BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CASE NO. ER-85-20

In the matter of Arkansas Power & Light Company of Little Rock, Arkansas, for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company.

CASE NO. EO-85-146

In the matter of the audit of the fuel expense of Arkansas Power & Light Company.

APPEARANCES: Stephen B. Rowell, Attorney at Law, P. O. Box 551, Little Rock, Arkansas 72203, and Gary W. Duffy, Attorney at Law, James C. Swearengen, Attorney at Law, W. R. England III, Attorney at Law, Hawkins, Brydon & Swearengen, P. C., P. O. Box 456, Jefferson City, Missouri 65102, for Arkansas Power & Light Company.

Willard C. Reine, Attorney at Law, 314 East High Street, Jefferson City, Missouri 65101, for Arkansas-Missouri Cotton Ginners Association, McCord Gin Company, Portageville Gin Company, R. M. Hart Gin & Elevator, Citizens Gin, Inc., L. Berry Gin Company, DeLisle-Pikey Gin & Elevator, Campbell Brothers Gin Company, Boeving Brothers Cotton, Southern Cotton Ginners Association, Richardson Gin, Inc., Vanduser Gin Company, East 84 Gin, Blakemore Cotton & Grain, Inc., Bragg City Gins, Inc., J. E. Jones Gin Company, McCarty Gin Company and Union Farmers Gin.

J. B. Schnapp, Attorney at Law, and Robin E. Fulton, Attorney at Law, Schnapp, Graham & Reid, 135 East Main Street, Fredericktown, Missouri 63645, for AMAX Lead Company and ASARCO, Incorporated.

John H. Hendren, Attorney at Law, and Gerald Roark, Attorney at Law, Hendren & Andrae, P. O. Box 1069, Jefferson City, Missouri 65102, for St. Joe Minerals Corporation, Cominco American Company, GAF Corporation and Ozark Lead Company.

Richard W. French, First Assistant Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the Public.

Martin C. Rothfelder, Assistant General Counsel, Paul H. Gardner, Assistant General Counsel, and Thomas M. Byrne, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

The Commission has stated that it would issue an order at a later date in Case Nos. ER-85-20 and EO-85-146 relating to the issues of Trued-Up Fuel and Purchased Power Cost and the issue of whether Arkansas Power & Light Company's expenses related to Grand Gulf I nuclear plant and the termination of the sales of capacity from the White Bluff plants and all issues related thereto should be considered in this case.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

The Commission, pursuant to Section 393.150, RSMo 1978, suspended the tariffs filed by AP&L, held a hearing on Staff's Motion for Summary Disposition of Certain Issues and granted it. Staff's motion dealt with a threshold issue in this case, whether the costs associated with the return of the White Bluff coal plants to the AP&L system and the costs incurred due to commercial operation and FERC allocation of Grand Gulf I nuclear plant to AP&L are known and measurable and should be considered in this rate case.

The Commission notes that in its order of November 21, 1984, it ordered the parties in this case to use the historical test year ending September 30, 1984, appropriately updated for known and measurable changes in presenting evidence at the hearing scheduled to commence on March 25, 1985. On February 1, 1985, the Staff of the Public Service Commission filed a Motion to Modify the Schedule of Proceedings because of a heavy workload. AP&L, in its Response to Motion to Modify Schedule stated that "...further postponement of a hearing beyond the dates suggested by Staff is not feasible because there does not appear to be sufficient time for transcript preparation, briefing and consideration of the case by the Commission if hearings are scheduled to end

later than April 12, 1985." The Commission rescheduled the hearings in this case for April 1-12, 1985. The hearing on Staff's Motion for Summary Disposition was held April 3-4, 1985.

The Staff presented evidence and oral argument in support of its Motion for Summary Disposition stating that these costs were not known and measurable. The other parties to the case except for AP&L presented oral argument in support of Staff's motion. AP&L presented evidence and oral argument supporting its position that it can quantify these costs and all it has to do is to show that the commercial operation of Grand Gulf I and Waterford III occurs.

