BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

Staff's Reply Brief

Respectfully submitted,

KEVIN A. THOMPSON, Mo Bar 36288
Chief Staff Counsel

STEVEN DOTTHEIM, Mo Bar 29149
Chief Deputy Staff Counsel

JENNIFER HERNANDEZ, Mo Bar 59814
Senior Staff Counsel

MEGHAN E. McCLOWRY, Mo Bar 63070
Associate Staff Counsel

AMY E. MOORE, Mo Bar 61759
Assistant Staff Counsel

Attorneys for the Staff of the Missouri Public Service Commission.

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STAFF'S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for *Staff's Reply Brief,* states as follows:

INTRODUCTION

The purpose of a reply brief is to respond to issues and arguments raised in the brief previously filed by one's opponent.[1] Of course, the Staff does not actually have an opponent in this general rate case. The Staff is the investigatory arm of the Commission. Its duty is to gather, analyze and present facts to the Commission, together with its recommendations based on its analyses. As the Commission's *2011 Annual Report* states:

> The Commission is assisted by a staff of professionals in the fields of accounting, consumer affairs, economics, engineering, finance, law and management. Duties range from helping individual consumers with complaints to investigating multi-million dollar utility rate requests. The staff participates as a party in all cases before the Commission, conducting audits of the books and records of utilities and making recommendations to the PSC regarding what type of rate increase, if any, should be granted. PSC staff recommendations, like those filed by other parties to a proceeding, are evaluated by the Commissioners in reaching a decision in a complaint case or rate case.[2]

In formulating its recommendations, Staff looks to (1) relevant prior decisions of the

[1] ***Black's Law Dictionary,*** 186 (7th ed., 1999).

[2] ***2011 Annual Report, Missouri Public Service Commission,*** p. 10 (available at www.psc.mo.gov).

Commission, (2) best practices and (3) the public interest.

Staff now responds to the issues and arguments raised by the other parties to this proceeding, particularly Ameren Missouri, to the extent that they are contrary to Staff's recommendations and a response is deemed helpful to the Commission.

ARGUMENT

1. Regulatory Policy and Economic Considerations:

Ameren Missouri's theme with respect to regulatory policy and economic considerations is that Missouri's regulatory paradigm is broken and, despite its best efforts, the Company just cannot earn a fair return.[3] Therefore, Ameren Missouri urges the Commission to take action to assist the Company to earn its authorized return on equity ("ROE") and to prevent any further earnings attrition.[4] Staff replies that the regulatory paradigm in Missouri is not broken and doesn't need fixing.

The record contains ample evidence of the true state of affairs. Ameren Missouri is a mature electric utility that serves a well-developed service area.[5] The cash flows resulting from the rapid load growth characteristic of former decades are finished and may not come again.[6] The Company's system is aging and in constant need of repair and replacement; these are expenditures that do not result in new revenues.[7] Additional costs result from environmental and other government mandates; these, too,

[3] *Ameren Missouri's Initial Brief,* pp. 5-9.

[4] *Id.,* p. 8.

[5] *Id.,* p. 4.

[6] *Id.*

[7] *Id.,* p. 3.

do not result in revenue growth.[8] A poorly-performing merchant generation affiliate continues to drag down the financials for Ameren Missouri and its parent.[9] It is these facts that account for Ameren Missouri's purported inability to earn its authorized ROE, not any flaw in Missouri's regulatory paradigm.

Nor is it at all clear that Ameren Missouri is in fact unable to earn its authorized ROE. At the hearing, Staff presented a surveillance report, prepared and filed by the Company, that shows its earned ROE exceeded its authorized ROE for the twelve months ended June 30, 2012.[10] This exhibit elicited significant interest from the bench and significant hearing time was devoted to an effort to reconcile it to the charts presented by Company CEO Warner Baxter. Four classes of adjustments were identified as necessary to reconcile the two:[11]

- Taum Sauk rebuild costs and associated income tax.[12] All parties agree that these "below the line" costs must be removed as directed by the Commission in its decision in Ameren Missouri's last rate case, ER-2011-0036. This adjustment *increases* Ameren Missouri's earned ROE.
- Entergy refund.[13] Ameren Missouri asserts that this one-time cash award must be removed because it artificially inflates the Company's ROE. Staff disagrees. After all, Ameren Missouri has not removed the Entergy payments

[8] *Id.,* p. 2.

[9] *Staff's Revenue Requirement Cost-of-Service Report,* pp. 22-24 ("*RR Report*").

[10] Ex. 237.

[11] *See Staff's Initial Brief,* p. 13 n. 53.

[12] Tr. 17:368, 372, 378 (Weiss).

[13] Tr. 17:380-381 (Weiss).

that were later refunded from its charts and graphs. The reality is that one-time costs and revenues occur every day; to remove the Entergy refund is to re-write history and present it as Ameren Missouri wishes it had been rather than as it actually was. Removing the Entergy refund would *decrease* Ameren Missouri's earned ROE.

- Weather normalization.[14] Ameren Missouri asserts that, because the authorized ROE is based on weather-normalized data, the earned ROE should also be weather-normalized to make it truly comparable. Again, Staff disagrees. The authorized ROE is based on weather-normalized data because a rate case is a *predictive* exercise and no one knows what the actual weather will be when the new rates are in effect. The earned ROE, by contrast, is a historical measure of Ameren Missouri's actual performance. To normalize data viewed for historical purposes would be to mis-state history. The weather was what it was for historical purposes. Weather-normalization would *decrease* Ameren Missouri's earned ROE.
- Other disallowed charges.[15] Staff pointed out at the hearing that the earned ROE should, in fact, be *increased* to reflect the removal of other disallowed costs, such as incentive compensation based on increased share value, institutional advertising, lobbying, and other "below the line" items. This adjustment is like the Taum Sauk adjustment discussed above but not like the Entergy refund and weather-normalization adjustments. It doesn't

[14] Tr. 17:382 (Weiss).

[15] *Staff's Initial Brief,* p. 13 n. 53.

misrepresent history, rather, it removes certain "below the line" costs to ensure that they are not inappropriately charged to ratepayers. This adjustment *increases* Ameren Missouri's earned ROE.

When Ameren Missouri's earned ROE for the twelve months ended June 30, 2012, is understood in the light of the proper adjustments -- and *only* the proper adjustments, both of which *increase* the earned ROE figure -- it is certain and undeniable that the Company's actual performance for the twelve-months ended June 30, 2012, did in fact ***exceed its authorized ROE.*** The impact of this point is significant. It means that the Missouri regulatory paradigm is *not* broken; it means that Ameren Missouri is *not* chronically under-earning; it means that the Commission should discount all of the poor-mouthing by Mr. Baxter and other Company witnesses and *reject* their strident demands that the Commission re-write the regulatory compact in the Company's favor.

The reality is that Ameren Missouri and other regulated monopolies are doing comparatively well in the still-sluggish American economy. Just today, for example, the St. Louis Post-Dispatch announced that Ameren had posted a third-quarter profit of $374 million ($1.54 per share), compared to last year's third-quarter profit of $285 million ($1.18 per share), an improvement of 31%.[16] Utility shares are sought after as a safe-harbor investment and utility bond yields are down for the same reason.[17] Capital has never been cheaper and, while bankers are more cautious, they can't make money if they don't make loans. There is absolutely no evidence at all of any degree of

[16] News article distributed on Nov. 9, 2012. 1.54 / 1.18 = 1.31.

[17] *RR Report,* pp. 18-20.

financial distress at Ameren Missouri or that it has been unable to access capital as needed on satisfactory terms.

The Commission needs to understand that the Company's entire case is predicated on a cynical effort to improve its bottom line to the detriment of its ratepayers. With a proper perspective on this utility's performance, outlook and underlying motive, the Commission should reject this latest collection of proposed "regulatory ratchets," all of which tip the balance farther to the Company's favor. There is no need for an artificially-inflated authorized ROE; no need for Plant-in-Service Accounting ("PISA"); no need for a Storm Restoration Cost Tracker, a Transmission Tracker, or a Property Tax Tracker. Frankly, there may not even be any justification for a Fuel Adjustment Clause ("FAC") on the facts developed in this record.[18]

Staff notes that a persistent, underlying thread throughout this case is Ameren Missouri's effort to find additional revenue wherever it can. Thus, the Company now seeks a return on undelivered coal for the first time in 100 years. Its PISA proposal is also a novel take on an issue that has existed as long as there has been cost-of-service ratemaking. Ameren Missouri inflates its Cash Working Capital requirement; seeks double recovery of its VS-11 separation program costs; and chooses the methodology that results in the highest number wherever it has a choice. Thus, for property tax expense, Ameren Missouri argues for a projected number that is larger than the historical figure, but for rate case expense, it rejects the projected figure in favor of the

[18] It is not Staff's position that Ameren Missouri's FAC should not be reauthorized. However, given that the FAC is intended to protect the utility from unmanageable levels of fuel and purchased power price volatility and given that the record shows that ameren Missouri is not presently exposed to unmanageable levels of fuel price volatility and is a net power seller rather than a buyer, a legitimate question exists as to the justification for its FAC. Staff will continue to review this issue in preparation for Ameren Missouri's next general rate case.

higher historical figure. The constant theme is "more money, more money, still more money." Nowhere is this more apparent than in the area of cost of capital. All three experts used similar methods, similar data, and reached similar results; but in every instance where professional judgment came into play, Company witness Robert Hevert chose the alternative that resulted in a higher number.

