BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rule Regarding Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms.	)))))	Docket No. EX-2006-0472

COMMENTS OF UNION ELECTRIC COMPANY d/b/a AMERENUE

COMES NOW Union Electric Company d/b/a AmerenUE (AmerenUE or Company), pursuant to Section 536.021, RSMo. (Cum. Supp. 2005), 4 CSR 240-2.180(15), and the Notice of Public Hearing and Notice of Public Comment appearing in the *Missouri Register*, Vol. 31, No. 14 (July 17, 2006), and hereby submits these Comments respecting proposed rule 4 CSR 240-3.161 and proposed rule 4 CSR 240-20.090.

I. PRELIMINARY COMMENTS

AmerenUE appreciates the opportunity to comment on the rules, as proposed, and recognizes that a great deal of hard work has gone into the development of the proposed rules, particularly on the part of the Commission's Staff which has taken the lead in moderating the pre-rulemaking workshops respecting rules implementing Senate Bill 179 (SB 179).[1] The following comments reflect AmerenUE's view that the proposed rules are, in general, a positive step toward making available to the Commission the tools embodied in SB 179. AmerenUE does not have major concerns about its ability to comply with the rules, as proposed, but would point out that the requirements are substantial and, in some cases, burdensome. Consequently, the Commission should improve certain provisions of the proposed rules, as discussed herein.

AmerenUE would also note that all of these comments are directed toward the goal of ensuring that fuel adjustment clauses or interim energy charge mechanisms (collectively referred

[1] SB 179 is codified at Section 386.266, RSMo. (Cum. Supp. 2005), and was enacted as SB 179, L. Mo. 2005, by a vote of 179 in favor and only 7 against.

to as rate adjustment mechanisms or "RAMs" in the proposed rules) are available for use by electric utilities, with the Commission's approval, in the manner contemplated by SB 179. Finally, please also note that while the proposed rules deal with both interim energy charges (IECs) and fuel adjustment clauses (FACs), AmerenUE's comments are generally directed toward only the FAC provisions of the proposed rules.

II. SB 179 GENERALLY

Before commenting on specific provisions of the proposed rules, AmerenUE believes it is important to discuss briefly the context for the enactment of SB 179 and the adoption of appropriate rules that allow the Commission to utilize the tools given it by the legislation.

A. SB 179 Brings Missouri Into the Mainstream of Public Utility Regulation

SB 179 provides a fuel and purchased power cost adjustment mechanism for use by Missouri regulators and the electric utilities under their jurisdiction that is similar to FACs that have routinely been employed in 27 of the other 29 non-restructured states.[2] Indeed, every single Midwestern state surrounding Missouri provides for an FAC outside general rate proceedings to allow timely recovery of fuel and purchased power costs.[3] This Commission has utilized, for decades, a *de facto* fuel adjustment clause, the purchased gas adjustment (PGA), for the natural gas purchase costs of local distribution companies. FACs allow utilities to timely pass through the necessary costs (subject to full prudence review and other consumer protections discussed below) associated with obtaining the fuel needed to fire the generation that serves customers, as well as the costs associated with purchased power needed to supplement the energy and capacity available from utility-owned generation.

[2] *See* Exhibit 1 attached hereto and incorporated herein by this reference.
[3] *See* Exhibit 2 attached hereto and incorporated herein by this reference.

FACs have been in use elsewhere for more than 40 years. *See, e.g.*, *City of Norfolk v. Virginia Electric Power Co.*, 90 S.E.2d 140 (Va. 1955).[4] FACs, such as the FAC now available in Missouri, reflect sound regulatory and economic policy, as evidenced by their wide use in almost every non-restructured state. An FAC does not allow utilities to earn a profit, but rather, provides a mechanism that allows the recovery of fuel and purchased power costs, which are often times much more significant, volatile and much more difficult to control than many other utility costs. An FAC allows actual cost recovery -- no more and no less -- of a major component of the costs necessary to provide service to customers. The Commission continues to have full ratemaking review over fuel and purchased power costs where FACs are utilized because of the built-in prudence reviews included in SB 179.

FACs also support or potentially prevent the deterioration of the credit quality of utilities thus avoiding the higher financing costs that utilities otherwise could face absent the FAC.[5] Moreover, a deterioration in credit quality in general creates a utility with greater overall risks and, since equity investors are subordinate to debt holders, the deterioration in credit quality tends to also increase the cost of equity capital. Rating agencies repeatedly recognize the importance of utilizing FACs and indeed of employing FAC mechanisms that allow timely

[4] Forty-three states utilized FACs as of 1991. National Regulatory Research Institute, *Current PGA and FAC Practices: Implications for Ratemaking in Competitive Markets*, 1991. FACs for electric utilities were also formerly used by the Missouri Commission until the Missouri Supreme Court, in its 1979 decision in *Utility Consumers Council v. Pub. Serv. Comm'n*, 585 S.W.2d 41 (Mo. banc 1979) (*UCCM*), precluded the further use of FACs in Missouri on the grounds that FACs constituted single-issue ratemaking that under the then-statutory scheme was not allowed. SB 179 reverses that result, as Justice Rendlin noted in his concurring opinion in the *UCCM* case, at p. 57, wherein he stated: "I agree that there is no statutory authority for a fuel adjustment clause, therefore, I must concur. In these times of energy crises it seems regrettable that we must reach this result. I hope the Legislature will address the problem without undue delay." The legislature is deemed to have known the law pre-dating SB 179 (that a fuel adjustment clause needed statutory authorization because otherwise it would violate the general prohibition against single-issue ratemaking), and consciously reversed that result with SB 179 thus allowing this single-issue adjustment as a matter of express, statutory law.

[5] Protecting the credit quality of utilities is a consideration long recognized by the Missouri Commission, including in its recent decision approving Kansas City Power & Light Company's (KCPL) alternative regulatory plan. In that case, a key driver was to preserve KCPL's investment grade rating in order to preserve lower borrowing costs, and thus lower rates, for Missouri ratepayers. Report and Order, *In the Matter of Kansas City Power & Light Company's Alternative Regulatory Plan*, Case No. EO-2005-0329 (July 28, 2005), at p. 29.

recovery of fuel and purchased power costs, as reflected in their evaluations of the relative creditworthiness of electric utilities, including in Missouri.[6] For example, Fitch noted that SB 179 "provides a more constructive operating environment for the Missouri-based gas and electric utilities."[7] Fitch also noted, however, that the "devil is in the details" and indicated that it would monitor the regulatory process (i.e. this rulemaking process) "to determine if the rules will allow the utilities to maintain more stable cash flow and reduce credit risk."[8]

These mechanisms also cause customer rates to reflect more closely changed market conditions. More closely reflecting changed market conditions sends improved price signals to consumers allowing them to make more informed and efficient choices relating to their consumption of electricity and other forms of energy.

In short, FACs provide an important and constructive regulatory tool for managing one of the most significant and/or volatile operating costs incurred by electric utilities.[9]

B. <u>Key Components of SB 179.</u>

The RAMs authorized by SB 179, including FACs, may be approved only after the resolution of a full, contested case rate proceeding where base rates are set based upon a consideration of all relevant factors.[10] Moreover, if an FAC is authorized, the utility is required to file a general rate case no less frequently than every four years where, again, all relevant factors (including the utility's earnings position) will be considered by the Commission.[11] Consequently, FACs do not replace regular, traditional rate case mechanisms that allow base

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[6] *New Missouri Bill Supports Utility Credit;*FitchRatings, June 1, 2005; *A Fresh Look at U.S. Utility Regulation*; S & P, Jan. 29. 2004; *Could MO's Regulatory Environment be Improving?*, J.P. Morgan Securities Inc (Report on Ameren Corp.) April 25, 2005; *Moody's Revises Rating Outlook of Empire District Electric to Stable from Negative*, Moodys, May 13, 2005; *U.S. Electric Utilities, Credit Implications of Commodity Cost Recovery*, FitchRatings, Feb. 13, 2006.
[7] FitchRatings, June 1, 2005.
[8] *Id.*
[9] These costs are important to utilities and ratepayers because they represent the largest single operating cost for most if not all electric utilities, including AmerenUE.
[10] § 386.266.4, RSMo.
[11] *Id.*

rates to be set at just and reasonable levels based upon consideration of all facts and circumstances related to the utility's operations and costs. Rather, FACs simply avoid the delays and inefficiencies inherent in the traditional ratemaking process by allowing a timely pass through of increases or decreases in prudently incurred fuel and purchased power costs -- no more and no less. This reduces or eliminates the need for repeated, frequent rate increase requests or over-earning complaint cases that would be driven by substantial movements (up or down) in fuel costs. To reiterate, only prudently incurred costs will be borne by ratepayers because SB 179 specifically preserves the Commission's ability to disallow any imprudently incurred costs via mandated prudence reviews that must occur no less frequently than once every 18 months.[12] SB 179 also contains mechanisms to true-up any over- or under-collections (with interest) to ensure ratepayers pay only actual, prudently incurred costs.[13] Consequently, utilities do not earn a return or otherwise profit in any way from FACs. At bottom, the FAC prevents harm to utilities and consumers that the volatility of fuel and purchased power costs can cause, while further protecting consumers by mandating periodic rate cases, prudence reviews and true-ups.

C. SB 179 Contains Numerous, Built-In Consumer Protections.

There are those who allege that SB 179 and the rules as proposed do not include sufficient consumer protections. They most often argue for a so-called "earnings test."[14] Their allegations are unsupported, inaccurate, and miss the mark by a wide margin, as demonstrated by the long list of consumer protections built into SB 179, including:

- The statute mandates that a RAM may only be established in a general rate proceeding based upon consideration of *all* relevant factors. This allows the Commission to consider the specific utility's entire financial picture in establishing a mechanism that is fair to all

[12] *Id.*
[13] *Id.*
[14] This issue is discussed briefly in Part D of these Comments, below, and in more detail in Appendix A to these Comments.

stakeholders, including the utility, to consumers, and that is consistent with the intent of SB 179.

- The statute mandates that the operation of the RAM and the utility's entire financial picture must be reviewed regularly. Regular reviews must occur because each electric utility with a RAM must file an additional rate case 37 months after the mechanism was established, followed by additional rate cases every four years, so long as the mechanism is in place. A mandated, periodic rate case requirement is a highly unusual consumer protection resulting from substantial compromises of various stakeholders' positions during the legislative process. In fact, the data indicates that no other non-restructured state's FAC statute requires periodic rate cases triggered by the initial adoption of an FAC, nor do any other non-restructured states require that an FAC be established in an initial rate case proceeding.[15] This suggests that FACs in other states can generally be established outside a general rate case proceeding without an examination of all facts and circumstances. However, SB 179 goes further than the practice in other states and mandates that the Commission provide all proper parties a regular forum, complete with all the protections required by contested case procedures and Due Process, to review the operation of the mechanism on a regular basis.