The Commission finds that there has been no final decision by the Federal Energy Regulatory Commission (FERC) in Dockets No. ER-82-483-000 and 82-616-000. Administrative law judges have issued initial decisions in those dockets, however, they are now before the entire FERC. At issue in those cases and relevant in this case is the percentage allocation of Grand Gulf I nuclear plant to AP&L and the reason for the allocation. Once FERC determines a percentage allocation for AP&L, AP&L has stated it is uncertain whether payments would begin at that time on the plant or if the payments would be delayed until after Grand Gulf I begins commercial operation.

The Commission finds that neither Grand Gulf I nuclear plant nor Waterford III nuclear plant have begun commercial operation. When these plants do become operational, then a short-term sales agreement between AP&L, Louisiana Power & Light Company (LP&L) and New Orleans Public Service, Inc. (NOPSI) will terminate and AP&L will no longer sell 785 megawatts (MW) of capacity out of its share of the White Bluff coal plants. According to the terms of the agreement, the sale will terminate in two phases keyed to the commercial operation of Grand Gulf I and Waterford III. If Grand Gulf I becomes commercial before Waterford III, the short-term sale will be reduced by 346 MW. The remaining sale of 438 MW will terminate when Waterford III becomes commercial. If

Waterford III becomes commercial first, then 375 MW of the sale terminates followed by the termination of the remaining 410 MW when Grand Gulf I becomes commercial.

The White Bluff coal plants have never been included as part of AP&L's rate base. However, certain revenue requirements from termination of the short-term sales are proposed as part of the rates in this case. AP&L has stated that any revenues to be received from future sales of power from White Bluff coal plants are not known and measurable.

Further, the Commission finds that the date of commercial operation of Grand Gulf I and Waterford III are unknown. Both units are in the process of completing their initial test programs. As of March 27, 1985, Grand Gulf I was completing an outage and preparing for resumption of power ascension testing at approximately 70 percent thermal reactor power. On March 27, 1985, Waterford III had progressed to 20 percent thermal power level plateau in power ascension testing.

Power ascension testing is a Nuclear Regulatory Commission (NRC) operating license requirement. Commercial operation is the point in time when a given generating unit is declared by its owner/operator utility to be available for regular production of electricity. LP&L is the operator/utility for Waterford III. Mississippi Power & Light Company (MP&L) is the operator/utility for Grand Gulf I. Ninety percent of Grand Gulf I is owned by Middle South Energy, Inc. Waterford III is owned by Louisiana Power & Light Company. All three entities: AP&L, LP&L and MP&L are subsidiaries of Middle South Utilities Company.

Both utility operators plan for commercial operation of the nuclear units during the second quarter of 1985.

Though MP&L plans for commercial operation of Grand Gulf I on or about July 1, 1985, this will depend upon successful completion of all NRC required testing. Grand Gulf I has already spent more time in initial testing than any

other nuclear unit since the Three Mile Island nuclear accident. Twenty-five months elapsed from the time the NRC first licensed Grand Gulf I for fuel loading (low power license) and the time that the NRC authorized testing of the unit at over five (5) percent thermal power (full power license). There are two other similar cotemporaneous General Electric boiling water reactor units, each of which is the first unit at a new site: LaSalle I and Susequehanna I. All three received low power licenses within a three-month period. Full power licenses were issued for LaSalle I and Susequehanna I within four (4) months after their low power licenses were issued. The significance of the long initial test program for Grand Gulf I is that it indicates a troublesome history of noncompliance with NRC requirements. Grand Gulf's original power ascension test schedule has been extended three additional months from the original seven months due to a combination of forced outage repair requirements, NRC required enhancements and preventative heat treatments.

From initial generation to 100 percent power for Susequehanna I, it took approximately seven months while for LaSalle I it took eleven months. Grand Gulf began initial generation on 10-20-84 and is being projected at 100 percent power in 5-85. LaSalle I experienced an additional delay of five months from 100 percent power until commercial operation.

A significant factor that is likely to result in Grand Gulf not meeting its testing schedule is its uniqueness. Grand Gulf is the largest reactor that has ever been licensed for commercial operation in the United States and it is the first commercial application for the General Electric Mark III Containment and BWR6 Nuclear Steam Supply System (NSSS) in the United States. Though it is similar in its configuration to other boiling water reactors (BWRs), it has a slightly different design which is unproven. This results in more testing and few if any generic test results from other United States units may be considered helpful.

