

Exhibit No.:	
Issue:	Fuel Adjustment Clause
Witness:	Maurice Brubaker
Type of Exhibit:	Direct Testimony
Sponsoring Party:	MIEC
Case No.:	EO-2012-0074
Date Testimony Prepared:	May 14, 2012

**BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI**

**In the Matter of the Second Prudence
Review of Costs Subject to the
Commission-Approved Fuel Adjustment
Clause of Union Electric Company,
d/b/a Ameren Missouri**

Case No. EO-2012-0074

Direct Testimony and Schedules of

Maurice Brubaker

On behalf of

Missouri Industrial Energy Consumers

May 14, 2012
Project 9165



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**STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS) SS**

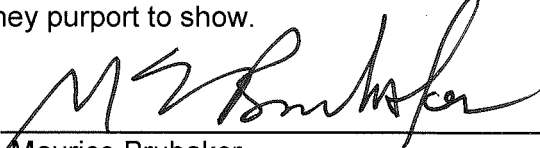
Affidavit of Maurice Brubaker

Maurice Brubaker, being first duly sworn, on his oath states:

1. My name is Maurice Brubaker. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.

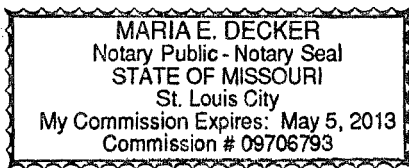
2. Attached hereto and made a part hereof for all purposes is my direct testimony and schedules which were prepared in written form for introduction into evidence in the Missouri Public Service Commission's Case No. EO-2012-0074.

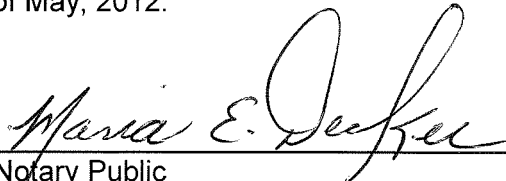
3. I hereby swear and affirm that the testimony and schedules are true and correct and that they show the matters and things that they purport to show.



Maurice Brubaker

Subscribed and sworn to before me this 14th day of May, 2012.





Notary Public

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Case No. EO-2012-0074

Direct Testimony of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q WHAT IS YOUR OCCUPATION?**

5 A I am a consultant in the field of public utility regulation and President of Brubaker &
6 Associates, Inc., energy, economic and regulatory consultants.

7 **Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

8 A This information is included in Appendix A to my testimony.

9 **Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

10 A I am appearing on behalf of the Missouri Industrial Energy Consumers ("MIEC").
11 MIEC member companies are large consumers of electricity and are materially
12 impacted by Ameren Missouri's rates.

**Maurice Brubaker
Page 1**

1 **Q HAVE YOU REVIEWED AMEREN MISSOURI’S APPLICATION, TESTIMONY AND**
2 **EXHIBITS FILED IN THIS MATTER?**

3 A Yes, I have.

4 **Q WHAT IS THE ISSUE IN THIS CASE?**

5 A The basic issue is whether Ameren Missouri was correct in retaining the revenues,
6 and consequently the margins, from sales under two bilateral contracts with American
7 Electric Power Company (“AEP”) and Wabash Valley Power Association, Inc.
8 (“Wabash”) during the period October 1, 2009 through May 31, 2011, or whether the
9 margins from these sales should have flowed through Ameren Missouri’s retail Fuel
10 Adjustment Clause (“FAC”) to retail customers.

11 **Q WHAT IS THE SUBJECT OF YOUR TESTIMONY?**

12 A I address Ameren Missouri’s claims with respect to the nature of the sales to AEP and
13 Wabash and the appropriate treatment in the FAC of revenues and expenses
14 associated with these sales.

15 **Q ARE ANY OTHER WITNESSES APPEARING ON BEHALF OF MIEC?**

16 A Yes. My colleague, Greg Meyer, will offer testimony concerning a \$3.3 million
17 reduction to the margins that Ameren Missouri witness Gary Weiss proposes to
18 make. It is Mr. Meyer’s position that this adjustment would not be appropriate, and
19 therefore should not be made.

