EXHIBIT A

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Tariff Filings of Union Electric Company d/b/a Ameren Missouri, to Increase Its Revenues for Retail Electric Service.	)))	Case No. ER-2011-0028

APPLICATION FOR REHEARING, REQUEST FOR RECONSIDERATION, MOTION FOR CLARIFICATION, AND MOTION FOR CORRECTION OF REPORT AND ORDER *NUNC PRO TUNC*

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or the "Company") and, pursuant to § 386.500.1, RSMo.[1] and 4 CSR 240-2.160, respectfully applies for rehearing of the Commission's Report and Order in the above-captioned proceeding which was issued July 13, 2011 ("Report and Order"). The Company also moves for clarification of a portion of the Report and Order, and for correction *nunc pro tunc* of certain typographical errors in the Report and Order. In support of its Application and Motions, the Company states as follows:

A. Application for Rehearing

1. Commission decisions must be lawful (i.e., the Commission must have statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n*, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). The decision is reasonable only if supported by competent and substantial evidence of record. *Alma*, 40 S.W.3d at 387. Moreover, Commission decisions must not be arbitrary, capricious, or unreasonable. § 536.140.1(6), RSMo. Commission decisions are also subject to reversal if the Commission abuses its discretion,[2] or its decision is against the greater weight of the evidence.[3] The Commission is a

[1] Statutory references are the Missouri Revised Statutes (2000), unless otherwise noted.
[2] *See, e.g., State ex rel. Gulf Transport Co. v. Public Service Comm'n*, 658 S.W.2d 448 (Mo. App. W.D. 1983) (reversal for abuse of discretion).
[3] *See, e.g., State ex rel. Midwest Gas Users Ass'n v. Public Service Comm'n*, 996 S.W.2d 608, 612 (Mo. App. W.D. 1999) (Recognizing reversal can lie if the decision is against the greater weight of the evidence).

creature of statute and it has only the powers conferred on it by the Legislature. *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 73 S.W.2d 393, 399 (Mo. banc 1934).

2. Under Missouri law, the absence of sufficient findings of fact and conclusions of law also render a Commission order unlawful. *See, e.g., Friendship Village v. Pub. Serv. Comm'n*, 907 S.W.2d 339, 344 (Mo. App. W.D. 1995). Section 386.420, RSMo. requires findings of fact that are not completely conclusory. *State of Missouri ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 103 S.W.3d 813, 816 (Mo. App. W.D. 2003). Section 536.090, RSMo. supplements § 386.420, and requires that the Commission's findings provide insight into how controlling issues were resolved. *Id.* The findings must be sufficiently definite and certain so that a reviewing court can review the decision intelligently to ascertain if the facts afford a reasonable basis for the decision without resorting to the evidence. *Id.*

3. For the reasons discussed herein, the Commission's decision to disallow the Company's approximately $89 million of prudently incurred investment in the new upper reservoir at the Taum Sauk Plant is unlawful, unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence.

4. Construction of an unambiguous contract is a question of law. A contract is unambiguous if the intent of the parties appears expressly, or by clear implication, from the terms of the contract itself. An examination of the Consent Judgment among the State of Missouri, the Missouri Department of Natural Resources, the Missouri Department of Conservation and the Company, and the plain an ordinary meaning of its provisions, reflects the clear intent of the parties that it (a) reflected a bargain between the State and the Company where the State receives, as total compensation for damage to the State and its citizens caused by the collapse of the old Taum Sauk upper reservoir, the damages and other consideration reflected therein, regardless of the cause of the breach (e.g., poor construction in the 1960s; improper

operation later); (b) reflected a full and final settlement of all such claims by the Company, without any requirement that the Company bear any further adverse consequences from the failure, save the Company's failure to prudently execute the reconstruction of a new upper reservoir as required by the Consent Agreement; (c) placed in the hands of the Commission the authority to judge if the Company prudently executed the reconstruction; and (d) precluded the Company from recovering from ratepayers any reconstruction costs *unless* the Company incurred them prudently and then only to the extent the reconstruction costs reflected (i) enhancements versus the reservoir that was replaced, (ii) costs incurred due to costs not reasonably foreseeable,[4] or (iii) costs that the Company would have had to incur even if the failure had not occurred. To the extent the Commission's decision reflects a construction of the Consent Agreement inconsistent with the foregoing, the Commission erred as a matter of law.[5]