Further slippage of testing schedule and commercial operation of Grand Gulf I is possible because in any nuclear plant, components may fail, human operators can make mistakes, procedures may contain errors and NRC requirements may change. Grand Gulf has experienced these events in the past. An outage was recorded on February 15, 1985, and continuing through March 27, 1985, for repair of leakages that have occurred in the condenser. In 1983, during low power testing, it was determined that the containment dry well cooling capacity was insufficiently designed and 35 tons of additional capacity had to be added delaying the schedule.

During testing the NRC determined that Grand Gulf NRC licensed operators of the plant had insufficient training and there was insufficient documentation of that training. The NRC then required all of the operators to be retrained and recertified.

During low power testing, it was discovered that Grand Gulf's technical specifications, which are the operating procedures for the plant, were not accurate. These specifications are developed by the licensee and approved by the NRC staff. It took six months to correct this problem. During low power testing, the NRC required Grand Gulf to tear down completely, inspect and replace part of its diesel generators. This was the result of problems at the Shoreham plant with emergency diesel generators manufactured by Transamerica Delaval, Inc.

LP&L's plans for commercial operation in the second quarter of 1985 could be termed ambitious. Comparing Waterford III's completion of testing to three other pressurized water reactors, St. Lucie II, San Onofre II and San Onofre III, the time between low power licensing to full power licensing is as follows: Waterford III - three months, St. Lucie II - four months, San Onofre II - seven months, and San Onofre III - ten months. Time between full power licensing and commercial power is as follows: Waterford III - three months (projected), St. Lucie II - two months, San Onofre II - eleven months,

and San Onofre III - a negative four and one-half months (probably typographical error). Waterford III's schedule is similar to St. Lucie II nuclear plant which has had the shortest initial test program since the Three Mile Island nuclear accident. St. Lucie II was the second plant built and San Onofre II and III were the second and third plants built.

Waterford III is in power ascension testing at approximately twenty percent power. The week before the hearing, it had a minor two-day shutdown. LP&L scheduled a 174-day test period beginning on December 18, 1984, which includes 28 days of outage, and concludes on June 8, 1985. LP&L has used 25 of its 28 days of outage and it still has a majority of its power ascension testing to do. In fact, all critical functions are not operational at the 20 percent power level.

A license is issued for full power operation with requirements for successful completion of a predetermined power ascension test program. Each power level is tested and safe operations established at each level. The NRC has limited the license capability of a plant for a long duration when trouble has developed at a certain level--Zion and LaSalle plants were so restricted.

Neither LP&L nor MP&L operate other commercial nuclear power plants. They have no "corporate" nuclear operating experience to rely on as they proceed through power ascension testing and on which to base their schedules for completion of testing. This experience is a significant factor in the performance of the initial testing program. Experienced operators and supervisors can be hired but as Mr. Rogers stated:

> To put that together into a cohesive program of testing the unit and operating the unit and to also provide the quality assurance, backup, all the resources that are required for an NRC licensee to put that together, it's very difficult to do... (T-154)

In addition, the decision to grant a permanent injunction against the Arkansas Public Service Commission prohibiting it from proceeding in a docket investigating contracts and agreements of AP&L (the Availability Agreement)

which obligate AP&L to purchase power from or to pay for construction and operation costs of the Grand Gulf project is on appeal to the Eighth Circuit Court of Appeals, Docket Nos. 84-2356EA, 84-2409, 84-210 and 84-2480. The Availability Agreements include the following paragraph 2.2(b) on page 9:

> In the event and to the extent that any action by any governmental regulatory authority, including, without limitation, the Federal Power Commission or any successor thereto, shall have the effect of prohibiting the system operating companies from making any payments which would otherwise be required pursuant to Section 4 of the Availability Agreement (as supplemented hereby) with respect to Unit No. 1 and Unit No. 2 the system operating companies shall make advances to the company at the same time and in the same amount as such prohibited payments and all such advances shall constitute subordinated indebtedness of the company.

