspects of the cost trend and is the most reasonable.

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[111] Moore Surrebuttal, Ex. 32, Page 9, Lines 5-11.

[112] Hanneken Surrebuttal, Ex. 218, Page 9, Lines 8-12.

[113] Meyer Surrebuttal, Ex. 514, Page 20, Lines 8-11.

[114] Robertson True-Up Direct, Ex. 413, Page 2, Lines 5-18.

[115] Meyer Direct Ex. 513, Page 18, Table 3.

[116] Moore Surrebuttal, Ex. 32, Page 9, Lines 5-11.

7. In the first year that Ameren Missouri incurred infrastructure inspection costs, 2008, the Company incurred annual infrastructure inspection costs of $ 8,165,926. By the fourth year, 2011, those annual costs had dropped to $ 5,373,259. For the test year ending March 31, 2014, the costs were $ 5,924, 356. On that basis, Public Counsel recommended that the base cost be set at the average of the last two twelve-month periods ending March 2013 and 2014. [117] **[*86]** In the update period those costs had risen to approximately $ 6.4 million. [118] In True-Up Direct testimony, Public Counsel updated its proposed amount to include the update period ending December 31, 2014. The two-year average, utilizing the twelve months ended December 2013 and 2014 is $ 6,149,077. Public Counsel recommends the infrastructure inspection amount included in base rates be set at that amount. [119]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

Decision:

The Commission establishes the base rate cost level for vegetation management at $ 54,504,662, which is the number recommended by Staff. The base rate cost level for infrastructure inspections is established at $ 6,149,077, the number recommended by Public Counsel. The Commission finds that the two-year average number **[*87]** recommended by Public Counsel appropriately captures the recent increases in costs while assuring that the increased expense numbers from the true-up period are not just an anomaly.

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?

Findings of Fact:

1. Since the last rate case, the vegetation management half of the tracker resulted in a regulatory asset, meaning Ameren Missouri spent more for vegetation management than the base level established in the tracker. The infrastructure inspection half of the tracker resulted in a regulatory liability, meaning Ameren Missouri spent less than the base amount established in the tracker. Under the terms of the tracker the two items are to be netted against each other and the resulting amount recovered from or returned to ratepayers. In addition, some amounts from the tracker ordered to be amortized in previous rate cases remain uncollected. [120] Staff, Public Counsel, and Ameren Missouri propose to combine all three figures and amortize that amount to be collected **[*88]** from ratepayers.

2. According to Staff's calculations, including true-up data, the revised total amount to be amortized and collected from ratepayers is $ 1,539,810. Amortized over three years as Staff and Ameren Missouri propose, that amounts to an annual figure of $ 513,270. [121]

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[117] Robertson Surrebuttal, Ex. 408, Page 14, Lines 4-17.

[118] Moore Surrebuttal, Ex. 32, Page 9, Lines 8-11.

[119] Robertson True-Up Direct, Ex. 413, Page 2, Line 5-18.

[120] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 4-31.

[121] Hanneken Surrebuttal, Ex. 218, Page 10, Lines 5-8.

3. Public Counsel proposed that the net over/under recovery amount be amortized over two years. [122]

4. The Commission has useda three-year amortization for tracked vegetation management and infrastructure inspection expenses **[*89]** in all previous Ameren Missouri rate cases in which the tracker was in place. [123]

5. MIEC opposes any collection of the regulatory asset resulting from under collections under the tracker because of its contention that Ameren Missouri over-earned during the period covered by the tracker. [124]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

Decision:

Staff has established the appropriate amount of the under-recovery in the existing tracker and the Commission finds that Staff's recommended amount shall be recovered from ratepayers amortized over three years.

8. Union Proposals

A. Can the Commission mandate or require that the Company address its workforce needs in a particular **[*90]** *manner and, if so, should it do so?*

Findings of Fact:

1. This issue is raised by the International Brotherhood of Electrical Workers Local 1439, AFLCIO. That local represents 703 members who work for Ameren Missouri. Local 1439 does not represent all unionized Ameren Missouri employees; some are represented by other locals or other unions. [125] For convenience, this report and order will refer to Local 1439 simply as the "Union."

2. The Union affirms that Ameren Missouri has been providing its customers with "consistently reliable and inexpensive power for decades." [126] But it is concerned about what it describes as an aging workforce and an aging infrastructure.

3. To address the aging workforce problem, to replace current employees who are **[*91]** moving toward retirement, the Union asks the Commission to allocate an extra $ 11.1 million to Ameren Missouri and require the company to use that extra money to induct a class of at least 37 apprentices in various job categories in 2015 and for the next two successive years. Further, the Union asks the Commission to demand that Ameren Missouri fill all jobs, internal or outsourced, first within its service territory, second in Missouri, and never offshore [127]

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[122] Robertson Direct, Ex. 406, Page 27, Lines 19-23.

[123] Staff Report Revenue Requirement, Ex. 202, Page 110, Lines 9-10.

[124] Meyer Direct, Ex. 513, Page 20, Lines 8-13.

[125] Walter Direct, Ex. 800, Page 2, Lines 1-17.

[126] Walter Direct, Ex. 800, Page 3, Lines 29-30.

[127] Walter Direct, Ex. 800, Page 9, Lines 16-23.

4. The Union also expresses concern that Ameren Missouri is using too much contract labor rather than hiring additional internal workers because it believes the quality of the work provided by its members is superior to that provided by contract employees. [128] The Union's witness conceded there was no way to quantify that belief. [129]

[*92]

5. Ameren Missouri has decreased the number of internal employees in recent years to improve efficiency and reduce costs. [130] But the company has completed all mandatory and scheduled maintenance work. [131] There is no evidence to suggest these reductions have prevented the company from offering safe and adequate service to its customers.

6. Ameren Missouri uses some contract labor to ensure efficient and effective completion of its work, particularly to meet short-term needs. [132] The company uses contract labor to do special projects that temporarily require a larger workforce. It would not be cost-effective to hire permanent employees to do that work if they would have to be laid-off when the special project was finished. [133]

[*93]

7. Ameren Missouri is already planning to hire all the internal apprentices it believes it needs, and it does not want a special allocation for that purpose. [134]

8. The Union asks the Commission to address the aging infrastructure problem by giving the company an undefined special annual rate allocation in an undefined amount to allow the company to address its infrastructure needs. [135]

9. The Union's witness did not suggest any particular way the Commission might help Ameren Missouri meet its infrastructure needs, but in its brief, the Union suggested the Commission create a pool of money to allow the companyto quickly be reimbursed for infrastructure expenditures or create an infrastructure system replacement surcharge such as authorized **[*94]** for other Missouri utilities. [136]

Conclusions of Law:

A. Section 393.130.1, RSMo (Cum. Supp. 2013), requires every electrical corporation, including Ameren Missouri, to "furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."

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[128] Transcript, Pages 1040-1041, Lines 6-25, 1-11, and Ex. 801.

[129] Transcript, Page 1041, Lines 12-15.

[130] Wakeman Rebuttal, Ex. 46, Page 12, Lines 8-22.

[131] Wakeman Rebuttal, Ex. 46, Page 13, Lines 5-9.

[132] Wakeman Rebuttal, Ex. 46, Page 13, Lines 11-15.

[133] Transcript Pages 987-988, Lines 25, 1-23.

[134] Transcript, Pages 1015-1016, Lines 16-25, 1-10.

[135] Walter Direct, Ex. 800, Pages 9-10, Lines 31, 1-3.

[136] IBEW 1439's Post-Hearing Brief, Page 3, Fn. 1

B. Section 393.140.(1) gives this Commission general supervisory authority over all electrical corporations, again including Ameren Missouri. Subsection (2) of that statute authorizes the Commission to examine or investigate the operations of such utilities and to:

> order such reasonable improvements as will promote the public interest, preserve the public health and protect those using such … electricity ...., and those employed in the manufactureand distribution thereof, and have power to order reasonable improvements and extensions of the works, wires, poles, pipes, **[*95]** lines, conduits, ducts and other reasonable devices, apparatus and property of … electrical corporations …

Based on the authority given by that statute, the Commission may exercise a great deal of control over Ameren Missouri's operations.

C. But, while the Commission has authority to regulate Ameren Missouri to ensure the utility provides safe and adequate service, the Commission does not have authority to manage the company. In the words of the Missouri Court of Appeals;

> The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its own affairs and conduct its business as it may choose, as long as it performs its legal duty, complies with lawful regulation, and does no harm to public welfare. [137]

Therefore, except as necessary to ensure the provision of safe and adequate service, the Commission does not havethe authority to dictate to the company how many employees it must hire or whether it must use internal workforce rather than **[*96]** outside contractors to perform the work of the company.

D. The Commission's authority to assist Ameren Missouri in its efforts to direct capital expenditures toward aging infrastructure is also limited by statute. Section 393.135, RSMo 2000, prohibits the recovery in electric rates of the cost of construction work in progress or CWIP. That means Ameren Missouri cannot charge its customers to develop a fund to allow for quick recovery of the cost of unfinished capital projects. Similarly, the infrastructure system replacement surcharges that the Commission has established for water and gas utilities in Missouri are authorized by statute. No similar statutory authority exists for the creation of an ISRS for electric utilities.

Decision:

The evidence presented by the Union does not demonstrate that Ameren Missouri has failed to provide safe and adequate service. **[*97]** Therefore, the Commission will not dictate to the company how many new employees it must hire, nor will it determine whether it must use its internal workforce or outside contractors to perform the company's work. Furthermore, there is no need for the Commission to direct Ameren Missouri to undertake any particular infrastructure replacement projects at this time.

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

Findings of Fact:

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[137] State ex rel. Harline v. Public Serv. Com'n, 343 S.W.2d 177, 182 (Mo. App. 1960)

1. The Union proposes that Ameren Missouri be required to provide additional quarterly reports to the Commission's Staff regarding its spending for infrastructure replacement and related to the special allocations proposed in the previous sub-issue. [138]

2. Ameren Missouri is ready to provide any information that Staff may request from it and believes that no additionalreporting requirement is needed. [139]

[*98]

Conclusions of Law:

The Commission makes no additional conclusions of law on this issue.

Decision:

The Commission finds there is no need to impose a new reporting requirement on Ameren Missouri as Staff can already obtain whatever information it needs from Ameren Missouri. Further, additional reporting requirements would ultimately increase costs for Ameren Missouri's ratepayers.

9. 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?

Findings of Fact:

1. This issue concerns the rate of return Ameren Missouri will be authorized to earn on its rate base. Rate base is the value of the utility's assets such as generating plants, electric meters, wires and poles, and the trucks driven by Ameren Missouri's repair crews. In order to determine a rate of return, the Commission must determine Ameren Missouri's cost of obtaining the capital it needs.

2. The relative mixture of sources Ameren Missouri uses to obtain the capital it needs is its capital structure. Ameren Missouri's actual capital structure as of **[*99]** the true-up date, December 31, 2014 is:

Long-Term Debt	47.18%
Short-Term Debt	00.00%
Preferred Stock	01.07%
Common Equity	51.76% [140]

No party has raised an issue regarding capital structure, so the Commission will not further address this matter.

3. Similarly, no party has raised an issue regarding Ameren Missouri's calculation of the cost of its long-term debt and preferred stock.

4. Determining an appropriate return on equity is the most difficult part of determining a rate of return. The cost of long-term debt and the cost of preferred stock are relatively easy to determine because their

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[138] Walter Direct, Ex. 800, Page 9, Lines 25-31.

[139] Transcript, Page 1015, Lines 7-15.

140 Murray Surrebuttal, Ex. 228, Page 4, Line 12.

rate of return is specified within the instruments that create them. In contrast, to determine a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Ameren Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity **[*100]** that is unassailably scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors' dollar in the capital market without permitting an excessive rate of return on equity that would drive up rates for Ameren Missouri's ratepayers. To obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

5. Four financial analysts offered recommendations regarding an appropriate return on equity in this case. Robert B. Hevert testified on behalf of Ameren Missouri. Hevert is Managing Partner of Sussex Economic Advisors, LLC. He holds a Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration with a concentration in finance from the University of Massachusetts. [141] He recommends the Commission allow Ameren Missouri a return on equity of 10.4 percent, within a range of 10.2 percent to 10.6 percent. [142]

[*101]

6. Michael Gorman testified on behalf of MIEC. Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates. [143] He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Masters Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield. [144] Gorman recommends the Commission allow Ameren Missouri a return on equity of 9.30 percent, within a recommended range of 9.00 percent to 9.60 percent. [145]

7. Lance Schafer testified on behalf of the Public Counsel. Schafer is employed by the Office of the Public Counsel as a Public Utility Financial Analyst. He holds **[*102]** a Bachelor of Arts in English from the University of Missouri, Columbia; a Master of Arts in French from the University of California, Irvine; and a Master of Business Administration with a specialization in Finance from the University of Missouri, Columbia. [146]

8. Finally, David Murray testified on behalf of Staff. Murray is the Utility Regulatory Manager of the Financial Analysis Unit for the Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri - Columbia, and a Masters degree in Business Administration from Lincoln University. Murray has been employed by the Commission since 2000 and has offered testimony in manycases before the Commission. [147] Murray recommends a return on equity of 9.25 percent, within a range of 9.00 percent to 9.50 percent. [148]

[*103]

141 Hevert Direct, Ex. 16, Page 1, Lines 5-16.
142 Hevert Direct, Ex. 16, Page 2, Lines 16-21.
143 Gorman Direct, Ex. 510, Page 1, Lines 4-6.
144 Gorman Direct, Ex. 510, Appendix A, Page 1, Lines 9-12.
145 Gorman Direct, Ex. 510, Page 2, Lines 4-9.
146 Schafer Direct, Ex. 409, Page 1, Lines 11-15.
147 Staff Report Revenue Requirement Cost of Service, Ex. 202, Appendix 1, Page 61.
148 Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 11, Lines 1-11.

9. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation. [149] To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk. [150]

10. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow (DCF) method is based on a theory that a stock's current price represents **[*104]** the present value of all expected future cash flows. In its simplest form, the Constant Growth DCF model expresses the Cost of Equity as the discount rate that sets the current price equal to expected cash flows. [151] The analysts also use variations of the DCF model including the multi-stage growth DCF [152] and the sustainable growth DCF [153] The Risk Premium method assumes that the investor's required return on an equity investment is equal to the interest rate on a long-term bond plus an additional equity risk premium needed to compensate the investor for the additional risk of investing in equities compared to bonds. [154] The Capital Asset Pricing Method (CAPM) assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio. [155] No one method is any more "correct" than any other method in all circumstances. Analystsbalance their use of all three methods to reach a recommended return on equity.

