**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.	)))	File No. ER-2012-0166

REPLY BRIEF OF AMEREN MISSOURI

Thomas M. Byrne, #33340
Managing Assoc. General Counsel
Wendy K. Tatro, #60261
Assoc. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-2514
(314) 554-3484
Facsimile (314) 554-4014
amerenmissouriservice@ameren.com

James B. Lowery, #40503
Michael R. Tripp, #41535
SMITH LEWIS, LLP
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com
tripp@smithlewis.com

L. Russell Mitten, #27881
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Phone (573) 635-7166
Facsimile (573) 634-7431
rmitten@brydonlaw.com

**Attorneys for Union Electric Company
d/b/a Ameren Missouri**

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COMES NOW Union Electric Company d/b/a Ameren Missouri (Company or Ameren Missouri), by and through counsel, and for its Reply Brief states as follows:

INTRODUCTION/POLICY

In their Initial Briefs several parties take issue with the evidence that Ameren Missouri has presented, primarily in the form of charts showing rolling 12-month averages of earnings, which demonstrate that at least since 2007 the Company has chronically failed to recover its cost of providing service to its customers, and as a result has consistently failed to earn close to its authorized return. The evidence that Ameren Missouri submitted shows that on a weather-normalized basis it has literally ***never*** earned its authorized return over that period,[1] and if data is not weather-normalized, the Company has only very occasionally earned its authorized return.[2] In many of the months (each a 12-month average), earnings shown on both charts are far below the return authorized by the Commission.

Although Ameren Missouri acknowledges that an authorized return represents only an opportunity and not a guarantee, if the regulatory process was allowing Ameren Missouri to timely recover its costs of providing service, in the absence of mismanagement one would expect these charts to show an approximately equal number of months when earnings were above and below the Commission-authorized ROE.[3] Instead, these charts show that earnings are

[1] Rates are set on a weather-normalized basis.
[2] *See, for example,* Ex. 2, Schedules WLB-ES1 and WLB-ES2 (Baxter Surrebuttal).
[3] Ex. 2, p. 4, l. 19 - p. 5, l. 9.

systematically and consistently below the authorized returns. These chronic under-earnings provide support for Ameren Missouri's proposals for the Commission to take some modest additional steps to improve the regulatory framework in this case, through the adoption of Plant-in-Service Accounting, the adoption of a two-way major storm restoration tracker, and the authorization of an ROE at least commensurate with ROEs authorized in other jurisdictions where costs can be more fully and timely recovered. By allowing for more full and timely recovery of the costs that the Company is incurring to serve its customers, these measures will help reduce the financial disincentive for the Company to invest in its system that currently exists, encourage investment for the benefit of customers, help mitigate the chronic under-earnings shown in the charts, and they may help reduce the frequency of rate cases.

Other parties, primarily the Staff and the MIEC, question whether the perspective shown by the charts Ameren Missouri has presented is accurate. "Is that picture even true?" is the rhetorical question raised in the Staff's Initial Brief.[4] The answer is, yes it most certainly is. The challenges that the Staff and the MIEC have raised to Ameren Missouri's evidence that it is chronically under-earning are based on three arguments, each of which does not withstand scrutiny.

First, the MIEC relies on the earnings chart that Mr. Gorman prepared, which was originally attached as Schedule MPG-21 to his direct testimony. Although Mr. Gorman's original chart contained a substantial error that significantly overstated Ameren Missouri's earnings, at the hearing the MIEC presented a "corrected" chart that showed that Ameren Missouri earned above its Commission-authorized ROE every year from 1996-2005.[5] In its Initial Brief, the MIEC used this revised chart to argue that Ameren Missouri's under-earnings

[4] Staff's Initial Brief, p. 12.
[5] Ex. 532.

since 2007 are offset by other periods when it over-earns. The MIEC stated: "However, as the evidence clearly shows, under Missouri's supposedly outdated regulatory paradigm, Ameren Missouri was systematically and chronically earning <u>more than</u> its authorized return for well over a decade prior to 2006."[6] That assertion simply is not and cannot be true.

Why? Because Mr. Gorman's "corrected" chart is still completely inaccurate and misleading. As Ameren Missouri CEO Warner Baxter testified, during most of the period from 1996-2005, Ameren Missouri was subject to a Commission-approved earnings sharing plan, whereby earnings were shared between Ameren Missouri and its customers pursuant to a sharing grid between 12.6% and 14%.[7] During the period that the earnings sharing plan was in effect, Ameren Missouri's authorized ROE was not 12% as Mr. Gorman's revised chart shows. Rather, it was the return reflected in the Commission-approved earnings sharing grid. Ameren Missouri did not over-earn, and could not have over-earned during the period that the earnings sharing plan was in effect, and the MIEC's argument to the contrary is simply wrong. Mr. Gorman's "corrected" chart, like his original chart in Schedule MPG-21, presents an inaccurate and misleading picture of Ameren Missouri's earnings and should be disregarded.

Second, the Staff attacks Ameren Missouri's evidence of chronic under-earnings using a single month's Surveillance Monitoring Report, which showed that Ameren Missouri's ROE for the 12-month period ending June 30, 2012 was 10.53%.[8] However, the evidence showed that this ROE excluded the impact of the Commission's disallowance of approximately $90 million in costs Ameren Missouri incurred to rebuild the Taum Sauk Plant, which had to be written off during the period covered by the report.[9] And although it may be appropriate for the

[6] MIEC's Initial Brief, p. 2 (footnote omitted).
[7] Tr. p. 313, l. 1-12.
[8] Staff's Initial Brief, pp. 12-13.
[9] Ex. 66, Tr. p. 1449, l. 20 - p. 1450, l. 12.

Commission to exclude consideration of this disallowance in a surveillance report, earnings should also be adjusted to eliminate the one-time refund from Entergy which occurred during this period, and weather-normalize revenues, which would significantly reduce the reported earnings. As Ameren Missouri witness Gary Weiss testified, elimination of the Entergy adjustment alone would reduce the reported ROE from 10.53% to approximately 9.97%, below the authorized return.[10] Weather normalization would reduce this return even further.[11] As the Staff has acknowledged, there are numerous other adjustments that must be made to determine what Ameren Missouri's "regulated" earnings were for the period in question,[12] and without making those adjustments there is no way to know whether Ameren Missouri was over-earning or under-earning. At best, surveillance reports can be used to track trends over time; whether a utility is actually over-earning or under-earning during a particular period requires a closer examination.[13]

Some of the same criticisms can be levied against the charts presented by the Company. Some of the charts were adjusted to reflect major regulatory adjustments – for example, Schedule WLB-ES3 was weather normalized and adjusted to exclude the Commission's Taum Sauk and FAC disallowances as well as the Entergy refund, and it shows that, as adjusted, the Company still did not earn its authorized return during any 12-month period from January of 2011 through July of 2012. But none of the Company's charts make every single regulatory adjustment that would be needed to determine its exact earnings on a regulatory basis, like the Commission would during a rate case. The difference is that the Company has presented 12-month rolling averages covering every month of data since 2007. From this large data set,

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[10] Tr. p. 1453, l. 14-18.
[11] Compare the June, 2012 return from Ex. 2, Schedule WLB-ES1 (weather normalized) to WLB-ES2 (not weather normalized).
[12] Staff's Initial Brief, footnote 53.
[13] Tr. p. 1470, l. 12 - p. 1471, l. 11.

one trend is unmistakable – the Company has consistently been unable to earn close to its authorized return. In contrast, data from one non-weather normalized surveillance report, which includes a huge one-time refund from Entergy and which in any event is only a single data point, doesn't really tell us anything.[14]

If the Commission has any doubt that Ameren Missouri has been significantly under-earning over the last five years, it need only look at rate case history of the Company over that period. Since 2006 Ameren Missouri has filed five general rate cases. Using an actual, historical test year, and making 100% of the "regulatory" adjustments that are appropriate for a rate case, the Company has been found to be significantly under-earning in each of the four cases that the Commission decided. In this case which has obviously not yet been decided, all parties acknowledge that the Company is entitled to a significant rate increase.[15] Under these circumstances, parties cannot credibly argue that the Company has been earning at or near to its authorized return over the last five years, no matter what data set they look at.[16]

Finally, the MIEC argues, without citing any supporting evidence, that Ameren Missouri's earnings shortfalls may be due to mismanagement. However, the evidence in this case shows that Ameren Missouri's management has worked diligently to provide customers with high-quality service at low costs. For example, the Labadie and Rush Island plants recently received an industry award based on efficient operations and low costs. The Callaway Plant has

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[14] Additional quarterly surveillance reports indicate returns significantly below Ameren Missouri's authorized return for every 12-month period from March, 2011 through March, 2012. Ex. 68.

[15] We would note that the Staff's Initial Brief reflects its pre-true-up position that a $202 million rate increase is justified. Based upon the true-up, Staff actually supports a $210 million increase. See the most recent *Reconciliation*, filed by the Staff on October 12, 2012.

[16] We generally agree with the Staff's recitation of what constitutes "just and reasonable" rates at pages 2-3 of the Staff's Initial Brief, that is, as part of balancing customer and utility interests, setting rates that will allow the Company to keep its assets in proper repair *and* insure (or at least provide a true, reasonable opportunity) to earn a fair return. But the pattern that is being observed demonstrates that the appropriate balance is not being struck. We are asking that incremental steps be taken in this case to better strike that balance.

run consistently for the last few years without an unscheduled outage.[17] And the evidence shows that the Company has increased reliability, improved its storm response capability, and materially reduced sulfur dioxide emissions, all while reducing its overall expenditures significantly since 2008.[18] Moreover, the Company's rates continue to be among the lowest of any electric utility in the state, and 25% lower than the average across the county.[19] This evidence suggests that Ameren Missouri is being managed very well; the MIEC's unsupported argument to the contrary should be disregarded.

It is somewhat understandable that other parties support the status quo. At least in the short run, a framework where utilities can't timely recover their cost of providing service, realize little or no benefit from growth, and have no real chance to earn at or near their authorized returns would seem to provide benefits to customers in the form of immediately lower rates. But in the long run this state of affairs creates financial stress for the utility, discourages investment in infrastructure, and ultimately is harmful to customers and our state as a whole. For that reason, Ameren Missouri is hopeful that the Commission will carefully consider its proposals in this case to enhance the regulatory framework to provide more timely and complete cost recovery.

I. RETURN ON EQUITY

A. Response to Staff

The Staff's position on the appropriate return on equity to be authorized for Ameren Missouri in this case continues to evolve. As the Commission may recall, Staff witness David Murray originally conducted a number of cost of equity analyses, relying on very low growth rates which had been explicitly rejected by the Commission in Ameren Missouri's last rate case

[17] Tr. p. 272, l. 4-12.
[18] Ex. 1, p. 9, l. 13 - p. 10, l. 12; p. 14, l. 10 - p. 15, l. 9 (Baxter Direct).
[19] Ex. 1, p. 11, l. 6 - p. 12, l. 1.

(i.e., the 3-4% growth rate for Stage 3 of his Multi-Stage model), and relying on data sets which the Commission had also explicitly found to be unreliable in that same case (e.g., the 2003 *Mergent Public Utility and Transportation Manual*, and Mr. Murray's own analysis of electric utility data from 1968-1999 conducted without using "rigid selection criteria"). He also "confirmed" his results using methods that the Commission explicitly rejected in the last case including consideration of valuation analyses conducted by money managers outside of the public utility context, and his "Rule of Thumb" which also is not applied by other analysts in the context of setting an ROE in a utility rate case.[20]

Not surprisingly, Mr. Murray's discredited analyses produced extremely low results – a cost of equity he claimed could be as low as in the 7% range.[21] Realizing that the Commission could never approve such an extremely low ROE for Ameren Missouri, Mr. Murray subjectively and arbitrarily adjusted his recommendation to the range of 8%-9%, with a specific recommendation of 9%, a recommendation that was not supported by the results of his cost of equity analyses. Mr. Murray testified that he did not expect the Commission to adopt his recommendation, and his recommendation was simply "trying to convince the Commission to approve an ROE in the single digits."[22]

In its Initial Brief, the Staff recommended ROE has made another leap; this time the Staff's range has moved another 90 basis points to 9%-9.9%. The Staff has fixed the lower end of its new range at the high end of Mr. Murray's previous recommendation (which, again, was completely unsupported by Mr. Murray's cost of equity analyses), and it has fixed the high end

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[20] *See* Ameren Missouri's Initial Brief and citations therein.
[21] Tr. p. 1979, l. 19 - p. 1980, l. 2.
[22] Tr. p. 1980, l. 3-24.

of its new range at the average authorized return for integrated electric utilities during the third quarter of 2012, which consists of just four observations.[23]

There are two important consequences of the Staff's last-minute change in position. First, this change in position cements the point that Mr. Murray's cost of equity analyses should not be used in any way, shape, or form to set an authorized ROE for Ameren Missouri in this case. With its second upward adjustment, the Staff's recommended range is now completely divorced from the results of the cost of equity analyses Mr. Murray conducted. If Staff's own ROE recommendation is not based on the results of Mr. Murray's analyses, the Commission's decision in this case certainly should not be.

Second, the Staff's change in position reflects an important concession: that authorized returns awarded to other utilities across the country are a significant consideration in setting the authorized ROE. As Staff acknowledges, this is grounded in one of the guiding principles of the *Bluefield* and *Hope* decisions: that an adequate return is commensurate with the returns realized from other businesses with similar risks. In discussing this principle, the Staff stated:

> What entities are those? Other public utilities. Financial analysts and investors recognize that every line of business is, by its very nature, subject to a set of unique risks. Consequently, the business entities that face corresponding risks and uncertainties to the utility under consideration are necessarily other utilities engaged in delivering the same service under similar conditions.[24]

It seems clear that this guiding principle of the *Hope* and *Bluefield* decision led the Staff to adjust its recommended range to encompass an ROE of 9.9%, which again is the average authorized ROE for integrated electric utilities for the third quarter of 2012. But in examining other authorized returns, the Commission has never relied on a single quarter of data, particularly when there are only four observations in that quarter. The Commission has historically looked at

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[23] Tr. p. 1649, l. 6-18.
[24] Staff's Initial Brief, p. 67.

6 and 12-month time periods.[25] Mr. Hevert explained the problem with relying on a single quarter of data:

> *Well, I think any analysis where you're trying to understand some measure of central tendency is—relies on more data than less. And I think in a circumstance where you have four observations, I think it's hard to draw conclusions from that regarding the level of returns, level of required returns overall for the electric utility industry.*[26]

In addition, Mr. Hevert pointed out at least one of the four observations, a PacifiCorp decision, was a multi-year settlement which allowed the company to defer some substantial investment.[27] Additional research shows that three of the four decisions, Oklahoma Gas and Electric (Oklahoma), Docket No. PUD 201100087 (Order issued July 9, 2012); PacifiCorp (Wyoming), Docket No.20000-405-ER-11 (Order issued October 8, 2012); and PacifiCorp (Utah), Docket No. 11-035-200 (Order issued September 19, 2012) were all the result of settlements rather than litigated cases, which presumably involved horse-trading, making the ROE results from the four observations even less reliable. The fourth decision comes from Texas, one of the least credit supportive jurisdictions in the country.[28]

The Staff may argue that it is nonetheless appropriate to use third quarter, 2012 data because the trend in ROEs is declining, and third quarter data is the most recent. But the evidence does not support that assertion. Although the cost of equity is somewhat lower today than it was in Ameren Missouri's last case,[29] there is no steady downward trend. For example, authorized returns for electric utilities the first quarter of 2012 were actually significantly higher than the average authorized return for 2011.[30] The most relevant "average authorized" ROEs for

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[25] Tr. p. 1651, l. 2-6; *Report and Order*, Case No. ER-2011-0028, p. 67.
[26] Tr. p. 1650, l. 20 - p. 1651, l. 1.
[27] Tr. p. 1649, l. 25 - p. 1650, l.10.
[28] Tr. p. 1649, l. 19-24.
[29] Ameren Missouri witness Hevert acknowledges that the cost of capital has declined somewhat although not nearly to the extent that other parties claim. Tr. p. 1548, l. 25 - p. 1549, l.5.
[30] *See* Staff's Initial Brief, p 84.

the Commission to consider are the average for integrated electric utilities of 10.27% for calendar year 2011, and the average of 10.05% for integrated electric utilities for the first nine months of 2012.[31] A return in that range would be commensurate with the returns authorized for businesses having at least somewhat corresponding risks, with which Ameren Missouri must compete for capital.[32] Using these returns as a benchmark suggests that Mr. Hevert's recommendation of 10.5% is more reasonable than the much lower recommended ROEs of other parties.

At the hearing, some Commissioners expressed a concern about relying on authorized returns from other jurisdictions, believing that this might create a "feedback loop" that keeps ROEs stable.[33] But the evidence adduced in this case shows that should not be a concern. Mr. Hevert testified that authorized returns adjust over time, do not exhibit stability, and were much higher in the 1990's than they are today.[34] And Mr. Gorman's Schedules MPG-11 and MPG-12 show that over the last 26 years, average authorized returns for electric utilities have varied considerably, from an average near 14% in 1986 to an average just above 10% today.

B. Response to the MIEC.

Many of the arguments raised in the MIEC's Initial Brief were addressed in the Company's Initial Brief. But others merit some additional response. First, the MIEC significantly overstates the decline in the cost of equity since Ameren Missouri's last case. The MIEC cites the fact that Mr. Hevert's DCF return estimates are "60 to 90 basis points lower than they were in the last case."[35] The MIEC is apparently referring to Exhibit 529 which provided a

[31] Ex. 20, p. 39, l. 9-14; Exs. 530 and 531.
[32] We say "somewhat" because for the reasons discussed in our Initial Brief, Ameren Missouri in fact has a greater risk of not earning a fair return or, put another way, lesser of an opportunity to earn a fair return, because of some of the facets of the Missouri regulatory process that are not present in most other jurisdictions.
[33] Tr. p. 203, l. 18 - p. 204, l. 5.
[34] Tr. p. 1653, l. 7-15.
[35] MIEC Initial Brief, p. 35.

comparison of Mr. Hevert's constant growth DCF results in both cases. What the MIEC does not say is that Mr. Hevert is not primarily relying on his constant growth DCF results in this case, nor did he in the last case. In fact, he testified in this case that due to the limiting assumptions in the constant growth DCF model (which the other experts have also recognized) changes in the results of this model alone don't allow us to draw any conclusions regarding the absolute decrease in the cost of equity. In other words, the MIEC's implication that the cost of equity has declined 60-90 points based on the change in this one analysis is simply wrong.

The MIEC also cites utility bond yields, which it argues have declined 70-100 basis points since the last rate case, and are also shown on Exhibit 529. But again, these declines in bond yields tell us nothing about the magnitude of any decline in equity costs. Mr. Hevert has presented substantial evidence in the form of citations to academic research and his own statistical analyses, that show that interest rates have an inverse relationship to risk premia that are a component of ROEs.[36] This is also demonstrated in Mr. Gorman's own Schedule MPG-12, which shows that as the A-Rated utility bond yield decreases, the "Indicated Risk Premium" increases. This information clearly suggests that declines in bond yields will be significantly offset by increases in risk premia, and that the magnitude of the decline in bond yields is a poor proxy indeed for measuring a change in the cost of equity. In short, as Mr. Hevert testified, Exhibit 529 tells us absolutely nothing about the magnitude of the change in the cost of equity between the Company's last rate case and this one.[37]

Finally, the MIEC cites changes in the authorized returns of electric utilities, which it alleges have declined "by 50 basis points over the last several quarters." In fact, the ROE for integrated electric utilities has only declined about 20 basis points from calendar year 2011 to the

[36] Ex. 21, p. 101, l. 3 - p. 104, l. 9 (Hevert Rebuttal).
[37] Tr. p. 1644, l. 19-22.

first nine months of 2012. But regardless of the magnitude of the decline, Ameren Missouri is fully supportive of consideration of recent authorized ROEs, which remain above 10% using any reasonable measure.