A final observation. The Company pointed out repeatedly in its testimony and its brief that it would be disinclined to make further investments in Missouri if satisfactory results were not forthcoming from this Commission. A few examples:

- "[I]n this case, the Company is asking the Commission to adopt the major storm cost tracker and Plant-in-Service Accounting . . . to mitigate the disincentive that currently exists for the Company to continue to invest in its system[.]"[19]

- "Only if the Commission allows the Company to fully recover its prudently incurred costs, authorizes a reasonable return on equity, and takes steps to mitigate the excessive regulatory lag that the Company is facing will the Company have a chance to actually earn its authorized return, and an incentive to continue to proactively invest in its system for the benefit of its customers."[20]

- "This systematic inability of utilities to recover the full cost of their investment in plant * * * creates a strong financial disincentive for utilities to invest in their systems during a period when additional investment is most needed to replace aging infrastructure to maintain or improve reliability. Under the current framework, the more a utility invests the more of its costs it fails to recover. In the face of this problem, utility executives ask themselves two questions: 1) How little can I invest in my system while still maintaining safe and adequate service? and 2) How quickly can I file another rate case to stop the losses I am experiencing from the plant investment that was absolutely necessary?"[21]

These statements raise interesting questions. The Company's obligation to

[19] *Ameren Missouri's Initial Brief,* p. 8.

[20] *Id.,* pp. 8-9.

[21] *Id.,* pp. 38-39.

continue to serve its customers with safe and adequate service at just and reasonable rates is a matter of statute; the Company has no discretion in maintaining this level of service.[22] If necessary, the Commission can compel capital investment to maintain safe and adequate service by the Company.[23] So, just what is the level of service that is in jeopardy? Something better than safe and adequate service?[24] Should ratepayers be required to pay for better service than the statutory minimum? In fact, within the context of our American concept of Due Process, *can* the captive ratepayers of a monopoly utility be compelled to pay for better service than the statutory minimum? Looking at Ameren Missouri's statement in a different way, Staff suggests that it is at least impolitic for the Company to hold the government and people of Missouri hostage by threatening to withhold further investment if it does not get its way -- but perhaps that's not what the Company meant.

As in its initial post-hearing brief, Staff urges the Commission to set just and reasonable rates for Ameren Missouri after due consideration of all relevant factors, sufficient to cover the cost of the service it provides to its customers and to allow a reasonable opportunity to its shareholders to earn a fair return on their investment, by granting an increase in revenue requirement of $210 million on an annual basis and resolving all contested issues herein as proposed by the Staff.[25]

[22] § 393.130.1, RSMo.

[23] §§ 393.140, 393.270.2, RSMo.

[24] Ameren Missouri has nowhere admitted that its services are less than safe and adequate.

[25] Per Staff's True-up/Settlement Reconciliation filed in EFIS on October 12, 2012, Item 363.

2. Cash Working Capital ("CWC"):

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?

Cash Working Capital ("CWC") is an issue that betrays Ameren Missouri's quest for increased revenues. CWC is the cash that Ameren Missouri needs to have on hand to operate. The correct amount is readily calculated via a Lead-Lag Study. Staff and the Company are at odds over the length of the collection lag; that is, the average length of time it takes ratepayers to pay their electric bills. Staff's position would reduce the revenue requirement by $5.8 million.

Abandoning a calculation method to which the Company had subscribed for a generation,[26] Ameren Missouri's highly-paid consultant Michael Adams sponsored a study suggesting that the collection lag is actually 28.75 days,[27] which is significantly longer than anyone had ever suspected before.[28] Mr. Adams' new lag figure will cost the ratepayers nearly six million dollars more per year.[29] Adams propped up his results with two further studies, one resulting in an even longer lag time of 32.72 and the other supporting a shorter lag time of 26.02. The point of this exercise, in fact, was simply to make the Company's original proposal look reasonable, even modest. Concerns voiced by Staff expert witness Boateng and MIEC expert witness Meyer are blithely dismissed

[26] Tr. 18:456.

[27] Tr. 18:454. Mr. Adams' rate is $500 per hour.

[28] Staff proposed 21.11 as it had in Ameren Missouri's last rate case; MIEC proposed 21.01.

[29] Ex. 409, Staff's True-up Reconciliation, row 8.

by Ameren Missouri as "nothing more than rank speculation."[30]

Let's examine the Company's bombastic pronouncement in detail. Ameren Missouri asserts that a point made by both Staff and MIEC attorneys in their opening statements "was not supported by the actual facts."[31] The point in question is that Adams' collection lag was inflated, in part, by its inclusion of customers who never pay their bills at all.[32] Staff and MIEC were wrong in this assertion, we are told, because "Mr. Adams made clear in his direct testimony and in cross-examination at the hearing, he had, in fact, made an allowance or adjustment for uncollectible revenues when he calculated collection lag."[33] The truth of the assertions made by the Staff and MIEC attorneys is readily apparent from the very different nature of the data relied on by Mr. Adams on the one hand and Messrs Boateng and Meyer on the other. Adams relied on Ameren Missouri's Accounts Receivable Breakdown Report ("ARBR") and Boateng and Meyer relied on the Company's CURST246 Report. The former is a report of amounts of money owed to Ameren Missouri by its customers; the latter is a report of amounts paid to Ameren Missouri by its customers. Customers who never pay don't make it in to the CURST246 Report, while Adams had to try to remove the non-payers from the ARBR by various manipulations.[34] Or did he?

A passage in Mr. Adams' rebuttal testimony is exactly on point and is intriguing:

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[30] *Ameren Missouri's Initial Brief,* p. 110. The Company also sought, but not intelligibly, to discredit Mr. Boateng for "parroting" Staff's previous CWC witness, Lisa Ferguson, and adapting her testimony for use in this case. *Ameren Missouri's Initial Brief,* p. 107. Staff is uncertain of the thrust of this accusation.

[31] *Ameren Missouri's Initial Brief,* p. 106.

[32] *Id.*

[33] *Id.,* pp. 106-107.

[34] Tr. 18:452. Adams admitted that he had no idea whether his adjustment was accurate. Tr. 18:458.

> Second, given that the [CURST246] report only presented information regarding payments made, the report would obviously have produced a lower collection lag. Those receivables that remain unpaid would not be reflected in the CURST246 report. Therefore, to the extent that certain accounts receivable remain uncollected by the Company and they progress to the 30+, 60+, 90+, or 120+ days outstanding, such receivables would be excluded from Staff's calculation of the collection lag.[35]

In this passage, Mr. Adams explains that the CURST246 Report is unsuitable to use to establish the collection lag *precisely because it excludes accounts that were never paid.* In other words, Adams considers the ARBR superior for the very reason that Boateng and Meyer condemn it, because its use results in an inflated collection lag. Thus, the reality is that the opening statements of the Staff and MIEC attorneys were exactly correct, as is proven by Mr. Adams' admission set out above.

The rest of Ameren Missouri's arguments are equally fatuous. The Commission should reject Ameren Missouri's contrived and inflated collection lag. Michael Adams is a successful and highly-paid consultant precisely because he delivers the goods for his clients: impressive studies that support more money from the ratepayers. The record shows that nothing has changed from Ameren Missouri's last rate case *except* the collection lag calculation methodology the Company now sponsors.[36] Therefore, the collection lag determined by the Commission shouldn't change, either. The Commission is authorized to believe some, all or none of the testimony of any witness.[37] Staff urges the Commission to find Michael Adams to be not credible and to reject his

[35] *Adams Rebuttal,* p. 10, lines 12-17.

[36] Tr. 18:460.

[37] ***St. ex rel. GS Technologies Operating Co., Inc. v. PSC,*** 116 S.W.3d 680, 690 (Mo. App., W.D. 2003); ***St. ex rel. Associated Natural Gas Co. v. PSC,*** 37 S.W.3d 287, 294 (Mo. App., W.D. 2000); ***St. ex rel. Associated Natural Gas Co. v. PSC,*** 706 S.W.2d 870, 880 (Mo. App., W.D.1985).

inflated collection lag recommendation.

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

Staff agrees with Ameren Missouri on Issue 2.B.

C. What is the proper calculation of the expense lag for Gross Receipts tax?

Staff agrees with Ameren Missouri on Issue 2.C.

Kevin A. Thompson

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

Ameren Missouri's Plant-in-Service Accounting ("PISA") proposal is another example of the Company's frantic attempt to squeeze still more money out of the existing customers for the existing level of service. In that way it is similar to the Storm Restoration Cost Tracker, the Transmission Tracker and the belatedly-appearing Property Tax Tracker also proposed by Ameren Missouri in this case. The PISA idea is unprecedented; it would make the construction accounting regimen that is occasionally established for major construction projects a permanent way of life.

Whatever PISA may be, it is *not* traditional cost-of-service ratemaking and Staff opposes it for that reason. It's another manifestation of Ameren Missouri's unproven theory that the regulatory paradigm in Missouri is broken. Broken, how? Because this private corporation doesn't earn the sort of returns its owners and executives wish that it did? That would be a very self-serving standard.

