Exhibit No.:	______________
Issue(s)	**W**NAR/ FAC/SLRE
Witness/Type of Exhibit:	Mantle/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2019-0374

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Filed on Behalf of the Office of the Public Counsel

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

** **

Denotes Highly Confidential and Confidential Information that has been Redacted

March 27, 2020

PUBLIC

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

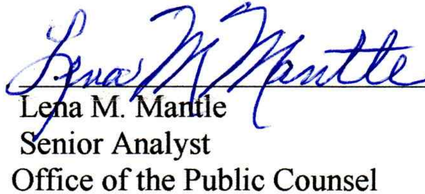
In the Matter of The Empire District Electric Company's Request for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in its Missouri Service Area	)))))	Case No. ER-2019-0374

VERIFICATION OF LENA M. MANTLE

Lena M. Mantle, under penalty of perjury, states:

1. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony in the above-captioned case.

3. My answer to each question in the attached surrebuttal testimony is true and correct to the best of my knowledge, information, and belief.



Lena M. Mantle
Senior Analyst
Office of the Public Counsel

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SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE, P.E.

THE EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2019-0374

1 **Q. What is your name?**
2 A. Lena M. Mantle.

3 **Q. Are you the same Lena M. Mantle who testified in direct and rebuttal in this**
4 **case for the Office of Public Counsel ("OPC")?**
5 A. Yes I am.

6 **Q. What is the purpose of your surrebuttal testimony?**
7 A. I respond to the rebuttal testimony of other parties' witnesses regarding the
8 following issues:
9 1) Empire's fuel adjustment clause ("FAC") sharing mechanism;
10 2) Other aspects of Empire's FAC;
11 3) The treatment of Empire's purchased power agreement ("PPA") with the
12 Missouri Joint Municipal Electric Utilities Commission ("MJMEUC") and
13 Empire's request for an accounting authority order for the loss of
14 municipal wholesale customers;
15 4) Empire's proposed weather normalization rider ("WNR"); and
16 5) Staff's Sales Reconciliation to Levelized Expectations ("SRLE") proposal.

17 **Q. What recommendations are you making in this testimony that are not in**
18 **your direct or rebuttal testimony?**
19 A. In this surrebuttal testimony, in addition to the recommendations in my direct and
20 rebuttal testimonies, I recommend the following for the Commission:

1 1) Define "off-system sales revenues" within Empire's FAC tariff sheets to
2 include all reimbursements for generation facilities operating costs; and
3 2) Prohibit Empire from passing costs from short-term capacity contracts
4 through its FAC by removing the ability to recover any costs of capacity,
5 regardless of the length of the contract, from its FAC tariff sheets.

6 **FAC Sharing Mechanism**

7 **Q. To whom are you responding regarding an appropriate sharing mechanism**
8 **for Empire's FAC?**

9 A. I am responding to Staff witness Brooke Mastrogiannis and Empire witness Todd
10 W. Tarter. Ms. Mastrogiannis responds to my recommendation to change
11 Empire's FAC sharing mechanism from 95/5 to 85/15 by testifying, "Staff has
12 found no sufficient reason to support a recommendation to change the sharing
13 mechanism at this time."[1] Mr. Tarter responds by testifying, "OPC's
14 recommendation introduces more risk to both the Company and its customers
15 regarding energy cost recovery. A shift to OPC's recommended FAC sharing
16 level begins to undermine the fundamental purpose of the FAC and starts to erode
17 the benefits that the FAC provides."[2]

18 **Q. What did Ms. Mastrogiannis provide to support her position?**

19 A. Ms. Mastrogiannis provided a quote from an April 29, 2015, Commission *Report*
20 *and Order* in Case No. ER-2014-0258. Ms. Mastrogiannis also attached to her
21 testimony Schedule BM-r1 which she, in a footnote,[3] testifies contains each rate
22 case where a non-utility party proposed a deviation from the current mechanism.
23 Her schedule is simply a reprint of that provided by Union Electric Company
24 d/b/a Ameren Missouri ("Ameren Missouri") witness Andrew Meyer in his

[1] Page 3.
[2] Page 5.
[3] Footnote 2 on page 3.

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1 rebuttal testimony in Case No. ER-2019-0335. However, she failed to correct the
2 schedule where it mistakenly lists Case No. ER-2007-0002 as a case where the
3 Commission approved a FAC

4 **Q. Would you like to respond to this schedule?**
5 A. With the exception of the first cases listed, this table is what it purports to be - a
6 listing of all the cases when a *non-utility party* requested a sharing mechanism
7 different from 95/5. However it is a very one-sided list. It does not show the
8 position of the *utilities* in these same cases. In many of the cases the utility asked
9 the Commission to not include any incentive mechanism in their FACs.
10 In addition, this table does not show that in every general rate case after
11 the Commission first authorized the electric utility to have a FAC, the electric
12 utility, when it filed the case, asked for the Commission to modify their FAC in
13 some manner. Typically the requested modification was to add more costs to the
14 FAC, as Empire is requesting in this case.

15 **Q. Ms. Mastrogiannis quoted a Commission decision in Case No. ER-2014-0258**
16 **to support her position. Has any information been brought before the**
17 **Commission since the Commission issued its report and order in Case No.**
18 **ER-2014-0258 that provides sufficient reason to support a change in**
19 **Empire's FAC sharing mechanism?**
20 A. Yes. OPC presented to the Commission, in Case No. EO-2017-0065,[4]
21 information showing that, from the time Empire was granted a FAC through the
22 filing of surrebuttal testimony in that case in July 2017, Empire's hedging policy
23 resulted in losses of over $95 million. Hedging losses are one of the costs that
24 flow through Empire's FAC for recovery from Empire's customers.

[4] *In the Matter of the Sixth Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of The Empire District Electric Company*

Public

1 **Q. Did the Commission find Empire imprudent for the hedging losses in that**
2 **case?**
3 A. No.

4 **Q. Why then are these hedging losses a reason for the Commission to change**
5 **Empire's FAC sharing mechanism?**
6 A. Because the FAC's efficiency incentive is meant to encourage the utility to
7 improve and be more cost-effective with its prudent behavior. Section 386.266
8 RSMo provides two important tools for the Commission to use to protect a
9 utility's customers. One tool is prudence audits. Section 386.266.5(4) requires
10 prudence audits no less frequently than every eighteen months. The other tool
11 available to the Commission, with the specific intent to entice electric utilities to
12 be not just prudent but more efficient and cost effective, is the provision that
13 allows the Commission to include in the FAC "features designed to provide the
14 electrical corporation with incentives to improve the efficiency and cost-
15 effectiveness of its fuel and purchased-power procurement activities."[5]
16 The distinction between these two tools shows that there is a difference
17 between prudence and cost-effectiveness. For example, I want to drive to the
18 beach. However my car is 12 years old and has over 160,000 miles on it. I decide
19 it is likely to breakdown on the drive. So it is a prudent decision to rent a car, but
20 I still have a choice. I can rent a Mustang convertible or a Ford Focus. Both are
21 prudent. One is much more efficient and cost-effective than the other.

22 **Q. Would Empire have acted different during this time period if the sharing**
23 **had been 85/15 instead of 95/5?**

[5] Section 386.266.1 RSMo.

1 A. I believe so. It is very likely that Empire would have reduced the hedging losses
2 if, at that time, it was required to absorb 15 percent of the losses ($14.3 million)[6]
3 instead of the 5 percent ($4.8 million)[7] it absorbed.

4 **Q. Has Empire changed its hedging strategy since the Commission issued its**
5 **order in the prudence case?**

6 A. Yes, Empire has changed its hedging strategy after the Commission's issued its
7 order in the FAC prudence case, Case No. EO-2017-0065. OPC witness John S.
8 Riley, in his rebuttal testimony in this case describes how Empire has changed its
9 Energy Risk Management Policy which has resulted in only ** ** in
10 hedging losses a year instead of the ** ** a year it lost from 2008
11 through 2017.[8]

12 **Q. If Empire is hedging more efficiently, then why does the Commission need to**
13 **change the incentive mechanism to 85/15?**

14 A. Hedging costs are just one of many costs that are included in Empire's FAC.
15 There are numerous other costs that may be reduced through Empire's actions if
16 Empire had to absorb more of any increase in costs. Empire used the same
17 hedging policy from 2001 through 2018. It only changed its policy after OPC
18 brought its hedging practices before the Commission. It is my belief that Empire
19 would still be operating under its 2001 policy absent that prudence case.

20 In addition, the 85/15 sharing mechanism would increase the profitability
21 of Empire if it managed to lower its costs below the costs in its FAC net base
22 energy ("NBEC").

[6] 15% of $95 million.
[7] 5% of $95 million.
[8] Rebuttal testimony of OPC witness John R. Riley, page 4.

Public

1 In this case, I am asking the Commission to be proactive and provide an
2 incentive for Empire to not only act prudently, but also be more efficient in all of
3 its fuel and purchased power decisions.