[*105]

11. Before examining the analyst's use of these various methods to arrive at a recommended return on equity, it is important to look at some other numbers. For 2014, the average return on equity awarded to all electric utilities by state commissions in this country was 9.76 percent. For fully litigated rate cases, the average number dropped to 9.63 percent. But those numbers include distribution only companies in deregulated states. Excluding those companies and looking only at vertically integrated electric companies like Ameren Missouri, the average return on equity award in 2014 was 9.94 percent. Looking only at returns established in fully litigated rate cases, thataverage was 9.86 percent. [156]

12. The Commission **[*106]** mentions the average allowed return on equity because Ameren Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

13. In its decision regarding Ameren Missouri's last rate case, the Commission established an ROE of 9.8 percent. [157] Since 2012, when that case was decided, interest rates have declined by approximately 37 basis points. [158] Furthermore, utility stock prices have increased and their dividend yields have gone

149 Gorman Direct, Ex. 510, Page 11, Lines 17-19.
150 Gorman Direct, Ex. 510, Page 12, Lines 1-11.
151 Hevert Direct, Ex. 16, Page 14, Lines 5-8.
152 Hevert Direct, Ex. 16, Page 19, Lines 7-14.
153 Gorman Direct, Ex. 510, Pages 19-20
154 Hevert Direct, Ex. 16, Page 28, Lines 4-14.
155 Gorman Direct, Ex. 510, Pages 32-33, Lines 13-24, 1-13.
156 Gorman Surrebuttal, Ex. 512, Schedule MPG-SR-1.
157 In the Matter of Union Electric Company, d/b/a/ Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service, File No. ER-2012-0166, Report and Order, December 12, 2012.
158 Gorman Surrebuttal, Ex. 512, Page 7, Lines 1-2.

down. This indicates that utilities' cost of capital has decreased because they need to sell fewer shares to generate the capital they need to support their investments. [159] As MIEC's witness, Michael Gorman, explained: "Because the price of stock has gone up and the other parameters of the stock have not significantly changed, that's a clear indication that investors have reduced their required cost of capital which has bid up the stock price." [160] This suggests the ROE allowed to Ameren Missouri should also be decreased.

[*107]

14. Similarly, Staff's witness, David Murray, believes that investor expectations for ROE have declined so that today investors would reasonably expect an ROE of 9.5 percent. [161]

15. Ameren Missouri's expert witness, Robert Hevert, supports an increasedROE at 10.4 percent. The Commission finds that such an ROE would be excessive. In large part, Hevert's ROE estimate is high because he based his multi-stage DCF analysis calculations on an optimistic nominal long-term GDP growth rate outlook of 5.71 percent. [162] As Gorman explains, that growth rate is substantially higher than consensus economists' forward-looking real GDP growth outlooks. [163] Adjusting Hevert's optimistic growth rate outlook to the consensus economist level reduces **[*108]** his multi-stage growth DCF return from 10.02 percent to 8.80 percent for his proxy group. [164]

16. Similarly, if Hevert's CAPM analysis is adjusted to use more reasonable projected returns on the market, that analysis would result in a range of 8.80 percent to 9.52 percent. [165]

17. Gorman, a reliable rate of return expert, recommends the Commission set ROE in a range between 9.0 percent and 9.6 percent. He recommended that the rate be set at the mid-point of that range, which is 9.3 percent, but he indicated that any rate within his range would be reasonable and would be adequate to attract capital at reasonable terms, would **[*109]** be sufficient to ensure the company's financial integrity, and is commensurate with returns on investment in enterprises having corresponding risks. [166]

18. Public Counsel's witness, Lance Schafer, recommended an ROE of 9.01 percent, within a range of 8.74 percent to 9.22 percent. Aside from any technical criticism about Schafer's methodology, an ROE of 9.01 is too low because it is substantially below the average ROE awarded by other state commissions to similarly situated utilities. Obviously, this Commission is not bound to follow the lead of other commissions in setting an appropriate ROE. In fact, the ROE the Commission has found to be reasonable in this case is below the average. But the capital market in which Ameren Missouri must compete is competitive. An ROE set 80 to 100 basis point below the ROE set for similar electric utilities could limit the company's ability to attract capital and could violate the Hope and Bluefield standard described earlier in this order, **[*110]** which requires that rates be set at a level that will allow the utility a return on its investment comparable to that earned by other companies with "corresponding risks and uncertainties." [167]

Conclusions of Law:

159 Gorman Surrebuttal, Ex. 512, Page 7, Lines 7-10.
160 Transcript, Page 1269, Lines 6-10.
161 Transcript, Page 1358, Lines 9-14.
162 Hevert, Direct, Ex. 16, Pages 22-23, Lines 3-9, 1-10.
163 Gorman Rebuttal, Ex. 511, Page 8, Lines 1-7.
164 Gorman Rebuttal, Ex. 511, Page 10, Lines 10-13.
165 Gorman Rebuttal, Ex. 511, Page 13, Lines 8-14.
166 Transcript, Page 1197, Lines 9-23.
167 Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia, 262 U.S. 679, 692 (1923).

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

> Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. … The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate to the particular application' (quoting **[*111]** Southwestern Bell Telephone Company v. Arkansas Public Service Commission, 593 S.W. 2d 434 (Ark 1980). [168]

Furthermore,

> Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony. [169]

B. Inanother case, the Court of Appeals recognized that the establishment of an appropriate rate of return is not a "precise science":

> While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made **[*112]** about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts. [170]

Decision:

Based on the competent and substantial evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayersand shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 9.53 percent is a fair and reasonable return on equity for Ameren Missouri. That rate is within expert witness Gorman's range, and only slightly above expert witness Murray's recommended range. The Commission finds that this rate of **[*113]** return will allow Ameren Missouri to compete in the capital market for the funds needed to maintain its financial health.

10. Class Cost of Service, Revenue Allocation and Rate Design

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

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

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

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168 State ex rel. Assoc. Natural Gas Co. v. Public Service Commission, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).
169 State ex rel. Assoc. Natural Gas Co. v. Public Service Commission, 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).
170 State ex rel. Missouri Gas Energy v. Public Service Commission, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

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

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

Findings of Fact:

1. After the Commission determines the amount of rate increasethat is necessary, it must decide how that rate increase will be spread among Ameren Missouri's customer classes. The basic principle guiding that decision is that the customer class that causes a cost should pay that cost.

2. The Class Cost of Service and Rate Design issue is similar to the ROE issue in that the method used to arrive at **[*114]** a number is less important than the reasonableness of the final number. Ameren Missouri, Staff, MIEC, and Public Counsel performed class cost of service studies using different methods with some different inputs. Each study is designed to measure how much each of the different rate classes contributes to Ameren Missouri's total cost of service. Rates should then be set so that each rate class contributes enough revenue to pay its fair share of those costs. But the class cost of service studies should not be taken as a precise mathematical calculation of correct rates. [171] Rather, the Commission must use its judgment to set just and reasonable rates for the various rate classes.

3. Ameren Missouri's and MIEC's experts use an Average and Excess (A&E) four non-coincident peak production allocator methodology. That methodology conceptually splits the electric system into an average component and an excess component. The average component is the amount of capacity needed to produce **[*115]** the required energy if it were taken at the same demand rate each hour. The excess component measures the difference between average demand and peak demand at four non-coincident peaks. [172] The Commission has accepted the reasonableness of this methodology in past Ameren Missouri rate cases.

4. Staff's expert relied on several Base, Intermediate and Peak (BIP) class cost of service studies. As the name implies, the BIP studies attempt to divide class contributions to costs into three categories rather than the two used in the A&E methods. Despite the conceptual differences, Staff's BIP studies reach the same general conclusionsas the A&E methods used by Ameren Missouri's and MIEC's experts. [173]

[*116]

5. The one outlier method is the Peak and Average (P&A) methodology used as an alternative method by Public Counsel. The Commission has rejected the P&A methodology in past rate cases and Public Counsel offered an alternative A&E study in recognition of that previous rejection. [174]

6. The weakness with the P&A methodology is that after dividing the average and excess components, instead of allocating just the excess average demand to the cost-causing classes, it allocates the entire peak demand to the various classes. That has the effect of double counting the average demand and allocates more costs to large industrials that have a steady but high average demand that doesnot contribute as

171 Transcript, Page 3022, Lines 2-25.
172 Brubaker Direct, Ex. 503, Pages 25-26, Lines 16-22, 1-7. See also, Davis Direct, Ex. 7.
173 Staff Report Rate Design, Ex. 201, Page 8, Lines 3-9.
174 Marke Direct, Ex. 403, Page 26, Lines 7-13.

much to the system peaks. That method works to the benefit of the residential class whose usage varies more by time of day and time of year. [175]

[*117]

7. Public Counsel does not propose to adjust rates for the classes based specifically on its P&A study, instead supporting the joint position described in the objected-to non-unanimous stipulation and agreement that all rate classes should be given the same percentage increase. [176]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission will once again reject Public Counsel's P&A study because it has the effect of double counting average demand. Also, because the results of the A&E and BIP studiesare similar, the Commission does not need to decide which particular study is most appropriate. Therefore, all the specific sub-issues involving the difference between those studies are moot and do not need to be addressed in this case. The Commission will need to decide whether inter-class rates should be adjusted based on those studies.

C. How should any rate increase be collected **[*118]** *from the several customer classes?*

Findings of Fact:

1. All of the A&E and BIP class cost of service studies indicate the residential and large transmission service (Noranda) classes are currently providing below average returns. That means those classes should contribute a greater share of Ameren Missouri's revenues than they currently are if they are to match their class cost of service. All studies also show that the small general service, large general service and small primary service are providing above average returns. That means they are currently contributing a greater share of revenue than would be indicated by their class cost of service. The other rate classes contribute revenues close to their cost of service. [177]

2. Ameren Missouri, Public Counsel, MIEC, and all other signatories to the objected-to Noranda special rate stipulation and agreement suggest that no adjustments be made to the class contributions. Instead, they would apply **[*119]** any increases ordered in this case "across the board", in other words, equally to all the customer classes.

3. Staff, MECG, and Wal-Mart would make some adjustments to bring the classes closer to their cost of service. Staff proposes a six-step process to bring the rate classes closer to their cost of service: 1) the Residential and LTS classes would receive a positive .50% revenue neutral adjustment, meaning their rates would increase 0.50% even before any rate increase that would result from this case. The small general service, large general service and small primary service would receive a negative 0.63% revenue neutral adjustment. 2) The portion of the revenue increase or decrease that is attributable to the amortization of the energy efficiency programs from the pre-MEEIA program costs would be assigned

175 Brubaker Rebuttal, Ex. 504, Page 6, Lines 1-21.
176 Post-Hearing Brief of the Office of the Public Counsel, Page 39.
177 For example, see, Warwick Direct, Ex. 49, Sch. WMW-1.

directly to the applicable customer classes. 3) The amount of revenue increase awarded to Ameren Missouri that is not associated with step 2 would be determined. 4) Ameren Missouri's rate schedules would be made uniform for certain interrelationships among the non-residential rate schedules that are integral to Ameren Missouri's rate design. 5) The residential customer charge **[*120]** would remain at $ 8.00. 6) After steps 1-5 are accomplished, any additional rate increase would apply across the board to all rate classes. [178]

4. MECG and Wal-Mart are particularly concerned about the large general service and small primary service classes. They presented evidence to show that the over-recovery from those classes has been long-standing, going back to the 2007 rate case. [179] To move toward actual cost of service, they ask the Commission to apply a 25% revenue neutral movement toward cost of service, while ensuring that no class receive a rate increase greater than 9.65%. [180]

5. Ameren Missouri has indicated that, aside **[*121]** from leaving the customer charge at $ 8.00, Staff's proposal is reasonable and would be acceptable. It also indicates that Wal-Mart's rate design proposal is reasonable. [181]

6. The small general service, large general service and small primary service rate classes have received negative rate adjustments in past Ameren Missouri rate cases, meaning the Commission has acted to move those classes closer to their cost of service. In ER-2010-0036, that negative adjustment was 0.61 percent, in ER-2011-0028 it was 1.78 percent, and in ER-2013-0166, it was 0.18 percent. [182]

7. The contribution collected from the various classes can change because of factors other than Commission action to adjust rates. [183] For example, even though the residential rate class is currently **[*122]** above its cost of service, over time, because of energy savings and the way the allocations work, they will move closer to their cost of service without any rate adjustments by the Commission. [184]

Conclusions of Law:

> A. Commission Rule 4 CSR 240-2.115(2)(D) states: A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

Decision:

The Commission agrees with Staff, MECG, and Wal-Mart that the existing class contributions to rates are out of balance. The only question is how much of an adjustment should be made to move the rate classes toward their cost of service as shown in the class cost of service studies. The Wal-Mart proposal would move the large general service and small primary service **[*123]** classes to their cost of service more quickly than Staff's proposal, but it would also have a greater impact on the classes that would see larger than average increases, notably the residential class. To minimize rate shock for the classes that will see

178 Scheperle Direct, Ex. 232, Pages 3-4, Lines 17-21, 1-32.
179 Chriss Cost of Service Direct, Ex. 751, Page 6, Tables 2 and 3.
180 Chriss Cost of Service Direct, Ex. 751, Pages 9-10, Lines 18-22, 1-6.
181 Transcript, Page 1494, Lines 2-11.
182 Fortson Rebuttal, Ex. 215, Schedule BJF-R1.
183 Transcript, Page 3022, Lines 2-25.
184 Transcript, Page 1497, Lines 1-7.

larger than system average increases, while still moving closer toward actual cost of service, the Commission will adopt Staff's six step proposal.

D. What should the Residential Class customer charge be?

Findings of Fact:

1. The customer charge is the set amount on every customer's bill that must be paid even if the customer uses no electricity.

2. Customer-related costs are the minimum costs necessary to make electric service available to the customer, regardless of how much electricity the customer uses. Examples include meter reading, billing, postage, customer account service, and a portion of the costs associated with required investment in a meter, the service line drop, and other billing costs. [185] Customer-related costs are generally recovered through the customer charge while other costs are recovered through volumetric rates that vary with the amount of electricity used.

[*124]

3. It is important to remember that determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. That means any increase in the company's customer charge would be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of revenue.

4. In actual practice, because the amount collected from volumetric rates varies with the amount of electricity used, the company will collect less money from volumetric rates when customers use less electricity. Thus, for example, in a cool summer, when customers are using less air conditioning, the company runs the risk of collecting less revenue. For that reason, electric utilities prefer to lessen riskby collecting more of their charges through the fixed customer charge.

5. Ameren Missouri's current customer charge for residential customers is set at $ 8.00 per month. Staff's class cost of service study would support recovery of a customer charge of $ 8.11 but Staff recommends that the charge remain at $ 8.00. [186]

[*125]

6. Ameren Missouri contends a customer charge of over $ 20 would be supported by the class cost of service studies, [187] but it only proposes to increase the residential customer charge by the same percentage as the overall rate increase that results from this case. [188] At Ameren Missouri's original rate increase that would have increased the customer charge to $ 8.77. [189] Since Ameren Missouri's requested increase is now lower, the customer charge increase request would be around $ 8.50. Since the Commission will not give Ameren Missouri the entire increase it has requested, the residential customer charge would be something less than $ 8.50 under Ameren Missouri's proposal.

185 Staff Report Rate Design, Ex. 201, Pages 43-44, Lines 29-31, 1-2.
186 Staff Report Rate Design, Ex. 201, Page 43, Lines 26-28.
187 Davis Rebuttal, Ex.9, Page 13, Line 1.
188 Transcript, Page 1498, Lines 16-25.
189 Davis Rebuttal, Ex. 9, Page 11, Lines 4-5.

7. Because no party is arguing that the customer charge should be based on the results of a particular class cost of service report, the Commission will not address the details of those reports. In **[*126]** any event, the Commission is not bound to set the customer charges based solely on the details of the cost of service studies. The Commission must also consider the public policy implications of changing the existing customer charges. There are strong public policy considerations in favor of not increasing the customer charges.

8. Residential customers should have as much control over the amount of their bills as possible so that they can reduce their monthly expenses by using less power, either for economic reasons or because of a general desire to conserve energy. Leaving the monthly charge where it is gives the customer more control.

9. Since Ameren Missouri has not shown a strong reason to increase the customer charge and is seeking only a small, largely token increase, the Commission finds that the existing customer charges for the residential class should not be increased.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission finds that Ameren Missouri's customer charges for residential customers shall remain at $ 8.00.