Fortunately, there are objective measures that show that Missouri's regulatory paradigm is not broken at all:

- First, the Company's condition is excellent. As Ameren Missouri itself points out, its rates are 25% below the national average;[38] reliability has improved 27% since 2006;[39] sulfur dioxide emissions have been reduced by 27% since 2006;[40] it has reduced its non-fuel expenditures by $300 million annually since 2008;[41] its coal-fired generating plants win prizes[42] and its nuclear plant has run for two cycles without an unscheduled outage, which is evidently "extraordinary."[43] These performance indicators do not reflect a company struggling to make it in a "broken" regulatory milieu.
- Second, Ameren Missouri and its parent have investment-grade credit ratings. Ameren Missouri's Moody's, S&P and Fitch corporate credit ratings are Baa2, BBB-, and BBB+, respectively; while parent Ameren Corporation's Moody's, S&P and Fitch credit ratings are Baa3, BBB-, and BBB, respectively.[44] Ameren Missouri's business risk profile is "excellent," its financial risk is "significant," and its regulatory risk is "decreasing."[45] It has "credit-supportive trackers, including a fuel adjustment clause, pension and other postemployment benefit trackers, and

[38] *Ameren Missouri's Initial Brief,* p. 1.

[39] *Id.,* p. 2.

[40] *Id.*

[41] *Id.,* p. 1.

[42] *Id.,* pp. 2-3.

[43] *Id.,* p. 3.

[44] *Staff's Revenue Requirement Cost-of-Service Report,* p. 22 ("*RR Report*").

[45] *Gorman Dir.,* p. 9 (*quoting Standard & Poor's Ratings Direct:* "Ameren Missouri," March 16, 2012).

a cost tracker for vegetation management and infrastructure inspections."[46] Moody's notes that "cash flow coverage metrics . . . have been strong for its rating over the last two years."[47] These quotes don't seem to describe a "broken" regulatory regime.

- Third, regulated electric utilities in general are doing very well. MIEC expert witness Michael Gorman testified, "I find the credit rating outlook of the [electric utility] industry to be strong and supportive of the industry's financial integrity, and electric utilities' stocks have exhibited strong price performance over the last several years."[48] Standard & Poor's stated, "[t]he U.S. electric utility sector performed well through 2011, and found it easier to access the capital markets than did most other corporate issuers."[49] Fitch's states "[t]he sector benefits from low interest rates, modest inflationary pressures, open capital markets, and low natural gas and power prices. Fitch expects these conditions to persist into 2013."[50] Utility stocks outperformed the market and posted a positive 20% gain in 2011.[51]

All of these indicators suggest that Ameren Missouri is doing very well indeed in Missouri's so-called "broken" regulatory environment. An old saw has it, "if it ain't broke, don't fix it." Utility regulation in Missouri "ain't broke" and doesn't need to be fixed. For

[46] *Id.*

[47] *Id.* (*quoting Moody's Investors Service Credit Opinion:* "Union Electric Company," August 12, 2011).

[48] *Id.,* p. 6.

[49] *Id. (quoting Standard & Poor's Ratings Direct:* "Industry Economic and Ratings Outlook: Continued Ratings Stability Expected for U.S. Regulated Electric Utilities In 2012," January 25, 2012, at 4-5).

[50] *Id.,* p. 7 (*quoting Fitch Ratings*: "2012 Outlook: Utilities, Power, and Gas," December 5, 2011, at 10).

[51] *Id.,* p. 8.

that reason, Ameren Missouri's PISA proposal should be rejected.

ROE Reduction if PISA is Granted:

Staff is adamant that, if the Commission does grant Ameren Missouri's PISA proposal, it should ***reduce*** the Company's awarded ROE to reflect the substantial resulting reduction in business risk. Several witnesses testified in support of such a reduction.[52] Staff has quantified the reduction at 45 basis points.[53]

Kevin A. Thompson

4. Income Tax, Accumulated Deferred Income Taxes ("ADIT") and Net Operating Loss ("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?

Ameren Missouri's position on the Employee Stock Ownership Plan ("ESOP") tax deduction is that it belongs to Ameren Corporation and the ratepayers have no claim on it, whatsoever. Ameren Missouri is wrong.

The ESOP is an employee benefit and employee benefits, like most other aspects of employee compensation, are part of the revenue requirement used to calculate the cost of service paid by ratepayers. It is an "above-the-line" cost, funded by the ratepayers. The deduction in question is for dividends paid on Ameren Corporation common stock held in an ESOP.[54] Because Ameren Corporation pays the dividends and administers the ESOP, it has retained all of the tax benefits, although 56.01% of the

[52] Tr. 19:608 (Barnes); 19:742, 757 (Cassidy); 19:773, 776 (Robertson); 19:793-795, 799 (Brosch); 26:1687-1688 (Gorman)..

[53] *Staff's Initial Brief,* p. 24.

[54] *Id.,* p. 9, 10.

participating employees are employees of Ameren Missouri.[55] It is Staff's position that 56.01% of the tax benefits generated by the ESOP should be allocated to Ameren Missouri as a reduction to revenue requirement.[56]

Ameren Missouri reaches the wrong conclusion on this issue because it focuses on the wrong facts. The governing fact is not who *pays* the dividends, but who *receives* the dividends. They are received as a ratepayer-funded employee benefit by Ameren Missouri employees.[57] But for the rates paid by the ratepayers, there would be no ESOP and no dividend deduction. For this reason, a *pro rata* share of the ESOP dividend deduction should be credited to Ameren Missouri's ratepayers.

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

Staff supports MIEC on this issue.

Kevin A. Thompson

5. Rate Case Expense:

What is the appropriate amount to include in Ameren Missouri's revenue requirement for Rate Case Expense?

Contrary to the position asserted by Ameren Missouri in its initial brief, Staff is *not* attempting to "cap" rate case expense.[58] Staff's position is an attempt to ensure that Ameren Missouri recovers all of its prudently-incurred rate case expense, but no more than that.

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[55] *Id.,* p. 10.

[56] *Id.*

[57] *See Warren Rebuttal,* pp. 4-6. The ESOP is one of several investment options open to Ameren Missouri employees through the company-sponsored 401(k) plan and the invested funds are part of each investing employee's compensation, a ratepayer-funded revenue requirement item. *Id.*

[58] *Ameren Missouri's Initial Brief,* p. 123, 125.

Unlike OPC, Staff's position in this case is that the Company should recover all of its rate case expenses.[59] Staff's proposed revenue requirement figure was not "pulled out of the air,"[60] but was carefully and thoughtfully calculated by Staff expert witness Lisa Hanneken and is intended to allow recovery of the full amount of the Company's incurred rate case expense by the time the rates established in Ameren Missouri's *next* general rate case take effect.[61] It's true that Staff didn't weight its calculation by number of issues or number of parties, and that is because Staff believes Ameren Missouri should recover 100% of this expense.[62] Ms. Hanneken did compare Ameren Missouri's expenditures to those incurred by other large utilities in their rate cases, but only as a check for inappropriate expenses.[63] Staff has not proposed *any* disallowances for imprudent, unnecessary or inappropriate rate case expenses in this case.

The truly amusing aspect of the Company and Staff positions on rate case expense is that Staff has treated this expense in exactly the way that the Company wants to treat property tax expense, and *vice versa.* Staff's rate case expense figure is not a cap, but a projection, just like the Company's property tax expense figure. For the sake of consistency, Staff would agree to treat rate case expense in the same way that

[59] In its brief, Ameren Missouri characterizes OPC's position as follows: "that all outside costs be disallowed and that any remaining costs be shared equally between the ratepayer and the shareholder." *Id.,* p. 125.

[60] *Id.,* p. 124.

[61] *I.e.,* 18 months after the rates established in this case take effect. It is not true, as Ameren Missouri asserts, that Staff expert witness Lisa Hanneken did no calculations. *Id.* Her calculations are found in her testimony. *Hanneken Surr.,* pp. 7-10. As she explains there, she reduced Ameren Missouri's estimate of its rate case expenses for this case by about 20% and amortized the result over 18 months. *Id.*

[62] Staff is examining this issue and may well take a position in the next rate case that is much more like the position taken by OPC in this rate case with respect to sharing rate case expenses between ratepayers and shareholders.

[63] An example might be: "Strategic planning retreat in Las Vegas, $1,000,000."

it contends property tax expense should be treated, that is, based on the latest known-and-measureable figure. The latest known-and-measureable figure for rate case expense is the $1,735,867 spent by the Company in Case No. ER-2011-0028.[64] Amortized over 18 months, the revenue requirement figure would be $1,157,244, which is a slightly larger figure than the $1,000,000 proposed by Staff.

Kevin A. Thompson

6. Property Tax Issues:

> *What property tax rates should be used in calculating the allowance for property tax expense to include in Ameren Missouri's revenue requirement? What portion, if any, of the $2.9 million property 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?*

The two property tax issues are treated together here for ease of discussion and for the sake of brevity. One issue is how to calculate the amount of money to be placed in revenue requirement for property tax expense. The second issue is whether that amount should be reduced in some way to reflect a sizeable refund of property taxes that Ameren Missouri received following an appeal.

On the first issue, Ameren Missouri wants to use either of two alternative projected figures to calculate the property tax expense amount.[65] Staff opposes this proposal and would rather use the latest known and measureable amount paid for property tax expense.[66] Staff's position is better in this instance because the rising

[64] *Hanneken Surr.,* pp. 7-8.

[65] *Ameren Missouri's Initial Brief,* pp. 93-94. The first alternative multiplies the known 2012 assessed value by the known 2011 property tax rates; the second alternative multiplies the known 2012 assessed value by projected property tax rates based on the observed historical rate of annual increase.

