BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service	)))	**File No. ER-2012-0166** Tariff No. YE-2012-0370

REPORT AND ORDER

Issue Date: December 12, 2012

Effective Date: December 22, 2012

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In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Annual Revenues for Electric Service	)))	**File No. ER-2012-0166** Tariff No. YE-2012-0370

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CHIEF REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has

failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Summary

This order allows Ameren Missouri to increase the revenue it may collect from its Missouri customers by approximately $260.2 million, based on the data contained in the Revised True-up Reconciliation filed by the Missouri Public Service Commission Staff on October 12, 2012.[1] Over $100 million of that increase is related to Ameren Missouri's increased net fuel costs and would otherwise be recoverd by the company through its fuel adjustment clause. Another $89 million of that increase is for the cost of increasing Ameren Missouri's energy efficiency efforts under Missouri's Energy Efficiency Investment Act, MEEIA. Those efforts will enable Ameren Missouri's customers to take steps to decrease their usage of electricity and thereby decrease their electric bills.

Procedural History

On February 3, 2012, Union Electric Company, d/b/a Ameren Missouri filed a tariff designed to implement a general rate increase for electric service. The tariff would have increased Ameren Missouri's annual electric revenues by approximately $375.6 million. The tariff revisions carried an effective date of March 4, 2012.

By order issued on February 6, 2012, the Commission suspended Ameren Missouri's general rate increase tariff until January 2, 2013, the maximum amount of time allowed by the controlling statute.[2] In the same order, the Commission directed that notice of Ameren Missouri's tariff filing be provided to interested parties and the public. The

[1] This number is only an estimate of the overall impact of the decisions described later in this report and order. This estimate does not in any way control or modify those decisions.

[2] Section 393.150, RSMo 2000.

Commission also established February 23, 2012, as the deadline for submission of applications to intervene. The following parties filed applications and were allowed to intervene: The International Brotherhood of Electrical Workers Locals 2, 309, 649, 702, 1439, and 1455, AFL-CIO and International Union of Operating Engineers Local 148 AFL-CIO (collectively the Unions); The Missouri Industrial Energy Consumers (MIEC);[3] The Midwest Energy Consumers Group (MECG);[4] Barnes-Jewish Hospital; The Missouri Department of Natural Resources (MDNR); Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; The Consumers Council of Missouri; AARP; The Missouri Retailers Association; and The Sierra Club, Earth Island Institute d/b/a Renew Missouri and the Natural Resources Defense Council (collectively Sierra Club). On March 28, 2012, the Commission established the test year for this case as the 12-month period ending September 30, 2011, trued-up as of July 31, 2012. In its March 28 order, the Commission also established a procedural schedule leading to an evidentiary hearing.

In July and August 2012, the Commission conducted twelve local public hearings at various sites around Ameren Missouri's service area. At those hearings, the Commission heard comments from Ameren Missouri's customers and the public regarding Ameren Missouri's request for a rate increase.

In compliance with the established procedural schedule, the parties prefiled direct, rebuttal, and surrebuttal testimony. The evidentiary hearing began on September 27, 2012, and continued through October 11. The parties indicated they had no contested true-up

[3] The members of MIEC are as follows: Anheuser-Busch Companies, Inc.; BioKyowa, Inc.; The Boeing Company; Covidien; Doe Run; Enbridge; Explorer Pipeline; General Motors Corporation; GKN Aerospace; Hussmann Corporation; JW Aluminum; MEMC Electronic Materials; Monsanto; Proctor & Gamble Company; Nestlé Purina PetCare; Noranda Aluminum; and Saint Gobain.

[4] The members of MECG are Walmart Stores, Inc. and JC Penney.

issues and the Commission cancelled the scheduled true-up hearing. The parties filed post-hearing briefs on November 5, with reply briefs following on November 15.

The Partial Stipulations and Agreements

During the course of the evidentiary hearing, various parties filed six nonunanimous partial stipulations and agreements resolving issues that would otherwise have been the subject of testimony at the hearing. No party opposed five of those partial stipulations and agreements. As permitted by its regulations, the Commission treated the unopposed partial stipulations and agreements as unanimous.[5] After considering the stipulations and agreements, the Commission approved them as a resolution of the issues addressed in those agreements. The issues resolved in those stipulations and agreements will not be further addressed in this report and order, except as they may relate to any unresolved issues.

The sixth nonunanimous stipulation and agreement was signed by Ameren Missouri, Staff, and MIEC, and was filed on November 2. That stipulation and agreement dealt with some rather technical matters regarding 1) class kilowatt-hours, revenues and billing determinants; 2) fuel costs purchased power costs, off-system sales revenues and base factors; and 3) fuel adjustment clause tariff sheets. On November 9, AARP and Consumers Council filed a timely objection to that stipulation and agreement.

AARP and Consumers Council object to the stipulation and agreement because it purports to resolve all issues regarding Ameren Missouri's fuel adjustment clause (FAC) except the FAC-related issues specifically excepted from the settlement. That is, the stipulation and agreement assumes the Commission will approve a Fuel Adjustment Clause

[5] Commission Rule 4 CSR 240-2.115(C).

in this case, a result that would be contrary to AARP and Consumers Council's position. AARP and Consumers Council did not request any additional hearings regarding the stipulation and agreement other than the evidentiary hearing that was already held.

As provided in the Commission's rules, the Commission will treat that stipulation and agreement as merely a position of the signatory parties to which no party is bound.[6] The issues that were the subject of that stipulation and agreement will be determined in this report and order.

Overview

Ameren Missouri is an investor-owned integrated electric utility providing retail electric service to large portions of Missouri, including the St. Louis Metropolitan area. Ameren Missouri has approximately 1.2 million retail electric customers in Missouri, more than 1 million of whom are residential customers.[7] Ameren Missouri also operates a natural gas utility in Missouri but the rates it charges for natural gas are not at issue in this case.

Ameren Missouri began the rate case process when it filed its tariff on February 3, 2012. In doing so, Ameren Missouri asserted it was entitled to increase its retail rates by approximately $376 million per year, an increase of approximately 14.6 percent.[8] Ameren Missouri claimed a rate increase was necessary due to increases in net fuel costs, significant investments in infrastructure, significantly expanded energy efficiency programs, reduced normalized revenues due to decreased demand for electricity, higher

[6] Commission Rule 4 CSR 240-2.115(2)(D).

[7] Baxter Direct, Ex. 1, Page 5, Lines 1-2.

[8] Baxter Direct, Ex. 1, Page 5, Lines 20-21.

pension/OPEB and medical costs, and higher operating costs.[9] The company attributed $103 million of that increase to the rebasing of fuel costs that would otherwise be passed through to customers by operation of the company's existing fuel adjustment clause.[10]

Ameren Missouri set out its rationale for increasing its rates in the direct testimony it filed along with its tariff on February 3, 2012. In addition to its filed testimony, Ameren Missouri provided work papers and other detailed information and records to the Staff of the Commission, Public Counsel, and to the intervening parties. Those parties then had the opportunity to review Ameren Missouri's testimony and records to determine whether the requested rate increase was justified.

Where the parties disagreed, they prefiled written testimony to raise those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. The process of filing testimony and responding to the testimony filed by other parties revealed areas of agreement that resolved some issues and areas of disagreement that revealed new issues. On September 21, 2012, the parties filed a list of the issues they asked the Commission to resolve. The Commission will address those issues in the order submitted by the parties.

Conclusions of Law Regarding Jurisdiction

A. Ameren Missouri is a public utility, and an electrical corporation, as those terms are defined in Section 386.020(43) and (15), RSMo (Supp. 2011). As such, Ameren Missouri is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

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[9] Baxter Direct, Ex. 1, Pages 5-6, Lines 21-23, 1-10.

[10] Baxter Direct, Ex. 1, Page 8, Lines 1-2.

B. Section 393.140(11), RSMo 2000, gives the Commission authority to regulate the rates Ameren Missouri may charge its customers for electricity. When Ameren Missouri filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

Conclusions of Law Regarding the Determination of Just and Reasonable Rates

A. In determining the rates Ameren Missouri may charge its customers, the Commission is required to determine that the proposed rates are just and reasonable.[11] Ameren Missouri has the burden of proving its proposed rates are just and reasonable.[12]

B. In determining whether the rates proposed by Ameren Missouri are just and reasonable, the Commission must balance the interests of the investor and the consumer.[13] In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

> Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[14]

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

> What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the

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[11] Section 393.150.2, RSMo 2000.

[12] Section 393.150.2, RSMo 2000.

[13] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, (1944).

[14] *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 690 (1923).

> property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.[15]

The Supreme Court has further indicated:

> '[R]egulation does not insure that the business shall produce net revenues.' But such considerations aside, the 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 the 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 to attract capital.[16]

C. In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

> Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.[17]

D. Furthermore, in quoting the United States Supreme Court in *Hope Natural Gas*, the Missouri Court of Appeals said:

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[15] *Bluefield,* at 692-93.

[16] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (citations omitted).

[17] *Federal Power Commission v. Natural Gas Pipeline Co*. 315 U.S. 575, 586 (1942).

> [T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' … Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. It is not theory but the impact of the rate order which counts.[18]

The Rate Making Process

The rates Ameren Missouri will be allowed to charge its customers are based on a determination of the company's revenue requirement. Ameren Missouri's revenue requirement is calculated by adding the company's operating expenses, its depreciation on plant in rate base, taxes, and its rate of return multiplied by its rate base. The revenue requirement can be expressed as the following formula:

Revenue Requirement = E + D + T + R(V-AD+A)
Where: E = Operating expense requirement
D = Depreciation on plant in rate base
T = Taxes including income tax related to return
R = Return requirement
(V-AD+A) = Rate base
For the rate base calculation:
V = Gross Plant
AD = Accumulated depreciation
A = Other rate base items

All parties accept the basic formula. Disagreements arise over the amounts that should be included in the formula.

The Issues

1. Regulatory Policy and Economic Considerations:

This is not a true issue in that the parties do not ask the Commission to resolve any questions regarding the particulars of Ameren Missouri's request for a rate increase. Instead, the parties presented testimony regarding general policy matters that affect the

[18] *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App. W.D. 1985).

Commission's decision making regarding the detailed issues that will be addressed later in this report and order. Because this is only a general policy discussion, the Commission will not make findings of fact or conclusions of law about these policy matters.

A great deal of testimony was offered by the parties regarding the difficult economic situation that is currently facing individuals and businesses in Missouri in general and in Ameren Missouri's service territory in particular. Aside from the testimony offered at the evidentiary hearing, the Commission also heard the message of hard times loud and clear from Ameren Missouri's customers during the twelve, well-attended, local public hearings the Commission conducted throughout Ameren Missouri's service territory.

The Commission was created to serve the public interest and it takes that responsibility very seriously. The Commission serves the public interest by establishing just and reasonable rates and the Commission has endeavored to do so in this report and order.

Many customers are already having a hard time paying their electric bills. Increasing Ameren Missouri's rates may make it even harder for some customers to pay their bills. However, a just and reasonable rate does not necessarily mean a lower rate.

The Commission has said many times that no one benefits when a utility is deprived of the ability to charge its customers a just and reasonable rate. Customers may initially be happy when the rates they pay are kept low, but if a utility's rates are kept unreasonably low, the reliability of the service the utility offers will inevitably suffer. No one likes to pay increased rates, but no one likes to sit in the cold and dark when the lights go out.

The other side of the just and reasonable rate argument is offered by Ameren Missouri. The theme of much of the company's testimony and argument is that the

regulatory system in Missouri is broken because Ameren Missouri has been unable to earn its allowed rate of return in recent years. In accord with that theme, Ameren Missouri has offered several ideas to fix the "broken" regulatory system, some of which the Commission has accepted, others of which it has rejected.

Perhaps Ameren Missouri's earnings have not been as healthy in the last five years as it would like, but many of the company's customers have also suffered from earnings that are not as large as they would like. In previous rate cases, the Commission has adopted some proposals designed to improve the regulatory system and it has adopted some additional proposals in this report and order. The Commission is willing to listen to and consider additional ideas for ways in which the system can be improved. However, what may be only a temporary downturn in the company's earnings does not mean the current regulatory system is broken. That conclusion is reflected throughout the remaining issues addressed in this report and order.

2. Cash Working Capital:

A. Should the collection lag be calculated using the CURST 246 Report for the 12-month period ending October 31, 2010, or the Accounts Receivable Breakdown Report?

Findings of Fact:

1. Cash Working Capital is a measure of the amount of cash the company needs to keep on hand to handle its day-to-day business affairs.[19] That amount is included in rate base and the company is allowed to earn a return on that investment.[20]

2. To determine the appropriate amount to allow for Cash Working Capital, Ameren Missouri performed a lead-lag study. As the name implies, a lead-lag study has

[19] Adams Direct, Ex. 8, Page 3, Lines 13-14.

[20] Adams Direct, Ex. 8, Page 4, Lines 18-19.

two aspects. The revenue lag portion of the study seeks to determine the lag time between the date customers receive service and the date the company receives payment from those customers. The other half of the equation is the expense lead, which seeks to determine the time between when the company receives goods and services and when it pays for those goods and services.[21]

3. This issue concerns the company's collection lag, the measure of the amount of time between when Ameren Missouri sends a bill to its customers and when the company receives payment from those customers.[22]

4. Ameren Missouri presented the testimony of Michael Adams, a consultant with Concentric Energy Advisors,[23] who analyzed the company's aged accounts receivable breakdown report to support a collection lag of 28.75 days. In other words, Ameren Missouri contends that on average, it collects payment from a customer 28.75 days after it bills the customer for electric service.

5. In past rate cases, Ameren Missouri has calculated its collection lag using data from something called a CURST 246 report that the company prepared until 2010.[24] Staff and MIEC contend Ameren Missouri's current estimation of its collection lag is inflated and would instead rely on the last available CURST 246 reports.[25]

6. Staff relies on the CURST 246 report for the twelve months ending October

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[21] Adams Direct, Ex. 8, Page 5, Lines 1-13.

[22] Adams Direct, Ex. 8, Page 7, Lines 6-12.

[23] Adams Direct, Ex. 8, Page 1, Line 13.

[24] Boateng Surrebuttal, Ex. 231, Page 3, Lines 1-14.

[25] Boateng Surrebuttal, Ex. 231, Page 2, Lines 14-17 and Meyer Direct, Ex. 510, Page 20, Lines 18-19.

31, 2010 to support a collection lag of 21.11 days.[26] MIEC relies on the CURST 246 report for the twelve months ending March 2010 to support a collection lag of 21.01 days.[27] MIEC did not explain why it uses the older CURST 246 report.

7. The test year for this case is the twelve-month period ending September 30, 2011, trued-up as of July 31, 2012. Therefore, the CURST 246 reports used by Staff and MIEC present information from outside the test year. In general, the use of out-of-test-year data, violates the matching principle behind the concept of a test year.

8. The CURST 246 report was developed some 25 years ago by Ameren Missouri's IT department[28] and purportedly showed Ameren Missouri's cash receipts on a daily basis as they were collected by the company. The report was compiled for over 25 years and was used by the company solely to calculate the collection lag for rate cases.[29]

9. No other electric utility in this state uses a collection report similar to the CURST 246 report.[30] Ameren Missouri's witness testified that to his knowledge, no other utility or regulatory agency relies on the CURST 246 report, or anything like it.[31]

10. Ameren Missouri questioned the accuracy of the CURST 246 report and found that it could not be replicated or validated. After 2010, Ameren Missouri decided to stop producing the CURST 246 report.[32]

11. Neither Staff's witness, nor MIEC's witness testified to having undertaken any

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[26] Boateng Surrebuttal, Ex. 231, Page 2, Lines 14-15.

[27] Meyer Direct, Ex.510, Page 21, Lines 13-14.

[28] Transcript, Page 461, Lines 19-21.

[29] Adams Rebuttal, Ex. 9, Page 6, Lines 14-20.

[30] Adams Rebuttal, Ex. 9, Page 16, Lines 1-3.

[31] Transcript, Page 463, Lines 15-17.

[32] Adams Rebuttal, Ex. 9, Page 7, Lines 10-13.

study to verify the accuracy of the CURST 246 report.[33]

12. To calculate its collection lag, Ameren Missouri relied primarily on its Accounts Receivable Breakdown Report. When a customer is billed, an amount is added to the company's accounts receivable. When the customer pays the bill, accounts receivable are reduced by the amount of the payment. The company monitors its accounts receivable by maintaining a monthly aging report to determine which customers pay their bills on time and which accounts receivable are delinquent. The aging report indicates in aggregate which receivables are current, or within 30 days outstanding, 30-59 days outstanding, 60-89 days outstanding, 90-119 days outstanding, and 120 or more days outstanding.[34]

13. Ameren Missouri adjusted that Accounts Receivable Breakdown Report to account for those accounts receivable that would never be collected and would instead be treated as bad debt. The uncollectable amounts were removed for purposes of the collection lag calculation by removing a percentage of accounts receivable that the company believed, based on a historical analysis,[35] were likely to be uncollectable for each period.[36]

14. When his calculation of a collection lead was challenged by MIEC and Staff, Ameren Missouri's witness undertook steps to verify the accuracy of that calculation. The company provided him with five months of data from the test year showing 1) the date customers were billed; 2) the due date on the bill; and 3) the date the bill was paid in full.

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[33] Transcript, Page 479, Lines 21-24.

[34] Adams Rebuttal, Ex. 9, Page 4, Lines 9-19.

[35] Transcript, Page 471-472, Lines 22-25, 1-4.

[36] Transcript, Page 462, Lines 14-25.

Using that data, he calculated a collection lag of 32.72 days. The collection lag was calculated at 27.79 days when outstanding balances were treated as if they had been outstanding for no more than 120 days.[37]

15. As a further verification of his analysis, Ameren Missouri's witness performed a turnover ratio analysis. This is the analysis that Laclede Gas Company and Atmos Energy Corporation use to calculate their collection lag. The analysis of Ameren Missouri's turnover ratio produced a collection lag of 26.02 days, which is closer to the collection lag proposed by the company than it is to the collection lags based on the old CURST 246 reports.[38]

16. The 28.75-day collection lag utilized by Ameren Missouri is consistent with collection lags calculated for other utilities around the country, including that used by Ameren Illinois.[39]

17. Staff and MIEC raised several additional criticisms of Ameren Missouri's aged accounts receivable breakdown analysis and its proposed collection lag, but all were refuted by Ameren Missouri.

18. Staff and MIEC sought to rely on the out of test year CURST 246 report. However, they performed no analysis to demonstrate that the old report was still accurate for use in this test year or indeed that it was ever accurate. Simply relying on an old familiar report as received wisdom is not competent and substantial evidence. After reviewing the competent and substantial evidence presented on this issue, the Commission finds that the 28.75-day collection lag utilized by Ameren Missouri in its lead-lag study is a

[37] Adams Rebuttal, Ex. 9, Page 14, lines 5-10.

[38] Adams Rebuttal, Ex. 9, Page 16, Lines 16-20.

[39] Transcript, Page 467, Lines 10-22.

reasonable and accurate measure of the company's collection lag.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The appropriate collection lag to be used in Ameren Missouri's lead-lag study is 28.75 days as proposed by Ameren Missouri.

B. Should the income tax calculation be removed from Ameren Missouri's cash working capital requirement?

Findings of Fact:

1. This sub-issue concerns another aspect of Ameren Missouri's calculation of its cash working capital requirement. MIEC's witness, Greg Meyer, points out that Ameren Missouri's calculation of cash working capital includes provisions recognizing the cash requirement associated with making income tax payments to the IRS. However, he asserts that due to favorable tax provisions, Ameren Corporation has paid little or no corporate income tax in recent years. For that reason, Meyer asserts that no cash working capital requirement should be calculated for income tax expense.[40] Ameren Missouri and Staff oppose the proposed adjustment to cash working capital.

2. Ameren Missouri's witness regarding cash working capital was Michael J. Adams. Adams is Senior Vice President of Concentric Energy Advisors, Inc. Concentric is a management consulting and economic advisory firm. Adams has an MBA in finance from the University of Illinois-Springfield.[41]

3. Ameren Missouri's cash working capital analysis reflected an expense lead of

[40] Meyer Direct, Ex. 510, Pages 19-20, Lines 10-19, 1-5.

[41] Adams Direct, Ex. 8, Pages 1-2, Lines 12-23, 1-4.