E. Should the Commission approve Wal-Mart's proposed shift to increase the demand **[*127]** *component of the hours-use rate design for Large General Service and Small Primary Service?*

Findings of Fact:

1. This sub-issue concerns rate design only within the large general service and small primary service class. Wal-Mart looked at Ameren Missouri's class cost of service study and noted that approximately 66.1% of non-energy efficiency base revenues for that class are demand-related, while 31.7% are energy related. However, under the "hours-use" intra-class rate design structure used by Ameren Missouri, a large portion of the class' demand-related costs are collected through energy charges. [190]

2. The large general service and small primary service class currently uses a declining three-block "hours-use" rate structure. As usage moves up to the next block, the rate declines. The "hours-use" rate structure has the effect of shifting demand cost responsibility from lower load factor customers to those with higher load factors. [191] Wal-Mart **[*128]** is a higher load factor customer and does not want to subsidize other customers within its rate class. [192]

3. Ameren Missouri would spread the increase resulting from this rate case equally among the three blocks. Wal-Mart proposes that the second and third block energy rates remain at their current levels and that the customer charge for the class be increased by the percentage of overall revenue increase. Half of

190 Chriss Cost of Service Direct, Ex. 751, Page 11, Lines 15-22.
191 Chriss Cost of Service Direct, Ex. 751, Page 12, Lines 1-14.
192 Chriss Cost of Service Direct, Ex. 751, Page 13, Lines 1-7.

the remaining overall increase would be applied to the first block energy charge and the other half to the demand charge. [193]

4. Wal-Mart's proposal would have a large and unfavorable impact on lower load factor customers, possibly **[*129]** resulting in double digit percentage increases for those customers, in addition to whatever rate increase results from this case. Meanwhile, the proposal would reduce rates for higher load customers by only a few percentage points. [194]

5. The "hours-use" rate design has been in use in Missouri since 1990 when the Commission approved its use as part of a settlement of a revenue complaint case and a rate design case. [195]

6. All the other investor-owned electric utilities in Missouri use an "hours-use" rate design for the non-residential customers. **[*130]** [196]

7. Staff recommends against accepting Wal-Mart's proposal because it believes more study is needed to assess the rate impact of the proposed changes on the 11,000 other customers in those rate classes. [197]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

Wal-Mart is proposing a change in a long-standing rate structure that could have significant rate impact on 11,000 customers. There is not enough evidence in the record for this case to justify making that change at this time. The Commission is willing to examine this question in more detailin Ameren Missouri's next rate case and expects the parties to more fully develop the evidence at that time. The Commission will **[*131]** not adopt Wal-Mart's proposal at this time.

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?

Findings of Fact:

1. As discussed in the previous sub-issue, Wal-Mart is generally dissatisfied with the "hours-use" rate design used by Ameren Missouri and all other electric utilities in Missouri. It asks the Commission to order Ameren Missouri to develop alternative rate designs for the large general service and small primary class that more closely reflect the company's cost of service and do not use the hours-use rate design for the energy charge. It asks that Ameren Missouri be ordered to present those alternatives in its next base rate case. [198]

2. Ameren Missouri indicates it is satisfiedwith the current "hours-use" rate design and asserts that if Wal-Mart wants to see a change it has the ability to perform **[*132]** and pay for its own cost study. [199]

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193 Chriss Cost of Service Direct, Ex. 751, Page 17, Lines 14-20.
194 Davis Rebuttal, Ex. 9, Page 9. Lines 4-15. In the Matter of the Investigation of Union Electric Company's Class Allocation and Rate Design, Report and Order, Case No. EO-87-175, 30 Mo. P.S.C. (N.S.) 406 (1990).
195 Davis Rebuttal, Ex. 9, Pages 7-8, Lines 21-22, 1-10.
196 Fortson Rebuttal, Ex. 215, Pages 7-8, Lines 16-17, 1-2.
197 Fortson Rebuttal, Ex. 215, Page 7, Lines 12-15.
198 Chriss Cost of Service Direct, Ex. 751, Pages 17-18, Lines 20-21, 1-2.
199 Initial Post-Hearing Brief of Ameren Missouri, Page 150.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

While the Commission is willing to look at this issue in the next rate case, it agrees that Wal-Mart has the resources to perform its own study and will not order Ameren Missouri to undertake the study proposed by Wal-Mart. Each party may perform its own study if it wishes to do so.

11. Economic Development Rate Design Mechanisms

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

Findings of Fact:

1. On October 20, 2014, the Commission issued an order in this case that directed the parties to address questions about rate design mechanisms that could be used to promote stability or growth of customer levels in geographiclocations where existing infrastructure is underutilized. That order directed Staff to file testimony on that question **[*133]** and invited other parties to also address the issue. [200]

2. The responses from the parties to that question raised questions about the scope and effectiveness of Ameren Missouri's existing Economic Development Riders.

3. Staff's response to the Commission's questions described Ameren Missouri's existing economic development riders and provided additional ideas for new or expanded programs. Staff did not recommend the Commission take any action at this time but recommended the Commission form a collaborative to collect ideas for future action from all interested stakeholders. [201]

4. Public Counsel also filed testimony discussing Ameren Missouri's existing Economic Development **[*134]** Riders and suggesting ideas for new or expanded programs. In particular, Public Counsel compared Ameren Missouri's existing Riders to those currently offered by Kansas City Power & Light Company and The Empire District Electric Company. [202]

5. Ameren Missouri filed the supplemental direct testimony of William Davis in response to the Commission's order. Davis' testimony describes the company's existing Economic Re-Development Rider (ERR). That Rider has been in place since 2007 and is designed to encourage re-development of certain sites in the City of St. Louis. Eligibility for participation in the Rider is limited to industrial and large commercial rate classes. [203]

6. Staff and Public Counsel also describe a more general Ameren Missouri Rider known as the Economic **[*135]** Development and Retention Rider (EDRR). [204]

7. On March 9, several parties signed and filed a non-unanimous stipulation and agreement regarding class cost of service and rate design. The primary focus of the stipulation and agreement was the provision

200 Order Directing Consideration of a Certain Rate Design Question, File No. ER-2014-0258, October 20, 2014
201 Staff Report Rate Design, Ex. 201, Page 45, Lines 18-20.
202 Marke Direct, Ex. 403, Pages 3-23.
203 Davis Supplemental Direct, Ex. 8.
204 Marke Direct, Ex. 403, Page 18, and Staff Report Rate Design, Ex. 201, Page 48.

of a reduced rate for Noranda. But it also included an exemplar economic development tariff for Ameren Missouri. That proposed tariff was never discussed when evidence was presented at the hearing, as it was filed five days after the issue was heard. As a result, there is no evidentiary support for it in the record.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission does not believe any action regarding Ameren Missouri's economic development riders is appropriate at this time. As will be noted subsequently in thisorder, the Commission will establish a collaborative to look at this issue more closely.

B. **[*136]** *Should the Commission modify Ameren Missouri's existing Economic Development Riders to require recipients to participate in the Company's energy efficiency programs?*

Findings of Fact:

1. The Division of Energy proposed that Ameren Missouri be directed to modify its existing economic development riders to require active participation in Ameren Missouri's MEEIA programs as a condition for participation in the riders. [205]

2. Ameren Missouri currently has two economic development riders in its tariffs. The Economic Re-Development Rider (ERR), which is designed to encourage re-development of certain sites in the City of St. Louis, and a more general Ameren Missouri Rider known as the Economic Development and Retention Rider (EDRR). Thus far only one customer has taken advantage of the EDRR. [206] No customers currently take service under the ERR. [207]

[*137]

3. MIEC, the party that represents many of the industrial-type customers who would be eligible to participate in the economic development riders opposed the idea of requiring participation in MEEIA as unnecessary and illegal. [208]

4. The other parties that responded to the request that participation in MEEIA be made a requirement to take service under an economic development rider raised questions and concerns about that proposal that can best be addressed through a collaborative process. [209]

Conclusions of Law:

A. The MEEIA statute, specifically section 393.1075.7, RSMo **[*138]** (Cum. Supp. 2013), allows certain large users of electricity to opt out of participation in MEEIA programs.

Decision:

205 Lohraff Direct, Ex. 702, Page 2, Lines 10-13.
206 Staff Report Rate Design, Ex. 201, Page 53, Lines 22-26.
207 Staff Report Rate Design, Ex. 201, Page 54, Lines 11-12.
208 Brubaker Rebuttal, Ex. 504, Pages 25-26.
209 See, Davis Rebuttal, Ex. 9, Pages 35-37.

Participation in Ameren Missouri's economic development riders is not robust at this time and adding criteria for participation will not encourage greater participation. The Commission will not make participation in MEEIA a requirement for receiving service through Ameren Missouri's economic development riders. As will be noted subsequently in this order, the Commission will establish a collaborative to look at this issue more closely.

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?

Findings of Fact:

1. Staff suggested the Commission open a collaborative to allow all interested stakeholders to discuss possible changes to Ameren Missouri's existing economic development riders.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The Commission will establisha **[*139]** collaborative process to more closely examine the use of economic development riders. The Commission will open a new working case for that purpose, and the parameters of that collaborative will be established in an order that will be issued in that new case.

12. Street Lighting

A. Can the Commission mandate or require that the Company sell its streetlights to the Cities?

Findings of Fact:

1. Ameren Missouri offers electricity to power municipal streetlights under two different provisions of its tariff. Under rate schedule 5(M), the municipal customer pays for the electricity needed to power the lights, but Ameren Missouri installs, owns and maintains the light fixtures, poles, wires, and other connections needed to provide street lighting. Ameren Missouri recovers those costs through the rate it charges the customer. Under the alternative 6(M) rate schedule, the municipal customer installs, owns, and maintains the light fixtures, poles, wires, and other connections, and pays a rate sufficient to recover the cost of the electricity needed to power the lights. [210]

[*140]

2. The Cities of O'Fallon and Ballwin note that the 6(M) rate for municipally-owned streetlight fixtures is lower than the corresponding 5(M) rate for streetlight fixtures owned by the company. They would like to explore the possibility of moving from the 5(M) rate to the lower 6(M) rate, believing that by doing so they could save a substantial amount of money. [211]

3. Steve Bender, Director of Public Works for the City of O'Fallon testified that his city pays over a million dollars per year under the 5(M) rate, but would pay only $ 180,000 per year under the 6(M) rate.

210 Davis Rebuttal, Ex. 9, Page 40, Lines 3-13.
211 Bender Direct, Ex. 850, Page 3, Lines 6-12.

[212] Robert Kuntz, City Administrator for the City of Ballwin, testified that his city would also pay less under the 6(M) rate. [213] Neither witness testified as to any additional costs the Cities would incur if they took responsibility for maintenance of the street lighting facilities under the 6(M) rate.

[*141]

4. To qualify for service under the 6(M) tariff, the Cities must own their own streetlight fixtures. To that end, they have asked Ameren Missouri to negotiate to sell the fixtures at a fair market price. [214] Ameren Missouri has refused to enter into such negotiations. [215] The Cities ask the Commission to force Ameren Missouri to negotiate for the sale of the streetlights and have proposed a tariff modification to make that happen. [216]

5. Ameren Missouri explains that it is not interested in selling the streetlight fixtures to the Cities for two reasons. First, the company says it is in business to construct, own, and operate electrical distribution systems, including streetlights, not to build such systems for sale toother **[*142]** entities. Second, the company does not want to sell the streetlight fixtures because they are an integrated part of its electrical distribution system. [217]

6. David Wakeman, Ameren Missouri's Senior Vice President of Operations and Technical Services, [218] testified, and the Commission finds, that the component parts of the streetlight facilities are much more than just the light fixtures and poles visible from the street. As Wakeman explained, those components include: "streetlight fixtures, streetlight poles, cables supplying power to those streetlights and the supply to the cable, which can include transformers or secondary pedestals." [219]

7. The mere existence of these othercomponents **[*143]** is not the only complicating factor. The real problem is that the other components are also used by Ameren Missouri to supply electric service to its other customers. The cables supplying power to the streetlights often share an underground trench with other distribution cables. The street light fixtures may be attached to poles that support other components of the overhead electric distribution system. [220]

8. For example, the electrical cable that feeds a streetlight might be fed out of a transformer that contains 12,000 volts of electricity and also serves the homes and businesses in the area. [221] Ameren Missouri's own technicians are trained to deal with that amount of electricity, but allowing other parties to have access to its electrical system would put them, as well as the system, at risk. [222]

[*144]

9. To avoid that problem, if the Cities were to take ownership of the streetlights, Ameren Missouri would have to reconstruct the system to separate the streetlights from the electric system and install a

212 Bender Direct, Ex. 850, Page 3, Lines 6-12.
213 Kuntz Surrebuttal, Ex. 853, Page 4, Lines 8-12.
214 Bender Direct, Ex. 850, Page 5, Lines 27-30.
215 Wakeman Rebuttal, Ex. 46, Page 15, Lines 13-19.
216 Bender Direct, Ex. 850, Attachment D.
217 Wakeman Rebuttal, Ex. 46, Page 17, Lines 10-14.
218 Wakeman Rebuttal, Ex. 46, Page 1, Lines 11-13.
219 Wakeman Rebuttal, Ex. 46, Page 16, Lines 15-17.
220 Wakeman Rebuttal, Ex. 46, Page 16, Lines 17-22.
221 Transcript, Page 1809, Lines 18-25.
222 Wakeman Rebuttal, Ex. 46, Page 17, Lines 18-23.

disconnect switch so that the Cities could shut off power to the streetlights if they needed to perform maintenance work on them. [223]

10. Some cities do own street lights that are served under the 6(M) rates. Generally, such systems are installed by the developer of a new subdivision and are separated from the rest of the electric distribution system by a disconnecting device. [224] In fact, the City of O'Fallon has an ordinance that requires developers of new subdivisions to construct streetlights that would conform to Ameren Missouri's 6(M) lighting requirements. [225]

[*145]

11. The Cities want to be able to move to the 6(M) rate because they contend the 5(M) rate for company owned facilities is clearly excessive. They believe the rate is excessive because the amount by which the 5(M) rate exceeds the 6(M) rate amounts to approximately $ 185.00 per fixture, per year. Over the 33-year life span for such fixtures established in the company's depreciation schedules, the Cities believe they would pay more than three times the value of each fixture. [226] The Cities imply that Ameren Missouri is refusing to sell the streetlights to them to keep them captive to what they believe to be an unreasonably high 5(M) rate.

12. The Cities misunderstand how the Commission sets rates for the street lighting class of customers. As is explained in more detail later in this order, Ameren Missouri and other parties to this case perform class cost of service analysis to determine the cost to serve each of the various rate classes. For purposes of those studies, **[*146]** the company-owned 5(M) service classification is combined with the customer-owned 6(M) classification into a single lighting class. [227] The class cost of service studies prepared by Ameren Missouri, Staff and MIEC all show that the lighting class as a whole currently pays rates that are close to Ameren Missouri's cost to serve that class. [228] That means that, in the long term, Ameren Missouri's overall income from the lighting class will be the same whether the Cities take service under the 5(M) or the 6(M) classification. If the Cities switch from the 5(M) classification to the 6(M) classification, rates will be adjusted between those classifications in a future rate case to account for that change to allow Ameren Missouri to recover its costs to serve the lighting class. Thus, Ameren Missouri does not have a financial incentive to "trap" its customers in the 5(M) classification.

