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August 31, 1992

Mr. Brent Stewart
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
100 East Capitol Avenue
Jefferson City, Missouri 65102

Re: Electric Utility Resource Planning Rulemaking; MoPSC Docket No. EX-92-299

Dear Mr. Stewart:

Enclosed please find the original and fifteen (15) copies of an Armco Inc.'s Reply Comments, which please file in the above matter and call to the attention of the Commission.

Please return to me a file-stamped copy of these Comments in the self-addressed, stamped envelope which is enclosed for your convenience.

Thank you for your attention to this matter.

Very truly yours,

Paul S. DeFord

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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

IN THE MATTER OF THE PROPOSED COMMISSION RULES 4 C.S.R. 240-22.010 through 22.080.)	))	**Case No. EX-92-299**

REPLY COMMENTS OF ARMCO, INC.

Armco, Inc. respectfully submits the following reply comments concerning the Commission's proposed rules on electric utility resource planning, 4 C.S.R. Chapter 22. Armco understands the goal of the proposed rules to be the establishment of minimum standards governing the resource planning process required of electric utilities. While Armco supports the goal of the proposed rules and commends the Commission staff for its analysis of the current need for resource planning. Comments of some of the parties, however, combined with ambiguities in portions of the proposed rules creates concern that the goal of the rules could be frustrated by grave and unintended consequences. Indeed, rather than protecting the public from the risk of unwise or nonexistent resource planning, several of the utilities' Comments threaten to transform this rule into a mechanism for shifting the risk of capital recovery onto ratepayers.

I. COMMISSION APPROVAL OF RESOURCE PLANS WOULD RADICALLY ALTER THE CAREFUL BALANCE IN UTILITY REGULATION

The policy objectives set forth in 22.010(1) correctly provide that compliance with the new rules should not be construed as "Commission approval of the utilities resource

plans, resource acquisition strategies or investment decisions." 4 C.S.R. 240-22.010(1). As noted by the staff in its initial comments, "a fundamental assumption of these proposed rules is that resource planning and investment decisions are, and should remain, the responsibility of utility managers rather than regulators." Comments of the Staff of the Missouri Public Service Commission at 15. This policy statement properly reflects long-held principles concerning the role of regulation in the business of electric utilities.

Union Electric, however, urges that the proposed rule is "unfair" precisely because it does not alter these fundamental assumptions. Initial Comments of Union Electric Co. at G. Union Electric's initial comments argue that Commission failure to approve the utilities resource plan would invite "hindsight attacks . . . as to whether the resources contained in the strategy were reasonable ones for the utility to implement." Id. at 8. Union Electric sees as "unfair" that it assume the risk that circumstances may change in such a way as to nullify the reasonableness of the resource plan originally submitted.

There is, of course, nothing "unfair" in requiring the utilities to assume the risk of their own decisions, and utilities are compensated for the risks associated with their business. Moreover, Union Electric's argument fundamentally misconstrues the stated purpose of the proposed rules.

As noted by the Commission staff, the purpose of these proposed rules is to insure that the public interest is

adequately served by requiring minimum standards of documentation and analysis in resource planning and investment decisions. Comments of the Staff of the Missouri Public Service Commission at 15. The purpose is not to protect the utilities from inopportune or speculative investment. The rules were not designed, and neither the Commission nor its staff need assume the responsibility to analyze and approve the substantive conclusions of a utilities resource plan. Indeed, the Commission staff would be assuming, in addition to its ordinary duties, the responsibilities of several departments within each of the utilities.

The innumerable problems created by the utilities proposal that the Commission "approve" the substance of a resource plan are highlighted by Union Electric's concern that a resource plan may be challenged "years" later. Commission approval of a resource plan which projects demand and investment decisions over the course of 20 years would inappropriately prevent future commissions from taking necessary corrective action or at the very least shift the cost of the correction onto ratepayers.

Although Union Electric maintains that the Commission's determination of reasonableness would not be conclusive, its arguments in support of this statement reveal the utilities' true view of this process. Union Electric is proposing "only that a presumption of prudence attach to an approved strategy." Initial Comments of Union Electric Company at 10. This presumption would only be overturned, however, upon an affirmative showing of fraud or negligence. Accordingly, the burden would no longer be upon

the utility to affirmatively demonstrate the reasonableness of its investment decisions but upon ratepayers or other interested parties to determine whether or not the utility has committed fraud. Precisely how these other parties are expected to determine whether or not the utilities have withheld critical information is not addressed by Union Electric.

In a similar argument, Union Electric alleges that strategy approval would not "constitute a guarantee" of recovering the costs of implementing a resource plan. Id. at 10. Union Electric maintains that plan approval would only go to the issue of "decisional prudence" but that the issue of "managerial prudence" would remain reviewable in a rate case. Once again, this argument masks a fundamental shift in the underlying distribution of risk. Rather than determining with the appropriate use of "hindsight," the reasonableness of the utilities' investment, the Commission would be limited to determining whether or not the utility had implemented or "managed" a particular resource plan correctly.[1] A commission would arguably be unable to review the prudence of the original plan, even if 20 years old.

Finally, Union Electric argues that implementation of the proposed rule is unfairly one-sided in that the utility is required to provide large quantities of information and the Commission is not required to provide any assurances in return.