Ameren Missouri has identified the significant flaws in Mr. Gorman's ROE analyses in its Initial Brief and they will not be repeated here. Suffice it to say that Mr. Gorman's recommendation is unsupported by credible analyses, far below the returns authorized in other jurisdictions and significantly outside the mainstream. Consequently it should be rejected.

II. PLANT-IN-SERVICE ACCOUNTING

Ameren Missouri's Plant-in-Service Accounting proposal was harshly criticized in the Initial Briefs of the Staff, the MIEC, and the OPC for numerous reasons. Each of these criticisms will be addressed separately. But at the outset, it is important to point out that the other parties' briefs do not convincingly refute the fact that the problem Ameren Missouri has identified, and proposed to resolve with Plant-in-Service Accounting, really exists. Specifically, there is a "donut hole" of time, after plant is placed in service but before it can be reflected in rates, where the utility is not compensated for the cost of capital it has paid for the plant, and it is not compensated for depreciation that begins accruing as soon as the plant is placed in service. Because of this "donut hole," utilities are never able to recover the full cost of any of the plant that is built and installed for the benefit of customers, at least to the extent investment exceeds depreciation expense that the utility is recovering through rates. The more plant that is installed, the greater the under-recovery becomes, and the under-recovery of costs creates a powerful disincentive for the utility to invest in its system.

The other parties argue that once plant is placed in service, the utility has the option of seeking to recover the costs of that plant by filing a rate increase request.[38] But that is not even close to true. Because of the way that the rate case process works in Missouri, even if the in-service date of a specific piece of plant could be timed perfectly with the filing of a rate case, the "donut hole" where costs associated with that item of plant are not recovered would still be at least five months – the typical length of time between the true-up date in a rate case, and the effective date of rates in that case. No matter what a utility does, it will not earn a return on its investment in plant for that five-month period, and it will have to absorb unrecovered depreciation expense for that five-month period. And, of course, the in-service date for all plant installations cannot be perfectly timed with a rate case filing. A large utility such as Ameren Missouri has to install plant throughout the year. Only one day of the year will be perfectly timed with a rate case filing so as to minimize the "donut hole" for the plant that is installed on that day. Ameren Missouri has filed rate case after rate case, in rapid succession. Nonetheless, it has systematically under-recovered tens of millions of dollars in lost return and depreciation due to its investment in plant which has fallen into the donut hole.

Other parties argue that increases in revenues and reductions in operations and maintenance costs might offset these systematic under-recoveries that occur with each incremental dollar of capital investment. And in the past this was generally true – systematic growth in revenue that could generally be counted on year after year did offset the systematic under-recovery in investment costs. But as numerous witnesses have testified, Ameren Missouri is now facing flat or negative growth in revenues, steadily increasing O&M costs, and an

[38] *See, for example,* MIEC's Initial Brief, p. 17, and OPC's Initial Brief, pp. 9-10.

increasing need to replace its aging infrastructure.[39] As discussed below, in these circumstances there is no reason to expect that increases in revenues or decreases in O&M costs will offset the systematic under-recovery of capital costs that we know will occur. This is a problem that must be acknowledged, and Plant-in-Service Accounting is Ameren Missouri's proposal to address the problem. Plant-in-Service Accounting is an appropriate solution because it is very similar to construction accounting, which the Commission has approved in the past (for the same reasons) for large capital projects, and it is even somewhat similar to the accrual of AFUDC on plant before it goes into service.

As mentioned, the other parties, especially the Staff and the MIEC, were extremely critical of the Company's Plant-in-Service Accounting proposal for many reasons. Their claims, and the Company's response, are briefly addressed below:

1. Claim: Plant-in-Service Accounting constitutes single-issue ratemaking.

Plant-in-Service Accounting does not change rates. It is not ratemaking at all, much less single-issue ratemaking. Moreover, there is no logical distinction in this regard between Plant-in-Service Accounting and construction accounting, or even accumulation of AFUDC on every capital project. If Plant-in-Service Accounting is single-issue ratemaking, then they would have to be as well.

2. Claim: Plant-in-Service Accounting violates the "matching principle."

See No. 1 above. Plant-in-Service Accounting no more violates the matching principle than construction accounting or the accrual of AFUDC. All three are simply preserving capital costs so that they can be considered for recovery in the utility's next rate case, rather than being

[39] Even the Staff admits that conditions are much different than they were in the past, when the old paradigm of increasing loads provided revenues to offset the impact of investment and other cost increases. Staff's Initial Brief, p. 22 ("The reality is that Ameren Missouri is not adding new customers. Expected load growth is modest. At the same time, Ameren Missouri faces a significant and increasing need to replace worn-out infrastructure that serves existing customers." (footnotes omitted)).

lost forever. Moreover, they no more violate the matching principle than other cost-tracking mechanisms which the Commission has approved in appropriate circumstances. If the Commission believes Plant-in-Service Accounting is warranted, the matching principle does not prevent the Commission from implementing it.

3. Claim: Plant-in-Service Accounting would weaken management's incentives to control costs.

A framework that gives a utility no ability whatsoever to recover the full cost of its capital investment is not incentivizing management to be efficient. It is providing a strong financial disincentive for the utility to make any investments, and a strong incentive to file repeated rate cases in rapid succession to minimize its under-recovery of costs.

4. Claim: Plant-in-Service Accounting does not account for reductions in O&M costs that could result from plant additions.

The evidence in this case is that Ameren Missouri's overall O&M costs will increase whether Plant-in-Service Accounting is adopted or not, due to the overall age of the Company's infrastructure.[40]

5. Claim: The Company's Plant-in-Service Accounting proposal fails to address Accumulated Deferred Income Tax (ADIT) that may offset plant costs.

It makes no sense to credit customers for ADIT associated with plant, until the cost of that plant is also reflected in rates. The generation of customers who is required to pay the full cost of plant should be credited with the full benefit of the associated ADIT. In addition, if plant under construction is never placed in service and included in rates, customers should not get the benefit of ADIT associated with plant that they will never pay for.

[40] Ex. 13, p. 4, l. 3-13 (Barnes Surrebuttal).

6. Claim: The Plant-in-Service Accounting proposal has never been adopted by this Commission or other Commissions, and it has never been written up in texts, treatises and journal articles.

Although Ameren Missouri's exact Plant-in-Service Accounting proposal has not been adopted, the proposal is very similar to construction accounting, which has been used by this Commission, and the accumulation of AFUDC, which is regularly used by many commissions. In addition, it is similar to treatment that has been implemented on a smaller scale in other states.[41] So even though this exact proposal has not been implemented before, it is similar enough to other treatments that have been implemented that the Commission can be confident that it will work.

The other parties also argue that if Plant-in-Service Accounting is adopted over their objections, a reduction to ROE would also be warranted. Although MIEC witness Gorman testified that the appropriate ROE deduction would only be ten basis points,[42] the Staff argues that an ROE deduction in an amount that would apparently completely offset any cost recovery afforded by Plant-in-Service Accounting is warranted.[43] These parties argue that an ROE deduction is warranted because Plant-in-Service Accounting transfers risk from Ameren Missouri to customers, but those parties fail to recognize (or acknowledge) that relative to the proxy group companies which all parties used to determine an appropriate ROE, Ameren Missouri today bears substantially more risk of failing to recover the cost of the plant it installs for service to customers.[44] As Ameren Missouri witness Hevert testified, other jurisdictions have other mechanisms – projected test years, interim rates, inclusion of CWIP in rate base – that

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[41] Ex. 4, p. 21, l. 4 - p. 22, l. 28 (Reed Rebuttal).
[42] Tr. p. 1687, l. 16 - p. 1688, l. 14.
[43] Staff's Initial Brief, p. 24.
[44] Ex. 20, p. 43, l. 8 – p . 47, l. 24; Schedules RBH-E7 and RBH-E8 (Hevert Direct).

accomplish the same thing.[45] As a consequence, all that adoption of Plant-in-Service Accounting would do is bring Ameren Missouri closer to the overall rate treatment other utilities have, which demonstrates that no reduction to ROE is warranted if Plant-in-Service Accounting is adopted.[46]

III. FUEL ADJUSTMENT CLAUSE

It is axiomatic that the Commission must base its decisions – including its decisions regarding the contested issues involving the fuel adjustment clause (FAC) – on competent and substantial evidence of record.[47] Based on the *evidence*, the Staff has completely failed to justify either a change in the sharing percentage or in how transmission charges are handled in the FAC. Indeed, a review of the Staff's Initial Brief and the actual evidentiary record reveals a considerable gulf between what is *argued* in the brief and what the Staff's witnesses *actually testified to* on both of these issues.[48]

A. The Sharing Percentage.

The Staff's Initial Brief claims that the Staff makes its recommendation to change the sharing percentage "because Staff considers it to be the right decision from a public policy perspective."[49] That is the very first time in this case that assertion has been made. Notably, it is a claim being made by advocates in the Staff's Initial Brief, not by any witness providing evidence for the Commission. In fact, the *evidence* indicates that the Staff really has no idea what the "right policy decision" is. Staff witness Lena Mantle's testimony on this issue shows

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[45] *Id.*

[46] Staff Counsel's "calculation" (page 24 of Staff's Initial Brief) of an ROE adjustment is seriously flawed and completely unsupported by competent and substantial evidence of record. Consequently, it cannot be relied upon. Indeed, no ROE expert in this case testified that a 45-basis point reduction in ROE is warranted. Among other problems with the "calculation" is that it totally ignores the relative positions of the utilities in the proxy groups vis-à-vis Ameren Missouri in terms of cost recovery.

[47] ***State ex rel. Alma Tele. Co. v. Pub. Serv. Comm'n***, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001) (Commission decisions not supported by competent and substantial evidence of record are unreasonable, and subject to reversal).

[48] In subsection D, below, the Company will address the limited briefing on these issues from the MIEC. The Company will not address AARP's and CCM's outright opposition to the FAC, which is largely philosophical, but is certainly not grounded in competent and substantial evidence of record.

[49] Staff's Initial Brief, p. 42, n. 208.

that the Staff is, at best, guessing. Indeed, an examination of Ms. Mantle's testimony conclusively demonstrates that she has no idea if the recommendation she is making in sworn testimony is the "right policy;" she is not even sure she would have made it had her superiors not arbitrarily picked new numbers to recommend for the sharing percentage:

> ***Q. You don't know if it had been up to you alone whether you would have filed your testimony in this case recommending 85/15 or not, correct?***
> *A. Correct.*
>
> ***Q. In fact, you might not have had you been the decision maker, isn't that true?***
> *A. That's true.*
>
> ***Q. And you were not the decision maker on whether to propose the change to 85/15, were you?***
> *A. No, I was not.*
>
> ***Q. In fact either Natelle Dietrich or Cherlyn Voss or both initiated the idea of once again recommending the 85/15, isn't that true?***
> *A. It was in a staff meeting where we determined that the Staff position would be of which they were and I would say they were the main decision makers, yes.*
>
> ***Q. You actually expressed concern to them about making the same argument that had just been rejected less than a year earlier, didn't you?***
> *A. Yes.*
>
> ****
>
> ***Q. There's no magic to the 85/15 is there?***
> *A. No, there is not.*[50]

The Staff's Initial Brief next claims that changing the sharing percentage would "give Ameren Missouri more incentive to search out and find additional OSS opportunities."[51] But here, too, the advocacy in the brief is disconnected from the evidentiary record. Ms. Mantle did recommend in the Staff's Revenue Requirement Report (where she was free of having her testimony rebutted, and of having to defend her contentions on cross-examination), that changing

[50] Tr. p. 1222, l. 11 - p. 1223, l. 6; l. 12-13 (emphasis added).
[51] Staff's Initial Brief, p. 45 (citing the portion of Staff's Revenue Requirement Report authored by Ms. Mantle).

the sharing percentage would give Ameren Missouri more incentive. But after being challenged, she backed-off and said the following:

> ***Q.*** ***[O]r do you just simply not know whether five percent is sufficient incentive? Isn't it the latter?***
> *A.* *Yes.*
>
> ***Q.*** ***And in fact you haven't produced any evidence that if the sharing percentage were changed that Ameren Missouri would in fact behave any differently, isn't that true?***
> *A.* *It's because the only way that evidence can be obtained is to do it.*
>
> ***Q.*** ***But the answer to my question is it's true, you haven't produced any such evidence, have you?***
> *A.* *No I have not.*
>
> ***Q.*** ***And you don't know whether or not any change in behavior would take place, do you?***
> *A.* *No, I do not.*[52]

And despite filing nearly 20 pages (plus schedules) of surrebuttal testimony, Ms. Mantle did not rebut in any way the following sworn testimony from Ameren Missouri witness Jaime Haro, who is the only witness in the case who actually buys and sells power:

- The Company already sells all of its in-the-money generation into the MISO market;
- The Company operates within the parameters of the Company's risk management policies, and has never been criticized by the Staff (or others) for not making an off-system sale it should have made, or not realizing an appropriate price; and
- Given that the Company would bear 100% of net fuel cost increases if the Commission determined that the fuel adjustment clause should not be reauthorized,[53] the Company has plenty of incentive to properly manage its off-system sales.[54]

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[52] Tr. p 1270, l. 20 - p. 1271, l. 10.
[53] More than $300 million in slightly less than three years. Ex. 202, p. 164, l. 7 ($309 million for accumulation periods 2 through 9 (Staff's Cost of Service Report)).
[54] Ex. 25, p. 15, l. 15 - p. 16, l. 18 (Haro Rebuttal). The Staff's Initial Brief directly concedes that with regard to the other two components of net fuel costs – fuel and purchased power – the Company has already done a good job of managing its costs. Staff's Initial Brief, p. 42, n. 210.

There are additional contentions in the Staff's Initial Brief that are refuted by the record. The Staff's Initial Brief (again pointing to Ms. Mantle's initial testimony, before rebuttal and cross-examination) flatly claims that if the sharing percentage were 85%/15%, it "would provide Ameren Missouri with more incentive to estimate the net base energy factors" in rate cases.[55] But once again, even if that's what Ms. Mantle said initially, she admits that it is not what she *meant* to say:

> ***Q.*** ***Is it your theory as Mr. Haro states on page 3, line 6 of his rebuttal testimony "that a change in the sharing percentage will create a greater incentive to better predict what power prices will be when rates are in effect – i.e., in the future?"***
> *A.* *No, it is not. But I do believe that it will provide an incentive to Ameren Missouri to look for better predictors.*[56]

So we ask "which is it"? Will a sharing percentage change "provide Ameren Missouri with more incentive to estimate," as the Staff's unsworn brief claims, or will it just provide an incentive to look for better predictors, as Ms. Mantle's sworn testimony states? The quoted passage above shows it is the latter. And what would those better predictors be? Ms. Mantle has no idea:

> ***Q.*** ***And you don't know yourself what a better predictor would be, do you?***
> *A.* *No.*[57]

And while the Company and the Staff do generally agree that it is very difficult to predict power prices, the only evidence in the record about several possible predictors indicates that one of them, forward power prices, at least over the past few years, might have been a better predictor.[58] But would the Staff support using forward prices? Not if Ms. Mantle has her way:

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[55] Staff's Initial Brief, p. 45.
[56] Ex. 224, p. 8, l. 8-12 (Mantle Surrebuttal).
[57] Tr. p. 1236, l. 17-19.
[58] Ex. 25, p. 4 (Table appearing thereon). The table shows us that had forward prices been used the average error over three years would have been approximately 11% versus approximately 19% if a one-year average were used, approximately 23% if a two-year average were used, and approximately 28% if a three-year average were used.

Q. ***And let's say the Company believed that forward prices, forward power prices were a better predictor than using historical averages for example, the Staff is not going to support the use of forward prices to set the base energy price for net based [sic] fuel costs, is it?***

A. *Not if I have a say so.*[59]

So we suppose the Company is "damned it if does and damned if it doesn't." If Ms. Mantle got her way and there were greater "incentive" to look for "better predictors," it's obvious the Staff would fight the Company unless that better predictor were backward looking, even if a forward look were the "better predictor" she claims exists. So in the end, the greater sharing the Staff advocates for would really accomplish one of two possible alternatives, both of which are illogical: it would either force the Company to bear more *prudently incurred* net fuel cost changes, assuming net fuel costs rise, even though the Company has done nothing wrong; or if net fuel costs drop, customers would simply get less benefit (and the Company more benefit) from the drop, again even though the Company didn't do anything to deserve this benefit the Staff seems to want to confer on the Company.[60]

Finally, while the relevance of including this in its Initial Brief is unclear, nonetheless the Staff chose to discuss a proposal made by Ameren Missouri witness Robert Neff to include known and measurable coal cost increases that will take place prior to the operation of law date in this case in net base fuel costs, a request which Mr. Neff made in response to contentions by

[59] Tr. p. 1237, l. 6-12.

[60] The Staff's attitude about the FAC is made clear in its statement at the bottom of page 46/top of page 47 of its Initial Brief, where it in effect says that the Company ought to be glad it has an FAC at all; and that the Staff is doing the Company a favor by letting it bear only 15% of net fuel cost changes. The Staff's attitude notwithstanding, the General Assembly authorized fuel adjustment clauses, and as the Commission has recognized, perhaps the key purpose of a fuel adjustment clause is its function to provide the Company with a reasonable opportunity to earn a fair return. Forcing the Company to bear the "heavy burden" of $30 million or more *additional prudently incurred* fuel costs contravenes the very purpose of an FAC. It's one thing to deprive a utility with an FAC of a portion of its prudently incurred fuel costs if it is shown that the utility doesn't have sufficient incentive to manage its FAC properly; it's another to deprive the utility of prudently incurred fuel costs when there is no such proof, as here.

the Staff that net base fuel costs should be set more accurately.[61] While we won't belabor the point (the fuel issues, except for the sharing and transmission charge issues, have been settled), it must be noted that in a closely analogous circumstance in Case No. ER-2010-0036, involving nuclear fuel costs that would increase before the operation of law date but after the true-up cutoff date, the Commission sided *with the Company* and agreed that the higher fuel costs should be accounted for in the rate case.[62] As we noted then, doing so promoted one aspect of the matching principle by matching the higher nuclear fuel cost level that all agreed would be in effect when rates became effective with the rates customers would pay.

B. Transmission Charges – Inclusion in the FAC.

We will first address the Staff's legal argument (which again is not supported by the Staff's witness or by any evidence of record) that the General Assembly did not intend for the costs an electric utility incurs to get the power from the generator to the load to be included in an FAC. Ms. Mantle had the following to say on this issue:

- She agrees that transmission charges have been included in the FAC from its inception.[63]
- When asked if Account 565 is where transmission charges are recorded she had no reason to disagree.[64]
- The FAC tariff has in fact contained reference to including charges in Account 565 in the FAC since the FAC was implemented.[65]
- She is *not* claiming that transmission charges have been included in the FAC up until now that the FAC did not allow.[66]

The statutory language provides in pertinent part as follows:

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[61] Staff's Initial Brief, p. 47.
[62] *Report and Order,* Case No. ER-2010-0036, p. 58.
[63] Tr. pp. 1243-44.
[64] *Id.* p. 1243.
[65] *Id.*
[66] Tr. p. 1243, l. 18-24.