[*147]

13. Ameren Missouri's 5(M) tariff contains a provision that allows a street lighting customer to give notice to the company of its desire to discontinue receiving 5(M) service. Neither City has thus far given such notice to Ameren Missouri. [229] Much of the Cities' concern about Ameren Missouri's action is based on a fear that if they gave such notice, Ameren Missouri would scrap the existing streetlight fixtures rather than sell them to the Cities in place. They contend that such action by the company would be economically wasteful and should be prevented by the Commission.

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223 Transcript Page 1811, Lines 8-13.
224 Transcript, Page 1822, Lines 19-24.
225 Transcript, Page 1860, Lines 12-22.
226 Bender Direct, Ex. 850, Page 3, Lines 13-28.
227 Warwick Direct, Ex. 49, Page 5, Lines 7-10. Warwick's testimony indicates the company has three lighting classes, including "Municipal Lighting - Incandescent 7(M). The 7(M) classification has no customers and is to be eliminated in the revised tariffs that will result from this case. See. Davis Rebuttal, Ex. 9, Page 52, Lines 1-13.
228 Rebuttal, Ex. 9, Page 39, Lines 16-19.
229 Transcript, Page 1864, Lines 3-6, as to the City of Ballwin. There is no indication in the record that the City of O'Fallon has issued such a notice.

14. Because neither City has actually given notice of its intent to discontinue receiving 5(M) service, its concerns about economic waste from the scrapping of **[*148]** still useful streetlight fixtures is largely hypothetical. Ameren Missouri's witness, David Wakeman, testified several times that he did not know what the company would actually do with the existing street lighting fixtures if the Cities chose to discontinue 5(M) service. [230]

15. This is not the first time the Cities have brought this matter to the Commission's attention. In April 2014, the Cities filed a complaint before the Commission seeking to force Ameren Missouri to negotiate the sale of its street lighting facilities. The Commission handled that complaint in File No. EC-2014-0316. In August 2014, the Commission dismissed that complaint for failure to state a claim upon which relief can be granted, finding that it has no authority to order Ameren Missouri to sell property that it does not wish to sell. The Cities' appeal of the dismissal of their complaint is currently pending before Missouri's Western District Court of Appeals. **[*149]** [231]

Conclusions of Law:

A. The Cities claim that Section 393.140(5), RSMo 2000, gives the Commission authority to order Ameren Missouri to negotiate the sale of its street lighting fixtures to the Cities. The relevant portion of that statute says:

> Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that … the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe … the just and reasonable acts and regulations to be done and observed.

On that basis, the Cities assert the Commission has authority to find that Ameren Missouri's refusal to negotiate the sale of the street lighting fixtures, and particularly its threat to scrap the fixtures rather than sell them to the **[*150]** Cities, is unjust and unreasonable and should be prohibited.

B. The specific statute that governs the transfer of utility property, Section 393.190.1, RSMo (Cum. Supp. 2013), in relevant part, says:

> No … electrical corporation … shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, … without having first secured from the commission an order authorizing it so to do.

While that statute declares what the utility must do if it wants to sell used and useful property, it does not declare that the Commission can order a utility to sell such property. The Commission has only the authority given it explicitly by statute or reasonably incidental to such authority. [232] Thus, from negative implication, the Commission has no such authority.

[*151]

C. Further, Section 71.525, RSMo 2000, restricts the ability of a municipality to condemn the used and useful property of a public utility if the municipality will use the property for the same or substantially

230 Transcript, Page 1797, Lines 13-24. See also, Page 1834, Lines 13-19.
231 ending appeal's file number at the Court of Appeals is WD78067.
232 State ex rel. Praxair v. Pub. Serv. Com'n, 344 S.W.3d 178, 192 (Mo 2011).

similar purpose as the public utility. Sub section 71.525.3 goes on to make it clear that the limitations on condemnation apply "no matter whether any other … provision of law appears to convey the power of condemnation of such property by implication." Essentially, the Cities are asking the Commission to condemn Ameren Missouri's property to allow them to operate a street lighting system in the company's place. Such action is forbidden by the statute. [233]

D. The Cities cite a 1987 telephone case as an example of a Commission finding that it does have authority to force a utility to sell its property. **[*152]** [234]In that case, the Commission found that it had sufficient authority to require independent telephone companies to essentially sell the company-owned telephone equipment inside customer homes to the customers. The companies had been paid for that equipment through accelerate depreciation. However, the basis for the Commission's finding of authority was a mandate from the Federal Communications Commission to take such action to enable the development of competition in the telephone industry. There is no such federal mandate in this case, and the *Detariffing* case does not justify a finding of Commission authority to order the sale of the street lighting fixtures.

E. The Commission will take administrative notice of its decision in in File No. EC-2014-0316.

Decision:

There has been a great deal of confusion, misunderstanding, **[*153]** and frustration surrounding this issue. But the actual issue before the Commission is quite narrow. The Cities ask the Commission to order Ameren Missouri to implement a tariff that would compel the Company to negotiate the sale of its street lighting fixtures when demanded by its customers. After considering the evidence and the arguments presented by the parties, the Commission decides that the tariff proposed by the Cities is not appropriate.

Previously, when the Cities filed a complaint to bring this question before the Commission, the Commission concluded that the complaint should be dismissed without a hearing because the Commission does not have authority to force Ameren Missouri to sell its property. The Commission will not contradict that earlier conclusion.

Further, having now heard evidence about the factual basis for the Cities' claim to Ameren Missouri's property, the Commission also concludes that the Cities' claim must fail on its facts. Even if it is assumed that Section 393.140(5), RSMo 2000, gives the Commission authority to compel Ameren Missouri to negotiate to sell its street lighting fixtures to correct an unjust or unreasonableact **[*154]** or regulation of the company, the Cities have not shown that Ameren Missouri has done anything unjust or unreasonable.

The cornerstone of the Cities' argument is that Ameren Missouri would be acting unreasonably and would be wasting ratepayer money if it were to actually choose to scrap the street lighting fixtures rather than allow the Cities an opportunity to buy them. Certainly, the Commission would closely examine the prudence of that decision in any future rate case where the company sought to recover such costs in rates. But at this time that is purely a hypothetical concern rather than a basis for granting relief to the Cities. The Commission will not require Ameren Missouri to implement a tariff requiring it to negotiate to sell its property to the Cities.

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233 See also, City of Kirkwood v. Union Electric. Co., 896 S.W.2d 946 (Mo. App. E.D. 1995).
234 Investigation of the Detariffing of Embedded Customer Premises Equipment (CPE) Owned by Independent Telephone Companies, 29 Mo. P.S.C. (N.S.) 299 (1987).

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

Findings of Fact:

1. As previously discussed, the class cost of service studies prepared by all the parties to this case showed that the revenue Ameren Missouri collects from the overall lighting class closely matches the company's cost to serve that class of customers. [235] But in responseto **[*155]** the Cities' claim that the 5(M) rate was unreasonable, Ameren Missouri's witness, William Davis, took a closer look at the intra-class balance of the 5(M) and 6(M) rates. In his rebuttal testimony, Davis reports that the 5(M) rates are currently above their costs of service, and the 6(M) rates are correspondingly below their cost of service. [236]

2. To adjust the 5(M) and 6(M) rate to make them match their actual cost of service would require a $ 3.9 million increase to the 6(M) rate schedule, with a corresponding $ 3.9 million decrease to the 5(M) rate. Because the 6(M) rate class is much smaller than the 5(M) rate class, the $ 3.9 million shift would roughly double the rates for the 6(M) rate class while reducing the rates for the 5(M) rate class by about 11 percent. [237] The shift would be revenue neutral for Ameren Missouri.

[*156]

3. William Davis suggested the Commission might want to take steps in this rate case to move the 5(M) and 6(M) rate classifications closer to their actual costs of service. He proposes a gradual shifting of those costs to avoid a rate shock for the 6(M) customers, but did not actually propose such a shift in this case. Since he did not raise the possible rate shift until he filed his rebuttal testimony, the other parties did not have an opportunity to verify Davis' intra-class cost of service findings.

Conclusions of Law:

The Commission makes no additional conclusions of law for this sub-issue.

Decision:

The Commission is concerned that Ameren Missouri's cost recovery from the 5(M) and 6(M) classification within the overall lighting class be balanced to match the company's cost to serve those classifications. However, the Commission is not willing to make such rate shifts until all parties have an opportunity to review the basis for such a shift.

The Commission will not order a rate shift between the 5(M) and 6(M) rate classifications at this time, but will direct Ameren Missouri to further study the appropriateness of the 5(M) rate compared to the 6(M) and to present **[*157]** the results of that study in its direct case for its next rate case.

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

Findings of Fact:

1. The Cities challenge a provision in Ameren Missouri's current lighting tariffs that creates a $ 100 per lamp early termination fee applicable if a street lighting customer in the 5(M) classification asks the

235 Davis Rebuttal, Ex. 9, Page 39, Lines 16-19.
236 Davis Rebuttal, Ex. 9, Page 40, Lines 16-21.
237 Davis Rebuttal, Ex. 9, Pages 40-41, Lines 21-23, 1-2.

company to remove the fixtures within either three or ten years of the installation of the fixture, depending upon the type of fixture to be removed. The Cities denounced that early termination fee as an unreasonable barrier to their goal of migrating from the 5(M) classification to the 6(M) classification. [238]

2. The early termination fees would apply to about ten percent of the total streetlights in the two cities. [239]

[*158]

3. The fee is not designed to recover the full cost of the street lighting fixtures that would be removed. Rather, the early termination fee is intended to give a customer pause before requesting a change in a lighting service. For example, it is designed to discourage a customer from initially requesting a mercury vapor light and three months later asking to change to a high pressure sodium light. [240]

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The early termination fee is a reasonable provision in Ameren Missouri's lighting tariff designed to ensure the costs incurred by the company are paid by the customers that cause that cost. The Commission will not order Ameren Missouri to remove that fee from its tariff.

13. 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?

Findings of [*159] Fact:

1. Ameren Missouri has installed electrostatic precipitators (ESPs) [241] at Units 1 and 2 of its coalfired Labadie Energy Center to comply with the U.S. Environmental Protection Agency's (EPA's) Mercury and Air Toxics Standards (MATS) rule. [242] It now seeks to add the installation costs to its rate base.

2. Staff determined that the construction and testing requirements for the ESP's for Unit 2 were completed in August 2014 and for Unit 1 in December 2014. The ESPs for both units were fully operational and in-service before the December 31, 2014 end of the true-up period. [243]

[*160]

3. Staff has reviewed the installation of the ESPs and has determined the trued-up costs pertaining to that project as of December 31, 2014. [244]

4. No party challenged the fact that the ESPs are used and useful or the amount of costs incurred to install the pollution control devices. However, Sierra Club challenged the prudence of Ameren Missouri's

238 Bender Direct, Ex. 850, Page 4, Lines 16-27.
239 Transcript, Page 1861, Lines 20-24, and Page 1864, lines 15-18.
240 Davis Rebuttal, Ex. 9, Page 43, Lines 7-18.
241 Staff describes the ESPs as "highly efficient filtration devices consisting of several chambers that contain numerous electro-statically charged steel plates that collect and remove fine particulate matter from flowing emission gases." Staff Revenue Requirement Report, Ex. 202, Page 49, Lines 14-16.
242 Michels, Amended Rebuttal, Ex. 26, Page 2, Lines 13-16.
243 Staff Revenue Requirement Report, Ex. 202, Page 49, Lines 17-28.
244 Carle Surrebuttal, Ex. 208, Page 5, Lines 12-14. The precise cost is highly confidential.

decision to install the ESPs. Sierra Club does not oppose pollution control devices in general but contends Ameren Missouri has not sufficiently studied the relative cost of immediately shutting down the Labadie coalfired plant rather than incurring the cost to install the ESPs and additional pollution control devices that will need to be installed in the future, as well as the possibility that the plant will need to be shut down in the relatively near future to comply with the U.S. Environmental Protection Agency's proposed carbon limiting regulations. [245]

[*161]

5. In response to Sierra Club's criticisms, Ameren Missouri offered the rebuttal testimony of Matt Michels, Ameren Missouri's Senior Manager of Corporate Analysis. Mr. Michels pointed to Ameren Missouri's recent Integrated Resource Plan (IRP) filing to demonstrate that installing the ESPs and keeping the plant in operation was cost effective. [246]

6. In response to Michels' rebuttal testimony, Sierra Club's witness, Dr. Hausman, narrowed his criticism of Ameren Missouri's Labadie analysis to two points. [247] First, he disagrees with Ameren Missouri's modeling in its IRP of the cost of compliance with greenhouse gas restrictions that might be imposed by the EPA's proposed Clean Power Plan. [248] Second, he contends Ameren Missouri should have modeled the option of retiring either Labadie Unit 1 or Unit 2 individually rather than as the whole plant because perhaps one unit could be retired without requiring any investment in replacement generation or transmission upgrades, even if the **[*162]** entire plant could not. [249]

7. Because of these deficiencies, Hausman recommends the Commission refuse to allow Ameren Missouri to include the ESP installation costs in rate base until the company "resolves these deficiencies and presents the Commission with an adequate justification for the prudence of these expenditures." [250]

8. The EPA's proposed Clean Power Planwas **[*163]** proposed in June 2014, but it is not yet in final form and no one knows how the final regulation regulate carbon emissions. Ameren Missouri's IRP analysis assumed that there was an 85 percent chance that any carbon restricting regulation would require indirect regulation of carbon emissions rather than placing a specific price on such emissions. [251] The currently proposed regulations do not include a carbon tax or a cap and trade regime that would impose such direct costs. [252]

9. The alternative to imposition of a direct cost on carbon emissions is indirect regulation where instead of making carbon emissions more expensive directly, the regulation would require utilities to replace polluting generating sources with less polluting sources. So, for example, a coal-fired plant might be replaced by a natural gas-fired combined-cycle plant. [253] That also means that less efficient coal-fired plants, plants that producemore **[*164]** carbon dioxide because they are less efficient, would be retired before the Labadie plant, which is relatively efficient. [254] The retirement of less efficient coal fired plants would increase electricity prices, which would make the Labadie plant more profitable [255]

245 Hausman Direct, Ex. 900, Pages 5-13.
246 Michels Rebuttal, Ex. 26.
247 Sierra Club's briefs also delve into broader criticisms of Ameren Missouri's IRP filing. The overall adequacy of the IRP filing is not being litigated in this proceeding. The only issue before the Commission at this time is the prudence of Ameren Missouri's decision to install the ESPs at Labadie Units 1 and 2.
248 Hausman Surrebuttal, Ex. 901, Pages 5-9.
249 Hausman Surrebuttal, Ex. 901, Page 10, Lines 1-15.
250 Hausman Surrebuttal, Ex. 901, Page 9, Lines 18-22.
251 Transcript, Page 1937, Lines 12-25.
252 Transcript, Pages 1942-1943, Lines 24-25, 1-3.
253 Transcript, Page 1943, Lines 3-24.
254 Transcript, Page 1949, Lines 10-25.