4 **Q. You have discussed Staff's response to your recommendation to change the**
5 **sharing mechanism. What was Empire's response?**

6 A. Empire witness Todd W. Tarter provided rebuttal testimony that: 1) increasing the
7 sharing mechanism would be a penalty for not forecasting energy prices correctly
8 in the rate case; [9] 2) a small change in the amount of costs Empire would be asked
9 to absorb can be significant;[10] and, 3) placing more risk on Empire's energy
10 forecast would require Empire to place more emphasis on an "equitable
11 establishment" of the NBEC.[11]

12 **Q. Would a change in the sharing mechanism be a penalty?**

13 A. No, it would provide a greater incentive for Empire to be more cost-effective and
14 efficient in its fuel and purchase power procurement activities as allowed by law.
15 While some of the fuel and purchased power costs are not in Empire's control,
16 Empire does have control over some of the costs. One such example is the
17 hedging costs discussed above. In addition, Empire makes unit commitment
18 decisions. Empire makes decisions on entering into or offering purchased power
19 agreements. These are just a few of the many ways Empire has influence over its
20 fuel and purchased power costs.

21 In making the statement that a change would be a penalty, Mr. Tarter
22 assumes that the NBEC set in the rate case will always be below what will

[9] Page 5.
[10] Page 6.
[11] *Id.*

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1 actually be incurred.[12] However, an increase in the percentage of costs allocated
2 to Empire allows it an earnings opportunity if it manages fuel and purchase power
3 costs in a manner that is below the NBEC set in the rate case.

4 **Q. What is your response to Mr. Tarter's testimony that changing the sharing**
5 **percentage is a penalty for not forecasting energy prices correctly?**

6 A. Mr. Tarter's statement that changing the sharing is a penalty for not forecasting
7 energy prices correctly is in direct contrast to Empire's filing in File No.
8 EA-2019-0010.[13] In this case, Empire was so sure of its ability to forecast energy
9 prices *over the next 30 years* that it assured the Commission that its customers
10 would benefit from the Commission granting it a Certificate of Convenience and
11 Necessity ("CCN") for 600 megawatts ("MW") of wind generation. These wind
12 projects are not being built because customers need additional generation, but on
13 Empire's projections that the wind projects will generate more revenue from the
14 energy market prices over the life of the projects than the projects would cost.
15 Empire is spending upwards of $600 million of its customers' dollars based on
16 forecasted energy prices over the next 30 years.

17 And yet in this case, when the FAC are likely to be changed based on new
18 energy market prices in about one year from when it goes into effect, Mr. Tarter
19 believes increasing the sharing mechanism to 85/15 would be a penalty for not
20 forecasting energy prices correctly for that short time span.

21 **Q. How do you respond to Mr. Tarter's testimony that a small change in the**
22 **amount of costs Empire would be asked to absorb can be significant?**

---

[12] As I stated in my direct testimony, the inclusion of the Asbury plant fuel costs in the NBEC will instantly result in an inaccurate NBEC since the Asbury plant was retired prior to when the NBEC will go into effect. The actual costs are higher than the estimate now that the Asbury plant has been retired.

[13] *In the Matter of the Application of The Empire District Electric Company for Certificates of Convenience and Necessity Related to Wind Generation Facilities*.

1 A. Mr. Tarter is concerned that Empire may have to absorb an additional $900,000 a
2 year. The magnitude of the difference between the amount Empire will be
3 requesting from its customers (return on and of $600,000,000 over 30 years) for
4 the wind projects vs. the amount Mr. Tarter states is significant for Empire to
5 absorb ($900,000 a year) is significant.

6 And again, Mr. Tarter assumes that the actual FAC costs will always be
7 greater than the NBEC set in the case. Changing the sharing mechanism to 85/15
8 provides an avenue for Empire to keep more of the amount below the NBEC if
9 Empire can reduce its FAC costs.

10 **Q. How much of the FAC costs allocated to Missouri retail customers has**
11 **Empire absorbed since the Commission authorized it to have a FAC?**

12 A. Schedule LMM-S-1 shows Empire's FAC costs and the allocation of those costs
13 between Empire's Missouri retail customers and Empire since when the
14 Commission authorized Empire to use a FAC in 2008. The information on this
15 schedule is from Empire's FAC rate tariff sheets filed with the Commission. This
16 information shows that, in the past 11 years, Empire has allocated $1.3 billion in
17 FAC costs to Missouri retail customers. The customers have paid 99.9% of these
18 costs. Empire has absorbed less than $1.5 million or 0.1 percent of the total FAC
19 costs over those 11 years. These means, on average over the last 11 years, Empire
20 has absorbed less than $150,000 a year.

21 **Q. Finally, how do you respond to Mr. Tarter's third point that changing the**
22 **mechanism to 85/15 places more risk on Empire's energy forecast which**
23 **would require Empire to place more emphasis on an "equitable**
24 **establishment" of the NBEC?**

25 A. I am not sure what Mr. Tarter is referring to when he refers to an "equitable
26 establishment" of the NBEC. It seems that Mr. Tarter does not believe in the fuel

1 and purchased power costs that he has testified to as being accurate with a sharing
2 mechanism of 95/5. If changing the sharing to 85/15 would incentivize Empire to
3 place more emphasis on an equitable NBEC, it should be an incentive for it to
4 review all of the ways it has to impact FAC costs in a more cost-effective manner.
5 OPC has always worked in rate cases with an objective of setting the most
6 accurate NBEC as possible. This is why OPC is requesting that the Commission
7 recognize the impact of the retirement of the Asbury plant on the FAC costs in
8 this rate case and that the NBEC be set without the costs and revenues associated
9 with the Asbury plant. An NBEC with the Asbury plant costs and revenues is
10 wrong before it is even approved. That is not equitable.

11 **Q. Is there anything else in Mr. Tarter's rebuttal testimony to which you would**
12 **like to respond?**
13 A. Yes. On page 5 of his rebuttal testimony, Mr. Tarter testifies, "OPC's
14 recommendation introduces more risk to both the Company and its customers
15 regarding energy cost recovery. A shift to OPC's recommended FAC sharing
16 level begins to undermine the fundamental purpose of the FAC and starts to erode
17 the benefits the FAC provides."

18 **Q. What is your response to this testimony?**
19 A. First of all, I do not see how it introduces more risk to the customers. Yes, the
20 customers would see a lower *percentage* of any costs decreases but increases in
21 savings that may be incentivized is likely to mean that the *dollar* amount that is
22 returned to the customers is greater than what they would have received with the
23 95/5 sharing. It does increase the risk to Empire but Empire has the ability to
24 influence FAC costs and the customers do not. The Commission has always been
25 clear that a FAC should not insulate electric utilities from all risk whatsoever.
26 Since the FAC was established, Empire has recovered over 99.9% of its FAC

1 costs placing almost all of the risk associated with its FAC costs on the customers
2 and very little on Empire (0.1%). OPC's modest proposal would shift 0.2% more
3 risk to Empire still leaving 99.7% of the risk on the customers.

4 Secondly, Mr. Tarter seems to be treating Empire's FAC and its 95/5
5 sharing mechanism as a right, not a privilege. The General Assembly had the
6 foresight to allow the Commission the ability to approve, modify or reject a FAC
7 for an electric utility in every general rate case, making the FAC a privilege for the
8 utility, not a right. The General Assembly also included in Section 386.266.1
9 RSMo the ability for the Commission to provide an incentive for the utility to
10 increase the efficiency and cost-effectiveness of its fuel and purchased power
11 procurement activities. If the General Assembly intended for a FAC to be rigid
12 and never change, it would not have included these important customer protection
13 provisions nor provided Commission discretion to the contrary.

14 <u>**MJMEUC Purchased Power Agreement and Empire's FAC**</u>

15 **Q. How did Empire respond to your direct testimony regarding how the**
16 **Missouri Joint Municipal Electric Utility Commission ("MJMEUC")**
17 **purchased power agreement ("PPA") is treated by its FAC?**

18 A. Empire witness Aaron J. Doll responded that it was Empire's understanding that
19 the FAC tariff sheets would not allow the revenues collected from the MJMEUC
20 PPA to flow through the FAC because the tariff sheet defines off-system sales
21 revenue ("OSSR") as "Revenue from Off-System Sales (Excluding revenue from
22 full and partial requirement sales to municipalities)."

23 **Q. Do you agree?**

24 A. No. The tariff language Mr. Doll is depending on refers to FERC contracts
25 Empire currently has with three Missouri municipalities. From my reading as an
26 engineer and past experience with how contracts interact with FACs, the contract

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1 between Empire and MJMEUC is a purchased power agreement which ***
2
3
4 ***

5 There is a past Commission case, Case No. EO-2010-0255, where the
6 Commission determined that Ameren Missouri had inaccurately interpreted
7 similar tariff sheet language to prevent the revenues from a PPA from flowing
8 back to its customers through its FAC. I have attached the Commission's *Report*
9 *and Order*[14] in this case as Schedule LMM-S-2.

10 Ameren Missouri entered into contracts with American Electric Power
11 Operating Companies ("AEP") and Wabash Valley Power Association, Inc.
12 ("Wabash") after it was first granted a FAC. Ameren Missouri chose to not flow
13 the revenues from these contracts through its FAC by choosing to define AEP and
14 Wabash as partial requirement customers. In its first prudence audit report of
15 Ameren Missouri's FAC filed in Case No. EO-2010-0255, Staff concluded that
16 Ameren Missouri acted imprudently by not flowing these revenues through its
17 FAC. The Commission agreed and found that the definition of off-system sales in
18 Ameren Missouri's FAC tariff sheets was intended to exclude requirement sales
19 to municipalities.[15] Additionally, the Commission found that Ameren Missouri's
20 contracts with AEP and Wabash, were not contracts with municipalities as
21 intended by the FAC tariff sheet language and therefore did not comply with the
22 tariff language.[16] Empire's situation is directly comparable to what Ameren
23 Missouri had done

[14] This *Report and Order* was upheld in the Western District appeals court, *State ex rel. Union Elec. Co. v. PSC*, 399 S.W.3d 467 (Mo. App. 2013) .
[15] Page 20.
[16] *Id*.