37.88 days associated with Federal Income Tax expense.[42]

4. Ameren Missouri employs statutory tax rates and payment dates when calculating its income tax expense for revenue requirement purposes. As such, there would still be an income tax component of the cash working capital requirement regardless of whether a tax expense was actually incurred or paid.[43]

5. No party challenged Ameren Missouri's calculation of the lead associated with income tax expense. Rather, MIEC's witness asserted that no allowance should be made in cash working capital for income taxes if no cash will be paid out for income taxes.[44]

6. Ameren Missouri's witness agreed that any company activity that does not represent a cash inflow or outflow should not be included in a lead-lag study.[45]

7. Staff's witness on cash working capital never addressed the income tax component. However, Staff supports Ameren Missouri's position on this issue.[46]

8. MIEC's witness on this issue was Greg Meyer. Meyer is also a consultant on public utility regulation and is an associate with Brubaker and Associates, Inc. He has a Bachelor of Science degree in business administration, with a major in accounting, from the University of Missouri. He was also a long-time employee of this Commission before becoming a consultant in 2008.[47]

9. MIEC's witness never quantified the amount of his proposed adjustment regarding income taxes and cash working capital in his testimony. Only in its reply brief

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[42] Adams Rebuttal, Ex. 9, Page 22, Lines 13-16.

[43] Adams Rebuttal, Ex. 9, Pages 22-23, Lines 22-23, 1-3.

[44] Transcript, Page 493, Lines 13-25.

[45] Transcript, Page 452, Lines 10-15.

[46] Staff's Revised Statement of Positions on the Issues, filed October 3, 2012, Page 3.

[47] Meyer Direct, Ex. 510, Appendix A, Page 1, Lines 9-12.

does MIEC point to an accounting schedule attached to Ameren Missouri's true-up direct testimony to claim that $2.6 million in cash working capital for income tax should be removed from rate base for cash working capital.[48]

10. MIEC's witness did not specifically challenge Ameren Missouri's calculation of its income taxes for cash working capital purposes as those taxes are laid out in Ameren Missouri's true-up accounting schedules. Instead, he broadly asserts that "Ameren Corporation has paid little or no income tax in recent years."[49] Similarly, in his surrebuttal testimony he asserts:

> [D]ue to the fact that Ameren Missouri is able to take advantage of significant tax deductions, most, if not all, of its income tax expense represents deferred amounts that are not paid currently. As a result, this expense does not require cash and should not be considered in calculating the CWC requirement.[50]

Conclusions of Law:

A. Any decision by the Commission must be supported by competent and substantial evidence upon the whole record.[51]

Decision:

This is an underdeveloped issue that comes down to a question of witness credibility. MIEC's witness, Greg Meyer, while generally credible on accounting and regulatory issues, claims no special expertise on income tax questions. Yet, he asserts, in very broad terms, his belief that Ameren Corporation has "paid little or no income tax in recent years" and that "most, if not all, of its income tax expense represents deferred

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[48] Reply Brief of The Missouri Industrial Energy Consumers, Page 12. The brief cites to Weiss True-Up Direct, Ex. 78, Schedule GSW-TE 19-1.

[49] Meyer Direct, Ex. 510, Page 19, Line 17.

[50] Meyer Surrebuttal, Ex. 511, Page 22, Lines 11-16.

[51] Section 536.140.2(3), RSMo (Supp. 2011).

amounts that are not paid currently". Meyer did not attempt to calculate any actual figures on what income tax liability and cash payments Ameren Corporation would incur. The witness' vague and unsupported statements about "little or no" or "most, if not all" do not constitute competent and substantial evidence to support MIEC's position. In sum, the Commission finds Greg Meyer's testimony about Ameren Corporation's income tax liability to be not credible.

The credible testimony of Ameren Missouri's witness Michael Adams, and the credible accounting schedules sponsored by Ameren Missouri's witness, Gary Weiss, are sufficient competent and substantial evidence to support Ameren Missouri's position. The Commission finds that the income tax calculation should not be removed from Ameren Missouri's cash working capital requirement.

3. Income Tax & ADIT & NOL:

A. Should a portion of the $2.8 million income tax benefit realized on dividends paid on Ameren Corporation shares held in Employee Stock Ownership Plan ("ESOP") accounts be a reduction to Ameren Missouri's revenue requirement?

Findings of Fact:

1. Ameren Corporation, Ameren Missouri's corporate parent, maintains an employee stock ownership plan (ESOP) as one of a number of tax-qualified employee plans. The ESOP is offered as part of Ameren's 401(k) plan and all employees of Ameren, including employees of Ameren Missouri are eligible to participate.[52]

2. Each year, eligible Ameren employees may designate a limited percentage of their salary to be withheld and contributed to the Ameren 401(k) plan. The corporate employer, be it Ameren Missouri or some other Ameren affiliate, will then match a

[52] Warren Rebuttal, Ex. 10, Page 4, Lines 5-13.

percentage of the employee contribution and add it to the employee's 401(k).[53]

3. Ameren Missouri's cost to pay employee salaries and its share of the corporate match contributed to an employee's 401(k) plan is included in the company's cost of service and is recovered from ratepayers through rates.[54]

4. Ameren Corporation receives certain tax deductions from the federal government for employee salaries and for the match it contributes to the 401(k) to encourage it to offer a 401(k) plan to its employees. Those tax benefits are flowed back to ratepayers and are not in dispute.[55] Rather, the dispute arises from one particular 401(k) related tax deduction received by Ameren Corporation. Ameren Missouri contends that tax deduction belongs entirely to Ameren Corporation. Staff and MIEC claim that a proportionate share of the tax deduction should be included as an offset to the costs included in Ameren Missouri's cost of service for ratemaking purposes. Approximately $3.2 million is at issue.

5. As part of its 401(k) plan, each year an eligible Ameren employee may select one of twenty-one investment funds in which his or her contribution and the employer match will be invested. One of the available investment funds is the Ameren ESOP. Thus, each employee can decide to invest none, some, or all of his or her contribution, including the match, in Ameren stock.[56]

6. The particular tax deduction in dispute is a provision of the federal tax code that allows a corporation to take a Dividends Paid Deduction for a dividend it pays on its

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[53] Warren Rebuttal, Ex. 10, Page 4, Lines 15-17.

[54] Brosch Surrebuttal, Ex. 502, Pages 23-24, Lines 23-24, 1.

[55] Warren Rebuttal, Ex. 10, Page 6, Lines 5-10.

[56] Warren Rebuttal, Ex. 10, Page 4, Lines 15-23.

stock to the extent that stock is held in an ESOP.[57] Ameren Corporation from time to time pays dividends on its stock, including stock held in an ESOP. It is a portion of that ESOP–related tax deduction that Staff and MIEC seek to claim on behalf of Ameren Missouri's ratepayers.

7. MIEC contends that the money Ameren Corporation uses to pay dividends is derived in large part from dividends paid by Ameren Missouri to its corporate parent. The argument is that since Ameren Missouri earns those dividends from rates paid by ratepayers, it is only fair that a portion of the tax benefits derived from those dividend payments should flow back to Ameren Missouri's ratepayers.[58]

8. Staff reaches the same result by arguing that a significant portion of the stock held in the ESOP is the result of contributions made by Ameren Missouri employees. In addition, Staff argues that those employees' salaries, as well as the match contributed by the company, are paid by ratepayers.[59]

9. Neither argument put forth by Staff and MIEC is well founded. Ameren Corporation pays its dividends out of its retained earnings at the sole discretion of its Board of Directors. Some of the money in its retained earnings may have ultimately been derived from money collected from ratepayers for the sale of electricity, but Ameren Corporation could just as easily use funds derived from one of its other subsidiaries to pay a dividend. It could, if it wished, even borrow the money to pay a dividend.[60]

10. The important fact is that retained earnings belong to the company and its

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[57] Warren Rebuttal, Ex. 10, Page 5, Lines 11-15.

[58] Brosch Direct, Ex. 500, Page 29, Lines 5-23.

[59] Cassidy Surrebuttal, Ex. 234, Page 9, Lines 15-20.

[60] Warren Rebuttal, Ex. 10, Page 8, Lines 3-9.

shareholders, not to ratepayers. Ameren Corporation can do whatever it wants with its retained earnings. If it chooses to use those earnings to declare a dividend to its shareholders, it may do so. If it chooses to use those retained earnings to throw a giant party or invest in property on the moon, it must answer only to its shareholders, not to this Commission, and not to ratepayers. Ameren Corporation and its shareholders are entitled to keep any tax benefits that arise from its decision on how to spend its money.

11. The argument that ratepayers have a claim to Ameren Corporation's tax deduction because the stock is purchased by Ameren Missouri's employees whose compensation is paid by ratepayers is even more ill founded. Once salary is paid to an Ameren Missouri employee, it becomes the property of the employee. If that employee chooses to invest part of his or her money in shares of Ameren Corporation, Ameren Missouri's ratepayers do not have any claim to that investment or any tax benefits that may result from that investment. This argument really is as invalid as an argument that the state should be able to claim the mortgage tax deduction of a state employee because the state employee used his or her taxpayer-funded salary to buy the house.

12. Staff and MIEC complain that Ameren Corporation is trying to deny ratepayers their share of the tax benefits derived from the payment of these dividends by hiding behind the corporate distinctions between parent and subsidiary company. However, this argument misses the point. The results would be the same if Ameren Missouri were a stand-alone company paying the dividends directly instead of first contributing the money to its corporate parent. Either way, the dividends are paid from shareholder-owned funds to which ratepayers have no claim.

13. Furthermore, the tax deduction Ameren Corporation receives when it offers a

dividend on stock held by an ESOP is presumably offered to increase the company's incentive to offer that benefit to its employees. Attempting to grab that incentive for Ameren Missouri's ratepayers could only reduce Ameren Corporation's incentive to offer that benefit to Ameren Missouri's employees, to the detriment of those employees.

Conclusions of Law:

A. The law in Missouri is crystal-clear: "When the established rate of a utility has been followed, the amount so collected becomes the property of the utility, of which it cannot be deprived by either legislative or judicial action without violating the due process provisions of the state and federal constitutions."[61] Once Ameren Missouri has earned and retained a profit, ratepayers no longer have a claim to those earnings, whether they are passed to a parent corporation in the form of dividends or spent or invested in some other way by the company.

Decision:

Ameren Missouri ratepayers are not entitled to claim a share of the tax benefits resulting from Ameren Corporation's decision to pay a dividend to Ameren Missouri employees who also happen to be shareholders under Ameren Corporation's ESOP. No portion of the income tax benefit realized on dividends paid on Ameren Corporation shares held in Employee Stock Ownership Plan ("ESOP") accounts should be a reduction to Ameren Missouri's revenue requirement

B. Should CWIP-related ADIT balances be included as an offset to rate base?

Findings of Fact:

[61] *Straube v. Bowling Green Gas Co*., 360 Mo. 132, 142, 227 S.W.2d 666, 671 (Mo. 1950)

1. Federal tax law allows Ameren Missouri to utilize accelerated and bonus depreciation and other means to effectively defer the payment of income taxes associated with construction projects. Because of differences between tax accounting and regulatory accounting, Ameren Missouri is able to collect money from ratepayers to cover those taxes before it must actually pay the taxes. Such deferred taxes are accumulated in Accumulated Deferred Income Tax (ADIT) accounts.[62]

2. The type of ADIT at issue in this case is created when tax law allows a utility to deduct costs associated with a construction project that, under financial and regulatory accounting rules, must be capitalized and depreciated over a period of time.[63]

3. Because the tax benefits resulting from deferred income taxes are not immediately flowed through to ratepayers, credit ADIT balances represent an essentially free source of capital funds available for use by the utility. In other words, that credit ADIT balance would be a free loan to the company from ratepayers. [64]

4. Credit ADIT balances have grown significantly in recent years because, Congress has added a number of deductions and bonus depreciation features to the tax code to help stimulate the economy.[65]

5. Because the credit ADIT balance would otherwise only benefit shareholders, those balances are usually subtracted from the utility's rate base when calculating the company's rates. By that means, the net amount of investor-supplied capital within the

[62] Brosch Direct, Ex. 500, Pages 30-31.

[63] Warren Rebuttal, Ex. 10, Page 11, Lines 13-15.

[64] Brosch Direct, Ex. 500, Page 32, Lines 3-17.

[65] Transcript, Pages 803-804, Lines 24-25, 1-6.

company's rate base can be quantified.[66]

6. Ameren Missouri does not disagree with the general principle to use credit ADIT balances as an off-set to rate base. However, disagreement arises over the treatment of that portion of the ADIT balance related to construction costs incurred for projects that remain in construction work in progress (CWIP) accounts at the end of the test period.[67]

7. Construction work in progress, or CWIP, is treated differently because of a voter-approved initiative that created a statutory prohibition on the inclusion of CWIP in an electric utility's rate base. Ameren Missouri contends that since it is prohibited from including CWIP in its rate base, it should not be required to recognize tax benefits associated with the CWIP as a reduction in rate base until the CWIP itself is added to rate base.[68]

8. Ameren Missouri has removed CWIP related ADIT balances from its rate base in previous rate cases. It explains that it has taken a different position in this case because those balances only became significant in recent years.[69]

9. Even though Ameren Missouri cannot add CWIP to its rate base, and therefore cannot earn a return on that investment, until the property is fully operational and used for service, it is allowed to earn an Allowance for Funds Used for Construction (AFUDC) before the property under construction is added to rate base. AFUDC is accrued during the process of construction and is added to the balances of plant in service that is

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[66] Brosch Direct, Page 32, Lines 15-17.

[67] Warren Rebuttal, Ex. 10, Page 12, Lines 2-4.

[68] Warren Rebuttal, Ex. 10, Page 12, Lines 5-14.

[69] Warren Rebuttal, Ex. 10, Page 13, Lines 10-14.

included in rate base when the plant is placed in service. It is then recovered from ratepayers over the remaining life of the property.[70]

10. Ameren Missouri contends that since current customers are not burdened with CWIP, they should not be allowed to benefit from lower rates that would result from including CWIP-related ADIT balances as an offset to rate base. To do otherwise would benefit current customers at the expense of future customers.[71] However, any "generational" mismatch will be slight. Ameren Missouri will begin recovering nearly all of these AFUDC amounts in its next rate case because all of Ameren Missouri's CWIP projects that were active at the end of the true-up period on July 31, 2012, are estimated to be in service on or before July 31, 2013.[72]

11. CWIP related ADIT balances must be accounted for in rate base because AFUDC is applied to Ameren Missouri's gross investment in CWIP, with no recognition given to the CWIP-related ADIT amounts that serve to reduce the company's actual net capital requirements for CWIP.[73] An example offered by MIEC's witness illustrates this problem:

> Consider a simplified example, where a utility is assumed to be constructing a single asset costing $1 million over a construction period of one year that will be funded fully at the beginning of construction, but will remain in CWIP and earning AFUDC at an assumed 10 percent rate throughout the year of construction. Assume also that the utility has elected 'repairs' tax accounting for this asset, allowing the full cost of the asset to be immediately deducted for income tax purposes in the current tax year. The value of the income tax deduction for this project being treated as a deductible 'repair' at a 38 percent federal/state tax rate would result in an immediate $380,000 income tax deferral to the utility, requiring the accrual of

[70] Brosch Surrebuttal, Ex. 502, Page 29, Lines 8-13.

[71] Warren Rebuttal, Ex. 10, Page 12, Lines 7-14.

[72] Brosch Surrebuttal, Ex. 502, Page 27, Lines 10-12.

[73] Brosch Direct, Ex. 500, Page 37, Lines 8-12.

> CWIP-related ADIT that reduces the utility's actual out-of-pocket investment in the new asset to only $620,000 after taxes.
>
> However, AFUDC will be accrued at 10 percent on the gross CWIP cost for the full year the asset is in CWIP, resulting in Plant-in-Service added to rate base of $1.1 million ($1 million plus $100,000 of AFUDC) with no recognition given to the CWIP-related ADIT in accruing AFUDC. Clearly, when the AFUDC rate is applied to the entire $1 million of gross investment, with no reduction for CWIP-related AFUDC, the utility is fully compensated for its gross investment in this asset. In this example, the $100,000 of allowed AFUDC on a gross $1 million investment, when the utility's after-tax net investment is only $620,000, would significantly overstate AFUDC and future rate base.[74]

In other words, failure to recognize the CWIP-related ADIT balance in the company's rate base will overstate the companies AFUDC costs and future rate base, essentially allowing the company to earn AFUDC and a return on capital supplied by ratepayers.

Conclusions of Law:

A. Missouri's Anti-CWIP statute states:

> Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.[75]

Decision:

As fully explained in the findings of fact, Ameren Missouri must include CWIP-related ADIT balances as an offset to rate base to avoid overstating AFUDC and future rate base, to the detriment of both current and future ratepayers.

4. Plant in Service Accounting (PISA): Should the Commission grant Ameren Missouri accounting authority to accrue a return on invested capital and to defer depreciation for non-revenue-producing plant additions in a regulatory asset during the period between the date when those plant additions begin serving

[74] Brosch Direct, Ex. 500, Pages 37-38, Lines 13-25, 1-7.

[75] Section 393.135, RSMo 2000.

customers until the date they are reflected in rate base in a later rate case?

Findings of Fact:

1. This issue is closely tied to Ameren Missouri's frequently repeated concerns about its inability to earn its allowed rate of return due to what it believes to be excessive regulatory lag.[76] The regulatory lag that plant in service accounting (PISA) aims to address results from the regulatory treatment of newly constructed plant. While the plant is being constructed, the utility is able to accrue AFUDC to compensate it for the money that is being invested in the plant. That money cannot be added directly into rate base because of Missouri's anti-CWIP statute. The AFUDC is accumulated during the construction process and is moved into rate base when the plant goes into service. The utility recovers that AFUDC cost over the remaining service life of the plant.[77]

2. AFUDC stops when the plant goes into service. At that point, the cost of the plant is eligible to be included in rate base and the plant begins depreciating. However, the utility cannot begin to recover the cost of the plant in rates until that cost is added to rate base in a subsequent rate case. There will always be some gap after AFUDC stops and before the cost of the plant can be put into rate base.[78] It is that gap that Ameren Missouri seeks to bridge through its PISA proposal.

3. PISA is a new concept developed by Ameren Missouri's Vice President, Business Planning and Controller, Lynn Barnes.[79] Since it is a new concept, it has not

[76] Barnes Rebuttal, Ex. 12, Page 18, Lines 6-9.

[77] Barnes Rebuttal, Ex. 12, Page 20, Lines 4-11.

[78] Barnes Rebuttal, Ex. 12, Page 20, Lines 12-17.

[79] Transcript, Page 582, Lines 2-4.

been adopted by any other state utility commission.[80] The PISA proposal would only apply to the net change in plant in service that is unrelated to new business. In other words, it would not apply to new service connections that would generate new revenue for the company.[81]

4. In effect, PISA would allow Ameren Missouri to continue to accrue AFUDC on eligible plant additions until that new plant can be added to the company's rate base in a future rate case. In that, it is very similar to the well-known regulatory concept of construction accounting.

5. Construction accounting is frequently used to help a utility recover the cost of single large construction projects, such as Ameren Missouri's recent Sioux Scrubber project. Through PISA, Ameren Missouri would extend that principle of cost recovery to include the many small construction projects that do not produce new revenue for the company, but collectively tie up a large amount of the company's capital outlays.[82]

6. There are several problems with Ameren Missouri's PISA proposal. First, over time, PISA could place a very heavy financial burden on ratepayers. Adoption of PISA would have no impact on the rates established for this case because the proposal is only to allow Ameren Missouri to begin to defer certain costs for possible recovery in a future rate case. However, if the Commission allows Ameren Missouri to recover the deferred costs in its next rate case there would be an impact on rates at that time.[83]

7. If PISA had been implemented in the last rate case, $637 million in plant

[80] Transcript, Page 580, Lines 17-21.

[81] Barnes Direct, Ex. 11, Page 18, Lines 4-12.

[82] Barnes Rebuttal, Ex. 12, Page 21, Lines 3-13.

[83] Transcript, Page 607, Lines 17-23.

additions would have qualified for PISA treatment during the period between the true-up date in the company's last rate case and the true-up date in this case. Lost depreciation and return that would be included in rate base under the PISA proposal amounted to $37.6 million during that period. If PISA had been in effect for this rate case, the company's annual revenue requirement would have been increased by $6.2 million.[84]

8. Although PISA would have an initial impact of around $6.2 million per year in the next rate case, those costs would not end after one year. The additional revenue Ameren Missouri would recover through PISA would continue to accumulate throughout the 30-40 year life of the assets as they depreciate.[85] Over forty years, that $6.2 million per year would total more than $240 million.[86] Of course, the PISA would not necessarily end after a single rate case. If the Commission renewed PISA for additional years, additional recoveries would tend to pancake on top of each other and the numbers could quickly become very large.