10. Based on that scenario, which Ameren Missouri reasonably found to be most likely, Ameren Missouri's IRP study concluded that investing in environmental controls, along with other investments and operating costs needed to keep Labadie operating until 2023 would save customers $ 3.6 billion. [256]

11. Ameren Missouri is required to comply with the MATS rule by April 16, 2016. Ameren Missourineeded **[*165]** to either install the ESPs by that time, or shut down the Labadie plant by that date to comply with the rule. [257] Shutting down the Labadie plant by April 2016 would require additional upgrades to the transmission grid to ensure reliability as well as the addition of new generating capacity. [258]

Conclusions of Law:

A. Sierra Club challenges the prudence of Ameren Missouri's decision to install ESP's at Units 1 and 2 of its Labadie Plant rather than shut down the plant by April 2016 in order to comply with the MATS standards. That challenge implicates what is described as the prudence standard. Missouri's courts have described that standard as follows:

> A utility's costs are presumed to be prudently incurred. The presumption does not, however, survive a showing of inefficiency or improvidence. If some other participantin the **[*166]** proceedings alleges that the utility has been imprudent in some manner, that participant has the burden of creating a serious doubt as to the prudence of the expenditure. If that is accomplished, the utility then has the burden of dispelling those doubts and proving the questioned expenditure was in fact prudent. The prudence test should not be based upon hindsight but upon reasonableness. The utility's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the utility had to solve its problem prospectively rather than in reliance on hindsight. In effect, the PSC's responsibility is to determine how reasonable people would have performed the tasks that confronted the utility. [259]

Thus, Sierra Club has the burden of demonstrating a serious doubt about the prudence of Ameren Missouri's decision before Ameren Missouri must defend its prudence

[*167]

Decision:

Sierra Club has not carried its burden of demonstrating a serious doubt about the prudence of Ameren Missouri's decision to install ESPs at Unit 1 and Unit 2 of its Labadie plant. Indeed, Sierra Club does not actually allege that the installation of the ESPs at Labadie was imprudent. Rather, it contends Ameren Missouri did not perform a sufficient analysis of costs and benefits to properly determine whether customers would have been better off if the company had immediately shut down one or more of the Labadie units to comply with an April 2016 deadline to comply with the EPA's MATS regulation. Yet, Ameren Missouri's IRP analysis demonstrated that ratepayers would save approximately $ 3.6 billion if the Labadie plant remains on line until 2023.

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255 Transcript, Page 1938, Lines 17-25.
256 Michels Amended Rebuttal, Ex. 26, Page 12, Lines 6-10.
257 Michels Amended Rebuttal, Ex. 26, Page 17, Lines 6-10. See also, Hausman Direct, Ex. 900, Page 9, Lines 1-13.
258 Michels Amended Rebuttal, Ex. 26. Page 18, Lines 10-16.
259 Atmos Energy Corp. v. Office of Public Counsel, 389 S.W.3d 224, 228 (Mo. App. W.D. 2012).

Sierra Club also speculates that Ameren Missouri did not perform a sufficient analysis to assess the possibility that future greenhouse gas regulations might make continued operation of the Labadie plant financially unviable. Ameren Missouri's analysis took into account its reasonable evaluation of what such regulations would likely require, but no such greenhouse gas regulations are currently in effect, and no one can know withany **[*168]** certainty what form such regulations might take in the future.

Sierra Club's criticisms of Ameren Missouri's cost-benefit analysis may be an appropriate topic to be raised when Ameren Missouri's IRP filing is discussed, but Ameren Missouri's decision to install the now fully operational and in-service ESPs is presumed to be prudent. Those costs identified in Staff's testimony may be included in Ameren Missouri's rate base.

14. Fuel Adjustment Clause ("FAC")

The parties identified several sub-issues regarding Ameren Missouri's fuel adjustment clause (FAC). Many of those issues regarded disputes between Public Counsel and Ameren Missouri about the sufficiency and timeliness of the evidentiary support the company offered to justify continuation of the FAC. During the course of the hearing, Public Counsel and Ameren Missouri filed a non-unanimous stipulation and agreement that resolved all disagreements between those parties and allowed for the continuation of the FAC with a few changes that were incorporated into a proposed tariff attached to the stipulation and agreement. [260]

[*169]

Consumers Council objected to the stipulation and agreement because it presupposes that the FAC will be continued, a result it opposes. Because of Consumers Council's objection, the Commission cannot approve the non-unanimous stipulation and agreement [261] and must resolve the issues based on competent and substantial evidence. The non-unanimous stipulation and agreement becomes merely a joint position statement of the signatory parties to which they are not bound. However, both Ameren Missouri and Public Counsel have indicated their intent to adhere to that joint position.

Should Ameren Missouri be allowed to continue to use a fuel adjustment clause?

Findings of Fact:

1. Before addressing other issues regarding the implementation of Ameren Missouri's fuel adjustment clause, the Commission must address the fundamental issue of whether Ameren Missouri should be allowed to continue to use a fuel adjustment clause.

2. The Commission first allowed Ameren Missouri **[*170]** to implement a fuel adjustment clause in a previous Ameren Missouri rate case, ER-2008-0318. . [262] The approved fuel adjustment clause includes an incentive mechanism that requires Ameren Missouri to pass through to its customers 95 percent of any deviation in fuel and purchased power costs from the base level. The other 5 percent of any deviation is retained or absorbed by Ameren Missouri. [263] The Commission has approved the continuation of that fuel adjustment clause in each subsequent Ameren Missouri rate case.

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260 Non-Unanimous Stipulation and Agreement Regarding Some Fuel Adjustment Clause Issues. Filed March 6, 2015.
261 Commission Rule 4 CSR 240-2.115(D).
262 In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 361, January 27, 2009.
263 In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order, Case No. ER-2008-0318, 18 Mo. P.S.C. 3d 306, 366-367, January 27, 2009.

3. In this case, **[*171]** Ameren Missouri proposed that the Commission allow it to continue to use its existing fuel adjustment clause. [264] Consumers Council did not present any testimony on this issue, but it did cross examine witnesses presented by other parties and urged the Commission to discontinue Ameren Missouri's fuel adjustment clause. Consumers Council also asks the Commission to change the existing sharing mechanism to create a 50/50 split, with Ameren Missouri retaining or absorbing half of any deviation from the base level of fuel and purchased power costs. The Commission will address the proposed modification of the sharing mechanism in the next section of this report and order.

4. When it first allowed Ameren Missouri to implement a fuel adjustment clause in ER-2008-0318, the Commission found that Ameren Missouri should be allowed to establish a fuel adjustment clause because its fuel costs were substantial, beyond the control of the company's management, and volatile in amount. **[*172]** The Commission also found that Ameren Missouri needed a fuel adjustment clause to have a sufficient opportunity to earn a fair return on equity and to be able to compete for capital with other utilities that have a fuel adjustment clause. [265] In the same rate case, the Commission found that a 95/5 sharing mechanism would give Ameren Missouri a sufficient opportunity to earn a fair return on equity, while protecting customers by preserving the company's incentive to be prudent. [266]

5. Ameren Missouri's net energy costs have risen substantially since the last rate case to approximately $ 696 million, an increase of 23 **[*173]** percent. [267] Fuel and purchased power costs, including transportation, are still the company's largest operating and maintenance (O&M) expense, comprising approximately 51 percent of its total O&M costs. [268] Coal costs have increased, and off-system sales have declined. Further increases in coal costs are anticipated, and no one knows what will happen to off-system sales revenue. [269] Those fuel and purchased power costs continue to be dictated by national and international markets and thus are outside the control of Ameren Missouri's management. Finally, these costs and revenues continue to be volatile. [270]

6. Ameren Missouri still needs a fuel adjustment clause to help alleviate the effects of regulatory lag as net fuel costs continue to rise. In addition, Ameren Missouri still must compete in the **[*174]** capital markets with other utilities, and the vast majority of those utilities have fuel adjustment clauses. The continued existence of a fuel adjustment clause is important to maintaining Ameren Missouri's credit worthiness. [271]

7. Finally, Consumers Council expresses concern that the existence of the FAC has contributed to "excessive" earnings by Ameren Missouri. That claim of past "excessive" earnings is based on the per-book quarterly surveillance reports that Ameren Missouri has filed since it was first allowed to have an FAC in 2009. Such surveillance reports merely provide a snapshot of unadjusted book earnings [272] and are not suitable to establish just and reasonable rates. In any event, those surveillance reports show that Ameren Missouri was earning less than its authorized return on equity more often than it was earning

264 Barnes Direct, Ex. 2, Pages 3-4, Lines 23,1-2.
265 In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.
266 In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order, Case No. ER-2008-0318, January 27, 2009, Page 76.
267 Barnes Rebuttal, Ex. 3, Page 21, Lines 5-8.
268 Barnes Rebuttal, Ex. 3, Page 21, Lines 1-5.
269 Barnes Rebuttal, Ex. 3, Page 22, Lines 11-19.
270 Barnes Rebuttal, Ex. 3, Page 25, Lines 1-9.
271 Rygh Rebuttal, Ex. 42, Pages 6-16.
272 Reed Surrebuttal, Ex. 41, Page 16, Lines 4-7.

more than its authorized return during the five years since Ameren Missouri was first allowed to implement an FAC. [273]

[*175] Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), allows the Commission to establish and continue a fuel adjustment clause for Ameren Missouri.

B. Commission Rule 4 CSR 240-2.115(2)(D) states:

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

Decision:

Ameren Missouri still needs to have a fuel adjustment clause in place if it is to have a reasonable opportunity to earn a fair return on its investments. The Commission concludes Ameren Missouri should be allowed to continue to implement a fuel adjustment clause.

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?

Findings of [*176] Fact:

1. As described in the conclusions of law for this issue, the Commission's rules regarding the FAC require that the electric utility seeking to continue an FAC file detailed information as part of its direct filing to institute the rate case. Public Counsel's witness, Lena Mantle, testified that Ameren Missouri failed to provide a complete explanation in its direct case of all the costs and revenues that it wanted to be included in its FAC. [274] On that basis, she urged the Commission to discontinue the FAC because the information Ameren Missouri filed did not provide the Commission with the information needed to make an informed decision. [275]

2. Ameren Missouri purported to offer the required minimum filings in an attachment to the direct testimony of Lynn Barnes. [276] When Public Counsel challenged thesufficiency of that filing, Barnes responded by testifying that the level of detail **[*177]** in Ameren Missouri's filing matches that offered in previous rate cases and that those previous filings have been found to be sufficient by Staff and the Commission. [277]

3. In the objected-to stipulation and agreement, now the joint position of Ameren Missouri and Public Counsel, those parties agreed to meet no later than May 30, 2015, to discuss additional information that Ameren Missouri should provide about costs and revenues when it files a request to continue its FAC in its next rate case. Ameren Missouri and Public Counsel agree to file their agreed-upon account, subaccount and activity code descriptions in this case by August 1, 2015. With that understanding, they agree the FAC should be continuedin this case.

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273 Reed Surrebuttal, Ex. 41, Pages 14-15, Figures 1 and 2.
274 Mantle Direct, Ex. 400, Pages 9-10, Lines 16-22, 1-2.
275 Mantle Direct, Ex. 400, Pages 17-18, Lines 20-23, 1.
276 Ex. 3.
277 Barnes Rebuttal, Ex. 3, Page 7, Lines 1-16. See also, In the Matter of the Tariffs of Aquila, Inc., Report and Order, File No. ER-20107-0004, 15 Mo. P.S.C. 3d 416, May 17, 2007.

Conclusions of Law:

A. Commission rule 4 CSR 240-3.161 establishes **[*178]** certain filing requirements for electric utilities that are seeking to continue a previously established FAC. Subsection (3) of that rule says:

> When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM [another word for FAC] as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties … the following supporting information as part of, or in addition to, its direct testimony: … (H) A complete explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records; (I) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records.

Decision:

The minimum filings Ameren Missouri made in this case are substantially similar to the filings it made in past rate cases and have never been challenged in the past. **[*179]** That does not mean those minimum filings cannot be improved in the future. Public Counsel and Ameren Missouri's agreement to meet to discuss those requirements is helpful, and the Commission anticipates the filing those parties intend to make by August 1. However, the dispute about the details of those filing is not a sufficient justification for the termination of the FAC. Ameren Missouri and Public Counsel have reached a reasonable settlement of their dispute, and the Commission will take no further action at this time.

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?

Findings of Fact:

1. In her direct testimony, Public Counsel's witness, Lena Mantle, testified that Ameren Missouri did not provide sufficiently detailed information about the magnitude, volatility and the company's ability to manage the costs and revenues that it proposes to include in its FAC. [278]

[*180]

2. Ameren Missouri's witness, Lynn Barnes, offered limited, conclusory information about magnitude, volatility, and ability to manage costs and revenue within the FAC in her direct testimony. [279] In her rebuttal testimony, Barnes disagreed that detailed testimony was required when the utility is merely seeking to continue an existing FAC. [280] However, she then offered much more detailed testimony on that topic. [281]

278 Mantle Direct, Ex. 400, Pages 13-16.
279 Barnes Direct, Ex. 2, Page 5, Lines 6-22.
280 Barnes Rebuttal, Ex. 3, Page 13, Lines 5-10.
281 Barnes Rebuttal, Ex. 3, Pages 21-29.

3. Public Counsel and Ameren Missouri have entered into an objected-to stipulation and agreement which remains their joint position. In that joint position, Public Counsel drops its position that the FAC be eliminated.

Conclusions of Law:

> A. In relevant part, Commission Rule 4 CSR 240-20.090(2)(C) says: In determining which cost components to include in a RAM, the commission will consider, but is not limited to considering, the magnitude of **[*181]** the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of a cost component. …

That regulation does not require the utility to file any specific information, nor does it require the utility to file such information in its direct case.

Decision:

The direct testimony offered by Ameren Missouri provided limited information about the continuing need for the FAC. However, when the sufficiency of that testimony was challenged by Public Counsel, Ameren Missouri responded with more extensive testimony in its rebuttal testimony. Ameren Missouri has provided sufficient information to allow the Commission to find that the FAC should be continued.

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

Findings of Fact:

1. Under the current FAC, Ameren Missouri passes 95 percent of eligible costs and revenues through the FAC. The remaining 5 percent is not passed through the FAC so that Ameren Missouri will retain an incentive to minimize its costs and maximize its revenue. Public Counsel initially urged the Commission to modify **[*182]** the sharing percentages incorporated in the FAC from a 95/5 split to a 90/10 split. [282] Consumers Council did not present any additional testimony on this question, but if the Commission does not totally eliminate the FAC, it advocates for a 50-50 split between rate payers and shareholders.

2. Public Counsel and Ameren Missouri have entered into an objected-to stipulation and agreement which remains their joint position. In that joint position, Public Counsel drops its position that the sharing mechanism be changed.

3. Since Ameren Missouri has had an FAC with a 95/5 sharing split, that 5 percent share amounts to $ 38 million of prudently incurrednet fuel costs that the company will never be able to recover. [283] Even to a company as large as Ameren Missouri, $ 38 million is a significant incentive.

[*183]

4. Giving Ameren Missouri a greater incentive to minimize its costs and maximize its off-system sales would be meaningless if there is little the company can actually do to minimize costs or maximize offsystem sales. In general, Ameren Missouri's fuel costs are dictated by national and international markets that are largely beyond the company's control. [284]

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282 Mantle Direct, Ex. 400, Pages 23-25.
283 Barnes Rebuttal, Ex. 3, Page 46, Lines 1-18.
284 Barnes Rebuttal, Ex. 3, Page 53, Lines 18-22.

5. Most other utilities with FACs do not have a sharing mechanism at all. [285]

6. Ameren Missouri's existing FAC, with the 95/5, has allowed the company to borrow money at a lower cost. Ameren Missouri's witness, Gary Rygh, an investment banker with Barclays, PLC, explains:

> Since 2009 [when the FAC began] Ameren Missouri has raised approximately $ 1.2 billion of debt, and each time the cost **[*184]** of that debt came in below the prevailing index at the time instead of above the cost of the index which was the case in prior Ameren Missouri debt offerings. The savings total about $ 8.6 million in interest costs every year for the life of the bonds that Ameren Missouri issued.