Public

Q. How is the MJMEUC contract different from full and partial requirement sales to municipalities?

A. It is my understanding that the cities are taking service from Empire through Empire's Federal Energy Regulatory Commission ("FERC") open access transmission tariff through May 31, 2020. The contract that will go into effect on June 1, 2020 is with MJMEUC, not the municipalities. It is signed by Duncan Kincheloe, the President and CEO of MJMEUC, not representatives of any municipalities. This contract allows ***

***

Q. Will the reimbursement MJMEUC provides to Empire for its fuel costs offset the costs that will be charged to Empire's retail customers through its FAC?

A. In its response to OPC data request 8042, attached as Schedule LMM-S-3, Empire states "Revenue received to reflect the share of those eligible costs will be allocated to a 447 account and returned to customers via the fuel adjustment clause." However, Empire's proposed FAC tariff sheets do not include any provision for this type of revenue to flow through Empire's FAC. These are the revenues recorded in FERC account 447 that Empire's proposed tariff sheets include in its FAC.

> The following revenues or costs reflected in FERC Account 447: all revenues from off –system sales and SPP energy and operating market including (see Note A. below):
> i. Energy;
> ii. Capacity Charges associated with Contracts shorter than 1 year;

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iii. Ancillary Services including;
a. Regulating Reserve Service
b. Energy Imbalance Service
c. Spinning Reserve Service
d. Supplemental Reserve Service
iv. Revenue Sufficiency;
v. Losses;
vi. Revenue Neutrality;
vii. Demand Reduction;
viii. Grandfathered Agreements;
ix. Pseudo-tie;
x. Miscellaneous; and
xi. Hedging.
(Note A omitted)

I see nothing in this tariff sheet language stating the fuel cost reimbursement recorded in FERC account 447 would flow back to the customers through Empire's FAC.

Q. Should this reimbursement of costs be included in Empire's FAC tariff sheets?

A. Yes. I have learned over time that to prevent disagreements in FAC filings, it is important to have clear, defined FAC tariff sheet language describing all costs and revenues that are included in the utility's FAC.

Q. Do you have any recommended language to be added to Empire's FAC tariff sheets that would require the fuel costs for which MJMEUC reimburses Empire to flow through Empire's FAC?

A. I am not an accountant and I do not know if FERC account 447 is the correct place to record these revenues. However, assuming these revenues from the MJMEUC contract would be recorded in FERC account 447 as Empire described in its response to OPC data request 8042, I recommend the OSSR section of Empire's FAC tariff sheets read as follows.

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1 The following revenues or costs reflected in FERC Account 447:
2 i. All generation facilities operating costs reimbursements; and
3 ii. All revenues from off–system sales and SPP energy and
4 operating market including (see Note A. below):
5 a. Energy;
6 b. Capacity Charges associated with Contracts shorter than 1
7 year;
8 c. Ancillary Services including;
9 • Regulating Reserve Service
10 • Energy Imbalance Service
11 • Spinning Reserve Service
12 • Supplemental Reserve Service
13 d. Revenue Sufficiency;
14 e. Losses;
15 f. Revenue Neutrality;
16 g. Demand Reduction;
17 h. Grandfathered Agreements;
18 i. Pseudo-tie;
19 j. Miscellaneous; and
20 k. Hedging.
21 (Note A to follow)

22 If it is determined by Empire that these revenues should be recorded in a different
23 FERC account, Empire should provide to the parties of this case for their review
24 language that is applicable to its accounting treatment.

25 **Q. Will Empire still have any full or partial requirement sales to any**
26 **municipalities in Missouri after May 31, 2020?**
27 A. It is my understanding that Empire will still provide full requirement sales to the
28 City of Lockwood. The revenues from Empire's agreement with the City of
29 Lockwood will not flow through Empire's FAC, and neither will the associated
30 costs. Therefore the tariff sheet language referring to full and partial sales to
31 municipalities should remain in Empire's FAC tariff sheets.

32 **Q. What are the implications of the timing of Empire's contract with MJMEUC**
33 **and this rate case?**

1 A. The contract is going into effect four months after the true-up cut-off date of
2 January 31, 2020. Because of this timing, both Staff and Empire included the
3 load and energy requirements of the cities as "wholesale customers" in
4 determining their energy and demand jurisdictional allocation factors. Many
5 different costs are allocated based on these factors. Staff and Empire considered
6 revenues from the cities below the line, just as they have been treated in past rate
7 cases.

8 However, Empire's FAC is designed to capture costs and revenues on a
9 going-forward basis. Beginning June 1, 2020, revenues from the sale of energy
10 from the contract with MJMEUC should flow through the OSSR component of
11 Empire's FAC. However, because it is a contract with a duration of greater than a
12 year, the revenues from the sale of capacity should not flow through Empire's
13 FAC. Empire, not its customers, will receive these revenues for capacity until the
14 next rate case. In Empire's next rate case, which I understand could be filed soon
15 after the conclusion of this rate case, the retail/wholesale jurisdictional allocation
16 factors should not include the loads of these cities as FERC wholesale customers,
17 resulting in more costs being allocated to Empire's Missouri retail customers.
18 Estimates of revenue from both the energy and capacity sales of this contract will
19 offset this increase when determining Empire's revenue requirement in its next
20 rate case.

21 **Q. Will the revenues Empire receives from the capacity charges in this PPA**
22 **cover all of Empire's costs that Empire now allocates to its municipal**
23 **contracts?**

24 A. I do not know. Empire witness Sheri Richard asked for an accounting authority
25 order or a discrete out-of-period adjustment to track the impact of the switch from
26 Empire serving these the cities through a FERC OATT to a contract with
27 MJMEUC and stated that the switch would significantly affect "the cost of service

1 allocations among Liberty-Empire's jurisdictions."[17] However, Ms. Richard does
2 not provide an estimate of these effects.

3 **Q. Should the Commission grant Empire an accounting authority order or**
4 **make a discrete out-of-pocket adjustment for these costs in this case?**
5 A. No. I have not seen any testimony where Empire has provided an estimate of the
6 cost and, therefore, it has not shown that these costs are material.

7 **Q. What other changes, if any, need to be made to Empire's FAC tariff sheets to**
8 **address Empire's contract with MJMEUC?**
9 A. The contract provides revenue to Empire from MJMEUC for ***
10 *** That revenue should be recorded in
11 FERC account 447 as revenue from off-system sales and should flow through
12 Empire's FAC, given Empire's proposed FAC tariff sheet language, so no change
13 in Empire's FAC tariff sheets is needed to account for this revenue.
14 There will be an impact in the calculation of the FAC rates beginning with
15 the accumulation period ending August 31, 2020. At the time the revenues from
16 the contract begin to flow through Empire's FAC, there should be a corresponding
17 change in the calculation of the jurisdictional factor ("J factor") in the tariff sheet
18 used to calculate FAC charges. I expect the J factor to increase by approximately
19 five percent, meaning that an additional five percent of the fuel and purchased
20 power costs would flow through Empire's FAC for recovery/return to Empire's
21 Missouri customers through FAC charges.[18]

22 **Q. Would you summarize this section of your surrebuttal testimony?**

---

[17] Corrected direct testimony of Empire witness Sheri Richard, page 27.
[18] The J factor will be similar to the current J factor for the months of March, April, and May 2020. The J factor will increase approximately five percent in June, July and August 2020. Thus for the six month accumulation period ending August 31, 2020, the J factor will increase less than 5 percent. The J factor for subsequent accumulation periods should be approximately five percent higher than past J factors.

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1 A. Empire's FAC is a mechanism that is used to collect or return the difference
2 between actual costs and a base cost set in a rate case determined on historical,
3 normalized costs. Beginning June 1, 2020, Empire will no longer be serving three
4 of its current municipal customers. However Empire has a PPA that will begin
5 when the service to those municipal customers ends. It is Empire's belief that it
6 will not have to pass some of the revenues through its FAC to its customers from
7 a PPA that will start after the true-up date of this case, based on its interpretation
8 of its current (and proposed) tariff sheet language. OPC disagrees with this
9 interpretation and recommends the Commission retain Empire's current FAC
10 tariff sheet language which would require Empire to flow these revenues through
11 its FAC.[19]

12 The contract includes revenues to offset fuel costs. Empire states that it
13 intends to flow these revenues through its FAC. However, Empire's current FAC
14 tariff sheet language would not include these revenues. Therefore, I have
15 recommended FAC tariff sheet language that would allow the inclusion of these
16 revenues in Empire's FAC.

17 Empire has not provided an estimate of the cost impact of losing the
18 municipal loads with an offset of the revenue from the sale of capacity in the
19 MJMEUC PPA. Therefore, the Commission should neither grant Empire an
20 accounting authority order nor allow for a discrete out-of-period adjustment for
21 the loss of these municipal customers. It can be appropriately accounted for in
22 Empire's next rate case.

23 **<u>Other FAC issues</u>**

24 **Q. Are there other FAC issues that were raised in rebuttal testimony that you**
25 **would like to address?**

[19] If the sharing mechanism stays the same (95/5), Empire would keep five percent of the energy revenue. If the Commission adopts the 85/15 sharing mechanism proposed by OPC, Empire would keep 15 percent of

Public

1 A. Yes. I would like to respond to Empire witness Doll's response in his rebuttal
2 testimony to my recommendations regarding wind project costs, Empire witness
3 Tarter's rebuttal testimony regarding setting the FAC base in this case, and Staff
4 witness J Luebbert's rebuttal testimony regarding the potential for Empire to incur
5 some short term capacity charges due to the retirement of Empire's Asbury plant.