5. More specifically, the Commission erred as a matter of law in not giving the term "enhancement" its plain and ordinary meaning, as understood by a person of average intelligence. In finding the plain and ordinary meaning of a contract term, the courts generally look to the dictionary definition of the term. According to *Merriam-Webster's Collegiate Dictionary,* "enhancement" means to "heighten, increase; *especially*: to increase or improve in value, quality, desirability." That the Consent Judgment did not define the term is irrelevant because many terms in the Consent Judgment, or in any contract for that matter, are not defined by the contract itself. Also irrelevant is the fact that "enhancement" is not a term in general use in the field of utility regulation. What the Consent Judgment means is a matter of contract interpretation, not utility regulation. The Commission has no power to rewrite the contract and must give effect to its terms as written. The Consent Judgment was entered into on November

[4] No such costs are at issue in this case.

[5] As discussed below, even if the contract is ambiguous, proper application of principles of contract construction lead to the same conclusion regarding the parties' intent, meaning any inconsistent determination by the Commission in this regard is not only unlawful for failing to properly apply those contract construction principles, but is also unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence.

17, 2007, after the reconstruction had begun. It makes no sense to conclude from the plain meaning of the term "enhancement" that the parties intended for something to constitute an enhancement only if it were an improvement to an upper reservoir constructed to current dam safety standards when (a) the new upper reservoir was already designed and under construction when the Consent Judgment was signed, and (b) the Consent Judgment already *required* that the new upper reservoir be built to *current* dam safety standards. Principles of contract construction that bind the Commission require that contracts are to be interpreted in accordance with principles reflecting common sense, good faith, and equity, and that all of the terms of the contract must be given effect if at all possible. The Commission's conclusion about the meaning of the term "enhancements" fails to comport with those principles for several reasons.

First, it entirely fails to give effect to the provision allowing the recovery of the cost of enhancements. This is because Paragraph 2 of the Consent Judgment specifies a standard that the Company was required to adhere to in reconstructing the upper reservoir. According to Paragraph 2, reconstruction was required to be done "according to all requirements of construction and licensing of all Federal and State regulatory agencies with jurisdiction over the rebuild." Paragraph 3 then states that the Company cannot recover reconstruction costs, *unless* the reconstruction costs fall into one of three categories identified earlier, one of which is "enhancements." If "enhancements" means "improvements over a reservoir designed to comply with modern construction standards," as the Commission concluded, then "enhancements" could not have been made consistent with the standard for reconstruction specified in Paragraph 2, and the inclusion of "enhancements" as a category of allowed costs has no meaning or purpose. In short, nothing could qualify as an enhancement under the Commission's interpretation of that term. Such construction fails to give effect to a key provision of the contract, in contravention of basic principles of contract construction.

Second, such reading makes no sense because it would mean that the Company would have to improve the upper reservoir for the benefit of customers, but the customers would receive the benefits of those betterments, for the remaining 80 years or more of the reservoir's life, without paying rates for service that reflect the investment that was needed to deliver those benefits.

Third, such a construction allows the Commission to deny recovery of prudently incurred costs.[6]

Fourth, it makes no sense that an investor-owned, for-profit public utility would agree to cash and other consideration amounting to hundreds of millions of dollars in settlement of all compensatory damages claimed by the State due to the failure of the old upper reservoir, and would also agree that it must gratuitously donate its prudently incurred investment in a new upper reservoir when that investment put the State and customers in a better position than they would have been in had the failure not occurred. Had the failure not occurred, a 1960s-era reservoir, with a much shorter life, that is less reliable and safe, and that generates less energy, would still exist. Yet the Commission's construction of the Consent Judgment forces the Company to donate its prudently incurred investment that lengthened the life of the facility, created a safer and more reliable facility, and that allowed the generation of more energy without compensating the utility for its investment (if not paid for by insurance and if it reflected an enhancement) through a return on and return of the investment through rates.

In summary, the Commission erred as a matter of law in concluding that "enhancements" means an improvement over a hypothetical upper reservoir constructed in accordance with 2010 dam safety requirements.

[6] It is one thing for a utility to voluntarily forgo recovery of prudently incurred costs to which it is otherwise entitled; it is another for a state utility commission to simply deny recovery of such costs absent a valid finding of imprudence. The former is permissible; that latter is unlawful.

