

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In Re: Union Electric Company d/b/a AmerenUE's)
Filing to Adjust Rates under its Approved Fuel and) **File No. ER-2010-0165**
Purchased Power Cost Recovery Mechanism) Tariff No. YE-2010-0356
Pursuant to 4 CSR 240-20.090(4))

STATEMENT IN OPPOSITION OF DELEGATION ORDER OF CHAIRMAN ROBERT M. CLAYTON III

This Commissioner issues this Statement in Opposition of the Delegation Order issued on January 22, 2010, authorizing the recalculation of AmerenUE's Fuel and Purchase Power Adjustment Clause (FAC). Because of the regulation deadline requiring approval or rejection of the FAC request within a 60 day period of the electric utility filing of the request, the Commission must make its decision by this day despite the fact that the corresponding tariff does not take effect until January 27, 2010.

This Commissioner has raised concerns regarding FACs since they became statutorily authorized by the General Assembly in 2005 with SB 179. Concerns were raised at the time of its enactment into law by this Commissioner regarding the scope and nature of the change in the balance of the ratemaking compact among various stakeholders.¹ Additionally, this Commissioner opposed the drafting of the regulation which implemented surcharges such as Fuel Adjustment Clauses, in Case No. EX-2006-0472.² This Commissioner has opposed each incident of the Commission awarding a FAC in a general rate case because of either the construction of the FAC or other issues

¹ Letter to Governor Matt Blunt from Commissioners Robert Clayton and Steve Gaw, dated May 20, 2005.

² Minutes of September 21, 2006 PSC Agenda meeting in which the Final Order of Rulemaking in Case No. EX-2006-0472, was approved by a vote of 3-2, with Commissioner Clayton voting NO.

existing in the case.³ Further, this Commissioner specifically opposed the FAC awarded to AmerenUE in its most recent rate case.⁴

FACs change the nature of the regulatory compact among stakeholders. By creating separate rate surcharges to address single issues and avoid review or audit of “all relevant factors,” when addressing a partial rate increase, the utility may be relieved of the implied incentive of cost control and making prudent fuel purchases. The threat to fair rate making from such a surcharge is that the Commission may have lost its ability to enforce “best practices,” mandate “least cost alternatives” or to have the ability to make an effective review of prudence in utility actions.

The fuel adjustment clause in the most recent AmerenUE general rate case⁵ permits a pass-through of 95% of fuel costs, with a brief prudence review. Parties to the case have suggested alternatives to such a FAC with a split of 50% pass through,⁶ or 80% pass through⁷, which are mechanisms that insure that the utility has “skin in the game” when making its fuel purchases. A modified FAC with a more reasonable split or more built-in incentives would be a more appropriate alternative.

This Statement in Opposition does not question the interpretation of AmerenUE’s tariff or that the filing is compliant with the former majority’s Report and Order in the case. It should be noted that no party has filed any opposition to the amendment, I

³ In the matter of Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P, for authority to file tariffs increasing electric rates for the service provided to customers in the Aquila Networks-MPS and Aquila Networks-L&P service area. Case No. ER-2007-0004; In the Matter of The Empire District Electric Company of Joplin, Missouri’s Application for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company, Case No. ER-2008-0093; and In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company’s Missouri Service Area, Case No. ER-2008-0318.

⁴ Dissent by Chairman Clayton and Commissioner Gunn, Case No. ER-2008-0318, dated January 27, 2009.

⁵ Case No. ER-2008-0318.

⁶ See Direct Testimony of Ryan Kind, Case No. ER-2008-0318.

⁷ See Direct Testimony of Maurice Bruebaker, Case No. ER-2008-0318.

believe the math is correct, Staff has recommended approval with certain conditions, which are incorporated in the Delegation Order and Public Counsel has filed nothing to suggest that the tariff should be rejected. It should also be noted that, until the approval of this tariff, the FAC has actually reduced consumers' bills with a "negative" FAC factor because of decreasing fuel costs.⁸ Finally, no party has suggested any lawful reason for its rejection.

This Commissioner issues this Statement in Opposition because of philosophical disagreement and concerns with the FAC's adjustment at this time. This Commissioner urges his colleagues in future cases to implement more equitable manners of recovering prudently incurred fuel costs.

Based on the foregoing, this Commissioner issues this Statement in Opposition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III". The signature is fluid and cursive, with a prominent "R" and "C".

Robert M. Clayton III
Chairman

Dated at Jefferson City, Missouri
On this 22nd day of January, 2010.

⁸ Case No. ER-2010-0044.