Over the life of the bonds, the savings amount to approximately $ 210 million, which ends up reducing customer rates. [286]

7. Furthermore, changing the sharing percentage without a good reason to do so could erode investor confidence in the utility and in the state regulatory process. [287]

Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), the statute that allows **[*185]** the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

Subsection 4 of that statute sets out some of the provisions that must be included in a fuel adjustment clause as follows:

> The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, includinga general rate proceeding initiated by complaint. The commission may approve such rate schedule after considering all relevant factors which **[*186]** may affect the cost or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:
>
> **(1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;**
>
> (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
>
> (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new

285 Barnes Rebuttal, Ex. 3, Page 52, Lines 7-11.
286 Rygh Rebuttal, Ex. 42, Page 20, Lines 14-21.
287 Barnes Rebuttal, Ex. 3, Page 53, Lines 1-3. See also, Rygh Rebuttal, Ex. 42, Pages 14-19.

> rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. …
>
> (4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-monthintervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate. (emphasis added)

[*187]

Subsection 4(1) is emphasized because that is the key requirement of the statute. Any fuel adjustment clause the Commission allows Ameren Missouri to implement must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity.

B. Subsection 7 of the fuel adjustment clause statute provides the Commission with further guidance, stating the Commission may:

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

Finally, subsection 9 of that statute requires the Commission to promulgate rules to "govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." In compliance with the requirements of the statute, the Commission promulgated Commission Rule 4 CSR 240-3.161, which establishes in detail the procedures for submission, approval, and implementation of a fuel adjustment clause.

C. Specifically, Commission **[*188]** Rule 4 CSR 240-3.161(3) establishes minimum filing requirements for an electric utility that wishes to continue its fuel adjustment clause in a rate case subsequent to the rate case in which the fuel adjustment clause was established. Ameren Missouri has met those filing requirements.

Decision:

There is no sufficient reason to change the existing 95/5 sharing percentage under which Ameren Missouri has operated for the past several years. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds there is no reason to change the sharing percentages in the fuel adjustment clause The Commission will retain the current 95%-5% sharing mechanism included in Ameren Missouri's fuel adjustment clause.

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

Findings of Fact:

1. As will be discussed in more detail in the Conclusions of Law for this issue, the Missouri statutethat allows the Commission to establish a fuel adjustment clause limits the application of the fuel adjustment clause to increases and decreases in fuel and purchased-power costs, including transportation. **[*189]** [288]

288 Section 386.266.1, RSMo (Cum. Supp. 2013).

2. Ameren Missouri currently includes all the MISO wholesale transmission expense it incurs in the fuel adjustment clause, as it was allowed to do by the Commission in the last Ameren Missouri rate case. [289]

3. The Commission's decision in the last rate case was challenged on appeal by several parties, including MIEC. The Commission's decision was upheld, but MIEC'sargument that transmission costs for "purchased power" should not include transmission costs related to self-generated power was found by the court to have been raised for the first time at the appellate **[*190]** court. Thus it was not preserved for appeal and was not addressed by the court. [290] MIEC now raises that argument to the Commission for the first time.

4. By the terms of MISO's tariff, Ameren Missouri, as a result of its participation in the MISO market, sells all the power it generates into the MISO market and then purchases back all the power it needs to serve its native load from the MISO market. [291] That fact is not disputed by any party.

5. In other contexts, Ameren Missouri recognizes the distinctionbetween serving its native load and making off-system sales. For example, when accounting for fuel costs, the company separates fuel expense to serve native load from fuel expense to make off-system sales. **[*191]** [292]

6. In addition to the distinction between serving native load and making off-system sales, Ameren Missouri can also purchase power from MISO or other third parties to supplement its self-generated power. [293] All three scenarios are reasons why Ameren Missouri could incur wholesale transmission costs under FERC Account 565, and these are the transmission costs Ameren Missouri seeks to pass through its FAC. [294]

7. Furthermore, under FERC Order 668, public utilities must net their MISO-cleared load and generation in each hour and report that net amount as either: (i) sale for resale (i.e. off-system sale under account 447 **[*192]** when the utility's cleared generation exceeds the cleared load, or (ii) a power purchase under Account 555 when the utility's cleared load exceeds its cleared generation. That order states "Netting accurately reflects what participants would be recording on their books and records in the absence of the use of an RTO market to serve their native load. " [295] That means that for accounting purposes, Ameren Missouri is required to recognize the distinction between off-system sales, power purchased to supplement its generation and self-generated power.

8. The transmission charges that Ameren Missouri is incurring from MISO are rapidly rising. This is principally due to MISO Schedule 26-A charges, which recover the cost of regionally funded Multi-Value TransmissionProjects (MVPs). The Schedule 26-A rate was zero four years ago, but is expected to be $ 0.58 per MWh in 2015 and is forecasted to rise to $ 1.65 per MWh by 2021. Such an increase could increase **[*193]** the charges to Ameren Missouri by $ 40 million or more. [296]

289 In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service, Report and Order, File No. ER-2012-0166, December 12, 2012.
290 In re Union Elec. Co., 422 S.W.3d 358 (Mo. App. W.D. 2013).
291 Haro Rebuttal, Ex. 14, Page 18, Lines 1-17.
292 Dauphinais Surrebuttal, Ex. 509, Page 9, Lines 1-13. And see Exhibits. 524-528
293 Dauphinais Direct, Ex. 508, Page 4, Lines 12-17.
294 Dauphinais Direct, Ex. 508, Page 4, Lines 9-12, and Page 6, Lines 19-20.
295 Dauphinais Surrebuttal, Ex. 509, Page 10, Lines 7-22, and Ex. 66.
296 Dauphinais Direct, Ex. 508, Page 5, Lines 1-13.

9. Ameren Missouri will be allowed to recover those increased costs in its future rates, but unless those costs are flowed through the FAC it will not be able to recover the increases that occur between rate cases. [297]

10. Only 3.5 percent of the MISO transmission charges incurred by Ameren Missouri to serve its load are related to true purchased power. The other 96.5 percent are incurred to transport power from Ameren Missouri's own generation to serve its own native load. [298]

[*194]

11. The Commission has approved a unanimous stipulation and agreement on Net Base Energy Costs, which establishes how those transmission costs and revenues will be treated as well as the amount of costs that will be added to base rates if MISO transmission charges are not flowed through the FAC. [299]

Conclusions of Law:

A. Section 386.266.1, RSMo (Cum. Supp. 2013), the statute that allows the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings **to reflect increases and [*195] decreases in its prudently incurred fuel and purchased-power costs, including transportation.** The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and costeffectiveness of its fuel and purchased-power procurement activities. (emphasis added)

The emphasized clause limits the costs that can be flowed through the FAC for recovery between rate cases. It allows for recovery of transportation costs, which has been determined to include transmission costs, but such transmission costs are limited to those connected to purchased power costs.

Decision:

The evidence demonstrated that for purposes of operation of the MISO tariff, Ameren Missouri sells all the power it generates into the MISO market and buys back whatever power its needs to serve its native load. From that fact, Ameren Missouri leaps to its conclusion that since it sells all its power to MISO and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view.

The drafters **[*196]** of the FAC statute likely did not envision a situation where a utility would consider all its generation purchased power or off-system sales. In fact, the policy underlying the FAC statute is clear on its face. The statute is meant to insulate the utility from unexpected and uncontrollable fluctuations in transportation costs of purchased power. At the time the statute was drafted, and even in our more complex present-day system, the costs of transporting energy in addition to the energy generated by the utility or energy in excess of what the utility needs to serve it load are the costs that are

297 Dauphinais Direct, Ex. 508, Page 5, Lines 13-21.
298 Dauphinais Direct, Ex. 508, Page 11, Lines 1-18.
299 Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, Filed March 5, 2015. Approved by Order issued on March 19, 2015.

unexpected and out of the utility's control to such an extent that a deviation from traditional rate making is justified.

Therefore, of the three reasons Ameren Missouri incurs transmission costs cited earlier, the costs that should be included in the FAC are 1) costs to transmit electric power it did not generate to its own load (true purchased power) and 2) costs to transmit excess electric power it is selling to third parties to locations outside of MISO (off-system sales). Any other interpretation would expand the reach of the FAC beyond its intent.

E. If the FAC continues, what costs **[*197]** *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?

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 in the test year be included, and what charges and revenues from MISO should be included?

Findings of Fact:

1. In her rebuttal testimony, [300] Public Counsel's witness, Lena Mantle, described in detail what costs and revenues she believed should be flowed through the FAC. The objected-to stipulation and agreement, which is now the joint position of Public Counsel and Ameren Missouri, contains a sample tariff that incorporates the agreement between Public Counsel and the company regarding the costs and revenues to be flowed through the FAC. [301]

[*198]

2. Consumers Council objected to the continuation of the FAC at a higher level, but did not file any testimony or make any argument at this level of granularity.

Conclusions of Law:

The Commission makes no additional conclusions of law for this issue.

Decision:

The sample tariff that was included as part of the joint position of Ameren Missouri and Public Counsel is a reasonable resolution of the question and may be used in so far as it is consistent with the other stipulations and agreements approved by the Commission.

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

This sub-issue was resolved by stipulation and agreement. [302]

15. Noranda Rate Proposal

300 Ex. 401.
301 Non-Unanimous Stipulation and Agreement Regarding Some Fuel Adjustment Clause Issues, filed March 6, 2015.
302 Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, filed on March 5, 2015, Paragraph 7.

A. Is Noranda experiencing a liquidity crisis such that it is likely to cease operations at its New Madrid **[*199]** *smelter if it cannot obtain relief of the sort sought here?*

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?

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

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

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?

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?

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?

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

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

3. If so, can the Commission change the terms of Noranda's service obligation to Ameren Missouri and of Ameren Missouri's service **[*200]** *obligation to Noranda?*

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

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

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

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

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

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

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

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?

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

G. Is it appropriate to remove Noranda as a retail **[*201]** *customer as proposed by Ameren Missouri in its Rebuttal Testimony?*

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?

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?

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

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?

The parties identified many decision points related to Noranda Aluminum's request to receive a rate less than Ameren Missouri's fully distributed cost to serve it. While most of those decision points will need to be addressed, the Commission finds that the entire issue should be addressed as a single issue rather than as several sub-issues.

Findings of Fact:

1. Noranda **[*202]** Aluminum, Inc. operates an aluminum smelter in New Madrid, Missouri, that takes electric service from Ameren Missouri. The smelter has been in operation since 1971 and annually produces approximately 260,000 metric tonnes of aluminum. That amounts to approximately 0.5 percent of the world's aluminum production and about 5 percent of the United States' aluminum production. [303] It employs approximately 900 workers.

2. Noranda uses approximately 4.2 million MegaWatt Hours (MWh) of electricity from Ameren Missouri in a year to make aluminum. Noranda uses 480 MWs of power, 24 hours per day, 7 days per week, 52 weeks per year. Every dollar per MWh change in Ameren Missouri's electricity rate represents a $ 4.2 million change in the pre-tax cash flow of Noranda. [304]

[*203]

3. If Noranda were to close, the Missouri economy would forego approximately $ 9 billion in economic activity over the next twenty-five years. State and local tax revenue would be reduced by approximately $ 350 million over those same twenty-five years. Additional unemployment benefits resulting from the closure could be as high as $ 9.4 million. [305]

4. Noranda also has a tremendous positive impact on the Southeast region of Missouri, one of the poorest regions in the country, providing the few high paying jobs in the area.

5. Noranda is by far Ameren Missouri's largest customer, representing over ten percent of the total retail sales made by the utility. [306]

303 Boyles Direct, Ex. 600, Page 4, Lines 1-14.
304 Boyles Direct, Ex. 600, Page 8, Lines 16-20.
305 Haslag Direct, Ex. 606, Pages 4-5, Lines 11-24, 1-16.

6. Noranda's current average base rate is $ 37.95 per MWh. It is alsosubject **[*204]** to operation of the FAC. Adding the current FAC of $ 4.40 brings the total rate to $ 42.35 per MWh. [307] Noranda's current rate is based on Ameren Missouri's fully allocated cost of service.

7. At the start of this case, Noranda proposed that it be given an initial total rate of $ 32.50 per MWh, to be increased by one percent annually, with that rate structure to remain in place for seven years. [308]

8. On March 9, 2015, just before this issue was heard, several consumer parties joined with Noranda in a non-unanimous stipulation and agreement. [309] Among other things, that stipulation and agreement would set the base rate for Noranda at $ 34.00 per MWh, would exempt Noranda from operation of the FAC, and would increase Noranda's future ratesby half **[*205]** of the percentage increase that Ameren Missouri might obtain in any future rate case. Under the stipulation and agreement, that rate structure would remain in place for ten years.

9. Several parties objected to the stipulation and agreement, and according to the Commission's rule, the stipulation and agreement cannot be approved if any party objects to it. However, the stipulated position may remain the joint position of the parties that signed the stipulation and agreement. The Commission can approve that position if it finds that it is supported by competent and substantial evidence. [310]

10. The first step to determiningwhether either of the reduced rates proposed **[*206]** by Noranda is reasonable is to determine Ameren Missouri's incremental cost to serve Noranda. The experts also refer to incremental cost as Ameren Missouri's avoided cost, meaning the cost that Ameren Missouri would avoid if the Noranda smelter shuts down. [311] Either term means the point at which other ratepayers would benefit from Noranda's presence on the system. At any price above that point, Noranda is making a contribution to Ameren Missouri's fixed costs. [312] At a price below that point, Noranda would not be making a contribution to Ameren Missouri's fixed costs and Ameren Missouri's other ratepayers would be better off without Noranda on the system. [313]

11. Incremental cost is largely influenced by the amount at which Ameren Missouri could sell power on the open market if it could no longer sell that power to Noranda. [314] MIEC'switness, James Dauphinais, testified that the **[*207]** incremental cost would be between $ 28.03 and $ 29.39 per MWh. [315] Staff's witness, Sarah Kliethermes, calculated incremental cost at $ 31.50 per MWh. [316] In his rebuttal testimony, Ameren Missouri's witness, Matt Michels, calculated that point at either $ 32.77 per MWh or $ 34.13 per MWh. [317] At the hearing, he testified that for the period through May of 2017, the incremental cost would likely remain below $ 32.50 per MWh. [318]

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306 Wills Amended Rebuttal, Ex. 53, Page 17, Lines 22-23.
307 Brubaker Direct, Ex. 503, Page 40, Lines 1-9.
308 Boyles Direct, Ex. 600, Page 3, Lines 9-13.
309 The parties that signed the stipulation and agreement were Public Counsel, Noranda, Consumers Council, the Missouri Retailers Association, and MIEC.
310 4 CSR 240-2.115(2)(D).
311 Transcript, Page 2792, Lines 23-25.
312 Transcript, Page 2793, Lines 11-19.
313 Transcript, Page 2793, Lines 7-10.
314 Dauphinais Direct, Ex. 508, Page 16, Lines 13-23.
315 Dauphinais Direct, Ex. 508, Page 17, Lines 20-23.
316 Transcript, Page 3003, Lines 14-22.
317 Michels Amended Rebuttal, Ex. 26, Page 26, Lines 3-12. In his testimony, Michels describes those numbers as the Actual Net Energy Cost, or ANEC. At the hearing explained that ANEC is another name for incremental cost or avoided cost. See Transcript, Pages 2956-2957, Lines 22-25, 1-6.
318 Transcript, Page 2946, Lines 10-18.

