

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

In the Matter of the First True-Up Filing Under)	
The Commission-Approved Fuel Adjustment)	<u>File No. ER-2010-0274</u>
Clause of Union Electric Company)	
d/b/a Ameren Missouri)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and recommends that the Missouri Public Service Commission (“the Commission”) order Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri” or “the Company”) to credit its customers \$121,636 in the Sixth Recovery Period of its Fuel Adjustment Clause (“FAC”) as a result of a true-up of the revenues Ameren Missouri billed during the First Recovery Period of its FAC . In support of this recommendation, Staff states as follows:

PROCEDURAL HISTORY

1. On December 1, 2010, Ameren Missouri filed an application with the Commission seeking to true-up amounts billed to customers under the Company’s FAC between October 1, 2009 and September 30, 2010 (hereinafter referred to as the Company’s “First Recovery Period”).

2. Pursuant to Commission Rule 4 CSR 240-20.090(5)(D), Staff is required to submit its recommendation regarding the Company’s application no later than December 31, 2010.

BACKGROUND

3. The Commission first authorized Ameren Missouri (then d/b/a AmerenUE) to use an FAC in Case No. ER-2008-0318 (“the 2008 rate case”). Ameren Missouri’s FAC was modified in its next rate case, Case No. ER-2010-0036 (“the 2010 rate case”).

4. Costs passed through the Company’s FAC are to reflect differences between the Company’s actual fuel and purchased power costs¹ and the Company’s Net Base Fuel Costs². While the Company’s actual fuel and purchased power costs are dynamic, the Company’s NBFC rates - one for the four summer months and one for the other months of the year - are not. The NBFC rates in Ameren Missouri’s FAC tariff were established in an Ameren Missouri general electric rate case to be consistent with the fuel and purchased power costs that were included in the Company’s cost of service used in setting its permanent rates.

5. The NBFC rates relevant to the Company’s First Recovery Period were established in the 2008 rate case (Original Tariff Sheet No. 98.5) when the Commission approved the compliance tariff sheets Ameren Missouri filed in that matter. In the 2010 rate case, well after Ameren Missouri first asserted the NBFC rates established in the 2008 rate case are incorrect because they are based on net system input (electrical energy required to serve load) determined “at the transmission level” and not “at the generation level,” Ameren Missouri filed and the Commission approved new compliance tariff sheets that included a First Revised Sheet No. 98.5 that is “Applicable To Service Provided Prior To The Effective Date Of This Tariff,” and that has the same NBFC rates that were established in the 2008 rate case.

¹ Including transportation costs, net of Off-System Sales Revenues (“OSSR”). See MO.P.S.C. Schedule No. 5, 1st Revised Sheet No. 98.1.

² The term Net Base Fuel Costs used here being the NBFC rates in Ameren Missouri’s FAC multiplied by actual customer usage.

6. Ameren Missouri continues to assert the NBFC rates established in the 2008 rate case are incorrect, because they are based on net system input (electrical energy required to serve load) determined “at the transmission level” and not “at the generation level,” and have resulted in the Company under-billing its customers for fuel and purchased power costs during the Company’s First Recovery Period of its FAC. As part of its true-up amount, Ameren Missouri has included the amount it asserts it under-billed its customers based on what the Company calls a mistake in setting the NBFC rates in the 2008 rate case.

STAFF’S INVESTIGATION

7. Ameren Missouri has not persuaded Staff that the NBFC rates established in the 2008 rate case are incorrect. As explained in the attached Staff memorandum, labeled Appendix A, Staff examined the Direct Testimony of Ameren Missouri witness Jeff L. Dodd, the analysis Ameren Missouri provided with its application in this case, monthly information Ameren Missouri previously provided to Staff, and the Company’s responses to information requests Staff issued to it in this case. Staff also reviewed Ameren Missouri’s FAC interest calculations as required by the Company’s tariffs and met with Ameren Missouri at least twice on this matter.