> [A]ny electrical corporation may make application to the commission to approve rate schedules authorizing . . . periodic adjustments outside of general rate proceedings to reflect increases and decreases in fuel and purchased-power costs, *including transportation*. (emphasis added).[67]

In order for the Staff's legal argument to be right, one has to conclude that the words "including transportation" modify only the word "fuel" in the statute. That conclusion is simply not borne out by the statutory language.[68] Nor is the Staff Counsel's statement (argument) that "if there's no wheels, then there's no transportation costs" (which was not even raised in this case until opening statement).[69] For the Staff's argument to hold true, one also has to conclude that the Staff (and others, e.g., the MIEC) had no idea that Account 565 was for transmission charges, yet it is un-refuted that it is.[70]

Consider that natural gas used to generate power doesn't move via wheels. To the contrary, gas molecules move in a pipe. Coal generally moves via wheels, but sometimes it floats on a barge in the water. The same is true for uranium. Power doesn't move via wheels (unless stored in a battery), but there aren't 1.2 million generators sitting next to the homes and businesses so it has to move. In fact, generators are generally located in isolated areas away from the load, so the power has to get from the generator to the load somehow. Is it really credible to assume that when the FAC statute was passed, the members of the General Assembly were thinking about the physics relating to electrons such that they decided that if they used the term "transportation," the costs to get the power to the load would be excluded from the FAC? And if the engineers on the Staff (Ms. Mantle included), who knew that the FAC tariff included

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[67] §386.266.1, RSMo. (Cum. Supp. 2011).
[68] Why wouldn't the General Assembly have written "fuel, including transportation, and purchased-power costs . . .," instead of "fuel and purchased-power costs, including transportation . . . ."?
[69] Tr. p. 189, l. 21-23 (Mr. Thompson's opening statement).
[70] *Order Granting Motion to Take Official Notice and Admitting Late-Filed Exhibit*, October 30, 2012 ("The Commission takes official notice of the fact that account 565 of the Uniform System of Accounts is the FERC USoA account for transmission charges."); Ex. 80.

transmission charges in Account 565, thought "transportation" did not include transmission of power, then why did they not say so during the past three and one-half years (indeed, why isn't Ms. Mantle, the expert, the engineer, saying so now)? Even more to the point, why did Ms. Mantle herself affirmatively recommend *in this case* through three rounds of testimony submitted over the course of two months that *some* transmission charges do belong in the FAC. If Staff Counsel were right, then Ms. Mantle's recommendation was illegal because "transportation" in the statute would not, according to his argument, include any kind of transmission yet Ms. Mantle's recommendation *does* include some transmission charges in the FAC. It's obvious that "transportation" as used in the FAC statute does include transmission of electric energy, Staff Counsel's novel and late-coming argument to the contrary notwithstanding.[71]

The Staff's Initial Brief makes another argument in support of its contention that the FAC cannot include transmission charges, claiming that the charges are not associated with transmitting power but rather are capital costs.[72] The Staff's characterization is wrong, as Mr. Haro explained in his testimony:

> ***Q.*** ***Ms. Mantle repeatedly refers to the transmission service charges she seeks to exclude as "costs of building transmission lines." Is this a proper characterization?***
>
> *A.* *No it is not. Charges assessed by MISO because of the load we serve are the costs we pay to MISO for service. It is no more a proper characterization of these charges as the "cost of building a line" than it is to call capacity or energy charges the "costs of building a power plant;" to call rail contract charges paid to move coal the "costs of building a railroad;" to call coal contract charges the "costs of building a coal*

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[71] For the same reason, the MIEC's arguments that transmission charges are not for transportation within the meaning of the statute also fail. MIEC's Initial Brief, pp. 39-40. The MIEC in fact does not dispute that some transmission charges could properly remain in the FAC (for what the MIEC calls "short-term" transmission). But if the statute doesn't allow transmission charges at all, then the length of the contract doesn't matter. This entire argument about what "transportation" means is a red herring. Both the MIEC's and the Staff's positions on it are internally inconsistent as they both agree some transmission charges are allowable in the FAC. If that is true then all transmission charges are allowable. The only question then is which ones *should* be allowed.

[72] Staff's Initial Brief, p. 50.

> *mine;" or to call the cost for a bus ticket "the cost of manufacturing a bus." These charges represent unavoidable transmission service charges which are required in order to participate in the MISO and to acquire and transport power to our customers.*[73]

Not only is the Staff's characterization wrong for the reasons given by Mr. Haro, but it's wrong under the argument the Staff makes relating to what Staff calls the "anti-CWIP" statute. At page 49 of its Initial Brief, the Staff points out that the lion's share of the MISO transmission charges in dispute arise under MISO Schedule 26A.[74] And then at page 51, the Staff suggests that Missouri's anti-CWIP statute forbids charging costs relating to nonoperational property of electric corporations to customers. It is true that if the charges are based on the "existing or new facility *of the electrical corporation*" then, in general, rates of the electrical corporation can't include the charge (emphasis added).[75] But Ameren Missouri has no transmission that generates MISO Schedule 26A charges and, as discussed in our Initial Brief, doesn't plan to construct such facilities. The *electrical corporation* referred to in §393.135 is obviously the electrical corporation whose charges (that are regulated by this Commission) are at issue, not MISO transmission charges generated because some *other* MISO member not regulated by this Commission built a MISO-approved MVP project. As Mr. Dauphinais acknowledged, only about $200 million of the $5 billion of MISO MVP projects that will eventually generate MISO Schedule 26A charges are even located in Missouri,[76] and the companies that are building those lines are not "electrical corporations" within the meaning of the Missouri Public Service Commission Law.

Carried to its logical conclusion, the Staff's "anti-CWIP statute"-based argument would mean that MISO Schedule 26A charges could not be reflected in Ameren Missouri's rates

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[73] Ex. 26, p. 12, l. 12-22 (Haro Sur-Surrebuttal).
[74] Staff's Initial Brief, p. 49.
[75] §393.135, RSMo. (2000).
[76] Tr. p. 1362, l. 12-16.

anywhere. Yet there is no dispute that under the Filed Rate Doctrine,[77] the Commission could not disregard the charges entirely. Put another way, if the Staff's "anti-CWIP" statute argument held water, the Filed Rate Doctrine would be violated. The question in this case is solely whether the charges could (or should) be included in the FAC. We've already addressed in detail why they can, and should remain there.

The Staff's "anti-CWIP" statute-based argument is a red herring, argued for the first time in its Initial Brief, and refuted by the fact that the Staff in fact agrees that the anti-CWIP statute cannot lawfully be applied in a way that fails to recognize these MISO transmission charges that the Company must pay if it is to participate in MISO:

> MR. THOMPSON: Staff is not recommending that those charges not be recovered. You are absolutely right to understand Mr. Lowery to say that lawfully this Commission can not refuse to allow Ameren to recover those charges and it's absolutely true that the file[d] [sic] rate doctrine does require their recovery. The question is how and when.[78]

In summary, there is absolutely no legal reason why these MISO transmission charges cannot continue to be included in the FAC, as they have been from day one of its operation. And for the reasons discussed in our Initial Brief, that is exactly where these charges belong.

The Staff's next attempt to justify changing how transmission charges have been handled is to reiterate an argument Ms. Mantle made in her surrebuttal testimony, where she attempted to analogize MISO transmission charges to payments a utility makes for an easement or a franchise. As we pointed out in our Initial Brief, the billing determinants MISO uses to assess these

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[77] *See, e.g.,* ***Nantahala Power & Light Co., et al. v. Thornburg, Atty. Gen'l of North Carolina***, 476 U.S. 953, 106 S. Ct. 2349, 90 L. Ed. 2d 1943 (1986) (Discussing the Filed Rate Doctrine, and the fact that the states must give effect to charges approved by the FERC).

[78] Tr. p. 1112, l. 21 - p. 1113, l. 2. The Staff attempts to couch its discussion of the anti-CWIP statute as part of a statutory interpretation argument regarding the FAC statute, but that simply cannot be the case. The anti-CWIP statute, where it applies, simply disallows including a cost in the determination of rates, no matter how a cost is included. If the anti-CWIP statute were relevant to what the FAC statute means, it would have to be because it forbids a cost from being included in the FAC. But if it forbids a cost from being included in the FAC then it forbids recovery of the cost – period. But Staff agrees it does not do so. The anti-CWIP statute simply has nothing to do with this issue.

transmission charges to Ameren Missouri are either a direct function of the Company's customers' load requirements or in the case of point-to-point transmission service, are incurred to support off-system sales (that benefit customers). They most certainly are not analogous to cash payments made to a landowner or to a municipality for an easement or a franchise, as Ms. Mantle reluctantly agreed:

> ***Q.*** ***"It's [transmission charges] based on the energy needs of Ameren Missouri's load in the MISO, right? That's what these charges are based on. Answer. Yes." Did I read that correctly?***
> *A.* *Yes.*
>
> ***Q.*** ***You don't calculate the cost of an easement based on whether, we don't multiply 345 kb [sic] by some factor to come up with the cost of the easement, we don't multiply kilowatt hours or megawatt hours that will flow over a line to come up with the cost of an easement do we?***
> *A.* *No.*
>
> ****
>
> ***Q.*** ***But you don't calculate the price you pay the landowner based on kilowatt hours or megawatt hours do you?***
> *A.* *No.*
>
> ***Q.*** ***But you do calculate the MISO transmission charges based upon a measurement of energy, don't you?***
> *A.* *Yes.*
>
> ***Q.*** ***When the Company gets a franchise or renews one with some city . . . the Company isn't paying a franchise fee based upon multiplying some measurement of energy by some number, is it?***
> *A.* *I don't believe it is.*[79]

C. MISO Transmission Charges – Tracker.

It is difficult to pin down what the Staff's real views on a transmission cost and revenue tracker are. In his opening statement, Staff Counsel indicated that the Staff could "live with" a tracker if it included "appropriate" safeguards, which presumably meant the conditions Staff

[79] Tr. p. 1248, l. 12 – 25; p. 1249, l. 4-16. And even Mr. Dauphinais concedes that the Schedule 26A charges are determined based on megawatt-hours. Tr. p. 1358, l. 24 - p. 1359, l. 3.

witness Oligschlaeger suggests.[80] In our Initial Brief we have already addressed all of those conditions, explaining why some are appropriate and some are not.[81]

In its Initial Brief, the Staff seems to be shifting its position a bit, now apparently arguing that Staff's opposition to a transmission cost and revenue tracker is more entrenched (Mr. Thompson's "Staff can live with it" statement seems to have been discarded), and that the Staff's opposition appears to be grounded in the fact that Ameren Missouri has asked for a tracker (only if transmission costs and revenues are not in the FAC) based on projections that the Staff "had not yet been able to review . . . in any meaningful way."[82]

When Mr. Haro filed his sur-surrebuttal testimony, he provided the then-known estimated MISO transmission charges, which were estimated to grow from about $25 million for the 12 months ending in July of this year to almost $53 million by 2016.[83] A week later, the Staff asked for more information about transmission costs and revenues, which was provided just two days later, on the day Mr. Oligschlaeger filed his responsive testimony.[84] Those figures (cited in our Initial Brief) are now of record, and we know that the transmission charge increases are now estimated to be higher, increasing on average over the next three years by 24% per year.[85] By the time Mr. Oligschlaeger testified at the hearings, the Staff had those figures for several days. No one has questioned the figures; no follow-up questions were asked. Staff could have asked about this data at least a week before it did, and, as noted, when the Company was asked it

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[80] Tr. p. 111, l. 7-11.
[81] With regard to Mr. Oligschlaeger's proposed condition 6 (and the illogical and arbitrary use of surveillance reports embodied in it), we would note that the Staff, in its Initial Brief, *admits* that the surveillance reports do not equate to a Commission-approved ROE and require several adjustments, including for weather and Callaway outages. Staff's Initial Brief, p. 13, n. 53. This confirms what we have already said: proposed condition 6 is illogical and arbitrary.
[82] Staff's Initial Brief, p. 53.
[83] Ex. 26, p. 8.
[84] The Staff indicates the Company didn't provide its most recent estimates until shortly before this issue was litigated. The Staff waited a week after Mr. Haro filed his sur-surrebuttal testimony to ask, and was provided the answer in two days.
[85] Tr. p. 1362, l. 18-24.

provided the data in just two days. For that matter, they could have questioned Mr. Haro about the figures when he was cross-examined to "test" whether they were reasonable or accurate. They did not do so.

The Staff's suggestion that the projected increases in the MISO transmission charges are insufficient to warrant a tracker fails to hold water in any event. Mr. Oligschlaeger readily admits that in recommending a transmission cost and revenue tracker for KCP&L and KCP&L-GMO back in 2010-2011, the Staff had noted that approval of a large sum of regional transmission projects in the Southwest Power Pool (SPP) would lead to an increase in future transmission expense.[86] And he readily admitted the *same is true* for MISO and consequently for Ameren Missouri.[87] And he readily admitted that the most important thing for the Staff in those prior cases was that there was "a lot of uncertainty about what those charges might be *in the future*" (emphasis added).[88] And there is no dispute: there is a great deal of uncertainty about the MISO transmission charges in the future as well.[89] And as we specifically noted in our Initial Brief, Mr. Oligschlaeger agrees that the Company has significantly less control over these charges than if it were building the transmission facilities itself, and that the level of control over these charges is in general a low level of control as compared to most of its other costs.[90]

The bottom line is this: If the Commission for some reason decides not to leave these charges (and include transmission revenues) in the FAC, based on current estimates,[91] there is a very substantial reason to believe that the Company will lose millions if not tens of millions of dollars unless a tracker is established. This will be the direct result of net MISO transmission

[86] Tr. p. 1287, l. 18-22.
[87] Tr. p. 1287, l. 23 - p. 1288, l. 1.
[88] Tr. p. 1288, l. 11-16.
[89] Tr. p. 1290, l. 1-19.
[90] Tr. p. 1290, l. 20 - p. 1291, l. 5.
[91] When is the last time we observed early estimates based on construction projects not yet built being too *high*? We would submit that rarely happens; the MISO transmission charges will probably be higher than estimated.

charge increases between the true-up cutoff date in this case and when new rates would be set in some future case. And those MISO transmission charges are a direct consequence of the Company's MISO participation which this Commission has repeatedly approved based, we are sure in no small measure, on the fact that the participation delivers huge benefits for customers. Those MISO transmission charges have to be paid; customers can't have the MISO-related benefits without them. So we can quibble in this case about whether it's $10 million, or $12 million or more, but by any reasonable definition we are talking about a great deal of money. Of the 14 major contested issues remaining in this case, most of them involve a revenue requirement impact of less than $10 million. Without a tracker (or leaving these costs and revenues in the FAC), the Commission deprives the Company of the opportunity to ask for recovery of the net cost change later, and deprives itself of the ability to consider such a request. And those deprivations occur for costs that at least the Staff is willing to admit are significantly less controllable than most costs and which the Company has to pay to gain benefits customers receive.

We respectfully submit that the Staff has not adequately answered the questions we posed in our Initial Brief, which were as follows:

> Why would the Commission change the FAC and then deny the tracker request? Why would the Commission today, in this rate case – given the facts listed above; given that the Company has no choice but to pay these charges; given that customers get nearly all of the benefits of MISO participation – why then would the Commission both require these transmission charges to be removed from the FAC *and* then deny the ability to defer them so they can be considered in a future rate case?

And we again state, the Staff's (and the MIEC's) Initial Brief notwithstanding, there is no legitimate reason to both remove these charges from the FAC and to deny the request for a transmission charge and revenue tracker.

D. MIEC's FAC/Tracker-Related Arguments.

The MIEC simply endorses the Staff's FAC sharing percentage arguments, requiring no further response on that issue. The only remaining issues of substance addressed by MIEC in its Initial Brief regarding the FAC relates to transmission charges and revenues.

We have largely already addressed MIEC's "long-term capacity" arguments. *See Initial Post-Hearing Brief of Union Electric Company d/b/a Ameren Missouri*, at pages 52 to 55. However, a couple of points bear reply here.

First, it is simply not credible to claim that, on the one hand, the "plain words of the FAC tariff" show that the reference to "capacity" is a reference to "transmission" capacity (as well as generation capacity), while at the very same time to then spend several sentences leading up to that assertion pointing to *extrinsic evidence* outside the four corners of the tariff to sustain the "plain words" argument. Indeed, the MIEC is completely mixing up two basic tariff interpretation concepts: the interpretation of an *unambiguous* [plain words] term, for which extrinsic evidence *cannot be considered*, and the interpretation of an *ambiguous* term, for which extrinsic evidence can be considered. We agree with MIEC on one thing: the meaning of "capacity" in the FAC tariff can't be discerned solely by examining that one word, which makes it ambiguous.[92] The MIEC can't have it both ways; its meaning is either revealed by "plain words" or it is not, in which case all of the MIEC's extrinsic evidence is irrelevant.

The MIEC's extrinsic evidence (its discussion about the MISO tariff and various MISO schedules, and issues on appeal at the FERC (page 39 of the MIEC's brief)) is also irrelevant for another reason. Under the law, what the FAC tariff means must be determined by finding the

[92] Commissioner Kenney, for one, recognized the ambiguity inherent in the term "capacity" as used in the FAC tariff. Tr. p. 1134, l. 11-14 ("COMMISSIONER KENNEY: There's capacity on a transmission line, there's generating capacity. In the absence of specifying what you meant doesn't that create an ambiguity?"). Try as he might, the MIEC's answer to that question was unconvincing, as evidenced by the fact that the MIEC itself, as noted, is relying on extrinsic evidence to explain a term it at the same time claims is unambiguous.

intention of the Commission and the utility at the time the FAC tariff was approved – back in 2009. ***State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n***, 156 S.W.3d 513, 521 (Mo. App. W.D. 2005). Ms. Mantle was involved then, and the *Aquila* decision discussed in our Initial Brief involving approval of an FAC and how *generation capacity* was to be handled in the FAC had been decided not long before then. As Ms. Mantle testified, "capacity" in the FAC tariff was intended to refer to *generation* capacity.[93] There is no evidence the Commission had any idea about any of the other things Mr. Dauphinais testified about during the evidentiary hearings in this case.[94] Consequently, the term capacity (present in the FAC tariff unchanged since 2009 and proposed that way in 2008) had to refer to generation capacity only.

One final point raised by the MIEC bears further response, that is, the MIEC's claim that these costs and revenues just aren't appropriate for a tracker because they aren't that large, they aren't volatile, and they can be controlled. We have largely addressed all of those issues in our Initial Brief (see pages 55 to 57), or above, but a few additional points bear noting here.

First, we respectfully suggest that approximately $12 million of expected increases in transmission costs in 2013 and 2014 alone, and far more thereafter, are material.[95] And as noted earlier, given that the MVP project estimates are early, pre-construction estimates, we would submit that those numbers are probably lower than what will actually materialize. Second, we pointed out in our Initial Brief that a cost change is volatile if it is increasing *rapidly or*

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[93] Tr. p. 1244, l. 5-12.

[94] And Mr. Dauphinais' irrelevant testimony, not mentioned in his rebuttal testimony or sur-sur-rebuttal testimony (though it could have been), was obviously in response to "friendly" and pre-staged cross-examination from Mr. Mills, notwithstanding Mr. Mills' claim that he didn't know "whether I'm friendly or not." Tr. p. 1352, l. 15-16; Tr. p. 1355, l. 10 - p. 1356, l. 17.

