

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the First Prudence Review of)	
Costs Subject to the Commission-Approved Fuel)	
Adjustment Clause of Union Electric Company)	<u>Case No. EO-2010-0255</u>
d/b/a Ameren Missouri)	

INITIAL POST-HEARING BRIEF OF MISSOURI ENERGY GROUP

COMES NOW the Missouri Energy Group (“MEG”), by and through undersigned counsel, and submits its Initial Post-Hearing Brief pursuant to the Commission’s Notice of Briefing Schedule issued January 12, 2011:

This case boils down to the question of whether Ameren Missouri (“AMMO”) could properly exclude the revenues derived from the bilateral contracts to American Electric Power Service Corp. (“AEP”) and Wabash Power Association, Inc. (“Wabash”) dated February 27, 2009 and April 28, 2009 respectively from the definition of Off-System Sales Revenues (“OSSR”) found in the Rider FAC Tariff No. 98.3, as approved in Case No. ER-2008-0318 by this Commission in its Final Report and Order dated January 27, 2009, thereby excluding those revenues in its calculation of the Fuel and Purchased Power Adjustment rates for the time period of March 1, 2009 through September 30, 2009.

The MEG believes that this exclusion by AMMO was improper under the tariff language OSSR definition and far beyond the intent of the FAC statute.

1. Background for FAC Statute and Proposed Tariff

For many years prior to its passage in the legislature, investor-owned electric utilities in the state of Missouri were vocal in their desire to have the legal ability to pass through fuel

costs outside of the parameters of a general rate case. In 2005, the Missouri legislature passed SB 179 which was subsequently codified in Section 386.266 RSMo and states in part:

Subject to the requirements of this section, any electric corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings **to reflect increases and decreases in its prudently incurred fuel and purchased-power costs, including transportation.** The Commission may, in accordance with existing law, include in such rate schedules features designed to provide the electrical corporation with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities.¹

Section 386.266.1 RSMo, emphasis added.

On April 4, 2008, AMMO (as “Union Electric Company”) filed a rate increase case that would ultimately be numbered ER-2008-0318 (“2008 case”). Marty Lyons, “Senior Vice President and Chief Accounting Officer of Ameren Corporation, Union Electric Company d/b/a AmerenUE (“AmerenUE” or the “Company”) and other Ameren subsidiaries,” filed direct testimony in that case supporting AMMO’s desired Fuel Adjustment Clause (“FAC”) including schedules that set out sample tariff language. The Rider FAC tariff sheets are numbered 98.1-98.5 (Schedules MJL-E1-1 through MJL-E1-5). On December 11, 2008 (and during the hearing in the 2008 case), AMMO, the Commission Staff, the Office of Public Counsel, and MIEC entered into a Stipulation and Agreement as to Off-System Sales-Related Issues, and on December 12, those same parties, joined by Noranda Aluminum, entered into a Stipulation and Agreement as to all FAC Tariff Rate Design Issues. On December 30, 2008, the Commission approved both Settlement Stipulations and on January 27, 2009, the Commission Issued its Final Report and Order in the 2008 case.

¹ Section 386.266.1 RSMo, (emphasis added)

In the hearing in the instant case on January 11, 2001, the Commission took administrative notice of Mr. Lyons' direct testimony in the 2008 case.² (Tr. at 468).

In this testimony in the 2008 case, Mr. Lyons described AMMO's proposed FAC and the reasons for wanting it. In his Executive Summary, Mr. Lyons states that "The proposed FAC applies to AmerenUE's total fuel, transportation, and purchased power costs, net of off-system sales revenues (i.e., the Company's "net fuel costs")."³ However, that is not how AMMO is using the FAC tariff in this case.

2. *The FAC Statute was not intended to be used to recover lost revenue*

While the FAC portion of 386.266 RSMo and Mr. Lyons' testimony in the 2008 case refer to using an FAC for recovery of total fuel, transportation, and purchased power costs, AMMO in this case is attempting to improperly use the FAC tariff mechanism to recover revenues that it lost resulting from its inability to serve Noranda Aluminum ("Noranda") after an ice storm on January 28, 2009. The use of the FAC mechanism to improperly recover lost revenues in this manner is described by Ms. Barnes in her testimony at the hearing in this case on January 10, 2011 under cross-examination by Staff counsel Jaime Ott:

Q. Now it's your position that Ameren entered into the AEP and Wabash contracts to restore Ameren to the same place it was prior to the ice storm?

A. Yes.

Q. How did entering into these contracts get money from the fuel cost to the utility any quicker than before the ice storm?