The Eighth Circuit Court of Appeals' decision may affect the Commission's consideration of the Availability Agreements in the context of this case. The Intervenor Mines question AP&L's credibility on the basis of the Availability Agreements. Public Counsel states that if FERC allocates a percentage of Grand Gulf to AP&L based upon the Availability Agreements, then the appropriateness of AP&L's purchased power cost becomes an issue.

Based upon these findings of fact, the Commission determined that the revenues and costs associated with the return of the White Bluff coal plants to AP&L's system and the cost incurred due to commercial operation and FERC allocation of Grand Gulf nuclear plant to AP&L are not within the historical test year ending September 30, 1984, and are not known and measurable changes and should not be considered in this rate case.

In summary, the Commission found that in considering the Grand Gulf costs, there has been no final decision by FERC on the allocation of Grand Gulf I, the commercial operation date for Grand Gulf I is unknown and there has been no 8th Circuit Court decision on whether a state regulatory commission can consider the Availability Agreements. In considering the White Bluff coal plant revenue requirements, the Commission found that matching revenues are unknown, the commercial operation of Grand Gulf I and

Waterford III are the basis for the termination of the short-term sales of White Bluff and those dates are unknown.

After the decision of the Commission on Staff's Motion for Summary Disposition of Certain Issues was announced, AP&L made an offer of proof which included Exhibit Nos. 97-102. AMAX Lead Company of Missouri and ASARCO, Incorporated objected to the offer of proof on the basis it came too late in the proceedings. Other parties expressed a desire to review the documents and file objections if necessary. No other objections were filed. The Commission finds that the objection to AP&L's offer of proof is overruled. Exhibit Nos. 81 and 104 are received into evidence. The objection to Exhibit No. 104 is overruled.

The Hearing Memorandum on All Issues Except Rate Design, Exhibit No. 4, contains the following agreements:

> IV. TRUED UP FUEL AND PURCHASED POWER COST
>
> A. All parties agree that trued-up fuel and purchased power cost is 17.837 mills/kwh based on March, 1984 prices, known and measurable as of May 31, 1984 in accordance with the Stipulation and Agreement in Case No. ER-83-206. Except for the arguments of Public Counsel as set out below, all parties agree further that a refund is necessitated by the $820,000 revenue requirement associated with trued-up fuel prices and that the refund shall be calculated and refunded as follows:
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> 1) The total amount of the refund shall be .222 Mills times the total number of kilowatt hoursales to Missouri jurisdictional customers adjusted upward by 8.559% for losses, during the period from October 1, 1983, to the effective date of tariffs approved by this Commission in Case No. ER-85-20, plus applicable interest.
>
> 2) The refund to each class shall be the same percentage of the total refund as the percentage of forecasted fuel expense originally allocated to that class.
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> 3) That the refund to each active customer within the Residential and Small General Service classes shall be the refund allocated to that class divided by the total kilowatt hours billed to active customer accounts in that class times that active customer's usage. The refund to inactive customers in these classes shall be the same factor times that inactive customer's usage.

4) That the refund to each customer, active or inactive, in the Large General Service, Large Power, and Lighting classes shall be the refund allocated to that class divided by total kilowatt hours billed to all accounts, both active and inactive, in that class times that customer's usage.

5) That Company shall make the appropriate refund including interest to active customer accounts by a credit to each customer account on the billing for the month which is the third billing month following the month in which tariffs approved by this Commission in Case No. ER-85-20 become effective.

6) That Company shall refund to inactive customer accounts in the Large General Service, Large Power, and Lighting classes by mailing checks to the last known address of such customers for those customer accounts for which the refund is $1.50 or more.

7) That Company shall make refunds to inactive customer accounts in the Residential and Small General Service classes only to those customers who claim their refund in person or by mail and who have refunds of $1.50 or more.

8) That no refunds of less than $1.50 to inactive customer accounts shall be made.

9) That Company shall publish newspaper notices in newspapers of general circulation throughout the Company's Missouri service area. The notice shall be printed the month after the month in which refunds are credited to active customer accounts and shall inform the inactive customers of the availability of a refund.

10) That Company shall submit for Commission approval its proposed newspaper notice two weeks prior to publication.