6. The Commission' also erred as a matter of law, rendering its decision unlawful, because it failed to give effect to an unambiguous provision of the Consent Judgment, that is, the phrase "audit powers." The plain and ordinary meaning of the term "audit" and the provision of the Consent Judgment that indicates that the parties to the Consent Judgment acknowledged the Commission's "audit powers" demonstrates that so long as the Company's investment was an "allowed cost," was prudent, and was, after audit, found properly charged to the project, it could be included in rate base. "Audit" means "a methodical examination and review." *Merriam-Webster's New Collegiate Dictionary.* Only one audit was done—a comprehensive audit conducted by the engineering and accounting groups on the Commission's Staff. That audit revealed no improper charges and recommended no disallowances.

7. Even if "audit" in this context is ambiguous, given that the only audit that was done was by the Commission's Staff, and that it revealed no improper charges and recommended no disallowances, it was unreasonable, arbitrary, capricious, an abuse of discretion, not supported by competent and substantial evidence of record, and contrary to the greater weight of the evidence to disallow the Company's investment in the new upper reservoir.

8. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, not supported by competent and substantial evidence of record, and is against the greater weight of the evidence as evidenced by public statements made by one or more of the commissioners indicating that the new upper reservoir in fact contained enhancements within the meaning of the Consent Judgment during the Commission's Agenda meeting on July 6, 2011, which may be found at http://168.166.67.51/viewerportal/vmc/player.do?eventContentId=4048, and which is incorporated herein by this reference.

9. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, not supported by competent and substantial evidence of record, and is against the greater weight of the evidence because it is undisputed that the quantified enhancements reflected in the

evidentiary record in this case cost substantially more than the approximately $89 million of investment sought to be placed in rate base, and because it is further undisputed that the benefits of the new upper reservoir far exceed such investment.

10. Even if the Consent Judgment is ambiguous, it must be construed according to the parties' intent. The parties' conduct and the construction the parties themselves have placed on the contract is proper extrinsic evidence of their intent. The only extrinsic evidence of that intent is in fact the conduct of the only parties to the contract, the Company and the State, represented by the Attorney General. The construction placed on a contract by the parties to that contract is entitled to great if not controlling weight as a matter of law. For the reasons noted earlier, and based upon this unrefuted extrinsic evidence, the record reflects the fact that Company's intention was and is that "enhancements" mean improvements over the old upper reservoir. The record similarly reflects that the State had the same intent, because the State, although afforded the opportunity to advise the Commission or the courts that the Company's request to include in rates the costs of enhancements as compared to the old upper reservoir violated the intention of the Consent Judgment, did not do so. Indeed, the State's lawyer admitted that the State did not view the Company's request (to recover the cost of enhancements in the new upper reservoir vis-à-vis the old one) as a violation of the Consent Judgment. Therefore, not only did the Commission err as a matter of law in construing the meaning of the term "enhancement" as it did, but its construction of that term as a matter of fact is also in error. This renders its decision regarding the Taum Sauk issue unreasonable, arbitrary, capricious, an abuse of discretion, lacking in support by competent and substantial evidence of record, and against the greater weight of the evidence.

11. In addition, even if the contract is ambiguous, the Commission's conclusion that "enhancement" means an improvement or betterment as compared to a 2010 upper reservoir that meets all current dam safety requirements is illogical for all of the reasons discussed in ¶5 above.

Consequently, the Commission's Taum Sauk decision is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence on this basis as well.

12. The Commission's "finding of fact" that it is "not bound by [the Consent Judgment's] . . . terms" is erroneous as a matter of law. Although denominated as a "finding of fact," whether and to what extent the Commission is bound by the Consent Judgment, the legal effect of the Consent Judgment on the Commission's decision, or whether and to what extent the Commission has the power to disallow the Company's investment in the new upper reservoir are all questions of law subject to *de novo* review by a reviewing court.

13. The Commission erred in relying upon its finding that it is not "bound by" the Consent Judgment to disallow the upper reservoir investment because the issue is not whether the Commission is bound by a contract (that has been made decretal by the Circuit Court of Reynolds County), but rather, the issue is whether the Commission has the authority to disallow prudently incurred costs that constitute "allowed costs" under the Consent Judgment. The Commission lacks such power, and therefore erred.

