BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Amendment to the Commission's Fuel Adjustment Clause Rules.	)))	File No. EX-2016-0294

JOINT COMMENTS OF AMEREN MISSOURI, KANSAS CITY POWER & LIGHT COMPANY, AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

COME NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri"), Kansas City Power & Light Company ("KCP&L"), and KCP&L Greater Missouri Operations Company ("GMO") (collectively, "Companies"), and submit these Comments on the proposed rescission of 4 CSR 240-3.161 and on proposed rule 4 CSR 240-20.090, as requested by the Commission's *Notice to Submit Comments*, as follows:

I. Background/Introduction.

1. This docket was opened in 2016.[1] It followed a workshop docket initiated in late 2010 that was created to review the effectiveness of the Commission's fuel adjustment clause ("FAC") rules, as required by 4 CSR 240-20.090(12).

2. The Staff prepared and circulated several iterations of draft rules as that workshop docket proceeded. The Companies actively participated in both the earlier dockets and provided the Staff with specific comments and suggestions on the draft rules that were being discussed.

3. The rules now formally proposed in this docket bear significant similarities to the latest drafts discussed in the workshop docket and reflect many suggestions the Companies made respecting those workshop drafts. Consequently, the Companies support a significant majority of the changes from the current rules that the proposed rules would make. However, the Companies recommend certain changes to the proposed rule in order to make needed clarifications or

[1] The Commission has indicated that proceeding with this rulemaking was delayed by an Executive Order issued by then-Governor Greitens in early 2017.

corrections, and recommends a few other changes in areas where the proposed rules create substantive concerns. Accompanying these Comments as Exhibit A is a mark-up of the proposed rule showing the Companies' recommended changes. If the suggested change is minor, the Companies have included a comment in Exhibit A to explain the change. If the suggested change is more involved or involves a substantive issue, these Comments address it in greater detail.

4. Before addressing the Companies' recommended changes in detail, it should be noted that a couple of important principles guided the Companies' Comments on the proposed rule.

5. First, while one cannot say there have been no disagreements about the application of the current FAC rules, it is fair to say that those rules have, in general, operated as intended, without significant concerns or problems for utilities, regulators, and other stakeholders. The Commission has received, processed, and decided more than a dozen requests to establish or continue/modify an FAC, has processed dozens of adjustments to FAC rates, and has completed a significant number of prudence reviews. In short, the rules can be improved, but they are not broken. This may be owing to the fact that the initial rules were adopted after an extensive, deliberative, and largely collaborative workshop process. Consequently, before a change is made to the current rules there should be a good reason for making the change, borne by lessons learned over the past dozen or so years.

6. Second, the rules should not contain provisions that can be used as a sword to advance a point of view on policy issues regarding the FAC. The FAC statute, Section 386.266, provides the Commission with authority to decide the propriety of an FAC and imposes certain standards the Commission must adhere to when that decision is made. The Commission should be wary of any party's attempt to put a thumb on the scale with respect to policy issues that could

arise in a FAC case via the rules. For the most part the proposed rules are faithful to that principle, but as outlined below, there are a few instances where the proposed rules go too far in this regard. In those instances, we suggest a correction to alleviate this concern but in a manner that leaves the Commission with all of the authority the FAC statute gives it.

II. Specific Comments.

7. 20.090(1)(L)2 – Environmental or RES[2] Costs. The Companies agree completely that if a cost or revenue were reflected in an ECRM[3] or RESRAM,[4] that same cost should not also be reflected in the FAC. However, the proposed rules' definition of "fuel-related revenues" recognizes (as reflected in current FACs) that there are certain costs and revenues that are related to fuel or power that can be included in an FAC, but they could alternatively be included in an ECRM or a RESRAM. For the Companies, examples are costs and revenues for/from emission allowances, which for years have been included in the Companies' FAC. As literally reflected in the proposed rule, however, emission allowance *revenues* are included in the "fuel-related revenue" definition and could therefore be included, but emission allowance *costs* are not included in any definition of the costs that can be included. It would be fundamentally unfair and inappropriate to include the revenues but exclude the costs. The Companies' suggested edit gives the Commission the ability to include both, but prevents the situation where a cost would be included in two different mechanisms to ensure there is no double-recovery.