9. Second, because PISA is a new concept that has never been tested, there are no clear standards for what would be treated as a non-revenue producing asset that should be excluded from the PISA.[87] Instead, the Commission's Staff would have to sort through all the company's data to determine whether the company has properly classified those assets.[88] The burden on Staff to review company information in rate cases is already substantial.

10. Third, PISA would violate the test-year principle in that it would routinely draw

[84] Barnes Surrebuttal, Ex. 13, Pages 5-6, Lines 21-23, 1-5.

[85] Transcript, Page 669-670, Lines 7-25, 1-16.

[86] Transcript, Page 675, Lines 2-4.

[87] Brosch Direct, Ex. 500, Pages 21-22, Lines 17-23, 1-4.

[88] Transcript, Pages 743-744.

non-test year expenses into the test year for the next rate case. The test year principle is important because it is designed to match revenues and expenses at a given time to try to determine an appropriate revenue requirement for the company.[89] By drawing in certain out-of-test-year expenses to be matched against test year revenues, while not examining all factors that might demonstrate a corresponding increase in revenue or decrease in expenses, PISA would unfairly increase the company's revenue requirement at the expense of ratepayers.[90]

11. The Commission does on occasion authorize accounting authority orders and tracking mechanisms that allow a utility to defer certain extraordinary costs for possible recovery in a future rate case. Several such mechanisms are authorized in this case. In addition, the Commission has authorized the use of construction accounting to help utilities deal with the financial burden of large construction projects. However, those mechanisms are premised on the existence of some extraordinary circumstance. Ameren Missouri concedes the expenses it would recover through PISA are not extraordinary, are not volatile or unpredictable, and are not outside the company's control. [91]

12. Fourth, Ameren Missouri contends PISA is needed to provide the company with a greater incentive to invest limited capital in needed infrastructure repairs and replacement.[92] However, while Ameren Missouri's witness testified that there are some additional discretionary capital projects the company might like to undertake if it were allowed PISA, it did not demonstrate that there is any great un-met need for additional

[89] Robertson Direct, Ex. 406, Page 6, Lines 3-6.

[90] Brosch Direct, Ex. 500, Pages19-20, Lines 15-22, 1-12.

[91] Transcript, Page 656-657, Lines 18-23, 1-20.

[92] Barnes Direct, Ex. 11, Page 19, Lines 6-16.

capital investment to ensure delivery of safe and adequate service.[93] Indeed, there is reason to be concerned that PISA would encourage Ameren Missouri to undertake capital projects that, while helpful, are not necessary to provide safe and adequate service, thereby unnecessarily driving up rates.

13. Finally, PISA seems to be a solution in search of a problem. Ameren Missouri has had difficulty earning its allowed ROE in the past several years. The company likes to blame that failure on systemic problems in Missouri's regulatory scheme that lead to excessive regulatory lag.[94] However, many businesses and individuals have been unable to earn as much as they might like in the economic conditions prevailing in recent years.

14. Furthermore, utility ratemaking is forward looking, concerned with current and anticipated financial conditions. What the company has earned in the past does not necessarily tell us what it will be able to earn in this future.[95] In the past several rate cases, the Commission has implemented several trackers and other regulatory measures that should enhance Ameren Missouri's ability to earn its allowed rate of return. Those previous measures should be allowed an opportunity to work before further measures are undertaken.

15. Indeed, a surveillance report that Ameren Missouri supplied to Staff showed that for the 12 months ended June 30, 2012, within the true-up period for this case, Ameren Missouri's actual earned return on equity was 10.53 percent, which is above the 10.2 percent return on equity allowed in its last rate case.[96] Ameren Missouri attempted to

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[93] Transcript, Pages 699-700.

[94] Baxter Direct, Page 14, Lines 2-4.

[95] Brosch Direct, Ex. 500,Page 9, Lines 5-9.

[96] Exhibit 237.

dismiss that 10.53 percent return as being attributable to warmer than normal weather and to other anomalies, but there it is. Under the circumstances, it is not clear that there is a systemic problem that needs to be solved with PISA.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

After considering Ameren Missouri's PISA proposal, the Commission finds that PISA would be bad public policy and should not be authorized.

5. Rate Case Expense: What is the appropriate amount to include in Ameren Missouri's revenue requirement for rate case expense?

Findings of Fact:

1. Rate case expense is the amount Ameren Missouri has spent to present and defend its rate increase request before the Commission. Ameren Missouri incurs such costs to procure expert testimony and to pay its lawyers to present that testimony.

2. Ameren Missouri estimates it will spend $1,903,000 for rate case expense in this case.[97] That number is necessarily an estimate because most rate case expenses are incurred in conjunction with the hearing, which, of course, occurs after the true-up date of July 31, 2012. Indeed, the actual final cost figures will not be known until after this report and order is issued.[98]

3. Ameren Missouri proposes to calculate the amount of rate case expense to be included in rates by averaging the actual rate case expenses from the company's two prior rate cases with its estimate of expenses for this case. Rate case expense for File No.

[97] Weiss Direct, Ex. 5, Page 28, Lines 7-8.

[98] Transcript, Pages 862-863, Lines 2-25, 1-12.

ER-2010-0036 was $2,128,352, for File No. ER-2011-0028 it was $1,735,867, and the estimated of expenses for this case is $1,903,000. Adding those three numbers and dividing by three results in an average of $1,922,000. Since, on average Ameren Missouri has filed a new rate case every 15 months, Ameren Missouri would divide that number by 15, multiply it by 12, to reach a normalized rate case expense of $1,538,000. That is the amount Ameren Missouri proposes to include in its annual cost of service for calculation of rates in this case.[99]

4. Staff's witness, Lisa Hanneken, analyzed Ameren Missouri's recent rate cases and proposes that Ameren Missouri be allowed to $1 million in its annual cost of service for rate case expense. That amount assumes a total rate case expense of $1.5 million, which is then normalized on an assumption that Ameren Missouri will file its next rate case in 18 months. ($1,500,000 divided by 18 months, multiplied by 12 months = $1,000,000).

5. Public Counsel proposes a sharp departure from prior Commission treatment of rate case expense. First, it proposes that the Commission disallow as imprudent all the money Ameren Missouri has spent to hire outside consultants and lawyers.[100] Second, for expenses not disallowed, Public Counsel proposes the Commission allow Ameren Missouri to recover only half from ratepayers, with the remainder to be imposed on shareholders. Specifically, after disallowing all cost of outside consultants and lawyers, Public Counsel would allow Ameren Missouri to recover $2,327[101], annualized over 15 months.[102] That

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[99] Barnes Rebuttal, Ex. 12, Page 30, Lines 6-19.

[100] Robertson Direct, Ex. 406, Pages 28-29, Lines 20-21, 1-12.

[101] Robertson True-Up Direct, Ex. 411, Page 3, Lines 10-12.

[102] Robertson Direct, Exhibit 406, Page 31, Lines 16-20.

amounts to $1,861.60 to be included in the cost of service for this case.

6. Public Counsel contends Ameren Missouri's use of outside consultants and attorneys to prepare and prosecute its rate case is imprudent. Public Counsel argues the company has "a large number of accountants, engineers, and others that that presumably could have been utilized to prepare, file and defend its rate increase request."[103] Public Counsel alleges Ameren Missouri therefore acted imprudently by hiring two outside legal firms and three outside consultants to develop and present significant portions of its case.[104]

7. Public Counsel assumes that since Ameren Missouri has many full-time employees with college degrees in relevant fields, those employees, with their relevant work experience, should be able to perform the work required to prepare and present a rate case to the Commission.[105] However, Public Counsel never performed any analysis of specific Ameren employees to determine if they would have any particular expertise or the time available from their regular duties to participate in the rate case.[106]

8. Much of the testimony offered in this case came from witnesses who were full-time Ameren employees, and much of that testimony was presented and defended by the two in-house attorney employed to represent Ameren Missouri. However, those Ameren Missouri employees have job duties in running the company that limit their availability to present a rate case. Furthermore, Ameren Missouri does not have full-time employees with the detailed, national expertise necessary to address certain policy

[103] Robertson Direct, Ex. 406, Page 19, Lines 19-21.

[104] Robertson Direct, Ex. 406, Page 20, Line 1.

[105] Robertson Direct, Ex. 406, Page 15, Lines 4-9.

[106] Transcript, Page 926, Lines 17-20.

issues.[107]

9. Ameren Missouri did present testimony from several outside consultants on specific issues. Public Counsel complains that such testimony, specifically that offered by John Reed, James Guest, and James Warren, was duplicative of testimony that was offered by Ameren employees.[108] Having closely examined that testimony during the course of the hearing, the Commission finds that Ameren Missouri's outside witnesses offered detailed expert opinion that appropriately presented Ameren Missouri's positions on the issues. While Ameren employees offered testimony on the same broad issues, that testimony was not duplicative of the testimony offered by the outside experts.

10. The testimony of Mr. Hevert on cost of capital, whose fees Public Counsel would also disallow,[109] is a good illustration of why Ameren Missouri is sometimes justified in hiring outside expert witnesses. As indicated elsewhere in this report and order, the determination of an appropriate return on equity is a very difficult matter that requires a great deal of skill and expertise. There are Ameren employees who understand cost of capital questions, but they are engaged full-time in managing the capital needs of the company.[110] It is unreasonable to expect that Ameren Missouri should be precluded from recovering the cost of hiring an appropriate return on equity expert to counter the experts engaged by the other parties to the case.

11. Aside from its contention that Ameren Missouri was imprudent in hiring outside attorneys and expert witnesses, Public Counsel also contends that ratepayers

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[107] Barnes Rebuttal, Ex. 12, Page 34, Lines 3-20.

[108] Robertson Surrebuttal, Ex. 408, Pages 7-9.

[109] Robertson Direct, Ex. 406, Page 17, Lines 21-23.

[110] Barnes Rebuttal, Ex. 12, Page 34, Lines 16-20.

should not be forced to pay for what it describes as an "elaborate defense of private interests".[111] Public Counsel contends Ameren Missouri has presented an elaborate defense in this case because it hired outside legal counsel and consultant services when the same services could likely have been provided by full-time Ameren employees.[112]

12. Although Public Counsel describes this argument as a separate basis for finding Ameren Missouri's use of non-employees to be imprudent,[113] it is just a restatement of the other prudence argument that the Commission has already rejected.

13. Aside from the prudence arguments, Public Counsel does not contend that the Commission should entirely disallow the company's rate case expense. It concedes that since rate case proceedings are a part of a regulated utility's normal cost of business those costs should be recoverable in rates.[114]

14. However, Public Counsel contends that as a matter of policy, the Commission should require shareholders to pay half of the admittedly prudent costs that Ameren Missouri incurred in prosecuting this rate case because shareholders, as well as ratepayers, benefit from any rate increase that results from this case.[115] Furthermore, Public Counsel suggest that a sharing of costs would provide Ameren Missouri with an incentive to control what it describes as a rising level of rate case expense.[116]

15. However, there is no "rising level of rate case expense". Ameren Missouri's estimated level of rate case expense for this case is in line with the amounts of rate case

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[111] Robertson Direct, Ex. 406, Page 23, Lines 7-11.

[112] Robertson Direct, Ex. 406, Page 24, Lines 9-13.

[113] Robertson Direct, Ex. 406, Page 29, Lines 9-12.

[114] Robertson Direct, Ex. 406, Page 11, Lines 17-21.

[115] Robertson Direct, Ex. 406, Page 11, Lines 1-7.

[116] Robertson Direct, Ex. 406, Page 14, Line 14.

expense it has incurred in its last two rate cases.[117] Indeed, Staff premised its recommended level of allowed rate case expense on a perceived downward trend in rate case expense.[118]

16. Rate case expense is just another cost of doing business for a regulated utility. As a regulated utility, Ameren Missouri has a legal obligation to provide safe, adequate, and reliable service to ratepayers. Because it is a regulated utility, the only way Ameren Missouri can raise its rates to charge what this Commission determines to be just and reasonable is through the rate case process. The rate case process is adversarial, just as is any other civil litigation in this country. That means all parties, including the company, must be able to present their facts and arguments so the Commission can reach a proper and fair resolution.

17. Shareholders benefit when rates go up to a just and reasonable level, but so do ratepayers. Shareholders may receive higher dividends and benefit from higher stock prices, but ratepayers receive the benefit of safe, adequate, and reliable service. No one benefits when a utility is deprived of the ability to charge its customers a just and reasonable rate.

18. Staff does not propose that any part of Ameren Missouri's rate case expense be disallowed as imprudent,[119] nor does it advocate for the sharing of costs between shareholders and ratepayers.[120] Instead, Staff looked at historical data regarding Ameren Missouri's actual rate case expenses and discerned a downward trend in those expenses.

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[117] Barnes Rebuttal, Ex. 12, Page 30, Lines 6-8.

[118] Hanneken Surrebuttal, Ex. 236, Page 7, Lines 20-22.

[119] Transcript, Pages 912-913, Lines 24-25, 1-2.

[120] Transcript, Page 879, Lines 17-20.

Staff also concluded that Ameren Missouri tended to overestimate its expenses. Based on that information, Staff estimated the company's rate case expense for this case to be $1.5 million. Staff assumed the company would file its next rate case in 18 months and therefore normalized that $1.5 million to allow Ameren Missouri to recover $1 million per year for rate case expense.[121]

19. The problem with Staff's estimate of $1.5 million as Ameren Missouri's rate case expense for this case is that it seems to be little more than an educated guess based on past rate case expenses. Staff's witness did not compare the number of issues in this case with earlier cases, she did not compare the total number of witnesses in this case with earlier cases, she did not compare the number of outside consultants or the number of intervenors in this case with earlier cases, nor did she use any mathematical calculation to arrive at her cost estimate.[122] In sum, Staff's general cost estimate is less reasonable than the specific cost estimate offered by Ameren Missouri.

Conclusions of Law:

A. The Commission established its standard for determining the prudence of a utility's expenditures in a 1985 decision regarding Union Electric's construction of the Callaway nuclear plant. In that decision, the Commission held that a utility's expenditures are presumed to be prudently incurred, but, if some other participant in the proceeding creates a serious doubt as to the prudence of the expenditure, then the utility has the

[121] Hanneken Surrebuttal, Ex. 236, Pages 7-8, Lines 13-24, 1-4.

[122] Transcript, Pages 909-910, Lines 3-25, 1-17.

burden of dispelling those doubts and proving the questioned expenditure to have been prudent.[123]

B. The Commission's use of that prudence standard has been upheld by reviewing courts in numerous cases.[124]

C. The Commission's prudence standard applies to Ameren Missouri's expenditures for rate case expense just as it would apply to any other expense that the Commission is reviewing in this case.

D. Based on the facts as set forth in its Finding of Fact for this issue, the Commission concludes that Public Counsel has failed to present sufficient evidence to create a serious doubt regarding the prudence of Ameren Missouri's decision to engage the services of outside expert consultants and legal counsel for the presentation of this rate case. Therefore, those costs are presumed to be prudently incurred.

Decision:

Ameren Missouri's estimate of rate case expense for this case is reasonable and Ameren Missouri's cost of service for this case shall include an annualized rate case expense of $1,538,000. The Commission has opened File No. AW-2011-0330 as a separate investigative case to examine the question of rate case expense in a more general manner. The Commission will renew its efforts to proceed with that investigation.

6. Property Tax Refund: What portion, if any, of the $2.9 million property

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[123] *In the matter of the determination of in-service criteria for the Union Electric Company's Callaway Nuclear Plant and Callaway rate base and related issues. And In the matter of Union Electric Company of St. Louis, Missouri, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the company.* 27 Mo. P.S.C. (N.S.) 183, 193 (1985).

[124] For example see, *State ex rel. Assoc. Natural Gas Co. v. Public Serv. Com'n*, 954 S.W.2d 520 (Mo. App. W.D. 1977).

tax refund received by Ameren Missouri should be credited to ratepayers? If an amount should be credited, over what period should the credit be amortized?

Findings of Fact:

1. In the Report and Order that resolved Ameren Missouri's last rate case, ER-2011-0028, the Commission set rates that allowed Ameren Missouri to recover roughly $129 million for payment of property taxes. That amount was based on the $119 million Ameren Missouri paid for property taxes in 2010, with an additional $10 million allowed for the anticipated payment of property taxes associated with the Sioux Scrubber and Taum Sauk construction projects that were being taxed for the first time in 2011.[125]

2. While that rate case was pending, Ameren Missouri was in the process of appealing approximately $29 million of its 2010 property tax liability to the Missouri State Tax Commission. Consequently, at the time rates were set, no one knew whether Ameren Missouri would be able to obtain a refund of all or part of the $29 million tax payment that was under appeal.

3. To deal with the uncertainty of the possible $29 million tax refund, the Commission's report and order found that Ameren Missouri had agreed to track any tax refund it might receive. Ameren Missouri's witness in this case confirms that the company agreed to track any tax refund.[126]

4. In its 2011 report and order, the Commission declined to order Ameren Missouri to return to its customers any tax refund it might receive as a result of its tax appeal. The Commission reasoned that it could not bind a future Commission and must

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[125] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order, Issued July 13, 2011, Pages 105-109.

[126] Transcript, Page 973, Lines 10-11.

leave the decision about how such tax refund should be handled to a future rate case.[127] However, the Commission stated:

> 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 any circumstance in which such a refund would not be ordered. However, such an order must wait until a future rate case in which that decision will be presented to the Commission.[128]

This is now the future rate case and the Commission must decide how the tax refund should be handled.

5. Late in the summer of 2011, after the Commission issued its report and order in the 2011 rate case, Ameren Missouri reached a settlement with the State Tax Commission by which it received tax refunds totaling $2.9 million.[129]

6. Staff and MIEC contend the $2.9 million tax refund should be returned to ratepayers through a two-year amortization, beginning with the effective date of rates established by this order.[130]

7. Although the rates established in the 2011 rate case allowed Ameren Missouri to recover an amount equal to all its 2010 tax liability, including the $2.9 million the company recovered as a tax refund, those rates did not necessarily allow the company to recover all it paid for property taxes in 2011. Tax liability may go up or down from year to

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[127] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order, Issued July 13, 2011, Page 111.

[128] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order, Issued July 13, 2011, Page 110.

[129] Weiss Rebuttal, Ex. 6, Page 27, Lines 18-21.

[130] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 117, Lines 20-25. Meyer Direct, Ex. 510, Page 17, Lines 1-7.

year and rates are not changed to reflect the new tax amounts until the company files a new rate case.[131] Ordinarily that variation is simply treated as an element of regulatory lag and no adjustment is made to account for the variations.

8. However, this is a unique situation. In the previous rate case, the Commission set rates based on the assumption that Ameren Missouri would pay the full amount of taxes for which it had been billed, even though the company was appealing $29 million of that tax bill. The Commission might have set Ameren Missouri's rates as much as $29 million lower than it did on the assumption that Ameren Missouri would prevail on its tax appeal. However, the Commission did not do so based, at least in part, on Ameren Missouri's representation that it would track those costs.

9. Ameren Missouri now contends that when it agreed to track those costs it merely intended to keep track of the property tax refund so it could be identified for the audit in this case.[132]

10. That was not the purpose of tracking the costs that the Commission understood at the time it stated "It is hard to imagine any circumstance in which such a refund would not be ordered.

Conclusions of Law:

There are no additional Conclusions of Law for this issue.

Decision:

The Commission will require Ameren Missouri to comply with the implicit agreement that allowed Ameren Missouri to avoid a possible reduction in rates surrounding its appeal

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[131] Transcript, Pages 984-988. See also, Exhibit 55.

[132] Ameren Missouri's Initial Post-Hearing Brief, Page 103. This explanation was not offered under oath by any witness.

of its 2010 tax liability. Ameren Missouri shall return the $2.9 million tax refund to rate payers, amortized over two years.

7. Property Taxes: What property tax rates should be used in calculating the allowance for property tax expense to be included in Ameren Missouri's revenue requirement?

Findings of Fact:

1. Each year, Ameren Missouri must pay property taxes on the property is owns around the state. All parties agree the company should be able to recover the cost of paying those property taxes from ratepayers as a cost of doing business. The question is, how much should the company be able to recover in rates?