- The statute does nothing to limit the investigatory power of the Commission and does nothing to limit any proper party's ability to seek the initiation of an investigation or to file an over-earnings complaint case. Consequently, if the Commission or someone else believes the utility is over-earning the Commission can take action to reduce rates.

- The statute expressly limits the costs that may be recovered under the RAM to *prudently incurred* costs. Ratepayers will therefore never pay for fuel or purchased power costs that were incurred because of the utility's imprudence.

- The statute mandates prudence reviews of all costs recovered under the RAM no less frequently than every 18 months. This provides the Commission and all proper parties with the opportunity, in a contested case proceeding with full Due Process protections, to scrutinize the utility's fuel and purchased power procurement activities.

- The statute requires that any over- or under-collections (which would result primarily if actual sales due to changes in weather were different from expected) be corrected or "trued-up" at least annually. Ratepayers will always ultimately pay the correct amounts, which will consist only of actual, prudently incurred fuel and purchased power costs – not a dollar more or less.

- The statute requires that interest be paid on any over- or under-collections as part of the true-up process or if costs are disallowed due to prudence reviews. The interest is calculated based upon the utility's short-term borrowing rate, which is a fair rate for consumers. Consequently, if over-recoveries occur, or amounts are later disallowed via prudence reviews, consumers will receive not only the overcharged amounts, but interest

[15] *See* Exhibit 3 attached hereto and incorporated herein by this reference.

at a very competitive rate (far more than the typical consumer could earn on a savings account or CD) on those amounts.

- The statute expressly empowers the Commission to approve as part of the RAM, incentives for the utility to improve its fuel and purchased power procurement activities, in accordance with existing law.

- The statute expressly empowers the Commission to take into account any change in business risk to the utility resulting from the RAM, in addition to other changes in business risk, in setting the electric utility's allowed return. This means that the existence of a mechanism is a factor that will fairly be taken into account in setting the allowed return for the utility.

- The statute mandates that that all amounts collected under the RAM be stated separately on the customer's bill. This ensures transparency for consumers, and helps send the right signals to them relating to their consumption of electricity.

The proposed rules enhance this long list of consumer protections. For example:

- Unlike 21 of the other 27 non-restructured states utilizing FACs, the proposed rules require adjustments to be made based upon historic, not projected costs;[16]

- Once a RAM is established, the utility cannot opportunistically discontinue it in times of declining fuel costs. This is because the Commission is empowered to prevent the discontinuance of the RAM if the utility were to seek opportunistically to discontinue it for those reasons;[17]

- The electric utility must make at least one adjustment filing each year (ensuring that rates will go down in times of declining fuel and purchased power costs);[18]

- The proposed rules contain detailed data submission requirements associated with initiating a RAM, continuing or discontinuing a RAM, and relating to periodic adjustments;[19] and

- Detailed surveillance monitoring reports are required each quarter allowing the Commission's Staff and other parties to the rate case where the RAM was established to very closely monitor the utility's financial condition.[20]

At bottom, when one examines the extensive quantity and quality of the consumer protections built-into the statute, as supplemented by the proposed rules, and in particular, the

[16] Proposed rule 4 CSR 240-20.090(1)(F); Exhibit 3 hereto.
[17] Proposed rule 4 CSR 240-20.090(3).
[18] Proposed rule 4 CSR 240-20.090(4).
[19] Proposed rule 4 CSR 240-3.161.
[20] Proposed rule 4 CSR 240-20.090(10); Proposed rule 4 CSR 240-3.161(6).

nearly unprecedented requirement that the FAC be established only in a rate case where all relevant factors are considered (coupled with the mandate that periodic rate cases occur where the FAC will again be reviewed along with all relevant factors), there is little question that Missouri's FAC is the most consumer protective FAC in the country, protests to the contrary by FAC opponents notwithstanding.

D. SB 179 Does Not Contemplate, and in Fact Prohibits, a So-Called "Earnings Test."

One other key subject relating to the proposed rules warrants discussion in these Comments. Certain entities or groups have made no secret of the fact that they disagree with the 179 legislators who voted in favor of SB 179 and desire to preclude effective use of an FAC to adjust rates to reflect increases and decreases in fuel and purchased power costs between full-blown rate proceedings. These opponents ignore the fact that SB 179 contains the virtually unprecedented requirement discussed earlier that periodic rate case *must* commence every 37 months. They also advocate what would amount to a "rate case within a rate case" that would as practical matter have to occur at each periodic adjustment of the FAC factors (e.g., up to four times *each year*). In other words, they want a so-called "earnings test." Wisely, the proposed rules do not include what in effect would be impractical and disabling provisions relating to a so-called earnings test, and the Commission's Staff has properly recognized that SB 179 does not contemplate an earnings test.

What is an "earnings test"? An earnings test means the utility would effectively never be able to utilize an FAC when fuel costs are rising unless the utility established, up to four times per year, that it is "under-earning." To implement such a test would in effect require a full-blown rate review that results in what in substance, if not in form, is a rate case each time an adjustment pursuant to the FAC is to be made. An earnings test would not allow the "periodic rate adjustments, *outside of general rate proceedings*, to reflect increases and decreases in [a

utility's] prudently incurred fuel and purchased power costs …"[21] contemplated by SB 179 because of the inherent complexity and time-consuming nature of the proceedings that would be necessary to apply an earnings test (emphasis added). An earnings test is consequently contrary to the letter, spirit, and intent of SB 179. In short, an earnings test upsets the balance the Legislature struck by enacting SB 179 in the first place.

The fact that SB 179 does not allow an earnings test is illustrated by just a couple of examples of key, complicated issues that would have to be resolved up to four times per year[22] if an earnings test were imposed. First, in order to determine what a utility's regulated rate of return is at a given moment, kilowatt-hour sales must be weather normalized. Otherwise, abnormally hot or cold weather could skew results temporarily and distort the earnings picture, effectively preventing the Commission from determining if there exists over- or under-earnings. However, when a period (e.g. a quarter) ends, utility sales are not magically weather normalized the day after the quarter ends. Data must be compiled on sales and on the weather, temperatures must be ranked, averaged and analyzed, and after many weeks, weather normalized sales will be determined (assuming there is agreement on the weather normalization methodology and results, which may or may not be the case).

Second, in order to determine whether a utility is "over-earning" one must determine the appropriate return on equity at the relevant time, which would be when the adjustment in rates pursuant to the FAC would be made. However, the appropriate ROE at a given point in time is the function of many variables in the financial markets, including interest rates, dividend levels, growth rates, and other factors, which, as the Commission is well aware, require extensive and complicated financial analyses from experts. Is it reasonable to believe the Legislature

[21] § 386.266.1, RSMo.
[22] An impossible task, to say the least.

contemplated contested proceedings on ROE, weather normalization, etc. so that the "proper" level of earnings could be determined at each FAC adjustment? The answer is patently "no."

Some might argue that the approved ROE from the earlier rate case should be used (this still fails to solve the need to weather normalize sales, update plant in-service and depreciation balances, etc), but in any event, this suggestion fails to solve the problem for at least two reasons. First, there may not have been an "approved ROE" in the earlier rate case as the rate case may have been (indeed this happens more often than not) resolved via a black box settlement. Indeed, the law encourages settlement and settlement has been and remains perhaps the most efficient regulatory tool available to resolve complicated rate proceedings. Second, using an approved ROE from an earlier period to test whether "over-earnings" are occurring later ignores the fact that interest rates, dividends, growth rates and other financial market conditions change over time. The appropriate allowed ROE at an earlier point in time (one, two, three, four years earlier when the initial rate case was decided) may have become inappropriate (either too high or too low) later when FAC adjustments are being made.

The foregoing demonstrates that an earnings test would effectively disable use of an FAC. That is an illogical and absurd result. Consequently, it could not have been intended by the Legislature.[23] In sum:

- The statute itself demonstrates that an "earnings test" violates the letter and spirit of SB 179;
- Including an earnings test would run counter to the operation of FACs in the vast majority of non-restructured states that use the FAC;
- An earnings test fails to promote the efficiency incentives inherent in traditional rate regulation because it in effect creates exceedingly frequent rate cases; and
- An earnings test does not make sense for reasons of regulatory symmetry.

[23] *See e.g., Spradlin v. Fulton*, 982 S.W.2d 255, 258 (Mo. banc 1998) (The intent of the Legislature should be given effect so as to avoid illogical and absurd results that defeat that intent).

Each of these points are discussed in detail in Appendix A hereto.

III. SPECIFIC COMMENTS ON PROPOSED RULES

A. Proposed Chapter 3 (4 CSR 240-3.161) Rules

The proposed Chapter 3 rules would create substantial, perhaps unprecedented filing and data submission requirements relating to the establishment and operation of RAMs, thus providing additional protections to consumers that supplement the already substantial protective measures embodied in SB 179 itself. AmerenUE does not have major concerns about its ability to comply with the rules, as proposed, but as noted above, the requirements are substantial and, in some cases burdensome. Consequently, there are some areas where improvements should be made. Set forth below are AmerenUE's suggestions with respect to how these improvements should be made.[24]

Subsections (1), (2) and (3): It is more appropriate to require "reasonable" explanations of the myriad of items that must be submitted with a request for RAM, rather than a so-called "complete" explanation.[25] In concept, AmerenUE does not believe that most other parties (e.g., the Commission's Staff) intend to disable a utility's request for an FAC on technical grounds by arguing that a reasonable explanation is not a "complete" (i.e. was not absolutely perfect). However, the language of a rule should reflect what the rule maker intends for it to reflect, in accordance with appropriate rules of interpretation and construction. Also, the Commission must keep in mind that any entity, whether it participates in this rulemaking or not, could later try to use the language of the Commission's rules to undermine SB 179 by initiating a court challenge to a Commission-approved rule on the grounds that an explanation was not "complete" and consequently failed to comply with the Commission's rules. For those reasons, requiring

[24] A mark-up of the rules, as proposed, is attached to these Comments as Exhibit 4 (Chapter 3) and Exhibit 5 (Chapter 20), which are incorporated herein by this reference, and reflect the specific changes suggested by AmerenUE in light of these Comments.