[66] *Staff's Initial Brief,* pp. 34-37. Staff's method uses the known 2011 assessed value multiplied by the known 2011 property tax rates.

trend that Ameren Missouri has calculated from past property tax rate increases has no logical connection to whatever the rate increases might be this year. In other words, while you can calculate a trend line to describe the historical data set, the trend line does not reflect the underlying causative factors and so has no predictive value.[67] What happens if the level of property tax expense remains the same or even goes down? The ratepayers would simply get gouged.

On the second issue, the Commission stated how it should be handled in the decision it issued in Ameren Missouri's last rate case.[68] Although Ameren Missouri accuses the Commission of having prejudged the issue and further asserts that no evidence supports Staff's proposed resolution,[69] the Company has made no showing, and offered no argument, leading to any other result.

Property tax expense is an item of revenue requirement. That's undeniable. It's an "above-the- line" item that it is used in calculating the revenue requirement on which rates are based.[70] Just as increases in property tax expense are included in revenue requirement to raise rates, decreases in property tax expense should be reflected in revenue requirement to reduce rates. A refund is one variety of expense reduction. Rather than a windfall for the Company, as Ameren Missouri seems to regard it, the

[67] *Carle Surr.,* p. 10; *Meyer Dir.,* p. 15; *Meyer Surr.,* p. 15.

[68] ***In the Matter of Ameren Missouri,*** Case No. ER-2011-0028 (***Report & Order,*** issued July 13, 2011) p. 110.

[69] *Ameren Missouri's Initial Brief,* p. 99.

[70] *RR Report,* p. 116.

property tax refund is properly to be returned to the ratepayers through inclusion in revenue requirement as an offset, amortized over two years.[71]

Ameren Missouri's argument that there is no evidence supporting Staff's position is ludicrous. Ameren Missouri admits that it received a $2.9 million property tax refund.[72] That fact, viewed in the context of property tax expense as an "above-the-line" revenue requirement item, is all that is necessary to support Staff's propose resolution, which is to include all $2.9 million in revenue requirement as an offset. This would be Staff's proposed resolution of this issue regardless of what the Commission said or didn't say in its 2011 ***Report & Order.*** It is the only reasonable resolution of this issue.

In its initial brief, Ameren Missouri actually makes a stealthy request for a property tax expense tracker:

> First, it takes a large utility like Ameren Missouri several months to prepare a rate case filing. Second, under the process the Commission routinely utilizes for major rate cases, a utility is unable to implement new rates until eleven months after it files a rate case. Finally, because Ameren Missouri does not have a formal “tracker” in place for property tax expense, there is no mechanism to defer on its books increases in property tax expenses as compared to the sum assumed when rates were last set, or decreases (or refunds) that might bring actual payments to a level below the sum assumed when rates were last set.[73]

And also:

> The lack of synchronization between the amount of property taxes the Company actually paid and the amount included in rates could have been avoided if a property tax tracker had been implemented in either Case No. ER-2010-0036 or Case No. ER-2011-0028. But that didn’t happen. And it is important to note that a formal tracker mechanism for property taxes differs significantly from Ameren Missouri’s promise to

[71] *Id.,* p. 117.

[72] *Weiss Rebuttal,* p. 27.

[73] *Ameren Missouri's Initial Brief,* pp. 100-101.

> simply keep track of any refund it received as a result of the 2010 tax appeal. As the Commission is well aware from its approval of formal trackers for Vegetation Management and OPEBs, formal tracker mechanisms require utilities to record differences between actual expenses and the amount of expense included in rates as either regulatory liabilities (when incurred expenses are less than the amount included in rates) or regulatory assets (when incurred expenses are greater than the amount included in rates). But the Commission's *Report and Order* in Case No. ER-2011-0028 imposed no such requirements or formalities. Consequently, Ameren Missouri did nothing more than keep track of the refund so that it could be identified in the audit conducted in the current rate case.[74]

Staff is, of course, opposed to Ameren Missouri's belated request for a property tax expense tracker.

In summary, Staff urges the Commission to include $127.2 million, the latest known and measureable amount of property tax expense, in revenue requirement in this case. Staff also recommends that the Commission reduce the cost of service calculation by $1.45 million to reflect a reasonable two-year amortization of the $2.9 million property tax refund that was received by Ameren Missouri during the test year and true-up period as established by the Commission in this rate proceeding.

Kevin A. Thompson

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?*

Yes, as stated in Staff's testimony and initial brief, the Commission should order Ameren Missouri to include a base level of Renewable Energy Standard ("RES")

[74] *Id.,* pp. 102-103.

compliance costs in permanent rates in the amount of $4.7 million, with the base level netted against any future deferred expenditures that occur beyond the July 31, 2012, true-up date.

The Staff's initial brief set forth the legal authority that established the Commission's authority to interpret its own rules, as well as its responsibility to set rates after considering all relevant factors of the case. For brevity, Staff will not repeat those arguments here, but cites the Commission back to Staff's initial brief.[75] There is, however, one argument made by the Missouri Industrial Energy Consumers' ("MIEC") witness that Staff must address; that is, MIEC's mistaken belief that Staff is in agreement with its position to exclude RES costs from Ameren Missouri's revenue requirement.

As part of Staff's surrebuttal testimony, Staff stated it agreed with Ameren Missouri in regard to the inclusion of an appropriate amount of RES costs in base rates and that Staff intended to include the true-up level of RES costs in the cost-of-service calculation.[76] Further, Staff testified at hearing that the RES rule does not include any specific language that prohibits the Commission from including a base level of RES compliance costs in Ameren Missouri's revenue requirement.[77] The Staff's and the Company's recommendation to include a base level of RES costs in the revenue requirement is no different than what the Commission ordered in Ameren Missouri's last rate case, Case No. ER-2011-0028. In that case, the Commission ordered "Ameren

[75] *Staff's Initial Brief,* pp. 37-40.

[76] *Cassidy Surr.,* p. 6, ll. 18-22.

[77] Tr. 21:1072, ll. 10-13.

Missouri shall include $885,266 in its rates for ongoing solar rebate expenses."[78] That is exactly what the Staff and Ameren Missouri are requesting the Commission do in this case, set $4.7 million as the base level of RES costs in rates for ongoing solar rebate expenses and other RES compliance costs.

The RES statute provides that the Commission shall establish rules that include "[p]rovisions 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."[79] The RES statute contemplates an alternative method of cost collection outside a general rate case. And, the Commission's RES rule[80] allows two alternatives from base rates to recover costs or pass-through benefits as a result of compliance with the RES requirements, those being the Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM") or an Accounting Authority Order ("AAO").[81] Nothing in the RES rule absolves the Commission from its obligation in a general rate case to set a company's base rates after considering all relevant factors of the case. Staff recommends the Commission order Ameren Missouri to include a base level of RES compliance costs in permanent rates in the amount of $4.7 million, with the base level to be netted against any future deferred expenditures that occur beyond the July 31, 2012, true-up date.

[78] ***In the Matter of Ameren Missouri,*** Case No. ER-2011-0028 (***Report & Order***, issued July 13, 2011), p. 101.

[79] Section 393.1030.2(4), RSMo (Cum. Supp. 2010), (emphasis added).

[80] Rule 4 CSR 240-20.100(6).

[81] Staff Ex. 202, p. 132, ll. 21-28, p.133, ll. 1- 12.

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?

As stated in Staff's testimony and initial brief, Staff recommends the Commission order Ameren Missouri to amortize the deferred expenditures over three years, from January 1, 2010, through July 31, 2012. However, Staff alternatively recommends that six years would also be an acceptable amortization period if the Company is afforded rate base treatment for the unamortized RES deferred regulatory asset balance from January 1, 2010, through July 31, 2012.[82]

MIEC has recommended a six-year amortization of RES costs to be consistent with the amortization period of Ameren Missouri's energy efficiency programs. However, MIEC's correlation is improper because the purpose of the RES statute and rule differs from the purpose of demand-side management ("DSM") programs. MIEC's witness agreed with this principle at hearing. DSM programs are designed to decrease the amount of energy a customer uses.[83] The use of renewable energy does not decrease the need of demand or energy, but rather alters the source of the energy used.[84] Moreover, while Ameren Missouri proposed a two-year amortization in testimony, the Company stated that even Staff's three-year amortization is more appropriate for an expense AAO than a six-year amortization period.[85] Staff's preferred treatment of RES deferred expenditures is for the Commission to order Ameren

[82] Ex. 202, p. 133, ll. 28-32; Ex. 235, p. 7, ll. 7-12.

[83] Tr. 21:1050, ll. 2-13.

[84] *Id.*

[85] *Ameren Missouri's Initial Brief*, p.134.

Missouri to amortize the deferred expenditures from January 1, 2010, through July 31, 2012, over three years.

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?

No, not if the Commission accepts Staff's recommendation of a three-year amortization period for the unamortized RES deferred regulatory asset balance incurred between January 1, 2010, through July 31, 2012. However, if the Commission authorizes a six-year amortization period, then Staff recommends inclusion of the unamortized balance in rate base.[86]

The expenses in Ameren Missouri's RES accounts are not capital items in nature.[87] Ameren Missouri does not own or operate the solar equipment that it is paying the rebate on; the solar equipment is the property of Ameren Missouri's customer.[88] The customer is also the one that will primarily benefit from the solar equipment.[89] RES compliance costs are simply an expense that Ameren Missouri incurs to comply with the RES statute.[90] In the light of that fact, why should Ameren Missouri receive both the return of, and a return on, an expense that is not capital in nature and that is not an asset it owns or maintains?