8. 20.090(2)(A)1. This provision (and a similar provision regarding notice if discontinuation of an FAC is requested) deals with notice of the FAC request (to establish/continue/modify an FAC) in a general rate proceeding. The suggested changes are

[2] Renewable Energy Standard.
[3] Environmental Cost Recovery Mechanism.
[4] Renewable Energy Standard Rate Adjustment Mechanism.

designed to clarify to what notice the rule refers, and to clarify the information that should be included in the notice. While the impact of rebasing FAC costs/revenues on proposed base rates in a general rate proceeding can be determined, there is no way to accurately estimate what future fuel adjustment rate ("FAR") adjustments will be given the volatility/uncertainty in fuel and purchased power costs and off-system sales, as well as in kilowatt-hour sales which can vary significantly due to weather and other factors.

9. 20.090(2)(A)9. With respect to the added language, there is a similar requirement in (2)(A)10 for fuel-related *revenues* so there should be a corollary provision for fuel and purchased power *costs*, including transportation. Regarding the portion of (A)9 that is stricken, the stricken language is unnecessary because under (2)(C), the utility is on notice that the issues of control/volatility/magnitude of costs and revenues are factors that the Commission may choose to take into account as it considers an FAC request. It will be up to the utility to decide how to meet its burden to support its FAC. The FAC rules do not need to prescribe the precise analyses a utility should do to support its request.

Another significant problem with the stricken language (which largely originated from the Office of the Public Counsel's ("OPC") comments in the workshop process) is that it could – and likely would – be misused to argue that a rule violation occurs if the utility fails to provide a detailed control/volatility/magnitude analyses on literally every minor element that make up fuel, that make up purchased power, and that make up off-system sales (and transportation associated with each).

For example, there are at least 15 different market settlement types used by MISO[5] to break down purchased power costs incurred in the market, the costs for which are all recorded in Account

[5] Midcontinent Independent System Operator, Inc.

555 (Purchased Power) of the Uniform System of Accounts ("USoA"). Including this language arguably would provide an advantage to parties like OPC, which have a long history of outright opposition to FACs, to claim that if volatility/control/magnitude analyses are not provided for each and every one of those 15 market settlement types the utility will have committed a technical violation of a procedural rule. Such a party could also attempt to rely on this language to say that this alone justifies excluding key and interrelated elements of purchased power from the FAC. Moreover, claimed technical violations of the current FAC have been argued in the past to entirely disqualify the utility from having an FAC. The rule should not create additional situations where a given party's policy views can be advanced with the help of the rule, but rather, should reflect neutrality on such issues.

Excluding this language removes no tool from the toolbox of any party wishing to oppose an FAC or wishing to change the terms of an FAC that is proposed; e.g., such a party is free to request data and to run any analyses (and to testify about them) they see fit to support arguments they may choose to make. However, including the language would likely be argued by such parties to lend legitimacy to claims that have been made in the past that the Commission must parse the most minute elements of fuel, of purchased power, of off-system sales (and associated transportation) before it can approve an FAC at all. Indeed, OPC took essentially that approach in KCPL's 2016 rate case (File No. ER-2016-0285), going so far as to claim that only the energy component of the locational marginal price ("LMP") paid for power should be included in the FAC even though the price of the energy itself consists of three components (and always has, the only difference today being that regional transmission organizations ("RTOs") provide transparency into those elements by splitting the LMP into three buckets).[6] As the testimony in that case

[6] OPC took the same or similar position in Ameren Missouri's 2014 rate proceeding (File No. ER-2014-0258), but all FAC issues were settled shortly before the evidentiary hearings in that case.

explained, fuel adjustment clauses deal with three categories of costs/revenues: (a) fuel, (b) purchased power, and (c) fuel-related revenues (and associated transportation). Each of those are made up of numerous elements, which are generally interrelated with one another.[7]

This is how utilities have viewed the FAC, and it is how the Commission has viewed the FAC. For example, aside from rejecting KCPL's request to include administrative costs (to administer the RTO and NERC[8]) in the FAC, the Commission soundly rejected OPC's view that all the various individual elements of fuel, purchased power, and off-system sales should be parsed and analyzed in the manner the subject language might be argued to suggest.[9] In rejecting OPC's attempt to individually evaluate the magnitude/control/volatility of each element that make up fuel and fuel transportation, the Commission viewed those elements as a whole, stating "[t]he evidence shows that KCPL's fuel and transportation costs are of such a magnitude that they would materially impact the utility, that those fuel costs are beyond the control of KCPL's management, and that its fuel costs are volatile." The Commission did not examine whether the costs incurred for the lumps of coal as distinguished from the coal transportation as distinguished from railcar expense, etc. were volatile, but rather, looked at fuel *as a whole*, purchased power *as a whole*, and off-system sales *as a whole*.

10. <u>20.090(2)(A)10.</u> This comment also applies to the addition the Companies are suggesting to 20.090(2)(A)9, discussed above. The goal of this provision appears to be to make sure that there is a clear identification of the accounting the utility will use for the elements of fuel, purchased power, and off-system sales (and associated transportation) that are included in an FAC.

---

[7] Those interrelationships are explained in Exhibits B and C hereto, which are testimonies filed by Ameren Missouri in the below-referenced KCPL rate case.
[8] North American Electric Reliability Corporation.
[9] The Company asks the Commission to take official notice of the Fuel Adjustment Clause portions of its May 3, 2017 *Report and Order* in File No. ER-2018-0285.

This provision also appears to contemplate (as the Companies believe may have occurred in a KCPL case) that the Commission could order some further designation if for some reason the utility's accounting were determined to be inadequate. As proposed, the language could be read to suggest that the Commission should be able to dictate the accounting used in each utility's general ledger. A utility should have to keep its books in accordance with the USoA and may need to use managerial accounting (which is unique to each utility) beyond basic USoA requirements so that only eligible costs/revenues are included in the FAC. If that accounting is sufficient, there should be no further Commission-ordered "designations." Ameren Missouri already does this, as shown on Exhibit D hereto, which is included in its monthly FAC reports. Exhibit D contains detailed descriptions of the elements of Ameren Missouri's FAC (tied to the specific tariff language) and of the accounting used to track those elements.

11. <u>20.090(2)(A)14 & 20.090(2)(A)15.</u> These provisions would require the utility to provide information regarding the allocation of net energy costs to customer classes in base rates, and a discussion of how the FAC rate design is reasonable given that cost allocation. While the Companies are capable of developing and filing such information, it would not be likely to provide additional value in the establishment of a just and reasonable FAC rate. Consequently, these requirements, which do not exist in the FAC rule that has been in place since 2006, should not be adopted. The reason additional value is likely not added is because the allocation method used for the components of net energy cost reflected *in base rates* may or may not be meaningful in establishing allocations of net energy cost *variances* that are reconciled in the FAC. In base rates, it is clear what the categories of costs and embedded levels of those costs that are reflected in rates will be (e.g., fuel expense, purchased power expense, off-system sales revenue). However, future rate adjustments under the FAC will result from marginal changes in any or all of these categories

from base levels, but we do not and cannot know in advance the extent to which any of the individual categories will contribute to the future variances that will be reconciled in the FAC, how those factors will interact, or what the marginal value of the changes will be. Thus, the information sought would be nothing more than a guess.

For example, in one accumulation period, the changes in the net energy costs to be reflected in an FAC adjustment may be primarily driven by higher fuel expense that theoretically is best allocated on one basis, whereas the next accumulation period, the FAC may be largely driven by significant load changes that impact purchased power costs and/or off-system sales revenues, which may theoretically be best allocated on a different basis. Because the fact that electric utilities' current FAC designs tend to allocate variances in net energy costs evenly across all energy consumption is reasonable on its face, it is an unnecessary complication to try to track class allocations from a base rate proceeding through to a dynamic and potentially volatile FAC calculation. If a party desires to present an analysis advocating for a particular rate design, it can request historical data from the utility and prepare and present whatever analysis it wants, but the rule should not require the utility to do so up-front.

12. 20.090(2)(A)17. The Companies disagree with the premise of the stricken language, which seems to suggest an FAC imposes risks on customer classes. Moreover, the Companies have no idea how one would quantify "risks" to a customer class. This language arose from OPC's prior attempts to oppose FAC's outright by claiming they are bad policy because OPC alleges that they shift risks to customers. OPC or others can continue to make that argument; they can identify risks, if they believe they exist, and they can try to quantify such a risk. The rules, however, should not advantage or disadvantage any particular point of view.

13. 20.090(8)(F). The Companies have recommended several edits to this provision, none of which are intended to change the substantive intention of the provision. Rather, the changes are suggested to add precision and clarity to the language. This provision is an adaptation of a provision that has been included in Ameren Missouri's FAC tariffs since 2012,[10] and which is also now included in the FAC tariffs for KCPL and GMO. The provision is designed to recognize that RTOs from time-to-time institute new "market settlement types" or "schedules" where they provide revenues or charge costs that are in the nature of, and possess the characteristics of, revenues or costs that are already included in the FAC. Sometimes RTOs will create a new type/schedule and "move" costs or revenues that were formerly covered by a type/schedule already covered by the FAC to the new type/schedule. At other times, RTOs will decide to break down a cost (e.g., a purchased power cost) into more subcomponents and report them under the new type/schedule.

Most of the recommended changes are to make clear that it is the cost or revenue that is included in the FAC (the type/schedule is just a designation for the costs or revenues). There also appears to be no reason to have two separate provisions (one for the utility and one for another party) for filing a request to include costs or revenues under a new type/schedule in the FAC. Both filings should simply take place at least 60 days before the next FAR filing. The recommendations also make clear that RTOs (e.g., MISO, PJM,[11] SPP[12]) sometimes add market settlement types but also sometimes add "schedules," which are functionally the same.

[10] See Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs, and Fuel Adjustment Clause Tariff Sheets, File No. ER-2012-0166, where the provisions reflecting this concept were first agreed upon, and the *Report and Order* in that case, where the FAC tariff sheets including such provisions were approved. Note that the Consumers Council of Missouri objected to the referenced Stipulation, but did not take issue with this particular provision.

[11] PJM Interconnection, LLC.

[12] Southwest Power Pool, Inc.

III. Conclusion

14. With a couple of exceptions outlined above, the proposed rules reflect an improvement to the current FAC rules by clarifying certain practices that have developed through 11-plus years of experience in applying the current rules. A few additional improvements can be made, and the Companies have specifically provided recommendations in those areas. Changes to the rules should not, however, go further in a way that some might attempt to use to advance their specific policy points of view. Those points of view can be advanced as such a party sees fit. The Companies appreciate the opportunity to provide these Comments, and request the Commission give them careful consideration.

Respectfully submitted,

SMITH LEWIS, LLP

/s/ James B. Lowery

James B. Lowery, #40503
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
lowery@smithlewis.com

Wendy K. Tatro, #60261
Director & Assistant General Counsel
Ameren Missouri
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
(314) 554-3484
(314) 554-4014
AmerenMissouriService@ameren.com

Attorneys for Ameren Missouri

/s/ Robert J. Hack

Robert J. Hack, MBN 36496
Phone: (816) 556-2791
E-mail: rob.hack@kcpl.com
Kansas City Power & Light Company
1200 Main – 16th Floor
Kansas City, Missouri 64105
Fax: (816) 556-2787

Attorney for Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company

Dated: August 6, 2018