1 **Q PLEASE SUMMARIZE YOUR FINDINGS AND RECOMMENDATIONS.**

2 A They may be summarized as follows:

- 3 1. The AEP and Wabash contracts at issue in this case are the same contracts that
4 were at issue in Missouri Public Service Commission ("PSC") Case No.
5 EO-2010-0255.
- 6 2. The only difference between this case and Case No. EO-2010-0255 is the period
7 of time under consideration.
- 8 3. The AEP and Wabash contracts are not "requirements contracts" and therefore
9 the revenues and expenses associated with these contracts should be flowed
10 through the FAC.
- 11 4. The Commission should issue an order finding that the same treatment ordered in
12 Case No. EO-2010-0255 is appropriate in this case.
- 13 5. If Ameren Missouri had not received the FAC that it requested, it would have been
14 able to retain the margins from power sales in the wholesale market and the
15 current issues would not have arisen.
- 16 6. Ameren Missouri has benefited substantially from the presence of the FAC,
17 collecting nearly \$200 million from its inception through January 2012.

18 **The AEP and Wabash Contracts**

19 **Q HAS THE TREATMENT OF THESE CONTRACTS IN AMEREN MISSOURI'S FAC**
20 **PREVIOUSLY BEEN CONSIDERED BY THE COMMISSION?**

21 A Yes. In Missouri PSC Case No. EO-2010-0255, the Commission held hearings to
22 consider the appropriate treatment of these contracts in Ameren Missouri's FAC over
23 the period March 1, 2009 to September 30, 2009. The Commission issued its Report
24 and Order on April 27, 2011 directing Ameren Missouri to refund \$17.2 million to
25 customers through an adjustment to its FAC charge to correct for an overcollection of
26 revenues for the indicated period of time.

1 **Q TO BE CLEAR, ARE THE CONTRACTS AT ISSUE IN THIS CASE THE SAME AS**
2 **THE CONTRACTS THAT WERE AT ISSUE IN CASE NO. EO-2010-0255?**

3 A Yes. These are the same two contracts that were previously at issue. The only
4 difference between this case and the prior case is the time period under
5 consideration.

6 **Q WHAT IS YOUR POSITION ON THIS ISSUE?**

7 A My position is that in accordance with the terms of the FAC, the margins from sales
8 under these two bilateral contracts for the period now under review should have been
9 treated like other off-system sales and flowed through the FAC to the benefit of retail
10 customers. The contracts have not changed, other relevant facts have not changed,
11 and the Commission should reach the same conclusion about treatment of these
12 contracts as it did in Case No. EO-2010-0255.

13 **Q WHAT IS AMEREN MISSOURI'S BASIS FOR CONTENDING THAT THE BENEFIT**
14 **OF THE MARGINS FROM THESE SALES SHOULD NOT BE FLOWED THROUGH**
15 **TO RATEPAYERS?**

16 A Ameren Missouri maintains that they fall into the category of sales which may be
17 excluded from off-system sales revenue ("OSSR") under the FAC. For reference,
18 Sheet No. 98.3 to the FAC tariff effective March 1, 2009 is attached hereto as
19 Schedule MEB-1. As stated in the tariff, all off-system sales flow through the FAC
20 except "long-term full and partial requirements sales."

1 **Q ARE THESE TWO BILATERAL CONTRACTS SHORT-TERM OR LONG-TERM**
2 **REQUIREMENTS CONTRACTS?**

3 A No. Requirements contracts (or requirements sales) are those wherein “requirements
4 service” is provided. The commonly understood regulatory concept of “requirements
5 service” is, and for many years has typically been, the provision of power to municipal
6 customers, and sometimes rural electric cooperatives, on a basis whereby the selling
7 utility incorporates the requirements of these customers (who typically have little or no
8 generation of their own) into its resource planning. In fact, this is the definition
9 provided by the Federal Energy Regulatory Commission (“FERC”) in the instructions
10 to filing the data requested on the “Sales for Resale” pages in the FERC Form 1
11 Report. Attached hereto as Schedule MEB-2, are pages 310-310.4, 311-311.4 and
12 450.1 (footnotes) from Ameren Missouri’s 2009 FERC Form 1 Report. Sales for
13 Resale are to be categorized as Requirements Service (“RQ”), Long-Term Firm
14 Service (“LF”), Intermediate Term Firm Service (“IF”), Short-Term Firm Service (“SF”),
15 Long-Term Unit Power Service (“LU”) or Intermediate Term Service from a
16 designated generating unit (“IU”).

17 FERC defines Requirements Service as:

18 Requirements service is service which the supplier plans to provide on
19 an ongoing basis (i.e., the supplier includes projected load for this
20 service in its system resource planning). In addition, the reliability of
21 requirements service must be the same as, or second only to, the
22 supplier’s service to its own ultimate consumers.

23 Note that sales to the cities are designated as requirements service, while all
24 other sales are not. In fact, in its 2009 FERC Form 1 Report, Ameren Missouri
25 categorized the sales to AEP (page 310) and Wabash (page 310.3) as “IF” –
26 Intermediate Firm Service, and not as “RQ” – Requirements Service.