All else remaining equal, customers of Ameren Missouri will pay more in rates if the Commission were to allow rate base treatment for the RES expenses incurred

[86] Ex. 202, p. 133, ll. 28-32; Ex. 235, p. 7, ll. 7-12.

[87] Tr. 21:1047, ll. 4-10.

[88] Tr. 21:1043, ll. 4-13.

[89] Tr. 21:1043, ll. 14-20.

[90] Tr. 21:1043, ll. 21-25; §§ 393.1020, 393.1025 and 393.1030, RSMo (Cum. Supp. 2010).

therefore hitting the one percent cap on RES costs with fewer renewable resources.[91] Therefore, the Commission should not order Ameren Missouri to include the unamortized RES deferred regulatory asset balance, which is simply an expense, in rate base.

Jennifer Hernandez

9. Fuel Adjustment Clause ("FAC"):

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

The Fuel Adjustment Clause ("FAC") is an important issue. Staff's position is that Ameren Missouri's FAC should be continued, but should be modified.[92] Staff recommends that the sharing percentage should be changed from 95%/5% to 85%/15%.[93]

Ameren Missouri has evidently forgotten that an FAC is a privilege and not a right. It can be discontinued or modified in any general rate case after it is first established. The Company's arguments compare the projected effects of the proposed 85%/15% sharing ratio to the effects of the current 95%/5% sharing ratio.[94] A better

[91] Tr. 21:1045, ll.10-18.

[92] Ex. 224, *Mantle Surr.,* p. 17: "Staff is merely proposing changes that, short of taking away the privilege, would provide Ameren Missouri more incentive to manage its net fuel cost efficiently and cost-effectively." AARP and Consumers' Council of Missouri recommend that the Commission discontinue Ameren Missouri's FAC. Tr. 22:1135.

[93] Staff makes this recommendation, despite the fact that the Commission denied it in Ameren Missouri's last rate case, because Staff considers it to be the right decision from a public policy perspective.

[94] *E.g., Ameren Missouri's Initial Brief,* p. 47: "had the 85%/15% sharing mechanism been in place for accumulation periods 2 through 9 (June 2009 to January 2012, as examined by Ms. Mantle in this case), the Company would have had to absorb an additional *$30 million of prudently incurred fuel* costs."

comparison would be to the effects of no FAC at all.[95] A serious question could be raised concerning Ameren Missouri's continued eligibility for an FAC. The purpose of an FAC is to protect the utility -- and thus its customers -- from the effects of uncontrollable fuel cost volatility.[96] Rule 4 CSR 240-20.090(2)(C) provides:

> In determining which cost components to include in a RAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs may be recovered in a RAM and what portion shall be recovered in base rates.

On the record developed in this case, Ameren Missouri is not subject to uncontrolled fuel cost volatility.

In its brief, Ameren Missouri asserts, erroneously, that Staff has abandoned three of the five reasons that it asserted supported a change in the sharing ratio: "In fact, the Staff has abandoned the first three of its reasons for arguing a sharing mechanism percentage change was warranted, undoubtedly because the Commission properly recognized that those reasons provided absolutely no basis for making a change."[97] Staff has abandoned none of its arguments, which are:

- First, the additional cost of an 85%/15% sharing ratio is *de minimis* when

[95] Which, for accumulation periods 2 through 9, would have required the Company to absorb $306 million in fuel costs above the base rate. *Staff's Initial Brief,* p. 44.

[96] Alt, L.E., ***Energy Utility Rate Setting,*** p. 89 (2006): "Electric utilities may use additional fuel adjustment charges in periods of highly fluctuating fuel costs as a way to recover fuel costs in a timely manner."

[97] *Ameren Missouri's Initial Brief,* p. 46. Perhaps the Company is referring to Mr. Lowery's blistering cross-examination of Staff expert witness Lena Mantle, which he evidently found more productive than did other onlookers.

compared to the cost of no FAC at all.[98]

- Second, the Company would keep more of its OSS revenues at 85%/15%.[99]
- Third, at 85%/15%, Ameren Missouri would have "more skin in the game"; a greater incentive to effectively manage its fuel and purchased power ("F&PP") costs and to seek out OSS opportunities.[100]
- Fourth, at 85%/15%, Ameren Missouri would have greater incentive to accurately estimate the net base energy cost factors in general rate cases.[101]
- Fifth, Ameren Missouri wrongfully inflicted regulatory lag on its ratepayers in its second FAC prudence review case, Case No. EO-2012-0074.[102]

Staff has abandoned *none* of these arguments.

Ameren Missouri argues that the Commission *cannot* change the sharing percentage because SB 179 requires that the Commission find that the FAC: "[i]s reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity[.]"[103] The Company evidently believes that it has demonstrated conclusively that it is chronically unable to earn its authorized ROE, so any modification to the FAC that would place a greater burden on the Company would not be lawful.[104] This is a completely nonsensical argument; the statute authorizes the Commission to

[98] *Id.,* p. 44.

[99] *Id.,* pp. 44-45.

[100] *Id.,* p. 45.

[101] *Id.*

[102] *Id.*

[103] § 386.266.4(1), RSMo.

[104] *Ameren Missouri's Initial Brief,* pp. 46-47.

discontinue the FAC entirely.[105] Certainly it can be modified with a corresponding ROE adjustment.

In summary, Staff believes that Ameren Missouri can "improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities"[106] and that more "skin in the game" will incentivize it to do so.

Kevin A. Thompson

10. FAC Tariff, including the Transmission Tracker:

> *C. Apart from transmission costs addressed in Item B, should Ameren Missouri be permitted to flow through the FAC MISO transmission charges, including charges reflecting the cost of building transmission facilities, and associated transmission revenues?*
> *D. Should Ameren Missouri be permitted to flow through the FAC transmission charges associated with transmission service in a term in excess of one year?*[107]
>
> *E. If the Commission determines that the MISO transmission charges and revenues addressed in Item C should not be flowed through the FAC should they be deferred in a transmission cost and revenue tracker using the trued-up test year sum for those charges and revenues as the base against which changes will be tracked, with sums above the base to be booked to a regulatory asset and sums below the base to be booked to a regulatory liability? If so, how should the amortization of the regulatory asset or regulatory liability be handled?*

To restate the issues in simpler form, should MISO transmission charges flow through the FAC and, if not, should a transmission cost and revenue tracker be established? Staff's answers to these questions are "no" and "no."

MISO transmission costs don't belong in the FAC:

Taking advantage of a certain imprecision in the language of Ameren Missouri's current FAC tariff, the Company has, since January 2012, been running MISO

[105] § 386.266.4, RSMo.

[106] § 386.266.1, RSMo.

[107] Staff supports the position of the MIEC on Issue 10.D.

transmission charges through its FAC as though they were F&PP costs. They are not F&PP costs and, as soon as Staff became aware that the Company was engaging in this practice, Staff proposed a change to the tariff language that would prohibit it. Ameren Missouri strongly opposes this tariff revision and has actually resorted to baseless falsehoods in an effort to win its position.[108]

Staff is not, by any means, asserting that the MISO transmission charges should not be recovered in rates, just that they shouldn't be recovered through the FAC. Why? Because they aren't the sort of costs that can lawfully be run through the FAC. By statute, amounts flowing through the FAC are limited to "prudently incurred fuel and purchased-power costs, including transportation."[109] The plain and ordinary meaning of the word "transportation" does not include administrative charges and certainly does not extend to the ongoing capital construction costs of the Lutesville to Heritage transmission line and other MISO MVP projects.[110] Additionally, costs related to nonoperational property of electric corporations may not be charged to ratepayers under Missouri law.[111]

Staff would oppose the inclusion of these MISO transmission charges in the FAC even if it were not unlawful because they are simply not the sort of charges that ought to be recovered through the FAC.

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[108] *Ameren Missouri's Initial Brief,* pp. 48-50; *but see* Tr. 22:1173-1174 (Company witness Jaime Haro).

[109] Section 386.266.1, RSMo.

[110] Tr. 22:1173 (Haro); *Dauphinais Sur-Surr.,* p. 7.

[111] Section 393.135, RSMo, the "Anti-CWIP Statute."

The proposed transmission tracker is unnecessary and should be rejected:

Staff opposes Ameren Missouri's proposed Transmission Tracker, but if the Commission nonetheless grants one, it should be subject to the conditions set out in the testimony of Staff witness Mark Oligschlaeger.

The evidence shows that the requested tracker is unnecessary. This just isn't the right case in which to establish a transmission tracker because, on the present evidence, MISO revenues and MISO transmission charges are more-or-less equivalent.[112] At the present, there is no problem of unrecovered transmission costs to address. Staff is of the opinion that trackers and other risk-mitigating mechanisms ("regulatory ratchets") are bad public policy in general, but it would be particularly objectionable to establish a tracker in the absence of any evidence of a present need for it. Ameren Missouri did not propose a transmission tracker until sur-surrebuttal testimony and at that time presented only limited information about future transmission costs and even less information regarding future transmission revenues. There is little information in the case regarding the actual need for a transmission tracker. Ameren Missouri *may* be able to show a need for such a tracker in the future, but it has not made such a showing in this case. The tracker should be rejected and revisited in Ameren Missouri's next rate case if the evidence supports a need for one.