14. The Commission's decision exceeds its authority because it in effect requires the Company to pay the citizens of Missouri an additional $89 million of compensatory damages for the damage caused by the December 2005 collapse of the old upper reservoir. However, the State settled all of its claims for the compensation required by the Consent Judgment. The Commission has no standing or power to make an additional claim for damages on behalf of itself or any Missouri citizen, and has no power to assess damages against the Company, nor may it disregard the Consent Judgment as a matter of law.

15. The Commission is estopped from disallowing the Company's investment in the new upper reservoir because the terms of the Consent Judgment with the State allow recovery of the investment if prudently incurred. The Commission is estopped because its decision is

inconsistent with the State's action in entering into the Consent Judgment in full and final settlement of all claims of the State, the Company relied upon the State's actions in full and final settlement of all such claims, and the Company is damaged by the Commission's disallowance of costs that, under the terms of the Consent Judgment, are "allowed costs."

16. The Commission lacks the power to punish or impose penalties on a public utility by disallowing prudently incurred costs and therefore acted unlawfully in doing so. The Commission's punitive powers are limited to the mechanisms provided to it by the legislature in Section 386, RSMo, none of which are applicable here.[7]

17. The Commission's erred in construing the Consent Judgment in a manner such that a cost that would have been incurred in the absence of the breach can never be an "allowed cost" unless it is 100% certain that the cost would have been incurred in the absence of the breach. That the Commission erroneously construed the Consent Judgment in this manner is evidenced by its "specific finding of fact" number 22; that is, by its conclusion that because Dr. Rizzo cannot "say with certainty" what would have occurred, the Commission "cannot conclude that the upper reservoir would have had to be rebuilt." It makes no sense under a plain reading of the four corners of the Consent Judgment for the parties' intent to be that 100% certainty is required. Ascribing such intent to the parties amounts to deleting one of the three categories of allowed costs from the Consent Judgment because by definition, nothing that is to occur in the future is, or can be, 100% certain. Because the old upper reservoir did fail, it was, when the Consent Judgment was entered into, it is today, and it will be forever in the future, impossible to know with 100% certainty if the costs would have been incurred absent the failure. Even if the contract is ambiguous, the construction placed on the contract by the parties themselves, and their conduct (as discussed in ¶ 10 above) demonstrates that the Commission's conclusion about

[7] The errors outlined in ¶¶ 13 through 16 occurred both with respect to the Commission's conclusion that there were no "enhancements" that constituted "allowed costs," and with respect to the Commission's conclusion that there were no costs that would have been incurred even in the absence of the breach that constitute "allowed costs."

what they intended is in error for the very same reasons. Consequently, the Commission's construction is erroneous as a matter of law based on the plain meaning of the terms in the Consent Judgment, and if there is an ambiguity, as a matter of fact. If erroneous as a matter of law the Commission's decision is unlawful. If erroneous as a matter of fact, the decision is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence.

18. The Commission erred in effectively concluding that Dr. Rizzo was not an expert regarding Federal Energy Regulatory Commission ("FERC") dam safety regulations and inspections; i.e., that he was not qualified by reason of education, experience or training to opine that the reconstruction would have occurred (and that the costs would therefore have been incurred even absent the breach of the old upper reservoir) as a result of the PFMA inspection process. Moreover, there is no support whatsoever in the record to conclude that Dr. Rizzo's opinion that he was "highly certain" that the reconstruction would have occurred even absent the breach was not competent and substantial evidence upon which the Commission could rely. The Commission's decision to conclude that that Dr. Rizzo was not an expert in this area, and to disregard his opinion, is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence.

19. The Commission's decision is unlawful because it disallows prudently incurred costs that are of benefit to ratepayers. A utility's expenditures are presumed to be prudent. Not only is there no evidence that creates the serious doubt necessary to rebut that presumption (and thus require the Company to carry the burden of persuasion with respect to prudence), but the Company's and the Staff's unrefuted evidence has affirmatively demonstrated the prudence of the costs at issue.

20. The Commission erred in determining that none of the $89 million of investment constituted "allowed costs" because there was no evidence of record that supports that determination. Indeed, no witness testified that this investment reflected anything other than "allowed costs," and the attorney for the only witness who opposed recovery of the costs at issue judicially admitted that the costs were in fact "allowed costs." If the contract is ambiguous, that judicial admission binds the Office of the Public Counsel, and the Commission, with no evidence on which to base its conclusion, has thus rendered an unreasonable decision that is also not supported by competent and substantial evidence of record, is arbitrary, capricious, constitutes an abuse of discretion, and that is against the greater weight of the evidence.