6 **Q. What were your recommendations to which Empire witness Doll responded?**

7 A. In my direct testimony, I provided the following four recommendations regarding
8 the treatment of costs and revenues Empire may receive/incur from Empire's wind
9 projects prior to Empire's next rate case:[20]

10 With respect to Empire's wind projects, the Commission order
11 Empire to:

12 a. Not pass any direct or indirect costs connected with the
13 wind projects through its FAC until a Commission order
14 expressly allows it;
15 b. Develop policies and procedures to prevent wind project
16 costs from being included in the FAC until a Commission
17 order expressly allows it;
18 c. Submit those policies and detailed documentation of the
19 procedures it has developed to the Commission Staff and
20 OPC by September 1, 2020; and
21 d. Include language in the FAC tariff sheet explicitly stating
22 that no costs associated with the wind projects shall pass
23 through the FAC.

24 In his rebuttal testimony, Empire witness Aaron J. Doll states that Empire agrees
25 to the recommendation that it be ordered not to pass any direct or indirect costs
26 connected with the wind projects through its FAC until a Commission order
27 expressly allows it. However, he states that Empire opposes my recommendations
28 that Empire develop policies to prevent wind project costs from being included in
29 its FAC, providing such policies to Staff and OPC, and including language in the

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the energy revenues.

Public

1 FAC tariff sheets that explicitly state no wind project costs will pass through
2 Empire's FAC.[21]

3 **Q. If Mr. Doll agrees with the recommendation that the Commission order**
4 **Empire to not pass any direct or indirect costs connected with the wind**
5 **projects through its FAC until a Commission order expressly allows it, why**
6 **does he oppose these other recommendations?**

7 A. Mr. Doll states that Empire opposes these recommendations as unnecessary and
8 premature.

9 **Q. Are they?**

10 A. No. Empire is currently expending funds on the wind projects, and will continue
11 to do so through the next rate case. Creating a policy that assures that there will
12 be a tracking of the expenditures to ensure that none of the costs prematurely flow
13 through Empire's FAC is not unnecessary. Empire has requested that its FAC
14 tariff sheets include language that keeps any wind project revenues from flowing
15 through its FAC. If it does not intend to flow any wind project revenues through
16 its FAC, then it should be okay with language that complementarily prevents any
17 wind project costs from flowing through its FAC and should also be willing to
18 develop policies to prevent this from occurring.

19 **Q. What testimony does Empire witness Tarter provide regarding the setting of**
20 **the FAC base to which you would like to respond?**

21 A. Empire witness Tarter testifies in response to Staff's FAC base estimate that the
22 base factor "should be based on an annualized and normalized forecast with
23 consistent assumptions that presents *the best estimate of what energy costs will be*

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[20] Page 3.
[21] Page 10.

Public

1 *when rates from this case become effective*."[22] (emphasis added) I agree with Mr.
2 Tarter. For this reason, I recommend the Commission order both Staff and
3 Empire to determine Empire's FAC base costs without its Asbury plant. As noted
4 in Empire witness Doll's rebuttal testimony, Empire retired its Asbury plant on
5 March 1, 2020,[23] prior to when the parties prefiled rebuttal testimony in this case.
6 In addition, as provided in OPC witness John A. Robinett's surrebutal testimony,
7 Asbury ** ** To get the
8 best estimate of what energy costs will be when rates from this case become
9 effective, which Mr. Tarter states is an objective of Empire, costs and revenues
10 from the Asbury plant should not be included in the base factor of Empire's FAC.

11 **Q. What is your concern regarding Staff witness J Luebbert's rebuttal**
12 **testimony regarding the potential for Empire to purchase short-term**
13 **capacity?**
14 A. Staff witness J Luebbert provides rebuttal testimony that Staff is concerned that
15 the timing of the retirement of Asbury, the addition of a new capacity agreement
16 with a customer, and the new generation resources not being available could lead
17 to a SPP resource adequacy shortfall and require Empire to enter into potentially
18 expensive short-term capacity contracts to cover this shortfall.[24] He then lists
19 several recommendations to the Commission in an effort to have the information
20 available to Staff for a future prudence audit. I would like to add a
21 recommendation that the Commission prohibit Empire from passing costs from
22 short-term capacity contracts through its FAC by removing from its FAC tariff
23 sheets its ability to recover any costs of capacity, regardless of the length of the
24 contract.

[22] Page 14.
[23] Page 2.
[24] Page 3.

Public

1 **Q. What additional FAC tariff sheet language are you recommending to effect**
2 **this change?**
3 A. The inclusion of costs for purchases of short-term capacity should be removed
4 from the definition of purchased power costs ("PP") that are included in Empire's
5 FAC. This is found in part B on Empire's proposed FAC tariff sheet 17w. I
6 recommend part B be replaced with the following:

7 B. Non-SPP costs or revenue as follows:
8 i. If received from a centrally administered market (e.g. PJM /
9 MISO), costs or revenues of an equivalent nature to those
10 identified for the SPP costs or revenues specified in sub
11 part A of part 1 above; and
12 ii. If not received from a centrally administered market:, costs
13 for purchases of energy; and

14 <u>**Weather Normalization Rider**</u>

15 **Q. Did any Empire witness testify in rebuttal regarding Empire's proposed**
16 **Weather Normalization Rider ("WNR")?**
17 A. Yes. Empire witness Timothy S. Lyons, in his class cost-of-service rebuttal
18 testimony, proposed some modifications to Empire's proposed WNR in response
19 to Staff's proposed Sales Reconciliation to Levelized Expectations ("SRLE").

20 **Q. Would these changes improve the WNR Empire proposed in direct**
21 **testimony?**
22 A. I do not know. Mr. Lyon's recommendations in his rebuttal testimony, like those
23 in his direct testimony, are light on details. He proposes that the weather
24 adjustment be based on a calendar year rather than on a month. However, he
25 provides no details as to how that adjustment would apply to bills. Would it be a
26 one-time charge/credit? If so, what month would this adjustment be made?
27 Would it be spread throughout the year and, if so, what would that look like?
28 How would this adjustment be calculated? How would customers with a partial

1 year of service be treated? How would bills based on estimated usage be treated
2 in this annual estimation?

3 He also offered that the WNR be implemented as a pilot program. Yet he
4 gave no parameters on what this pilot would look like. He did not propose how
5 many customers would be in the pilot, what the pilot would consist of, how long
6 this pilot would last, or how and when it would be evaluated.

7 **Q. Does his testimony change your recommendation regarding Empire's**
8 **proposed WNR?**

9 A. No, my recommendation remains the same. The Commission should not approve
10 a WNR for Empire. Empire has provided little to relieve OPC's concerns
11 regarding the program it proposed in its direct filing. The pilot program proposed
12 by Empire in its rebuttal testimony is not really a pilot program, for it has no
13 parameters. Further, as I provided in my rebuttal testimony, and shown in the
14 graph below, Empire has submitted its fourth quarter 2019 FAC surveillance
15 report and it shows that Empire is earning above a fair return on equity.

16 **

17
18 **

Public

1 As shown in this graph, Empire does not have a need for a WNR for it to have an
2 opportunity to earn a fair return.

3 **Staff's Sales Reconciliation to Levelized Expectations Proposal**

4 **Q. You recommended the Commission reject Staff's Sales Reconciliation to**
5 **Levelized Energy ("SRLE") in your rebuttal testimony because Empire does**
6 **not need the mechanism to have an opportunity to earn a fair return. Is**
7 **there any rebuttal testimony that causes you to change your**
8 **recommendation?**

9 A. My recommendation remains the same – the Commission should reject Staff's
10 SRLE proposal. However, Staff witness Robin Kliethermes' rebuttal testimony
11 shows that this proposal should also be rejected not just because Empire does not
12 need it to earn a fair return, but also because the revenue level Staff is
13 recommending the sales be measured against is based on unreliable data.

14 Ms. Kliethermes provided rebuttal testimony outlining Staff's concerns
15 with the impact of estimated bills on normalized billing determinants in this case.
16 She testifies that 15 percent of Empire's residential customers received an
17 estimated bill in 2018 and 26 percent received an estimated bill in December
18 2019.[25] She goes on to explain how having a large percentage of estimated bills
19 causes errors in Staff's weatherization models and impacts the overall expectation
20 that the billing determinants resulting from this case accurately reflect a
21 reasonable level of normalized and annualized usage for Empire's customers.[26]
22 She further explains how estimated bills impact weather normalization of
23 customer usage. Ms. Kliethermes concludes this section of her testimony with a
24 recommendation that the Commission "appropriately weigh the reliance on any
25 [class cost-of-service] study results and weather normalization models."

[25] Page 2.
[26] Page 4.

Public

1 **Q. Why should this raise a concern with Staff's SRLE proposal?**

2 A. According to Staff's class cost-of-service report in this case:

3-8
> Staff's Residential SRLE is designed to, on an annual basis, reconcile the revenues realized from sales in excess of 400 kWh per customer per month, net of the FAC base factor per kWh, to the revenues that were assumed to be realized in aggregate from those sales, net of the FAC base factor per kWh. (footnote omitted)[27]

9 In other words, with some adjustments,[28] the Staff's SRLE will assure Empire that
10 it receives the revenues resulting from the annualized and normalized billing
11 determinants that Ms. Kliethermes cautions the Commission against relying on in
12 class cost-of-service study results and weather normalization models.