11) That any unrefunded amounts (including refunds below $1.50) remaining after six months from the date of the newspaper notices shall be placed in the "Helping Hand" program.

The Commission considers these agreements, except for the first sentence, a Joint Recommendation. Public Counsel proposes that the interest rate should be 11.71 percent from October 1, 1983, to July 1, 1984, and 13.71 percent from July 1, 1984, until the refund is complete. AP&L and the Staff contend that the interest rate agreed to in the Stipulation approved by the

Commission in Case No. ER-83-206 is 11.71 percent and should be applied in this case. Intervenors, AMAX Lead Company of Missouri, ASARCO, Inc., St. Joe Minerals Corporation, Cominco American Company, GAF Corporation and Ozark Lead Company (the Mines), did not state a position in the Hearing Memorandum but filed a brief which states:

> In the event that the Public Service Commission denies Public Counsel's position on this issue, then it is the intervening mining companies' position that the stipulated interest rate of 11.71 percent should be increased to 13.71 percent, no later than January 1, 1985, as a "penalty" for AP&L's refusal to file new tariffs or effectuate the refund process.

Public Counsel states its position is based on the failure of AP&L to execute the refund procedure in a timely manner. Public Counsel further states that the failure of AP&L to accomplish this task will undoubtedly harm the ability of customers to receive money due them for excess rates paid to AP&L.

Exhibit No. 103, Schedule DWM-7, sets out the portion of the Stipulation and Agreement from the Report and Order in Case No. ER-83-206 which relates to fuel expense. Therein in paragraph 3(c) the Stipulation provides that

> [t]he Commission should establish a docket and schedule hearing dates during the month of June, 1984, to audit Company's March, 1984, fuel prices, known and measurable as of May 31, 1984, to determine the requirement of any refund pursuant to paragraph 3(b) above and/or any rate reduction due to the trueing-up of forecasted fuel...

Paragraph 3(b) provides that the mechanics of the true-up and refund shall be based on the formula set out in Appendix B of the Stipulation which is included in Exhibit No. 103, Schedule DWM-7. Appendix B, page 1, H states that:

> In the event that the true-up March 1984 fuel and purchased power expense to Missouri retail customers is less than the projected 18.036 mills/kwh, but greater than the base fuel and purchased power expense of 16.824 mills/kwh the total amount of the refund will be equal to the difference between the projected 18.036 mills/kwh and the trued-up March, 1984 fuel and purchased power expense multiplied by the actual Missouri retail kwh consumption (adjusted for losses by the loss factor of 1.08599) between October 1, 1983, and the effective date of revised tariffs reflecting rates based on trued-up March, 1984 fuel

costs. In addition to this amount, Company shall pay simple interest thereon at the annual rate of 11.71 percent.

The Commission notes that it established Case No. EO-85-146 on February 1, 1985, and consolidated it with Case No. ER-85-20 for purposes of hearing to conserve Staff resources. Since the Commission approved Stipulation in Case No. ER-83-206 did not require AP&L to file tariffs or to take any action to create a docket, the Commission does not believe that AP&L should be penalized with an additional two percent interest rate. The Commission is of the opinion that the interest rate of 11.71 percent agreed to in the Commission approved Stipulation in Case No. ER-83-206 is the interest rate to be applied in this case.

Public Counsel proposes a refund method as follows:

(1) The determination of actual usage of active and inactive customers during the refund period at different residences they may have lived in during that period.

(2) The refunding to active customers of an amount in proportion to the actual usage at all residences lived in by that customer during the refund period.

(3) The refunding to inactive customers of their refund in proportion to the actual usage during the refund period by mailing a check to that inactive customer's forwarding address.

The Joint Recommendation of AP&L and Staff is set out on pages 9 and 10 and includes numbered paragraphs 1-11. Paragraph 3 of the Joint Recommendation as interpreted by Staff and AP&L would result in a refund to a residential or small general service customer based upon the usage at a particular location rather than by a customer's usage.