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[1]For example, if an initial resource plan called for the construction of a generating facility two years after plan approval, the Commission conducting a rate case could not review the decision to begin construction but merely whether the cost of construction was reasonably managed.

The absurdity of this argument is patent. The Commission is a regulatory body. It is charged with the responsibility of assuring that the utilities act in the best interests of their customers while providing the utility a reasonable opportunity to earn an appropriate return. The Commission has no obligation to reward a utility for providing information deemed necessary to assist the Commission in accomplishing its task.

Kansas City Power & Light ("KCP&L") proposes similar justifications for plan approval without providing convincing explanations. KCP&L first argues that plan approval would result in cost efficiency and a reduction of litigation. The fallacy in this argument is the assumption that submission of a resource plan requires litigation. The clear intent of the rules is to require filing without substantive review.[2] Plan approval, however, would require extensive litigation. If Union Electric is correct, litigation would then also occur in rate making proceedings covering the same plan.

KCP&L complains that the numerous assumptions and evaluations of uncertainties that allow for "an infinite combination of possibilities" has created significant risks for utilities in rate proceedings. KCP&L's solution is to have the Commission approve its assumptions so as to eliminate any risk to its investors. This is not the role of the Public Service Commission. KCP&L states "because of an erroneous assumption, a key uncertainty overlooked, or simply a mechanical mistake, the

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[2]To the extent the rules suggest otherwise, they should be amended. As discussed infra, the establishment of a docket is not necessary for review of a filing.

best resource strategies or investment decisions may not be selected or even evaluated." Initial Comments of Kansas City Power & Light Company at 5. KCP&L does not explain, however, why the risk of calculating these infinite possibilities should fall upon the Commission or upon ratepayers. The goal of the proposed rules is to require and document a minimum amount of planning by the electric utilities, not to prevent the utilities from conducting any and all investigations necessary to reach reasonable investment decisions.

Finally, KCP&L argues that "without Commission approval, the company will be in the precarious position of selecting resource acquisition strategies and investment decisions without all the pertinent information." Id. at 6. Any lack of information, however, would not result from a lack of guidance by the Commission. Rather, the utility is requesting that the Commission conduct its resource planning for it and remove any risk to its shareholders.

There is another important reason why the proposed rules should not shift the balance of proof and the responsibility for risk from the utilities to the ratepayers. National experience with demand side management programs strongly suggests that often plans may have unintended adverse consequences and may detrimentally affect the utility more than doing nothing at all. In one well-documented case, an eastern electric utility inaugurated a program to provide a discount to customers who would install a high efficiency rated refrigerator. While many took up the utility's offer, the old refrigerators were in most

cases simply moved to the customers' garage or basement. The effect was to increase the utility's load rather than reduce it. Such consequences can best be avoided by assuring that the entity that is principally responsible for assembling the plan has the risk that the plan will not succeed. Doing so will go a long way toward assuring that the very best utility planning and contingency efforts will be expended.

II. PROPOSED RULE CONTAINS AMBIGUITIES WHICH MAY PERMIT FUTURE DISTORTION OF THE ORIGINAL INTENT

Although the underlying policies supporting the proposed rule are fundamentally correct, Armco must agree with the Monsanto, et al. ("Monsanto") that certain language in the proposed rule creates unnecessary ambiguity. 4 C.S.R. 240-22.080 unnecessarily provides that compliance review will "determine" whether the utility's resource acquisition strategy meets the "planning objectives" of 4 C.S.R. 240-22.010. Because of the breadth of the planning objectives enumerated in 22.010, this language creates an impression that the plan will receive an official stamp of approval. Armco agrees with Monsanto that such language should be deleted.

Of further concern to Armco is language contained in 22.080(4) establishing a docket for the purpose of receiving the compliance filing, establishing intervention deadlines and setting a prehearing conference. Armco sees no need for the establishment of a docket merely to receive a filing which will not receive a substantive review. Such language implies the application of due process and corresponding determination of

some substantive right. If parties have had an opportunity to intervene and comment and the Commission approves the filing, the utilities may argue that the plan itself has been approved after a substantive review. Particularly dangerous is the implication that an intervenor may be bound by these proceedings despite their supposed limited and abbreviated nature.

A similar concern is created by language contained in 22.080(6) and (8) concerning review of the plan by intervenors, public counsel and the staff. Armco does not believe anyone other than the utility should be responsible for the plan's compliance with the rule. If the staff reaches an "agreement" regarding the correction of the deficiencies of the plan, the utility is given the opportunity to argue that staff agreed with the substance of the plan and thus has secured plan approval.

As a final matter, Armco would also voice its support of Monsanto's statement that the goal of rate minimization is equal to the objective of minimizing utility costs. To hold otherwise would distort the balance between the interests of the public and those of the utility.

CONCLUSION

Armco supports the goals of the Commission staff in drafting the proposed rules under consideration. The staff has properly resisted the attempts by electric utilities to alter the risk of long-term planning while still protecting the public. With the exception of the few specific sections referenced herein, Armco

does not object to the Commission's implementation of these rules.

Pursuant to the Commission's Notice of Public Hearing published in the Missouri Register on July 1, 1992, the undersigned will appear on behalf of Armco to answer questions of the Commissioners and the Hearing Examiner relating to these

Comments at the public hearing to be held on September 10 and 11, 1992.

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