13 **Q. Is there an opportunity for customers' bills to be reduced through the**
14 **SLRE?**

15 A. Yes. However, given the uncertainty in the billing determinants in this case that
16 are used to "reconcile the revenues" there is great uncertainty that we can even
17 determine what the appropriate revenues to be collected are.

18 **Q. Are there any other reason that the Commission should not approve a SLRE**
19 **for Empire in this case?**

20 A. Yes. The country is likely heading into a recession because of the COVID-19
21 virus. In a typical recession, many customers reduce their electrical usage to the
22 best of their abilities in an effort to lower their bills. The SLRE is designed so
23 that *Empire* is held harmless from reductions in usage even if the reduction is
24 from customer efforts to be able to afford a minimal amount of service. If the
25 Commission approves the SLRE, customers who work hard to reduce their bill
26 will still see a surcharge that increases their bills. This may be the tipping point

[27] Page 8.

1 where some customers can no longer afford their service. Given all of the
2 concerns regarding this proposal, now is not a good time for such a proposal to be
3 implemented.

4 **Q. Does this conclude your surrebuttal testimony?**

5 A. Yes, it does.

[28] Adjustments would be made for an assumed customer base usage, the FAC base factor and the customer charge.

Public

Empire's Fuel Adjustment Clause

Information from Current and Cancelled Tariff Sheets

Accumulation Period		Total Company		Missouri Retail Jurisdiction					
	Ending Date	TEC	NBEC	Energy Ratio	TEC	NBEC	(TEC-NBEC)	Customer Share	Empire Share
22	8/31/2019	$ 63,483,115	$ 64,887,766	81.79%	$ 51,924,464	$ 53,073,364	$ (1,404,651)	$ (1,091,455)	$ (57,445)
21	2/28/2019	$ 74,862,132	$ 66,584,207	83.38%	$ 62,417,045	$ 55,515,243	$ 8,277,925	$ 6,556,712	$ 345,090
20	8/31/2018	$ 64,930,243	$ 67,415,208	82.38%	$ 53,491,447	$ 55,538,634	$ (2,484,965)	$ (1,944,828)	$ (102,359)
19	2/28/2018	$ 84,144,071	$ 65,471,519	83.18%	$ 69,992,706	$ 54,460,508	$ 18,672,552	$ 14,755,589	$ 776,610
18	8/31/2017	$ 69,070,641	$ 62,822,095	81.79%	$ 56,490,184	$ 51,379,742	$ 6,248,546	$ 4,854,920	$ 255,522
17	2/28/2017	$ 66,508,009	$ 62,011,760	82.65%	$ 54,970,282	$ 51,254,036	$ 4,496,249	$ 3,530,433	$ 185,812
16	8/31/2016	$ 60,294,281	$ 71,719,486	82.02%	$ 49,455,700	$ 58,827,094	$ (11,425,205)	$ (8,902,825)	$ (468,570)
15	2/29/2016	$ 63,582,057	$ 68,751,492	82.33%	$ 52,347,405	$ 56,603,425	$ (5,169,435)	$ (4,043,219)	$ (212,801)
14	8/31/2015	$ 69,754,928	$ 74,062,163	82.24%	$ 57,366,358	$ 60,908,622	$ (4,307,235)	$ (3,365,151)	$ (177,113)
13	2/28/2015	$ 75,012,690	$ 76,149,399	83.94%	$ 62,967,398	$ 63,921,578	$ (1,136,709)	$ (906,471)	$ (47,709)
12	8/31/2014	$ 77,536,319	$ 74,979,148	82.01%	$ 63,585,233	$ 61,488,173	$ 2,557,171	$ 1,992,207	$ 104,853
11	2/28/2014	$ 83,236,791	$ 78,366,213	83.46%	$ 69,465,915	$ 65,401,136	$ 4,870,578	$ 3,861,540	$ 203,239
10	8/31/2013	$ 75,335,386	$ 75,002,161	83.03%	$ 62,554,569	$ 62,277,876	$ 333,225	$ 262,858	$ 13,835
9	2/28/2013	$ 70,581,445	$ 71,948,220	80.13%	$ 56,557,838	$ 57,653,053	$ (1,366,775)	$ (1,040,454)	$ (54,761)
8	8/31/2012	$ 74,678,147	$ 77,190,644	80.20%	$ 59,889,169	$ 61,904,100	$ (2,512,497)	$ (1,914,185)	$ (100,747)
7	2/29/2012	$ 65,773,548	$ 70,393,679	82.22%	$ 54,082,171	$ 57,881,065	$ (4,620,131)	$ (3,608,949)	$ (189,945)
6	8/31/2011	$ 92,165,823	$ 81,456,890	81.14%	$ 74,783,142	$ 66,093,938	$ 10,708,933	$ 8,254,744	$ 434,460
5	2/28/2011	$ 80,289,219	$ 78,376,098	83.90%	$ 67,359,028	$ 65,754,006	$ 1,913,121	$ 1,524,771	$ 80,251
4	8/31/2010	$ 89,018,894	$ 81,984,294	82.46%	$ 73,406,957	$ 67,606,069	$ 7,034,600	$ 5,510,843	$ 290,044
3	2/28/2010	$ 79,431,215	$ 75,540,365	84.93%	$ 67,457,923	$ 64,153,572	$ 3,890,850	$ 3,139,134	$ 165,218
2	8/31/2009	$ 74,904,898	$ 75,974,254	81.96%	$ 61,393,384	$ 62,269,847	$ (1,069,356)	$ (832,640)	$ (43,823)
1	2/28/2009	$ 77,599,808	$ 75,211,342	85.62%	$ 66,439,575	$ 64,394,613	$ 2,388,466	$ 1,942,714	$ 102,248
	Total	$ 1,632,193,660	$ 1,596,298,403		$ 1,348,397,893	$ 1,318,359,695	$ 35,895,257	$ 28,536,288	$ 1,501,910

Total Missouri FAC costs paid by Missouri retail customers	$ 1,346,895,983	Empire	$ 1,501,910
	99.9%		0.1%

Missouri Energy ratio was calculated given information from tariff sheets to obtain "Fuel Cost Recovery" shown in tariff sheets.

LMM-S-1

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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	))))	**Case No. EO-2010-0255**

REPORT AND ORDER

Issue Date: April 27, 2011

Effective Date: May 7, 2011

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the First Prudence Review of	)	
Costs Subject to the Commission-Approved Fuel	)	**Case No. EO-2010-0255**
Adjustment Clause of Union Electric Company,	)	
d/b/a Ameren Missouri	)	

APPEARANCES

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For Missouri Energy Group.

CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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

Summary

This order determines that Union Electric Company d/b/a Ameren Missouri acted imprudently, improperly and unlawfully when it excluded revenues derived from power sales agreements with AEP and Wabash from off-system sales revenue when calculating the rates charged under its fuel adjustment clause.

Procedural History

On August 31, 2010, the Commission's Staff filed a Prudence Report and Recommendation regarding its first prudence review of Ameren Missouri's costs related to

its fuel adjustment clause (FAC). In its Report, Staff concluded that Ameren Missouri acted imprudently in not including certain costs and revenues in calculating the FAC rate it billed to its customers. The costs and revenues Staff contends were improperly excluded from the fuel adjustment clause are associated with Ameren Missouri's sales of energy to American Electric Power Operating Companies (AEP) and to Wabash Valley Power Association, Inc. (Wabash). Staff advised the Commission to order Ameren Missouri to refund approximately $24.1 million plus interest to its customers by an adjustment to its FAC charge. Subsequently, on October 12, 2010, Staff corrected its prudence report and recommendation to reflect revised calculations that indicate Ameren Missouri over-collected $17,169,838 during the recovery periods in question, rather than the $24,073,236 over-collection Staff had shown in its initial prudence report.

Ameren Missouri disputed Staff's claim of imprudence and on September 9, 2010, requested a hearing regarding Staff's recommendation.[1] Commission Rule 4 CSR 240-3.161(10) provides that parties to the rate case in which the Commission established Ameren Missouri's fuel adjustment clause are automatically parties to this prudence audit case, without the necessity of having to apply for intervention. By that rule, the Commission recognized the following entities as parties to this case:

AARP;
Consumers Council of Missouri;
IBEW Local Union 1455, 1439, 2, 309, 649, and 702;
International Union of Operating Engineers – Local No. 148;
Laclede Gas Company;
Missouri Coalition for the Environment;
Missouri Department of Natural Resources;
Missouri Energy Group;

[1] The Office of the Public Counsel, the Missouri Retailers Association, and the Missouri Industrial Energy Consumers support Staff's proposed adjustment, but also requested a hearing in pleadings filed on September 10, 2010.

Missouri Industrial Energy Consumers;
Missourians for Safe Energy;
Noranda Aluminum;
State of Missouri; and
The Commercial Group.

In addition, the Commission allowed the Missouri Retailers Association, which was not an automatic party, to intervene.

On September 29, 2010, following a prehearing conference, the Commission established a procedural schedule leading to an evidentiary hearing regarding Staff's recommended adjustment to Ameren Missouri's FAC charge. In compliance with the established procedural schedule, the interested parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing was held on January 10 and 11, 2011. The parties filed post-hearing briefs on February 10, 2011, with reply briefs following on February 24.