2. Staff and MIEC contend the Commission should base the amount Ameren Missouri is allowed to recover for property taxes on the actual amount of property tax the company paid during the test year. The actual amount Ameren Missouri paid for property taxes during true-up period of the test year, specifically in December 2011, was $127.2 million.[133]

3. Ameren Missouri contends use of the actual property tax paid during the test year would not allow the company to recover the actual amount of property tax it will likely incur going forward, as the tax imposed is likely to increase. Ameren Missouri offers two alternatives for calculation of the amount of property tax it should be allowed to recover in rates. The first alternative would apply the company's actual 2011 tax rates to the actual 2012 certified assessed valuation to arrive at a property tax amount of approximately $128.3 million. The second alternative would assume a tax rate that increases by eleven percent from the actual 2011 tax rates, applied to the actual 2012 certified assessed

[133] Carle Surrebuttal, Ex. 218, Page 8, Lines 20-22.

valuation to arrive at a property tax amount of approximately $130.4 million.[134]

4. The Missouri State Tax Commission is responsible each year to determine the valuation and assessment of the distributable commercial real and personal property of all Missouri utility companies, including Ameren Missouri.[135]

5. The Tax Commission determines the value of utility property as of January 1 of each year. Using the valuation certified by the Tax Commission, each taxing jurisdiction within Ameren Missouri's service territory determines its tax rate and applies that rate to the value of the utility party subject to its jurisdiction. Any of the taxing jurisdictions can choose to raise or lower its tax rate to meet its budgetary needs.[136]

6. After the taxing jurisdictions determine and report their rates, each of the 66 counties in which the company owns property sends a tax bill to Ameren Missouri in November or December. Ameren Missouri will pay its tax bill for 2012 in December 2012.[137]

7. The State Tax Commission certified its valuation of Ameren Missouri's property on June 28, 2012, which is within the true-up period for the test year in this case.[138]

8. Although the valuation of Ameren Missouri's property was certified within the test year, the actual amount of taxes Ameren Missouri will need to pay for 2012 is dependent upon the tax rate established by the myriad taxing authorities within its service territory. Those rates could go up or down and thereby affect Ameren Missouri's total tax

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[134] Cudney Rebuttal, Ex. 14, Page 6, Lines 7-23.

[135] Cudney Rebuttal, Ex. 14, Page 3, Lines 1-3.

[136] Cudney Rebuttal, Ex. 14, Page 3, Lines 13-16.

[137] Transcript, Page 1012, Lines 12-22.

[138] Cudney Rebuttal, Ex. 14, Page 3, Lines 10-12.

bill. Ameren Missouri will not know those tax rates until it receives the last tax bill from 66 counties sometime in December.[139]

9. The test year and true-up period for this case ended on July 31, 2012. On December 31, 2011, within that test year and true-up period, Ameren Missouri paid property taxes totaling $127.2 million. That amount is clearly known and measurable.

10. The amount Ameren Missouri will pay in property taxes in December 2012 is not yet known and measurable and falls outside the test year and true-up period for this case.

11. If the Commission were to set Ameren Missouri's rates based on projections about what it might pay in property taxes in December 2012, it would violate an important rate making principle. A December 2012 payment would be outside the test year and true-up period. The test year and true-up period is important because it allows the Commission to set rates while considering the relationship between revenues, expenses and rate base within a specified period. Ameren Missouri is asking the Commission to make an isolated adjustment for taxes paid outside that specified period. By going outside the specified test year and true-up period to make an isolated adjustment, the Commission would necessarily be ignoring other expense and income items that might also change the company's revenue requirement.

12. There are many such out of test year items that might affect the company's revenue requirement. A good example was raised by MIEC. Ameren Missouri refinanced some of its outstanding debt in September 2012 at a lower interest rate, thus saving the

[139] Cudney Rebuttal, Ex. 14, Page 3, Lines 20-21.

company money.[140] Since that transaction is outside the test year and true-up period it has no effect on the rates established in this case. But, if the Commission were to go outside the test year and true-up period to make an isolated adjustment for 2012 tax payments it would need to consider other out of period adjustments to maintain the matching principle of evaluating all relevant factors for that period. Quickly the integrity and relevance of the test year and true-up period would be lost

13. Nevertheless, the Commission sometimes makes isolated adjustment for certain known and measureable costs when doing so is necessary to ensure just and reasonable rates are established. However, Ameren Missouri's 2012 property taxes are not known and measureable and inclusion of those costs is not necessary to establish just and reasonable rates.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall be allowed to recover $127.2 million in rates for property taxes as proposed by Staff and MIEC.

8. Renewable Energy Standard (RES) Costs:

A. Should the Commission order Ameren Missouri to include a base level of RES costs in permanent rates? If so, what is the base amount to include in permanent rates and should the level included in permanent rates in this case be netted against any future deferred expenditures that occur beyond the July 31, 2012, true-up date?

Findings of Fact:

1. Ameren Missouri is required to incur certain costs to comply with Missouri's

[140] Transcript, Page 308, Lines 6-21.

Renewable Energy Standard (RES) law. Thus far, the bulk of the RES costs incurred by the company are for rebate payments made to customers who install their own solar power systems.[141] During the updated test year, Ameren Missouri incurred approximately $4.7 million in such RES costs.[142]

2. Ameren Missouri proposes to recover that $4.7 million amount in its base rates in this case.[143] It would then track its future costs above or below that base amount and establish what would essentially be an AAO to recover or refund any variation from that base amount.[144] Staff supports Ameren Missouri's proposal.[145]

3. MIEC does not take issue with the amount of RES costs Ameren Missouri has incurred. However, it interprets the applicable Commission regulation to preclude the inclusion of any amount of those costs in base rates.[146]

Conclusions of Law:

A. Missouri's statute known as the Renewable Energy Standard is found at Sections 393.1025 and 393.1030, RSMo (Supp. 2011). That law requires Missouri's investor-owned electric utilities, including Ameren Missouri, to meet portfolio standards such that increasing percentages of the electric power sold by the utility are obtained from renewable energy resources. The percentage of power that must be obtained from

[141] Transcript, Pages 1042-1043, Lines 23-25, 1-3.

[142] Transcript, Pages 1069-1070, Lines 23-25, 1-3.

[143] The exact amount is $4,656,595. Transcript, Page 1073, Line 8.

[144] Transcript, Page 1047, Lines 17-23.

[145] Cassidy Surrebuttal, Ex. 234, Page 6, Lines 18-22.

[146] Meyer Direct, Ex. 510, Page 8, Lines 3-8.

renewable energy resources rises from two percent for 2011 through 2013 to fifteen percent beginning in 2021.[147]

B. Another section of the Renewable Energy Standard requires each investor-owned electric utility, again including Ameren Missouri, to make available to its retail customers a standard rebate offer for new or expanded solar electric systems.[148]

C. The Renewable Energy Standard directs the Commission to make whatever rules are necessary to enforce the renewable energy standard. The statute specifically requires that the Commission's rule include "[p]rovision for recovery outside the context of a regular rate case of prudently incurred costs and the pass-through of benefits to customers of any savings achieved by an electrical corporation in meeting the requirements of this section."[149]

D. The Commission's RES rule is found at 4 CSR 240-20.100. That regulation describes in detail a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) by which a utility may recover its RES compliance costs outside a rate case. The RESRAM would operate in much the same manner as a fuel adjustment clause to allow periodic rate adjustments between general rate cases.

E. However, the regulation does not require an electric utility to implement a RESRAM to recover its costs. Instead, it states:

> Alternatively, an electric utility may recover RES compliance costs without 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, and monthly calculate a carrying charge on the balance in the regulatory asset account

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[147] Section 393.1030.1, RSMo (Supp. 2011).

[148] Section 393.1030.3, RSMO (Supp. 2011).

[149] Section 393.1030.2(4).

equal to its short-term cost of borrowing. …[150]

F. Ameren Missouri and Staff interpret this provision of the regulation to allow the company to include a base level of compliance costs in rates and to then track any variation in those costs through an AAO for future recovery in the next rate case. That is the way the Commission handled the matter in the last rate case.[151]

G. MIEC interprets the regulation differently. MIEC would rely more heavily on the second sentence of the provision to argue that if the company does not have a RESRAM, which Ameren Missouri does not, it can only defer all costs in an AAO for recovery in a future rate case. It would not allow Ameren Missouri to establish a cost base within this rate case. [152] Under MIEC's interpretation, Ameren Missouri would likely eventually recover all its costs with interest, but its recovery of those costs would be delayed until it files another rate case.[153]

H. MIEC's interpretation of the regulation is incorrect because it ignores the plain dictate of the first sentence, which simply states that if it chooses not to use a RESRAM, the utility can recover its RES costs through rates established in a general rate case. The second sentence simply established the means by which the utility can track those costs between rate cases without using a RESRAM.

I. The purpose of the regulation is to enable the utility to recover its RES costs and thereby remove barriers to the implementation of renewable energy programs. The interpretation of the regulation espoused by Ameren Missouri and Staff assures that the

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[150] 4 CSR 240-20.100(6)(D).

[151] Transcript, Page 1070, Lines 18-23.

[152] Transcript, Page 1049, Lines 3-11.

[153] Transcript, Page 1054-1055, Lines 15-25, 1-23.

intent of the regulation is met. In contrast, MIEC's interpretation of the regulation would assure that the utility would be unable to recover its RES costs in a timely manner. Instead, it would always be required to delay its recovery of costs until its next rate case. Such a delay would hurt the utility's cash flow and would cause matching problems in that future ratepayers would be required to pay the RES costs incurred by current ratepayers.

Decision:

Ameren Missouri shall include a base level of $4,656,595 for REC compliance costs in the rates established in this case and shall track any variation in those costs through an Accounting Authority Order for future recovery in its next rate case.

B. Over what period of years should the Commission order Ameren Missouri to amortize the deferred RES costs incurred from January 1, 2010, through July 31, 2012?

C. Should the Commission order Ameren Missouri to include the unamortized RES deferred regulatory asset balance from January 1, 2010, through July 31, 2012, in rate base?

Findings of Fact:

1. In Ameren Missouri's last rate case, the Commission handled RES costs in the same manner it found to be appropriate in this case. A base level of RES costs was established at $885,266 and Ameren Missouri was allowed to include additional expenditures in an AAO for consideration in its next rate case.[154]

2. This is the next rate case, and Ameren Missouri has deferred $6.3 million in that AAO. All parties agree on that amount.[155] The Commission must now determine how

[154] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order issued July 13, 2011, Page 101.

[155] Transcript, Page 1069, Lines 7-22.

Ameren Missouri will be allowed to recover that $6.3 million.

3. Ameren Missouri proposes that it be allowed to amortize and recover that $6.3 million over two years. It also wants to include the unamortized balance in its rate base.[156] Staff proposes to amortize that amount over three years, but would not allow the unamortized balance in rate base.[157] MIEC would amortize the $6.3 million over six years and would allow the unamortized balance to be included in rate base.[158] Staff would also accept MIEC's proposal.[159]

4. The primary item included in Ameren Missouri's RES expense is the cost of paying solar rebates to customers who have installed solar equipment at their home. The customers, not Ameren Missouri, own and operate that solar equipment.[160] Another significant RES cost to Ameren Missouri is their program to purchase Renewable Energy Credits (RECs) to comply with RES requirements.[161] Ameren Missouri's RES costs do not include capital costs, such as the solar equipment Ameren Missouri has installed at its own headquarters.[162]

5. MIEC suggests that a relatively long six-year amortization period is appropriate because the solar equipment for which the rebates are paid has a service life of around ten years.[163] However, because the utility does not own the solar equipment, there is no reason to link the amortization period to the life of the solar equipment. From Ameren

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[156] Weiss Rebuttal, Ex. 6, Page 7, Lines 3-4.

[157] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 133, Lines 28-31.

[158] Meyer Surrebuttal, Ex. 511, Page 5, Lines 20-21.

[159] Cassidy Surrebuttal, Ex. 234, Page 7, Lines 9-16.

[160] Transcript, Pages 1042-1043, Lines 23-25, 1-13.

[161] Transcript, Pages 1406-1047, Lines 18-25, 1-3.

[162] Transcript, Page 1047, Lines 4-10.

[163] Meyer Surrebuttal, Ex. 511, Pages 5-6, Lines 22-23, 1-7.

Missouri's perspective, RES costs are simply an expense that should be recovered quickly rather than over the life of the equipment. That suggests a short amortization period is appropriate.

6. Typically, the items the Commission will allow a utility to include in its rate base are investments in plant, fuel inventories and other capital items.[164] Since these RES costs are not capital items and will be amortized over a short period, inclusion of those costs in rate base would not be appropriate.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall recover $6.3 million in past RES costs amortized over three years with the unamortized balance not included in rate base.

9. Coal Inventory, Including Coal-in-Transit: Should the value of Ameren Missouri's coal inventory include the value of coal in transit?

Findings of Fact:

1. Ameren Missouri must purchase massive amounts of coal to be burned in its coal-fired electric generating plants. That coal must be shipped to the generating plants from the coal mines. Ameren Missouri takes title to the coal as it is loaded into Ameren Missouri's railcars at the mine. Once the coal is delivered to the generating plant, its cost is added to plant inventory, dumped in a pile, and included within the company's rate base.[165]

2. This issue concerns whether the coal-in-transit, in other words, the coal that is sitting in a railcar, or barge, between the mine and the generating plant, should also be

[164] Transcript, Page 1057, Lines 9-13.

[165] Neff Rebuttal, Ex. 18, Page 5, Lines 8-9.

included in rate base. Ameren Missouri contends the coal-in-transit should be included in rate base. Staff and MIEC oppose the inclusion of that coal in rate base.

3. It is important to remember that this is a rate base issue. In other words, the question is whether the company should be able to earn a return on the value of the coal-in-transit. The cost of the coal is not charged to ratepayers until it is actually burned at the power plant.[166]

4. At any given moment, Ameren Missouri has large quantities of coal in transit, moving toward its generating plants.[167] The quantities and value of the coal-in-transit are highly confidential so an exact number will not be included in this report and order. However, inclusion of coal in-transit in rate base would increase Ameren Missouri's revenue requirement in this case by less than $1 million.[168]

5. Ameren Missouri takes title to the coal at the time it is put into its railcars at the mine. Thereafter, Ameren Missouri is the owner of the coal as it is being transported.[169] Generally, the coal is in transit for three or four days before it is added to inventory at the coal plant.[170]

6. The mine sends Ameren Missouri an invoice for the coal as it is delivered to the railcars. Ameren Missouri typically pays that invoice about two weeks later. As a result, the coal is usually not paid for until it is sitting in the coal pile at the generating

[166] Transcript, Page 1411, Lines 5-13.

[167] Transcript, Page 1405, Lines 10-12.

[168] Transcript, Page 1419, Lines 2-6.

[169] Transcript, Page 1409, Lines 15-25.

[170] Transcript, Page 1408, Lines 20-24.

plant.[171] However, payment is simply a timing matter, unconnected to where the coal is located. Ameren Missouri would still have to pay for the coal when invoiced even if for some reason delivery was delayed and the coal was still sitting in a railcar.[172]

7. The amount of coal held in inventory in the coal piles at the generating plants was not at issue at the hearing in this case. However, MIEC argued that inclusion of coal in-transit as part of inventory would increase that inventory to a level higher than necessary.[173]

8. There was a good deal of testimony offered about what would be an optimum amount of coal to hold in inventory at the plant, most of it highly confidential, but all such testimony misses the point. The coal-in-transit is not part of inventory and allowing it in rate base would not make it a part of inventory. Rather, it is a separate rate base item. As Ameren Missouri's witness explained, coal inventory is coal that is on site that the company knows it can burn. Coal that is in transit may never arrive because of some disruption. Therefore, it is not counted as part of the coal inventory reserve for purposes of determining whether there is enough coal on hand to avoid running out of coal and having to shut the plant down.[174]

9. As previously indicated, Ameren Missouri actually pays for the coal approximately two weeks after it takes title to the coal at the mouth of the mine. Staff and MIEC contend that payment delay should preclude Ameren Missouri from including the coal-in-transit in rate base.

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[171] Transcript, Page 1400-1401, Lines 12-25, 1-17. This testimony was offered in camera, but the facts are not highly confidential.

[172] Transcript, Page 1410, Lines 15-20.

[173] Meyer Surrebuttal, Ex. 511, Page 28, Lines 3-15.

[174] Transcript, Page 1413, Lines 1-16.

10. In response to that argument, Ameren Missouri's witnesses pointed out that it has not yet paid for approximately one quarter of the coal sitting in the coal pile, but no one was arguing that coal in inventory should not be included in rate base.[175] Staff's witness at the hearing did not challenge that argument, but in its reply brief, Staff attempted to change its position impose a new adjustment to reduce "by 25 percent the value of the coal pile to reflect that Ameren Missouri has no investment in that coal."[176] However, such a position was not supported by any witness at the hearing.

11. The arguments about the two-week delay in paying for the coal are without merit. Ameren Missouri uses an accrual method of accounting. The coal goes on the company's books as an owned item when it takes ownership of the coal at the mine.[177] Using an accrual method of accounting, the timing of cash payments for inventory items is not a consideration in determining whether an inventory item should be included in rate base. Qualifying capital cost items are included in rate base whether they are paid for in advance, at the time of delivery, or after delivery. The test is whether those items are used and useful, not when payment is made.

12. Ameren Missouri's lead-lag study recognizes a 17.14-day lead for the time between when the coal is loaded into the railcars and the time Ameren Missouri pays for it. There is also a $53 million allowance for coal in the company's cash working capital allowance, which is also a rate base item. From this, Staff's witness argued for the first time at the hearing that allowing Ameren Missouri to include coal-in-transit in its rate base

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[175] Transcript, Page 1421, Lines 2-12.

[176] Staff's Reply Brief, Page 34. Ameren Missouri filed a motion to strike that portion of Staff's brief on November 26, 2012. Staff responded on December 3 and agreed that its proposal to make a new adjustment in its reply brief was inappropriate and withdrew that portion of its brief. Ameren Missouri's motion to strike is now moot and on that basis is denied.

[177] Transcript, Page 1420, Lines 15-22.

would allow the company to double recover for that cost.[178]

13. The double recovery argument is not persuasive. The 17.14-day lead associated with the coal-in-transit measures the amount of time Ameren Missouri has use of the coal before paying for it. In other words, recognizing the 17.14-day lead in the cash working capital allowance means that allowance is lower than it would be if the lead were not taken into account. Since the cash working capital allowance is already in rate base, recognizing the lead tends to reduce rate base. Thus, recognizing coal-in-transit in rate base does not amount to double recovery, rather it simply offsets a reduction to rate base that has already been taken through the adjustment of the cash working capital allowance through the lead-lag study.

14. Staff also argues in its brief that coal-in transit should not be included in rate base "because coal in transit has never been included in rate base in the 100 years of utility regulation in Missouri, that's why." Interestingly, Staff's witness, Lisa Hanneken, indicated at the hearing that she could not make such a broad statement.[179] In any event, whether coal-in-transit has ever before been included in rate base is irrelevant. The Commission will make its decision on the evidence presented to it in this case, not on what may or may have not happened in the past hundred years.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall include the value of coal in transit in its rate base.

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[178] Transcript, Pages 1423-1424, Lines 3-25, 1-9.

[179] Transcript, Pages 1434-1435, Lines 20-25, 1-2.

10. Severance Costs and VS11: Should Ameren Missouri be authorized to amortize to rates over three years the approximately $25.8 million in costs incurred in its VS11 voluntary employee separation program?

Findings of Fact:

1. In 2011, Ameren Missouri reduced its workforce by offering a lump-sum severance package to some of its employees. Three hundred forty employees accepted the severance offer and left the employ of the company at the end of 2011.[180]

2. By reducing its workforce by 340 employees, Ameren Missouri has saved, and will continue to save, roughly $25 million per year. The severance package cost Ameren Missouri a one-time amount of approximately $25.8 million.[181] Ameren Missouri proposes to recover those one-time costs by amortizing the $25.8 million over three years.[182] That amounts to an increase of $8.6 million in annual revenue requirement.

3. Staff and MIEC oppose Ameren Missouri's proposed amortization of the cost of the severance package.

4. Ameren Missouri started to realize savings resulting from the reduction in its workforce as soon as it implemented the severance package. However, rates set in the last rate case assumed that the 340 employees would remain employed and the rates were set high enough to cover those costs. As a result, Ameren Missouri will be able to retain all those savings until new rates, using the new lower employment numbers, are set in this case. However, once the new rates go into effect, those savings will start flowing to ratepayers[183]

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[180] Baxter Direct, Ex. 1, Page 15, Lines 3-5.

[181] Carver Surrebuttal, Ex. 515, Page 3, Lines 7-9.