[95] That transmission revenues for the trued-up test year were more than transmission charges (essentially resulting in an approximately -$7.4 million "base" for any tracker) is also irrelevant. The -$7.4 million lowers the revenue requirement in this case by a like amount. *Changes* in transmission charges/revenues would be tracked against that base. If, for example, in 2013 the net became $0, that means that net transmission charges/revenues went up by $7.4 million and, without inclusion in the FAC or deferral in a tracker, the Company stands to lose that $7.4 million change. The $7.4 million is calculated by comparing the transmission charges/revenues shown on Exhibit C to the *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, and Fuel Adjustment Clause Tariff Sheets* (-$33.127 million versus $$25.7 million).

unexpectedly. Not only are the costs expected to increase rapidly (24% per year on average) but the uncertainty about by how much they will actually increase causes the increases to be unexpected. And while the MIEC would like to leave the impression that the Company doesn't view it that way, in making that suggestion the MIEC took one snippet of Ms. Barnes' testimony out of context, but then ignored what she said on the very next page of the transcript:

> ***Q.*** ***So if it's rapid and significant it might be volatile even if expected versus if it's small and slow it might not be volatile?***
>
> *A.* *That's correct.*[96]

Finally, we invited the Commission to review the speculative testimony of Mr. Dauphinais where he makes several conclusory statements (supported by not a shred of evidence of documentation) about things the Company can supposedly do to control MISO transmission charges. The MIEC has basically cut and pasted that testimony into its Initial Brief.[97] It remains as underwhelming and unsupported there as it was in Mr. Dauphinais pre-filed testimony. This Commission has experience at the MISO. This Commission knows (and the record reflects) the very minimal voting power the Company has at the MISO. And we believe this Commission understands (even the Staff recognizes this) the relative lack of control a utility has over these kinds of charges.

IV. VOLUNTARY SEVERANCE PROGRAM (VS 11)

"As part of its continuing efforts to improve its profitability." Those are the first few words of the Staff's Initial Brief on this issue.[98] The suggestion may be that such improvement is a bad thing, and the statement certainly appears to suggest that such improvement actually

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[96] Tr. p. 1154, l. 7-10. Ms. Barnes is not alone in her understanding of what "volatile" means. Tr. p. 1363, l. 23 - p. 1364, l. 3 (discussing *Webster's* definition of "volatile"). Moreover, regardless of the various definitions of "volatile" we can all argue about, the fact is that the Commission has no hard and fast rules for when a tracker or an AAO is appropriate. That matter is largely left to the discretion of the Commission.
[97] pp. 42-43.
[98] Staff's Initial Brief, p. 90.

occurred. In fact, both suggestions are untrue. As discussed earlier, a just and reasonable rate is one that covers the Company's operating expenses, taxes and depreciation and provides a reasonable opportunity to earn a fair return (i.e., a reasonable opportunity to cover the utility's cost of equity). So yes, if the Company is allowed to amortize the VS 11 costs, it may "improve its profitability" (more fully cover its cost of equity), but if it is not allowed to amortize the costs, no such improvement whatsoever will occur. This is because, as we outlined in our Initial Brief, it will have spent about $26 million on severance costs, and it will have lowered its payroll costs by about $25 million. Even if that $25 million were $26 million, at best it is a wash – "profitability" is the *same* having implemented the program as it would have been had it not been implemented.

But what about customers; what did VS 11 do for them? It is not a wash for them; in fact, it is a substantial gain of $24 million *annually* net of the $8.6 million amortization (a net gain of $15.4 million annually) for years to come.[99]

The Staff claims that the Company could have simply delayed filing a rate case and thereby could have gained more benefit (could have actually enhanced its profitability). That's easy for the Staff to say. Based even on the Staff's very low ROE recommendation and on the Staff's positions on all other issues, even the Staff agrees the Company is facing a present revenue deficiency of $210 million *per year*. Was the Company to wait six months; one year, to gain $12 million or $24 million ($2 million per month) of payroll and benefit savings when it is under-recovering its costs by, at a bare minimum, $17.5 million *per month*?[100]

[99] As discussed in our Initial Brief, the annual gain is about $24 million (rather than $25 million) because the calculation of the $25 million included a few employees whose employment was severed prior to December 31, 2011, and because the calculation is through January 2, 2013 – a period of more than 365 days.
[100] From the Company's standpoint, the revenue deficiency is greater, nearly $27 million per month.

The Staff says that the Company "continue[s] to avoid the costs represented by the severed employees."[101] That's true, and its rates no longer reflect those costs, meaning its revenues are lower by a like amount. The Company is "avoiding" the costs, but it is also foregoing the revenues.

The Staff claims there is "double recovery."[102] This argument, advanced by Staff witness Lisa Ferguson, reflects a fundamental misunderstanding of how ratemaking works. Rates are set (usually based on history) and that history is used as a proxy (estimate) for what costs and revenues will be in the future when the new rates take effect. The proxy is always wrong. But the point is that when customers pay those new rates they are not paying the past costs. Rather, they are paying for the contemporaneous service they are then receiving.[103] Properly understood, there is and can be no "double-recovery." And, as pointed out earlier, given the math here, no matter how one looks at it there is no "recovery" at all; the Company is simply back to zero.

The MIEC makes some of the same arguments the Staff makes, and one other argument. The MIEC claims that amortization of the VS 11 costs is illegal retroactive ratemaking.[104] This argument has been rejected by the courts time and time again, most recently when the MIEC claimed that amortizing deferred sums from the past through *future* rates was retroactive ratemaking. No past rate is changed by an amortization, meaning that there can be no retroactive ratemaking as a matter of law.[105]

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[101] Staff's Initial Brief, p. 91.
[102] *Id.*, pp. 91-92.
[103] *See, e.g.*, ***State ex rel. Empire Dist. Electric Co. v. Public Service Com.***, 100 S.W.2d 509, (Mo. 1936) ("'Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other [*1194] operating expenses, or to capital of the company.'", *quoting* ***Board of Public Utility Comrs. v. New York Telephone Company***, 271 U.S. 23, 70 L. Ed. 808 (1926))
[104] MIEC's Initial Brief, pp. 30-31
[105] *See, e.g.* ***State ex rel. Noranda Aluminum, Inc. et al. v. Pub. Serv. Comm'n***, 356 S.W.3d 293 (Mo. App. S.D. 2011), *citing* ***State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n***, 210 S.W.3d 330, 335 (Mo. App. W.D. 2006).

Lastly, we will address the Missouri Gas Energy (MGE) case cited by the MIEC. In the case involving MGE, the severed employees left as part of a corporate reorganization. The Report and Order on this issue is quite short, both in length and in details. We don't know, for example, what level of payroll savings had occurred between the date the employees left and when new rates would take effect. We don't know what MGE's overall payroll costs, as compared to what had been assumed when rates were last set, had been. We don't know the myriad of other relevant facts and circumstances that the Commission at that time may have had before it in deciding against MGE's request to amortize severance costs arising from the reorganization. We do know those facts here; they are of record and they are outlined in our Initial Brief. We do know that there is no *stare decisis* in administrative law,[106] meaning that this Commission can make the decision it believes is the right one based on the record *in this case*.

To summarize, we repeat what we said in our Initial Brief on this issue, because nothing in the Staff's or MIEC's Initial Brief rebuts it:

> Allowing the Company to amortize the severance costs will allow the Company to temporarily gain a benefit from regulatory lag. Customers will undoubtedly gain a greater benefit through ongoing payroll and benefit cost savings. This is a win-win, and it is a win-win this Commission has full power, authority, and discretion to implement. The Company urges the Commission to do so.[107]

V. STORM COSTS AND STORM COST AND REVENUE TRACKER

The MIEC's Initial Brief offers up two goals which it claims a storm tracker cannot accomplish, and then cites the "failure" to accomplish those goals as a reason not to approve the tracker. This is an attempt to focus the Commission on side issues and to ignore the real issues. The MIEC says there is no evidence that a tracker will improve storm response time. Ameren

[106] ***State ex rel. Praxair v. Pub. Serv. Comm'n***, 328 S.W.3d, 329, 340 (Mo. App. W.D. 2010).
[107] Ameren Missouri Initial Brief, p. 83.

Missouri makes no such claim. The Company already has very good storm restoration response time and no one in the case has argued otherwise. The MIEC next argues there is no evidence that a tracker will allow the Company to recover its costs faster. Ameren Missouri is not claiming that a tracker will allow the Company to recover these expenditures any faster. Ameren Missouri's proposal simply deals with *how* cost recovery occurs, and is a proposal that reflects a logical, fair, and orderly two-way mechanism as opposed to the illogical piecemeal mechanisms used in the past. This issue is addressed further below.

The MIEC's third argument is that the tracker "insulates and restores earnings outside of a rate case,"[108] implying we suppose that such a tracker reduces risk for the Company. But the fact is that adoption of a tracker does not change rates outside of a rate case and simply results in the deferral of costs (above or below a base) that will be considered in a future rate case. And in that rate case the costs will still undergo a prudence review before they are used to calculate the Company's revenue requirement, as Staff's witness confirmed at hearing.[109] Moreover, neither the MIEC nor the Staff provided any proof that a two-way tracker reduces risk for the Company, let alone a calculation of the impact of the tracker on risk or the Company's cost of equity. The Staff's witness testified that not only did he fail to calculate a level of risk reduction, he didn't even compare Ameren Missouri's proposed cost recovery mechanism with the storm restoration cost recovery mechanisms (or the overall cost recovery mechanisms) of the utilities in the rate of return proxy group.[110] Without such a comparison, there is no evidentiary basis to argue that any risk is reduced relative to the proxy group, or, using the MIEC's brief's language, that earnings are insulated. Finally, it is important to remember that the proposed tracker *goes both ways*. Without a tracker, the Company could spend less between rate cases than was assumed when

[108] MIEC's Initial Brief, p. 45.
[109] Tr. p. 1923, l. 22 - p. 1924, l. 9.
[110] Tr. p. 1925, l. 10-16.

base rates were set, allowing it the opportunity to keep the difference. With the tracker, that difference will be deferred to a regulatory liability, with the Commission then having the ability to include that sum as a reduction to the revenue requirement in a future rate case.

Next, the MIEC argues that a tracker removes the incentive to control the costs of storm restoration. Again, there is no evidentiary basis for this argument. In fact, neither the MIEC nor the Staff ever answered the direct refutation of this assertion by Ameren Missouri witness David Wakeman. Mr. Wakeman testified in his surrebuttal testimony that storm restoration costs are very different than the typical costs a utility incurs in serving customers. This is because when a large scale storm interrupts service to a large number of customers, the Company has an obligation to act prudently, but there are fewer opportunities to control costs than would occur if there was not a premium placed upon getting customers restored as soon as possible.[111] For example, Mr. Wakeman pointed out that the Company cannot put out a Request for Proposal, nor can it decide to not have its own personnel work overtime. These are both ways the Company might control expenditures on a normal project. Restoration of customer service after a major storm is not, and should not be, considered a normal project. Mr. Wakeman testified that the Company controls storm restoration costs to the extent it can, by, for example, negotiating hotel discounts ahead of time. But the opportunities for cost control in the course of emergency storm restoration work are few.

The MIEC next argues that the current cost recovery method already allows the Company to recover its costs. The Staff's Initial Brief makes the same claim. The truth is that the past use of Accounting Authority Orders and piecemeal deferrals in rate cases may or may not have allowed recovery of all storm restoration costs and, in any event, are cumbersome, illogical, and fail to account for the situation where actual storms costs turn out to be less than assumed when

[111] Ex. 32, p. 4, l. 15 - p. 5, l. 17 (Wakeman Surrebuttal).

rates were last set. Aside from those flaws, the Staff has made clear that if a storm falls outside of a test year and does not meet Staff's rigorous requirement that the storm restoration cost must be equivalent to 5% of the Company's net income, then Staff would oppose any request to recover that cost through an Accounting Authority Order, which is the only avenue available to the Company in that circumstance.[112] Staff's standard requires a particular storm must cost the Company $15 million to restore.[113] Staff agreed that many storms will cost less than $15 million to restore customer service.[114] Staff agreed that it is possible that the Company may experience multiple storms that cost more than the amount used to set rates but less than $15 million.[115] Given these scenarios, it is clear that the current methodology of recovering the costs of storm restoration falls short and should be corrected. If the Company has actually recovered its expenditures in the past, it has been more luck than foresight. The Commission has the opportunity to remedy the situation, and the Company has proposed to accomplish this in a manner that does not disadvantage customers and, indeed, offers them the benefit of being able to have their rates lowered in the future if the Company spends less than had been assumed.

Staff argues that a tracker shifts the burden of production to Staff. This is a red herring. In fact, a tracker reduces the work required from all parties without reducing protections offered to customers. All costs will be tracked and so Staff's review is simplified. It is true that the Company does not have to file an application asking for permission to defer the costs for later consideration in a rate case, but the Staff's work is also reduced in that it does not have to investigate and file a response about whether or not it considers the storm extraordinary. Instead, the Company will have to demonstrate to the Staff that the storm meets the definition set forth in

[112] Tr. p. 1916, l. 24 - p. 1920, l. 19.
[113] Tr. p. 1918, l. 15-16.
[114] Tr. p. 1919, l. 1-4.
[115] Tr. p. 1919, l. 5-12.

Mr. Wakeman's direct testimony. The Staff will still have to investigate the prudence of these expenditures, but that is not a burden imposed by the tracker, but rather is a part of the Staff's normal review for all costs whether or not a tracker exists.

The next issue which must be addressed is the base amount against which the tracker is calculated. Ameren Missouri has agreed to use the Staff's calculation.[116] The MIEC, on the other hand, used a much longer time period for calculating a normal number. The MIEC wants to paint this methodology as being the same as what the Company used in its last rate case, but that argument is a misstatement of the Company's methodology. In the last rate case, the Company used data starting in April of 2007.[117] In this case, the MIEC used data starting in April of 2007 but went forward through the true-up period in this case, which constitutes a much longer period of time. Starting at the same point, but then extending the period is not the same methodology. The MIEC also claims that because the Company chose to agree with the Staff's recommendation, a move which reduced its requested revenue requirement, that the Company is "picking and choosing" methodologies. Ameren Missouri's movement (which was small in any event) towards the Staff's position is simply a means to reduce the number of issues in dispute in this case.

The final issue related to storm restoration costs is whether storm assistance revenues received from other utilities should be included in the calculation of the Company's revenue requirement. The Company's Initial Brief listed the multiple reasons why this should not be done – the Company has no control over when other utilities may need assistance and so presuming it will achieve this revenue is nothing more than a guessing game which sets the level at an amount the Company is unlikely to achieve in any given year. In fact, the Staff's witness

[116] Tr. p. 1906, l. 3-13.
[117] Tr. p. 1897, l. 5-15.

admitted that the level recommended by the Staff (which is less than the amount recommended by the MIEC) was achieved in only one year since 2005.[118]

The Staff asserts it is necessary to have some level of storm assistance revenue included because customers pay for the labor and equipment used to provide this assistance. To the extent that customers have paid for the labor and equipment, the fairest resolution is to grant the Company's request for a two-way storm tracker and require the Company to include as a credit all storm assistance revenues received, which will reduce any regulatory asset arising from the tracker (or make larger any regulatory liability). The Company would point out that the crews which are sent to assist with storm restoration work overtime.[119] The Staff's witness admitted that the overtime level may be more than the amount of overtime built into the Company's regular rate.[120] If that occurs, crediting customers back for all overtime payments made to the crews actually means that customers will receive back more than the amount of labor cost used to develop rates. So even the solution of crediting back to customers amounts received for storm assistance should be limited so that overtime is not included in that calculation. Otherwise, customers may be over-compensated due to the level of overtime worked. The Company desires a solution that is fair to both the Company and its customers. The tracker along with crediting non-overtime reimbursements is the fair solution. The solution proposed by the Staff and the MIEC is skewed toward making it more difficult for the Company to recover its actual costs and overcompensating customers. Their recommendations should be denied.

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[118] Tr. p. 1931, l. 14 - p. 1933, l. 2.
[119] Tr. p. 1937, l. 9-14.
[120] Tr. p. 1938, l. 9-18.

VI. INCOME TAX

A. ESOP.

The MIEC and the Staff are attempting to seize the tax benefit earned by Ameren Corporation when it elects to pay dividends out of its after-tax earnings to shareholders who hold Ameren Corporation stock in an Employee Stock Ownership Plan (ESOP). This adjustment is completely without merit. Insofar as customers have no entitlement to Ameren Corporation's after-tax earnings, they certainly have no right to any tax deductions or other benefits that are derived from those earnings. Customers have no more entitlement to this tax benefit than they would to the tax benefit derived from Ameren Corporation's decision to invest its after-tax earnings in municipal bonds or to make a contribution to a worthy charity – none whatsoever. Ameren Corporation's decision to dispose of its after-tax earnings should have no impact whatsoever on Ameren Missouri customer rates, whether Ameren Corporation uses its money in a way that creates additional tax liability or in a way that reduces its tax liability. The reason is that once earned, Ameren Corporation's earnings belong to it, and not to Ameren Missouri's customers.

The Staff and the MIEC attempt to get around this simple and obvious principle of ownership with two arguments that do not withstand scrutiny. First, they argue that some of the money Ameren Corporation used to pay dividends on stock held in ESOP accounts may[121] have come from rates paid by Ameren Missouri customers. Although it is likely that, in any given period, a portion of the money used to pay Ameren Corporation's dividend comes from dividends paid by Ameren Missouri and that Ameren Missouri gets cash to pay a dividend through rates paid by customers, where the money originally came from is completely irrelevant

[121] The Staff and MIEC provided no evidence at all about where the money came from that was used to pay Ameren Corporation's dividend. As Ameren Missouri witness Warren testified, it is possible that the money could come from dividends earned from other subsidiaries, or that the money used to pay the dividend could be borrowed.

to the resolution of this issue. Once money is earned by Ameren Missouri, customers are not entitled to any of the benefits of ownership of that money – it belongs to Ameren Missouri. Once dividended to Ameren Corporation, the money belongs to Ameren Corporation, not to Ameren Missouri's customers or even to Ameren Missouri itself.

The MIEC attempts to analogize this situation to the allocation of a share of income tax expense from Ameren Corporation to Ameren Missouri. But the analogy does not hold water. It is clearly appropriate ratemaking to allocate the relevant share of a common cost incurred by a parent corporation on behalf of its subsidiaries to those subsidiaries. Those are costs that are incurred to provide service to customers, and it is appropriate that customers pay those costs. These allocations take place all the time with respect to overhead costs and corporate governance costs, just to name a couple of examples. Ameren Missouri's tax liability also arises directly from, and is a cost of its regulated operations, even though Ameren Corporation files a consolidated tax return. It is perfectly appropriate that these costs be paid by Ameren Missouri's customers.

But the tax benefit at issue here is completely different from an allocated cost. The tax benefit does not arise as a consequence of Ameren Missouri's regulated operations. Instead, it is the result of *individual employees'* decisions to invest a portion of their compensation *after it has been earned,* and Ameren Corporation's decision to dispose of its own money *after it has been earned.* Customers are simply not entitled to seize tax benefits owned by Ameren Corporation and derived as a result of its decision to devote its after-tax earnings to a particular purpose – the payment of dividends – notwithstanding the fact that Ameren Missouri pays the share of income tax liability incurred as a direct consequence of its regulated operations. Again, the after-tax earnings and the incidents of ownership of those earnings belong to Ameren Corporation and not

Ameren Missouri's customers. And whatever Ameren Corporation chooses to do with the money it has already earned should have no impact on Ameren Missouri's customers' rates, whether those decisions result in positive or negative tax consequences.