Findings of Fact

1. On January 27, 2009, the Commission issued a Report and Order[2] in Commission File Number ER-2008-0318 concerning Ameren Missouri's request for a general rate increase. As part of that Report and Order, the Commission approved for the first time Ameren Missouri's request to implement a fuel adjustment clause.

2. The next day, January 28, 2009, Southeastern Missouri was struck by a terrible ice storm.[3] The ice storm knocked down the power lines that serve the aluminum smelter operated by Noranda Aluminum, Inc. As a result, the smelter lost electric power in mid-cycle, causing the molten aluminum to solidify in the smelting equipment. Noranda

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[2] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service*, Report and Order, File No. ER-2008-0318 (January 27, 2009).

[3] Barnes Direct, Ex. 3, Page 5, Lines 19-24.

quickly restored one of the three production lines, but could not immediately put the second and third lines back into production. Two-thirds of Noranda's production capacity was lost while the solidified aluminum was jackhammered out of the equipment.[4]

3. When Noranda lost production capacity, it reduced the amount of electricity it purchased from Ameren Missouri. The loss of sales to Noranda was a serious problem for Ameren Missouri because Noranda normally buys a lot of electricity. Before the damage resulting from the ice storm, Noranda hourly consumed more than 460 megawatts of electricity at a very high load factor, meaning it used nearly the same amount of electric power every hour of every day throughout the year.[5]

4. Because of the damage to Noranda's production capacity, Ameren Missouri stood to lose approximately $90 million per year of its normal electric sales to Noranda.[6] That amounts to approximately four percent of Ameren Missouri's base-rate revenue requirement from which the company's rates were developed.[7]

5. Since Ameren Missouri would not be selling as much electric power to Noranda, it would have more electric power available to sell on the off-system market. Such off-system sales could partially offset the revenue lost on sales of power to Noranda. However, there was a problem with off-system sales.

6. Under the fuel adjustment clause that the Commission approved the day before the ice storm, revenue from off-system sales is used to offset Ameren Missouri's fuel

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[4] Barnes Direct, Ex. 3, Page 6, Lines 4-10.

[5] Haro Direct, Ex. 1, Page 6.

[6] Barnes Direct, Ex. 3, Page 6, Lines 12-15.

[7] Barnes Surrebuttal, Ex. 4, Page 2, Lines 19-20.

purchase costs, subject to a 95/5 sharing mechanism.[8] That means Ameren Missouri is allowed to pass 95 percent of any net changes in fuel/purchased power costs through to its customers outside of a general rate case. The other 5 percent must be absorbed by the company's shareholders.

7. Normally, the fuel adjustment clause would benefit Ameren Missouri because the company would be allowed to pass through to customers 95 percent of what were anticipated to be rising fuel costs without having to experience the delay that would result if the company had to file a new rate case to recover those increased fuel costs. However, that 95/5 sharing mechanism also applied to off-system sales. That means 95 percent of any increase in off-system sales would benefit ratepayers rather than the company by offsetting rising fuel costs under the fuel adjustment clause's formula.

8. Thus, if Ameren Missouri simply replaced the revenue it could no longer earn by selling power to Noranda - revenue that is not subject to sharing mechanism of the fuel adjustment clause - by selling more power off-system, it would be unable to retain 95 percent of that replacement revenue. That would result in a revenue shortfall for Ameren Missouri's shareholders.

9. Ameren Missouri first attempted to avoid that revenue shortfall by asking the Commission to rehear its Report and Order and modify the approved fuel adjustment clause to exclude revenue from those off-system sales used to offset the lost sales to Noranda.[9] The Commission denied Ameren Missouri's application for rehearing in an order issued on February 19, 2009.[10]

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[8] Eaves Direct/Rebuttal, Ex.11, Page 3, Lines 4-9.

[9] *In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs To Increase its Annual Revenues for Electric Service,* File No. ER-2008-0318, Application for Rehearing and Motion for Expedited Treatment

10. In its February 19 order denying Ameren Missouri's application for rehearing, the Commission found that it could not modify the fuel adjustment clause tariff in the manner Ameren Missouri requested without setting aside the approved stipulation and agreement regarding the fuel adjustment clause, reopening the record to take evidence on the appropriateness of the proposed change, and making a decision before the March 1, 2009 operation of law date. The Commission concluded that such action was "obviously impossible" and on that basis denied Ameren Missouri's application for rehearing. The Commission's order did not make any decision or ruling on the merits of Ameren Missouri's proposal, nor did the Commission take any evidence on the merits of that proposal.

11. After the Commission denied Ameren Missouri's application for rehearing, the company's revised tariff, now including the fuel adjustment clause, went into effect on March 1, 2009.

12. With the fuel adjustment clause now in effect, Ameren Missouri began looking for a means to sell power to replace the lost Noranda load. In replacing that load, Ameren Missouri sought to enter into sales contracts that would most closely resemble the service to Noranda by rebalancing the load with regard to the type of customer served and credit exposure faced by Ameren Missouri.[11] Ameren Missouri also acknowledged that it was seeking to enter into a contract that would be excluded from operation of the fuel adjustment clause.[12]

(February 5, 2009).

[10] *In the Matter of Union Electric Company d/b/a AmerenUE's Tariffs To Increase its Annual Revenues for Electric Service,* File No. ER-2008-0318, Order Denying AmerenUE's Application for Rehearing (February 19, 2009).

[11] Haro Direct, Ex. 1, Pages 4-5, Lines 8-22, 1-17.

[12] Transcript, Page 118, Lines 7-11.

13. Ameren Missouri subsequently entered into two contracts that it describes as long-term partial requirements contracts. The first contract was with American Electric Power Service Corporation (AEP) for 100 megawatts for a duration of 15 months. The second contract was with Wabash Valley Power Association, Inc., to serve Citizen Electric load in Missouri. That contract was for 150 megawatts for a duration of 18 months.[13]

14. Ameren Missouri's description of these contracts as long-term partial requirements contracts is important because of the controlling terms found in the fuel adjustment clause tariff. That tariff provides:

> Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447), excluding Missouri retail sales <u>and long-term full and partial requirements sales</u>, that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission.[14] (emphasis added).

Ameren Missouri contends these contracts fall within the tariff's exclusion for long-term full and partial requirements sales, the other parties contend they do not. The question then becomes: what are the appropriate definitions of "long term" and "full and partial requirements" sales?

15. Before examining those definitions in more detail, it is important to understand the genesis of Ameren Missouri's fuel adjustment clause tariff. The definition of off-system sales that is at issue in this case was initially proposed through the testimony of Ameren Missouri's witness, Marty Lyons, as part of Ameren Missouri's request for a fuel adjustment clause in Ameren Missouri's rate case, ER-2008-0318.[15]

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[13] Haro Direct, Ex. 1, Page 7, Lines 1-10.

[14] Eaves Direct/Rebuttal, Ex. 11, Schedule DEE-5-3.

[15] Transcript, Page 350, Lines 5-17.

16. The parties in ER-2008-0318 did not agree that Ameren Missouri should be allowed to implement a fuel adjustment clause and the Commission resolved that overall issue in its report and order. However, the parties were able to agree upon the details of the language that would be included in the fuel adjustment clause tariff if the Commission decided to allow Ameren Missouri to implement a fuel adjustment clause. The exact language of the tariff, including the definition of off-system sales, was agreed to in a stipulation and agreement that the Commission approved as part of the resolution of ER-2008-0318.[16]

17. The only testimony about the intent of the parties when they agreed upon the definition of off-system sales was offered by Lena Mantle on behalf of Staff.[17] As case coordinator and expert witness for Staff, Mantle was involved in negotiations surrounding the development of Ameren Missouri's fuel adjustment tariff. She testified that, based on conversations with Ameren Missouri's representatives, she understood that the tariff definition was designed to exclude from operation of the fuel adjustment clause the wholesale electric supply contracts that Ameren Missouri had entered into with various municipal utilities.[18]

18. The exclusion of those municipal contracts from the operation of the fuel adjustment clause makes sense, because in the pending rate case, ER-2008-0318, Ameren Missouri's costs were allocated to municipal utilities through energy and demand allocators. In other words, Ameren Missouri's costs to provide wholesale service to the

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[16] Barnes Direct, Ex. 3, Pages 3-4, Lines 23-24, 1-5.

[17] Mantle is the Manager of the Energy Department, Utility Operations Division of the Missouri Public Service Commission.

[18] Mantle Direct/Rebuttal, Ex. 12, Page 4, Lines 3-25.

municipalities were not being flowed through the Fuel Adjustment Clause, so it would have been inappropriate to flow the revenues received from the municipalities through the Fuel Adjustment Clause. Including those revenues within the fuel adjustment clause would have required Ameren Missouri to pay all the costs of those contracts while receiving credit for only five percent of the revenues generated through those contracts.[19]

19. When Ameren Missouri's fuel adjustment tariff was once again before the Commission in Ameren Missouri's next rate case, ER-2010-0036, the parties, including Ameren Missouri, stipulated that the tariff's definition of off-system sales would be changed to specifically exclude long-term full and partial requirements sales to Missouri municipalities.[20] As a result, under the revised tariff, revenue from both the Wabash and the AEP contracts would be treated as off-system sales and would be flowed through the fuel adjustment clause.

20. With that background, we can now return to a discussion of the definitions of "long-term" and "full and partial requirements" sales. Ameren Missouri's fuel adjustment clause tariff does not define either term, so the parties proposed their own definitions. Ameren Missouri would base its definitions on the way in which such contracts are currently treated in the wholesale electric marketplace. The other parties would define those terms in what they describe as a more traditional regulatory context.