[182] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 101, Lines 12-13.

[183] Carver Direct, Ex. 514, Page 26, Lines 12-17.

5. Staff's witness, Lisa Ferguson, calculated the savings retained by Ameren Missouri up until new rates will go into effect on January 2, 2013 at roughly $26 million.[184] Ameren Missouri disagreed with some of the details of Ferguson's calculation, but conceded that the savings the company realized in 2012 roughly equal the severance costs.[185]

6. Despite having already recovered the costs of the severance package, Ameren Missouri asks the Commission to again recover those costs from ratepayers through a direct three-year amortization. Ameren Missouri contends such recovery is justified because ratepayers will ultimately benefit from the cost reductions resulting from the severance package in an amount much greater than the direct costs the company seeks to amortize.[186] Ameren Missouri also complains that from March 2009 through July 2012, the company actually under-recovered its payroll and benefit costs by $51 million.[187] Finally, Ameren Missouri argues that it should be allowed to recover the additional amortization so that it will have an incentive to pursue further cost-cutting measures.[188]

7. Ameren Missouri prudently took steps to reduce its payroll costs to improve the efficiency of its operations. Under the lag that results from the traditional regulatory model, the company is able to retain those cost savings until it chooses to come back for a rate adjustment and a new level of costs is used to reset rates. In this case, Ameren Missouri, for reasons unconnected to these particular costs, has asked the Commission to adjust its rates. The new rates will reflect the lower personnel costs and the company will

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[184] Ex. 242.

[185] Barnes Rebuttal, Ex. 12, Page 17, Lines 1-2.

[186] Barnes Rebuttal, Ex. 12, Page 16, Lines 14-17.

[187] Barnes Rebuttal, Ex. 12, Page 17, Lines 5-8, as corrected at Transcript, Page 1804.

[188] Barnes Rebuttal, Ex. 12, Page 17, Lines 12-14.

cease to benefit directly from the reduced payroll after having barely recovered its costs. If Ameren Missouri had not chosen to request a rate increase at this time, it would have continued to benefit from its reduced payroll costs. That is how the system works.

8. Ameren Missouri is essentially asking the Commission to require ratepayers to give the company a $25.8 million bonus to reward the company for being efficient in reducing its payroll and to give it an extra incentive to reduce costs in the future. The Commission finds that the company does not need and will not receive any extra incentive to operate efficiently.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri proposed amortization of the costs of its severance package are disallowed.

11. Return on Common Equity (ROE): In consideration of all relevant factors, what is the appropriate value for return on equity (ROE) that the Commission should use in setting Ameren Missouri's Rate of Return?

Findings of Fact:

1. This issue concerns the rate of return Ameren Missouri will be authorized to earn on its rate base. Rate base includes things like generating plants, electric meters, wires and poles, and the trucks driven by Ameren Missouri's repair crews. In order to determine a rate of return, the Commission must determine Ameren Missouri's cost of obtaining the capital it needs.

2. The relative mixture of sources Ameren Missouri uses to obtain the capital it needs is its capital structure. Ameren Missouri's actual capital structure as of the true-up

date, July 31, 2012 is:

Long-Term Debt	46.8%
Short-Term Debt	00.0%
Preferred Stock	01.1%
Common Equity	52.1%[189]

No party has raised an issue regarding capital structure so the Commission will not further address this matter.

3. Similarly, no party has raised an issue regarding Ameren Missouri's calculation of the cost of its long-term debt and preferred stock.

4. Determining an appropriate return on equity is the most difficult part of determining a rate of return. The cost of long-term debt and the cost of preferred stock are relatively easy to determine because their rate of return is specified within the instruments that create them. In contrast, in determining a return on equity, the Commission must consider the expectations and requirements of investors when they choose to invest their money in Ameren Missouri rather than in some other investment opportunity. As a result, the Commission cannot simply find a rate of return on equity that is unassailably scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity attractive enough to investors to allow the utility to fairly compete for the investors' dollar in the capital market, without permitting an excessive rate of return on equity that would drive up rates for Ameren Missouri's ratepayers. In order to obtain guidance about the appropriate rate of return on equity, the Commission considers the testimony of expert witnesses.

[189] Martin Direct, Ex. 23, Page 7.

5. Three financial analysts offered recommendations regarding an appropriate return on equity in this case. Robert B. Hevert testified on behalf of Ameren Missouri. Hevert is Managing Partner of Sussex Economic Advisors, LLC, and Executive Advisor to Concentric Energy Advisors, Inc. of Marlborough, Massachusetts. He holds a Bachelor of Science degree in Finance from the University of Delaware and a Master of Business Administration degree from the University of Massachusetts.[190] He recommends the Commission allow Ameren Missouri a return on equity of 10.50 percent, within a range of 10.25 percent to 11.00 percent.[191]

6. Michael Gorman testified on behalf of MIEC. Gorman is a consultant in the field of public utility regulation and is a managing principal of Brubaker & Associates.[192] He holds a Bachelor of Science degree in Electrical Engineering from Southern Illinois University and a Masters Degree in Business Administration with a concentration in Finance from the University of Illinois at Springfield.[193] Gorman recommends the Commission allow Ameren Missouri a return on equity of 9.30 percent, within a recommended range of 9.20 percent to 9.40 percent.[194]

7. Finally, David Murray testified on behalf of Staff. Murray is the Utility Regulatory Manager of the Financial Analysis Unit for the Commission. He holds a Bachelor of Science degree in Business Administration from the University of Missouri – Columbia, and a Masters in Business Administration from Lincoln University. Murray has been employed by the Commission since 2000 and has offered testimony in many cases

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[190] Hevert Direct, Ex. 20, Page 1.

[191] Hevert Rebuttal, Ex. 21, Page 2, Lines 4-12.

[192] Gorman Direct, Ex. 507, Page 1, Lines 4-6.

[193] Gorman Direct, Ex. 507, Appendix A, Page 1, Lines 9-12.

[194] Gorman Direct, Ex. 507, Page 2, Lines 6-8.

before the Commission.[195] Murray recommends a return on equity of 9.0 percent, within a range of 8.00 percent to 9.00 percent.[196]

8. A utility's cost of common equity is the return investors require on an investment in that company. Investors expect to achieve their return by receiving dividends and through stock price appreciation.[197] To comply with standards established by the United States Supreme Court, the Commission must authorize a return on equity sufficient to maintain financial integrity, attract capital under reasonable terms, and be commensurate with returns investors could earn by investing in other enterprises of comparable risk.[198]

9. Financial analysts use variations on three generally accepted methods to estimate a company's fair rate of return on equity. The Discounted Cash Flow (DCF) method assumes the current market price of a firm's stock is equal to the discounted value of all expected future cash flows.[199] The Risk Premium method assumes that the investor's required return on an equity investment is equal to the interest rate on a long-term bond plus an additional equity risk premium needed to compensate the investor for the additional risk of investing in equities compared to bonds.[200] The Capital Asset Pricing Method (CAPM) assumes the investor's required rate of return on equity is equal to a risk-free rate of interest plus the product of a company-specific risk factor, beta, and the expected risk premium on the market portfolio.[201] No one method is any more "correct" than any other

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[195] Staff Report Revenue Requirement Cost of Service, Ex. 202, Appendix 1, Page 49.

[196] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 13, Lines 17-22.

[197] Gorman Direct, Ex. 507, Page 11, Lines 2-6.

[198] Gorman Direct, Ex. 507, Page 11, Lines 7-17.

[199] Gorman Direct, Ex. 507, Page 13, Lines 7-10.

[200] Hevert Direct, Ex. 20, Page 36, Lines 9-15.

[201] Hevert Direct, Ex. 20, Page 31, Lines 8-18.

method in all circumstances. Analysts balance their use of all three methods to reach a recommended return on equity.

10. Before examining the analyst's use of these various methods to arrive at a recommended return on equity, it is important to look at another number. For 2011, the average return on equity awarded to integrated electric utilities by state commissions in this country was 10.27 percent.[202] For the first six months of 2012, that average awarded return on equity dropped to 10.05 percent.[203] For just the second quarter of 2012, the average awarded return on equity was 9.92 percent.[204] For the third quarter of 2012, the average awarded return on equity dropped to 9.9 percent.[205]

11. The Commission mentions the average allowed return on equity not because the Commission should, or would slavishly follow the national average in awarding a return on equity to Ameren Missouri. However, Ameren Missouri must compete with other utilities all over the country for the same capital. Therefore, the average allowed return on equity provides a reasonableness test for the recommendations offered by the return on equity experts.

12. Ameren Missouri's witness, Robert Hevert, recommended the Commission allow the company an ROE in a range from 10.25 to 11.00 percent, with a specific recommended ROE of 10.5 percent.[206] MIEC's witness, Michael Gorman, recommended an ROE in a range from 9.2 to 9.4 percent, with a specific recommended ROE of 9.3

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[202] Hevert Direct, Ex. 20, Page 39, Lines 9-14.

[203] Transcript, Page 1555, Lines 2-5. That figure excludes an unusually high incentive rate awarded to an electric utility in Virginia

[204] Transcript, Page 1555, Lines 15-16. *See also*, Ex. 530.

[205] Transcript, Pages 1558-1560. That number is calculated by averaging ROE awards to four vertically integrated electric utilities in the quarter.

[206] Hevert Rebuttal, Ex. 21, Page 2, Lines 6-9.

percent.[207] Staff's witness, David Murray, recommended an ROE in a range from 8.0 to 9.0 percent, with a specific recommended ROE of 9.0 percent.[208] However, in its initial brief, Staff suggested that an ROE of 9.45 percent might be more appropriate.[209] AARP and Consumer's Council did not offer an ROE expert witness, but they recommend the Commission adopt an ROE of 8.0 percent, which is the low end of David Murray's range. Public Counsel also did not offer an ROE expert witness, but advises the Commission to adopt an ROE at the low end of a reasonable range to best protect the interests of ratepayers.

13. The Commission will examine the analysis presented by each of the experts in more detail later in this order. But before doing so, the Commission notes that the cost of equity has trended downward since Ameren Missouri's ROE was established in its last rate case. Utility bond yields have declined by approximately 70 to 110 basis points since that last rate case. That decline in utility bond yields suggest that Ameren Missouri's cost of capital is lower now than it was then.[210] That decline is reflected in the trend noted above in declining allowed ROE in the last year. Even Ameren Missouri's expert, Mr. Hevert agrees that the cost of equity has gone down since the last case. As he puts it, "the question is by how much.[211]

14. Looking at the recommendation of Staff's expert first, the Commission finds that David Murray's recommendation is unreasonably low. If the Commission were to award Ameren Missouri an ROE of 9.0 percent as Murray recommends, it would be the

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[207] Gorman Direct, Ex. 507, Page 2, Lines 6-9.

[208] Staff Report, Revenue Requirement Cost of Service, Ex. 202, Page 13, Lines 17-21.

[209] Staff's Initial Brief, Page 89.

[210] Gorman Direct, Ex. 507, Page 5, Lines 7-9.

[211] Transcript, Page 1548, Lines 3-4.

second lowest non-penalty ROE awarded to an energy utility in the United States in the last thirty years.[212] Furthermore, Murray testified at the hearing that he actually believes Ameren Missouri's cost of equity may be below 8.0 percent and he only raised his recommendation to 9.0 percent in recognition that the Commission would not award an ROE below 8.0 percent.[213]

15. Even Murray does not believe the Commission will actually award Ameren Missouri an ROE of 9.0 percent based on his recommendation. Instead, he is trying to convince the Commission to award an ROE below 10.0 percent.[214] That is probably why Staff essentially abandoned Murray's recommendation after the hearing. In its Initial Brief, Staff recommended that the Commission award Ameren Missouri an ROE of 9.45 percent, using Murray's 9.0 percent ROE recommendation as the low end of a possible range, bounded at the top by the national average ROE of 9.9 percent.[215]

16. Ameren Missouri's witness, Robert Hevert, primarily relied on two forms of the DCF model to make his recommendation that the Commission award the company an ROE of 10.5 percent.[216]

17. However, Hevert's estimation of an appropriate ROE is too high. MIEC's witness, Michael Gorman explains that Mr. Hevert relied on long-term sustainable growth rate estimates in his DCF models that are higher than the growth outlook of the economy as a whole. As he explained, it is not rational to expect that utilities can grow faster than the economies in which they provide service because utilities provide service to meet the

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[212] Hevert Rebuttal, Ex. 21, Page 28, Footnote 57.

[213] Transcript, Page 1979-1980, Lines 23-25, 1-20.

[214] Transcript, Page 1980, Lines 17-24.

[215] Staff's Initial Brief, Page 89.

[216] Hevert Direct, Ex. 20, Page 18, Lines 15-16.

demand of the economies they serve.[217] After correcting this, and other flaws in Hevert's multi-stage DCF model, Gorman showed that model as yielding a ROE of 9.46 percent instead of the 10.74 percent derived by Hevert.[218]

18. Although the Commission finds Michael Gorman to be the most credible and most understandable of the three ROE experts who testified in this case, his recommendation that the Commission award Ameren Missouri an ROE in a range from 9.2 to 9.4 percent also has weaknesses.

19. Ameren Missouri's extensive cross-examination of Gorman revealed that Gorman's evaluation is dependent on many assumptions. The same is true of any other expert and illustrates why ROE analysis is as much an art as a science. Specifically, that cross-examination showed that Gorman performed a risk premium analysis that relied on indicated risk premium data from 1986 through 2012. He then excluded the three highest and three lowest years from his analysis and arrived at an indicated ROE of 9.26 percent.[219] However, the three years that Gorman excluded from his analysis as too high were from three of the four most recent years, 2008, 2009, and 2011. The three years he excluded from his analysis as too low were from the early period of the study. As a result, the study wound up relying on risk premium data from 1986 and 1987 to calculate an ROE for today.[220]

20. Manipulating the data in a slightly different manner, using just a simple average of the last ten years of data, would result in an indicated ROE of 9.6 percent

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[217] Gorman Direct, Ex. 507, Page 44, Lines 10-12.

[218] Gorman Rebuttal, Ex. 507, Page 50, Table 8.

[219] Transcript, Pages 1728-1732.

[220] Transcript, Page 1732, Lines 14-25.

instead of 9.26 percent. Weighting that ten-year average would indicate an ROE of 9.76 percent.[221]

21. Similarly, the cross-examination revealed that if Gorman relied on the mean rather than the median for his proxy groups within his DCF analysis, his indicated ROE would have been 9.7 percent rather than 9.4 percent.[222]

22. That testimony does not show that Gorman was dishonest or unreliable. On the contrary, the Commission found his testimony to be reliable and persuasive. However, the cross-examination clearly revealed that any expert analysis is subject to the many decisions that go into choosing among the data to be included in the various formulas. As a result, the opinions offered by the ROE experts cannot be blindly accepted as scientifically or legally binding on the Commission.

23. After considering and balancing all the information before it, the Commission is concerned that Gorman's recommended ROE is too low. The national average awarded ROE in recent months is around 10.0 percent. Gorman's analysis indicates a return somewhere below 10.0 percent is appropriate. However, Gorman also testified that dropping a utility's allowed ROE too precipitously could be harmful to the company. He explained:

> caution is necessary in awarding a return on equity for an electric utility company because dropping that authorized return on equity too fast can create financial trouble, even if the return on equity reflects fair compensation in the marketplace.[223]

He then went on to say:

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[221] Transcript, Page 1737, Lines 12-24.

[222] Transcript, Pages 1745-1756.

[223] Transcript, Page 1774, Lines 18-22.

> my concern is that if the cost of capital drops and stays low, the utility needs time to modify its financial housekeeping in order to maintain its financial integrity while receiving a very low authorized return on equity, even if it is consistent with current market costs.[224]

24. In addition, Ameren Missouri must compete for capital with other utilities. Awarding Ameren Missouri an ROE that is 60 or 70 basis points below the national average could cause that available capital to flow away from Ameren Missouri to the detriment of both shareholders and ratepayers.

25. After considering all the competent and substantial evidence presented on this issue, the Commission finds that an ROE of 9.8 percent is appropriate.

Conclusions of Law:

A. In assessing the Commission's ability to use different methodologies to determine just and reasonable rates, the Missouri Court of Appeals has said:

> Because ratemaking is not an exact science, the utilization of different formulas is sometimes necessary. … The Supreme Court of Arkansas, in dealing with this issue, stated that there is no 'judicial mandate requiring the Commission to take the same approach to every rate application or even to consecutive applications by the same utility, when the commission in its expertise, determines that its previous methods are unsound or inappropriate to the particular application' (quoting *Southwestern Bell Telephone Company v. Arkansas Public Service Commission,* 593 S.W. 2d 434 (Ark 1980).[225]

Furthermore,

> Not only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.[226]

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[224] Transcript, Page 1775, Lines 8-13.

[225] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

[226] *State ex rel. Assoc. Natural Gas Co. v. Public Service Commission,* 706 S.W. 2d 870, 880 (Mo. App. W.D. 1985).

B. In another case, the Court of Appeals recognized that the establishment of an appropriate rate of return is not a "precise science":

> While rate of return is the result of a straight forward mathematic calculation, the inputs, particularly regarding the cost of common equity, are not a matter of 'precise science,' because inferences must be made about the cost of equity, which involves an estimation of investor expectations. In other words, some amount of speculation is inherent in any ratemaking decision to the extent that it is based on capital structure, because such decisions are forward-looking and rely, in part, on the accuracy of financial and market forecasts.[227]

Decision:

Based on the evidence in the record, on its analysis of the expert testimony offered by the parties, and on its balancing of the interests of the company's ratepayers and shareholders, as fully explained in its findings of fact and conclusions of law, the Commission finds that 9.8 percent is a fair and reasonable return on equity for Ameren Missouri. The Commission finds that this rate of return will allow Ameren Missouri to compete in the capital market for the funds needed to maintain its financial health. Furthermore, this allowed return on equity is well within the zone of reasonableness that Missouri's courts have applied when reviewing Commission decisions regarding return on equity.

12. Fuel Adjustment Clause (FAC):

Should Ameren Missouri's fuel adjustment clause be continued?

Findings of Fact:

1. Before addressing other issues regarding the implementation of Ameren Missouri's fuel adjustment clause, the Commission must address the more fundamental

[227] *State ex rel. Missouri Gas Energy v. Public Service Commission*, 186 S.W.3d 376, 383 (Mo App. W.D. 2005).

issue of whether Ameren Missouri should be allowed to continue to use a fuel adjustment clause.

2. In a previous Ameren Missouri rate case, ER-2008-0318, the Commission allowed Ameren Missouri to implement a fuel adjustment clause.[228] The approved fuel adjustment clause includes an incentive mechanism that requires Ameren Missouri to pass through to its customers 95 percent of any deviation in fuel and purchased power costs from the base level. The other 5 percent of any deviation is retained or absorbed by Ameren Missouri.[229] The Commission has approved the continuation of that fuel adjustment clause in each subsequent Ameren Missouri rate case.

3. In this case, Ameren Missouri proposed that the Commission allow it to continue to use its existing fuel adjustment clause.[230] AARP and Consumers Council did not present any testimony on this issue, but they did cross examine witnesses presented by other parties and urge the Commission to discontinue Ameren Missouri's fuel adjustment clause. Staff did not oppose the continuation of the fuel adjustment clause, but advises the Commission to change the sharing mechanism to create an 85/15 split, with Ameren Missouri retaining or absorbing 15 percent of any deviation from the base level of fuel and purchased power costs. MIEC supports Staff's position. The Commission will address the proposed modification of the sharing mechanism in the next section of this report and order.

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[228] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.

[229] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Page 76.

[230] Barnes Direct, Ex. 11, Page 6, Lines 2-4.

4. When it first allowed Ameren Missouri to implement a fuel adjustment clause in a previous rate case, ER-2008-0318, the Commission found that Ameren Missouri should be allowed to establish a fuel adjustment clause because its fuels costs were substantial, beyond the control of the company's management, and volatile in amount. The Commission also found that Ameren Missouri needed a fuel adjustment clause to have a sufficient opportunity to earn a fair return on equity and to be able to compete for capital with other utilities that have a fuel adjustment clause.[231] In the same rate case, the Commission found that a 95/5 sharing mechanism would give Ameren Missouri a sufficient opportunity to earn a fair return on equity, while protecting customers by preserving the company's incentive to be prudent.[232]

5. Nothing has changed in the years since the Commission established Ameren Missouri's fuel adjustment clause to cause the Commission to change that decision. The Commission again finds that Ameren Missouri's fuel and purchased power costs are substantial, $941 million in the test year, comprising 47 percent of the company's total operations and maintenance expense.[233] Furthermore, the revenue the company receives from off-system sales, which is also tracked through the fuel adjustment clause, is also substantial, estimated to total approximately $360 million per year.[234] Those fuel and purchased power costs continue to be dictated by national and international markets, and

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[231] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 69-70.