B. ADIT Associated with CWIP.

In the second income tax issue, the Staff and the MIEC are attempting to credit customers with a tax benefit associated with Construction Work in Progress (CWIP), even though customers don't pay any of the costs of CWIP until the plant is placed in service. Specifically, the Staff and MIEC are attempting to credit against rate base Accumulated Deferred Income Tax (ADIT) associated with CWIP projects. This is a completely inappropriate mis-match. It is bad enough that, under Missouri statutes, customers are not required to pay any of the costs of projects while they are under construction. This prohibition would be made even more detrimental to utilities if customers were given tax benefits associated with the plant for which they are not yet paying. Clearly, any ADIT offset associated with CWIP should be credited to customers only when they pay the costs of the plant, and not a moment before.

The MIEC's primary argument in support of crediting customers with tax benefits associated with CWIP now, before they have to pay the associated costs, is "that's the way it's always been done."[122] While it is true that Ameren Missouri has consented to offsetting rate base with ADIT associated with CWIP in some past cases, as Mr. Warren testified, the amounts involved in past cases were modest, while the quantity of ADIT associated with CWIP has increased markedly in this case.[123] To Ameren Missouri's knowledge, the Commission has not resolved this issue in a contested case, and Ameren Missouri's consent to treatment of much smaller amounts in previous cases should not be held against it. It is illogical to credit customers

[122] MIEC Initial Brief, p. 13.
[123] Ex. 10, p. 11, l. 15-21 (Warren Rebuttal).

with the tax benefits associated with projects for which they are not paying, and Ameren Missouri's willingness to voluntarily absorb this type of adjustment in previous cases, where the amounts at issue were much smaller, does not change that.

In addition, the mis-match in accounting for ADIT will create significant problems if the cost of the underlying plant is ultimately disallowed in a subsequent rate case when the utility attempts to place the plant in service and include it in rates. In such a situation, customers will already have received the tax benefits (in the form of lower rates) associated with the CWIP, even though they may ***never*** have to pay the related costs. Such a circumstance could arise if the project was never completed, or if there were prudence disallowances associated with part or all of the project's costs. In those circumstances, the customers would have unjustly received the tax benefits associated with a project whose costs were borne entirely by the Company. This is a perfect example of why the MIEC's and the Staff's proposal to credit one group of customers with benefits associated with a project before a later generation of customers pays the costs is illogical. The MIEC's and the Staff's position should be rejected and ADIT associated with CWIP should be included in rate calculations when, and only when, the associated CWIP is included in rates.

VII. PROPERTY TAXES

The Staff and the MIEC continue to argue that the property tax expense the Commission should include in the revenue requirement in this case is Ameren Missouri's actual property tax expense for Tax Year 2011 because that is the only amount that qualifies as "known and measureable."[124] But, as the Company showed in its Initial Brief, that argument is false. Commission decisions in two recent rate cases – Case No. ER-2011-0028 (Ameren Missouri's last rate case) and Case No. WR-2000-844 (St. Louis County Water Company) – clearly

[124] Staff's Initial Brief, p 35; MIEC's Initial Brief, p. 22.

recognize that operating expenses do not need to be precisely known in order to be considered "known and measureable" for purposes of setting rates. Instead, operating expenses whose amount can't be exactly determined must only be capable of being estimated with "reasonable precision."[125] The alternate estimates of property tax expense proposed by Ameren Missouri in this case satisfy that standard.

All parties agree that to determine property tax expense only two things must be known: first, the assessed value of the taxable property, and second, the composite tax rate. Each of the Company's estimates is based on the assessed value of Ameren Missouri's property that the various taxing jurisdictions will use to determine actual property tax expense for Tax Year 2012, which Ameren Missouri will pay approximately a week prior to the operation of law date for rates set in this case. That assessed value, which was established by the Missouri State Tax Commission, has been known since late June. Thus, one of the elements of the property tax calculation, the assessed value, was fully known to all parties before the end of the true-up period used in this case. Only Ameren Missouri used this known and measureable assessed value for Tax Year 2012 to calculate the property tax expense proposed to be used for ratemaking. Put another way, the Staff and the MIEC completely ignored the fact that the assessed value of Ameren Missouri's property had changed (increased) from the assessed value used to calculate 2011 property taxes.

The second element, the composite property tax rate, was not known by the end of the true-up period and won't be known until later this year. Consequently, Ameren Missouri had to estimate the tax rate, and has proposed two alternate methods to do so. One alternative uses the Company's actual composite tax rate for Tax Year 2011. Although that rate is known and

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[125] Report and Order, Case No. ER-2011-0028, pp. 107-08; Report and Order, Case No. WR-2000-844, 10 Mo.P.S.C.3d 259 (2001).

measureable in the sense that we know what it was for 2011, it probably understates the tax rate for 2012 because, as explained in the unchallenged testimony of Ameren Missouri's witness Chris Cudney, Ameren Missouri's composite property tax rates have recently increased significantly year-to-year. To capture that trend and more accurately estimate the tax rate that will be used to determine actual property tax expense for the period just prior to when new utility rates will go into effect, the Company's second alternative estimates the composite tax rate based on a historical average of the actual tax rate increases Ameren Missouri has experienced for Tax Years 2009 through 2011. The Company then applied that historical average increase to the actual composite rate for 2011 to arrive at its estimate of the composite rate for 2012.

The Staff argues that the Commission should refuse to accept either of the Company's proposed estimation methodologies because those methodologies violate "the cost-of-service paradigm used in Missouri, which depends upon a historical test year, annualized and normalized and updated for known and measureable changes"[126] and also because "[p]ast tax rates are not predictive of future tax rates."[127] But the Staff's argument is unfounded. Indeed, as noted, it is the Staff that is using a "past tax rate" as a proxy (an estimate) for what tax rates will be in the future. As noted previously, the State Tax Commission conclusively determined the assessed value of Ameren Missouri's taxable property, which will be used to determine actual property tax expense for Tax Year 2012, prior to the end of the true-up period. Therefore, that value is unquestionably both known and measureable. The composite tax rate for 2011 similarly is known and measureable, and both the Staff and the MIEC base their respective property tax expense estimates on that composite rate. And although neither party disputes Ms. Cudney's testimony that Ameren Missouri's composite tax rate has increased in each of the past three

[126] Staff's Initial Brief, p. 35.
[127] *Id*. p. 36.

years, both the Staff and the MIEC conveniently ignore that fact and oppose the use of an average of those historical increases to estimate the increase over 2011 tax rates that likely will occur in 2012. They argue that such an average is not called for because it is not known with certainty that the composite tax rate will increase in 2012. Yet both the Staff and the MIEC argued in other testimony that a historical average was both a legitimate and reliable method to estimate storm restoration costs.[128] But neither the Staff nor the MIEC ever explain why the same methodology is appropriate for one expense but inappropriate for another.

The Staff and the MIEC also fail to address a second regulatory principle that governs the determination of expense amounts used for ratemaking and is just as important as the "known and measureable" principle. That principle – that costs used to set rates should reflect as closely as possible the operating conditions the utility will experience during the period rates are in effect – strongly supports the forward-looking estimates (based on the actual 2012 assessed value and an average of actual, historical property tax rate increases) proposed by Ameren Missouri instead of the backward-looking estimate proposed by the Staff and the MIEC. No party disputes the fact that the Company will pay its property taxes for Tax Year 2012 before rates set in this case take effect. Consequently, with respect to its property tax expense, the 2012 tax expense amount – not the 2011 amount – is the condition that Ameren Missouri will experience during the period rates set in this case are in effect. And Ms. Cudney's unchallenged testimony explains why it is very likely that the Company's 2012 property tax expense will significantly exceed its expense for 2011.

The MIEC attempts to make an issue out of Ms. Cudney's lack of familiarity with how property tax expense can or should be estimated for ratemaking purposes.[129] But Ms. Cudney

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[128] See Ex. 202, pp. 119-120; Ex. 510, pp. 9-12 (Meyer Direct).
[129] MIEC's Initial Brief, pp. 22-23.

testified as a property tax expert, and her unfamiliarity with ratemaking doesn't diminish in any way her testimony that (i) the Company's composite tax rates have increased each of the past three years, and (ii) budgetary pressures confronting local taxing authorities likely will result in a further increase in the tax rate for 2012. Therefore, the question left for decision by the Commission is simple: Which property tax expense estimate satisfies the Commission's "known and measureable" standard *and* most closely reflects property tax expense Ameren Missouri will actually incur during the period rates set in this case are in effect? The correct answer to that question most certainly is *not* the out of date estimate proposed by the Staff and the MIEC.

The MIEC further argues that Ameren Missouri's position on this issue is inconsistent with its position that the results of a bond refinancing, which occurred in the third quarter of this year and which may reduce the Company's overall interest costs, should not be reflected in rates.[130] But a review of the full transcript related to that issue reveals that there is no inconsistency because of significant differences between the facts underlying the bond refinancing issue and those underlying the property tax expense. Two differences are particularly relevant. First, no part of the debt refinancing or its effects – which, as noted above, took place during the third quarter – occurred within the test year or the true-up period used in this case. Second, no party has proposed to adjust the Company's interest costs to reflect the effects of the refinancing.

Focusing on the second difference, the reason no party has proposed such an adjustment may be that it appears no one can reasonably estimate the effect the refinancing will have on debt costs. As noted in the MIEC's Initial Brief, Ameren Missouri's witness testified that the refinancing could produce savings "of up to $5 million."[131] But it seems unlikely that an

[130] *Id*. pp. 23-24.
[131] *Id*.

estimate of potential savings ranging from zero to $5 million as reasonably precise would qualify as reasonably precise, which is the standard the Commission requires an estimate to meet to be considered "known and measureable." Without a reasonably precise estimate of annual cost savings, the very regulatory principle that the MIEC relies on for its argument would not justify any adjustment to reduce test period debt costs – even if the Commission was convinced that going beyond the end of the true-up period to pick up those reductions is appropriate.

In contrast, Ameren Missouri has proposed a reasonable estimate of property tax expense that satisfies the Commission's "known and measureable" standard. Of the two components necessary to determine property tax expense, one component – the assessed value of Ameren Missouri's property – was conclusively known before the end of the true-up period. And the second component – the composite tax rate – is capable of reasonably precise estimation based on known tax rates for 2011 or an estimated tax rate using a methodology that the Commission routinely considers reliable for ratemaking purposes – averaging actual historical data. So the Company is not, as the MIEC contends, trying to "have its cake and eat it too,"[132] because the facts behind the debt cost and property tax expense issues differ materially.

VIII. 2010 PROPERTY TAX REFUND

Both the Staff and the MIEC argue that the Commission should order Ameren Missouri to return to customers the $2.9 million refund it received of the property taxes it paid for Tax Year 2010. Each party bases its argument *solely* on the following statement from the Commission's *Report and Order* in Case No. ER-2011-0028:

> If Ameren Missouri does receive a tax refund, then the Commission would certainly expect that the company would return that refund to its customers who are ultimately paying the tax bill. It is hard to imagine a circumstance in which such a refund would not be ordered.[133]

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[132] MIEC's Initial Brief, p. 24.
[133] Report and Order, Case No. ER-2011-0028, p. 110.

But as Ameren Missouri pointed out in its Initial Brief, unchallenged record evidence in this case proves the assumption on which the Commission's statement is based – that customers paid the full amount of the Company's property tax expense – is false. Apparently the Staff and the MIEC believe they simply can ignore that evidence; however, because it must decide issues based on competent and substantial record evidence and not on unfounded assumptions, the Commission doesn't have the same prerogative.

In its Initial Brief, Ameren Missouri described and discussed the evidence in this case that conclusively establishes each of the following facts:

- The Company paid its property taxes for Tax Year 2010 sometime the last week in December of that year;[134]

- At the time Ameren Missouri paid its 2010 property taxes, the Company's customers were paying rates set in Case No. ER-2010-0036, which were set using a revenue requirement that included actual property tax expense for Tax Year 2009;[135]

- The Company's property tax expense for Tax Year 2009 was approximately $9 million less than its tax bill for Tax Year 2010;[136]

- Rates set in Case No. ER-2010-0036 remained in effect throughout the first seven months of 2011 – the period immediately following the date the Company paid its 2010 property taxes;[137]

- The Company did not implement rates based on Ameren Missouri's actual property tax bill for Tax Year 2010 until July 31, 2011, the effective date of rates set in Case No. ER-2011-0028; and[138]

- Although rates based on 2010 property tax expense remained in effect for the final five months of 2011 and continue in effect today, Ameren Missouri's actual property tax expense changed again sometime the last week of December 2011 when the Company paid its property taxes for Tax Year 2011.[139]

[134] Tr. p. 985, l. 25 - p. 986, l. 7.
[135] Ex. 55; Tr. p. 985, l. 8-11.
[136] Ex. 55; Tr. p. 986, l. 23 - p. 987, l. 8.
[137] *Id.*
[138] *Id.*
[139] *Id.*

This evidence shows that Ameren Missouri's customers have not paid through rates the full amount of the Company's property tax expense. This is true for two reasons. First, Ameren Missouri's rates for electric service to customers don't change each December when the Company pays its property tax bills. Consequently, as was the case during the first seven months of 2011 and throughout 2012, the property tax expense reflected in customer rates only infrequently matches Ameren Missouri's actual property tax expense. Second, the Company does not have in place a property tax tracker mechanism. If such a tracker mechanism had been in place, customers could properly receive the benefits of any tax refunds Ameren Missouri receives, such as the one the Company received for its 2010 property taxes. Correspondingly, customers also could properly be required to make up tax increases not reflected in base rates, such as the $9 million increase in property tax expense Ameren Missouri experienced in Tax Year 2010 compared to Tax Year 2009. Without such a tracker, requiring the Company to asymmetrically return refunds to customers amounts to nothing more than "cherry picking" cost changes that benefit customers while ignoring the numerous and recurring cost increases that adversely affect the utility.

Because the facts clearly establish that customers did not pay through rates the full amount of the Company's property tax expense, Ameren Missouri opposes the Staff's and the MIEC's proposal to require a refund of the $2.9 million tax refund. The MIEC's Initial Brief pejoratively characterizes the Company's stance as "chutzpah."[140] But, like its argument generally, the MIEC's assertion is unfounded. It isn't chutzpah for Ameren Missouri to point out that the facts don't support the Commission's assumption in its *Report & Order* in Case No. ER-2011-0028 that customers paid through rates the full amount of Ameren Missouri's 2010 property taxes. It isn't chutzpah to also point out that for the first seven months of 2011, the

[140] The MIEC's Initial Brief, p. 21.

property tax component of the Company's rates was approximately $3.56 million less than actual property tax expense for that period.[141] And, finally, it isn't chutzpah for Ameren Missouri to argue that the Commission's decision on this issue should be based on the facts of record instead of on the unfounded assumptions and conclusions stated in the *Report and Order* in Case No. ER-2011-0028, which were based on no evidence whatsoever.

In its Initial Brief, the Staff argues that Ameren Missouri's position on this issue is inconsistent with the Company's attitude toward other expense items where there is a mismatch between actual costs and the costs included in revenue requirement used to set rates, citing the proposed PISA and various formal tracker mechanisms as examples.[142] But the Staff is wrong: there is no inconsistency between Ameren Missouri's position on this issue and its position regarding PISA or other current and proposed tracker mechanisms. The Company strongly supports the PISA and formal tracker mechanisms because they are mechanisms that are designed to ensure that customers neither over-pay nor under-pay major costs that Ameren Missouri incurs to provide service. As noted earlier, had a formal property tax tracker mechanism been in place, it would have operated so that the Commission could both return to customers the full amount of the $2.9 million tax refund at issue here and allow collection from customers for property tax increases not reflected in base rates, such as the increase in property tax expense the Company experienced in Tax Year 2010. But no such tracker was in place. Instead, in Case No. ER-2011-0028, the Commission simply ordered the Company to keep track of any property tax refund it received. To use that admonition as justification for the refunds proposed by the Staff and the MIEC would be fundamentally unfair to Ameren Missouri because it would cherry-pick the benefit of the $2.9 million tax refund while exempting customers from

[141] As Ameren Missouri noted in its Initial Brief, this estimate is based on 9/12ths of the difference, net of the $2.9 million refund, of the Company's tax bills for Tax Years 2009 and 2010.
[142] The Staff's Initial Brief, p. 34.

the effects of at least $3.56 million in property tax expense increases that the Company never recovered through base rates.

IX. CASH WORKING CAPITAL REQUIREMENT

In defense of its use of the collection lag calculation it performed in Ameren Missouri's last rate case, the Staff argues that certain "flaws" exist within the Accounts Receivable Breakdown Report – containing payment information from the test year – which make it an unreliable source of information for the calculation of Ameren Missouri's collection lag for this case.[143] The reason that the Staff criticizes the Accounts Receivable Breakdown Report no doubt has much to do with its reliance on the now-defunct CURST report – containing payment information outside the test year, which violates traditional cost-of-service ratemaking practices. As the Staff points out in its brief, traditional cost-of-service ratemaking principles would otherwise prohibit reliance on the CURST report:

> *Cassidy Rebuttal*, p. 5: "Traditional ratemaking practice ***requires*** that rates be set based upon a historical test year that uniformly captures all of the changes in a utility's revenues, expenses and investment levels and also maintains this proper relationship through a matching all these variables." Ex. 234, *Cassidy Surr*., pp. 2-3.[144]

Despite this rule, the Staff purportedly finds use of the Accounts Receivable Breakdown Report untenable.

What are these "flaws" in the Accounts Receivable Breakdown Report that are so fatal that they would drive the Staff to ignore current payment data and instead rely on a report containing old information and no longer produced by the Company? According to the Staff, they include:

- Inclusion of customers that never pay at all;

[143] Staff's Initial Brief, p. 16-17.
[144] *Id.*, p. 19, fn. 83.

- Results in a collection lag that exceeds the 21 days allowed to customers to pay their bills;
- Calculation does not employ dollar-weighting;
- Misunderstands the role bad debts play in the calculation; and
- Does not measure actual payment habits of customers who pay early.[145]

Not one of these purported "flaws" has any merit, and this Commission should reject the Staff's use of outdated information recycled from a prior rate case.

<u>Inclusion of customers that never pay at all</u>. Despite the fact that the Staff is well aware that Mr. Adams made an adjustment to the Accounts Receivable Breakdown Report to remove uncollectible debts (Mr. Adams not only stated this in his pre-filed testimony,[146] he told Staff counsel this at hearing – just before counsel cut him off[147]), it continues to argue this point. It simply is not true. No one has impeached in any way the adjustment developed by the Company and applied by Mr. Adams by showing that it was improperly calculated or was otherwise inaccurate. There is no flaw.