21. In the context of today's marketplace for wholesale electric power, a long-term power supply contract is one that covers a period of one year or more. That was amply demonstrated through the testimony of Jaime Haro, Director, Asset Management and

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[19] Mantle Direct/Rebuttal, Ex. 12, Page 5, Lines 1-16.

[20] Transcript, Page 357, Lines 1-11, and Page 82, Lines 7-22.

Trading for Ameren Missouri,[21] and Duane Highley, Director of Power Production for Associated Electric Cooperative, Inc.[22] Both men have marketed and traded power for several years and concur that in the context of that marketplace, "a 'long-term' power supply agreement would be one which covers a period of one year or more. A short-term agreement is commonly understood to be one with a term of less than one year."[23]

22. While a contract with a duration of one year or more is treated as a long-term contract within the context of the wholesale electric market, this Commission is not seeking to define the term in that context. Rather, the Commission must define long-term within a regulatory context. In that context, Staff's witness points to a definition of long-term found in the FERC Form 1 used by Ameren Missouri in filing annual reports with FERC and this Commission. By that definition, a long-term contract is one that lasts five years or longer, an intermediate term contract is longer than one year, but less than five years, and a short-term contract is one year or less.[24] For purposes of its annual reports, Ameren Missouri does not classify either the Wabash or the AEP contracts as long-term requirements contracts.[25]

23. A similar disagreement exists between the parties regarding the appropriate definition of a requirements contract. Again, Jaime Haro and Duane Highley explain that within the context of the marketplace, "a long-term partial requirements sale is an agreement where the seller provides resources sufficient to meet part of the purchasing

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[21] Haro Direct, Ex. 1, Page 1, Lines 4-6.

[22] Highley Surrebuttal, Ex. 7, Page 1, Lines 10-13.

[23] Highley Surrebuttal, Ex. 7, Page 6, Lines 7-9.

[24] Eaves Direct/Rebuttal, Ex. 11, Pages 10-11, Lines 24-26, 1-18.

[25] Eaves Direct/Rebuttal, Ex. 11, Page 11, Lines 29-31.

entity's load obligation during the term of the agreement."[26] The other parties counter that in a regulatory context, the definition of a requirements contract is more restrictive.

24. Jaime Haro testified that his definition of a partial requirements contract is based on his "understanding of the market" and the only regulatory authority he cited to support his definition was the definition offered by the Edison Electric Institute (EEI).[27]

25. Ameren Missouri refers to the definition of "Partial Requirements" offered by the Edison Electric Institute as support for its definition of a partial requirements contract. That definition is a follows:

> A wholesale customer who purchases, or is committed to purchase, only a portion of its electric power generation need from a particular entity. There is often a specified contractual ceiling on the amount of power that a partial requirements customer can take from the entity. In contrast, a "requirements" or "full requirements" customer is committed to purchase all of its needs from a single entity and generally would not have a ceiling on the amount of power it can take.[28]

26. Edison Electric Institute also offers a definition of "Full Requirements" as follows:

> A wholesale customer (utility) that is committed to purchase all of its electric power generation from a single generator and generally there is not a ceiling on the amount of power purchased.[29]

27. Neither the definition of "Partial Requirements," nor the definition of "Full Requirements," actually defines "Requirements." Instead, they simply define the difference between partial and full requirements. If the meaning of "Requirements" is to be

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[26] Haro Surrebuttal, Ex. 2, Page 2, Lines 1-3.

[27] Transcript, Page 50, Lines 7-24.

[28] Haro Surrebuttal, Ex. 2, Schedule JH-S5.

[29] Haro Surrebuttal, Ex. 2, Schedule JH-S5.

understood in either definition, reference must be made back to the definition offered for Requirements Service.

28. The Edison Electric Institute defines "Requirement Service" as:

> Service that the supplier plans to provide on an ongoing basis (i.e. the supplier includes projected load for this service in its system planning). In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate customers."[30]

The same definition of requirement service is found in the instructions for completion of the FERC Form 1.[31]

29. Consistent with those definitions, the commonly understood concept of requirements service is the provision of power to municipal customers or rural electric cooperatives on a basis whereby the selling utility incorporates the requirements of these customers into its resource planning.[32]

30. The key phrase in the definition of requirements service is that it is service the supplier plans to provide on an ongoing basis. The Wabash and AEP contracts are for terms of only 18 and 15 months and Ameren Missouri acknowledged that it entered into those contracts to replace the Noranda load lost due to the ice storm.[33] Those contracts expired on May 31, 2010, and October 31, 2010, and were not renewed.[34] In short, it is clear that Ameren Missouri did not intend to provide these services to Wabash and AEP on an ongoing basis.

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[30] Brubaker Direct, Ex. 14, Schedule MEB-3.

[31] Haro Surrebuttal, Ex. 2, Schedule JH-S3.

[32] Brubaker Direct, Ex. 14, Page 3, Lines 3-7.

[33] Haro Direct, Ex. 1, Page 7, Lines 1-10.

[34] Transcript, Page 49, Lines 10-12.

31. In an effort to fit the Wabash and AEP contracts into the EEI and FERC definitions of requirement service, Ameren Missouri's witness, Jaime Haro, suggested that the definitions' statement that requirement services are to be provided on an ongoing basis could simply mean that they are to be provided for the term of the contract.[35] When pressed on cross-examination, Haro conceded that his definition of ongoing basis as meaning the term of the contract could apply to contracts with a term of a single day.[36]

32. All parties agree that Ameren Missouri's existing electric sales contracts with various municipalities are requirements sales that are properly excluded from the tariff's definition of off-system sales. The Wabash and AEP contracts differ substantially from Ameren Missouri's contracts with the municipalities in that Ameren Missouri provides substantially more capacity and energy services to the municipalities than it did to Wabash and AEP under their contracts. The contracts with AEP and Wabash strictly provide capacity and energy, leaving the buyer to arrange the transmission, pay for transmission and for all other services required to accept the power from the seller. In addition, the municipal contracts were longer in length than the AEP and Wabash contracts.[37]

33. In short, the contracts with the municipalities are for requirements service and Ameren Missouri designated them as such in its 2009 FERC Form 1 filing. In contrast,

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[35] Transcript, Page 68, Lines 7-13.

[36] Transcript, Page 87, Lines 19-25.

[37] Brubaker Direct, Ex. 14, Page 5, Lines 3-19. Brubaker designated this testimony describing the terms of the contracts as highly confidential because Ameren Missouri had designated the contracts as highly confidential at the time. At the hearing, Ameren Missouri agreed that the contracts could be treated as public information and the Commission so designated them. See. Transcript, Page 519. Therefore, the witness' description of the terms of the contract is also treated as public information.

Ameren Missouri categorized the Wabash and AEP as Intermediate Firm Service, and not as Requirements Service in that same 2009 FERC Form 1 filing.[38]

34. Ameren Missouri testified that in view of the new, more competitive wholesale energy market, it would not be offering requirements service to the municipalities in the coming years after those existing contracts terminate according to their terms.[39]

35. If the revenues Ameren Missouri received from the Wabash and AEP contracts during the recovery periods at issue in this case are flowed through the Fuel Adjustment Clause, Ameren Missouri must refund its customers $17,169,838 as calculated in the Correction to Staff's Prudence Report and Recommendation filed on October 12, 2010.

Conclusions of Law

1. Ameren Missouri is a public utility, and an electrical corporation as those terms are defined in Section 386.020(43) and (15), RSMo Supp. 2010. As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

2. Section 386.266.4(4), RSMo Supp. 2010, gives the Commission authority to approve an electrical corporation's fuel adjustment tariff if it finds that the tariff includes "provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rates." The fuel adjustment tariff that the Commission approved for Ameren Missouri contains such provisions.

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[38] Brubaker Direct, Ex. 14, Page 3, Lines 1-24.

[39] Wills Surrebuttal, Ex. 6, Page 6, Lines 23-26.

3. Commission Rule 4 CSR 240-20.090(7) establishes procedures for the conduct of prudence reviews respecting fuel adjustment tariffs.

4. In order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that the utility acted imprudently and that such imprudence resulted in harm to the utility's ratepayers.[40]

5. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, then the utility has the burden of dispelling those doubts and proving the questioned expenditure to have been prudent.[41]

6. Section 386.266.4(1), RSMo Supp. 2010, gives the Commission authority to approve an electrical corporation's fuel adjustment tariff if it finds that the tariff is "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." The Commission has approved such a tariff for Ameren Missouri and no one challenges that tariff in this case. Ameren Missouri argues that this provision also requires the Commission to interpret the language of the previously approved tariff in a manner that protects the utility's ability to earn a fair return on equity. There is no such requirement in the plain language of the statute and the Commission will interpret this tariff in the same manner it would interpret any other tariff.

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[40] *State ex rel. Assoc. Natural Gas Co. v. Public Serv. Comm'n, 954 S.W.2d 520 (Mo. App. W.D. 1997).*

[41] *In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues. And In the matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the company.* 27 Mo. P.S.C. (N.S.) 183 (1985).