21. The Commission's decision is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence in finding Dr. Rizzo credible in terms of his opinion about the cause of the failure of the old upper reservoir, yet completely disregarding his unrefuted opinions about what costs would have been incurred in the absence of the breach.

22. The Commission's decision is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence in requiring 100% certainty regarding whether costs would have been incurred even absent the breach, while also finding Dr. Rizzo's testimony to be "very credible regarding the cause of the breach of the old upper reservoir," when in fact the cause of the failure also is not known with "100% certainty."

23. The Commission's conclusion that imprudence in building the older upper reservoir in the 1960s does not provide "a reasonable basis" to allow recovery of reconstruction costs that are "allowed costs" under the Consent Judgment is unlawful, unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence because the Commission has

no power to disallow prudently incurred reconstruction costs that are, under the Consent Judgment, "allowed costs."

24. The Commission's decision is unreasonable, arbitrary, capricious, constitutes an abuse of discretion, is not supported by competent and substantial evidence of record, and is against the greater weight of the evidence in concluding that none of the $89 million of investment constituted "allowed costs" under the Consent Judgment based on the Commission's view that such a construction would mean the Company could recover all uninsured reconstruction costs.

There is no evidence of record that any of the enhancements quantified in the record were features present in the old upper reservoir. Indeed, the evidence is unrefuted that the old upper reservoir contained none of these features, and the evidence is unrefuted that all of these features are an improvement or betterment over the old upper reservoir. The record reflects no request by the Company to recover more dollars than it actually cost to construct such enhancements. Under the Company's (and the record shows, the only other party to the Consent Judgment, the State's) construction of the phrase "allowed costs" only uninsured costs that are enhancements, or that would have been incurred even absent the breach, are allowed costs.

It makes perfect sense that such recovery would be allowed because customers benefit from both kinds of costs if they were prudently incurred. If the cost would have been incurred absent the breach, this means that the Company (if prudent) would have incurred them and would have been entitled to place them in rate base in the absence of the breach. Thus customers are in the same position they would have been in absent the breach. If the costs are for enhancements, customers are getting something of value for the prudently incurred cost of the enhancements – a safer, more reliable, and longer-lived facility that provides them benefits. If it were prudent to enhance the old upper reservoir (if it could have been enhanced) then the Company would have been entitled to include those costs in rate base. Again, customers are in

the same position they would have been in absent the breach. This conclusion is supported by the plain meaning of the contract and the intent it reflects per its four corners, and if ambiguity were present, by the available extrinsic evidence. The Commission has no basis for its conclusion in this regard.[8]

25. The Commission's decision is unlawful, unreasonable, arbitrary, capricious, an abuse of discretion, not supported by competent and substantial evidence of record, and against the greater weight of the evidence in that the Commission relied upon facts not in evidence, including that some of the deficiencies in the old upper reservoir should have been apparent to an inspector without the enhanced PFMA process; that "enhancement" is not a term in general use in the field of utility regulation; and that the parties "cannot have intended" for the Company to be able to recover prudently incurred costs falling within one of the three categories of allowed costs.

26. The Commission's decision relating to the Taum Sauk issue is unlawful because it contains inadequate findings of fact and conclusions of law, as follows:

a. Because they are insufficient to provide insight into how the Commission can deny recovery of prudently incurred utility investments, in particular those that without dispute provide greater benefits than the cost, given a utility's right as a matter of law to have recognized all of its prudently incurred investments in rates.

b. Because they are insufficient to provide insight into how the Commission could find that that "enhancements" meant as compared to a 2010 upper reservoir constructed to 2010 standards, when the only parties to the contract, by action and by

[8] The Commission apparently concluded there was ambiguity because it relies upon extrinsic evidence to reach its conclusion that an "enhancement" must be a betterment vis-à-vis the 1960's dam. In this regard, the Commission relies on what terms are or are not used "in the general field of utility regulation," hypothetical factual circumstances not of record, the quality of the construction of the old upper reservoir in the 1960s, dam safety standards in the 1960s, and the Staff's 2007 investigation report. As noted earlier, it is the Company's position that the Consent Agreement is not ambiguous, thus the Commission erred as a matter of law in (implicitly) concluding that it is. As also noted, the Commission's construction of the Consent Judgment is also in error even if the Consent Judgment is found to be ambiguous as a matter of law.