During the hearing a new issue developed between AP&L and Staff over the meaning of active customer accounts in paragraph 3 of their Joint Recommendation. In its initial brief, AP&L belatedly adopted the testimony of Mr. Watkins, Staff's witness on this issue, whenever it conflicts with Mr. Myers, AP&L's witness. No disagreement now exists between Staff and AP&L on the meaning of active customer accounts.

Exhibit No. 103, Schedule DWM-7, the Stipulation in Case No. ER-83-206, 3(f) states:

> Any refund due to the forecasted fuel true-up will go to the rate classes in proportion to the forecasted fuel subject to true-up and refund allocated to the rate classes as shown in "Appendix A," and to the customers within each class in proportion to their kilowatt hour usage during the period the forecasted fuel costs were collected.

Public Counsel states that the clear meaning of this paragraph is that the customers were to receive refunds in proportion to the customers' actual usage during the refund period. Public Counsel states that AP&L's and Staff's proposal as set out above would unfairly treat ratepayers and cause them not to receive funds through no fault of their own.

Staff's witness Mr. Watkins testified that he felt:

> that the most reasonable way to make the refund--and now we're limiting this to small general service and residential--was that the total amount of the refund, dollars that were allocated to those classes, would be distributed to current customers on the basis of the billing histories associated with their account numbers, whether or not that was actually that customer's billing history. In that fashion the total amount of the refund would be refunded to the current customers.
>
> The inactive customers who were aware that a refund was available would receive a refund if they requested one and that it was in excess of a dollar and a half. And that would be in addition to the total amount of the refund obligation that the company was indeed obligated by this Commission to refund.

AP&L has retained billing tapes for the period of the refund. However, Mr. Myers, AP&L's witness, testified that programming the computer to pick up customers' old addresses after they had moved to new addresses would be a horrendous problem. Mr. Watkins also testified that it was his understanding that AP&L would have to do manually all the rebillings because the account numbers were associated with the location, not the customer.

The average refund to be received by a residential customer would be approximately $3.00. Approximately one-half of the total refund of $200,000 will go to the residential and small general service customers. AP&L has approximately 30,000 residential customers. Mr. Trippensee, witness for

Public Counsel, testified that it appeared that AP&L was losing 300 customers net a year.

Public Counsel stated that it is not advocating that the Commission approve its more costly refunding procedure if the Commission plans to put the cost of this procedure on the customers receiving the refund. The issue of who is to pay for the refund cannot be decided in this case since the costs have not been included in AP&L's cost of service but will be an issue in the Company's next rate case.

Staff objects to Public Counsel's raising an issue regarding the amount of the refund since Public Counsel did not raise the issue at the hearing. Staff states such action by Public Counsel violates the Hearing Memorandum and Suspension Order and requests that the Commission reject the Public Counsel's new proposals.

The Commission adopts the Staff and AP&L's Joint Recommendation on this issue. The Commission finds that manually rebilling or developing a new computer program to cross-check locations of customers who have moved would not be feasible in this case because of the size of the refund. The Commission further finds that Staff and AP&L's Joint Recommendation as to the paying of a refund upon request of an inactive customer to be a reasonable method. The Commission is of the opinion that the method of refunding set out by the Staff and AP&L's Joint Recommendation effectuates the Stipulation in Case No. ER-83-206.

Since the Commission is allowing AP&L to change its position on the meaning of active customer accounts by way of brief, the Commission sees no reason for not allowing Public Counsel to state its position on this issue and present its solution to the problem in its brief.

Public Counsel proposes that AP&L be required to advertise the refund in papers surrounding its service territory, i.e. St. Louis, Missouri, Memphis, Tennessee, and Springfield, Missouri, to notify inactive customers who could not

be contacted by mail of the existence of the refund. AP&L, Staff and the Mines contend that the procedures submitted in the Stipulation in Case No. ER-83-206 are adequate to locate any customer who has left the AP&L system and inform them that they are entitled to a refund and how to apply for it. The Mines further contend that the advertising proposed by Public Counsel is not cost effective and state that billing inserts approved by the Commission and notices to the last-known addresses of prior customers should be sent.