[232] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Page 76.

[233] Barnes Direct, Ex. 11, Page 8, Lines 14-17.

[234] Barnes Direct, Ex. 11, Page 8, Lines 17-20.

thus are outside the control of Ameren Missouri's management.[235] Finally, these costs and revenues continue to be volatile, particularly off-system sales. For example, annual average wholesale prices decreased approximately $3 per megawatt-hour (MWh), or approximately 10 percent since February 2011, when Ameren Missouri rebased fuel costs in the last rate case. That reduction in wholesale electricity prices caused a $30 million decrease in annual off-system sales revenues despite comparable sales volumes.[236] That volatility also means the fuel adjustment clause has benefited ratepayers in those periods when the company's net fuel costs have decreased.

6. Furthermore, the Commission finds that Ameren Missouri still needs a fuel adjustment clause to help alleviate the effects of regulatory lag as net fuel costs continue to rise. In addition, Ameren Missouri still must compete in the capital markets with other utilities and the vast majority of those utilities have fuel adjustment clauses. The continued existence of a fuel adjustment clause is important to maintaining Ameren Missouri's credit worthiness.[237]

Conclusions of Law:

A. Section 386.266.1, RSMo (Supp. 2011), allows the Commission to establish and continue a fuel adjustment clause for Ameren Missouri.

Decision:

Ameren Missouri still needs to have a fuel adjustment clause in place if it is to have a reasonable opportunity to earn a fair return on its investments. The Commission concludes

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[235] Barnes Direct, Ex. 11, Page 8, Lines 20-23.

[236] Barnes Direct, Ex. 11, Pages 8-9, Lines 23-26, 1-3.

[237] Barnes Direct, Ex. 11, Page 10, Lines 3-16.

that Ameren Missouri should be allowed to continue to implement the previously approved fuel adjustment clause.

A. Should the sharing percentage in Ameren Missouri's fuel adjustment clause be changed to 85%-15%?

Findings of Fact:

1. While Staff did not oppose the continuation of Ameren Missouri's fuel adjustment clause, it advised the Commission to modify the sharing mechanism within the fuel adjustment clause to increase the percentage of costs and income absorbed or retained by Ameren Missouri from 5 percent to 15 percent. MIEC did not present any additional testimony on this question, but supports the modification proposed by Staff. AARP and Consumers Council also did not present any additional testimony on this question, but if the Commission does not totally eliminate the FAC, they advocate for a 50-50 split between rate payers and shareholders.

2. Staff offered five reasons why the sharing percentage should be changed. First, Staff points out that under the current 95%-5% sharing percentage, Ameren Missouri had to absorb only $15.3 million out of its net total fuel and purchased power cost of $1.4 billion, or about 1.1 percent of its net energy costs. If that sharing percentage had been changed to 85%-15%, as Staff advocates, Ameren Missouri would have had to absorb $45.9 million, or 3.3 percent of its net energy costs. If it did not have an FAC at all, Ameren Missouri would have had to absorb $306 million, or 21.8 percent of its net energy costs.[238] In essence, Staff suggests Ameren Missouri should be thankful it has an FAC and not quibble about the sharing percentage.

3. Second, Staff points out that Ameren Missouri's off-system sales margins are

[238] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 164, Lines 5-15.

more volatile than its fuel costs. If the sharing percentage were changed to 85%-15% as Staff proposes, Ameren Missouri would be able to keep a greater percentage of the off-system sales margins.[239]

4. Third, Staff claims that increasing the sharing percentage to 85%-15% would give Ameren Missouri a greater incentive to increase its fuel cost savings or to make more off-system sales.[240]

5. Fourth, Staff claims that increasing the sharing percentage to 85%-15% would increase Ameren Missouri's incentive to accurately estimate the net base energy cost factors in its general rate cases.[241]

6. Fifth, Staff complains that Ameren Missouri used the FAC process to delay payment to ratepayers under the company's second prudence review case, EO-2012-0074.[242] The Commission will address each of Staff's concerns in turn.

7. It is easy for Staff to say that Ameren Missouri should not complain about a proposal to triple the amount of net energy costs it must absorb under the fuel adjustment clause from $15 million to $45 million. But that extra $30 million represents prudently incurred net fuel costs that the company would never be able to recover. Even to a company as large as Ameren Missouri, $30 million is not *de minimis*. Certainly, much time and energy has been expended in this case on issues that are worth substantially less than $30 million.

8. Ameren Missouri's off-system sales margins are volatile because power

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[239] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 165, Lines 7-11.

[240] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 165, Lines 12-17.

[241] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 166, Lines 1-7.

[242] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 166, Lines 8-16.

prices are volatile[243] and Staff's proposal would allow the company to keep a greater percentage of off-system sales. However, that fact would not necessarily benefit the company. The company could just as easily be harmed if off-system sales decreased to below the level included in rates. The volatility of off-system sales is an argument for keeping the sharing mechanism at 95%-5%, not for changing it.

9. Staff contends that increasing the sharing percentage to 85%-15% would give Ameren Missouri a greater incentive to minimize its costs and maximize its off-system sales. However, a greater incentive would be meaningless if there is little the company can actually do to minimize costs or maximize off-system sales. In general, Ameren Missouri's fuel costs are dictated by national and international markets that are largely beyond the company's control.[244] Ameren Missouri already sells all of its available, in-the-money generation into the MISO market so there is little, if any, opportunity for Ameren Missouri to increase its off-system sales no matter how much incentive it is given.[245] Furthermore, Staff has not alleged that Ameren Missouri has acted imprudently in minimizing its fuel costs or maximizing its off-system sales.[246]

10. Staff claims that increasing the sharing percentage to 85%-15% would increase Ameren Missouri's incentive to accurately estimate the net base energy cost factors in its general rate cases. Specifically, Staff's witness suggested that the increase would provide the company with a greater incentive to look for better predictors of future

[243] Haro Rebuttal, Ex. 25, Pages 2-3, Lines 22,1.

[244] Barnes Direct, Ex. 11, Page 8, Lines 21-23.

[245] Haro Rebuttal, Pages 15-16, Lines 15-21, 1-4.

[246] Transcript, Page 1221, Lines 1-17.

power costs.[247] However, Staff's witness did not know of any better predictors of future power costs,[248] and she was unwilling to utilize forward price projections even if they might be a better predictor.[249]

11. Finally, Staff complains about Ameren Missouri's decision to include AEP and Wabash revenues in the FAC and argues the company misused the FAC to delay repaying that revenue to ratepayers. The Commission directed Ameren Missouri to remove the AEP and Wabash revenues from its FAC in a report and order issued in 2011 in File Number EO-2010-0255. That decision has since been appealed to the Missouri Court of Appeals. The case Staff specifically references, EO-2012-0074, shares the same issues and is currently pending before the Commission. In the last rate case, the Commission rejected Staff's argument that Ameren Missouri's alleged imprudence regarding the AEP and Wabash revenues demonstrated a need for the company to have a greater incentive under the FAC.[250] Surely the Commission has no desire to try to punish Ameren Missouri for exercising its legal right to appeal the Commission's decision in EO-2010-0255. In short, Ameren Missouri has not misused the FAC process and Staff's argument is without merit.

12. Furthermore, changing the sharing percentage without a good reason to do so could erode investor confidence in the utility and cast a shadow on the state regulatory process.[251]

13. Most significantly, a change in the sharing mechanism to require Ameren

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[247] Mantle Surrebuttal, Ex. 224, Page 8,Lines 8-12.

[248] Transcript, Page 1236, Lines 17-19.

[249] Transcript, Page 1237, Lines 6-12.

[250] In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service, File Number ER-2011-0028, Report and Order, Issued July 13, 2011, Pages 82-83.

[251] Barnes Direct, Ex. 11, Page 10, Lines 14.16.

Missouri to absorb 15 percent of net fuel cost changes instead of the current 5 percent would impose a significant financial burden on the company. If the proposed 85%-15% sharing mechanism had been in place since the fuel adjustment clause was put into effect instead of the actual 95%-5% sharing mechanism, Ameren Missouri would have been required to absorb an additional $30 million in net fuel costs.[252] That would be a heavy burden on a company that is already having difficulty earning its allowed rate of return.

Conclusions of Law:

A. Section 386.266.1, RSMo (Supp. 2011), the statute that allows the Commission to establish a fuel adjustment clause provides as follows:

> Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation. The commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.

Subsection 4 of that statute sets out some of the provisions that must be included in a fuel adjustment clause as follows:

> The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedule after considering all relevant factors which may affect the cost or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:
>
> *(1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;*
>
> (2) Includes provisions for an annual true-up which shall accurately and appropriately remedy any over- or under-collections, including interest at the

[252] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 164, Lines 5-15.

> utility's short-term borrowing rate, through subsequent rate adjustments or refunds;
>
> (3) In the case of an adjustment mechanism submitted under subsections 1 and 2 of this section, includes provisions requiring that the utility file a general rate case with the effective date of new rates to be no later than four years after the effective date of the commission order implementing the adjustment mechanism. …
>
> (4) In the case of an adjustment mechanism submitted under subsections 1 or 2 of this section, includes provisions for prudence reviews of the costs subject to the adjustment mechanism no less frequently than at eighteen-month intervals, and shall require refund of any imprudently incurred costs plus interest at the utility's short-term borrowing rate. (emphasis added)

Subsection 4(1) is emphasized because that is the key requirement of the statute. Any fuel adjustment clause the Commission allows Ameren Missouri to implement must be reasonably designed to allow the company a sufficient opportunity to earn a fair return on equity.

B. Subsection 7 of the fuel adjustment clause statute provides the Commission with further guidance, stating the Commission may:

> take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

Finally, subsection 9 of that statute requires the Commission to promulgate rules to "govern the structure, content and operation of such rate adjustments, and the procedure for the submission, frequency, examination, hearing and approval of such rate adjustments." In compliance with the requirements of the statute, the Commission promulgated Commission Rule 4 CSR 240-3.161, which establishes in detail the procedures for submission, approval, and implementation of a fuel adjustment clause.

C. Specifically, Commission Rule 4 CSR 240-3.161(3) establishes minimum filing requirements for an electric utility that wishes to continue its fuel adjustment clause in

a rate case subsequent to the rate case in which the fuel adjustment clause was established. Ameren Missouri has met those filing requirements.

Decision:

Staff's stated reasons for experimenting with adjusting the sharing mechanism of Ameren Missouri's fuel adjustment clause to implement an 85%-15% split do not withstand scrutiny. Imposing a significant financial burden on the company simply to experiment with an alternative sharing percentage would be unfair to the company. The Commission finds that there is no reason to change the sharing percentages in the fuel adjustment clause under which Ameren Missouri has operated for the past several years. The Commission will retain the current 95%-5% sharing mechanism included in Ameren Missouri's fuel adjustment clause.

B. MISO Costs in the FAC:

Findings of Fact:

1. Through its membership in the Midwest Independent Transmission System Operator, Inc. (MISO), Ameren Missouri has access to a transparent energy market where it can acquire power to serve its load and sell power off-system. As part of its membership in MISO, Ameren Missouri incurs certain transmission charges for the load it serves through the MISO market.[253] Ameren Missouri incurs a variety of charges from MISO for the use of its service. Ameren Missouri cannot pick and choose which of these charges it will pay, all are required charges.[254] Furthermore, no party is disputing the amount of the MISO charges or the fact that Ameren Missouri must pay them. Ameren Missouri is currently flowing MISO transmission charges through the fuel adjustment clause.

[253] Haro Sur-Surrebuttal, Ex. 26, Page 6, Lines 6-9.

[254] Haro Rebuttal, Ex. 25, Page 22, Lines 12-16.

2. Since January 2012, Ameren Missouri has begun to incur charges under MISO tariff schedule 26A. As with the other MISO transmission charges, including charges incurred under schedule 26,[255] Ameren Missouri has flowed those charges through the fuel adjustment clause.[256]

3. When Staff realized that what it terms the cost of building transmission lines would be included under MISO tariff schedules 26 and 26A, it proposed that those charges be excluded from recovery under the fuel adjustment clause.[257] MIEC arrived at essentially the same position and would exclude all charges for long-term transmission service from the fuel adjustment clause.[258]

4. The Ameren Missouri tariff provision in question concerns Factor CPP, which determines what costs may be flowed through the FAC. That tariff provision states as follows:

> Costs of purchased power reflected in FERC Account Numbers 555, **565**, and 575, excluding MISO administrative fees arising under MISO Schedules 10, 16, 17, and 24, **and excluding capacity charges for contracts with terms in excess of one (1) year,** incurred to support sales to all Missouri retail customers and Off-System Sales allocated to Missouri retail electric operations. … [259] (emphasis added).

5. Under the Federal Energy Regulatory Commission's Uniform System of Accounts, transmission charges for the transmission of the utility's electricity over transmission facilities owned by others are to be recorded in account 565.[260] Since the

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[255] Transcript, Page 1195, Lines 14-17.

[256] Transcript, Page 1173, Lines 19-23.

[257] Mantle Surrebuttal, Ex. 224, Page 3, Lines 24-28.

[258] Dauphinais Surrebuttal, Ex. 518, Pages 9-16.

[259] Mantle Surrebuttal, Ex. 224, Page 3, Lines 10-17.

[260] Exhibit 80.

tariff specifically provides that costs of purchased power reflected in account 565 are to be flowed through the fuel adjustment clause, Ameren Missouri acted appropriately in doing so. Indeed, Staff agreed that account 565 costs were to be passed through the fuel adjustment clause within the current language of the tariff[261] and no party has alleged that Ameren Missouri should be required to make any adjustment for transmission charges that have already been passed through the fuel adjustment clause.

6. However, MIEC argues that the highlighted exclusion in the tariff provision of "capacity charges for contract with terms in excess of one (1) year" would exclude most schedule 26 and 26A charges from the fuel adjustment clause because those charges are for contracts with terms in excess of one year.[262] However, the tariff's exclusion of capacity charges for contract with terms in excess of one year refers to generation capacity, not transmission capacity. That interpretation of the tariff is supported by Ameren Missouri's witness, Jaime Haro, when he testifies "[c]apacity is commonly understood – in the markets and in Missouri regulation – as generation capacity."[263] Staff's witness, Lena Mantle, confirms that the intent of the tariff's exclusion was to apply to generation capacity.[264] The Commission finds that the tariff's exclusion applies only to generation capacity and not transmission capacity.

7. Actually, whether the tariff's current exclusion applies to generation capacity or transmission capacity is not the important question before the Commission. Even if the current tariff were interpreted to exclude transmission capacity, the Commission could, in

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[261] Transcript, Page 1243, Lines 10-13.

[262] Dauphinais Surrebuttal, Ex. 518, Pages 13-14, Lines 8-24, 1-8.

[263] Haro Sur-Surrebuttal, Ex. 26, Page 11, Lines 6-7.

[264] Transcript, Page 1244, Lines 5-16.

this case, direct Ameren Missouri to modify its tariff to explicitly include transmission capacity. The more important question before the Commission is whether that tariff should exclude the capacity charges challenged by Staff and MIEC.

8. MIEC's witness, James Dauphinais, explains that MISO schedule 26 charges are for long-term transmission service the utility takes under MISO tariff schedule 9 to serve its network load and short-term transmission services it takes under MISO tariff schedule 7 and MISO tariff schedule 8 to make off system sales on behalf of its retail customer to entities not located within MISO or PJM. Currently, schedule 26 is used by MISO to recover the cost of Baseline Reliability Projects of 345 kV or higher voltage that are included in the MISO Transmission Expansion Plan.[265]

9. Dauphinais also explains that MISO schedule 26A charges are incurred by Ameren Missouri for long-term transmission service it takes under MISO tariff schedule 9 to serve its network load and short-term transmission services it takes under MISO tariff schedule 7 and MISO tariff schedule 8 to make off-system sales, on behalf of its retail customers, to entities not located within MISO or PJM. MISO schedule 26A is used to recover the cost of Multi-Value Transmission Projects (MVPs).[266]

10. The MVPs are of particular concern because the MISO Board of Directors has approved $5.6 billion of new MVP construction through 2021. MISO will collect the cost of these MVPs from all MISO transmission customers for the benefit of the transmission owners who are, or who will, construct the MVPs.[267]

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[265] Dauphinais Surrebuttal, Ex. 518, Page 11, Lines 3-15.

[266] Dauphinais Surrebuttal, Ex. 518, Page 12, Lines 6-16.

[267] Dauphinais Surrebuttal, Ex. 518, Page 12, Lines 16-20.

11. About eight percent of the MVP's will be built within Missouri.[268] Furthermore, only about $250 million of the $5.6 billion approved by MISO for MVPs will be used for construction in Missouri.[269] Ameren Missouri does not plan to build any MVPs within its service territory,[270] but Ameren Transmission Company (ATX), an affiliate of Ameren Corporation may build one or more MVPs in Ameren Missouri's service territory.[271]

12. The MISO transmission revenues associated with MVPs will ultimately flow to the owners of that transmission. That means that if ATX or another Ameren Corporation affiliate builds the MVP, those revenues, which are paid by Ameren Missouri's ratepayers, will go to the Ameren Corporation affiliate instead of being used to offset the charges paid by Ameren Missouri's ratepayers.[272]

13. Staff is concerned that ATX or another affiliate will build the MVP's instead of Ameren Missouri and thereby siphon off the transmission revenue that would otherwise go back to Ameren Missouri. However, Ameren Missouri has no particular right of first refusal to build such projects, cannot dictate to Ameren Corporation how other affiliated companies invest money, and may not have sufficient capital to build such projects while also maintaining reliable service within its own service territory.[273]

14. Since the construction of MVPs is just getting underway, associated transmission charges are expected to rise in the future. Right now, through the true-up period for this case, the twelve months ending July 31, 2012, those transmission costs are

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[268] Transcript, Page 1200, Lines 1-5.

[269] Transcript, Pages 1361-1362, Lines 18-25, 1-4.

[270] Transcript, Page 1175, Lines 20-25.

[271] Oligschlaeger Responsive Testimony, Ex. 240, Page 8, Lines 7-17.

[272] Oligschlaeger Responsive Testimony, Ex. 240, Page 8, Lines 17-19.

[273] Transcript, Pages 1308-1309.

$25.8 million. By 2016, they are projected to rise to nearly $53 million.[274] Ameren Missouri anticipates those costs will rise by 24 percent per year.[275]

15. Right now, MISO transmission costs paid by Ameren Missouri are nearly offset by MISO revenues received by Ameren Missouri as a transmission owner.[276] But as MVPs are built, transmission costs will rise faster than revenues simply because most of the MVPs are being built outside Missouri.[277]

16. Ameren Corporation is a member of MISO, but it has little control over MISO transmission charges.[278]

17. MISO transmission charges are volatile because no one knows for sure how much those MVP projects will costs once construction is complete.[279]

18. All parties agree that Ameren Missouri must be able to recover the MISO transmission charges in some manner. If the charges are not flowed through the FAC, the Commission will need to allow the company to recover those charges in base rates. The only issue is whether Ameren Missouri should be allowed to flow those charges through the fuel adjustment clause.

19. Since Ameren Missouri must be allowed to recover the MISO transmission charges in some manner, the continuation of the current practice of passing those costs through the fuel adjustment clause is the most logical manner of doing so. Those costs meet the Commission's past standards for inclusion in the fuel adjustment clause in that

[274] Haro Surrebuttal, Ex. 26, Page 8, Line 2.

[275] Transcript, Page 1362, Lines 18-24.

[276] Oligschlaeger, Responsive Testimony, Page 7, Lines 11-15. The exact numbers are highly confidential.

[277] Transcript, Page 1296, Lines 12-23.

[278] Transcript, Page 1290, Lines 13-19. Also Page 1246, Lines 6-14.

[279] Transcript, Page 1290, Lines 1-19.

they are significant in amount, volatile in that they are not only rapidly rising, but are also uncertain in amount, and they are largely beyond the control of Ameren Missouri. The Commission finds that MISO transmission costs should continue to be flowed through Ameren Missouri's fuel adjustment clause.

Conclusions of Law:

A. Commission Rule 4 CSR 240-20.030 requires electric utilities to keep all accounts in accordance with the Uniform System of Accounts.