words, indicated that "enhancements" meant as compared to a 1963 reservoir constructed to 1963 standards.

c. Because the Commission's conclusion that it is not "bound by" the Consent Judgment is completely conclusory.

d. Because they are not sufficiently definite and certain without resort to the evidence to allow the court to intelligently ascertain if what the Commission claims is the "fact" that at least some deficiencies would have been revealed without a PFMA inspection actually provides a reasonable basis for the decision.

e. Because they fail to provide sufficient insight into why it is not a reasonable construction of the consent judgment that the parties thereto intended that all uninsured reconstruction costs could in fact be recovered so long as they were prudently incurred and so long as they (a) were improvements over the old upper reservoir, or (b) were costs that even without the breach would have been incurred anyway, regardless of the fact that there was poor construction in the 1960s, particularly where the benefits of the investment sought to be recovered here far outweigh the cost of that investment

f. Because they fail to explain how the fact that a term is or is not used in "utility regulation" has anything to do with what interpretation of the relevant contract term.

g. Because they fail to explain how the comparison for "enhancements" can be by reference to a dam constructed to current standards where the Consent Judgment (a) generally prohibits reconstruction costs, (b) but requires reconstruction to current standards, and (c) specifically creates an exception to the general prohibition on recovery of reconstruction costs if they are "enhancements" or another category of allowed costs.

h. Because they are not sufficiently definite and certain without resort to the evidence to allow the court to intelligently ascertain the precise nature of the Staff's

recommendation in the 2007 investigatory docket, or why the Staff's recommendation has anything to do with what the Consent Judgment means, or what the Commission's powers and obligations are when a utility seeks to rate base prudently incurred investments.

i. Because the Commission fails to properly distinguish between conclusions of law and findings of fact.

B. Request for Reconsideration

27. Ameren Missouri asks the Commission to reconsider its decision addressing the Company's energy efficiency programs.

28. As the Commission is aware, Ameren Missouri has invested tens of millions of dollars in electric energy efficiency programs in the last several years.[9] It has developed a network of trade allies which is very valuable to the success of its current programs. These programs end on September 31st of this year.[10] The Company would prefer to continue funding these programs but needs Commission assistance to be able to do so. The record contains a great deal of agreement on the energy efficiency issue. No party in this case argued that the Company's current programs don't work or that they shouldn't be continued. All of the parties and the Commission itself acknowledge the existence and very real impact of the throughput disincentive. Given these facts, the next logical step is to address the throughput disincentive and find a mechanism that will allow Ameren Missouri to continue its investment in energy efficiency programs. Addressing the throughput disincentive is exactly what is required of the Commission by the Missouri Energy Efficiency Investment Act ("MEEIA"). The MEEIA statute states that the Commission:

[9] In the years 2008 and 2009, the Company spent approximately $13.5 million while in 2010 it significantly increased that investment to $23 million. That amount grew even more in 2011, with the Company anticipating expenditures of approximately $33 million on energy efficiency programs. Ex. 111 (Mark Surrebuttal), p. 4, l. 4-6.
[10] Ex. 113 (Laurent Surrebuttal), p. 4, l. 12-15.

> "...*shall* (1) Provide timely cost recovery for utilities; (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings."[11]

29. Significantly, the legislature used the word "shall" in this section. It requires the Commission to take action to align incentives, which means to deal with the throughput disincentive, a "fundamental" barrier to the alignment of interests of the Company and its customers.[12] The Company has proposed a billing unit adjustment mechanism that will offset the throughput disincentive for the level of energy efficiency savings the Company expects to achieve over the next two years. It does not solve the throughput disincentive for all time but offsets it for the next couple of years. Ameren Missouri does not request this mechanism because it is the ultimate solution, but rather as a necessary interim step to allow the Company to keep its energy efficiency programs in place.

30. Specifically, the Company requests the Commission approve the billing unit adjustment mechanism and, in concert with that approval, extend the effective date of its current energy efficiency tariffs until December 31, 2013. This will allow Ameren Missouri to retain the momentum of its current energy efficiency programs, and allow it to achieve 75% of Realistic Achievable Potential in 2012,[13] while providing time for the Company to consider what regulatory support is necessary for long-term investment in energy efficiency. Denial of this request is not supportive of energy efficiency efforts in Ameren Missouri's service territory.