Mr. Myers', AP&L's witness, testified that AP&L contacted the newspapers for advertising rates. The St. Louis Post Dispatch, for a one-time insert, three-column ten-inch insert, charged $2,143.50. The St. Louis Globe-Democrat was slightly cheaper for the same ad. The Springfield News, for the same ad, charged $890.40. The Memphis Commercial Appeal, for the same ad, charged $3,000.90.

The Commission adopts the Joint Recommendation on this issue. The Commission finds that Public Counsel's proposal does not appear to be cost effective.

The Commission further finds that billing inserts and notices to the last-known addresses of prior customers are unnecessary since the active customers will be receiving a refund based upon their location and the inactive customers will be notified by newspaper.

Public Counsel proposes that AP&L be required to identify all costs associated with making this refund. AP&L states that it intends to do that. The Commission determines that AP&L should keep records identifying all costs associated with the refund.

The Commission finds that the Joint Recommendation, contained in Exhibit No. 4, paragraphs 1-11, is reasonable and should be adopted.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

Arkansas Power & Light Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo Supp. 1984. The Company's proposed tariffs were suspended pursuant to the authority vested in this Commission by Section 393.150, RSMo 1978. The burden of proof to establish that the proposed tariffs are just and reasonable is upon the Company. Section 393.150, RSMo 1978.

The Commission, after notice and hearing, may order a change in any rate, charge, or rental or any regulation or practice affecting any rate, charge or rental and may determine and prescribe the lawful rate, charge, or rental, and the lawful regulation or practice thereafter to be observed. Sections 393.140 and 393.150, RSMo 1978.

The Commission may consider all facts which, in its judgment, have any bearing upon a proper determination of the price to be charged, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies. Section 393.270, RSMo 1978.

The court in State ex rel. Hotel Continental v. Burton, 343 S.W.2d 75 (Mo. 1960) stated:

> it was held in the West Plains case, supra, 310 S.W.2d 928 [1-3], and we hold here, that the commission's express statutory power to determine and prescribe just and reasonable rates and to determine what rates will permit a fair return, includes the power to determine what items should be included in a utility's operating expense and what items should be excluded, and how excluded items, if any, should be handled and treated, in order that that commission may arrive at a reasoned determination of the issue of "just and reasonable" rates.

Pursuant to Section 536.060, RSMo 1978, the Commission may accept a stipulation in disposition of issues in a contested case where the Commission finds that the proposed settlement is just and reasonable.

The Commission determines that the Joint Recommendation as set out on pages 9 and 10 of this Report and Order is reasonable and just and should be accepted. The Commission further determines that the stipulated trued-up fuel and purchased power cost of 17.837 mills/kwh based on March, 1984 prices, known and measurable as of May 31, 1984, in accordance with the Stipulation and Agreement in Case No. ER-83-206, is reasonable and just and should be accepted.

It is, therefore,

ORDERED: 1. That all objections and motions that have not been ruled upon be, and hereby are, overruled and denied. Exhibits No. 81 and 104 are received into evidence.

ORDERED: 2. That Staff's Motion for Summary Disposition of Certain Issues be, and hereby is, granted.

ORDERED: 3. That the Joint Recommendation entered into by Arkansas Power & Light Company and the Staff of the Missouri Public Service Commission in Case No. EO-85-146 as set forth herein is hereby accepted and adopted in disposition of all remaining issues.

ORDERED: 4. That the trued-up fuel and purchased power cost of 17.837 mills/kwh based on March, 1984 prices, known and measurable as of May 31, 1984, stipulated to by Arkansas Power & Light Company, Ozark Lead Company, Cominco American Company, St. Joe Minerals Corporation, GAF Corporation, Cotton Ginners, the Staff of the Missouri Public Service Commission and the Office of Public Counsel in Case No. EO-85-146 is hereby accepted and adopted.

ORDERED: 5. That Arkansas Power & Light Company be, and hereby is, directed to keep records identifying all costs associated with the refund in Case No. EO-85-146.

ORDERED: 6. That this Report and Order shall become effective on the 15th day of June, 1985.

BY THE COMMISSION

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Musgrave, Mueller, Hendren and Fischer, CC., Concur and certify compliance with the provisions of Section 536.080, RSMo 1978.

Dated at Jefferson City, Missouri, on the 4th day of June, 1985.