[25] Or, alternatively, that require that explanations be provided "in reasonable detail."

complete explanations is unwise and does not, the Company believes, reflect the intent of the drafters or this Commission.

For example, AmerenUE does not believe the Commission would intend that a RAM filing be deemed inadequate simply because some aspect of the filing was not absolutely perfect. Yet by using the term "complete," the Commission may create that opportunity for someone because "complete" means "perfect; consummate; not lacking in any element or particular." *Black's Law Dictionary*, (5th ed 1979). What should be intended is that a fair, just and suitable explanation be provided. Requiring a "reasonable" explanation does just that. "Reasonable" means "fair, proper, just, moderate, suitable under the circumstances." *Id.* In sum, the Commission should not adopt language that might provide those who simply oppose rate adjustment mechanisms entirely with an unwarranted opportunity to delay or oppose, on unduly technical grounds, a request for a RAM. It is simply not logical to hold the utility to a standard of absolute perfection when the utility seeks to utilize an FAC as authorized by SB 179.

Subsection (5): Surveillance reporting should be submitted quarterly, not monthly. The monthly submission of the data required by this subsection is unduly burdensome and of limited benefit, particularly considering those burdens. The ability of Staff and other parties to review this data four times per year (under AmerenUE's proposal, the data will still be reported by month – it would just be submitted quarterly) is more than sufficient. More frequent reporting simply creates unnecessary costs, which increase the utility's cost of service and divert utility resources from the important work of running an efficient utility that serves its customers well.

Subsection (6): Because Surveillance Monitoring Reports will be available to parties other than Staff and OPC, who have statutory confidentiality obligations, it is necessary that such Reports be deemed "Highly Confidential." With respect to subsection (C), the proposed rule assumes that each utility budgets in the same manner, and that each utility prepares budgets

based upon regulatory accounting principles as opposed to financial (GAAP) accounting principles. AmerenUE, and AmerenUE understands, the other Missouri electric utilities, each prepare their budgets in different ways and do not prepare them for regulatory accounting purposes. The budgeting process should not be driven by these Surveillance Reports.

Subsection (7): Subsection (A)1.F of subsection (7) appears calculated to prevent inclusion of costs in the rate adjustment mechanism even if the utility has not received any insurance proceeds, and even if there has been no prudence disallowance. The true-up and prudence review provisions of SB 179 are designed to make after-the-fact adjustments, *with interest*, for items such as this. The statute contemplates that the utility can recover its prudently incurred fuel and purchased power costs via the rate adjustment mechanism. Before-the-fact preclusion of recovery of these costs is inappropriate and contrary to the statute, and is unnecessary to protect ratepayers, who will be fully protected by mandated true-ups and prudence reviews. Also, if additional requirements are to be imposed with regard to a particular FAC, those requirements should be spelled out in the order approving the RAM, as suggested in the mark-up attached to these Comments.

Subsections (9) – (14): Although not present in any other Commission rule or statute, including in the familiar PGA process utilized in the natural gas industry for many years, AmerenUE does not object to including mechanisms that in effect make any party to the general rate proceeding in which the rate adjustment mechanism was approved a party to related rate adjustment, true-up and prudence reviews respecting that same mechanism. AmerenUE also does not object to allowing discovery from those proceedings to be used across those proceedings, and for responses to be appropriately updated. The principal change necessary to the rule as drafted is that when each subsequent general rate proceeding is filed, any person or entity desiring to be a party to that case, and to thus have this special status as to the rate

adjustment mechanism that may arise (whether anew or via continuation) from that general rate proceeding, needs to become an intervenor in that general rate proceeding according to established Commission rules. This is practical and fair as the Commission customarily provides timely notice to any person or entity that was a party to the prior general rate proceeding. Indeed, this approach is consistent with the structure of the proposed rule, in particular, subsection (14), which contemplates that each general rate proceeding produces a new rate adjustment mechanism.

B. Proposed Chapter 20 (4 CSR 240-20.090) Rules

Subsection (1): AmerenUE agrees that it is appropriate, as reflected in the proposed rules, to refrain from providing a detailed delineation in the rules of cost categories that may be included in the FAC. This allows the appropriate delineation of these cost categories by the electric utility as part of its general rate proceeding establishing the FAC mechanism, subject to the Commission's approval, as contemplated by the proposed rules

Subsections (2) and (3): Only an electric utility may "make an application to the commission" for a RAM. § 386.266.1, RSMo. The rules should be clarified, consistent with the statute, to provide that other parties to the general rate proceeding where a RAM is established or is to be continued can propose alternatives, but *only* if the electric utility proposes to establish or continue the RAM in the first place. With respect to subsections (2)(F) and (3)(A), to clarify that each periodic FAC adjustment is to be based upon historical fuel and purchased power costs, subsection (F) should read "The *periodic adjustments of the* RAM shall be based upon historical fuel and purchased power costs" (emphasis added) since the base level of fuel and purchased power costs would be set in the rate case according to normal rate case standards, including, where appropriate, the use of updated test years and true-ups, which might take into account new fuel prices under new contracts, or similar items.

Subsection (7): Sub-subsection 1.A, which purports to award interest at the utility's short-term borrowing rate plus one percent is unlawful. SB 179 specifically provides that any sums refunded under a RAM is to include interest at the utility's short-term borrowing rate – not more, not less. The Commission has no authority, absent specific statutory authority, to require monetary relief and consequently has no authority to require a higher rate of interest than specified by SB 179.[26]

Subsection (9): AmerenUE believes that the rules should require that RAM rates reflect voltage differences. This is simply in recognition of the fact that the physics of the electric system mean that line losses do differ at different voltage levels.

Subsection (11): AmerenUE has no objection to this subsection, except that the words "or discontinuation" should be deleted. If the utility is allowed to discontinue the RAM under subsection (3), there is no authority in SB 179 for incentive programs to be imposed on the utility. In addition, references to "performance based programs" relating to a RAM are misplaced in this subsection. The issues addressed in subsection (11) are, in the words of SB 179, "incentives to improve the efficiency and cost effectiveness of [the utility's] fuel and purchased power procurement activities." Section 386.266.1, RSMo. Those are the kinds of incentives that relate to RAMs. The only mention of "performance based programs" in SB 179 appears elsewhere in SB 179 in a separate, stand-alone provision pertaining to incentive or performance based regulation *generally*, not incentives related to fuel and purchased power procurement, or RAMS respecting fuel and purchased power procurement. *See* Section 386.266.8.

The Commission should not arbitrarily dictate the time within which it must adopt an appropriate schedule in an over-earnings complaint case. When an over-earnings complaint is

[26] See, e.g., *Wilshire Construction Co. v. Union Electric Co.*, 463 S.W.2d 903, 905 (Mo. 1971); *State of Mo. ex rel. GS Technologies Operating Co., Inc. v. Pub Serv Comm'n*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2004).

filed, the complainant is not required to file anything that remotely approaches the minimum filing requirements imposed on an electric utility that desires to initiate a general rate increase case. The complainant may or may not have filed a useable cost of service or class cost of service study, and the complainant may or may not have filed testimony supporting the complaint. Moreover, data respecting the complainant's views of the electric utility's costs, revenues and earnings may or may not have been provided or may or may not even exist. The electric utility, other parties, and indeed the Commission, may or may not agree on the appropriate test year, update periods, and true-up periods. Indeed, test year related issues will likely be paramount and may require substantial time, data analysis, and consideration by the Commission. It is therefore not only impractical, but also inappropriate to fix, by rule, an artificial "deadline" by which the Commission must set a procedural schedule.

This also removes Commission discretion. If, under the particular circumstances of a particular complaint, a procedural schedule can appropriately be set in 60 days (or 45 days, or 90 days, etc.) then the Commission is perfectly capable of setting a procedural schedule at the appropriate time based upon the circumstances of that particular case. It should not tie its own hands by adopting a rule of general applicability without considering the individual circumstances that may exist in an individual complaint case alleging over-earnings by a utility. In fact, experience has shown that it typically takes something approaching (if not exceeding) 60 days after a general rate increase request is filed for the Commission to be in a position to issue a procedural schedule.[27] However, as noted earlier, those cases will have included detailed testimony, tariff sheets, a test year proposal from the filing utility, etc. from the very beginning.

[27] Consider AmerenUE's current rate case, filed July 7. The parties' procedural schedule recommendation was not filed until August 29 (52 days after the case was filed), and parties were still seeking to intervene nearly seven weeks after the case was filed. As of the filing of these Comments (60 days after the rate case was filed), a procedural schedule has not been adopted.

Because that usually is not true in a complaint case (and there is no requirement that it be true), the 60 day deadline built into subsection (13) as proposed is unwise and unworkable.

Subsection (14): This subsection is unusual and unwarranted. It too restricts, rather than preserves, Commission discretion. It promotes uncertainty in the industry, which in turn creates unnecessary risks. Given, in particular, the extremely lengthy process it has taken to arrive at the proposed set of rules under consideration at this time, the industry and other stakeholders (e.g. credit ratings agencies) need to have a reasonable expectation that rules that are ultimately adopted will remain in effect, unless changes are truly warranted. The Commission is free, at any time, to examine, and in compliance with the Missouri Administrative Procedure Act, amend its rules, if warranted at that time based upon circumstances that may (or may not) arise. The Commission should not restrict its discretion and authority, and create uncertainty, by mandating a particular time at which the rules *must* be reviewed.

IV. CONCLUSION

When 179 out of 186 legislators adopted SB 179, they expected Missouri's electric utilities to have available to them a fair, workable, and effective mechanism that would allow electric rates to be adjusted between general rate proceedings in a timely manner to reflect increases and decreases in prudently incurred fuel and purchased power costs. They included numerous features, some of which are outlined above, to balance consumer needs with the needs of the industry to recover, on a timely basis, these volatile and, to a large extent, uncontrollable costs. The Commission's Staff moderated approximately 18 separate workshops over an approximately seven-month period resulting in still more consumer protections embedded in the proposed rules now under consideration. Nearly a year and a half has passed since these legislators created the RAMs that are the subject of this rulemaking. The time has come to implement those RAMs via

rules that are faithful to the Legislature's intent and that allow use of a fair, effective and efficient FAC.

AmerenUE therefore respectfully requests that the Commission make the revisions to the proposed rules outlined in these Comments, and issue its Final Order of Rulemaking respecting these rules promptly. We again appreciate the opportunity to provide these comments, and look forward to appearing at the Public Hearing scheduled for September 7, 2007 in Jefferson City.