If a tracker is established, it should be conditioned as proposed by Staff:

Staff opposes the proposed transmission tracker; but if the Commission decides to establish it anyway, it should be subject to the six conditions described by Staff expert witness Mark Oligschlaeger.

[112] Tr. 22:1166 (Haro); *Oligschlaeger Res.,* p. 7.

Ameren Missouri does not like all of the conditions proposed by Staff expert witness Mark Oligschlaeger. Of the six proposed conditions, the Company states it will not accept conditions (4) and (6).[113] Condition (4) requires the imputation to Ameren Missouri, as an offset to costs, of MISO transmission revenues earned by its unregulated affiliates, including ATX and ATXI, from facilities in Ameren Missouri's service area;[114] condition (6) imposes an ROE "cap" on deferrals of costs to the tracker so that they will cease when Ameren Missouri is over-earning.[115]

Ameren Missouri asserts that each of these conditions is inappropriate; and that condition (4) is also unlawful, while condition (6) is unworkable.[116] Staff responds that these conditions are the *quid pro quo* for the tracker the Company seeks; without these conditions, Staff for its part will continue to oppose Ameren Missouri's proposal. Frankly, Staff would rather have no transmission tracker at all than a transmission tracker with conditions.

Condition (4), the imputation condition, is intended to prevent the Ameren family of corporations from skimming off the MISO revenues for the shareholders through unregulated entities to the detriment of Ameren Missouri's ratepayers. A constant concern in situations where regulated utilities have unregulated affiliates is that they be prevented from allocating the burden of the costs to the regulated utility for payment by its ratepayers, while the profits are allocated to the unregulated affiliate for the enrichment of its shareholders. That is the evil that condition (4) is intended to address.

[113] *Ameren Missouri's Initial Brief,* p. 64.

[114] *Staff's Initial Brief,* p. 58.

[115] *Id.,* p. 59.

[116] *Ameren Missouri's Initial Brief,* pp. 64-80.

Ameren Missouri's opposition to this condition, while it asserts that it is unaware of any plans for such projects in Missouri, suggests that Staff's concerns are not misplaced.

Condition (6), the ROE cap, is a common-sense provision intended to prevent the deferral of costs for another day while the Company is overearning and thus well-able to pay those costs from present revenues. It seems hardly necessary to justify this provision; its merit is plain on its face.

In summary, Staff urges the Commission to (1) exclude MISO transmission costs from Ameren Missouri's FAC tariff; (2) reject the proposed transmission tracker because it is unnecessary and would be bad public policy; and (3) impose Staff's suggested conditions on the transmission tracker if it decides to grant it over Staff's opposition.

Kevin A. Thompson

11. Coal Inventory, including Coal in Transit:

Should the value of Ameren Missouri's coal inventory include the value of coal in transit?

Ameren Missouri maintains an inventory of coal at each of its coal-burning generation plants evidently referred to as the "coal pile."[117] The parties do not disagree that the value of the coal pile (or piles) should be included in rate base and therefore reflected in revenue requirement.[118] Because the coal pile is constantly diminished as the Company burns its contents for fuel, it must be constantly replenished.[119] It follows, therefore, that at any given moment, there are many tons of coal on rail cars heading for

[117] *Ameren Missouri's Initial Brief,* p. 127.

[118] *Id.*

[119] *Id.,* pp. 128-129, 130.

the Ameren Missouri coal pile.[120] This coal in transit, the record makes abundantly clear, is titled to Ameren Missouri.[121]

Staff opposes the Company's proposal in this case to include the value of the coal on the rail cars in rate base -- and thus in revenue requirement -- in the same way as the coal in the coal pile.[122] Why? Because the coal in transit has never been included in rate base in the 100 years of utility regulation in Missouri, that's why.[123] More to the point, because the Company has not yet paid for that coal and thus has no investment in it.[124] Therefore, Staff urges the Commission to reduce the cost of service calculation by approximately $0.72 million to reflect the fact that Ameren Missouri has not yet paid for the coal in transit and thus has no investment in it. Ameren Missouri responds by pointing out that it hasn't paid for a quarter of the coal in the coal pile yet, either.[125] On that fact, Staff now proposes that rate base be reduced by 25% of the value of the coal pile to reflect that Ameren Missouri has no investment in that coal. The corresponding revenue requirement reduction is about $5.0 million.[126] The value of the two adjustments together is $5.72 million.

Rate base reflects the net present value of the shareholders' investment in the utility.[127] Items that do not reflect shareholder investment, such as contributed plant, for

[120] *Id.,* p. 128; *Neff Rebuttal,* p. 5; *Meyer Surr.,* p. 28.

[121] *Id.*

[122] The revenue requirement value of this issue is $800,000. *Id.*

[123] *Hanneken Surr.,* p. 3; Tr. 24:1415-1416, 1436. *See Staff's Initial Brief,* p. 60. This point is raised to suggest that the issue has coal in transit has been considered and rejected long ago.

[124] *Ameren Missouri's Initial Brief,* p. 131.

[125] *Id.*

[126] $20 million x 0.25 = $5 million.

[127] L.E. Alt, ***Energy Utility Rate Setting,*** p. 32 (2006).

example, or ratepayer security deposits, are excluded from rate base.[128] Coal that has not yet been paid for does not reflect any amount of shareholder investment and must likewise be excluded from rate base.

Kevin A. Thompson

12. 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?

In its initial post-hearing brief, Staff recommended that the Commission authorize a return on common equity ("ROE") in the range of 9.0 to 9.9, midpoint 9.45.[129] The bottom of this range is based on Mr. Murray's recommendation of 9.0, the Lowest Reasonable Rate, and the top is set by the third-quarter 2012 national average of awarded ROEs at 9.9.[130] The midpoint, at 9.45, rounded up to 9.5, is just above Mr. Gorman's recommended range of 9.2 to 9.4.[131] Staff made this recommendation based on a consideration of the relevant factors, including the testimony and recommendations of the three expert cost-of-capital witnesses, the generally reduced cost of capital since Ameren Missouri's last general rate case,[132] the recent downward trend in awarded ROEs for electric utilities,[133] and Ameren Missouri's own recent earnings performance as shown by the surveillance report for the twelve months ended June 30, 2012.[134] Of

[128] *Id.,* at p. 37.

[129] *Staff's Initial Brief,* pp. 61-62, 89.

[130] *RR Report,* p. 13; Tr. 26:1650 (Hevert); 30:1978-1979 (Murray). *See Staff's Initial Brief,* pp. 84-87.

[131] *Gorman Dir.,* p. 2; Tr. 26:1697-1698 (Gorman).

[132] Tr. 26:1548-1549, 1563-1565, 1691.

[133] Tr. 26:1553-1556; Ex. 530.

[134] Ex. 237.

course, if additional risk-reducing mechanisms are adopted, the Commission should consider a corresponding reduction of Ameren Missouri's awarded ROE.[135]

Ameren Missouri's initial brief denounces Staff expert witness David Murray for purportedly taking the position that everyone else is "getting it wrong."[136] But the fact is, it is Company witness Robert Hevert who finds himself well out of the mainstream, insisting on an ROE much higher than either of the other experts, higher than the national average of awarded ROEs, and higher than Ameren Missouri's last awarded ROE in a declining cost-of-capital environment. As OPC points out, "Mr. Hevert is the only witness with a recommended ROE range above 10% (or for that matter, the only one with a recommendation above even 9.5%)."[137] Mr. Hevert insists on an ROE for Ameren Missouri that is *higher* than it was awarded in its last general rate case.[138] Staff's recommended range of 9.0 to 9.9 and that of MIEC expert witness Michael Gorman, 9.2 to 9.4, are essentially synonymous.[139] A review of the analytical results of the three experts shows that they overlap in the band between 8.04 and 9.6.[140] Surely the "zone of reasonableness" in a case with three contentious experts is found where all three agree. Interestingly, the low end of this zone of expert agreement is very close to

[135] *See Staff's Initial Brief,* pp. 24-25. Several witnesses testified, for example, that Ameren Missouri's ROE should be reduced if Plant-in-Service Accounting ("PISA") is granted; Tr. 19:608 (Barnes); 19:742, 757 (Cassidy); 19:773, 776 (Robertson); 19:793-795, 799 (Brosch); 26:1687-1688 (Gorman). Staff quantified the reduction at 45 basis points. *Staff's Initial Brief,* p. 24.

[136] *Ameren Missouri's Initial Brief,* p. 30.

[137] *OPC's Initial Brief,* p. 16.

[138] Tr. 26:1592, 1767.

[139] Staff's recommendation, 9.0-9.9, is wider than MIEC's, 9.2-9.4, but includes all of it.

[140] *See* Table 2 at p. 77, *Staff's Initial Brief.* 8.04 is Mr. Gorman's lowest result; 9.6 is Mr. Murray's highest. Mr. Hevert's results range from 7.9 to 12.67. *Id.* Note that, while Mr. Murray would be comfortable with a result between 9.0 and 8.04, Mr. Gorman testified that he would not be comfortable with an awarded ROE below 9.2. Tr. 26:1700-1701.

OPC's recommendation of 8.0.[141] The high end, 9.6, is close to the midpoint of Staff's recommended range at 9.5 and not far from the top of Mr. Gorman's range at 9.4.