11. The actual future incremental cost is uncertain because it depends on the spot energy **[*208]** market prices and annual capacity market prices that will occur in the future. [319] 12. In setting a rate for Noranda, it is important that the rate be set, and remain, above the incremental cost. Below that cost, Noranda would not be covering any part of Ameren Missouri's fixed costs. If Noranda is not making any contribution to fixed costs, there is no justification for allowing it to pay a reduced rate and other ratepayers would be better off if the smelter closed. But, so long as Noranda's rate remains above the incremental cost, Noranda will make a contribution to Ameren Missouri's fixed costs and other customers will pay a lower rate than they would if the smelter closed and went off Ameren Missouri's system. [320]

13. A rate below fully allocated cost of service and above incremental cost of service is only appropriate if the smelter will likely leave AmerenMissouri's system if not allowed a lower electric **[*209]** rate. The future viability of the smelter, and thus the likelihood Ameren Missouri would retain Noranda's load, is largely dependent on the price of aluminum metal on the world market. [321]

14. The world's aluminum price is established by trading on the London Metal Exchange (LME), which includes a U.S. Midwest premium applicable to the aluminum produced at the Noranda smelter. [322]

15. The price of aluminum is highly volatile. Over the last 30 years, the annual percentage changes in price vary from plus 44 percent to minus 33 percent. Large positive changes can be quickly followed by large negative changes. On the whole, the average annual percentage of change in price per year is 15.9 percent. [323] Removing the effect of general inflation, **[*210]** aluminum prices have trended downward since 1982 by an average of 0.3 percent per year. [324]

16. Demand for aluminum tends to be cyclical following the general business cycle and is concentrated in industrial sectors that experience large swings in demand. Swings in demand are amplified [325] by an inventory cycle.

17. The other side of the pricing equation, supply, tends to be inelastic because production capacity cannot be increased in the short term. Occasionally that results in large upward spikes in price. But more commonly supply is unresponsive on the downside. Aluminum smelters need to work at full capacity to minimize costs so small adjustmentsin production are not practical. So producers **[*211]** tend to keep producing even when demand falls, causing inventories to grow and prices to fall. [326]

18. The demand for aluminum is also affected by major price shocks caused by the effects of financial crises, wars, or other major world events. Such crises are certain to occur, but their timing is unpredictable. [327] As a result, forecasts of future aluminum prices can be unreliable. [328] There is little ability to predict the timing of an aluminum cycle beyond a year or two, and even a short-term prediction can be significantly wrong. [329]

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319 Dauphinais Surrebuttal, Ex. 509, Page 25, Lines 14-18.
320 Transcript, Page 3003, Lines 4-13.
321 Fayne Surrebuttal, Ex. 603, Pages 4-5, Lines 9-22, 1-12.
322 Pratt Direct, Ex. 608, Page 3, Lines 5-12.
323 Pratt Direct, Ex. 608, Page 3, Lines 18-24.
324 Pratt Direct, Ex. 608, Page 5, Lines 5-7.
325 Pratt Direct, Ex. 608, Pages 6-7, Lines 15-16, 1-13.
326 Pratt Direct, Ex. 608, Page 7-8, Lines 15-26, 1-10.
327 Pratt Direct, Ex. 608, Pages 9-10, Lines 1-14, 1-2.
328 Pratt Direct, Ex. 608, Pages 16-20.
329 Pratt Surrebuttal, Ex. 609, Page 6, Lines 1-4.

19. To test its ability to survive the volatilityof the aluminum market, Noranda ran several **[*212]** scenarios to "stress test" the smelter's ability to survive. Based on those scenarios, Noranda believes that at some point, unless it receives a lower electric rate, it will exhaust its available credit and cash and will not be able to attract new investment. At that time, it will face a "substantial likelihood of imminent closure." [330]

20. Ameren Missouri criticized the scenarios chosen by Noranda as unrepresentative of the most likely aluminum price forecasts. For example, if Noranda had used the future aluminum prices forecasted by CRU, a commodity sector consultancy, based in London [331] in its scenarios, it would not face a liquidity shortage. [332]

[*213]

21. However, the scenarios are not intended to be forecasts of likely aluminum prices. Rather they are scenarios of what could happen to the smelter if certain aluminum prices develop. [333] And there is a substantial possibility of encountering a significant price downturn in at least one of the next six years. Such a downturn of at least 14.7 percent has occurred in every six-year period since 1982. [334]

22. Experts do rely on scenarios such as these to stress test business plans, assess ability to service loans, and assess ability to pay for power. [335] More importantly, lenders also use such stress testing to determine whether to loan money to a company. Banks and institutional lenders look at scenarios that use conservative forecasts when determining whether it is safe to loan money to a borrower. [336]

[*214]

23. And the need to consider the views of lenders is important because Noranda will need to refinance substantial amounts of debt in the near future. Noranda's revolving asset based loan facility allows the company to obtain cash to run its day to day business operations. It will need to be refinanced in February 2017. [337] In addition, Noranda has a large amount of existing debt that comes due in 2019, which it will need to start refinancing in 2018. [338]

24. Steven Schwartz, an economist who testified for Noranda, explained that Noranda's operating performance in 2015 and expectations about 2016 will "color the way that potential lenders evaluate Noranda." [339] Schwartz further explained: "Creditors will lend Noranda money if its prospects seem likely to improve. Absentprospects **[*215]** for improvement, however, Noranda is an unattractive borrower." [340] If it is to improve its prospects, Noranda immediately needs a lower electric rate to improve its cash flow.

25. Noranda's refinancing difficulties are not just theoretical. Noranda has already been unable to obtain financing for construction of a new rod mill at the New Madrid smelter, causing a further drain on its cash resources. [341]

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330 Boyles Direct, Ex. 600, Page 20, Lines 4-11. See also, Boyles Surrebuttal, Ex. 601, Page 9, Lines 5-23.
331 Humphreys Rebuttal, Ex. 19, Page 3, Lines 8-9.
332 Mudge Rebuttal, Ex. 33, Page 17, Lines 1-7.
333 Pratt Surrebuttal, Ex. 609, Page 6, Lines 14-22.
334 Pratt Surrebuttal, Ex. 609, Page 7, Lines 14-21.
335 Pratt Surrebuttal, Ex. 609, Page 8, Lines 1-11.
336 Harris Surrebuttal, Ex. 605, Page 2, Lines 4-23.
337 Boyles Direct, Ex. 600, Page 21, Lines 17-22.
338 Boyles Direct, Ex. 600, Page 22, Lines 20-23.
339 Schwartz Direct, Ex. 610, Page 17, Lines 19-23.
340 Schwartz, Direct, Ex. 610, Page 17, Lines 13-15.
341 Harris Direct, Ex. 604, Page 3, Lines 13-22.

26. Tom Harris, a banker specializing in leverage finance for corporations, testified for Noranda that based upon his experience as a banker and leveraged financier, "Noranda will be unable to raise capital without first fundamentally improving its cash flow and thereby demonstratingits **[*216]** long-term viability". [342]

27. Noranda is heavily in debt. Its current leverage ratio is nearly seven times its last twelvemonths' earnings. [343] Its debt to equity ratio was at 87 percent at the end of 2013. [344] Moody's and Standard & Poors have recently downgraded Noranda's credit rating to a "highly speculative" grade of risk. [345]

28. In large part, Noranda's current financial plight is due to its heavy debt load, much of which was imposed upon it when it was acquired by Apollo, a private equity firm, in a leveraged buyout transaction in 2007. Apollo borrowed funds to buy Noranda, using the company's assets as collateral. It thenused **[*217]** Noranda's assets to borrow more money to recoup its equity investment in the company and to pay itself additional dividends. [346]

29. Apollo no longer is the sole owner of Noranda. It is now a publicly traded company, although [347] Apollo continues to own a third of its outstanding shares.

30. Electricity is Noranda's largest single cost to make aluminum, comprising 31.8 percent of the total cost. [348] However, electricity is not the only cost to produce electricity, and Noranda has advantages over some other smelters for those costs. [349] If Noranda was granted the $ 32.50 rate it originally requested, it would have the lowest total production cost of any aluminum producer in the country. [350]

[*218]

31. A chart prepared by Noranda witness, Henry Fayne, from data provided by CRU, shows that Noranda's current cost of electricity, at $ 42.50 per MWh, is the second highest among the nine remaining smelters in the United States. At a rate of $ 34 per MWh as proposed in the joint position, its rate would drop to the second lowest in the country.

Conclusions of Law:

A. Commission Rule 4 CSR 240-2.115(2)(D) states:

> A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

B. Section 393.130, RSMo (Cum. Supp. 2013), establishes the requirements for the provision of service by regulated utilities. In general, it requires that all charges for utility service must be "just and reasonable" and not more than allowed by law or order **[*219]** of this Commission. Subsection 2 of that statute further states:

342 Harris Direct, Ex. 604, Page 5, Lines 4-14.
343 Harris Direct, Ex. 604, Page 5, lines 16-21.
344 Mudge Rebuttal, Ex. 33, Page 37, Lines 8-9.
345 Boyles Direct, Ex. 600, Page 23, Lines 10-13.
346 Mudge Rebuttal, Ex. 33, Pages 36-37, Lines 7-18, 1-9.
347 Transcript, Page 2436, Lines 15-25.
348 Schwartz Direct, Ex. 610, Page 8, lines 7-17.
349 Mudge Rebuttal, Ex. 33, Page 49, Lines 8-19.
350 Mudge Rebuttal, Ex. 33, Page 54, Lines 1-3.

> No … electrical corporation … shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand collect or receive from any person or corporation a greater or less compensation for … electricity ..., except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.

Subsection 3 adds:

No … electrical corporation … shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

C. In sum, the statute says that utilities cannot give any "undue or unreasonable" preference to any particular customer, or class of customers. The most cited caseinterpreting the meaning of "undue or unreasonable" **[*220]** preference is *State ex rel. Laundry v. Public Service Commission*, [351] a 1931 decision by the Missouri Supreme Court. The *Laundry* decision arose from a complaint brought before the Commission by two laundry companies contending that they should be allowed to receive water service at the same reduced rate made available to ten manufacturing customers. The court found that the special manufacturing rate had been put in place by the utility to try to draw more business into its service area. In its decision, the Supreme Court found that the laundries were similarly situated to the manufacturing customers and should have been allowed to take water at the reduced manufacturer's rate.

D. The *Laundry* decision merely decides that in the facts described in that case, the laundries should have qualified for the industrial rate. As a result, the Laundry court's views of economic development rates are largelydicta. However, Ameren Missouri cites to an even earlier **[*221]** Commission decision that the *Laundry* court quoted extensively for the proposition that all economic development rates are forbidden by the controlling statute. That Commission decision, *Civic League of St. Louis v. City of St. Louis*, [352] does indeed sharply criticize a water rate imposed by the City of St. Louis for the purpose of encouraging manufacturing enterprises to locate within the city and orders the city to revise those rates to avoid discrimination. However, the criticism was that the rates imposed by the City of St. Louis were set below the cost of service and that they were unreasonably low. In the words of that Commission:

> The establishment of the truth of such averment (that rates to manufacturers were below the cost of service) would reveal not only unquestionably unjust discrimination, but also an unreasonable low rate to this class (the manufacturers), and intolerable oppression upon the general metered water users in that they would be compelled to pay in part for water and service furnished to the favored class. The exercise of power crystallized into legislation that unjustly discriminates betweenusers of water in this manner, in effect deprives those **[*222]** discriminated against of the use of their property without adequate compensation or due process of law, and turns it over to the favored class. It is in essence a species of taxation which takes the private property of the general or public metered water users for the private use of metered water users engaged in manufacturing. This is an abuse of power. [353]

351 34 S.W.2d 37 (Mo 1931)
352 4 Mo. P.S.C. 412 (1916).
353 Civic League at 455-456.

While this decision speaks more directly to the propriety of below-cost rates, it does not necessarily contradict the principle set forth in *Laundry* that the Commission may set preferential rates as long as the preference is reasonably related to the cost of service and is not unduly or unreasonably preferential. [354] No party has identified any subsequent court decision that would go as far as proscribing all economic development or load retention type rates.

[*223]

E. Instead, the courts that have examined this issue have made fact-based inquiries about the statutory proscription against unjust and unreasonable rates and undue or unreasonable preference or [355] disadvantage and this is what the Commission must do here.

F. The evidence in this case shows that Noranda is a unique customer because it uses much more electricity than any other Ameren Missouri customer. It uses that electricity at a very high load factor. It is so unique that it has had its own rate classification for many years. G. Under these circumstances, a rate for Noranda that is less than its fully allocated cost [356], but more than its incremental cost is just and reasonable within the meaning of Section 393.130, RSMo (Cum. Supp. 2013), and is not unduly or unreasonably preferential.

[*224]

Decision:

The Commission will start from a premise that no one really disputes; Noranda is significant to this state, to Ameren Missouri, and to its customers. Noranda's aluminum smelter near New Madrid, Missouri has a huge economic impact on a region of the state, known as the Bootheel, that is economically depressed. It buys staggeringly large amounts of electricity every hour of every day. It is by far Ameren Missouri's largest customer, by itself buying over ten percent of all the electricity Ameren Missouri sells. For many years, Noranda has come before this Commission in every Ameren Missouri rate case and proclaimed that it needs low cost electricity to remain viable. Sometimes the Commission has made decisions that Noranda would find favorable; sometimes it has not. Most recently, less than a year ago, the Commission denied Noranda's request for a reduced rate in a complaint case decided while this case was pending. The Commission denied that request because Noranda failed to meet its burden of proof to show that its current rate was not just and reasonable. But Noranda continued its quest for a lower rate in this rate case, again asking for a rate that is below AmerenMissouri's **[*225]** fully allocated cost to serve. This time the Commission reaches a different result because additional evidence and argument was presented. The additional evidence describes a looming problem for Noranda: it must seek to refinance its existing debt in 2017 and 2019. Noranda presented various scenarios based on the price of aluminum in which it would run out of liquidity (cash and available credit) in the next few years. Those scenarios were criticized a not the most likely to occur, and indeed, they are not intended to be forecasts of aluminum prices. Rather, they are scenarios of what would happen if aluminum prices, which are volatile, were to drop. They are worst case scenarios, but sometimes the worst happens.

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354 "… that principle of equality does forbid any difference in charge which is not based upon difference in service, and, even when based upon difference of service, must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination." Laundry at 45.

355 For example see, State ex rel. City of Joplin v. Pub. Serv. Comm'n, 186 S.W.3d 290 (Mo. App. W.D. 2005).

356 Ameren Missouri's fully allocated cost to serve Noranda would include an allocation of all fixed and variable costs. Noranda's current rate represents its fully allocated cost of service.

Lenders do not look at a borrower and accept promises that everything will be alright if aluminum prices stay as high as the analysts think they will. Investors asked to loan millions of dollars to Noranda will want to know whether the company will be able to survive and pay back its debts even if things do not go as well as planned. Therefore, lenders will stress test the company by looking at unfavorable scenarios. Wall Street agrees that Noranda has a problemas the company's **[*226]** credit rating was recently downgraded to a highly speculative grade of risk. Unless Noranda's cash flow improves, it will likely be unable to refinance its debt and could be forced to close.

In this case, Noranda and the other parties presented evidence sufficient to convince the Commission that Noranda is in danger of discontinuing operations at its New Madrid smelter in the absence of a load retention rate. As a result, it is in the interest of all ratepayers for the Commission to allow Noranda a lower rate to keep it as a customer of Ameren Missouri.

In part, Noranda's precarious financial situation is the result of Apollo Management's decision to milk massive amounts of cash out of the company when it purchased it in 2007. Certainly, Noranda would be better off today if it still had the hundreds of millions of dollars that Apollo borrowed against the assets of the company to give to itself as a special dividend. Apollo no longer owns all the shares of Noranda, but it still owns a third of its shares and can influence its board of directors.