<u>Results in a collection lag that exceeds the 21 days allowed to customers to pay their bills</u>. Here, the Staff relies on testimony by Mr. Meyer to argue that Ameren Missouri's collection lag calculation of 28.75 days means that ***all*** of its customers pay late, despite testimony from Mr. Adams that only 30% to 36% of its customers pay late.[148] This argument belies a basic misunderstanding of mathematics. For example, while 64% to 70% of Ameren Missouri's customers may pay on-time, assume that the average lag for those customers is 20 days; for the 30% to 36% of Ameren Missouri's customers who pay late, however, assume the average lag for those customers to be 39 days. While the resulting average collection lag for all

[145] *Id.*, p. 16-17.
[146] Ex. 8, p. 8, l. 4-9 (Adams Direct); Tr. p. 458, l. 1-3; p. 462, l. 11-25; Ex. 47.
[147] Tr. p. 457, l. 23 - p. 458, l. 7.
[148] Staff's Initial Brief, p. 17.

customers in this example obviously would exceed 21 days, it is absolutely clear that this is not the same thing as saying that all customers are late-payers.

Moreover, the rationale underlying Mr. Meyer's argument – that the Commission has a rule allowing customers 21 days before the utility may consider the payment late – has been rejected by the Commission as a basis for rejecting longer collection lags. In its 1993 Report and Order regarding Southwestern Bell Telephone Company,[149] the Commission was presented with collection lag analysis on behalf of the utility calculated using two of the three methodologies used by Mr. Adams in this case: an accounts receivable turnover ratio computation[150] resulting in a 28.46 day collection lag and a customer sampling of all bills for a particular month in the test year (here, Mr. Adams analyzed five months[151]).[152] Despite the fact that the Staff's own modified accounts receivable analysis and random sampling also resulted in a collection lag in excess of 21 days, the Staff recommended a 21-day collection lag based on the Commission rule requiring that the utility allow customers 21 days to pay their bills before considering payment past due and on the Staff's conclusion that a collection lag in excess of 21 days would necessarily mean that all Southwestern Bell's customers "pay their bills late."[153]

The Commission rejected the Staff's recommendation, finding that the underlying bases for Staff's support of a 21-day collection lag were "not well-founded."[154] In rejecting the Staff's reliance on the Commission's 21-day rule as a basis for ignoring Southwestern Bell's collection lag calculations, the Commission stated: "The rule itself is directed at utility behavior and not

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[149] *Staff of the Missouri Pub. Serv. Comm'n v. Southwestern Bell Tel. Co.*, 1993 Mo. PSC LEXIS 62 at *56-57; 2 Mo. P.S.C. 3d 479 (December 17, 1993).
[150] Ex. 9, p. 16, l. 8-20 (Adams Rebuttal); Tr. p. 481, l. 11-19. Mr. Adams' accounts receivable turnover ratio resulted in a collection lag of 26.02 days – a result that is substantially higher than that recommended by Staff and MIEC.
[151] Ex. 9, p. 14, l. 5-10; Tr. p. 481, l. 5-10. Mr. Adams' sampling resulted in a 27.79-day average collection lag.
[152] 1993 Mo. PSC LEXIS at *60-61.
[153] *Id.* Of course, some proportion of Ameren Missouri's customers, and we would strongly suspect customers at any utility, do in fact pay their bills late.
[154] *Id.* at 61.

directly at consumer behavior, and merely provides for a minimum amount of time a utility must give customers to pay from the rendition of a bill before the utility may consider the bill past due and take further action."[155] In other words, there was no evidence that the rule had any effect on customer behavior. As a result, the Commission determined "that Staff's evidence is insufficient to justify the use of its proposed 21-day collection lag."[156] Implicit in the Commission's determination was its necessary rejection of the notion that a collection lag in excess of 21 days was impossible in that it meant that all customers paid late. Mr. Meyer's argument has been made before – and the Commission has rejected it as a basis for restricting collection lag to 21 days because it's obviously not true. Neither Mr. Meyer nor the Staff offers anything new in this case that would change this Commission's mind.

<u>Calculation does not employ dollar-weighting</u>. Again adopting a criticism lodged by Mr. Meyer, the Staff suggests that the CURST report should be relied upon because Mr. Adams does not dollar-weight his calculations.[157] If the Staff or Mr. Meyer had quantified the effect of this criticism, perhaps it would have some value – but perhaps not. Mr. Adams testified at hearing that he looked at three months of the customer analysis and, when he applied the dollar-weighting that Mr. Meyer said was necessary, the collection lag actually went ***up*** for two of the months and was only slightly down from his 28.75-day recommendation for one month.[158] Consequently, the only competent and substantial evidence of record suggests that dollar weighting makes the lag *longer* than being recommended by Mr. Adams.

<u>Misunderstands the role bad debts play in the calculation</u>. This purported flaw is ambiguous in that it is unclear how this misunderstanding impeaches Mr. Adams' use of the

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[155] *Id.*
[156] *Id.*
[157] Staff's Initial Brief, p. 17.
[158] Tr. p. 482, l. 5-11.

Accounts Receivable Breakdown Report or why the adjustment he made to remove bad debts from his calculation is incorrect. The only question that remains, then, is "so what?"

Does not measure actual payment habits of customers who pay early. Without any quantification by Mr. Boateng of the true impact of this alleged flaw, the Commission is left to wonder how many credit balances there actually are and whether the amount of these balances makes any material difference to Mr. Adams' calculation. As Mr. Adams testified, there are a limited number of credit balances, and most of those balances are incorrect payments that are ultimately refunded to the customer.[159] This purported flaw has no perceptible effect on the reliability of Mr. Adams' lead-lag analysis; had the Staff or the MIEC arrived at a much different conclusion than Mr. Adams based upon current information or on a review of the five months of data for every single one of Ameren Missouri's 1.2 million customers that Mr. Adams reviewed, this Commission might have some reason to question Mr. Adams' calculation. Lacking this evidence, Mr. Adams' collection lag analysis should be accepted by the Commission.

One last point. The MIEC spends much of its Initial Brief defending its use of the CURST report because Mr. Adams could not prove a negative. This was the actual exchange at the hearing:

> ***Q.*** ***Again, Mr. Adams, you said just you knew that you were not -- you went to the IT department and you were not able to verify the accuracy of the CURST 246 report. Is that your testimony?***
> *A.* *I believe I said that I went to the IT Department. They were not able to verify it. They were not able to provide answers as to whether everything was included.*
>
> ***Q.*** ***Did they find a single account that was not included in the 246 report?***
> *A.* *I don't know the answer to that.*
>
> ***Q.*** ***So they never said, Oh, we just found Mike Smith who pays his electric bill on time, but he wasn't included in the CURST 246 report, there must***

[159] Tr. p. 458, l. 14-20.

be a problem with the report? You never encountered any kind of information like that from the IT group, right?
A. They were just -- they just told me they were not able to be verify the code that generated that report.

Q. But they could not find a single account that was not contemplated in that report, correct?
A. They did not look at individual accounts is my understanding. They were looking at the code that produced the report from the system.

Q. But if you're looking at CURST report and you want to know if it's accurate, wouldn't you want to know if it incorporates all of the accounts of Ameren customers?
A. Yes.

Q. And you couldn't find a single account that was not accounted for in that report?
A. As I said, I did not look at it.

Q. And IT didn't present with you a single account that was not contemplated in that report?
A. But if they identified any, I can't tell you that. But they did not tell me that they didn't find any.[160]

From these questions and answers, the MIEC concludes that the CURST Report was reliable because Mr. Adams was "unable to point to a single customer who was not accounted for in the CURST Report."[161] As is strikingly clear from Mr. Adams' testimony, that issue was not the focus of anyone's evaluation of the report; moreover, Mr. Adams told counsel for the MIEC several times that he did not know one way or the other what customer accounts were included in the CURST report. In fact, that was the point – the CURST report was abandoned because no one could determine what information got into the report and what did not get into the report. Accordingly, the MIEC's argument impeaches its own reliance on the report.

Ameren Missouri's abandonment of the CURST report was prudent; the Staff and MIEC's reliance on the report was not. The Commission should note that the only attack lodged

[160] Tr. p. 472, l. 14 - p. 473, l. 23.
[161] MIEC Initial Brief, p. 8.

by the MIEC and the Staff is against Mr. Adams' use of the Accounts Receivable Breakdown Report, and none of those attacks has any merit. Even more obvious is the fact that neither of those parties criticized the alternative methodologies used by Mr. Adams (the turnover ratio calculation and the five-month customer sampling analysis) to demonstrate the reliability of his lead-lag analysis and the fallibility of the CURST report. As such, this Commission cannot rely on the calculations based upon data outside the test year and contained in the CURST report.[162]

X. RATE CASE EXPENSE

As Ameren Missouri pointed out in its Initial Brief, there are two aspects to the question of what and how much rate case expense should be allowed as an operating expense – a policy aspect and an evidentiary aspect.[163] Because OPC's Initial Brief largely focuses on the policy it advocates for – supporting the apportionment of rate case expense between the ratepayer and the shareholder – Ameren Missouri's response primarily responds to those policy arguments and propositions advanced by OPC. In addition, Ameren Missouri offers a brief response to Staff's position as set out in its Initial Brief.

A. Because regulation of public utilities benefits the customer, the costs necessarily incurred by that regulation inherently benefit the customer and, therefore, should and must be borne by the customer.

As was the case for most other states, Missouri's Public Service Law was enacted in 1913 for the purpose of protecting "the consuming public against the public utilities as natural monopolies."[164] Recognizing that competition was inadequate to protect the public who were customers of these monopolies, state regulation was adopted in Missouri to take the place of and

[162] Nor should the Commission, or can it lawfully, "order" the Company to once again start preparing the CURST report, as the Staff suggests at page 18 of its initial brief. To do so would be to dictate to a utility how it should manage its business, which is authority the Commission does not possess. *See, e.g.,* ***State ex rel. City of St. Joseph v. Pub. Serv. Comm'n*, 30 S.W.2d 8** (Mo. *banc* 1930). *See also* ***State of Missouri ex rel. Southwestern Bell Co. v. Pub. Serv. Comm'n***, 262 U.S. 276, (1923)
[163] Ameren Missouri's Initial Brief, p. 114. As discussed below, there is also a very important legal aspect to the issue that OPC totally ignores.
[164] ***State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n***, 600 S.W.2d 222, 226 (Mo. App. W.D. 1980).

stand for the competitive forces.[165] As the court in ***State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*** observed, "[t]his protection, however, has been and continues to be balanced against permitted recovery by utilities of a just and reasonable return upon their investment of properties committed to service for the public."[166] As a result, while a utility's monopoly is protected by the state, the state now exercises its police power over the utility such that the utility no longer has power to set its own prices or earn whatever profit it can.

It is then the case that a public utility's prudence review is regulation's substitute for competitive forces in an unregulated market:

> If a competitive enterprise tried to impose on its customers costs from imprudent actions, the customers could take their business to a more efficient provider. A utility's ratepayers have no such choice. A utility's motivation to act prudently arises from the prospect that imprudent costs may be disallowed.[167]

Consequently, the utility's customers are not the only ones without a choice because the utility has an *obligation to serve* that requires it to spend money. Because a regulated utility cannot set its own rates, it is ***required*** to incur a cost unknown to an unregulated utility – the cost of going to the Commission and proving to the satisfaction of that Commission why it needs a change in those rates.

Because this cost – its rate case expense – is a cost unknown to private enterprise and imposed upon the utility, logic would suggest that the prudency determination of a utility's rate base and operating expenses would not demand that rate case expense be treated differently than any other operating expense. Ameren Missouri does not argue, however, that the Commission

[165] ***May Dept. Stores Co. v. Union Elec. Light & Power Co***., 107 S.W.2d 41, 44-45 (Mo. 1937).
[166] 600 S.W.2d at 226.
[167] ***Gulf States Utilities Co. v. Louisiana Pub. Serv. Comm'n*, 578 So. 2d 71, 94 (La. 1991), *quoting Long Island Lighting Co***., 71 P.U.R. 4th 262 (N.Y. Pub. Serv. Comm'n, 1985).

should not review its rate case expenses for prudency as it does other operating expenses;[168] it asserts, though, that adoption of OPC's demand that the *shareholders* bear *prudently incurred* rate case expense is entirely unjustified, just as it would be entirely unjustified with respect to other operating expenses.[169]

The clear implication of this regulatory framework is that rate case expense is different in a meaningful way from other operating expenses, including sums expended by the utility on goodwill advertising and for certain incentive compensation plans, both of which are firmly within the discretion afforded the management of a utility and which the Commission may determine is unrelated to the provision of service to customers.[170] As an expense a utility is required to incur in order for that utility to fulfill its service obligations, prudently incurred rate case expense is not the result of a decision voluntarily made by management that may be unrelated to that service and, therefore, rate case expense is not an expense that should be borne by the shareholder. Moreover, in the regulatory compact, the customer is afforded regulatory protection from unjust and unreasonable rates through the ratemaking process and through other regulatory oversight.[171] It is only fair that the customer bear the costs of that protection, and the costs needed to provide that service.

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[168] As counsel for Ameren Missouri told this Commission at hearing, Ameren Missouri believes its rate case expense should be held to a strict prudence standard. Tr. p. 816, l. 9-23.

[169] In fact, the Commission has recognized that disallowance of prudently incurred rate case expenses violates a utility's procedural right to file a rate case:

> The Commission does not want to put itself in the position of discouraging necessary rate cases by discouraging rate case expense. This is a particularly treacherous area for the Commission to be addressing in that the Commission cannot be viewed as having a dampening effect upon a regulated company's statutory procedural rights to seek out a rate increase when it believes the facts so justify it. Disallowing prudently incurred rate case expense can be viewed as violating the company's procedural rights.

In re St. Joseph Light & Power Co., 2 Mo. P.S.C. 3d 248, 260 (1993); *see also In re St. Joseph Light & Power Co*., 3 Mo. P.S.C. 3d 207, 214 (1994).

[170] *See* ***Laclede Gas Co*.**, 600 S.W.2d at 228.

[171] Even if one were to assume what OPC implicitly assumes—that the sole objective of a utility's management is to maximize the wealth of the company's stockholders, this is not a sufficient reason to disallow costs the utility is required to incur in order to obtain a rate increase. Were this indeed the case, there are several "checks" built into

B. OPC's analogy between rate case expense and the operating costs incurred by a utility for goodwill advertising and certain incentive compensation plans is false and provides no support for the disallowance of rate case expense.

Relying upon ***State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n***,[172] OPC argues that disallowance of rate case expense attributable to hiring outside counsel and outside consultants in this case (and, apparently, that this Commission should adopt a 50-50 sharing of the prudently incurred expenses – the direction of its argument is unclear) is analogous to the disallowance of Laclede Gas Company's goodwill advertising expenses, including those related to problems in on-going labor negotiations.[173] This is a false analogy in that the two types of expenses are sufficiently dissimilar such that the disallowance of one does not provide reason for disallowance of the other.

First, the point has already been made that it is within the utility's managerial decision-making to incur certain types of expenses such as advertising and certain kinds of incentive compensation, and there is no absolute requirement that a utility promote its goodwill or provide its top executives with incentive compensation based upon the utility's earnings in order for the utility to deliver electricity to its customer. Conversely, a utility seeking to raise its rates because the existing rates are no longer just and reasonable to cover its expenses in providing that service has no choice as to whether it should incur a certain type of expense – rate case expense – because it cannot raise those rates without Commission approval and it has to have the funds the rate increase will provide to discharge its service obligation. Therefore, while it may be appropriate to require that particular advertising expenses or incentive compensation plans

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the regulatory framework to address that danger: prudency reviews during the rate case, overearnings complaints when the utility is earning more than is just and reasonable, and Staff or customer complaints arising from the utility's failure to safely and adequately serve its customers because of claims that the utility has ignored its service obligation so as to increase its profits.

[172] 600 S.W.2d 222 (Mo. App. W.D. 1980).

[173] OPC's Initial Brief, pp. 13-14.

directly benefit ratepayers before either is allowed recovery as an operating expense, it is not appropriate to require that the utility prove that an expense that it is required to incur in order to continue providing reliable service at just and reasonable rates somehow has a direct benefit on every ratepayer.[174]

Second, OPC argues for disallowance of an entire category of rate case expense (outside counsel and outside consultants) and a mandatory 50-50 sharing of a rather narrow category of what *it* considers prudently incurred expenses. OPC finds its justification for these proposals in a case in which the Commission reviewed particular advertising expenses and specifically determined which of those expenses constituted goodwill advertising for purposes of disallowance on the ground that these advertising expenses did not benefit all ratepayers.[175] What OPC is asking this Commission to do – whether to order a disallowance of a category of rate case expense or to order a 50-50 sharing of the "prudent" expenses – is to adopt a rule prohibiting these expenses outright without any individual finding that a specific expense was imprudently incurred. That is not how the Commission treats advertising expenses or incentive compensation or, for that matter, any operating expense.

Traditional ratemaking principles require that the Commission evaluate particular expenditures for the purpose of specifically determining the prudency of that expenditure. Counsel for OPC made this point in its opening statement, in fact:

> Traditionally the Commission looks at advertising sometimes literally ad by ad, message by message, to determine whether the advertising benefits customers or benefits shareholders. . . .

[174] While Ameren Missouri would be hard-pressed to find a customer who would come in to testify before this Commission that a single dollar of rate case expense resulting in a rate increase was a benefit to that customer, it is equally true that this same customer's expectation is that electricity will flow through to the light fixture when the customer flips the switch on the wall. That alone is a benefit of rate case expense; that is, the fact that the rate increase provided the funds necessary to make sure the light does come on.
[175] 600 S.W.2d at 228.

> Incentive compensation, you just had some discussion about that. That is another analogy. If incentive compensation is tied to acts that actually benefit ratepayers, then it's allowed in rates. If it's tied to acts like simply increasing earnings per share, then it's not included in rates.[176]

Abandoning these traditional notions of ratemaking, OPC argues that the Commission should instead adopt results-oriented general rules that would prohibit a utility from retaining outside consultants or outside counsel if it has anyone on its payroll with a degree "relevant" to the issues in the rate case[177] and that would require the mandatory 50-50 sharing of prudently-incurred rate case expense between the shareholders and ratepayers without any specific determination that one-half (or any percentage) of the rate case expense incurred by the utility directly and only benefitted shareholders.[178] This is not how the Commission carries out its duty in setting just and reasonable rates,[179] and there is no compelling reason for this Commission to deviate from the prudency review it conducts of specific operating expenses.

Indeed, we submit that to do so would be unlawful. The courts have recognized time and time again, including quite recently in ***AG Processing, Pub. Serv. Comm'n, OPC v. KCP&L Greater Missouri Operations Company***, Slip. Op., p. 5-6 (Mo. App. W.D. Oct. 23, 2012) (citing ***State ex rel. Assoc. Nat'l Gas Co. v. Pub. Serv. Comm'n,***, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997)), that the utility is afforded a presumption of prudence for all of its expenditures that

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[176] Tr. p. 836, l. 22-25; p. 837, l. 5-10; *see also* ***Laclede Gas***, 600 S.W.2d at 228 ("The P.S.C. gave specific attention to the nature and extent of the advertising in question. The evidence is competent and substantial to support the finding of the P.S.C. that costs of advertising related to safety, off-peak usage and conservation are proper cost items to be included within the rate schedule.").

[177] Although OPC argues for a general prohibition against these outside expenses, Ameren Missouri demonstrated in its Initial Brief that OPC's particular claims that the testimony of certain outside consultants was "duplicative" of testimony provided by Company witnesses wholly lacked any evidentiary basis. Ameren's Initial Brief, pp. 117-118.

[178] As Ameren Missouri pointed out in its Initial Brief, OPC witness Ted Robertson provided no specific factual information, numerical analysis, economic theory, or model from another jurisdiction that would support the sharing of costs between ratepayers and shareholders on a 50-50 basis. *Id.* pp. 122-123.

