BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service	)))	Case No. ER-2012-0166

CONCURRING OPINION OF COMMISSIONER TERRY M. JARRETT IN THE COMMISSION'S REPORT AND ORDER

I concur in the *Report and Order* because, taken as a whole, I believe it provides just and reasonable rates consistent with *Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Hope Natural Gas Company v. Federal Power Commission*, 320 U.S. 591 (1943), and supports bold steps by the utility in promoting and implementing energy efficiency programs that give ratepayers an opportunity to impact their costs for electrical service. However, I write separately to address; (1) Plant in Service Accounting ("PISA") and (2) Ameren Missouri's Property Tax Appeal and subsequent Refund.

(1) Plant in Service Accounting ("PISA")

These times are challenging for regulated utilities and consumers. Increasingly, regulators are being asked to rethink the traditional rate making paradigm and to consider alternatives to traditional regulatory practice. Not every idea is a good one, but every well conceived idea merits consideration by this Commission. Energy efficiency is an example of new thinking that is being embraced by utility regulators, utilities and ratepayers.

Today's electricity world looks vastly different from the traditional vertically integrated utility of years past. It is the past that shaped state regulations which guided us through the 19th and into the 20th century. The current regulatory framework is rooted in more than 100 years of regulatory history in Missouri, solidly developed and applied. "Rate of return" regulation is a

valuable approach to utility regulation; but, economic, political and regulatory changes cannot be overlooked in regulating investor owned utilities today.

Now, utility systems are no longer incentivized to encourage unlimited demand for electricity and load growth. Instead, energy efficiency, conservation and demand response are in the spot light. Construction of new base load power plants has all but been supplanted by costly installation of environmental controls on existing generation plants. Public policy pushes interest in "green" energy sources, leading to construction of renewable power generation and transmission projects to move the renewable power to the load. More stringent reliability limits and development of the "smart grid" requires investment. Aging infrastructure must be replaced. This short list of new regulatory considerations shows that today's regulator is not faced with the same challenges that were faced by the first five Commissioners of the Missouri Public Service Commission when it was created by the Missouri General Assembly in 1913.

We now live in regulatory times that incent a counterintuitive business model whereby a regulated utility spends its investor monies to stop sales of its product. Explaining this complex model is difficult if not logically impossible, but experts and scholars have opined that this new thinking is the "right thinking" for today's regulatory marketplace. This is the new normal.

While there are those that call for dismantling traditional regulation and retooling the future from the ground up, there are sound reasons for leaving the existing paradigm intact, chief among them the legal certainty that exists in laws that have been tested by time. As has been demonstrated in Missouri, each new legislative effort to implement a "tweek" or "fix" to the traditional regulatory framework has left parties in a state of uncertainty, not only at the hands of the regulator, but ultimately the courts. Absent legislative mandates, a regulator must understand and use the tools that already are in the regulator's toolbox.

Regulators must work to address today's unique challenges in the face of one longstanding issue; regulatory lag. The "file and suspend" system for rate setting honors the Constitutional bargain of ensuring that private property is not taken without just compensation, while creating a regulatory balancing of interests between ratepayers and utility investors. The suspension period affords due process protections, without unduly delaying implementation of new just and reasonable rates. The "lag" that raises concern is not just embedded in the "suspension" of a rate (as many as eleven months in Missouri), but also in the type of test period ("historical") the regulator uses to measure a new rate. This scheme of time and measurement made perfect sense in a 1913 world where new base load generation was being built, along with distribution and transmission systems for a utility. These capital intensive projects lent themselves well to the rate of return regulatory model, and the regulatory review which accompanied the process. The granting of monopoly status to a utility in exchange for rate regulation a century ago has allowed for the expansive development of safe and reliable utility services for Missouri's ratepayers, fueled economic development throughout the state, and provided an opportunity for the utilities investor's to earn a fair return on their investment. This balance should not be disturbed. Nor should there be any temptation to put a thumb on the scale and tilt that balance discriminatorily in favor of one interest over another.

There will always be financial market concerns, and economic drivers that are well beyond a Missouri regulator's control. However, understanding there are regulatory choices that neither require a change of law, or creation of new regulation, allows today's regulator to act lawfully and proactively in the face of changing times. Commissioners must ensure that the best tool in ratemaking is selected if addressing the "lag" issue, and making sure that tinkering with the tried and true regulatory model isn't inadvertently tipped off balance.

Ameren Missouri's PISA proposal is an example of a regulatory tool that could allow Missouri regulators to reach into the tool box and attempt to realign an out of balance framework for cost recovery in construction projects. Missouri's prohibition on collection of "construction work in progress" – like statutory lag in rate making – tilts the balance of interests. That is why exploration of new approaches such as PISA should not be set aside simply because it is new or novel.

Beyond PISA, this Commission can look to existing laws to diminish regulatory lag – leaving only mandatory statutory lag behind. Statutory lag (eleven month suspension) is not mandatory in Missouri; to the contrary, the law directs this Commission to act as "speedily" as possible in determining a rate increase change. More expedient processing of rate increase filings is a tool available today. Time is one tool, but function is another, and the mechanisms embodied in PISA recognize that capital projects may not neatly fit into a test year. Further, certain types of capital projects may not be capable of expedient completion, not because of the utilities' delay, but for example due to review and approvals necessary from state and federal agencies. Even where these factors are built into the construction timeline, such outside countervailing forces have a tremendous impact on the Missouri regulated utilities' operations.

What the Infrastructure System Replacement Surcharge ("ISRS") has accomplished through statute illustrates a change to regulatory and statutory lag. According to Ameren, the intended goal of PISA was to reduce the regulatory lag that kept the company from earning its allowed return on equity. While ultimately I did not believe that the record supported implementing PISA as proposed in this case, I do believe that the general concept of reducing lag should be further explored.

The Commission opens workshop dockets to invite comment and participation from interested persons on issues which are new to the Commission. The Commission recently opened a workshop docket, AW-2013-0110, to explore rate stabilization, a regulatory "tool" currently not utilized by this Commission. In my opinion, PISA or similar concepts to reduce lag should be explored and considered in the context of a workshop, and adding it to the existing rate stabilization workshop is appropriate.

(2) Ameren Missouri's Property Tax Appeal and Subsequent Refund

As I noted above, I supported the *Report and Order* in its totality. In light of Ameren's *Application for Rehearing and Request for Reconsideration,* my view is unchanged as to my support of the Order in its totality. Nevertheless, Ameren raises serious legal arguments on the property tax refund issue. As a matter of law, Ameren may be entitled to keep the refund. It looks like this issue may be addressed by the courts, thereby providing legal certainty on this matter.

Absent that, I am concerned that we return the entire tax refund without offsetting Ameren's expenses to prosecute the case. I realize that the record in this case is not adequate to determine how much Ameren spent to obtain the refund. This is a fact question – limited to an inquiry of the balancing of the ledger sheet – what did it cost to recover the refund? Returning nearly $2.9 million dollars to the ratepayers from Ameren, without any explanation as to why Ameren Missouri's investors should bear the financial burden to litigate solely for the benefit of the ratepayers, is striking. In rate making, expenses are considered part of the process. But on this particular issue, there seems to be no offset whatsoever; nor any explanation. To the extent that these facts would be legally relevant, development of the record on this point would have been valuable in my opinion.

My point begs the question, why would the utility seek redress at all, if the shareholders bear the cost of the litigation, and must hand over all of the spoils to the ratepayers? Win, lose or draw the ratepayers as well as the utility must have skin in the game.

Respectfully submitted,

This 9th day of January, 2013
at Jefferson City, Missouri.