The Commission's Report and Order also states that the Company's request is not completely consistent with the Commission's new MEEIA rules. Of course, those rules only became effective *after* the hearing was completed in this case. Moreover, many of the specific

[11] Section 393.1075.3 RSMo. Emphasis added.
[12] Ex. 115 (Davis Rebuttal), p. 2, l. 12-15.
[13] Ex. 111, p. 4, l. 10-13.

requirements set forth in the Report and Order are not found in the MEEIA statute and, accordingly, can be waived by the Commission.

31. The key is whether Ameren Missouri's request is consistent with the MEEIA statute and whether Ameren Missouri's request moves toward aligning utility and customer interests in energy efficiency. The Company submits that its proposal is allowed under the language of the MEEIA statute and is the only proposal in this case that aligns incentives for the Company and for its customers. The Commission should not turn its back on Ameren Missouri's request and upon the Company's energy efficiency programs.

32. The Company asks the Commission to reconsider its order on Ameren Missouri's energy efficiency programs.

C. ***Motion for Clarification***

33. The section of the Report and Order which addresses the amount of Renewable Energy Standard ("RES") compliance costs to include in the Company's revenue requirement refers to those costs as "solar rebate expenses." *See* Report and Order, p. 101. However, as the Commission's first finding of fact on this issue (Report and Order p. 97, ¶1) indicates, the issue is the amount of *RES compliance costs* that should be used to set the revenue requirement in this case.

34. Consequently, although it is true that the historical test year RES expenses consisted only of solar rebate costs (the approximately $885,000 incurred in the true up period), there are several kinds of RES compliance costs that Ameren Missouri will incur during the period when rates in this case will be in effect. These include the $2 million of solar Renewable Energy Credits that the Company will pay in 2011 pursuant to the terms of its Commission

approved Standard Offer Contract tariff, costs Ameren Missouri will pay for solar renewable energy certificates, and other RES compliance costs.[14]

35. Because the record reflects that the overall RES compliance costs consist of much more than just solar rebate costs, and because the record reflects that the amount of just solar rebate costs in the test year is far below what the RES compliance costs are and will be, the Company requests that the Commission clarify that the approximately $885,000 used as a proxy to set the revenue requirement underlying the rates set in this case are not included in rates "for ongoing solar rebate expenses." Rather, they are simply a proxy for "RES compliance costs." As the Commission is aware, customers pay for service, but they don't pay for the property used to provide it or the costs of the utility incurred in the past.[15] In addition, it is well-settled that the "test year is a period past, but is employed as a vehicle upon which to project experience in a future period when rates determined in the case will be in effect,"[16] but it does not reflect the later recovery of costs incurred in the past.

36. For similar reasons, the Report and Order should clarify that the Accounting Authority Order authorized by the Commission is designed to capture all RES compliance costs, not just the cost of solar rebates. The Commission itself described the accounting authority the Company seeks as "authority to defer the cost of solar rebates, the cost to purchase renewable energy or renewable energy credits and other related costs… ." Report and Order, p. 95, ¶1. Consequently this request for clarification is entirely consistent with that provision of the order.

D. ***Motion for Correction Nunc Pro Tunc***

37. The Report and Order contains one factual mistake and two minor typographical errors which the Company suggests the Commission correct.

38. On page 71, ¶ 23 (fifth line), the word "analyst's should be plural "analysts'."

[14] Ex. 130 (Weiss Direct), p. 36, l. 3 through 13; Ex. 131 (Weiss Rebuttal), p. 16, l. 21-22.
[15] *See e.g., State ex rel. Empire District Electric Co. v. Pub. Serv. Comm'n*, 100 S.W.2d 509 (Mo. 1936).
[16] *State ex rel. Missouri Power & Light Co. v. Pub. Serv. Comm'n*, 669 S.W.2d 941, 945 (Mo. App. W.D. 1984).

39. On page 54, in the next to last line of ¶ 23, Union Electric Company is incorrectly referred to as "Ameren Missouri's parent company." "Ameren Missouri" is a fictitious name under which Union Electric Company does business.

WHEREFORE, the Company hereby respectfully requests that the Commission grant rehearing of its Report and Order with respect to the Taum Sauk issue, that it reconsider its order regarding energy efficiency issues, that it clarify its Report and Order as requested above regarding RES compliance costs, and that it correct its Report and Order *nunc pro tunc as outlined* above.

Dated: July 22, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 22nd day of July, 2011.

/s/James B. Lowery
James B. Lowery