B. Under the Filed Rate doctrine, the Commission must allow Ameren Missouri to recover in some manner the transmission charges imposed under the FERC approved MISO tariff.[280]

C. Staff presents a legal argument against inclusion of the MISO transmission charges in the fuel adjustment charge based on two Missouri statutes. The first statute Staff references is the statute that authorizes the establishment of a fuel adjustment clause. Section 386.266.1, RSMo (Supp. 2011) allows an electric utility to apply to the Commission for a mechanism to permit the utility to make periodic rate adjustments to "reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation."

D. Staff argues that transmission of electricity over electric lines is not the transportation of electricity within the meaning of the statute and therefore, transmission costs cannot properly be flowed through the fuel adjustment clause. Staff would limit the meaning of "transportation" within the statute to the transportation of fuel, such as coal. However, the phrase "including transportation" within the statute modifies both "fuel" and

[280] *Nantahala Power and Light Co. v. Thornburg,* 476 U.S. 953, 106 S.Ct. 2349 (1986).

"purchased-power" costs. Since there is no way to transport electricity, in the form of purchased-power, except by transmission over electric lines, the statute that allows electric utilities to include transportation costs as part of purchased power costs must have been intended to allow transmission costs to be included within a fuel adjustment clause.

E. The second statute cited by Staff is Missouri's anti-CWIP statute, Section 393.135, RSMo 2000. That statute states:

> Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

Staff contends that statutory provision would prohibit the inclusion of the Article 26 and 26A MISO charges within the fuel adjustment charge because MISO is using those charges to allow transmission owners to recover the costs of building new transmission projects.

F. Of course, if the anti-CWIP statute really applied to prohibit recovery of these transmission charges through the fuel adjustment charges, it would also prohibit their recovery by any method until the new transmission facilities were put in service. Any attempt by the Commission to deny Ameren Missouri the ability to recover duly imposed, FERC-approved charges would violate the filed-rate doctrine.

G. Even if the inclusion of the capital construction costs associated with the construction of MVP and other transmission projects in the fuel adjustment clause does not violate the anti-CWIP statute, Staff contends the recovery of such construction costs through the fuel adjustment clause would be bad public policy because the fuel adjustment

clause should not be used to recover construction costs.[281]

H. However, both Staff's reliance on the anti-CWIP statute and its public policy argument rely on a mischaracterization of the nature of the transmission charges that Ameren Missouri seeks to flow through the fuel adjustment clause. MISO may use those charges to allow the transmission owner to recover the cost of constructing the transmission. But from Ameren Missouri's perspective, it is paying a FERC approved transmission charge, nothing more and nothing less. To Ameren Missouri it makes no difference how the transmission owner uses the revenue it receives through FERC.

I. When Ameren Missouri pays the transmission charges it is in the same position as an Ameren Missouri customer who pays their electric bill. The customer pays an established rate for the amount of electricity used. It is meaningless to try to parse out how much of that payment is for the cost of a new transformer in the neighborhood, or how much is paid toward the CEO's salary. The customer is paying a legally established charge that covers all the costs associated with the electricity used and Ameren Missouri is paying a legally established charge that covers all the costs associated with the transmission services it is using.

J. The Commission concludes there is no legal or public policy impediment to allowing Ameren Missouri to recover MISO transmission charges through the fuel adjustment clause.

Decision:

The Commission finds that Ameren Missouri may pass MISO transmission charges through its fuel adjustment clause.

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[281] Mantle Surrebuttal, Ex. 224, Page 4, Lines 14-22.

The Sixth Non-Unanimous Stipulation and Agreement:

Having decided that Ameren Missouri's fuel adjustment clause will be continued, the Commission must now take up the sixth nonunanimous stipulation and agreement that was signed by Ameren Missouri, Staff, and MIEC and filed on November 2. As explained earlier in this report and order, AARP and Consumers Council objected to that stipulation and agreement because it assumed the Commission would renew Ameren Missouri's fuel adjustment clause in some form, a result that was contrary to AARP and Consumers Council's position.

That stipulation and agreement dealt with technical details regarding 1) class kilowatt-hours, revenues and billing determinants; 2) fuel costs, purchased power costs, off-system sales revenues and base factors; and 3) fuel adjustment clause tariff sheets. In particular, the stipulation and agreement set out alternative model tariff sheets that would be used depending upon how the Commission decided the sharing percentage and MISO transmission cost issues. Those technical details were not the subject of testimony or other evidence at the hearing.

Because of the objection, the Commission cannot approve the stipulation and agreement. However, that stipulation and agreement is now the joint position statement of the signatory parties and no party has presented any evidence to counter that joint position. Therefore, the Commission finds that the joint position of the parties described in the sixth nonunanimous stipulation and agreement is appropriate and shall be incorporated in the compliance tariffs that Ameren Missouri will be directed to file as a result of this report and order.

B. Should Ameren Missouri be allowed to track transmission charges for recovery in a future rate case?

C. If a tracker is allowed, should it be subject to the conditions proposed by Staff?

Decision:

If the Commission had refused to allow Ameren Missouri to continue to recover MISO transmission charges through the fuel adjustment charge, Ameren Missouri proposed that it be allowed to track and defer those costs for possible recovery in a future rate case. Since the Commission has allowed those charges to be recovered through the fuel adjustment clause, these issues are now moot.

13. Storm Costs Tracker: Should the Commission establish a two-way storm restoration cost tracker whereby storm-related non-labor operations and maintenance (O&M) expenses for major storms would be tracked against the base amount with expenditures below the base creating a regulatory liability and expenditures above the base creating a regulatory asset, in each case along with interest at the Company's AFUDC rate?

Findings of Fact:

1. Ameren Missouri has proposed to implement a two-way storm restoration tracker to deal with storm-related non-labor operations and maintenance (O&M) expenditure for major storms.[282] Under that proposal, the Commission would establish a base level of expected major storm restoration O&M costs in the company's revenue requirement. Actual expenditures would then be tracked above or below that base level to create a regulatory asset or liability that the Commission would consider for amortization and recovery in the company's next rate case.[283]

2. Staff, MIEC, and Public Counsel oppose the creation of a storm restoration tracker.

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[282] The capital costs incurred for storm restoration are included in rate base and recovered in that manner.

[283] Barnes Direct, Ex. 11, Page 14, Lines 1-14.

3. Under regulation as it is currently practiced, major storm costs are recovered through base rates by inclusion of an expected level of costs determined by averaging historical storm related costs over several years. Occasionally, however, the utility's service territory will be hit by an extraordinary storm with many customers out of service, requiring massive repair and restoration efforts. For most extraordinary storm events that occur outside a rate case test year, the Commission has allowed the affected utility to defer those costs through an accounting authority order (AAO) for possible recovery in a future rate case.[284]

4. The Commission has frequently approved such AAOs and has allowed Ameren Missouri to recover its extraordinary storm recovery costs through an AAO and subsequent five-year amortizations. In fact, the company's current revenue requirement contains four separate amortizations related to extraordinary storm restoration costs.[285]

5. The current system has allowed Ameren Missouri to recover all of its major storm recovery costs in recent years. For the period from March 1, 2009, when rates from Case No. ER-2008-0318 went into effect, until the July 31, 2012 true-up cut-off date for this case, Ameren Missouri has, or will, collect in rates approximately $8.2 million more than the actual costs it incurred to restore service.[286]

6. If major storm restoration costs do not rise to the level included in base rates, Ameren Missouri gets to keep the extra earnings. That has also happened in recent years, as in 2010, when $6,400,000 was allowed for such expenses in base rates and the

[284] Boateng Rebuttal, Ex. 207, Page 4, Lines 1-14.

[285] Wakeman Surrebuttal, Ex. 32, Page 3, Lines 1-3.

[286] Meyer Surrebuttal, Ex. 511, Page 12, Lines 8-21 and Schedule GRM-SUR-1.

company had actual expenses of only $38.[287]

7. The two-way storm restoration costs tracker would not allow Ameren Missouri to recover its costs any sooner. But it would rationalize the process, and it would allow over collected costs to be returned to ratepayers if the company is fortunate enough to avoid any major storms.[288]

8. The current system using occasional AAOs to allow Ameren Missouri to recover its extraordinary storm restoration costs requires Ameren Missouri to file an application for an AAO and to demonstrate that the storm event is extraordinary before related costs will be deferred through the AAO.[289] Staff is concerned that the burden of determining whether particular storm costs would be treated as normal or major would be shifted to Staff.[290]

9. However, Ameren Missouri's proposal would use the IEEE1366 method to determine whether a particular storm event would be classified as a major storm. That method looks at customer interruption minutes per customer to determine whether an outage event is outside the normal range of such events. Ameren Missouri would also treat as extraordinary costs and include in the two-way tracker the costs of preparation for an anticipated major storm that does not materialize if the non-internal labor O&M incurred for the preparation exceeds $1.5 million.[291]

10. The storm restoration costs tracker would not allow Ameren Missouri to automatically recover the tracked costs. Those costs would still be subject to a prudence

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[287] Transcript, Pages 1926-1927, Lines 9-25, 1-6.

[288] Wakeman Surrebuttal, Ex. 32, Page 3, Lines 3-8.

[289] Boateng Rebuttal, Ex. 207, Page 4, Lines 10-11.

[290] Boateng Surrebuttal, Ex. 231, Page 13, Lines 4-7.

[291] Wakeman Direct, Ex. 30, Pages 13-14, Lines 5-23, 1-4.

review by Staff just as those costs are currently reviewed for prudence.[292]

11. In general, the Commission remains skeptical of proposed tracking mechanisms. There is a legitimate concern that a tracker can reduce a company's incentive to aggressively control costs. However, that concern is reduced for major storm restoration costs. When faced with a massive power outage, the company's first priority must be to quickly restore electric service to its customers.

12. As explained by Ameren Missouri's witness, David Wakeman, who is the person in charge of its power restoration efforts, the ordinary means by which the company can control costs frequently are not available in major storm restoration situations. For example, the company cannot take the time to obtain competitive bids for services, it cannot limit the amount of overtime worked by its employees, nor can it decide not to hire outside restoration crews.[293] In any event, there is no evidence in the record to suggest that Ameren Missouri has spent money imprudently in past major storm restoration efforts.

13. Major storm restoration costs are particularly well suited for inclusion in a two-way tracker. Ameren Missouri has no control over whether major storms occur and has very little ability to control its restoration cost when such storms do hit its service territory. Such major storm costs can have a significant impact on the company's overall costs and ability to earn a reasonable return on its investment. Furthermore, for whatever reason, major storm events seem to have increased in frequency and intensity in recent years.

14. In the past, the Commission has allowed Ameren Missouri to recover all its major storm costs through a series of AAOs. The creation of a two-way tracker will simply rationalize that method of recovery without reducing Ameren Missouri's incentive to control

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[292] Transcript, Pages 1923-1924, Lines 22-25, 1-9.

[293] Wakeman Surrebuttal, Ex. 32, Page 4, Lines 15-22.

costs. It will not increase the burden of prudence review imposed on Staff and other parties. However, because it tracks major storm restoration costs both above and below the amount set in base rates, the tracker will return such costs to ratepayers if Ameren Missouri's service territory is not hit by a major storm. The Commission finds that a two-way tracker is appropriate in these circumstances and will approve the tracker proposed by Ameren Missouri.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The Commission approves the two-way tracker for major storm restoration costs as proposed by Ameren Missouri

14. Storm Costs:

A. If the Commission does not establish a two-way storm restoration costs tracker, then what is the appropriate amount to include in revenue requirement for major storm restoration costs?

B. If the Commission does establish a two-way storm restoration costs tracker, then what is the appropriate base level of major storm restoration Operations and Maintenance (O&M) costs to include in Ameren Missouri's revenue requirement?

Findings of Fact:

1. Having approved the major storm restoration cost tracker proposed by Ameren Missouri, the Commission must now decide what level of costs should be established as the base for that tracker.

2. All parties agree the base level should be established using a normalized storm restoration cost calculated by averaging storm costs incurred over a period of time.

Staff proposed to set that base amount at $6.8 million using a 60-month period ending on the true-up date of July 31, 2012.[294] Ameren Missouri accepted Staff's proposal.[295] MIEC initially argued the base level should be set at $6.5 million, using a 62-month period running from April 2007 to May 2012.[296] After the hearing, MIEC proposed the base level be set at $6.3 million by extending the averaged period to include June and July 2012, to reach the end of the true-up period.[297]

3. The difference between the parties is that MIEC claims the Commission should use a normalization period of a long as possible by including all available data, which in this case goes back to April 2007.[298]

4. The purpose of using a normalization to determine the proper amount of expense to include is rates is to find a representative period of time that will most accurately reflect what cost levels are likely to be incurred during the time rates will be in effect.[299]

5. In Ameren Missouri's last rate case, Ameren Missouri and Staff proposed to use 47 months of expense information as the normalization period, going back to April 2007 as the first month for which information was available. In that case, MIEC proposed to use expense information for only 23 months beginning with the start of the test-year and running through the end of the true-up period.[300] In rejecting MIEC's use of a 23-month

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[294] Transcript, Page 1916, Lines 16-21.

[295] Transcript, Pages 1902-1903, Lines 22-25, 1-4.

[296] Meyer Direct, Ex. 510, Page 10, lines 9-13.

[297] Transcript, Page 1903, Lines 12-25.

[298] Meyer Direct, Ex. 511, Page 8, Lines 9-14.

[299] Barnes Rebuttal, Ex. 12, Page 26, Lines 17-20.

[300] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order issued July 13, 2011, Page 21.

normalization period, the Commission indicated a longer period of normalization was likely to be more reliable than a shorter period of normalization.[301]

6. In this case, all parties recommend the use of an appropriately long period for the normalization. MIEC has apparently taken the Commission's statement in the last case to mean that normalization should be measured over as long a period as possible. In this case 64 months of available expense information is nearly the same period as the 60 months used by Staff and Ameren Missouri, although it has a $500,000 impact on the company's cost of service. However, in Ameren Missouri's next rate case, assuming the next case is filed in 15 months, there might be 79 months of available cost information. The case after that might have 94 months of available data. At some point, a principle of using all available data for the normalization period would become too long to be reliable.

7. The 60-month normalization period proposed by Staff and accepted by Ameren Missouri is a reasonable normalization period and the Commission will accept that normalization period to calculate Ameren Missouri's average major storm costs.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

The storm cost base shall be set using a 60-month average of $6.8 million.

15. Storm Assistance Revenues:

A. If the Commission authorizes a two-way storm restoration cost tracker for Ameren Missouri, should storm assistance revenues received from other utilities be included in the tracker or annualized and normalized and included as an offset in revenue requirement?

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[301] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order issued July 13, 2011, Page 22.

B. What amount of storm assistance revenue should be included in the cost of service?

Findings of Fact:

1. Storm assistance revenue is the amount of money Ameren Missouri receives to reimburse it for the labor costs associated with use of its crews for storm restoration work performed for other utilities around the country.[302] While this is not a regular source of income, Ameren Missouri reported receiving such revenue on eleven occasions since July 2005.[303]

2. Staff and MIEC propose that an annualized and normalized storm assistance revenue should be included as an offset to the base amount of storm restoration cost set in the tracker. Ameren Missouri would not use those revenues as an offset to the base amount set in the tracker, but would account for such revenue through the tracker as an offset to the restoration costs incurred by the company from storms in its own territory.[304]

3. The amount of storm assistance revenue Ameren Missouri receives can vary a great deal from year to year. In 2007, 2009, and 2010, the company received no such income, whereas in 2011, it received $2.6 million.[305]

4. Ameren Missouri has no control over such revenue as it depends entirely upon whether mutual assistance requests are received from some other utility.[306]

5. MIEC calculated that the company received $1.6 million in such revenue during the test year. It proposed to normalize that amount over two years to arrive at its

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[302] Wakeman Rebuttal, Ex. 31, Page 5, Lines 18-23.

[303] Meyer Direct, Ex. 510, Page 12, Lines 19-22.

[304] Wakeman Rebuttal, Ex. 31, Page 6, Lines 15-20.

[305] Transcript, Pages 1931-1932 and Ex. 76.

[306] Wakeman Direct, Ex. 30, Page 9, Lines 13-22.

$800,000 offset to revenue requirement for this case.[307]

6. Staff took a different approach to normalizing the amount of storm restoration revenue earned by Ameren Missouri. Staff noted that 2011, which happens to be the test year, contained an unusually high amount of storm restoration revenue. Staff proposed to normalize that level of income by averaging the amount of such income the company received over the five-year period ending July 31, 2012. That normalization resulted in Staff's recommendation to include $581,189 as an offset to the company's revenue requirement.[308]

7. Because this source of revenue is highly variable, Staff's five-year normalization provides a more reasonable estimate of likely future revenues than does the test-year normalization proposed by MIEC, which includes the unusually high revenues experienced in 2011 without acknowledging the earlier years when no such revenue was received.

8. The importance of this issue was diminished when the Commission decided to implement a two-way tracker for storm costs. Ameren Missouri will require the company to include these revenues within the tracker. The only question remaining is whether the $581,189 normalization of that revenue described by Staff should be used to reduce the base level of storm costs included in the tracker.

9. Ameren Missouri proposes that the revenue not be used to reduce the base level of storm costs, and would instead simply credit such revenues against expenses within the tracker. The Commission finds that to be a reasonable solution that will credit ratepayers for that revenue without imposing an economic penalty on the company if those

[307] Meyer Direct, Ex. 510, Page 13, Lines 9-15.

[308] Transcript, Page 1928, Lines 20-25.

revenues are not received.

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

Ameren Missouri shall credit storm assistance revenue as an offset to major storm expenses within the two-way storm cost tracker established in the report and order. Such revenue shall not be used to reduce the base level of storm costs established within that tracker.

16. Vegetation Management and Infrastructure Inspection Tracker:

A. Should the unamortized balance for the regulatory asset associated with the Vegetation Management and Infrastructure Inspection Tracker be adjusted for all amortization through December 31, 2012, and amortized over two years?

B. Should the Vegetation Management and Infrastructure Inspection Tracker be continued?

Findings of Fact:

1. Ameren Missouri's vegetation management and infrastructure inspection expense is closely associated with two Commission rules. Following extensive storm related service outages in 2006, the Commission promulgated new rules designed to compel Missouri's electric utilities to do a better job of maintaining their electric distribution systems. Those rules, entitled Electrical Corporation Infrastructure Standards[309] and Electrical Corporation Vegetation Management Standards and Reporting Requirements,[310] became effective on June 30, 2008.

2. The rules establish specific standards requiring electric utilities to inspect and

[309] Commission Rule 4 CSR 240-23.020.

[310] Commission Rule 4 CSR 240-23.030.

replace old and damaged infrastructure, such as poles and transformers. In addition, electric utilities are required to more aggressively trim tree branches and other vegetation that encroaches on transmission lines. In promulgating the stricter standards, the Commission anticipated utilities would have to spend more money to comply. Therefore, both rules include provisions that allow a utility the means to recover the extra costs it incurs to comply with the requirements of the rule.

3. In an earlier rate case, ER-2008-0318, the Commission allowed Ameren Missouri to recover a set amount in its base rates for vegetation management and infrastructure inspection costs. However, since the rules were new, the Commission found that Ameren Missouri had too little experience to know how much it would need to spend to comply with the vegetation management and infrastructure inspection rules. Because of that uncertainty, the Commission established a two-way tracking mechanism to allow Ameren Missouri to track its vegetation management and infrastructure costs.

4. The order required Ameren Missouri to track actual expenditures around the base level. In any year in which Ameren Missouri spent below that base level, a regulatory liability would be created. In any year in which Ameren Missouri's spending exceeded the base level, a regulatory asset would be created. The regulatory assets and liabilities would be netted against each other and would be considered in a future rate case. The tracking mechanism contained a 10 percent cap so if Ameren Missouri's expenditures exceeded the base level by more than 10 percent it could not defer those costs under the tracking mechanism, but would need to apply for an additional accounting authority order. The Commission's order indicated that the tracking mechanism would operate until new rates

were established in Ameren Missouri's next rate case.[311]

5. The Commission renewed the tracking mechanism in Ameren Missouri's next two rate cases, ER-2010-0036 and ER-2011-0028, finding that Ameren Missouri's costs to comply with the vegetation management and infrastructure inspection rules were still uncertain, as the company had not yet completed a full four/six year vegetation management cycle on its entire system.[312]

6. Ameren Missouri asks that the tracker be continued. Staff does not oppose the continuation of the tracker, but MIEC contends the tracker is no longer necessary and urges the Commission to end it.