[179] If OPC's recommendation for treatment of rate case expense were applied to advertising, the Commission need only conclude that prudently incurred advertising expense provides a benefit to both the shareholder and ratepayer; consequently, those costs deemed prudent would still be split 50-50 between the ratepayer and shareholder. The Commission does not treat advertising expense or incentive compensation this way, and there is no reason it should treat rate case expense this way.

can only be rebutted if a serious doubt about the prudence of a particular expenditure is created by evidence of record. OPC has not even come close to creating such a doubt.

Third, the premise underlying OPC's comparison – that rate case expense is analogous to goodwill advertising in that it benefits the shareholder and not the ratepayer – is not supported by any evidence in this record. In his testimony, Mr. Robertson argues for the apportionment of rate case expense to shareholders based upon this very assumption – that "shareholders benefit from the activities from which rate case costs are derived, as much as, if not more than ratepayers"[180] – yet he offers ***no*** evidentiary basis for this assumption. The record in this case is utterly devoid of any evidence upon which this Commission could conclude that shareholders benefit more than ratepayers from the use of outside consultants or from an increase in rates. In fact, Mr. Robertson admits that rate increases – often necessary, just and reasonable – benefit the ratepayer.[181] Consequently, the cost required to obtain those new rates must be considered a benefit to the ratepayer.

It is important to note that OPC's argument for a heightened burden of proof (that rate case expense cannot be recovered by the utility "unless the Company can show that it ***directly benefits*** ratepayers"[182]) is not supported by ***Laclede Gas***. The court in that opinion interpreted the Commission's order to provide "that advertising costs items ***directly related to the benefit of ratepayers*** are justified operational costs permitted to be included within the rate schedule."[183] Even in the area of advertising expense, the Commission does not require that it directly benefit all ratepayers; instead, the issue is simply whether the cost benefits ratepayers. This is the same issue with regard to prudently-incurred rate case expense – does it benefit ratepayers?

[180] Ex. 406, p. 8, l. 16-18 (Robertson Direct).
[181] Tr. p. 941, l. 17-22.
[182] OPC's Initial Brief, p. 11 (emphasis added).
[183] 600 S.W.2d at 228 (emphasis added).

While she acknowledged that shareholders generally benefit from the Company's recovery of just and reasonable rates, Ameren Missouri witness Lynn Barnes explained that the benefit primarily accrues to the ratepayer:

> When the Company's costs rise, the Company's efforts to secure rates which allow it the opportunity to earn a reasonable return on the investment of the Company and its shareholders are not only entirely lawful, but necessary to customers. It is the customer who is the primary beneficiary when a utility's ability to fulfill its statutory obligation to provide adequate and reliable service is ensured because the Company is able to attract investment and maintain that investment by providing a reasonable return to its shareholders.[184]

In fact, even when the increase includes a recovery which allows a return on equity to the shareholder, the ratepayer benefits.[185]

As the United States Supreme Court made clear in *Hope*,[186] the utility shareholder's concern that the utility be financially-sound (and even pay dividends) is not something that should be punished; rather, an investor has a legitimate concern with the utility's economic health:

> [T]he investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital.[187]

A financially-sound utility that maintains credit and attracts capital at a reasonable cost is a utility that can continue providing safe and adequate service to its customers at just and reasonable rates. Therefore, it can properly be said that the interests of the ratepayer and the

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[184] Ex. 12, p. 35, l.17 – p. 36, l. 2 (Barnes Rebuttal).
[185] Ex. 13, p.10, l. 1-12 (*citing* KCPL Report and Order, Case No. ER-2010-0355, p. 166) (Barnes Surrebuttal).
[186] ***Federal Power Comm'n v. Hope Natural Gas Co***., 320 U.S. 591 (1944).
[187] *Id.* at 603.

shareholder are more often aligned[188] and not, despite OPC's view of the world, pitted directly against one another.

In the end, the Commission's decision on this issue, as it is with all of the issues in this case, must be based upon competent and substantial evidence.[189] The Commission will not find any evidence in the record to support a sharing of rate case expense based upon the unsupported assumption that shareholders receive a greater benefit (economic or otherwise) than ratepayers when rates change. OPC offers no economic analysis or study showing what relationship, if any, there is between the amount of rate case expense incurred by a utility in a particular case and the specific economic benefit (e.g., greater dividend or increased share value) to the shareholder that occurs as a direct result of that expense.

On the contrary, a determination by this Commission that the utility is due a rate increase necessarily implies that the utility's existing rates were no longer just and reasonable and that new rates were necessary in order for the utility to continue carrying out its duty of serving its customers. In sum, OPC has failed to bear its burden to prove with evidence its assertion that the benefit to shareholders is so substantial that this Commission would be justified in forcing those shareholders to bear most of the necessary cost of obtaining a change in rates.

When an industry is subject to regulatory oversight, the public generally has to pay the cost of reviewing the operations of firms within that industry. This is true for the public utility industry. The very nature of rate base regulation requires the expenditure of significant amounts of time and money by those conducting this oversight role to examine a utility's rate base, to

[188] The consumer and investor interests are in many respects coterminous. ***See Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n***, 262 U.S. 276, 307-308 (1923) (Brandeis, J., concurring) (highlighting the common interests of the consumer and the utility—e.g., "[i]t is to the interest both of the utility and of the community that the capital be obtained at as low a cost as possible"—and, in fact, asserting that consumers may ultimately be harmed by a balancing of interests that unnecessarily weighs in their favor).
[189] ***State ex rel. Rice v. Pub. Serv. Comm'n***, 220 S.W.2d 61, 64 (Mo. 1949).

calculate its cost of capital, review its operating expenses, and to make pricing decisions. Though directly derived from different sources, ultimately it is the public that funds both the Public Service Commission and the Office of Public Counsel. This is appropriate.

Why, then, should the costs incurred by a regulated utility in submitting to this oversight – to which it has no choice – be funded any differently? Neither the fact that a utility has shareholders who invest in a regulated utility (thereby providing capital to the utility), nor the fact that these shareholders may receive a return on their investment (at a rate dependent on its regulators) are sufficient reasons to shift rate case expenses to the shareholders. Indeed, a shareholder's return on investment is not an act of thievery from beleaguered customers or something that the shareholder is entitled to receive only when the economy is favorable; rather, "[a] public utility is ***entitled*** to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public . . . ."[190] Because a utility is entitled to earn a return on its investment, the prudent expenses incurred in submitting to regulatory oversight so that it can obtain an increase in utility rates which are currently unjust and unreasonable should be borne by the ratepayer.

In short, OPC has failed to offer any policy or evidentiary justification for the disallowance of Ameren Missouri's prudently-incurred rate case expense – expenses which have been generally decreasing in the last several rate cases. If adopted, such a rule would effectively result in restrictions on Ameren Missouri's ability to properly litigate its claim for just and reasonable rates in the ratemaking process, thereby tilting the balance in favor of intervenors who litigate against the company without restriction. Moreover, changing the rules by adopting OPC's proposals during a rate case – after the money has been spent – is certainly not justified. Finally, it is the prudence review by the Commission that provides the traditional and proper

[190] ***Bluefield Water Works v. Pub. Serv. Comm'n***, 262 U.S. 679, 692 (1923) (emphasis added).

review of individual rate case expenses and threat of disallowance of imprudently-incurred expenses that operates to control rate case expense.

C. Staff's proposal to cap recovery of Ameren Missouri's rate case expense likewise should be rejected.

While Staff says that it "has not proposed that any amount of Ameren Missouri's rate case expense be disallowed,"[191] its proposal is that Ameren Missouri only recover $1.5 million of the requested $1.9 million in rate case expense functions as a cap on rate case expense.[192] The same reasons which make OPC's recommendation untenable apply equally to Staff's position; even more so, in fact, because Staff also is advocating that the Commission abandon the traditional prudency review that requires an item-by-item determination as to prudency and instead adopt a bright-line rule as to what constitutes prudent rate case expense (anything over $1.5 million). Furthermore, Staff's attempt to dress-up the number snatched out of the air by Ms. Hanneken as the result of careful analysis is based upon generalities elicited from the witness by Staff counsel.[193]

Ignoring all of her testimony regarding how Ameren Missouri has worked to control rate case expense,[194] Staff attempts to further bolster its position by deliberately taking out of context the testimony of Ameren Missouri witness Lynn Barnes by characterizing it as the Company's "cavalier" attitude about rate case expense.[195] Mr. Mills' question regarding the impact of timing on the next rate case and Ms. Barnes' entire answer to that question was as follows:

Q. Is the timing of your next rate case, regardless of the fact that it isn't known now, but at least there's some information in the record about when that might be, is that a relevant consideration for the Commission

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[191] *Staff's Initial Brief,* p. 31.
[192] Tr. p. 883, l. 12-16.
[193] For a critical analysis of the purported basis for Ms. Hanneken's recommendation, see *Ameren Missouri's Initial Post-Hearing Brief*, p. 124-125.
[194] *See Ameren Missouri's Initial Post-Hearing Brief*, p. 120-121.
[195] *Staff's Initial Brief,* p. 31.

to take into account when determining the amount of rate case expense to allow in this case?

A. No. Actually, I don't think it is, and I guess this is the way I think about these expenses. As I understand the regulatory process, we use historical data and we normalize things where we think that's more reasonable to come with. Really, we're using all of that information in order to determine what a proper cost of service should be for future rates when they go into effect.

So in my mind, normalizing these expenses like we normalize other expenses makes sense to me, and whether or not we file another rate case imminently or in several years, these costs, whether you take the position we over-collected or under-collected them, it's going to be just a cost of service.

And whatever our cost of service is in the future, how it was derived using these historical numbers, they lose their character when they just become part of the cost of service in the future. And so we may over-collect on rate case expense, then we under-collect on labor or we under-collect on something else, and at the end of the day it all sort of comes out in the wash.

So to me, trying to figure out when we're going to file our next rate case is not a good measure to determine how we should set rates for rate case expense in the past. If these rate case expenses are deemed to be prudently incurred, and we've got some history now because we've been filing rate cases frequently that we can normalize those expenses. It would seem that that would be a reasonable approach, similar to how we normalized expenses for other things before we set rates in the future.[196]

Ms. Barnes was not expressing a cavalier attitude about rate case expense; rather, she was stating what is obvious with regard to all operating expenses – once rates are set, the rates are the rates and the initial estimated amounts accepted by the Commission to set those rates no longer retain their individual significance. As Ms. Barnes explained (and as the Staff well knows), the Company will "under-recover" some of its operating expenses and will "over-recover" others – that is the nature of ratemaking.[197] For the Staff to suggest that Ms. Barnes' testimony meant otherwise is an intentional misreading of that testimony.

[196] Tr. p. 851:18-853:4.

[197] In the past several years, given the new utility paradigm in which utilities operate, it has been and likely will be more likely that utilities will "under-recover" far more than they "over-recover."

Finally, this testimony again highlights the fact that Ms. Barnes offered the only rational basis that this Commission heard upon which it could properly set the amount of Ameren Missouri's rate case expense. Despite Staff's characterization of its proposed allowance at hearing, Staff witness Hanneken admitted that she did not perform any economic or accounting analysis, nor did she perform any specific calculation – not even a mathematical averaging of Ameren Missouri's prior rate case expense.[198] (And it is Ameren Missouri that is being cavalier?) OPC, on the other hand, could only find costs it would not allow; in fact, it did not even bother to propose any specific amount of rate case expense to be allowed by the Commission.[199]

In the end, the competent and substantial evidence heard by this Commission supports Ameren Missouri's request to include $1.538 million of rate case expense in Ameren Missouri's revenue requirement.

XI. COAL INVENTORY

There is only one remaining issue in setting the Company's coal inventory level and that is the question of whether or not to include coal that is in transit and not yet in the coal pile. If the cost of coal in transit is a necessary part of providing service to the Company's customers, it should be included as part of coal inventory.

The MIEC and the Staff argue that because the Company has set its coal inventory target level higher than the level calculated by the Utility Fuel Inventory Model (UFIM) as the least cost level, there is no need to include coal in transit in inventory. But as was explained in the Company's Initial Brief, this argument completely misses the mark for multiple reasons. First, this argument assumes that the least cost level calculated by the model is the prudent level of

[198] *See Ameren Missouri's Initial Post-Hearing Brief*, p. 124-125.
[199] *Id.*, p. 125-126.

coal to maintain in inventory. This would ignore all of the operational realities facing a utility with an obligation to serve (versus the needs of an independent generator with no obligation to serve) as was explained by Ameren Missouri witness Robert Neff at the hearing.[200] Mr. Neff, with his many years of experience in purchasing coal and determining appropriate coal inventory levels, does not recommend setting coal inventory at the UFIM least cost level. To the contrary, based upon his knowledge and experience, Mr. Neff believes it would in fact be imprudent for the Company to keep its inventory at the UFIM least cost level, because of the risk that transportation interruptions or other operational problems that may unexpectedly deplete the coal pile.[201] While Mr. Meyer and Ms. Hannekan have experience in auditing utility books and records, they have no experience with or responsibility for ensuring coal-fired power plants have the coal necessary to generate power and thus no operational basis for their recommendation. Mr. Neff does have an operational basis for his recommendation. The Commission should not utilize a coal inventory level for ratemaking purposes that could leave the Company, and its customers, with insufficient coal supply during unexpected supply interruptions.[202]

Secondly, both the Staff and the MIEC have accepted the Company's target coal pile levels in this case. It is inconsistent for these parties to argue that coal in transit, which is necessary to achieve and maintain those targeted coal pile levels, should be excluded from the cost of service. The Staff's and the MIEC's argument effectively ignores the fact that coal is consumed at the plants on a daily basis[203] and that supply must be replenished by coal in transit or the inventory will not be maintained at the appropriate level necessary to ensure that coal will

[200] Tr. p. 1393, l. 19 - p. 1394, l. 12.
[201] Tr. p. 1417, l. 14-18.
[202] Nor should the Company be expected to maintain a higher coal inventory level (what is in the pile plus what is in transit) while being required to bear the cost of the coal in transit without receiving any return thereon.
[203] Tr. p. 1431, l. 4-6.

be there when needed.[204] Additionally, as Mr. Neff testified (testimony that no party disputes), title to the coal transfers to Ameren Missouri as soon as the coal is loaded into the rail car at the mine.[205] The consequence of this, as Chair Gunn's hypothetical question suggested, is that if the railroad loses the coal while it is in transit, it is Ameren Missouri who bears the loss (as between it and the seller of the coal), just as is the case for coal in the coal pile.[206]

The Staff and the MIEC also argue that coal in transit should not be included in coal inventory because there is a two-week delay in paying for the coal, and so the coal in transit has not yet been paid for by the Company. This argument is completely meritless. The timing of cash payment for items of inventory or other rate base items has no impact whatsoever on whether those items are included in rate base. Payments to suppliers for coal, gas, nuclear fuel, and inventory items, such as transformers, conduit, poles, etc., are made at various times; indeed, up to one-fourth of the coal in the coal pile itself (all of which the Staff and the MIEC agree should be included in inventory) has not yet been paid for due to the timing of receiving, processing, and paying invoices. But the timing of payment for these many items is never a consideration in determining whether an item should be included in rate base or not. Qualifying capital costs are included in rate base whether they are paid for ahead of time, at the time of delivery, or after delivery of the purchased item occurs. The test is whether they are used and useful, not when they are paid for.

The financial impact of the timing of payments the Company makes to all suppliers is addressed by the lead-lag study, which results in the cash working capital (CWC) adjustment to rate base. In this case, the fact that there is a two-week delay in payment for purchased coal is fully accounted for in the cash working capital adjustment. The net lead/lag days *already reflect*

[204] Tr. p. 1434, l. 10-15.
[205] Tr. p. 1414, l. 21 - p. 1415, l. 4.
[206] Tr. p. 1409, l. 15 - p. 1410, l. 3.

(and thus already reduce rate base by[207]) the period of time between when the Company acquires an item and pays for it. Consequently, customers are already being credited with the two-week delay between when the Company takes title to the coal in transit and when the Company pays for it (and this is true regarding the timing of other supplier payments as well). Failing to include coal in transit in rate base despite the fact that it is a legitimate, prudent and necessary cost of providing service to customers cannot be justified on the basis of that two-week delay.[208]

The last argument offered in opposition to this request is that the Commission has not allowed recovery of this cost in past rate cases. Of course, the truth is that the Commission has not explicitly ruled on this request in any of Ameren Missouri's last several rate cases. Ameren Missouri failed to include the cost when it prepared its previous rate case (because the coal supply group mistakenly believed it was included in the information provided to Mr. Weiss.)[209] This meant the Company presumed the cost was included in its revenue requirement request when, in reality, it had not been. That oversight was corrected when the Company filed the current rate request. It is appropriate that the Commission rule on this request in this case based upon the evidence in the record. Whether or not the request was made in previous rate cases has no relevance in the Commission's current decision.

XII. RENEWABLE ENERGY STANDARDS COMPLIANCE COSTS

The arguments in the MIEC's brief regarding recovery of the costs of complying with Missouri's Renewable Energy Standard (RES) essentially repeat the arguments made in the MIEC's testimony and were addressed in Ameren Missouri's Initial Brief. The MIEC repeats

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[207] When we say "already reduces rate base by," we mean that the CWC requirement (adjustment to rate base) would be greater (there would be a greater CWC requirement) if one ignored the payment lag and thus rate base would be higher. By including the payment lag, rate base is lower than if it were not included.

[208] Staff also argues that inclusion of coal in transit in rate base would represent a "double recovery" of costs recovered through the CWC adjustment. As just explained, this argument evidences a complete misunderstanding of how the CWC adjustment to rate base operates, including a complete failure to recognize that customers are already being credited, through a rate base reduction, with the payment lag.

[209] Tr. p. 1412, l. 11-25.

the claim that the treatment requested by Ameren Missouri somehow violates the Commission's regulations. Believing this claim, however, requires a convoluted reading of the rule. Again, the relevant portion of the regulation states:

> Alternatively, an electric utility may recover RES compliance costs without the use of the RESRAM procedure through rates established in a general rate proceeding. In the interim between general rate proceedings the electric utility may defer the costs in a regulatory asset account…[210]

The MIEC's argument focuses on the second sentence, but it is the first sentence that makes clear that the Commission intended that the costs of complying with Missouri's RES are to be recovered through rates established in general rate proceedings, which is precisely the treatment Ameren Missouri proposes. More specifically, the Company proposes that the Commission include $4.7 million (RES costs for the 12 months ending July 31, 2012) in the Company's revenue requirement as the means to "recover RES compliance costs without the use of the RESRAM . . .," just as the regulation contemplates.

MIEC also claims that the Staff agrees with the MIEC's interpretation of the regulation, but in fact this cannot be the case. This is because the Staff agrees with Ameren Missouri that $4.7 million should be included in the Company's revenue requirement and also agrees that this same sum can be used as a base amount with sums above (or below) the base to be accumulated in a regulatory asset or liability "[i]n the interim between general rate proceedings . . .," again just as the regulation contemplates.[211]

Second, consistent with the language in the second sentence of the regulation, the Company asks to defer costs (above the base already reflected in rates) that it incurs between

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[210] 4 CSR 240-20.100(6)(D).