The Commission is not tasked with protecting private interests, and it does not want to reward Apollo's behavior in any way, but it must protect **[*227]** the public interest and set just and reasonable rates. In these circumstances, the public interest encompasses more than the economic concerns of Noranda's employees, the Bootheel, or even the state of Missouri. Specifically, and of greatest import to this Commission's mandate, is the effect of Noranda's closure on Ameren Missouri's other customers. It is important to understand that a customer in St. Louis who has no connection to the Bootheel, will pay higher electric rates if Noranda closes its smelter. Right now, Noranda pays a large portion of Ameren Missouri's fixed costs, costs that will not go away just because Noranda no longer buys electricity. If Noranda closes its smelter, those costs will still be there, but then all Ameren Missouri's other customers will have to pick up the bill for those fixed costs. Thus, Ameren Missouri's other customers will benefit from retaining Noranda's load for Ameren Missouri.

As with everything else involving Noranda, the numbers are large. Noranda argues that the incremental cost to provide power to Noranda, that is the price at which Ameren Missouri could sell that power on the off-system market, is approximately $ 28per MWh. If Noranda **[*228]** pays a rate of $ 36 per MWh and buys 4 million MWhs per year, it would contribute roughly $ 32 million per year towards Ameren Missouri's fixed costs. That is $ 32 million per year that Ameren Missouri's other customers will have to pay if the smelter shuts down. Even if it is assumed that the incremental cost is $ 31.50 per MWh as estimated by Staff, Noranda would still be contributing $ 18 million per year to Ameren Missouri's fixed costs at a rate of $ 36 per MWh. It is true Ameren Missouri's other customers will have to pay extra to make up for the lower rate given to Noranda. But they will have to pay even more if the smelter shuts down and Noranda contributes nothing to Ameren Missouri's fixed costs.

During the hearing, Noranda and several consumer groups, including the Public Counsel, filed a nonunanimous stipulation and agreement to which several parties objected. Because the stipulation and agreement is not unanimous, the Commission cannot approve it. However, the stipulation and agreement remains the joint position of the signatory parties and the Commission can use it as a starting point toward crafting a revised rate for Noranda.

The non-unanimous stipulationand agreement **[*229]** - now the joint position - has some good features, but the Commission is not willing to adopt that position in its entirety. First, the $ 34 per MWh rate proposed is too low. The Commission wants to ensure that Noranda remains competitive with other smelters in this country but does not want to require other customers to support a rate for Noranda that would make it the lowest overall cost smelter in the country.

Second, the ten-year term of the joint position is too long, and is largely illusory. Ten years is a very long time, and the market for electricity may look very different by that time. Attempting to set a rate at that distance, even with escalator clauses and opt-out measures, would not be prudent. Additionally, while a stipulation and agreement can be binding on its signatories for ten years, the Commission cannot bind future Commissions, nor can it preclude future litigants from presenting contrary positions in future rate cases, positions to which the Commission will need to give due consideration.

Since the Commission cannot, and will not, approve the joint position in its entirety, it will need to explain in detail the rate that will be established forservice to Noranda: **[*230]**

1. For a period of three years, a new class of Ameren Missouri electric service ratepayer is authorized for Industrial Aluminum Smelters (IAS).

2. The existing tariff and rates for the LTS class will remain in effect and will be updated in this and future rate cases. If Noranda is not willing to accept the terms of service for the IAS class, or if it violates the conditions set forth in this order, it shall revert to the LTS class.

3. An effective base rate of $ 36.00 per MWh is set for the IAS class, to become effective when new rates go into effect resulting from this case.

4. The new IAS class shall remain subject to the Rider FAC, but any increase in rates due to operation of the Rider FAC shall not exceed $ 2.00 per MWh.

5. The IAS class will not be subject to any rate increase resulting from this case.

6. If Ameren Missouri files any additional rate cases during the three-year existence of the IAS class, it is the intent of this Commission that the IAS class shall receive 50 percent of the system average increase and zero percent of any system average decrease resulting from such rate cases. When the FAC is rebased in such rate proceeding, theIAS shall once again **[*231]** be subject to no more than a $ 2.00 per MWh rate increase due to the Rider FAC. The intent of this Commission is not binding on a future Commission, and such future Commission must decide those cases based on the competent and substantial evidence presented in those cases.

7. The IAS class may retain its existence and rate after the expiration of the three-year term until such time as the Commission establishes a new rate in a general rate proceeding.

8. The IAS class shall be subject to 100 percent of any new surcharge, adjustment mechanism, or any other mechanism that seeks to change or impose new rates between rate cases that takes effect during the three-year term as a result of any new Missouri legislation passed and taking effect after the implementation date of rates resulting from this case.

9. The new IAS class shall not be subject to charges, rates, or surcharges that were not in effect at the implementation date of rates resulting from this case unless specifically enumerated in this order.

10. The resulting deficiency in retail base rate revenue associated with the creation of the IAS class shall be applied among all remaining classes payingfor Ameren Missouri's **[*232]** electric service by changing base rate revenue in proportion to current base rate revenue minus LTS base rate revenue.

Any change in FAC revenues associated with the rate for the IAS class shall flow automatically through the FAC to all remaining classes paying for Ameren Missouri's electric service.

11. As a condition to access the reduced rate structure available to the IAS class, the IAS customer shall provide the Commission's Staff and all parties to this rate case the following information regarding employment at the New Madrid smelter:

> The IAS customer shall file a monthly certification of compliance and quarterly surveillance reports demonstrating that the customer has fulfilled the requirement that employment at the New Madrid smelter meets or exceeds a daily average of 850 fulltime equivalent personnel, either direct employees or contract personnel, and specifically noting instances where the employee count goes below the required average because employees have voluntarily left the customer's employ and the IAS customer is actively seeking to fill those positions, or due to *force majeure* or other events considered by the Commission to be outsidethe IAS customer's **[*233]** control.

The information provided shall be classified as Highly Confidential.

12. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, the IAS customer shall expend $ 35 million in capital, as defined by accounting principles generally accepted in the United States (USGAAP), at the New Madrid smelter in the first year of the term, and shall provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated as Highly Confidential, detailing the nature and scope of work performed to meet the $ 35 million requirement with discrete expenditures accounted for by amount of capital expended.

13. As a condition to access the reduced rate structure available to the new IAS class, and the limited exemption from the FAC, after the first year of the term and through the period that the reduced base rate is in effect, the IAS customer shall expend an annual inflation adjusted $ 35 million in capital as defined by USGAAP at the New Madrid smelter, utilizing the general Consumer Price Index as published by the US Bureau of Labor Statistics, compoundedannually, in the **[*234]** second through final years the reduced base rate is in effect, and a pro-rated inflation-adjusted monthly capital expenditure for each full months the reduced base rate is in effect after the term to the extent there are any partial-year terms, and to provide the Commission Staff and all parties to this rate case an annual surveillance report, which shall be designated Highly Confidential, detailing the nature and scope of work the customer performed to meet the required aggregate capital investment level with discrete expenditures accounted for by amount of capital expended.

14. The IAS customer may elect to invest an amount greater than $ 35 million in capital per year, as defined above, as set forth in paragraphs 12 and 13, with a corresponding reduction in its capital spending obligation in the later years of this period, but in no event shall the IAS customer's capital investment spending credited at the end of each year be less than the compounded inflation-adjusted expenditure requirement for that same period as set forth in paragraphs 12 and 13.

15. As a condition to access the reduced rate structure available to the IAS class, and the limited exemptionfrom the FAC, the **[*235]** IAS customer shall not issue any special dividend, aside from its regular, customary penny per share dividend, until after the first rate case following the expiration of the three-year term.

16. The IAS customer may remain in the IAS class only so long as it remains a stand-alone entity. Membership in the IAS class shall not be assigned to, or assumed by, any successor company,

whether through direct ownership, through a holding company, or otherwise unless such assignment or assumption is approved by the Commission.

17. If the IAS customer believes that it will have to discontinue operations at the New Madrid smelter, it shall provide notice to the Commission and to all parties to this case without delay and as soon as reasonably possible.

18. As a term of the IAS tariff, if the IAS customer should materially fail - as determined by the Commission - to comply with any term or condition required to access the reduced rate provided by this order, the IAS customer shall no longer have access to the rate structure outlined herein, and the customer's rate structure shall revert to the rate structure set for the LTS class at that time, with the resulting differencein retail revenue **[*236]** to be allocated to the benefit of the remaining customer classes in equal proportion to their then-current contribution to retail revenue less the LTS class. Since Ameren Missouri's rates to other customers cannot be changed except through a general rate case, Ameren Missouri shall retain the extra payments collected from Noranda in that event in a regulatory liability to be returned to customers with interest in Ameren Missouri's next general rate case.

19. The Commission Staff or any party to this case may file a petition asking the Commission to determine whether the IAS customer has failed materially to comply with any term or condition required to access the reduced rate structure. Upon the filing of such a petition, the Commission shall hold a hearing or make a determination based on verified pleading within 30 days of the filing of the petition.

20. At such a hearing, the IAS customer shall bear the burden to show that it has not failed to meet any term or condition required to access the IAS class rate structure; why its failure to meet any term or condition required to access the IAS class rate structure is immaterial; or why it should continue to accessthe IAS class **[*237]** rate structure despite a material failure to meet any term or condition required to access the IAS class rate structure.

21. In assessing whether a violation of any term or condition is material, the Commission shall weigh all relevant factors, including:

(a) Any evidence of *force majeure*;

(b) With regard to an alleged violation of an employment level condition, whether the violation is the *de minimis* result of the quarterly-average calculation and whether the IAS customer has actively sought, or is actively seeking, to fill those vacant positions.

In future rate cases, the Commission will once again assess whether Noranda should be allowed to continue to receive a reduced load retention rate, and may continue this rate and these conditions as it finds appropriate based on the competent and substantial evidence presented in such cases, including the economic conditions at the time of that case. In such future rate case, the Commission would consider extending the term of the special rate with additional conditions and consumer protections, including a possible price trigger based on aluminum prices on the London Metals Exchange.

THE COMMISSIONORDERS THAT:

1. **[*238]** The tariff sheets filed by Union Electric Company, d/b/a Ameren Missouri on July 3, 2014, and assigned tariff number YE 2015 0003, are rejected.

2. Union Electric Company, d/b/a Ameren Missouri is authorized to file a tariff sufficient to recover revenues as determined by the Commission in this order.

3. Union Electric Company, d/b/a Ameren Missouri shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than May 15, 2015.

4. The Department of Economic Development's Petition for Leave to File Amicus Brief is denied.

5. This report and order shall become effective on May 12, 2015.

BY THE COMMISSION

R. Kenney, Chm., W. Kenney, Hall, and
Rupp, CC., concur;
Stoll, C., dissents, with separate dissenting opinion attached.

Dated at Jefferson City, Missouri,
on this 29th day of April, 2015.

Dissent:

DISSENTING OPINION OF COMMISSIONER STEPHEN M. STOLL

This commissioner dissents from the majority in its order in Case No. ER-2014-0258 because the order establishes a rate structure that is unlawful, confiscatory, arbitrary and capricious.

A foundational **[*239]** cornerstone of regulatory law is provided by the United States Supreme Court in its decision in Bluefield Water Works v. Public Service Comm'n 262 US. 679 (1923). The order in ER-2014-0258 is remarkably similar to the order overturned by the Supreme Court in Bluefield in that it sets rates for a utility service that are less than the cost of providing the utility service.

In *Bluefield,* Justice Butler wrote:

> "The question in this case is whether the rates prescribed by the commission's order are confiscatory, and therefore beyond legislative power. Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment." [1]

[1] Bluefield Water Works v. Public Service Comm'n 262 U.S. 679, 262 (1923)

The Order lowers the rates of a single customer, **[*240]** Noranda, in a single class, Large Transmission Service, to a level less than the cost of providing service that constitutes 10 percent of the Utility's total load under the pretense that the loss of this single LTS customer would detrimentally affect all other customers of this utility. Therefore, this order would in effect raise the rates of all customers in all classes to subsidize rates of the largest customer to avoid presumably even higher costs should Noranda fail.

It is here that the Order creates a confiscatory dilemma from which it cannot escape: If the losses resulting from the below-service-cost rates approved for Noranda are not spread across other customer classes- residential, commercial and industrial - the Order unlawfully confiscates the value of the service from the Utility; if the Utility is made whole by spreading the subsidized costs of Noranda's below-cost rate to other ratepayers, the money of the customers in all the other classes is being unlawfully confiscated because they are forced to pay costs higher than those actually necessary to provide utility service to them.

In the face of this conundrum, the Order arbitrarily departs from the known and measurable **[*241]** costs the Utility has incurred within the test year established in ER-2014-0258.This departure assumes costs that could be incurred at some point outside the test year if Noranda's management can't make a profit and its board votes to close the New Madrid facility.

Capriciously, this order then builds those assumptions into rates and transmission charges paid by all other customers to subsidize the electric rate for Noranda.

The projections on which these assumptions are based are speculative at best because it is extremely difficult to accurately calculate the benefits or costs of surplus generation that would result from closing the New Madrid plant. The possibilities range from ratepayers bearing the costs of the surplus generation to ratepayers enjoying the profits of the generation if it is sold off-system.

The difficulty of calculating the off-system sales benefits to ratepayers - who would get all profits normally going to the Utility if Noranda fails and that load is sold off-system - becomes impossible in the face of significant, but unknown costs anticipated under new Clean Air Act restrictions.

Absent a crystal ball, we cannot measure the costs or benefits of a rule **[*242]** restricting the C02 output of coal plants used to generate electricity before the rule is completed. The costs of shutting down heavy C02 emitting coal plants netted against costs resulting from the closure of an aluminum smelter that consumes 500 megawatts of electricity every hour cannot be calculated until the C02 limits and costs are finalized.

For more than 100 years this Commission - and the voters of Missouri through adopting prohibitions against electric utilities recovering plant construction costs before the plant is used and useful -have ensured that risks associated with operating utilities are borne, appropriately, by the investors - the owners -of the utilities, and not the rate-paying customers of the utility.

The management of business is, fundamentally, the management of risk at a level acceptable to attract and retain investors necessary to finance the operation of the business. In a United States Supreme Court decision in a case emanating this state, Missouri ex rel Southwestern Bell Telephone Co. v. Public Service Commission of Missouri 262 US 267 (1923) the Court drew a bright line between regulation and management:

> "It must never **[*243]** be forgotten that, while the state may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership." [2]

[2] State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri, 262 U.S. 267, 289 (1923)

This Order arbitrarily goes beyond the Supreme Court's prohibition against this Commission managing utilities it regulates to, in effect, managing an aluminum smelter over which it has no authority. It does this by shifting the risk for an aluminum smelting venture from the investors who own it and profit from it to the backs and pocketbooks of utility customers who neither own nor manage it.

No one, especially this commissioner, disputes the importance of Noranda to this state, Noranda employees and all Missouri citizens. We all want to support this company and to see it succeed in producing a product that is important for our state and nation. This support **[*244]** rightly should be borne not just by one utility or its customers, but by all Missourians. And, the steps Missouri takes to help this company should be more sound than a utility rate structure that is unlawful, arbitrary, capricious and confiscatory.

For this reason, and those reasons outlined above, I DISSENT in ER-2014-0258.

Respectfully,

Stephen M. Stoll, Commissioner

MO Public Service Commission Decisions

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