7. The other half of this issue concerns what should be done with the regulatory asset that has accumulated under the existing tracker. Ameren Missouri proposes that it be amortized and recovered over two years.[313] Staff argues for a three-year amortization.

8. Ameren Missouri has now been operating under the Commission's vegetation management and infrastructure inspection rules for nearly five years. Ameren Missouri has completed its first four-year cycle for vegetation management work on urban circuits under the requirements of the new rules, however, it will not complete the first six-year cycle of work on rural circuits until December 31, 2013.[314]

9. Ameren Missouri's actual expenditures for vegetation management and

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[311] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase its Annual Revenues for Electric Service*, Report and Order, Case No. ER-2008-0318, January 27, 2009, Pages 48-49.

[312] *In the Matter of Union Electric Company, d/b/a Ameren UE's Tariffs to Increase its Annual Revenues for Electric Service, Report and Order*, File No. ER-2010-0036, May 28, 2010, and *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service,* Report and Order, File No. ER-2011-0028, July 13, 2011.

[313] Weiss Rebuttal, Ex.6, Pages 26-27.

[314] Wakeman Rebuttal, Ex. 31, Page 2, Lines 10-13.

infrastructure inspection have not been extremely volatile over the last three rate cases, but they have varied from base amounts. For example, the base amount allowed in rates in the last rate case was $52.2 million for vegetation management and $7.8 million for infrastructure inspections. The true-up expenditure amount for this case was $54.1 million on vegetation management and $6.2 million on infrastructure inspections.[315]

10. The tracking mechanism works in two directions. That means ratepayers can also benefit when, as was the case for infrastructure inspections in the last year, the company spent less than the established base amount.[316]

11. For the period of March 1, 2011, when rates went into effect in the last rate case, through July 31, 2012, the end of the true-up in this case, Ameren Missouri under-collected a net amount of $2,465,063. That represents a $2,896,420 under-collection for vegetation management, offset by an over-collection of $431,357 for infrastructure inspections.[317] In past Ameren Missouri rate cases the Commission has amortized that net amount over three years for collection from ratepayers and has rolled any unamortized balance from the previous tracker into the new amount so that only one tracker remains. Staff recommends the Commission do so again in this case.[318] Staff's proposed three-year amortization will increase Ameren Missouri's annual revenue requirement by $821,688.[319]

12. The Commission finds Staff's proposed treatment of the existing regulatory asset to be reasonable and consistent with past Commission practice.

Conclusions of Law:

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[315] Meyer Surrebuttal, Ex. 511, Charts at Pages 23-24.

[316] Barnes Rebuttal, Ex. 12, Page 38, Lines 12-13.

[317] Grissum Surrebuttal, Ex. 223, Page 7, Lines 12-17.

[318] Staff Report Revenue Requirement Cost of Service, Ex. 202, Pages 114-115.

[319] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 115, Lines 26-28.

A. Commission Rule 4 CSR 240-23.020 establishes standards requiring electrical corporations, including Ameren Missouri, to inspect its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.020(3)(A) establishes a four-year cycle for inspection of urban infrastructure and a six-year cycle for inspection of rural infrastructure.

B. Commission Rule 4 CSR 240-23.020(4) establishes a procedure by which an electric utility may recover expenses it incurs because of the rule. Specifically, that section states as follows:

> In the event an electrical corporation incurs expenses as a result of this rule in excess of the costs included in current rates, the corporation may submit a request to the commission for accounting authorization to defer recognition and possible recovery of these excess expenses until the effective date of rates resulting from its next general rate case, filed after the effective date of this rule, using a tracking mechanism to record the difference between the actually incurred expenses as a result of this rule and the amount included in the corporation's rates … .

C. Commission Rule 4 CSR 240-23.030 establishes standards requiring electrical corporations, including Ameren Missouri, to trim trees and otherwise manage the growth of vegetation around its transmission and distribution facilities as necessary to provide safe and adequate service to its customers. Specifically, 4 CSR 240-23.030(9) establishes a four-year cycle for vegetation management of urban infrastructure and a six-year cycle for vegetation management of rural infrastructure. The vegetation management rule also includes a provision that allows Ameren Missouri to ask the Commission for authority to accumulate and recover its cost of compliance in its next rate case.[320]

Decision:

Although Ameren Missouri now has more experience in complying with the rules, it

[320] Commission Rule 4 CSR 240-23.030(10).

still has not completed a single cycle on inspections for its rural circuits. The Commission finds that because of that remaining uncertainty the tracker is still needed. However, as the Commission has indicated in previous rate cases, it does not intend for this tracker to become permanent. For this case, the Commission will renew the existing vegetation management and infrastructure inspection tracker.

Ameren Missouri shall establish a tracking mechanism to track future vegetation management and infrastructure costs. That tracking mechanism shall include a base level of $60.3 million ($54.1 million vegetation management + $6.2 million infrastructure = $60.3 million). Actual expenditures shall be tracked around that base level with the creation of a regulatory liability in any year where Ameren Missouri spends less than the base amount and a regulatory asset in any year where Ameren Missouri spends more than the base amount. The assets and liabilities shall be netted against each other and shall be considered in Ameren Missouri's next rate case. The tracking mechanism shall contain a ten percent cap so expenditures exceeding the base level by more than ten percent shall not be deferred under the tracking mechanism. If Ameren Missouri's vegetation management and infrastructure inspection costs exceed the ten percent cap, it may request additional accounting authority from the Commission in a separate proceeding. The tracking mechanism shall operate until the Commission establishes new rates in Ameren Missouri's next rate case.

The net under-collection of $2,465,063 under the tracker established in Case No. ER-2011-0028 shall be combined with any unamortized amount related to the tracker established in Case No. ER-2010-0036 and then amortized over a three-year period so that only one tracker remains.

17. Rate Design:

A. What should the residential class customer charge be?

B. What should the small general service class customer charge be (single-phase and three-phase)?

Findings of Fact:

1. After the Commission determines the amount of rate increase that is necessary, it must decide how that rate increase will be spread among Ameren Missouri's customer classes. The basic principle guiding that decision is that the customer class that causes a cost should pay that cost.

2. The Commission has approved a stipulation and agreement that resolves most of the rate design issues. One issue that remains unresolved is amount of Ameren Missouri's customer charge for its residential and small general services customer classes.

3. The customer charge is the set amount on every customer's bill that must be paid even if the customer uses no electricity.

4. Customer-related costs are the minimum costs necessary to make electric service available to the customer, regardless of how much electricity the customer uses.[321] Customer-related costs are generally recovered through the customer charge while other costs are recovered through volumetric rates that vary with the amount of electricity used.

5. It is important to remember that determining an appropriate customer charge is a question of rate design, not a question of the company's revenue requirement. That means any increase in the company's customer charge would be accompanied by a decrease in volumetric rates so that, in theory, the company recovers the same amount of

[321] Cooper Direct, Ex. 36, Page 9, Lines 20-23.

revenue.

6. In actual practice, because the amount collected from volumetric rates varies with the amount of electricity used, the company will collect less money from volumetric rates when customers use less electricity. Thus, for example, in a cool summer, when customers are using less air conditioning, the company runs the risk of collecting less revenue. For that reason, electric utilities prefer to lessen risk by collecting more of its charges through the fixed customer charge.

7. Ameren Missouri's current customer charge for residential customers is set at $8.00 per month. For the small general service rate, the current customer charge is $9.74 per month for single-phase service and $19.49 for three-phase service. Ameren Missouri proposes to increase those customer charges to $12.00 per month for residential customers. It would increase the customer charge to $14.61 for single-phase customers and $29.24 for three-phase customers in the small general service class.[322]

8. Staff would slightly increase the residential customer charges to $9.00,[323] but NRDC, Public Counsel, and AARP/Consumers Council oppose any increase in the customer charges.

9. Ameren Missouri, Staff, and Public Counsel all submitted cost of service studies that support their positions regarding the customer charges. Ameren Missouri's study indicates a customer charge of $20.00 would be appropriate for the residential class, although the company limited its request to $12.00.[324] Staff's study indicated the correct amount for the residential customer charge would be $8.97, which Staff rounded to

[322] Cooper Direct, Ex. 36, Pages 21-22, Lines 16-25, 1-5. The small general services class includes small commercial businesses.

[323] Staff's Rate Design and Class Cost of Service Report, Ex. 205, Page 22, Lines 17-18.

[324] Cooper Direct, Ex. 36, Page 21, Lines 16-21.

$9.00.[325] Public Counsel's study indicated the correct customer charge would be under $6.00 for the residential class and about $10.65 for the small general services class. Public Counsel recommends the current customer charges be unchanged.[326]

10. The chief difference between the various cost of service studies is the amount of distribution plant that each expert assigned to customer-related usage. Ameren Missouri's study tends to overstate the amount of the distribution system that would appropriately be allocated to customer-related usage.[327] On that basis, for this purpose, the Commission finds the cost of service studies submitted by Staff and Public Counsel to be more reliable.

11. Regardless of their details, the Commission is not bound to set the customer charges based solely on the details of the cost of service studies. The Commission must also consider the public policy implications of changing the existing customer charges. There are strong public policy considerations in favor of not increasing the customer charges.

12. Recently, in File Number EO-2012-0142, the Commission approved Ameren Missouri's first energy efficiency plan under the Missouri Energy Efficiency Investment Act. (MEEIA). Shifting customer costs from variable volumetric rates, which a customer can reduce through energy efficiency efforts, to fixed customer charges, that cannot be reduced through energy efficiency efforts, will tend to reduce a customer's incentive to save electricity.[328]

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[325] Transcript, Page 2148, Lines 20-24.

[326] Meisenheimer Direct, Ex. 403, Page 17, Lines 11-16.

[327] Transcript, Page 2067-2071 and Ex. 410.

[328] Morgan Rebuttal, Ex. 650, Page 7, Lines 11-15.

13. Admittedly, the effect on payback periods associated with energy efficiency efforts would be small,[329] but increasing customer charges at this time would send exactly to wrong message to customers that both the company and the Commission are encouraging to increase efforts to conserve electricity.

14. The Commission finds that the existing customer charges for the residential and small general services classes should not be increased.

Conclusions of Law:

A. The Missouri Energy Efficiency Investment Act is codified at Section 393.1075, RSMo (Supp. 2011).

Decision:

Ameren Missouri's customer charges for residential and small general services customers shall remain unchanged.

B. Should the Commission address declining block rate design either by opening a separate docket on rate design or by ordering Ameren to address the rate design in its next general rate case?

Findings of Fact:

1. Ameren Missouri's current residential rate design includes a declining block element for the winter billing season only. That means that during the winter the rate paid for electricity goes down as more electricity is used. That declining block design benefits customer who use a lot of electricity in the winter, chiefly customers who use electricity for space heating in their home. That design also benefits the electric utility in that it makes electricity more competitive with other fuel sources for space heating and allows the company to sell more electricity during off-peak times. The downside of a declining block

[329] Davis Surrebuttal, Ex. 40, Page 3, Lines 12-19.

rate design is that it may not send a proper price signal and tends to encourage the excessive consumption of electricity.[330]

2. In Ameren Missouri's last rate case, the Commission decided not to eliminate Ameren Missouri's declining block rates because not enough evidence was presented in that case to justify such a modification. At that time, the Commission invited the parties to present more evidence in the next rate case.[331]

3. The NRDC raised the issue of declining block rates again in this case through the testimony of Pamela Morgan. Ms. Morgan's testimony acknowledged the complexity of the issue and indicated much of the information needed to properly evaluate the continued use of declining block rates is controlled by the utility. She recommends the Commission open a new, separate investigative case to address this issue.[332]

4. Ameren Missouri agreed that if the Commission wished to investigate declining block rates it should do so in the context of a broader investigative case that could involve all Missouri's regulated electric utilities and all interested stakeholders, not just those who have intervened in this case.[333]

Conclusions of Law:

There are no additional conclusions of law for this issue.

Decision:

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[330] Morgan Rebuttal, Ex. 650, Page 17, Lines 5-7.

[331] *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase its Annual Revenues for Electric Service*, File No. ER-2011-0028, Report and Order, issued July 13, 2011, Page 124.

[332] Morgan Rebuttal, Ex. 650, Page 18, Lines 10-13.

[333] Cooper Surrebuttal, Ex. 38, Pages 14-15, Lines 14-23, 1-5.

The Commission finds that the issue of whether declining block rates should be eliminated or modified should be addressed in an investigative case outside the confines of this rate case. The Commission will open such a case by separate order.

18. Should the Commission make the Findings Required by the Energy Independence and Security Act of 2007 (EISA).

Findings of Fact:

1. In 2007, the United States Congress passed the Energy Independence and Security Act of 2007 (EISA). EISA amended the Public Utility Regulatory Policies Act of 1978 (PURPA) to establish four additional PURPA standards with which each electric utility must comply. Those four new standards relate to 1) Integrated Resource Planning (IRP), 2) Rate Design Modifications to Promote Energy Efficiency Investments, 3) Consideration of Smart Grid Investments, and 4) Smart Grid Information. EISA requires the Commission to consider in a general rate case for each individual electric utility whether it is appropriate to implement those standards to encourage conservation of electric energy, efficiency in the use of facilities and resources by electric utilities, and equitable rates to consumers of electricity. [334]

2. In its direct testimony, Staff examined Ameren Missouri's compliance with each of the EISA standards and concluded that the Commission should make a specific finding that the Commission and the Company do not need to do anything further to comply with each of those standards. No party responded to Staff's testimony, either in testimony or by argument.

[334] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 176, Lines 9-26.

3. PURPA section 111(d)(16)[335] requires state commissions to consider integration of energy resources into utility, state and regional plans and to adopt policies to establish cost-effective energy efficiency as a priority resource.[336]

4. The Commission has complied with that standard by revising its integrated resource planning rule to require the screening and integration of cost-effective energy efficiency resources as part of the resource planning process.

5. PURPA section 111(d)(17)[337] requires state commissions to consider various means to encourage energy efficiency.[338]

6. The Commission has complied with that standard by implementing the requirements of the Missouri Energy Efficiency Investment Act (MEEIA) in this case and through a stipulation and agreement resolving Ameren Missouri's MEEIA implementation filing in File No. EO-2012-0142.[339]

7. PURPA section 111(d)(18)[340] requires state commissions to consider requiring electric utilities to consider investments in smart grid technology before investing in non-advanced grid technologies. PURPA section 111(d)(19)[341] requires state commissions to make available information about smart grid technology.

8. The Commission has taken steps to encourage electric utilities to become

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[335] This section is codified at 16 U.S.C.A. Section 2621(d)(16).

[336] Staff Report Revenue Requirement Cost of Service, Ex. 202, Page 178, Lines 20-26.

[337] This section is codified at 16 U.S.C.A. Section 2621(d)(17).

[338] Staff Report Revenue Requirement Cost of Service, Ex. 202, Pages 179-180, Lines 25-28, 1-5.

[339] Staff Report Revenue Requirement Cost of Service, Ex. 202, Pages 180-181.

[340] This section is codified at 16 U.S.C.A. Section 2621(d)(18).

[341] This section is codified at 16 U.S.C.A. Section 2621(d)(19).

familiar with and to use smart grid technology.[342]

Conclusions of Law:

A. The purpose of PURPA is to encourage

(1) conservation of energy supplied by electric utilities;
(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and
(3) equitable rates to electric consumers.[343]

B. The four new PURPA standards created by the Energy Independence and Security Act of 2007 (EISA) are:

(16) Integrated resource planning
Each electric utility shall—
(A) integrate energy efficiency resources into utility, State, and regional plans; and
(B) adopt policies establishing cost-effective energy efficiency as a priority resource.
(17) Rate design modifications to promote energy efficiency investments
(A) In general
The rates allowed to be charged by any electric utility shall—
(i) align utility incentives with the delivery of cost-effective energy efficiency; and
(ii) promote energy efficiency investments.
(B) Policy options
In complying with subparagraph (A) each State regulatory authority and each nonregulated utility shall consider—
(i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
(ii) providing utility incentives for the successful management of energy efficiency programs;
(iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
(iv) adopting rate designs that encourage energy efficiency for each customer class;
(v) allowing timely recovery of energy efficiency-related costs; and
(vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements,

[342] Staff Report Revenue Requirement Cost of Service, Ex. 202, Pages 181-182.

[343] 16 U.S.C.A. Section 2611.

and educating homeowners about all existing Federal and State incentives, including the availability of low-cost loans, that make energy efficiency improvements more affordable.

(18) Consideration of smart grid investments

(A) In general

Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—

(i) total costs;
(ii) cost-effectiveness;
(iii) improved reliability;
(iv) security;
(v) system performance; and
(vi) societal benefit.

(B) Rate recovery

Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on capital expenditures of the electric utility for the deployment of the qualified smart grid system.

(C) Obsolete equipment

Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(19) Smart Grid information

(A) Standard

All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B)

(B) Information

Information provided under this section, to the extent practicable, shall include:

(i) Prices

Purchasers and other interested persons shall be provided with information on—

(I) time-based electricity prices in the wholesale electricity market; and
(II) time-based electricity retail prices or rates that are available to the purchasers.

(ii) Usage

> Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them
> (iii) Intervals and projections
> Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
> (iv) Sources
> Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
> (C) Access
> Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.[344]

Decision:

While not specifically making a determination to implement PURPA section 111(d)(16), the Commission has promulgated rules to address the principles of that section. Therefore, nothing remains for the Commission to determine in response to PURPA section 111(d)(16).

No further determination by the Commission is needed in response to PURPA section 111(d)(17).

The Commission has established the appropriate avenues for monitoring smart grid activities and no greater ongoing activity is needed in response to PURPA sections 111(d)(18) and 111(d)(19).

Application for Waiver or Variance of 4 CSR 240-20.100(6)(A)16 for Maryland Heights

[344] 16 U.S.C.A. 2621(d)(16)-(19).

Landfill Gas Facility:

On December 7, 2012, Ameren Missouri filed an application asking the Commission for a waiver or variance from Commission Rule 4 CSR 240-20.100(6)(A)16 concerning the treatment of landfill gas purchased from the landfill owner for operation of the company's Maryland Heights landfill gas facility. That regulation provides that RES compliance costs may only be recovered through a RESRAM or as part of a general rate proceeding. Such costs may not be recovered through a fuel adjustment clause.

In recent days, a question has arisen as to whether some or all of the cost of landfill gas purchased from the owner of the landfill and used to operate the company's Maryland Heights landfill gas facility is a RES compliance cost. The parties to this case assumed that the cost of such gas would be recovered through the fuel adjustment clause. The treatment of these landfill gas costs would have a very small impact on this case, but recalculating many of the agreed upon particulars of the fuel adjustment clause at this late date would be difficult.

Because of those difficulties, Ameren Missouri asks the Commission to grant it a waiver from the rule provision to allow it to continue to flow the cost of the landfill gas through its fuel adjustment clause. Ameren Missouri agrees that in the future it will work with Staff and other interested parties to resolve the issues surrounding the landfill gas. The application represents that Staff supports the company's request for waiver of the rule provision. It also represents that Ameren Missouri has contacted all other parties to this case and that none of them object to the application.

On December 7, the Commission issued an order establishing December 11 as the deadline for any interested party to respond to Ameren Missouri's application. Staff

responded on December 11, indicating its support for the requested waiver for purposes of this case only. No other response has been filed.

The Commission finds Ameren Missouri's application to be reasonable and will waive application of the rule provision as requested.

THE COMMISSION ORDERS THAT:

1. The tariff sheets filed by Union Electric Company, d/b/a Ameren Missouri on February 3, 2012, and assigned tariff number YE-2012-0370, are rejected.

2. Union Electric Company, d/b/a Ameren Missouri is authorized to file a tariff sufficient to recover revenues as determined by the Commission in this order. Ameren Missouri shall file its compliance tariff no later than December 18, 2012.

3. Union Electric Company, d/b/a Ameren Missouri shall file the information required by Section 393.275.1, RSMo 2000, and Commission Rule 4 CSR 240-10.060 no later than January 14, 2013.

4. For purpose of the rates established in this case, Ameren Missouri is granted a waiver of Commission Rule 4 CSR 240-20.100(6)(A)16 as regards the purchase of landfill gas for the operation of the Maryland Heights Landfill Gas Facility.

5. This report and order shall become effective on December 22, 2012.

BY THE COMMISSION

(S E A L)

Steven C. Reed
Secretary

Gunn, Chm., concurs with concurring opinion attached;
Jarrett, C., concurs with concurring opinion to follow;
Stoll, C., concurs; and
Kenney, C., dissents, with dissenting opinion to follow.
and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 12th day of December, 2012.