Logic tells us that the Company, of course, wants the *highest* ROE it can get. Its entire rate case presentation is directed at achieving a higher earned ROE and it evidently believes that one necessary component for reaching that goal is to bake a higher awarded ROE into rates. This is reflected in Mr. Hevert's range of 10.25 to 11.00, all of which is above both the Company's last ROE award of 10.2 and the most recent national average of 9.9. Logic also tells us that the residential and small commercial ratepayers likewise want the *lowest* ROE they can get, which is reflected in OPC's recommendation of 8.0. MIEC, an association of large industrial and commercial ratepayers, wants the lowest ROE that it believes will permit Ameren Missouri to continue to provide service at the requisite level of reliability. That goal is reflected in Mr. Gorman's range of 9.2 to 9.4.[142] Staff, which has no stake in the outcome, has presented a reasonable recommendation, which is not so high as Ameren Missouri's nor so low as OPC's, and which overlaps MIEC's.

Mr. Hevert's range and recommendation are simply too high and are, frankly, contrary to the weight of the credible evidence.[143] They are based on outlandishly high growth rates.[144] MIEC expert witness Michael Gorman testified that he was not

[141] Tr. 26:1501-1502 (Opening Statement of Ms. Christina Baker).

[142] As Mr. Gorman expressly testified. Tr. 26:1707.

[143] To go there, the Commission has to disregard the testimony of Mr. Gorman and Mr. Murray, plus Mr. Hevert's admission that the cost of capital is declining and the observable declining trend in ROE awards by other state commissions.

[144] *See Staff's Initial Brief,* Table 2, p. 77. MIEC expert witness Michael Gorman dismissed Mr. Hevert's results as "overstated" and based on "unsustainably high short-term (five-year) growth rate estimates." *Gorman Dir.,* pp. 40, 43.

surprised that Mr. Hevert got the highest results, considering the inputs he chose.[145] OPC's recommendation is too low; the evidence suggests that an award this low would have negative effects on Ameren Missouri's credit metrics. Only Staff's recommended range of 9.0 to 9.9, particularly where it overlaps MIEC's recommendation of 9.2 to 9.4, is well-supported by the record. Staff urges the Commission to select an ROE in this range, preferably in the zone formed by Mr. Gorman's recommendation of 9.3 and the high end of the previously described zone of expert agreement at 9.6. Within this zone, Staff believes 9.5 would be an appropriate number.

Kevin A. Thompson

13. Severance Costs and VS-11:

Should Ameren Missouri be authorized to amortize to rates over three years the approximately $25.8 Million in costs incurred in its VS-11 voluntary employee separation program?

Ameren Missouri paid $25.8 million to some 340 employees to go away.[146] Ameren Missouri now wants to recover that $25.8 million from its customers through rates. Staff opposes this request because, when the rates set in this case take effect in January 2013, Ameren Missouri will have already recovered all of those costs.[147] Why should the ratepayers give the Company a $25 million gift?

Ameren Missouri characterizes this issue as one involving a *positive* regulatory lag.[148] The thing about regulatory lag is that it *ends* when new rates take effect. Had

[145] Tr. 26:1695.

[146] *Ameren Missouri's Initial Brief,* p. 80.

[147] *Id.; Staff's Initial Brief,* p. 90. Staff says Ameren Missouri will have recovered more than $25.8 million by January 2013; the Company will only admit to $25 million. *See* Tr. 28:1811-1812 (Carver) for an explanation of the $900,000 that Staff includes in the savings calculation and the Company disputes.

[148] *Ameren Missouri's Initial Brief,* pp. 81-83.

Ameren Missouri wanted to continue to enjoy the positive regulatory lag created by reducing its payroll, it should have waited longer to file this rate case. That was a matter entirely within the Company's control and the Company must live with the consequences of the decision it made. Rates that included a $25 million gift or bonus to Ameren Missouri would not be sustained on appeal because they would not be just and reasonable.

The Company attempts to lead the Commission astray by asserting that this issue is one where the Commission has "broad discretion" to allow these (non) costs.[149] Nothing could be farther from the truth. What discretion does the Commission have, under the law, to include an arbitrary (and capricious) amount in revenue requirement that the evidence shows has already been recovered? The prudent answer is "none." The Commission can only make just and reasonable rates, which means not including non-existing costs in revenue requirement.

Kevin A. Thompson

14. Storm-related Issues:

There are three storm-related issues in this case. To take them in logical order: First, what is the base level of storm restoration costs to include in Ameren Missouri's revenue requirement? Second, what is the base level of storm assistance revenues to include in Ameren Missouri's revenue requirement as a credit for ratepayers? Third, should both of these items be incorporated into a two-way storm-restoration-costs tracker?

[149] *Ameren Missouri's Initial Brief,* p. 81, 83.

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? 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?

Staff and Ameren Missouri agree that the base level of storm restoration costs to include in revenue requirement, whether or not a storm restoration cost tracker is established, is $6.8 million based on a 60-month average ending July 31, 2012.[150]

B. Should the Commission establish a two-way storm restoration cost tracker whereby storm-related non-labor 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[151] rate?

Staff is opposed to the proposed storm restoration costs tracker because it represents yet another significant erosion of Missouri's traditional cost-of-service ratemaking paradigm. In particular, every special cost-recovery mechanism granted to the Company represents a diminution of its incentive to operate efficiently and in the least-cost manner. However, as trackers go, this one is less obnoxious than most because its two-way nature allows for recovery by the ratepayers of unused base amounts of estimated storm restoration costs that were included in revenue requirement but never used.

The Company makes four arguments in support of the storm restoration costs tracker: (1) the tracker mechanism would merely formalize what is already occurring; (2) the tracker would be less administratively burdensome" than the present method; (3)

[150] *Ameren Missouri's Initial Brief,* p. 86.

[151] "AFUDC" is Allowance for Funds Used During Construction, i.e., the carrying costs for capital used for construction.

without a tracker, there can be no deferral and recovery for ratepayers when storm restoration costs are less than the base; and (4) storm restoration costs are appropriate for a tracker.

Current practice is "piecemeal" and "uncertain":

Staff opposes Ameren Missouri's request for a storm restoration cost tracker because Staff argues that the current method of normalization, amortization and accounting authority orders ("AAOs"), when appropriate, is sufficient for the Company to recover its storm restoration costs.[152] The Company asserts that this method is a "piecemeal"[153] and uncertain solution[154] and that the four existing storm-restoration-cost amortizations justify the use of a tracker;[155] such a tracker would merely "formalize what is already occurring."[156] Staff considers that the establishment of a storm restoration costs tracker would make the recovery of these costs much more certain and therefore opposes the same. Storm restoration, in particular, is an area where prudent and effective cost management is critical.

Current practice is administratively burdensome for the Company:

The Company goes on to argue that a storm restoration cost tracker would be "less administratively burdensome" than the current practice.[157] What this really means is that the Company will not have to bother with going before the Commission to prove

[152] *Staff's Initial Brief,* pp. 92-97.

[153] *Ameren Missouri's Initial Brief,* p. 84.

[154] *Id.,* p. 85

[155] *Id.,* p. 84.

[156] *Id.*

[157] *Id.,* p. 85.

up the extraordinary nature of their excess storm costs. Instead, the Company hopes and the Commission Staff and other parties fear, these costs would be subject to less scrutiny and recovery would become more or less automatic. The evil in this development is the loss of any incentive to effectively and prudently manage storm restoration costs. A further objection is that the burden in any litigation would shift from the Company, which under the current regime must prove the excess costs are extraordinary, to the other stakeholders, who would be put in the unenviable position of proving that the costs are imprudent.[158]

Further, the Company argues that AAO's are not a workable solution because of the Commission Staff's position that it will support an AAO request only when the excess net storm restoration costs exceed 5% of the Company's net income.[159] However, the Company is unable to show that it has ever suffered any detriment from the Staff's position; notice also that the Company does not argue that it is a Commission position, or that the Commission could not order an AAO under such circumstances. The fact is that Ameren Missouri has recovered all of its excess storm restoration costs and there is no evidence that the Commission would treat it differently in the future.[160]

Current practice means no refund to customers:

Thirdly, the Company argues that, without a storm restoration cost tracker, there

[158] Staff has litigated numerous claims of imprudence against utilities with generally meager results. The Commission is frankly reluctant to declare any arguably sensible utility expenditure to be imprudent. That may well be the path of wisdom, but it is nonetheless a powerful incentive for Staff and others to oppose the burden-shifting implicit in the establishment of the proposed storm restoration costs tracker.

[159] *Ameren Missouri's Initial Brief,* p. 85.

[160] *Boateng Surr.,* p. 13.

could not be any refund to customers of unspent storm restoration funds.[161] Under traditional cost-of-service ratemaking, the utility simply retains any unspent portion of the revenue requirement; that is the positive side of regulatory lag. Staff also points out that, while a two-way storm restoration cost tracker would give some level of benefit to the ratepayers, that benefit is capped at the base amount included in the tracker less anything spent for storm cost restoration; whereas the potential risk faced by the ratepayers is unlimited.[162] Additionally, the Company has not even recognized the fact that the establishment of the proposed tracker would require an offsetting ROE reduction to reflect the further diminution of Ameren Missouri's business risk.[163]

Storm restoration costs are perfect for a tracker:

Lastly, in support of the storm restoration costs tracker, the Company argues that storm restoration costs are just the type of costs appropriate for a tracker.[164] They are "outside the control of Ameren Missouri, they are unpredictable, and they can be quite large."[165] The Company is correct about one thing, they cannot control the storms. But they do have control on the other end; the Company has some control over the costs associated with its response to a storm. The creation of a tracker, with its implicit assurance of recovery and shifting of the burden of proof away from the Company, would necessarily act to reduce Ameren Missouri's incentive to prudently and effectively

[161] *Ameren Missouri's Initial Brief,* p. 85.