A. We lost revenues from base rates because Noranda wasn't taking any load. And what we did was we entered into these

² Tr. Vol 4 at 468, lines 7-8

³ Marty Lyons Direct Testimony, Executive Summary at p. 1

two contracts that mimic the type of load that Noranda would have taken and so the revenues then that we received from those contracts, we treated the same way as we would have treated Noranda revenues had they been working.

Q. But isn't the purpose behind the fuel adjustment cost [sic] to recover fuel costs to the company?

A. Yes.

Q. And it's the fuel adjustment clause is [sic] not there to recover base rates?

A. But we're trying to recover revenues. So we entered into contracts that –

Q. But is – that's not my question. Is the fuel adjustment clause there for the utility to recover base rates?

A. No.

Q. It's just there to cover fuel costs?

A. It's meant to recover fuel costs in excess of what's built into base rates.⁴

Using the FAC to recover lost revenues was not listed as one of Mr. Lyons' stated intents when he proposed the FAC Tariff in the 2008 case, nor is it listed as the intent of the Commission's Rules for the FAC as stated in the Code of State Regulations for the FAC:

Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, **to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs.** The FAC may or may not include off-system sales revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC⁵

⁴ Tr. Vol 2 at 180, line 13

⁵ 4 CSR 240-2.090(1)(C)

The FAC is not intended to be used as a method to recover lost revenues. Utilities cannot manipulate the existing statutes or rules to suit their fluctuating goals.

3. *The AEP and Wabash contracts do not fall under the exclusions for OSSR*

Under the Rider FAC Tariff approved by this Commission in the 2008 case on January 27, 2009, OSSR is described as follows:

[R]evenues from Off-System Sales allocated to Missouri electric operations.

Off-System Sales shall include **all sales transactions** (including MISO revenues in FERC Account Number 447), **excluding Missouri retail sales and long-term full and partial requirements sales**, that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission.⁶

The contracts that AMMO entered into with AEP and Wabash do not meet this definition and the revenues derived from those contracts cannot be properly excluded from OSSR. AMMO's contract with AEP was for 15 months and their contract with Wabash was for 18 months.⁷

Using the definitions in FERC Form 1, these contracts are for intermediate firm service (IF)—described in FERM Form 1 as longer than one year but shorter than five years.⁸

In addition the contracts are not requirements service contracts. The FERC definition of requirements service (RQ) is:

Service which the supplier plans to provide on an ongoing basis (i.e., the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the

⁶ Rider FAC Tariff Sheet No. 98.3, effective March 1, 2009; Exhibit 15, LaConte Direct, p. 4, line 19 – p. 5, line 3 (emphasis added)

⁷ Exhibit 15, LaConte Direct, p. 5, lines 19-20

⁸ Exhibit 15, LaConte Direct, p. 6, lines 5-7, Exhibit 14, Brubaker Direct, Schedule MEB 2

same as, or second only to, the supplier's service to its own ultimate consumers.⁹

The FERC definition is also used in the Edison Electric Institute *Glossary of Electric Industry Terms*.¹⁰ AMMO did not include these contracts with AEP and Wabash as requirements service on their FERC Form 1, they classified these contracts as "IF".¹¹

While AMMO witnesses have said throughout their testimony in this case that they define long-term differently than everyone else does (to include any contract longer than 12 months), none of AMMO's witnesses has been able to provide anything written that would support this definition.¹² Furthermore, every party to the FAC and OSS Stipulations approved in the 2008 case understood the terms "partial requirements" and "long-term" to be defined in the common manner in the regulatory world as stated on the FERC Form 1 and the EEI *Glossary of Electric Industry Terms* except for AMMO.

4. Conclusion

The ice storm that struck Southeast Missouri on January 28, 2009 created much destruction to property and business, but it did not change the meaning of the terms "long term" or "partial requirements," under the OSSR language of the FAC Tariff, nor did it alter the **purpose** of the FAC tariff. This Commission should require AMMO to include the revenues derived from the AEP and Wabash contracts in its calculation of the Fuel and Purchase Power Adjustment rates for the time period of March 1, 2009 through September 30, 2009.

⁹ Exhibit 15, LaConte Direct, p. 5, lines 8-9, Exhibit 14, Brubaker Direct, Schedule MEB 2

¹⁰ Exhibit 14, Brubaker Direct, p. 4, lines 3-11 and Schedule MEB 3

¹¹ Exhibit 14, Brubaker Direct, Schedule MEG 2, pp. 1 of 11 (AEP) and 4 of 11 (Wabash), Tr., Vol 2 at 83, lines 24-25 through page 84, line 1

¹² Tr., Vol. 2, at 195, lines 5-21

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 4 CSR 240-2.080 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing to be served on all persons on the official service list in Case No. EO-2010-0255.

Dated at St. Louis, Missouri this 10th day of February, 2011.

/s/Lisa C. Langeneckert
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