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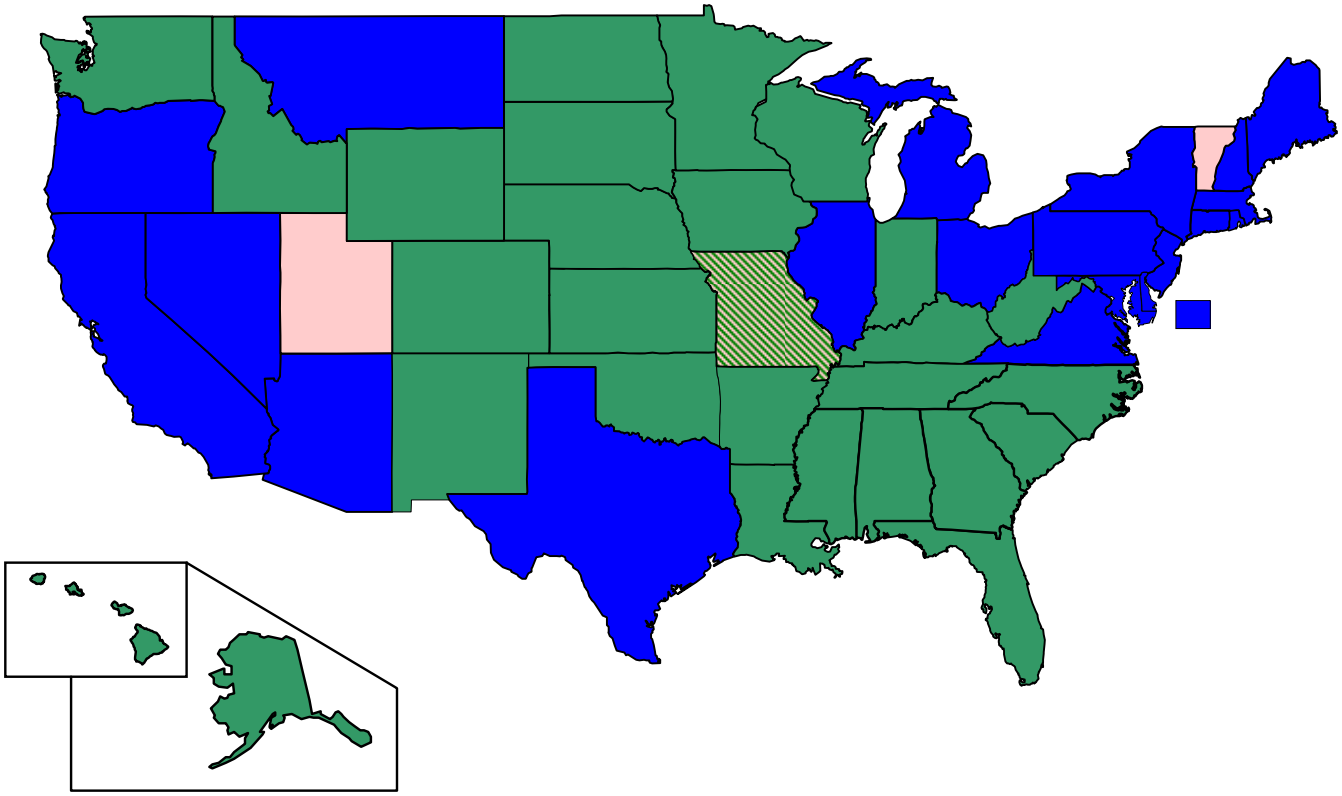
Exhibit 1
Rate Adjustment Mechanisms for Electric Utilities
September 2006



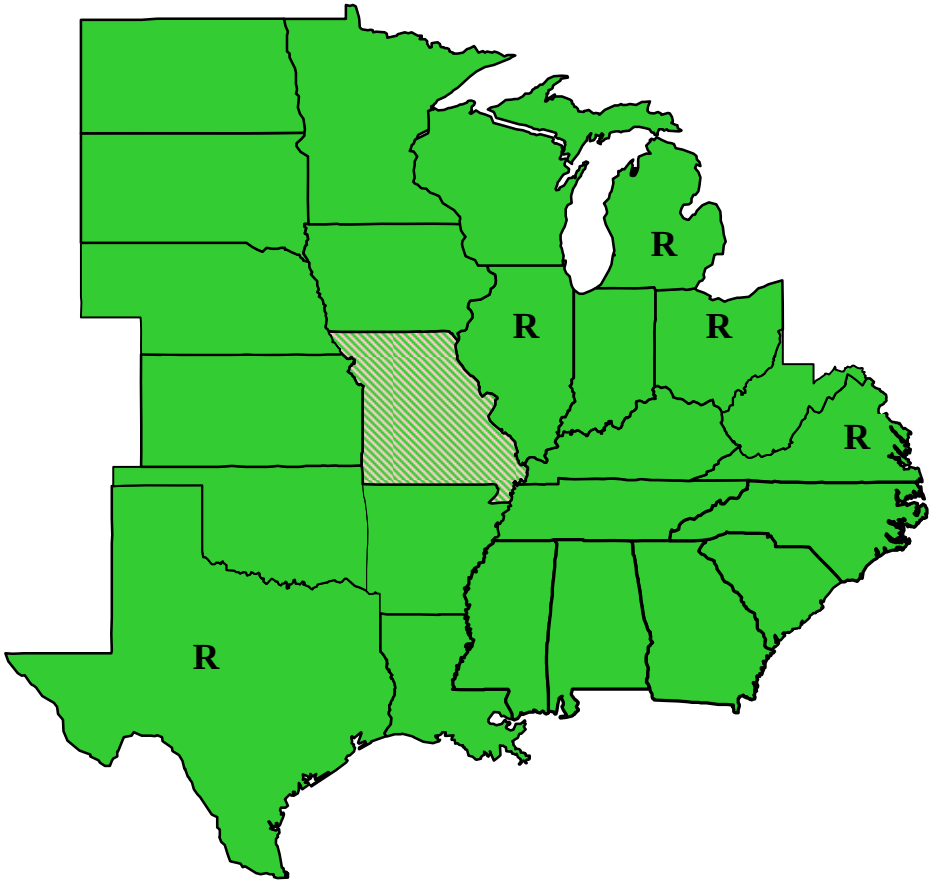
Legend

Code	Description	Number of States
	Rate Adjustment Legislation Enacted in 2005	**1**
	No Rate Adjustment Mechanisms Allowed	**2**
	Rate Adjustments for Fuel and/or Purchased Power	**27**
	Restructured or Partially Restructured States—Various types of rate adjustment mechanisms used to adjust retail rates with changes in procurement costs	**21**

Source: *The Brattle Group* (based on interviews with State Commission Staff, reports by Regulatory Research Associates and NARUC, and EIA and State Commission websites)

9/6/06

Exhibit 2
Rate Adjustment Mechanisms for Electric Utilities
In Central and Southeastern United States
September 2006



Legend

Code	Description	Number of States
	Rate Adjustment Legislation Enacted in 2005	**1**
	Rate adjustments for Fuel and/or Purchased Power Costs	**24**
R	Restructured or Partially Restructured States	**5**

Source: *The Brattle Group* (based on interviews with State Commission Staff, reports by Regulatory Research Associates and NARUC, and EIA and State Commission websites)

9/6/06

Exhibit 3
Fuel Adjustment Clauses and Consumer Protection Measures in Non-Restructured States
September 2006

State	Type of Rider	Rate Case Requirements		Historic or Projected Costs	Earnings Test
		Initially	Periodic		
Alabama	F,PP		No	Projected	No
Alaska	F,PP	Yes	No	Projected	No
Arkansas	F,PP	Unknown	No	Projected	No
Colorado	F,PP	No	No	Projected	No
Florida	F,PP	No	No	Projected	No
Georgia	F,PP	No	No	Projected	No
Hawaii	F,PP		No	Projected	No
Idaho	F,PP	No	No	Projected	No
Indiana	F,PP	No	No	Projected	✔ [A]
Iowa	F,PP	No	No	Projected	No
Kansas	F,PP	No	No	Projected	No
Kentucky	F,PP		No	Historic	No
Louisiana	F,PP	No	No	Historic	No
Minnesota	F,PP	No	No	Historic	No
Mississippi	F,PP		No	Projected	No
Missouri	F,PP	✔	✔	Historic	No
Nebraska [B]	F,PP	[B]	[B]	Projected	[B]
New Mexico	F,PP		No	Projected	No
North Carolina	F,PP	No	No	Projected	No
North Dakota	F,PP	No	No	Projected	No
Oklahoma	F,PP	No	No	Projected	No
South Carolina	F,PP		No	Projected	No
South Dakota	F,PP	No	No	Historic	No
Tennessee	PP		No	Projected	No
Utah	[C]	[C]	[C]	[C]	[C]
Vermont	[D]	[D]	[D]	[D]	[D]
Washington	PP	Yes	No	Projected	No
West Virginia	F,PP	No	No	Projected	No
Wisconsin	F,PP	No	No [E]	Projected	✔ [E]
Wyoming	PP		No	Projected	✔

Source: *The Brattle Group* (based on interviews with State Commission Staff, reports by Regulatory Research Associates and NARUC, and EIA and State Commission websites)

Notes: No entry indicates the information has not been collected. Authorized riders are F: Fuel and PP: Purchased Power.

Rate adjustment legislation in Missouri enacted in 2005.

[A] In Indiana, an earnings test is explicitly required by statute for the FAC.

[B] Nebraska does not have any investor-owned utilities, but Nebraska Public Power District has an inactive Production Cost Adjustment.

[C] Utah has no FAC in place, but PacifiCorp has been allowed to recover replacement power costs through temporary rate increases.

[D] In Vermont, FACs are prohibited.

[E] In recent years, allowed ROEs frequently exceeded 12%. A periodic rate case requirement was adopted independently of the Wisconsin fuel rules.

EXHIBIT 4 – AMERENUE'S SB 179 COMMENTS

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 3 – Filing and Reporting Requirements

PROPOSED RULE

4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements

PURPOSE: This rule sets forth the information that an electric utility must provide when it seeks to establish, continue, modify, or discontinue and/or true-up its rate adjustment mechanism (i.e., fuel and purchased power adjustment clause or interim energy charge). It also sets forth the requirements for the submission of Surveillance Monitoring Reports as required for electric utilities that have a rate adjustment mechanism.

(1) As used in this rule, the following terms mean:

(A) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and,

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales.

(B) 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 FAC.

(C) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission.

(D) Interim energy charge (IEC) means a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine

whether or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC.

(E) Rate adjustment mechanism (RAM) means fuel adjustment clause or interim energy charge.

(F) Staff means the staff of the public service commission.

(G) True-up year means the twelve (12) -month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth (12^{th}) calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12) -month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year the true-up year may be less than twelve (12) months.

(2) When an electric utility files to establish a RAM as described in 4 CSR 240-20.090(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

(B) An example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.090(8);

(C) Proposed RAM rate schedules;

(D) A general description of the design and intended operation of the proposed RAM;

(E) A reasonable~~complete~~ explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A reasonable~~complete~~ explanation of how the proposed FAC shall be trued-up to reflect over- or under-collections, or the refundable portion of the proposed IEC shall be trued-up, on at least an annual basis;

(G) A reasonable~~complete~~ description of how the proposed RAM is compatible with the requirement for prudence reviews;

(H) A reasonable~~complete~~ explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;

(I) A reasonable~~complete~~ explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(J) A reasonable~~complete~~ explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;

(K) A reasonable~~complete~~ explanation of any rate volatility mitigation features designed in the proposed RAM;

(L) A ~~reasaonble~~reasonable~~complete~~ explanation of any feature designed into the proposed RAM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed RAM;

(M) A ~~reasaonable~~reasonable~~complete~~ explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;

(N) A reasonable~~complete~~ explanation of any change in business risk to the electric utility resulting from implementation of the proposed RAM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(O) The supply side and demand side resources that the electric utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply side resource; in submitting this information, it is recognized that supply and demand side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;

(P) A proposed schedule and testing plan with written procedures for heat rate tests and/or efficiency tests for all of the electric utility's nuclear and non-nuclear generators, steam, gas, and oil turbines and heat recovery steam generators (HRSG) to determine the base level of efficiency for each of the units;

(Q) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;

(R) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a reasonable~~complete~~ explanation of forecasted environmental investments and allowances purchases and sales; and

(S) Authorization for the commission staff to release the previous five (5) years of historical surveillance reports submitted to the commission staff by the electric utility to all parties to the case.

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(2)(D);

(B) If the electric utility proposes to change the identification of the RAM on the customer's bill, an example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.090(8);

(C) Proposed RAM rate schedules;

(D) A general description of the design and intended operation of the proposed RAM;

(E) A reasonable~~complete~~ explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(F) A reasonable~~complete~~ explanation of how the proposed FAC shall be trued-up to reflect over- or under-collections, or the refundable portion of the proposed IEC shall be trued-up, on at least an annual basis;

(G) A reasonable~~complete~~ description of how the proposed RAM is compatible with the requirement for prudence reviews;

(H) A reasonable~~complete~~ explanation of all the costs that shall be considered for recovery under the proposed RAM and the specific account used for each cost item on the electric utility's books and records;

(I) A reasonable~~complete~~ explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RAM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(J) A reasonable~~complete~~ explanation of any incentive features designed in the proposed RAM and the expected benefit and cost each feature is intended to produce for the electric utility's shareholders and customers;

(K) A reasonable~~complete~~ explanation of any rate volatility mitigation features in the proposed RAM;

(L) A reasonable~~complete~~ explanation of any feature designed into the proposed RAM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed RAM;

(M) A reasonable~~complete~~ explanation of the specific customer class rate design used to design the proposed RAM base amount in permanent rates and any subsequent rate adjustments during the term of the proposed RAM;

(N) A reasonable~~complete~~ explanation of any change in business risk to the electric utility resulting from implementation of the proposed RAM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(O) A description of how responses to subsections (B) through (N) differs from responses to subsections (B) through (N) for the currently approved RAM; and,

(P) The supply-side and demand-side resources that the electric utility expects to use to meet its loads in the next four (4) true-up years, the expected dispatch of those resources, the reasons why these resources are appropriate for dispatch and the heat rates and fuel types for each supply side resource; in submitting this information, it is recognized that supply and demand side resources and dispatch may change during the next four (4) true-up years based upon changing circumstances and parties will have the opportunity to comment on this information after it is filed by the electric utility;

(Q) The results of heat rate tests and/or efficiency tests on all the electric utility's nuclear and non-nuclear steam generators, HRSG, steam turbines and combustion turbines conducted within the previous twenty-four (24) months;

(R) Information that shows that the electric utility has in place a long-term resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service;

(S) If emissions allowance costs or sales margins are included in the RAM request and not in the electric utility's environmental cost recovery surcharge, a reasonable~~complete~~ explanation of forecasted environmental investments and allowances purchases and sales; and

(T) Any additional information that may have been ordered by the commission to be provided in the previous general rate proceeding.

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described in 4 CSR 240 20.090(3) in which it requests that its RAM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(3)(D);

(B) A complete explanation of how the refundable portion of the IEC or the over- or under-collections under the FAC that the electric utility is proposing to discontinue shall be handled;

(C) A reasonable~~complete~~ explanation of why the RAM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

(D) A reasonable~~complete~~ explanation of any change in business risk to the electric utility resulting from discontinuation of the adjustment mechanism in setting the electric utility's allowed return, in addition to any other changes in business risk experienced by the electric utility; and,

(E) Any additional information that may have been ordered by the commission to be provided.

(5) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, the following monthly information on a quarterly~~monthly~~ basis to the Auditing Manager of the commission, the Office of the Public Counsel (OPC) and others, as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through the commission's electronic filing and information system (EFIS). The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of the quarter~~month~~ being reported on when the RAM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the RAM goes into effect. It shall contain, at a minimum:

(A) The revenues billed pursuant to the RAM by rate class and voltage level;

(B) The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

(C) The electric utility's actual fuel and purchased power costs allocated by rate class and voltage level using commission approved allocation methods;

(D) All significant factors that have affected the level of RAM revenues and fuel and purchased power expenses along with workpapers documenting these significant factors;

(E) The difference, by rate class and voltage level, between the total fuel and purchased power revenues collected through base rates and the RAM and the fuel and purchased power expenses incurred;

(F) Off-system sales revenue;

(G) Off-system sales expenses;

(H) Off-system megawatt-hour sales;

(I) Megawatt-hours generated, fuel consumption and expense, and heat rates by generating facility;

(J) Megawatt-hours purchased with firm and non-firm purchases separately stated;

(K) Prices of fuel purchased by fuel type breaking out freight and transportation prices;

(L) The electric utility's monthly fuel report. If the electric utility proposes to change the contents or name of the fuel reports, staff, OPC and others that receive the information will be contacted thirty (30) days in advance of the change and notified of such actions. Staff, OPC and others that receive the information shall have the opportunity to discuss the further availability of such information. Specifically the monthly fuel reports are identified as:

1. Kansas City Power and Light Company Report 25: Fuel Statistics
2. The Empire District Electric Company Fuel Report
3. Aquila Networks - L&P Monthly Production Statistics
4. Aquila Networks - MPS Monthly Production Statistics
5. AmerenUE – AmerenUE SB179 Fuel Report; and

(M) Any additional information ordered by the commission to be provided.

(N) To the extent any of the requested information outlined above is provided in response to one section, the provision of such information only needs to be provided once.

(6) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report (which shall be highly confidential) as required in 4 CSR 240-20.090(10) to the Manager of the Auditing Department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The submittal to the commission may be made through EFIS.

(A) There are five (5) parts to the electric utility Surveillance-Monitoring Report. Each part, except Part one (1), Rate Base Quantifications, shall contain information for the last twelve (12) month period and the last quarter data for total company electric operations and Missouri jurisdictional operations. Page one, Rate Base Quantifications shall contain only information for the ending date of the period being reported. The form of the Surveillance Monitoring Report is included herein.

1. Rate Base Quantifications Report. The quantification of rate base items on page one shall be consistent with the methods or procedures used in the most recent rate proceeding ~~unless otherwise specified~~. The report shall consist of specific rate base quantifications of:

A. Plant in service;
B. Reserve for depreciation;
C. Materials & supplies;
D. Cash working capital;
E. Fuel inventory;
F. Prepayments;
G. Other regulatory assets;
H. Customer advances;
I. Customer deposits;
J. Accumulated deferred income taxes;
K. Any other item included in the utility's rate base in the most recent rate proceeding.
L. Net Operating Income from page three; and
M. Calculation of the overall return on rate base.

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of:
A. Common stock equity (net);
B. Preferred stock (par or stated value outstanding);
C. Long-term debt (including current maturities);
D. Short-term debt; and
E. Weighted cost of capital including component costs.

3. Income Statement. Page three shall consist of an income statement containing specific quantification of:
A. Operating revenues to include sales to industrial, commercial and residential customers, sales for resale and other components of total operating revenues;
B. Operating & maintenance expenses for fuel expense, production expenses, purchased power energy and capacity;
C. Transmission expenses;
D. Distribution expenses;
E. Customer accounts expenses;
F. Customer service and information expenses;
G. Sales expenses;
H. Administrative and general expenses;
I. Depreciation, amortization and decommissioning expense;
J. Taxes other than income taxes;
K. Income taxes; and
L. Quantification of heating degree and cooling degree days, actual and normal;

4. Jurisdictional Allocation Factor Report. Page four shall consist of a listing of jurisdictional allocation factors for the rate base, capitalization quantification reports and income statement.

5. Financial Data Notes. Page five shall consist of notes to financial data including, but not limited to:
A. Out of period adjustments;
B. Specific quantification of material variances between actual and budget financial performance;

C. Material variances between current twelve (12) month period and prior twelve (12) month period revenue;

D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the RAM;

E. Budgeted capital projects; and,

F. Events that materially affect debt or equity surveillance components.

(B) The Surveillance Monitoring Report shall contain any additional information ordered by the commission to be provided.

(C) The electric utility shall annually submit its approved budget, in electronic form~~, based upon its budget year in a format similar to Surveillance Monitoring Report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget shall be submitted within thirty (30) days of its approval by the electric utility's management or within sixty (60) days of the beginning of the electric utility's fiscal year, whichever is earliest.~~ The budget submission shall be highly confidential.

(7) When an electric utility files tariff schedules to adjust an FAC rate as described in 4 CSR 240-20.090(4) with the commission, and served upon parties as provided in sections (9) through (11) in this rule, the tariff schedule must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

1. For the period from which historical costs are used to adjust the FAC rate:

A. Energy sales in kilowatt-hours by rate class and voltage level;

B. Fuel costs by fuel type and generating facility by fuel type included in fuel and purchased power costs in the FAC rate and the base rates; and

C. Purchased power costs included in fuel and purchased power costs with costs differentiated by:

(1) Short-term and long-term purchased power contracts, where long-term is defined as contracts with terms greater than one (1) year;

(2) On-peak and off-peak costs; and

(3) Demand and energy costs, separately stated;

D. Market purchased megawatt-hours and costs included in fuel and purchased power costs;

E. Revenues from, expenses associated with and megawatt-hours from off-system sales;

F. Extraordinary costs not to be passed through, if any, due to the electric utility having received net insurance recoveries for ~~such costs being~~ an insured loss~~, or subject to reduction due to litigation or for any other reason~~;

G. Base rate component of fuel and purchased power costs and revenues from off-system sales; and

H. Any additional requirements ordered by the commission as part of its approval of the RAM.

2. Calculation of the proposed FAC collection rates;

3. Calculations supporting the voltage differentiation of the FAC collection rates, if any, to account for differences in line losses by voltage level of service; and

4. Calculations underlying any seasonal variation in the FAC collection rates.

(B) Workpapers supporting all items in subsection (A) shall be submitted to the commission, and served upon parties as provided in sections (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

(8) When an electric utility that has a RAM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.090(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall:

(A) File the following information with the commission and serve upon parties as provided in sections (9) through (11) in this rule:

1. Amount of costs that it has over-collected or under-collected through the RAM by rate class and voltage level;
2. Proposed adjustments or refunds by rate class and voltage level;
3. Electric utility's short-term borrowing rate; and
4. Any additional information ordered by the commission as part of its approval of the rate adjustment mechanism.

(B) Submit the following information to the commission and served upon the parties as provided in section (9) through (11) in this rule. This submittal to the commission may be made through EFIS.

1. Workpapers detailing how the determination of the over-collection or under-collection of costs through the RAM was made including any model inputs and outputs and the derivation of any model inputs;
2. Workpapers detailing the proposed adjustments or refunds;
3. Basis for the electric utility's short-term borrowing rate; and
4. Any additional information ordered by the commission to be provided.

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the Manager of the Auditing Department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the RAM was approved by the commission, periodic rate adjustment proceeding, annual true-up, or prudence review respecting~~, or general rate case to modify, extend or discontinue~~ the same RAM, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these sections of the commission's rule on RAMs.

(10) Party status and providing to other parties affidavits, testimony, information, reports and workpapers in related proceedings subsequent to general rate proceeding establishing RAM.

(A) A person or entity granted intervention in a general rate proceeding in which a RAM is approved by the commission, shall be a party to any subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review respecting~~, or general rate case to modify, extend or discontinue~~ the same RAM, without the necessity of applying to the commission for intervention. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review respecting~~, or general rate~~

~~case to modify, extend or discontinue~~ the same RAM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review respecting~~, or general rate case to modify, extend or discontinue~~ the same RAM, concurrently with filing the same with the commission or submitting the same to the Manager of the Auditing Department of the commission and OPC, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these materials.

(B) A person or entity not a party to the general rate proceeding in which a RAM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through(4) of the commission's rule on intervention, respecting any related subsequent periodic rate adjustment proceeding, annual true-up, or prudence review~~, or, pursuant to 4 CSR 240-2.075(1) through (5),~~ respecting ~~any subsequent general rate case to modify, extend or discontinue~~ the same RAM. If no party to a subsequent periodic rate adjustment proceeding, annual true-up, or prudence review, objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, unless within the above-referenced ten (10) -day period the commission denies the application for intervention on its own motion. If an objection to the application for intervention is filed on or before the end of the above-referenced ten (10) -day period, the commission shall rule on the application and the objection within ten (10) days of the filing of the objection.

(11) Issuance of protective orders and discovery.

(A) In each general rate proceeding where the commission may approve, modify, or reject a RAM, and each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM, the electric utility or the complainant, depending upon which entity initiates the case, shall file a motion for commission issuance of a protective order. The protective order shall, among other things, provide that the results of discovery may be used in any subsequent periodic rate adjustment proceeding, annual true-up, or prudence review without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(B) The commission shall establish a new case for each mutually exclusive twelve (12) -month period encompassing an annual true-up, prudence review and possible periodic rate adjustments, upon the filing of the first pleading or rate schedule respecting such annual true-up, prudence review or periodic rate adjustments, and shall issue a new protective order, pursuant to 4 CSR 240-2.085, to apply in the proceeding without the necessity of any party applying for a protective order. This new protective order shall be identical to the protective order in the immediately preceding related case, unless the electric utility or other party files and serves upon the parties in the immediately preceding related case, at least thirty (30) days prior to the filing of the first pleading or rate schedule respecting the annual true-up, prudence review and possible periodic rate adjustments, encompassing an appropriate twelve (12) -month period, a proposed new

protective order for commission consideration. If the commission does not rule on the request for a proposed new protective order by the time that information sought to be protected is provided to another party or filed with the commission, the information shall be provided or filed at the level of protection designated by the providing or filing party.

(C) If an electric utility or other party files for a new protective order less than thirty (30) days prior to the filing of the first pleading or rate schedule respecting an annual true-up, prudence review or possible periodic rate adjustments, encompassing an appropriate twelve (12) -month period, the commission shall initially issue a protective order identical to the protective order in the immediately preceding related case to be in effect while the commission considers responses and decides whether the new protective order proposed by the electric utility or other party shall be adopted for any additional material to be disclosed by parties in the proceeding in question.

(D) Subsequent protective orders shall authorize use of the results of discovery from any preceding proceeding relating to the same RAM, without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the earlier proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

(12) Supplementing and updating data requests in subsequent related proceedings. If a party which submitted data requests relating to a proposed RAM in the general rate proceeding where the RAM was established ~~or in the general rate proceeding where the same RAM was modified or extended~~, or in any subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review respecting the same RAM, wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic rate adjustment proceeding, annual true-up, or prudence review respecting ~~or general rate case to modify, extend or discontinue~~ the same RAM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response, from a related general rate proceeding where a RAM was established~~, a general rate case where the same RAM was modified or extended,~~ or a related periodic rate adjustment proceeding, annual true-up, or prudence review that the responding party has learned or subsequently learns is in some material respect incomplete or incorrect.

(13) Separate cases for each general rate proceeding involving a RAM and for each mutually exclusive twelve (12) -month annual true-up period of a RAM. Each general rate proceeding where the commission may approve, modify, or reject a RAM; each general rate case where the commission may authorize the modification, extension, or discontinuance of a RAM; and each mutually exclusive twelve (12) -month period of a RAM that encompasses an annual true-up, prudence review, and possible periodic rate adjustments shall comprise a separate case.

(14) For the purposes of this rule, a RAM (even if continued in substantially the form approved in the previous general rate proceeding) shall be considered to be a new distinct RAM after each general rate proceeding required by section 386.266.4(3), RSMo or if it were modified or extended in a general rate case.

(15) Right to discovery unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(16) Waivers. Provisions of this rule may be waived by the commission for good cause shown.

~~*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, SB179, effective January 1, 2006.*~~

~~*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than $500 in the aggregate.*~~

~~*PRIVATE COST: This proposed rule will not cost private entities more than $500 in the aggregate.*~~

~~*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before Month/Day/Year, and should include a reference to Commission Case No. EX-2006-####. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for Month/Day/Year, at Time in Room ??? of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*~~

EXHIBIT 5 TO AMERENUE'S SB 179 COMMENTS

Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240 – Public Service Commission
Chapter 20 – Electric Utilities

PROPOSED RULE

4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

PURPOSE: This rule sets forth the definitions, structure, operation, and procedures relevant to the filing and processing of applications to reflect prudently incurred fuel and purchased power costs through an interim energy charge or a fuel adjustment clause which allows periodic rate adjustments outside general rate proceedings.

(1) Definitions. As used in this rule, the following terms mean as follows:

(A) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo.

(B) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs including any net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales.

(C) 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 FAC.

(D) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission.

(E) Initial RAM rules mean the rules first adopted by the commission to implement Senate Bill 179 of the Laws of Missouri 2005.

(F) Interim energy charge (IEC) means a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC.

(G) Rate adjustment mechanism (RAM) refers to either a fuel adjustment clause or interim energy charge.

(H) Staff means the staff of the public service commission.

(I) True-up year means the twelve (12) -month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth (12th) calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12) -month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year the true-up year may be less than twelve (12) months.

(2) Applications to establish, continue or modify a RAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060 and section 386.266, RSMo, any electric utility in a general rate proceeding may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules. The commission shall approve, modify or reject such applications to establish a RAM only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that may affect the costs or overall rates and charges of the petitioning electric utility.

(A) The commission may approve the establishment, continuation or modification of a RAM and associated rate schedules provided that it finds that the RAM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the rate schedules that implement the RAM conform to the RAM approved by the commission.

(B) The commission may take into account any change in business risk to the utility resulting from establishment, continuation or modification of the RAM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) 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.

(D) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how the costs passed through the proposed RAM requested shall be applied to monthly bills.

(E) After an electric utility requests a RAM under this subsection, a~~A~~ny party to the general rate proceeding may oppose the establishment, continuation or modification of a RAM and/or may propose alternative RAMs for the commission's consideration

including but not limited to modifications to the electric utility's proposed RAM. Where a utility proposes to establish a RAM and, alternatively to recover the components that would have been treated in the RAM in base rates, versus proposing continuance or modification of a RAM, if the commission modifies the electric utility's proposed RAM in a manner unacceptable to the electric utility, the utility may withdraw its request for a RAM and the components that would have been treated in the RAM will be included in base rates as reflected in the commission order authorizing the utility to recover these components if a record respecting this alternative is fully developed before the commission during the course of the case.

(F) The periodic adjuments of the RAM shall be based on historical fuel and purchased power costs.

(G) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(2) in conjunction with an application to establish a RAM and 4 CSR 240-3.161(3) in conjunction with an application to continue or modify a RAM.

(3) Application for discontinuation of a RAM. The commission shall allow or require the rate schedules that define and implement a RAM to be discontinued and withdrawn only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect the cost or overall rates and charges of the petitioning electric utility.

(A) Any party to the general rate proceeding may oppose the discontinuation of a RAM on the grounds that the utility is opportunistically discontinuing the RAM due to declining fuel or purchased power costs and/or increasing off-system sales revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not allow the RAM to be discontinued, and shall order its continuation or modification. To continue or modify the RAM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity and the rate schedules that implement the RAM conform to the RAM approved by the commission. Any periodic adjustment of the RAM shall be based on historical fuel and purchased power costs.

(B) The commission may take into account any change in business risk to the corporation resulting from discontinuance of the RAM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) The electric utility shall include in its initial notice to customers, regarding the general rate case, a commission approved description of why it believes the RAM should be discontinued.

(D) Section (2)(A) through (C), (F) and(G) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(4).

(4) Periodic adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section

386.266, RSMo and the FAC mechanism established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its FAC rates. If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266 RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266 RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) An electric utility with a FAC shall file one (1) mandatory adjustment to its FAC in each true-up year coinciding with the true-up of its FAC. It may also file one (1) to three (3) additional adjustments to its FAC within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the FAC and in general rate proceedings thereafter.

(B) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) in order for the commission to process the electric utility's requested FAC adjustment increasing rates.

(C) If the staff, Office of the Public Counsel (OPC) or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted in compliance with that rule, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff schedules to adjust the FAC rates and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.161, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase FAC rates shall be suspended. If the commission then issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing timeline for the adjustment to increase FAC rates. For good cause shown the commission may further suspend this timeline. Any delay in providing sufficient information in compliance with 4 CSR 240-3.161 in a request to decrease FAC rates shall not impact the processing timeline.

(5) True-ups of RAMs. An electric utility that files for a RAM shall include in its tariff schedules and application, if filed in addition to tariff schedules, provision for true-ups on

at least an annual basis which shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.

(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate.

(B) The true-up adjustment shall be the difference between the historical fuel and purchased power costs intended for collection during the true-up period and billed revenues associated with the RAM during the true-up period.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) at the time that it files its application for a true-up of its RAM in order for the commission to process the electric utility's requested annual true-up of any under-collection.

(D) The staff shall examine and analyze the information filed by the electric utility pursuant to 4 CSR 240-3.161 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo and the RAM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the electric utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect by operation of law sixty (60) days after the utility's filing.

1. If the staff, OPC or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline for the adjustment to the FAC rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

A. If the party requesting the information can demonstrate to the commission that the adjustment shall result in a reduction in the FAC rates, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the RAM shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

(6) Duration of RAMs and requirement for general rate case. Once a RAM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification, extension, or discontinuance of the RAM in a general rate proceeding, although an electric utility may submit proposed rate schedules to implement periodic adjustments to its FAC rates between general rate proceedings.

(A) If the commission approves a RAM for an electric utility, the electric utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the RAM, assuming the maximum statutory suspension of the rates so filed.

1. The four (4) year period shall not include any periods in which the electric utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the adjustment mechanism must be fully refunded. In the event a court determines that the adjustment mechanism is unlawful and all moneys collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a rate case. The term fully refunded as used in this section does not include amounts refunded as a result of reductions in fuel or purchased power costs or prudence adjustments.

(7) Prudence reviews respecting RAMs. A prudence review of the costs subject to the RAM shall be conducted no less frequently than at eighteen (18) month intervals.

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for each RAM shall be established in the general rate proceeding in which the RAM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, OPC or other party auditing the RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

A. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.~~e plus one percent (1%)~~.

(8) Disclosure on customers' bills. Any amounts charged under a RAM approved by the commission shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval.

(9) Rate design of the RAM. The design of the RAM rates ~~may~~ shall reflect differences in losses incurred in the delivery of electricity at different voltage levels for the electric utility's different rate classes. Therefore, the electric utility shall conduct a Missouri jurisdictional system loss study within twenty-four (24) months prior to the general rate proceeding in which it requests its initial RAM. The electric utility shall conduct a Missouri jurisdictional loss study no less often than every four (4) years thereafter, on a schedule that permits the study to be used in the general rate proceeding necessary for the electric utility to continue to utilize a RAM.

(10) Submission of Surveillance Monitoring Reports. Each electric utility with an approved RAM shall submit to staff, OPC and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.161(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the RAM.

(B) If the electric utility also has an approved environmental cost recovery mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the environmental cost recovery mechanism and the RAM.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.161(6), after notice and an opportunity for a hearing, the Commission may suspend a fuel adjustment mechanism or order other appropriate remedies as provided by law.

(11) Incentive mechanism ~~or performance based program~~. During a general rate proceeding in which an electric utility has proposed establishment or, ~~;~~ modification ~~or discontinuation~~ of a RAM, or in which a RAM may be allowed to continue in effect, any party may propose for the commission's consideration incentive mechanisms ~~or performance based programs~~ to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities.

(A) The incentive mechanisms ~~or performance based programs~~ may or may not include some or all components of fuel and purchased power costs, designed to provide the electric utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities.

(B) Any incentive mechanism ~~or performance based program~~ shall be structured to align the interests of the electric utility's customers and shareholders. Unless the incentive mechanism ~~or performance based program~~ proposes a symmetrical cost

sharing, the anticipated benefits to the electric utility's customers from the incentive ~~or performance based program~~ shall exceed the anticipated costs of the mechanism or program to the electric utility's customers. For this purpose, the cost of an incentive mechanism ~~or performance based program~~ shall include any increase in expense or reduction in revenue credit that increases rates to customers in any time period above what they would be without the incentive mechanism ~~or performance based program~~.

(C) If the commission approves an incentive mechanism ~~or performance based program~~, such incentive mechanism ~~or performance based program~~ shall be binding on the commission for the entire term of the incentive mechanism ~~or performance based program~~. If the commission approves an incentive mechanism ~~or performance based program~~, such incentive mechanism ~~or performance based program~~ shall be binding on the electric utility for the entire term of the incentive mechanism ~~or performance based program~~ unless otherwise ordered or conditioned by the commission.

(12) Pre-existing adjustment mechanisms, tariffs and regulatory Plans. The provisions of this rule shall not affect:

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

(13) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existences of its RAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. ~~If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed.~~

~~(14) Rule review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.~~

(1~~4~~5) Waiver of provisions of this rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for a hearing.

(16) Transitional period respecting initial RAM rules proposed and adopted. If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this subsection shall apply to electric utilities which have made application in a general rate proceeding, by filing, with the commission, rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (9) and associated application, if any, seeking commission approval of a RAM, prior to the adoption of the initial final rules that implement the application process for a RAM.

(A) RAM filing by utility respecting initial proposed RAM rules. The electric utility shall file its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, for a RAM in accordance with the proposed initial RAM rules as transmitted to the Secretary of State, as the commission's proposed order of rulemaking, if the commission has not adopted initial final rules at the time of the electric utility's filing. If the electric utility files a general rate proceeding before the commission issues a notice of proposed rulemaking respecting initial RAM rules or if the electric utility files a general rate proceeding less than thirty (30) days after the commission issues a notice of proposed rulemaking respecting initial RAM rules and the electric utility wants to propose a RAM for commission approval, the electric utility shall request a RAM as part of its general rate proceeding filing.

(B) Final RAM rules different from proposed RAM rules. If the RAM rules adopted by the commission's final order of rulemaking are different from the commission's proposed rules, the electric utility shall:

1. Amend its filing to seek to bring the filing into compliance with the adopted RAM rules;
2. Seek waiver for good cause shown; or
3. Provide an adequate explanation why good cause exists not to require that the electric utility amend its filing or file a request for waiver.

(C) Procedure for utility unamended RAM filing when proposed RAM rules are not altered by final RAM rules and procedure for amendments to utility's RAM filing to address portions of proposed RAM rules altered by final RAM rules. The electric utility may amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and application, if any, to conform them to the adopted rules within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding. Thereafter, and within ten (10) days of service of the electric utility's timely filing of amendments, other parties may file responsive pleadings respecting:

1. Whether the unamended portions of the electric utility's initial filing are in compliance with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 that were not altered by the final order of rulemaking;
2. Whether the timely-filed amendments bring its filing into compliance with the commission's final order of rulemaking; and
3. Whether the timely-filed amendments provide the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

(D) Commission determination whether to approve electric utility RAM filings when electric utility unamended filing and amended filing are in compliance with final RAM rules and sufficient time is available. The commission shall determine whether to approve the electric utility's proposed RAM if the following conditions are met.

1. The electric utility's unamended initial filing complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed order of rulemaking that were not subsequently changed by the final order of rulemaking of the commission;

2. The timely-filed amendments comply with the commission's final order of rulemaking; and

3. The timely-filed amendments provide the parties to the general rate proceeding sufficient time, under the existing procedural schedule or a modified procedural schedule, for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. The commission may modify the procedural schedule for making the determination whether to approve the electric utility's proposed RAM in order to provide parties sufficient time for the opportunity for a fair hearing, but still make the determination in the general rate proceeding.

(E) Procedure when electric utility's unamended initial filing or amended filing are not in compliance with final RAM rules. If the commission determines that the electric utility's unamended initial filing does not comply with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed order of rulemaking that were not subsequently changed by the final order of rulemaking, or the timely-filed amendments do not bring the utility's filing into compliance with the commission's final order of rulemaking, then the commission may authorize the electric utility, on a procedural schedule set by the commission, to amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, relating to the requested initial RAM, to the extent necessary to conform to the rules adopted by the commission. If the commission determines that there is a procedural schedule available that will provide the parties to the general rate proceeding the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

1. If the commission authorizes the electric utility to refile, other parties may file responsive pleadings within ten (10) days of service of the electric utility's timely refiling.

2. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(F) Waiver procedure in lieu of amendment of RAM filing by electric utility.

1. Rather than file an amendment to seek to bring its filing into compliance with the final RAM rules adopted by the commission, the electric utility may choose to file a request for waiver from specific provisions of the rules, but must do so within fifteen (15) days after the commission issues an order adopting final rules and in no event

later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding.

2. Waiver requests shall reference the specific requirements of the adopted rules from which waiver is sought and shall show and explain fully why good cause exists, and as a consequence why it is reasonable and appropriate, that waiver should be granted by the commission.

3. Within ten (10) days of the electric utility's filing of a request for waiver, other parties may file responsive pleadings respecting whether the timely-filed request for waiver is in compliance with the instant rule; and whether the timely-filed request for waiver provides the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of a relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. If the commission determines that the timely-filed request for waiver should be granted and the electric utility's filing is otherwise in compliance with 4 CSR 240-20.090 and 4 CSR 240-3.161, the commission shall proceed to determine whether to approve the electric utility's proposed RAM.

5. If the request for waiver is not granted, in whole or in part, because the commission finds that good cause does not exist, and as a consequence it is not reasonable or appropriate, that waiver should be granted by the commission, then the commission shall determine whether there is a procedural schedule available whereby the electric utility may amend its filing to conform to the final rules adopted by the commission, and provide sufficient time to the parties to the general rate proceeding for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential. Should the commission permit the electric utility to refile, then within ten (10) days of service of the electric utility's timely refiling, other parties may file responsive pleadings. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(G) Procedure for addressing nonsubstantive and nonmaterial changes to proposed RAM rules. If portions of the proposed RAM rules are altered in a nonsubstantive manner or to a nonmaterial degree by the final rules adopted by the commission, the electric utility, rather than file amendments or request waivers, may file explanations that show good cause why the commission should not require the electric utility to either amend its filing or request waivers for these items. These explanations shall be processed by the commission according to the same procedures as amendments and requests for waivers are processed pursuant to 4 CSR 240-20.090(16).

(H) Transition period applicable only to initial RAM rules. This section on procedures during a transitional period only applies to the initial rules adopted by the commission to implement S.B. No. 179, L. 2005, codified as section 386.266, RSMo.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, SB179, effective January 1, 2006.

~~*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than $500 in the aggregate.*~~

~~*PRIVATE COST: This proposed rule will not cost private entities more than $500 in the aggregate.*~~

~~*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before Month/Day/Year, and should include a reference to Commission Case No. EX-2006 ####. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed rule is scheduled for Month/Day/Year, at Time in Room ??? of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*~~

APPENDIX A

1. *The statute itself demonstrates that an "earnings test" violates the letter and spirit of SB 179.*

As discussed in the Comments to which this Appendix is attached, any reasonable reading of SB 179 demonstrates that the Missouri Legislature did not intend to create a contested case proceeding involving a review of overall utility earnings each and every time an adjustment was made under the FAC. This is evident by examining the following key features of SB 179:[1]

- There is absolutely no reference to an earnings test in the legislation.

- SB 179 allows "periodic rate adjustments *outside of general rate proceedings* to reflect increases and decreases in [a utility's] prudently incurred fuel and purchased power costs" (emphasis added). § 386.266.1, RSMo. This is just like the PGA. The utility files for the fuel cost adjustment, without review of all other revenues or costs, and if the filing meets the applicable rules, which allow proper examination of the fuel and purchased power costs subject of the adjustment, the Commission approves the adjustment, promptly resulting in either an increase or decrease in rates. An earnings test in effect necessitates a general rate proceeding and if an earnings test were to exist, there would be no practical way to make "periodic adjustments *outside* general rate proceedings," yet the statute expressly provides that such adjustments are to be made.

- These periodic adjustments are made pursuant to rate schedules (§ 386.266.1, RSMo.) that can only take effect "after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint." § 386.266.3, RSMo. The FAC cannot be used until base rates are set, which will include a comprehensive cost and revenue review as mandated by the statutory provisions noted in the next bullet.

- In the general rate proceeding which must occur before any rate schedule containing the FAC can take effect, the Commission must consider "all relevant factors" which may affect costs or rates." § 386.266.4, RSMo.

- The Commission must specifically find that the rate schedule that it approves in that general rate proceeding is "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity" and must mandate annual true-ups, including interest. § 386.266.4(1) and (2), RSMo. This is the point of the FAC. Fuel and purchased power costs are the largest component of AmerenUE's (and most if

[1] Statutory construction is, in the first instance, a matter of determining the intent of the Legislature. See, e.g., Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15 (Mo. banc 1995). (All principles of statutory construction are subordinate to the requirement that the Legislature's intent be ascertained and given effect, wherever possible.)

not all utilities') cost of service and are often times the most volatile cost of all of a utility's significant operating cost components. These costs are also in large part market driven, and markets are not something a utility can control. Without the FAC, this cost component holds a great potential to create a large under-recovery (and a lower than fair ROE) for utilities if costs shoot up, or a large over-recovery (and a higher than fair ROE) if costs drop. The FAC solves that problem. As explained further below, the earnings test is contrary to this statutory requirement because it would cap the upside while failing to protect utilities from the downside.

- The requirement that the Commission find that FAC mechanism it is approving be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity" operates only in connection with the *initial rate proceeding where base rates are set*. § 386.266.4, RSMo. By definition, the utility is, at the time new base rates take effect as a result of that rate case, being given the opportunity to earn the an ROE based upon the revenue requirement approved in the rate case. This is not an "earnings test" applied at the time of each periodic rate adjustment made pursuant to the FAC mechanism approved in the earlier rate case as opponents of an FAC have argued.

- The Commission cannot approve the rate schedule that it would approve in a general rate proceeding unless the utility is also mandated to return in four years for another full-blown rate case proceeding where the process starts all over again, with a fresh look at all relevant factors. § 386.266.4(3), RSMo. This is the consumer's protection against over- or under-earnings caused by changes in the myriad of other cost of service items that, unlike fuel and purchased power costs, are not (taken alone) as significant or volatile and thus do not need periodic adjustments like those needed for fuel and purchased power.

- The mere act of passing SB 179 demonstrates that an earnings test was not intended because if the operation of an FAC was to include an earnings test, the FACs in use prior to the Supreme Court's decision in the *UCCM* case would have been lawful because there would have been no single-issue adjustment for fuel costs being made. The Legislature well understood that SB 179 allows what the *UCCM* case had made unlawful.

In summary, the foregoing legislative scheme allows the Commission to set base rates in the initial rate case, enables the use of FACs that ensure that consumers timely pay the right costs for the large fuel and purchased power costs incurred by utilities, requires prudence reviews, true-ups and refunds with interest, and then resets base rates four years later. The four-year cycle is then repeated. It protects the utility against the impact that large increases in fuel costs could cause in relation to allowing the utility "a sufficient opportunity to earn a fair return on equity."

Conversely, it protects ratepayers from every paying more than the actual, prudently incurred cost of fuel and purchased power, including ensuring that decreases in those costs are timely reflected in the form of lower rates.

2. Including an earnings test would run counter to the operation of FACs in the vast majority of non-restructured states that use the FAC.

An earnings test clearly would be far outside the mainstream of how U.S. regulatory commissions have implemented FACs. Based upon the research to date, only three states have been identified that impose any kind of "earnings test" related in any way to the FAC process.[2] In one of the three states (Indiana), the earnings test is specifically mandated by legislation. But, importantly, none of the three states require any periodic rate case review of overall utility costs, a key consumer protection that is required by SB 179.[3] Indeed, it would be illogical for the Legislature to include the nearly unprecedented periodic rate case requirement in SB 179 and to include an earnings test. Consequently, it would be equally illogical and in fact unlawful for the Commission to accede to the demands of those who seek to disable the use of an FAC through an earnings test that leads to illogical and absurd results.[4] The lack of an earnings test requirement in the vast majority of non-restructured states is also consistent with Missouri's use of the PGA for natural gas distribution companies, which neither includes use of an earnings test nor a periodic rate case requirement.

3. An "earnings test" fails to promote the efficiency incentives inherent in traditional rate regulation because it in effect creates exceedingly frequent rate cases.

Not only would an earnings test be contrary to the Legislature's intent in enacting SB 179, it would also represent poor regulatory policy. The FAC, coupled with traditional rate

[2] *See* Exhibit 3 to AmerenUE's Comments.
[3] Wisconsin, which utilizes an earnings test within the FAC framework, also mandates a two-year rate case cycle, but the rate case requirement is independent of whether a FAC is used or not. Wisconsin also has the highest allowed returns on equity in the country.
[4] *Spradlin*, 982 S.W.2d at 258.

regulation, isolates a very significant, often times volatile, and largely uncontrollable cost, while continuing to create a meaningful incentive for the utility to control and lower other, more controllable costs. As has always been the case in traditional rate regulation, if a utility can reduce or slow the growth in these other costs via efficiencies, the utility can temporarily benefit from those cost savings, just as was the case before SB 179 was passed. Moreover, customers will also be assured of deriving the ultimate and more permanent benefit from the efficiencies created by this powerful incentive because of the requirement that periodic rate cases occur because efficiencies gained by the utility between rate cases will then be reflected as new rates are set as a result of each periodic rate case. An earnings test would fly in the face of this legislative scheme and drastically reduce this incentive to reduce costs. Indeed, what was the Legislature's point in enacting FAC legislation and including this four-year cycle of full rate reviews if an earnings test is to be applied each time an adjustment under an FAC is made?

Like the PGAs, which have been utilized in Missouri for many years, the idea behind the FAC is to *avoid* frequent, inefficient and contentious full reviews of all a utility's costs and revenues while preserving the ability to review the prudence of these expenditures and to require true-ups. Indeed, an earnings test would be even more detrimental to efficiency than frequent rate cases. An earnings test would reduce one of the incentives utilities otherwise would have to aggressively seek out other operating cost reductions, as noted above. This is because the utility would simply lose the ability to pass through its actual, prudently incurred fuel costs *because* of efficiencies it will have gained.

The incentive for utilities to reduce costs -- this regulatory compact between utilities and the Commission -- has worked, as illustrated by the continued lowering of AmerenUE's rates over the past 20 years. This regulatory compact has allowed AmerenUE to indeed become more efficient and offer its customers some of the lowest rates in the country, while remaining

financially sound. That financial soundness has contributed to those lower rates, and to AmerenUE's ability to provide very high quality service at low rates. Indeed, since 1983, AmerenUE's electric rates have been reduced numerous times and are well below both national and Midwestern average electric rates. That will remain true after taking into account the rate increases requested in AmerenUE's current rate case.

4. An earnings test does not make sense for reasons of regulatory symmetry.

An earnings test would presumably bar the pass-through of actual, prudently incurred fuel costs if the utility has so-called "over-earnings" (which as noted above could not practically be determined absent a rate case in any event). This is in effect an ROE cap, but without any corollary ROE floor, because presumably those who favor an earnings test would require the pass through of fuel cost savings even if the utility is earning less than an appropriate ROE. This would fly into the face of the statutory requirement in SB 179 that requires the FAC mechanism to provide a utility with a fair opportunity to earn a reasonable rate of return. Because an earnings test would cap the upside while failing to provide protection for the downside, utilities would no longer have a fair opportunity to earn an appropriate (or even the allowed ROE on average, assuming one exists).[5]

[5] As noted earlier, a so-called allowed ROE may not exist if the rate case was settled, as is often the case and even then, an earlier allowed ROE may no longer be the appropriate ROE.