[162] *Boateng Surr.,* p. 14.

[163] Because there is no unrecovered amount of storm restoration costs, the amount of any ROE reduction cannot readily be quantified. Staff would suggest 10 basis points.

[164] *Ameren Missouri's Initial Brief,* pp. 85-86.

[165] *Id.*

manage its storm restoration costs in order to achieve the best solution for the lowest cost.

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

Staff's position in this case is that a normalized level of storm assistance revenues should be included in rates and would properly reflect a reduction in the overall cost of service for the ratepayers.[166] The Company makes two arguments in support of its position that storm assistance revenues should not be included as an offset to rate base: (1) there is no consistency as to how often Ameren Missouri provides assistance; and (2) one year of abnormally high revenues creates an unattainable amount.[167]

Ameren Missouri has offered assistance eleven times in the last five years, that is, about twice a year on average.[168] As noted in Staff's initial brief, this argument is a weak one because storm restoration costs, which also don't occur every year,[169] are nonetheless included in revenue requirement at a normalized level.

Lastly, the Company argues that one year of abnormally high revenues creates an unattainable amount, making it more likely Ameren will never earn that level of

[166] That amount is $581,189. *Staff's Initial Brief,* p. 98. This figure is based upon a 5-year normalization of storm assistance revenues received by the Company during the 60 months ending July 31, 2012. *RR Report,* p. 83.

[167] *Ameren Missouri's Initial Brief,* pp. 86-88.

[168] *Id.,* pp. 86-87. As of the filing of this brief, Ameren Missouri has sent Ameren crews and support personnel to New Jersey to aid in restoration efforts in the wake of Hurricane Sandy.

[169] As evidence by the $31 spent by Ameren Missouri on storm costs in 2010.

revenue.[170] The numbers used at hearing are already incorrect and the 2012 numbers will likely be much higher than the record shows due to the fact that Ameren Missouri recently sent over 400 employees and contractors to the east coast to provide assistance in restoring power to millions of customers impacted by Hurricane Sandy. Further, just because the annual figures vary significantly from year to year does not mean these revenues should be overlooked for ratemaking purposes. Failure to account for these revenues in rates is fundamentally unfair to the ratepayers and would result in a windfall to the shareholders.

In summary, Staff states that the Commission should include $6.8 million in revenue requirement for storm restoration costs. Staff urges the Commission to reject the Company's proposed storm cost tracker. If the Commission decides to grant it anyway, the base level should be set at $6.8 million and Staff recommends inclusion of storm assistance revenues as an offset to costs. If the Commission does not establish the proposed tracker, it should include $581,189 in revenue requirement which would represent a reduction to the overall cost-of-service calculation.

Meghan E. McClowry

17. 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 trackers be continued?

In its initial brief, Ameren Missouri proposes that any balances from the

[170] *Ameren Missouri's Initial Brief,* pp. 87-88.

vegetation management and infrastructure inspection trackers that are deferred to a regulatory asset (if expenditures exceed the base) or to a regulatory liability (if expenditures are less than the base) be amortized over two years.[171] In contrast, Staff recommends the Commission amortize such amounts over three years, which is consistent with Staff's approach for similar expenditures and with the Commission's orders in previous cases.[172] Furthermore, for the sake of efficiency, Staff recommends any unamortized amounts related to the vegetation management and infrastructure inspection tracker from Case No. ER-2010-0036 be rolled into the amortization established in this proceeding so that only one tracker remains.[173]

Amy E. Moore

18. Class Cost of Service and Rate Design:

D. What should the Residential Class customer charge be?

In Ameren Missouri's initial brief, the Company states, "[o]ne of the reasons the Staff opposes the Company's proposal to increase its customer charges is the Staff's contention that increasing the charge for the Residential rate class will cause "rate shock" to customers."[174] Staff has proposed a modest increase in the residential customer charge from $8 to $9.[175] However, Staff's concern about rate shock is not based solely on the Company's proposed $4 increase in the residential customer charge (from $8 to $12). Staff is concerned with the amount and percentage of

[171] *Ameren Missouri's Initial Brief,* pp. 136-37.

[172] *RR Report,* p. 115.

[173] Id. at lines 29-31.

[174] *Ameren Missouri's Initial Brief,* p. 141.

[175] *Staff's Initial Brief,* p. 102.

increases that customers have experienced over the last five (5) years,[176] in combination with the 50% increase proposed by the Company for residential customer charges in this case. Since 2007, Ameren Missouri customers have experienced a 30.09% increase in electric rates, while experiencing an increase in income of less than one-half of that amount.[177]

Additionally, Ameren Missouri argues:

> Staff has either supported or expressed no concern about increases in customer charges that were much greater than the increases proposed by Ameren Missouri in this case. And the Commission approved each of those increase. For example, in Ameren Missouri's most recent rate case, Case No. GR-2010-0363, Staff proposed to increase the monthly customer charges for residential customer charges from $15 to $30, an annual increase of $180. In Missouri Gas Energy's 2007 general rate case, Case No. GR-2006-0422, the Commission approved a change in that utility's monthly residential customer charge from $11.65 to $24.62 – an annual increase of almost $156.[178]

The Company's argument that Staff is being inconsistent by supporting or not opposing a customer charge increase in a gas case, and calling a $4 increase in customer charge in this case "rate shock," is unpersuasive. At hearing, Company witness William R. Davis agreed with Staff Counsel that significant differences between gas utilities and electric utilities could support Staff's varying positions.[179] It is Staff's contention that gas cases and electric cases are simply not the same so far as the customer charge goes and that there are other considerations in play.

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[176] *Ameren Missouri's Initial Brief,* pp. 1-2: "[T]here are some costs that the Company has little or no ability to control; increases in those costs drove the need for the rate increases Ameren Missouri has sought and received in the recent past and are driving the need for the rate increase sought in this rate case."

[177] *RR Report,* p. 2.

[178] *Ameren Missouri's Initial Brief,* p. 141.

[179] Tr. 30:2135-2136.

E. What should the Small General Service Class customer charge be (single-phase and three phase)?

Ameren Missouri states in its initial brief:

> Although the Staff also **opposes** any increase to the current monthly customer charges for the Small General Services rate class, the Staff agrees that the monthly customer charge for the Residential rate class should be increased, but the Staff proposes a more modest increase from $8 to $9.[180]

The statement that the Staff also opposes any increase to the current monthly charges for the Small General Service rate class is incorrect. Staff has always supported an increase in the monthly customer charge for the Small General Service class. Staff's *Rate Design and Class Cost of Service Report* proposes that the charges for the Small General Service class be increased uniformly.[181] This consists of customer charges along with winter and summer energy charges.

When Staff signed on to the *Revised Non-Unanimous Stipulation and Agreement Concerning Any Revenue Increase (Rate Design)*, Staff's position on Issue 18.E. changed. Staff's Brief stated:

> The Small General Service ("SGS") Class customer charge (single-phase and three-phase) increase should be the same percent increase that is not associated with the Energy Efficiency ("EE") revenue requirement percentage as outlined in paragraph 1.c. of the Revised Non-Unanimous Stipulation and Agreement to settle allocation of any revenue increase in the event the Commission finds that Ameren Missouri's rates should be increased.

Meghan E. McClowry

[180] *Ameren Missouri's Initial Brief,* p. 139.

[181] *Staff's Rate Design and Class Cost of Service Report,* p.22, item 6.

19. Energy Independence and Security Act of 2007 ("EISA"):

Pursuant to the Energy Independence and Security Act of 2007 ("EISA"), the Commission is required to determine whether or not it is appropriate to implement each of the standards for electric utilities found in the Public Utility Regulatory Policies Act of 1978 ("PURPA"), § 111(d), not later than December 19, 2009, or in the first general rate case for each individual electric utility, commenced after December 19, 2010. This is not at contested issue.

Ameren Missouri did not address this non-contested issue in its brief. Staff urges the Commission to make the findings described in its initial brief.[182]

Steven Dottheim

CONCLUSION

In conclusion, Staff recommends that the Commission grant Ameren Missouri a general rate increase amounting to approximately $210 million, resolving each contested issue as Staff has recommended. In this way, just and reasonable rates will be set and all relevant factors considered, with due regard to the interests of the various parties and to the public interest.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law, determining just and reasonable rates and charges for Ameren Missouri as recommended by Staff herein; and granting such other and further relief as are just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson
KEVIN A. THOMPSON
Missouri Bar Number 36288
Chief Staff Counsel

[182] *Staff's Initial Brief,* pp. 103-111.

STEVEN DOTTHEIM
Missouri Bar Number 29149
Chief Deputy Staff Counsel

JENNIFER HERNANDEZ
Missouri Bar Number 59814
Senior Staff Counsel

MEGHAN E. McCLOWRY
Missouri Bar Number 63070
Associate Staff Counsel

AMY E. MOORE
Missouri Bar Number 61759
Assistant Staff Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-6514 (Voice)
573-526-6969 (Fax)
kevin.thompson@psc.mo.gov

Attorneys for the Staff of the Missouri Public Service Commission.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **15th day of November, 2012,** to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson