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

AARP'S INITIAL BRIEF

COMES NOW AARP, and hereby offers responsive arguments on two utility "deferral" proposals, not addressed in its initial comments, which seriously threaten just and reasonable electric rates in Missouri.

I. "Plant-In-Service Accounting"

Ameren Missouri (or "Company") describes this newly-invented proposal as their "most significant enhancement to the regulatory framework".[1] However, the evidence on the record shows that this novel accounting scheme would fundamentally change the current incentives that are inherent to a fair rate case process, and would result in a serious detriment to ratepayers.

The Commission follows an "extraordinary event" principle for determining whether to allow a utility to collect costs through an accounting deferral for potential recovery in a subsequent case. This principle was elucidated in the 1991 rate case In re Missouri Public Service Co., where the Commission stated: "Lessening regulatory lag by deferring costs is not a reasonable goal unless the costs are associated with an

[1] Initial Post-Hearing Brief of Ameren Missouri, p. 36.

extraordinary event." [2] In fact, Ameren Missouri conceded during cross-examination that the expenditures that would be subject to Plant in Service Accounting are not outside of the Company's control, are not volatile, and are not unpredictable.[3] Ameren Missouri further conceded that even if the Company were not earning its authorized rate of return, its primary justification for this Plan-in-Service Accounting scheme, is also not extraordinary.[4]

AARP agrees with the analysis of Office of the Public Counsel ("Public Counsel") accounting witness Robertson who points out that the Company's "Plant-in-Service Accounting" proposal would isolate one component (i.e., plant) in its cost of service calculation, while ignoring other components within the same cost of service. As a result, utility revenue could increase, operating expense could decline, and other rate base items within plant-in-service and accumulated depreciation could decline. All of these items are exposed regulatory lag. The premise behind observing a test year for audit purposes (and true-up, if needed) is to match revenue and cost of service during a specific period *to ensure calculation of a revenue requirement that is fair to both the Company and to ratepayers*.[5] Thus, the proposal would unfairly work to the detriment of consumers, as only one aspect of the ratemaking formula is accumulated over a period of time that is longer than a 12-month test year, but then dumped into a future rate case calculation where only 12 months of data is used for the other components. The better approach is for the Commission to consider "all relevant factors" equally to ensure that electric rates are fair to all parties.

[2] Case Nos. EO-91-358 & EO-91-3601, 1 Mo. P.S.C. 3d 200, 207 (1991).
[3] Tr. 621, 657
[4] Tr. 656.
[5] Exhibit 406, Robertson Direct Testimony, pp. 5-6.

Ameren Missouri witness Barnes acknowledged that no other state has ever adopted the proposed Plant-in-Service Accounting mechanism, that it has not been written up in any authoritative text on utility ratemaking, that it has never been mentioned in a treatise, and that it has never been the subject of a journal article.[6] AARP could find neither court case precedent nor public utility commission case on this topic, but surely it would violate the concept that ratemaking must be equally fair to consumers and utility shareholders.[7] Plant-in-Service Accounting, as proposed by Ameren Missouri, could only work to change the entire premise of ratemaking to the favor of increased utility revenues and lead to the higher utility bills for consumers—all in return for *no improvement in customer service* (only higher utility profits).

The Commission's Staff and the Public Counsel accurately describe this proposal as a "regulatory ratchet" that would only work in the favor of utility shareholders, and once it has been tightened down on ratepayers, it is unlikely to ever loosen up. The Commission has already adopted the Fuel Adjustment Clause along with a variety of trackers for this utility, all of which currently operate to burden ratepayers with the utility's business risk. Rarely, do any of these current mechanisms operate to the benefit of consumers. Each of the current single-issue mechanisms work to erode the built-in incentive for cost-efficiency that is inherent to cost of service ratemaking. The Commission should not adopt any more such mechanisms, but rather, it should look for ways to bring electric ratemaking back to a more even-handed approach.

"Plant-in-Service Accounting" does not have any chance to benefit consumers, even during a short term period, as it can only ratchet up rate increases for no added

[6] Tr. 581-582.
[7] Valley Sewage Co. v. Public Service Commission, 515 S.W.2d 845, 851 (Mo. App. 1974).

consumer benefit. Ameren Missouri implies that this accounting mechanism is needed because the utility is currently "underinvesting" in its infrastructure.[8] Safe, adequate and reliable service is not something that ratepayers should have to pay extra for; it is what Ameren Missouri is required to provide.[9] It is outrageous that to suggest that the regulatory bargain must continually be tilted ever further against ratepayers--with new methods for increasing utility earnings and by shifting a larger share of business risk onto ratepayers who are struggling through a difficult economy--simply to entice a monopoly electric company to live up to its obligation to provide basic and essential services with adequate facilities that are up to date.

Ameren Missouri argues that Plant-in-Service Accounting is needed because of a "regulatory gap" that occurs after construction of plant, during which the Company is not permitted to earn a return on the capital it has committed to a construction project.[10] However, the Company acknowledges that it is allowed to accrue an Allowance For Funds Used During Construction (AFUDC), which does indeed compensate it for the cost of the capital it has committed to the project during the period of construction. MIEC (Missouri Industrial Energy Consumers) witness Michael Brosch effectively explained why Company's concerns about this "gap" are significantly misplaced, and why singling out specific components (in this instance, plant) would be unfair:

> [A]t the time construction is completed, the asset is eligible for consideration in rate base. Given the dynamic environment that occurs between test years, there's . . . a continual process of building new plant, retiring old plant. Everything's very dynamic. So you can't say that a specific asset that was completed in August of 2012 is not being allowed to earn a return. An overall revenue requirement is being established in

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[8] Tr. 591.
[9] Section 393.130 RSMo.
[10] Initial Post-Hearing Brief of Ameren Missouri, p. 37-38.

> this case that may be sufficient to pay a return on all the new assets added for the next two or three years.
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> . . .
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> What you see is volatility in the income statement that suggests that an inability to contain expenses at the same rate of growth that revenues are growing is really the root cause of the historical earnings problem.[11]

II. Transmission Tracker

Ameren Missouri is also proposing Fuel Adjustment Clause ("FAC") treatment, or in the alternative, a tracker, which would allow another ever-expanding set of costs (in this instance, transmission costs) to be accumulated through an extraordinary accounting deferral.[12] FAC treatment for transmission costs runs afoul of the law. According to Missouri's FAC law ("SB 179"), only certain costs are allowed to flow through the FAC, and these costs are limited to "prudently incurred fuel and purchased-power costs, including transportation."[13] Apparently, Company has been erroneously interpreting the word "transportation" to include transmission costs, rather than sticking to the limited intent of the law to include the possibility of passing-through transportation costs related to fuel procurement (e.g., the cost of moving coal by rail). Moreover, costs related to any non-operational electric property is prohibited from being charged to ratepayers under Missouri law ("Proposition One" or the "Anti-CWIP Statute").[14] Surely, this law not permit the *ongoing* capital construction cost of building transmission facilities to be charged to consumers in any fashion.

[11] Tr. 801-803
[12] Initial Post-Hearing Brief of Ameren Missouri, pp. 48.
[13] Section 386.266.1, RSMo.
[14] Section 393.135, RSMo.

Furthermore, it is inappropriate to pass transmission costs through the FAC, even if it were lawful to do so. As Staff expert witness Lena Mantle testified, "Just because a cost is incurred to deliver energy to Ameren Missouri customers, does not mean the cost should flow through the FAC," characterizing the inclusion of these charges in the FAC as bad public policy.[15] Construction costs, and related costs such as easement and real estate costs, are simply not the kind of costs that the FAC was intended to recover.[16] Changes in transmission construction costs are neither uncontrollable nor volatile.[17]

Mr. Haro testified that Ameren Missouri should also receive special ratemaking treatment for certain MISO transmission charges, both because of its membership in the MISO and because of its need to use third-party transmission facilities to serve a portion of its native load. He further testified that it is fair to pass these charges on to the ratepayers because they are enjoying benefits from Ameren Missouri's MISO participation. Company offers an alternative proposal that the MISO transmission costs that are the subject of dispute between the Company and the Staff with respect to their recovery through the FAC, together with MISO transmission revenues, should be tracked via a "Transmission Cost and Revenue Tracker". As such, a larger than test year amount of such costs would be accumulated and dumped into a future general rate case for recovery.[18] All consumer parties taking a position in this case oppose the "Transmission Cost and Revenue Tracker" proposal in this case. Although Company projects that these costs will increase in future years, no other evidence on the record

[15] Tr. 1208-1209.
[16] Tr. 1244-1245.
[17] Tr. 1209.
[18] Initial Post-Hearing Brief of Ameren Missouri, pp. 57-58.

has established the reasonableness of Ameren Missouri's projection of increased MISO transmission expenses. MISO revenues will likely increase only if Ameren Missouri builds additional transmission.[19] Ameren Missouri currently has no plans to build Multi-Value Transmission Projects, the allocated costs of which are primary drivers of the projected MISO transmission expenses.[20] Transmission built by Ameren Corporation or by one of its unregulated subsidiaries would not result in revenue benefits for Ameren Missouri's ratepayers, although they would bear a portion of the construction costs if MISO determines that the transmission projects are Multi-Value Projects.[21] Revenues, by contrast, would inure solely to the benefit of whoever built the transmission facility.[22]

MIEC expert witness Dauphinais testified, "A $3.4 million increase in transmission expenses by the end of 2013 and another $6.6 million by the end of 2014 is miniscule in comparison to the total revenue requirement increase the Company has requested in this proceeding . . . These anticipated changes do not rise to a magnitude that justifies them being tracked through a Transmission Tracker."[23] Staff witness Mr. Oligschlaeger agreed, further testifying that the Commission has never authorized a tracker or other such device on the basis of *projected* future revenue requirement increases.[24] Surely, this is not an area of costs that justifies any further erosion to the fair application of cost of service ratemaking.

Creating an ongoing deferral for any transmission costs would be a terrible regulatory precedent. A tracker unreasonably shifts business risk from a utility to its

[19] Tr. 1168-1169, 1173.
[20] Tr. 1169.
[21] Tr. 1169-1170.
[22] Tr. 1171-1172.
[23] Ex. 526, p. 8.
[24] Tr. 1345-1346

customers, and as discussed *supra*, would further erode the balance of risk and opportunity that cost-of-service ratemaking strikes between the utility and its customers, almost certainly to the *detriment* of consumers. Ameren Missouri argues continually that “regulatory lag” is an evil burden to the utility and that Missouri's supposedly old-fashioned adherence to "all relevant factors" ratemaking must be changed. However, the fairness of this traditional ratemaking approach is not only the most fair and even-handed way to balance the interests of shareholders and consumers, it is also Missouri law.[25] As the Commission Staff notes in its initial brief, trackers in general may very well be illegal due to the ban on single-issue ratemaking, and are vulnerable to challenge.[26] Nonetheless, trackers are simply bad ratemaking policy, in that such mechanisms enable special treatment for one item of cost, to the exclusion of other costs and revenues and to the detriment of ratepayers, and furthermore the built-in regulatory incentive to minimize these costs is diminished.

III. Conclusion

In opposing the various anti-consumer proposals for special treatment in this rate case (FAC, deferral accounting, trackers, etc.), AARP is not suggesting that Ameren Missouri be denied ratemaking recognition for its prudently incurred costs, whether those costs are construction costs, fuel-related costs, or MISO transmission costs. Rather AARP opposes granting selected costs preferential treatment over other ratemaking elements in ways that unfairly harm consumers or that undermine the very important regulatory incentives (i.e., regulatory lag) which drive cost efficiency. AARP

[25] St. ex rel. Utility Consumers' Council v. Public Service Commission of Missouri et al.,585 S.W.2d 41, 56-58 (Mo. banc 1979) "*UCCM*”).
[26] Ibid., p. 56, Footnote 292.

prays that the Commission issues an order in this rate case which protects consumer interests by considering all relevant factors equally.

As its deliberates upon what is "just and reasonable" in this rate case, AARP also urges the Commission to give sufficient weight to the sworn testimony of consumers at local public hearings regarding the impact that would result from imposing Company's rate increase proposals in the midst of the current recession-ravaged economic environment. The Commission should give that testimony as much weight as it gives to Company's evidence of its economic realities, and thus fairly balance the interests of utility shareholders with the consumer interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to official service list, on this 15th day of November, 2012.