1 **Q ARE YOU AWARE OF ANY OTHER GENERALLY ACCEPTED SOURCES FOR**
2 **THE DEFINITION OF REQUIREMENTS SERVICE?**

3 A Yes. The Edison Electric Institute (“EEI”), a trade association for the investor-owned
4 electric utility industry, publishes a “Glossary of Electric Industry Terms.” I have
5 attached as Schedule MEB-3 a copy of page 134 of that document which defines
6 requirements service as:

7 Requirements Service: Service that the supplier plans to provide on
8 an ongoing basis (i.e., the supplier includes projected load for this
9 service in its system resource planning). In addition, the reliability of
10 requirements service must be the same as, or second only to, the
11 supplier's service to its own ultimate customers.

12 This definition is the same as the definition included in the FERC Form 1
13 Report, and in his deposition Mr. Haro stated he did not disagree with it.¹

14 Also, in his surrebuttal testimony in Case No. EO-2010-0255, Mr. Haro
15 (page 7 of the surrebuttal testimony of Jaime Haro) referenced the FERC's Electronic
16 Quarterly Report (“EQR”) Data Dictionary. It defines requirements service as:

17 Requirements Service: Firm, load-following power supply necessary
18 to serve a specified share of customer's aggregate load during the
19 term of the agreement.²

20 All public utilities and power marketers must file EQRs for each calendar
21 quarter, and those EQRs must summarize the contractual terms and conditions for
22 market-based power sales. Notably, Ameren Missouri did not classify either the AEP
23 sale or the Wabash sale as “requirements contracts” in its EQR filings.

¹Haro November 19, 2010 Deposition in Case No. EO-2010-0255, pages 133-134.

²FERC Order No. 2001-1, Order Revising Electric Quarterly Report Data Dictionary, 125 FERC ¶61,103, Attachment, page 37.

1 **Q BASED ON YOUR EXPERIENCE IN THE ELECTRIC UTILITY INDUSTRY, IS THIS**
2 **THE COMMONLY UNDERSTOOD MEANING OF “REQUIREMENTS SERVICE”?**

3 A Yes, it is.

4 **Q WHAT IS THE NATURE OF THE SERVICES PROVIDED TO AEP AND WABASH?**

5 A The bilateral contracts between Ameren Missouri and AEP and Ameren Missouri and
6 Wabash both provide only electric capacity and energy service. Ameren Missouri is
7 not providing any of the RTO or OATT services that are needed to complete a
8 transaction. I have attached as Schedule MEB-4 a copy of pages attached to the
9 Wabash contract which spell out the additional items that are the responsibility of the
10 buyer (i.e., Wabash). At his deposition, Mr. Haro indicated that the same division of
11 responsibilities applies to the AEP contract, wherein AEP is required to provide all of
12 these services.³

13 **Q HOW DOES THIS SERVICE DIFFER FROM THE SERVICE PROVIDED TO THE**
14 **MUNICIPAL CUSTOMERS?**

15 A The services provided to the municipalities include the capacity and energy service
16 as well as all, or many, of the RTO and OATT charges. Schedule MEB-5 is a
17 summary of the nature of the services provided by Ameren Missouri to these
18 municipal customers. Obviously, Ameren Missouri provides substantially more
19 service to these municipal customers than to AEP and Wabash under their bilateral
20 one-off contracts. These service characteristics are typical of requirements service
21 provided by utilities.

³Haro November 19, 2010 Deposition in Case No. EO-2010-0255, pages 137-138.

1 In contrast, the bilateral contracts with AEP and Wabash strictly provide
2 capacity and energy, leaving the buyer to arrange the transmission, pay for
3 transmission and for all other services required to accept the power from the seller.

4 **Q HOW DO THE CONTRACT DURATIONS COMPARE TO THE DURATION OF**
5 **MUNICIPAL CONTRACTS?**

6 A In general, the municipal contracts are much longer in length. As contrasted to the
7 18-month duration of the Wabash contract and the 15-month duration of the AEP
8 contract, the duration of the municipal contracts listed in the FERC Form 1 Report
9 ranges from 29 months to 77 months. (Some municipalities, like the City of Kirkwood,
10 have been customers for decades.)

11 **Q DOES THE FACT THAT THE CONFIRMATION LETTER WITH AEP STATES,**
12 **AMONG OTHER THINGS, THAT THE CAPACITY AND ENERGY PROVIDED WILL**
13 **“...ENABLE AEP TO PARTIALLY MEET LOAD SERVING REQUIREMENTS.”**
14 **AND THAT THE AGREEMENT WITH WABASH STATES, AMONG OTHER**
15 **THINGS, THAT THE PRODUCT SHALL BE USED TO “...PARTIALLY MEET THE**
16 **REQUIREMENTS THE CITIZENS ELECTRIC CORPORATION IN MISSOURI...”**
17 **MAKE THESE AGREEMENTS REQUIREMENTS CONTRACTS?**

18 A No. These are incidental statements that have no meaning as to the character of the
19 service supplied. Given that Ameren Missouri was seeking contracts that could be
20 characterized as “long-term partial requirements” so as to qualify for exclusion from
21 flowing the margin through the FAC,⁴ it is not surprising that some of these words
22 such as “load,” “partially,” and “requirements” would appear as incidental language in

⁴Haro November 19, 2010 Deposition in Case No. EO-2010-02555, page 139.

1 these documents. Calling these transactions requirements service does not make
2 them so anymore than calling a dog a duck makes it quack. They are what they are,
3 and they are not requirements contracts.

4 **Q TO THE EXTENT THAT THERE ARE ANY DIFFERENCES IN TERMINOLOGY**
5 **BETWEEN A REGULATED RETAIL RATE CONTEXT AND A COMPETITIVE**
6 **WHOLESALE MARKET CONTEXT, WHICH CONCEPTS SHOULD GUIDE THE**
7 **COMMISSION'S DECISION?**

8 **A**The regulatory context is clearly more relevant here because the Commission sets
9 rates in the regulated retail context. It is not setting rates in the wholesale market,
10 and thus if there are differences in terminology, the traditional interpretations from the
11 regulated retail ratemaking context are the most appropriate and are the ones that
12 should be used.

13 **Other Matters**

14 **Q TURNING NOW TO SOME OTHER MATTERS, HOW DO YOU RESPOND TO**
15 **AMEREN MISSOURI WITNESS LYNN BARNES' DIRECT TESTIMONY AT PAGE 5**
16 **THAT “. . . NOT FOLLOWING THE TARIFF IS NOT A MATTER OF WHETHER**
17 **THE COMPANY WAS ‘PRUDENT,’ BUT RATHER, IS AN ALLEGATION THAT THE**
18 **COMPANY DID NOT FOLLOW THE LAW . . .”?**

19 **A**I disagree. While, like Ms. Barnes, I am not an attorney and do not pretend to offer a
20 legal opinion, it is my considered opinion that it is generally imprudent for the
21 Company to violate the law.

1 **Q AT PAGE 9, LINE 4 OF HER TESTIMONY, MS. BARNES DESCRIBES THE LOSS**
2 **OF THE NORANDA LOAD AS A “. . . DEVASTATING FINANCIAL BLOW . . .”**
3 **AND AT LINE 13 OF PAGE 13 ASSERTS THAT AMEREN MISSOURI WAS**
4 **“... FACED WITH A CATASTROPHIC FINANCIAL LOSS . . .” HOW DO YOU**
5 **RESPOND?**

6 **A While I agree that the ice storm and the resulting loss of load was a major event, it**
7 **hardly rises to the level of “devastating” or “catastrophic.” After considering the**
8 **reduction in income taxes, the net impact of the previously ordered \$17 million refund,**
9 **plus the refund amount at issue in this case amounts to less than a 70 basis points**
10 **return on equity (0.70%).**

11 **Q IN ADDITION TO THE ICE STORM AND THE LOSS OF LOAD THAT MS. BARNES**
12 **DESCRIBES, ARE THERE OTHER FACTORS THAT CONTRIBUTED TO THE**
13 **IMPACTS THAT MS. BARNES DESCRIBES?**

14 **A Yes. Had Ameren Missouri not received the FAC that it had asked for, power that**
15 **otherwise would have been sold to Noranda would have been sold in the wholesale**
16 **market and the net revenues from such sales would have been retained by Ameren**
17 **Missouri’s stockholders.**

18 **Q AT PAGE 10, LINE 12 OF HER TESTIMONY, MS. BARNES INDICATES THAT IN**
19 **THE SHORT RUN AMEREN MISSOURI’S ONLY OPTION WAS TO SELL THE**
20 **POWER NORANDA WAS NO LONGER USING INTO THE OFF-SYSTEM**
21 **MARKET. DO YOU AGREE?**

22 **A No. Ameren Missouri could have filed an application with the Missouri Public Service**
23 **Commission requesting permission to withdraw its FAC tariff.**

1 **Q DID AMEREN MISSOURI DO SO?**

2 A No, it did not.

3 **Q HAS AMEREN MISSOURI BENEFITTED FROM THE PRESENCE OF THE FAC?**

4 A Yes. Substantially. Since the inception of the FAC, Ameren Missouri has refunded
5 only roughly \$4 million to Missouri ratepayers,⁵ compared to the nearly \$200 million it
6 has collected as a result of the FAC through January 2012.

7 **Q DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

8 A Yes, it does.

⁵Excluding the \$17 million refund required as a result of the inappropriate treatment of the AEP and Wabash sales.

Qualifications of Maurice Brubaker

1 **Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A Maurice Brubaker. My business address is 16690 Swingley Ridge Road, Suite 140,
3 Chesterfield, MO 63017.

4 **Q PLEASE STATE YOUR OCCUPATION.**

5 A I am a consultant in the field of public utility regulation and President of the firm of
6 Brubaker & Associates, Inc. ("BAI"), energy, economic and regulatory consultants.

7 **Q PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
8 **EXPERIENCE.**

9 A I was graduated from the University of Missouri in 1965, with a Bachelor's Degree in
10 Electrical Engineering. Subsequent to graduation I was employed by the Utilities
11 Section of the Engineering and Technology Division of Esso Research and
12 Engineering Corporation of Morristown, New Jersey, a subsidiary of Standard Oil of
13 New Jersey.

14 In the Fall of 1965, I enrolled in the Graduate School of Business at
15 Washington University in St. Louis, Missouri. I was graduated in June of 1967 with
16 the Degree of Master of Business Administration. My major field was finance.

17 From March of 1966 until March of 1970, I was employed by Emerson Electric
18 Company in St. Louis. During this time I pursued the Degree of Master of Science in
19 Engineering at Washington University, which I received in June, 1970.

20 In March of 1970, I joined the firm of Drazen Associates, Inc., of St. Louis,
21 Missouri. Since that time I have been engaged in the preparation of numerous

1 studies relating to electric, gas, and water utilities. These studies have included
2 analyses of the cost to serve various types of customers, the design of rates for utility
3 services, cost forecasts, cogeneration rates and determinations of rate base and
4 operating income. I have also addressed utility resource planning principles and
5 plans, reviewed capacity additions to determine whether or not they were used and
6 useful, addressed demand-side management issues independently and as part of
7 least cost planning, and have reviewed utility determinations of the need for capacity
8 additions and/or purchased power to determine the consistency of such plans with
9 least cost planning principles. I have also testified about the prudence of the actions
10 undertaken by utilities to meet the needs of their customers in the wholesale power
11 markets and have recommended disallowances of costs where such actions were
12 deemed imprudent.

13 I have testified before the Federal Energy Regulatory Commission ("FERC"),
14 various courts and legislatures, and the state regulatory commissions of Alabama,
15 Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia,
16 Guam, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri,
17 Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania,
18 Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia,
19 Wisconsin and Wyoming.

20 The firm of Drazen-Brubaker & Associates, Inc. was incorporated in 1972 and
21 assumed the utility rate and economic consulting activities of Drazen Associates, Inc.,
22 founded in 1937. In April, 1995 the firm of Brubaker & Associates, Inc. was formed. It
23 includes most of the former DBA principals and staff. Our staff includes consultants
24 with backgrounds in accounting, engineering, economics, mathematics, computer
25 science and business.

1 Brubaker & Associates, Inc. and its predecessor firm has participated in over
2 700 major utility rate and other cases and statewide generic investigations before
3 utility regulatory commissions in 40 states, involving electric, gas, water, and steam
4 rates and other issues. Cases in which the firm has been involved have included
5 more than 80 of the 100 largest electric utilities and over 30 gas distribution
6 companies and pipelines.

7 An increasing portion of the firm's activities is concentrated in the areas of
8 competitive procurement. While the firm has always assisted its clients in negotiating
9 contracts for utility services in the regulated environment, increasingly there are
10 opportunities for certain customers to acquire power on a competitive basis from a
11 supplier other than its traditional electric utility. The firm assists clients in identifying
12 and evaluating purchased power options, conducts RFPs and negotiates with
13 suppliers for the acquisition and delivery of supplies. We have prepared option
14 studies and/or conducted RFPs for competitive acquisition of power supply for
15 industrial and other end-use customers throughout the United States and in Canada,
16 involving total needs in excess of 3,000 megawatts. The firm is also an associate
17 member of the Electric Reliability Council of Texas and a licensed electricity
18 aggregator in the State of Texas.

19 In addition to our main office in St. Louis, the firm has branch offices in
20 Phoenix, Arizona and Corpus Christi, Texas.

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