7. Under Missouri law, once the Commission approved the fuel adjustment tariff, that tariff acquired "the same force and effect as a statute directly prescribed from the legislature."[42] Therefore, a reviewing court is to interpret a tariff in the same manner it interprets a statute.[43]

8. In interpreting Ameren Missouri's fuel adjustment tariff, the Commission must "ascertain the intent of [Ameren Missouri and the Commission] from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning."[44] The Commission may look beyond the plain and ordinary language of Ameren Missouri's tariff '"only when the meaning is ambiguous or [acceptance of the plain and ordinary language] would lead to an illogical result defeating the purpose of the [tariff].'"[45]

Decision

The language from Ameren Missouri's tariff that is in question is as follows:

> Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447), excluding Missouri retail sales and long-term full and partial requirements sales, that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission.

As explained more fully in the findings of facts section of this report and order, that definition of off-system sales determines what revenue is to be run through the fuel

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[42] *State ex rel. Laclede Gas Company v. Pub. Serv. Comm'n, 156* S.W.3d 513, 521 (Mo App. W.D. 2005), quoting *All-States Transworld Vanlines, Inc. v. Southwestern Bell Tel. Co.*, 937 S.W. 2d 314, 317 (Mo. App. E.D. 1996).

[43] *Id.*

[44] *Id.*, quoting *Wolff Shoe Co. v. Dir. Of Revenue*, 762 S.W. 2d 29, 31 (Mo. banc 1988).

[45] *Id.*, quoting *State ex rel. Maryland Heights Fire Prot. Dist. v. Campbell*, 736 S.W. 2d 383,387 (Mo. banc 1987).

adjustment clause subject to a 95/5 sharing mechanism. Ameren Missouri is able to keep 100 percent of revenue that the definition excludes from off-system sales, which explains the company's desire to exclude revenue derived from the Wabash and AEP sales from off-system sales.

Some confusion was injected into the hearing by Staff's misreading of part of the tariff language. That misreading derives from a confusingly placed comma in the definition. Staff would read the second part of the definition as if there were no comma between "sales" and "that". Thus, the definition would state "excluding Missouri retail sales and long-term full and partial requirements sales that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission." In other words, the numbered provisions at the end of the sentence would modify "long-term full and partial requirement sales". However, there is a comma before "excluding" and after "sales", and that creates a parenthetical expression that modifies "all sales transactions" at the start of the sentence.

The intended meaning of the definition would be clearer if it were rearranged as follows:

> Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447) that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission, excluding Missouri retail sales and long-term full and partial requirements sales.

Aside from grammatical construction, the correctness of that meaning of the definition is clear because if the numbered provisions at the end of the sentence are taken to be limitations on the exclusion rather than the inclusion, then all sales transactions would be

unlimited and off-system sales would be defined as including transactions that are associated with non-Missouri jurisdictional generating units. That would not be a reasonable interpretation of the definition.

No one questions the exclusion of Missouri retail sales from the definition of of-system sales, but the intended meaning of the exclusion of "long-term full and partial requirements sales" is much less clear. In interpreting the meaning of the phrase "long-term full and partial requirements sales", the Commission must look first to the plain and ordinary meaning of those words and may look beyond those words only if their meaning is ambiguous. In the context of Ameren Missouri's sales of electric power to Wabash and AEP, those words are ambiguous. They are not defined anywhere in the tariff and they do not have a plain and ordinary meaning outside the tariff. Therefore, the Commission will attempt to ascertain the intent of Staff, Ameren Missouri, and the other parties when they agreed to this tariff language through their stipulation and agreement.

The parties presented arguments about the tariff language as if there were two provisions to be interpreted, "long-term" and "full and partial requirement sales". However, the tariff language can best be understood as a single provision, a description of a type of sale that is to be excluded from the definition of off-system sales.

The type of sale to be excluded is described in the Edison Electric Institute and FERC Form 1 definitions as "requirements service". That is the type of sales contract that Ameren Missouri had entered into with municipal utilities, cooperatives, and other investor owned utilities over the years. It is also a type of sales contract that has become much less common in recent years, as the wholesale electric market has become less regulated.

The key phrase in the definition of “requirements service” is the requirement that the supplier plans to provide such service “on an ongoing basis (i.e. the supplier included projected load for this service in its system planning).” As the wholesale electric market has changed in recent years, Ameren Missouri has moved away from requirements service contracts, leaving only the remnant municipal requirements contracts, which Ameren Missouri intends to not renew when their terms expire.

The tariff’s definition of long-term full and partial requirements sales was not limited to municipal customers, but by the time the parties were negotiating the language of the tariff, those were the only such existing customer contracts that would fall within the definition. That also explains the statement that Lena Mantle testified she heard from a representative of Ameren Missouri during those negotiations. Since the municipal contracts were the only ones in existence at that time that would fall within the definition, it is reasonable to conclude that Ameren Missouri’s employees would name those contracts when asked about the definition of long-term full and partial requirements sales.

Thus, the tariff’s definition of off-system sales was intended to exclude requirements sales of the type exemplified by the existing requirements sales to the municipalities. The question then becomes, are the Wabash and AEP contracts the sort of requirements sales that fall within the intent of the tariff?

The Commission concludes that the Wabash and AEP contracts are not long-term full or partial requirements contracts as defined by Ameren Missouri’s tariff. They simply do not have the characteristics to qualify as such contracts. Ameren Missouri calls them such, but it must stretch the definition beyond the breaking point to do so.

If Ameren Missouri's definition were accepted, nearly any sales contract of over one-year duration would qualify as a long-term full or partial requirements contract that could be excluded from the fuel adjustment clause. Ameren Missouri would be able to choose unilaterally to define an off-system sale out of the fuel adjustment clause and thereby increase its profits at the expense of its ratepayers. Such a broad definition would render the tariff's definition of off-system sales nearly meaningless and would make the fuel adjustment clause extremely one-sided in a way that was not intended by the Commission or by the parties to the stipulation and agreement that presented that tariff language to the Commission for approval. Ameren Missouri describes its contracts with Wabash and AEP as long-term full or partial requirements contracts, but, to paraphrase MIEC's witness, Maurice Brubaker, calling a dog a duck does not make it quack, and calling Ameren Missouri's contracts with Wabash and AEP long-term full or partial requirements contracts does not make them so.

Ameren Missouri also argues that it did not act imprudently in entering into the Wabash and AEP contracts and that nothing it did has harmed ratepayers. On that basis, it argues that the Commission has no basis to find the imprudence necessary to require it to refund money to its ratepayers.

Ameren Missouri bases that argument on the fact that had there been no ice storm and Noranda had not been forced to curtail its production and resulting purchases of electricity, the money Noranda paid to Ameren Missouri would not have been flowed through the fuel adjustment clause and the company would not have had to share 95 percent of that revenue with its ratepayers. Ameren Missouri contends that the revenue it received from the Wabash and AEP contracts merely replaced the revenue it lost from

Noranda and therefore, its ratepayers are no worse off than they would have been had there been no ice storm.

Ameren Missouri's argument would however deprive its ratepayers of the benefit of the bargain implicit in the Commission's approval of the fuel adjustment tariff language proposed in the stipulation and agreement among the parties to the rate case, ER-2008-0318. The bargain implicit in the approved fuel adjustment clause is that ratepayers will pay more to help the company when the utility's fuel costs rise or offsetting revenue from off-system sales drop. On the other hand, ratepayers will benefit from decreased rates if fuel costs drop or offsetting revenue from off-system sales increase. Here offsetting revenue from off-system sales, as those revenues were defined in the tariff, increased and ratepayers should have benefited in the amount of $17,169,838. However, Ameren Missouri sought to deprive ratepayers of that benefit by branding the Wabash and AEP contracts as long-term full or partial requirements contracts when they do not qualify as such under the terms of the company's tariff. In doing so, Ameren Missouri acted contrary to the requirements of its tariff and therefore acted inappropriately.

THE COMMISSION ORDERS THAT:

1. Union Electric Company, d/b/a Ameren Missouri shall refund $17,169,838 to its ratepayers by an adjustment to its FAC charge to correct an over collection of revenues for the period of March 1, 2009, to September 30, 2009.

2. This report and order shall become effective on May 7, 2011.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

Gunn, Chm., Clayton, and Kenney, CC., concur;
Davis, C., dissents, with dissenting opinion to follow;
Jarrett, C., dissents.
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 27th day of April, 2011.

The Empire District Electric Company
A Liberty Utilities Company
Case No. ER-2019-0374
OPC Data Request – 8042

Data Request Received: 12/17/19
Request No. 8042

Date of Response: 01/06/20
Respondent: Aaron Doll

Submitted by: Lena Mantle

REQUEST:

Assuming the Commission authorizes Empire to modify its FAC as Empire is proposing in this rate case, explain how the costs and revenues associated with Empire's purchased power agreement with the Missouri Joint Municipal Electric Utility Commission, dated November 30, 2018, will be treated with respect to Empire proposed FAC and how this treatment is consistent with Empire's proposed FAC tariff sheets as provided in Aaron Doll's direct testimony Schedule AJD-1.

RESPONSE:

The purchased power agreement with the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") will commence on June 1, 2020.

Due to the new Settlement System Replacement Project ("SSRP") that will be implemented February 1, 2020 by the Southwest Power Pool ("SPP"), Integrated Marketplace ("IM") revenue from the units for which MJMEUC has purchased power will be directly allocated. Therefore, there will be no exchange of IM revenue by the parties. FAC eligible fuel costs will be allocated based on the percentage shares described in the 5-year term deal that was provided in the response to OPC DR 2022. In particular, Schedule 3.2 from this Agreement titled "Energy Settlements Under the Agreement" details the allocation to the purchaser of operating costs related to settlement resources. Revenue received to reflect the share of those eligible costs will be allocated to a 447 account and returned to customers via the fuel adjustment clause.