8. As stated in Appendix A and above, Ameren Missouri’s request actually includes two separate components: one component using the Commission-approved NBFC rates (referred to in the below chart as the “normal” true-up amount), and a second component adjusting the normal true-up amount due to the alleged mistake in the NBFC rates. The following chart presents the results of Staff’s investigation, and contrasts Staff’s results with the true-up amount Ameren Missouri requests in its current true-up application:

	Normal True-Up <u>Amount</u>	Adjustment for Alleged <u>Mistake</u>	Company's Proposed <u>Amount</u>
Accumulation	\$ (12,607,571)	\$ 579,709	\$ (12,027,862)
Interest	(350,483)	\$ 24,166	\$ (326,318)
Refund	<u>12,836,419</u>	<u>\$ -</u>	<u>\$ 12,836,419</u>
Proposed Adjustment	\$ (121,636)	\$ 603,875	\$ 482,239

9. The effect of the alleged mistake on this true-up period adjustment amount is \$603,875.

EFFECT OF ANY MISTAKE IN THE CALCULATION OF NBFC

10. Although Staff is not convinced the NBFC rates were incorrectly established in the 2008 rate case, even assuming *arguendo* that the relevant NBFC rates do not reflect the intent of the agreement reached in the 2008 rate case, there is little that the Commission can do today to remedy this situation for the time periods affected by the incorporation of the alleged mistake into Ameren Missouri's tariff.

THE FILED RATE DOCTRINE AND RETROACTIVE RATEMAKING

11. To allow Ameren Missouri to now charge its customers an amount based upon NBFC rates and/or a calculation methodology that is or was not present in its tariff (as opposed to the NFBC rates that are) would violate the filed rate doctrine and the prohibition against retroactive ratemaking. As stated by the Western District Court of Appeals in a recent review of Aquila's FAC, "[t]he filed rate doctrine ... precludes a regulated utility from collecting any rates other than those properly filed with the appropriate regulatory agency." *State ex rel. AG Processing, Inc. v. Mo. Pub. Serv. Comm'n*, 311 S.W.3d 361, 365 (Mo. App. W.D. 2010) quoting *State ex rel. Associated Natural Gas Co.*, 954 S.W.2d 520, 531 (Mo. App. W.D. 1997). More specifically, the Court found that "[t]his aspect of the filed rate doctrine constitutes a rule against retroactive ratemaking or retroactive rate alteration." *Id.* "Retroactive ratemaking is

defined as ‘the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.’” *Id.*, quoting *State ex rel. Util. Consumers' Council of Mo.*, 585 S.W.2d 41, 59 (Mo. 1979). In explaining the rationale beyond this prohibition the Court stated as follows:

The filed rate doctrine's rule against retroactive ratemaking has an “underlying policy of predictability, meaning that if a utility is bound by the rates which it properly filed with the appropriate regulatory agency, then its customers will know **prior to purchase** what rates are being charged, and can therefore make economic or business plans or adjustments in response.” *Id.*, quoting *State ex rel. Associated Natural Gas Co.* at 531 (emphasis in original). In other words, the approved tariffs are to “provide advance notice to customers of prospective charges, allowing the customers to plan accordingly.” *Id.*

12. For these reasons Ameren Missouri’s FAC charges, based on true-up adjustments and otherwise, must comply with its Commission-approved tariff in effect.

CONCLUSION

13. In conclusion, it is Staff’s opinion that it would violate the filed rate doctrine and the prohibition against retroactive ratemaking if the Commission were to approve the true-up adjustment Ameren Missouri proposes and, further, that Ameren Missouri has not demonstrated the NFBC rates were incorrectly established in the 2008 rate case,.

14. Because Ameren Missouri filed for this true-up seven days after it filed for the change to its FPA in File No. ER-2011-0153, Ameren Missouri asked that the true-up amount determined in this matter be included in the FPA that will go into effect with its June billing month. A credit of \$121,636, with accumulated monthly interest, should be included in the adjustment amount when calculating the fuel and purchased power adjustment recovery period

rate (FPA_{RP}) for the Sixth Recovery Period, which will begin with Ameren Missouri's June 2011 billing month.

WHEREFORE, Staff recommends that the Commission order Ameren Missouri to include a credit of \$121,636, with accumulated monthly interest, in the FAC adjustment amount when calculating the FPA_{RP} for the Company's Sixth Recovery Period, which will begin with Ameren Missouri's June 2011 billing month. Should the Commission desire further evidence regarding the alleged mistake, Staff recommends that the Commission set a prehearing conference for the parties to discuss procedural recommendations.

Respectfully submitted,

/s/ ERIC DEARMONT

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 30th day of December, 2010.

/s/ ERIC DEARMONT

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
File No. ER-2010-0274, Union Electric Company d/b/a Ameren Missouri

FROM: David Roos, Regulatory Economist III
Matthew Barnes, Utility Regulatory Auditor IV

DATE: /s/ John Rogers 12-30-2010 /s/ Eric Dearmont 12-30-2010
Energy Department / Date Staff Counsel's Office / Date

SUBJECT: Staff's Analysis of and Recommendation Concerning Ameren Missouri's
First Fuel Adjustment Clause True-up Filing Under 4 CSR 240-3.161(8)
and 4 CSR 240-20.090(5).