[211] While the Staff's testimony on this point was unclear, its Initial Brief was not unclear: "the Commission should order Ameren Missouri to include a base level of RES costs in permanent rates in the amount of $4.7 million, with the base level netted against any future deferred expenditures that occur beyond the July 31, 2012, true-up date." Staff's Initial Brief, p. 37.

general rate proceedings so that they can be accumulated in a regulatory asset and considered for collection through a future rate case, just as the regulation provides for. To be clear, the deferred sums would only be RES compliance costs in excess of the RES costs used to set base rates in this case.

The MIEC also argues that the rules only allow for "deferral" and not for "tracking" of these costs, but the MIEC is making a distinction without a difference. A tracker is simply a shorthand way of referring to a mechanism to defer costs in between rate cases. While it makes sense that the Commission's regulation only referred explicitly to deferral of a regulatory asset (which implies expenditures above a base) given that the RES requirements increase year after year (and thus RES compliance costs are likely to increase), nothing in the regulation precludes deferring expenditures that are less than the base into a regulatory liability, and the Company supports that treatment.[212, 213]

The Commission should remain mindful that these are expenditures which the Company is required to make and over which it has little control.[214] No party has taken issue with this fact. The Company should not be placed in a position where it cannot recover these obligatory expenditures, and it should not be placed in a position where it must advance the cash necessary to comply with the RES, and then have recovery of these costs delayed for multiple years, as the MIEC proposes. As Chair Gunn asked MIEC witness Meyer at hearing, "Isn't' it really…a better policy to deal with these [RES compliance costs] in a rate case, in a generalized rate case where we can take all relevant factors in and kind of make sure that at the end of the day,

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[212] Since nothing in the regulation precludes this treatment, the Commission can order it, whether it is ordered via a "waiver" of the regulation (which the Company believes is unnecessary) or pursuant to the Commission's general powers to grant accounting authority. Here, that authority would simply be to defer RES costs below the base to a regulatory liability. If the Commission believes that a waiver is necessary or warranted, Ameren Missouri hereby requests such a waiver.

[213] Tr. p. 1047, l. 17-23.

[214] Tr. p. 1043, l. 21-25; Tr. p. 1072, l. 15-20.

regardless of what the rule says, at the end of the day that it's included in rates in an appropriate way, taking in all the other factors?"[215] The Company agrees and believes that the Commission should approve Ameren Missouri's proposal.

The second issue left for the Commission to resolve is over how many years the current regulatory asset (arising from the deferral mechanism approved in the Company's last rate case) should be amortized. This Company has proposed that it be amortized over two years with rate base treatment for the unamortized balance. The MIEC proposes six years, and Staff proposes two options – three years with no rate base treatment, and six years with rate base treatment. As the Company pointed out in its Initial Brief, neither the MIEC nor the Staff can offer a reason for extending the amortization period or for denying rate base treatment. The Commission, in the Company's previous rate case, dismissed the MIEC's proposal to amortize these costs over ten years as too long. Although the MIEC has shortened its proposal to six years, that is still a relatively long amortization period with no basis in the record. These costs are expenses which are incurred annually. Amortizing annual expenditures over a lengthy period of time does not make sense.

Finally, the Company requests the Commission grant it rate base treatment for the unamortized portion of the expenditures. The purpose of rate base treatment is to compensate the Company for the time value of that money between the time it is spent and the time when it is recovered, as the MIEC and Staff witnesses both admitted at the hearing.[216] The money is spent and not available to the Company until recovered through rates and that is true whether the expenditures are a rate base investment or an expense. The money is still spent. There is no doubt that the Company is spending money on RES compliance. There is also no reason given

[215] Tr. p. 1054, l. 8-14.
[216] Tr. p. 1074, l. 7 – 12; p. 1059, l. 18-21.

by either the Staff or the MIEC as to why the Company should not be compensated for the time value of that money. Absent a basis for denying the requested treatment, the record simply does not support denial of rate base treatment for the unamortized balance of these RES compliance costs which were incurred and advanced by the Company, some of which are deferrals from before the Company's last rate case.

XIII. VEGETATION MANAGEMENT AND INFRASTRUCTURE INSPECTION TRACKER

The Commission has addressed the question of whether Ameren Missouri should be allowed to retain its vegetation management and infrastructure inspection trackers. All of the reasons upon which the Commission ordered continuance of these trackers in the Company's last rate case are still valid today and provide a sufficient basis upon which to order the continuation of these trackers.

Staff agrees that the trackers should be continued. The MIEC offers up several arguments, all of which were directly addressed in the Company's Initial Brief and so will not be repeated here. There is nothing new or compelling in MIEC's arguments. MIEC does not dispute that the Company must incur these costs as the work is required by Commission regulations[217] or that the Company has yet to complete a full cycle under either the Commission's vegetation management rules or the infrastructure inspection rules.[218] The MIEC's argument ignores Ameren Missouri witness David Wakeman's testimony that, even after a full cycle has been completed, the cost of compliance will still not be known because regrowth occurs at differing rates, dependent upon weather and other factors.[219] For all of these reasons, the Commission should order the continuation of these trackers.

[217] Tr. p. 1043, l. 21-25; p. 1072, l. 15-20.
[218] Ex. 31, p. 2, l. 10-13 (Wakeman rebuttal).
[219] Tr. p. 1952, l. 14-21.

XIV. RATE DESIGN – CUSTOMER CHARGE

The initial briefs filed by the Staff, OPC, AARP, the Consumers Council of Missouri, and the Natural Resources Defense Counsel/Renew Missouri/Sierra Club (collectively NRDC) each argue against Ameren Missouri's proposal to increase the monthly customer charge for customers in the Residential rate class by $4 per month and the charge for single-phase and three-phase customers in the Small General Services rate class by $4.87 and $9.75 per month, respectively. And although their specific arguments differ somewhat, they all share the common defects that they either lack evidentiary support altogether, or are contrary to the weight of competent and substantial record evidence regarding this issue that does exist.

An argument that illustrates this point is one made by all the previously mentioned parties except the Staff: that increasing monthly customer charges will discourage customers from investing in energy efficiency measures. Although NRDC witness Pamela Morgan and OPC witness Ryan Kind each testified in support of this proposition, neither witness offered any evidence – at least nothing more than their respective speculative assumptions – to prove the proposition is true. And there appears to be good reason for that: during cross examination, Ms. Morgan admitted that she doesn't know what effect, if any, an increase in the monthly customer charge will have on customers' willingness to invest in energy efficiency measures because she did no study to find out the answer to that question.[220] She further testified that she is not aware of *any* study that (i) has examined the effect of customer charges on customers' willingness to invest in energy efficiency, or (ii) has determined whether customers' attitudes are positively or negatively affected by increases or decreases to customer charges.[221]

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[220] Tr. p. 426, l. 14-19.
[221] *Id*. p. 425, l. 14-20.

In stark contrast, Ameren Missouri presented compelling evidence showing that the increases in monthly customer charges proposed in this case likely will not affect customers' decisions to invest in energy efficiency measures.[222] For example, as the Company discussed in its Initial Brief, for approximately half of Ameren Missouri's residential customers, total energy costs, which include the monthly customer charge and volumetric charges for energy usage, will actually *decrease* if the customer charge is increased as proposed.[223] And of those residential customers whose overall energy costs will increase, most will see an *annual* increase of between $5 and $25,[224] and none will see an *annual* increase of more than $48.[225]

One would expect annual cost increases of this magnitude to have a negligible impact on customers' willingness to make investments in energy efficiency.[226] And that is exactly what the evidence shows. Company witness William Davis showed that under the current $8 customer charge, the weighted average payback period for an energy efficiency measure is 1.78 years. That payback period would increase under the proposed $12 charge to 1.81 years.[227] The difference – 12 days – almost certainly would not impact the willingness of customers to make investments in energy efficiency.

There also is evidence that the proposed customer charge increases will not adversely affect the majority of Ameren Missouri's low-income customers. Using LIHEAP customers as a representative proxy for all the Company's low-income customers, Mr. Davis determined that, from a total energy cost standpoint, approximately 60 percent of low-income customers will be

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[222] Ameren Missouri's Initial Brief, pp. 139-41.
[223] Ex. 39, p. 9, l. 20 – p. 10, l. 7 (Davis Rebuttal).
[224] *Id.* p. 3, l. 15-16.
[225] *Id*.
[226] Based on the *AmerenUE Demand Side Management (DSM) Market Potential Study*, which Ms. Morgan relied on for her testimony, fewer than half of Ameren Missouri's customers in the Residential and Small General Services rate classes expressed a willingness to invest in energy efficiency measures even if the payback period is one year or less. Ameren Missouri's Initial Brief, pp. 142-43.
[227] Ex. 40, p. 3, l. 3-22 (Davis Surrebuttal).

better off if the residential customer charge is increased to $12 than they are under the current $8 charge.[228]

To counter these conclusions, OPC argues in its Initial Brief that "there are so many flaws in [Mr. Davis'] analysis that the Commission cannot rely on it,"[229] and further criticizes the Company for not performing a study based on household income or the percentage of household income that goes to pay for energy.[230] But there are two fundamental problems with OPC's arguments. First, no witness – not even OPC's own witness Mr. Kind – gave testimony alleging that Mr. Davis' analysis is defective or pointing out the nature of the alleged defects. In fact, when Ms. Morgan was asked if she had any evidence disputing the accuracy of Mr. Davis' analyses, she testified she did not.[231] *Argument* in OPC's Initial Brief cannot substitute for competent and substantial evidence of record; there is, in fact, no evidence whatsoever that Mr. Davis' study is flawed in any way. Second, Ameren Missouri could not conduct a study of its customers usage patterns based on their household incomes because, as Ameren Missouri witness Wilbon Cooper testified, the Company doesn't have that kind of demographic data about its customers.[232] He further testified that while such an analysis might have been possible using census data regarding household income, both the analysis and its results would be very imprecise.[233]

Another argument made by the parties, other than the Staff, who oppose any changes to the customer charges is that the increases Ameren Missouri proposes weakens the price signals that influence customers' behavior regarding their use of electricity. For example, NRDC's

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[228] Ex. 39, p. 12, l. 7-13.
[229] OPC's Initial Brief, p. 25.
[230] *Id*.
[231] Tr. p. 426, l. 9-13.
[232] *Id*. p. 2107, l. 11 - p. 2108, l. 2.
[233] *Id*., p. 2108, l. 3-5.

Initial Brief alleges that "[b]ecause increasing the fixed charge results in higher bills for those who use less electricity and lower bills for those who use more electricity, the [proposed customer charge] adjustment weakens the price signal to customers and reduces their ability to respond to price signals by managing their electricity use."[234] But the parties' price signal argument is flawed because it ignores the fact that (i) from an economic standpoint, both fixed and variable costs comprise the price customers pay for electricity, and (ii) in the short-term, customers who respond to price signals by reducing consumption can control only the variable cost component. Mr. Cooper explained these two points in his surrebuttal testimony as follows:

> Ameren Missouri's proposal to increase the monthly customer charge for the Residential and Small General Services rate classes is designed to move those charges closer to actual cost. Consequently, the Company's proposal does not conflict with the price signal consideration, as alleged by Ms. Morgan. *In fact, by moving to recover more of the fixed costs of providing electric service to customers – which do not vary with the amount of electricity sold – through the customer charge, the price signal regarding that actual cost of consuming more or less electricity is enhanced.*
>
> A monthly customer charge that is materially below cost does not send a customer an accurate price signal with regard to the Company's costs of making service available to the customer. From an economic perspective, a more cost-based customer charge would allow customers to make rational decisions as to whether it is in their best interest to "invest in structural changes, appliances or equipment that preserve the customer's desired outcome(s)."[235] (emphasis added)

NRDC further argues that the proposed increases to monthly customer charges contravene established ratemaking practices.[236] But as Mr. Cooper made clear in the testimony cited above, Ameren Missouri's proposal is fully consistent with the first of those ratemaking practices – maintaining a strong price signal to customers. Evidence in this case also shows that the Company's proposal also is consistent with two other ratemaking practices cited by NRDC's witness: maintaining rate stability for customers and revenue stability for the utility.

[234] NRDC's Initial Brief, p. 8.
[235] Ex. 38, p. 6, l. 19 - p. 7, l. 8 (Cooper Surrebuttal).
[236] NRDC's Initial Brief, p. 8.

Ms. Morgan confirmed this when she admitted during cross-examination that increasing customer charges actually furthers both of those objectives.[237] Increasing the customer charge promotes rate stability for customers because it decreases the amount of the overall revenue requirement that must be recovered through volumetric charges, thus reducing the volatility of monthly customer bills due to usage changes, such as when air conditioning usage increases during summer months. And the proposed increase enhances the stability of utility revenues for much the same reason: because the portion of a utility's revenue requirement that must be recovered through volumetric rates is reduced, the utility's revenue stream becomes less volatile.

Another ratemaking practice that NRDC argues the Commission must observe is to promote "fairness between broad groupings of customers (classes) and within a given customer grouping."[238] NRDC's witness explained the meaning of this practice in response to a Company data request, defining the phrase "intra-class equity" as she used it to describe the fairness consideration. Ms. Morgan stated in her response that fairness would be achieved through a rate design that recognizes that Ameren Missouri's costs for serving customers within a rate class vary from customer to customer.[239] But, as Ms. Morgan acknowledged in her rebuttal testimony, that fairness consideration cannot be addressed in this case because no party has proposed a rate design that would charge different rates to customers within the same rate class based on Ameren Missouri's customer-specific costs of providing service.[240] Because no party has proposed such a rate design – a fact freely admitted by its own witness – one can only wonder why NRDC

[237] Tr. p. 427, l. 16 – p. 428, l. 9.
[238] NRDC's Initial Brief, p. 8.
[239] Ex. 38, p. 10, l. 16 – p. 11, l. 14 (Cooper Surrebuttal).
[240] Ex. 650, p. 13, l. 11-14 (Morgan Rebuttal).

persists in making its argument.[241] Whatever NRDC's reason, the Commission should disregard the argument.

OPC, AARP, and the Consumers Council of Missouri argue that Ameren Missouri's proposed customer charge increases are not supported by a valid cost study.[242] But the record evidence in this case conclusively shows that argument is false. The Company's Class Cost of Service Study (CCOSS) supports a weighted customer charge of approximately $20 for the Residential rate class and $22 for the Small General Services rate class.[243] And Ameren Missouri's witness William Warwick offered the following explanation of the methodology the Company used to develop those charges:

> The Company's CCOSS includes all customer-related costs in its customer charge, including those costs in distribution Accounts 364-368 that have a customer-related component. In contrast, Staff and OPC include only the allocated costs of services, meters, and customer installations and the various O&M expenses associated with the operation and maintenance of such services and meters. In addition, Staff includes all customer service and sales expenses, including uncollectible expense, while OPC does not include the uncollectible account expense.[244]

Because of the differences between the CCOSS methodologies used by the Staff and OPC, on the one hand, and Ameren Missouri, on the other, the customer charges supported by the Staff's and OPC's cost studies were much less than those proposed by the Company. For example, the Staff's study supports a monthly customer charge of approximately $9 for the Residential rate class,[245] while the OPC's study supports a charge of only about $6.[246] In evaluating these results, the Commission should keep in mind that in each of Ameren Missouri's last two general rate cases – Case No. ER-2010-0036 and ER-2011-0028 – the Commission

[241] Such a rate design also was not part of the stipulation that resolved all rate design issues except for the proposed increase to the customer charges.
[242] OPC's Initial Brief, p. 23.
[243] Ex. 36, p. 21, l. 16 – p. 22, l. 2 (Cooper Direct).
[244] Ex. 34, p. 10, l. 6-11 (Warwick Rebuttal).
[245] Ex. 205, p. 22, l. 17-18 (Staff's Rate Design and Class Cost of Service Report).
[246] Ex. 403, p. 17, l. 9-16 (Meisenheimer Direct).

found that OPC's cost study methodology was unreliable.[247] The Commission should reach a similar conclusion with regard to the Staff's methodology in this case because Staff's study did not include any of the costs in distribution Accounts 364-368 in its customer charge calculation because the Staff concluded those costs are not customer-related.[248]

But that conclusion is erroneous. Customer-related costs are costs a utility incurs to be able to provide any electricity to its customers, while demand costs are costs the utility incurs because of the amount of electricity it provides. Because Ameren Missouri must invest a portion of the costs in distribution Accounts 364-368 in order to be able to send a single kilowatt of electricity to its customers, those costs clearly are customer-related and therefore should be included in the calculation of a customer charge. Exhibit 410, and the testimony of the Staff's witness Michael Scheperle related to that exhibit, illustrates the accuracy of that statement.

Exhibit 410 is a copy of Mr. Warwick's workpapers that identifies, by USOA account number, the costs he included in his customer charge calculation. As shown on that exhibit, Account 364 is where the costs of poles and fixtures are recorded. Account 365 contains the costs for wires and devices. Account 366 contains the costs of conduit. Account 367 is for the costs of cable and devices, and Account 368 is for recording the costs of line transformers. Under cross-examination, Mr. Scheperle admitted that Ameren Missouri must make investments in the plant items included in each of those accounts in order to be able to provide power to a customer when that customer first flips the switch demanding service.[249] As noted in the preceding paragraph, that is the characteristic that distinguishes customer-related costs from demand related costs.

[247] Ex. 37, p. 5, l. 4-6 (Cooper Rebuttal).
[248] Tr. p. 2147, l. 16 – p. 2148, l. 6.
[249] Tr. p. 2151, l. 18 – p. 2153, l. 24.

Because a portion of the costs in each of distribution Accounts 364-368 are customer-related, they should be included in the customer charge calculation. Ameren Missouri did so in its CCOSS, but both the Staff and OPC categorized 100 percent of those costs as demand-related, and neither party included any costs from Accounts 364-368 in their respective customer charge calculations. So it is the Staff and OPC – not Ameren Missouri – who have failed to support their proposed customer charges with a valid cost study.

NRDC raises a final rate design issue, one not related to the proposed customer charge increases, that also needs to be addressed. That issue is NRDC's proposal to open a generic workshop or rulemaking docket to address the declining block rate structure. As Mr. Cooper stated in his surrebuttal testimony, Ameren Missouri does not oppose NRDC's proposal, but only if the Commission concludes that an examination of the declining block rate structure is necessary.[250] Investigating an issue such as declining block rates in a generic proceeding is preferable to an examination of the same issue in the Company's next general rate case because a generic proceeding would allow all interested parties to participate – not just those parties who intervene in Ameren Missouri's rate cases. A generic proceeding also would allow the Commission to apply any policy decisions it reaches to all investor-owned utilities who employ the declining block rate structure.

[250] Ex. 38, p. 14, l. 14-21 (Cooper Surrebuttal).

Respectfully submitted:

SMITH LEWIS, LLP

Thomas M. Byrne, #33340
Managing Assoc. General Counsel
Wendy K. Tatro, #60261
Asst. General Counsel
Ameren Services Company
P.O. Box 66149
St. Louis, MO 63166-6149
Phone (314) 554-2514
(314) 554-3484
Facsimile (314) 554-4014
AmerenMissouriService@ameren.com

/s/ James B. Lowery
James B. Lowery, #40503
Michael R. Tripp, #41535
Suite 200, City Centre Building
111 South Ninth Street
P.O. Box 918
Columbia, MO 65205-0918
Phone (573) 443-3141
Facsimile (573) 442-6686
lowery@smithlewis.com

L. Russell Mitten, #27881
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Phone (573) 635-7166
Facsimile (573) 634-7431
rmitten@brydonlaw.com

Attorneys for Union Electric Company d/b/a Ameren Missouri

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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 15th day of November, 2012.

/s/James B. Lowery
James B. Lowery