DATE: December 30, 2010

On December 1, 2010, Union Electric Company d/b/a Ameren Missouri ("the Company" or "Ameren Missouri") submitted to the Missouri Public Service Commission ("the Commission") its first Fuel Adjustment Clause ("FAC") true-up filing under the provisions of 4 CSR 240-3.161(8) and 4 CSR 240-20.090(5).

Based upon Staff's analysis of the information provided by Ameren Missouri, Staff recommends that the Commission disallow Ameren Missouri's request to debit an additional \$482,239 from customers as a true-up of its FAC revenues billed during the Company's First Recovery Period. Instead, Staff recommends that the Commission approve a \$121,636 credit to these customers (with additional interest calculated monthly per the Company's FAC), to be included in the adjustment amount when calculating the fuel and purchased power adjustment factor recovery period rate ("FPA_{RP}") for the Company's Sixth Recovery Period, which will begin with Ameren Missouri's June 2011 billing month.

BACKGROUND

Under the terms of the Company's FAC, after completion of each 12-month recovery period, the Company is required to make a true-up filing in conjunction with an adjustment to its FAC, where applicable. The true-up filing shall be made on the first FAC filing date that occurs at least two (2) months after completion of each recovery period. Any true-up adjustment shall be reflected in the under/over recovery factor (item R) in the calculation of the FPA_{RP}, and shall include interest calculated monthly at a rate equal to the weighted average interest rate paid on the Company's short-term debt. The Company's application was submitted in an effort to comply with this tariffed true-up procedure.

THE COMPANY'S REQUEST

Ameren Missouri seeks to recover from its customers what it claims was an under-billing of \$482,239 during the Company's first twelve-month recovery period ('the First Recovery Period') (October 1, 2009 through September 30, 2010) that followed the Company's first accumulation period (March 1, 2009 through May 31, 2009).

The Company's request includes two separate components: a first true-up amount using the Commission-approved summer and winter Net Base Fuel Costs (NBFC) rates referred to in the below chart as the "normal" true-up amount; and a second component based upon an adjustment to the normal true-up amount due to an alleged mistake in the summer and winter NBFC rates approved by the Commission in Case No. ER-2008-0318. The following chart is Staff's summary of the two components contained in the Company's true-up filing:

	Normal True-Up <u>Amount</u>	Adjustment for Alleged <u>Mistake</u>	Company's Proposed <u>Amount</u>
Accumulation	\$ (12,607,571)	\$ 579,709	\$ (12,027,862)
Interest	(350,483)	\$ 24,166	\$ (326,318)
Refund	<u>12,836,419</u>	<u>\$ -</u>	<u>\$ 12,836,419</u>
Proposed Adjustment	\$ (121,636)	\$ 603,875	\$ 482,239

STAFF'S INVESTIGATION AND RECOMMENDATION

Staff examined the Direct Testimony of Ameren Missouri witness Jeff L. Dodd, the analysis Ameren Missouri provided with its application in this case, the monthly information Ameren Missouri submitted to Staff and the Ameren Missouri responses to information requests issued by Staff in this case. Staff also reviewed Ameren Missouri's FAC interest calculations contained in the Company's tariffs.

Based upon Staff's analysis of the information provided by Ameren Missouri, Staff recommends that the Commission disallow Ameren Missouri's request to debit an additional \$482,239 from customers as a true-up of its FAC revenues billed during the Company's First Recovery Period. Instead, Staff recommends that the Commission approve a \$121,636 credit to customers (with additional interest calculated monthly per the Company's FAC), to be included in the adjustment amount when calculating the FPA_{RP} for the Company's Sixth Recovery Period, which will begin with Ameren Missouri's June 2011 billing month.

The Commission approved Ameren Missouri's (then d/b/a AmerenUE's) use of an FAC in its *Report and Order* issued on January 27, 2009 in Case No. ER-2008-0318. Essential components in calculating the amounts debited or credited under Ameren Missouri's FAC are the NBFC and the summer and winter NBFC rates. The Direct Testimony filed

by Mr. Dodd in this true-up case makes note of an alleged mistake in the levels of summer and winter net system inputs used to calculate the initial summer and winter NBFC rates for the FAC approved by the Commission in Case No. ER-2008-0318 and used to determine the amount of NBFC incurred during the Company's first accumulation period.

The design of the FAC to include summer and winter NBFC rates and the methodology to determine those rates were approved by the Commission, contingent upon subsequent approval of the FAC mechanism itself, in its *Order Approving Stipulation and Agreement As To All FAC Tariff Rate Design Issues* ("FAC Order"), issued in Case No. ER-2008-0318 on December 30, 2008 and effective January 8, 2009. Ameren Missouri filed compliance tariff sheets, which Staff reviewed and recommended the Commission approve as being in compliance with the Commission's *Report and Order* and the Commission's *FAC Order*. The Commission approved those compliance tariff sheets by its *Order Approving Compliance Tariff Sheets*, issued February 19, 2009. The Commission-approved summer and winter NBFC rates were found on the Company's Original Sheet No 98.5 that bore an effective date of March 1, 2009.

The Company's FAC was also reviewed in Ameren Missouri's next rate case, Case No. ER-2010-0036. In that case, *A First Nonunanimous Stipulation and Agreement* was filed on March 10, 2010. Ameren Missouri (then d/b/a AmerenUE) was a signatory to that nonunanimous agreement. The *First Nonunanimous Stipulation and Agreement* proposed a number of changes to the Company's FAC. None of the changes addressed, or attempted to address, the mistake now alleged to be present. The Commission approved the *First Nonunanimous Stipulation and Agreement* on March 24, 2010. Following the Commission's *Report and Order*, issued May 28, 2010, the Company submitted compliance tariffs intending to comply with both the *Report and Order* and the Commission's previous order approving the *First Nonunanimous Stipulation and Agreement*. The Commission approved these compliance tariff sheets, including those related to the Company's FAC, in an order issued June 16, 2010. As a result, the Commission-approved summer and winter NBFC rates are now found on the Company's 1st Revised Sheet No. 98.5 that bears an effective date of June 21, 2010.

The Company has not established to Staff's satisfaction that the summer and winter NBFC rates were set incorrectly in Case No. ER-2008-0318 or reaffirmed incorrectly in File No. ER-2010-0036. Even if the Company had convinced Staff that the NBFC rates were incorrectly set, which it has not, based upon the advice of Staff Counsel, it is Staff's position that correcting any mistake would violate the filed rate doctrine, and the prohibition against retroactive ratemaking. These topics will be addressed by Staff Counsel in the pleading accompanying this memorandum. Based upon Staff's investigation and these legal concerns, Staff recommends the Commission disallow Ameren Missouri's true-up request and instead approve a \$121,636 credit to Ameren Missouri's customers to account for revenues over-collected during the Company's First Recovery Period.

Because Ameren Missouri filed for the true-up 7 days after it filed for the change to its FPA in File No. ER-2011-0153, Ameren Missouri asked that the true-up amount be included in the FPA that will go into effect with its June billing month. For this reason a credit of \$121,636, with accumulated interest, should be included in the adjustment amount when calculating the FPA_{RP} for the Sixth Recovery Period, which will begin with Ameren Missouri's June 2011 billing month.

Staff has verified that Ameren Missouri has filed its 2009 annual report and is not delinquent on any assessment. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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

In the Matter of Union Electric)	
Company d/b/a AmerenUE's Fuel and)	
Purchased Power Adjustment Clause)	Case No. ER-2010-0274
True-up)	

AFFIDAVIT OF DAVID C. ROOS

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

David C. Roos, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



David C. Roos

Subscribed and sworn to before me this 30th day of December, 2010.





Notary Public

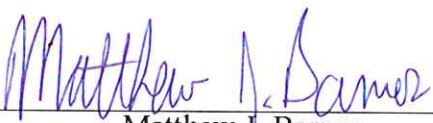
**BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of Union Electric)	
Company d/b/a AmerenUE's Fuel and)	
Purchased Power Adjustment Clause)	Case No. ER-2010-0274
True-up)	

AFFIDAVIT OF MATTHEW J. BARNES

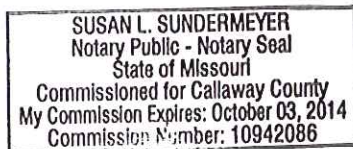
STATE OF MISSOURI)
) ss
COUNTY OF COLE)


Matthew J. Barnes, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.



Matthew J. Barnes

Subscribed and sworn to before me this 30th day of December, 2010.





Notary Public