

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

In the Matter of Union Electric Company     )  
d/b/a AmerenUE's Filing to Adjust Rates     )  
under its Approved Fuel and Purchased     )  
Power Cost Recovery Mechanism             )  
Pursuant to 4 CSR 240-20.090(4)            )

**File No. ER-2011-0018**

**STAFF RESPONSE TO ORDER DIRECTING STAFF FILING REGARDING MOTION BY MISSOURI  
INDUSTRIAL ENERGY CONSUMERS AND STAFF RESPONSE TO MOTION BY PUBLIC COUNSEL**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and for its response, pursuant to the Commission's September 10, 2010, *Order Directing Staff Filing*, to the Missouri Industrial Energy Consumers (MIEC) *Motion to Reject Tariff or in the Alternative Motion to Suspend and Request for Hearing* filed September 10, 2010, and its response to the Office of the Public Counsel's (OPC) *Motion to Reject Tariff, or in the Alternative, Motion to Suspend and Request for Hearing*, recommends the Commission deny the MIEC and OPC motions, stating as follows:

1. On July 23, 2010, AmerenUE filed a tariff sheet designed to increase its revenues from its Fuel Adjustment Clause (FAC) charges by \$71,618,461 during Recovery Period 4 (October 1, 2010 through September 30, 2011). The tariff sheet, 1st Revised Sheet No. 98.14, bears an effective date of September 23, 2010.

2. On August 23, Staff recommended the Commission issue an order approving AmerenUE's tariff sheet. This recommendation was not varied by Staff's September 9, *Response to Commission Order and Corrected Recommendation to Approve Tariff Sheet*.

3. On August 31, in File No. EO-2010-0255 (the prudence review of the first and second accumulation periods under AmerenUE's FAC), Staff filed its *Prudence Report and*

*Recommendation* (“*Report*”), in which it recommended an adjustment to account for what it contends are over-collections relating to the first and second accumulation periods under AmerenUE’s FAC.

4. The basis for both the MIEC and OPC motions is Staff’s Report in Case No. EO-2010-0255. Staff’s conclusion and position in the prudence docket is that AmerenUE was imprudent for not including in its FAC calculations all costs and revenues associated with certain sales of energy to American Electric Power Operating Companies and to Wabash Valley Power Association, Inc., during the period of March 1 to September 30, 2009, in determining the associated FAC charges that are billed to its customers.

5. Commission Rule 4 CSR 240-20.090(4) provides:

(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 sixty (60) days of the electric utility’s filing and may instead order implementation of an appropriate interim rate schedule(s).

6. Staff’s *Report* in File No. EO-2010-0255 speaks for itself; however Staff’s recommendation to include certain amounts as customer refund adjustments made

contemporaneously with the next available true-up adjustment following a Commission Order in File No. EO-2010-0255, has not yet been adopted by the Commission. More importantly, Staff's conclusion in File No. EO-2010-0255 – that AmerenUE was imprudent for not including in its FAC calculations all costs and revenues associated with certain sales of energy to American Electric Power Operating Companies and to Wabash Valley Power Association, Inc. – has not yet been subjected to all applicable process in that prudence docket, and has not yet been accepted by the Commission.

7. Commission Rule 4 CSR 240-20.090(7) provides:

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.

2. 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.

8. Given the very ministerial process outlined in 4 CSR 240-20.090(4) concerning periodic adjustments of FACs, as compared to the well-developed procedures described in 4 CSR 240-20.090(7) respecting prudence reviews, Staff recommends that it is most appropriate to evaluate the prudence of AmerenUE's FAC adjustments in the prudence review dockets, such as the pending File No. EO-2010-0255. Staff cautions against duplicating the prudence review process in this docket, or undertaking a prudence review in this docket under a procedure at variance with 4 CSR 240-20.090(7).9. Commission Rule 4 CSR 240-20.090(7)(A) provides that all amounts ordered refunded by the commission as a result of a prudence review shall include interest at the electric utility's short-term borrowing rate. Thus, harm to customers for having paid FAC charges for costs found by the Commission to be imprudent is addressed by customers not only being refunded the charges for the imprudent costs, but also interest on that amount at the utility's short term borrowing rate. See §386.266.4(4) and 4 CSR 240-20.090(7)(A).

10. Pending adoption by the Commission of Staff's conclusion and position in File No. EO-2010-0255 that AmerenUE was imprudent for not including in its FAC calculations all costs and revenues associated with certain sales of energy to American Electric Power Operating Companies and to Wabash Valley Power Association, Inc., rejection or suspension of AmerenUE's FAC tariff adjustments on the basis of the imprudence of that action appears to be overreaching.

11. Staff finds the pleadings of both MIEC and OPC short or devoid of indicating the procedure(s) they believe the Commission would follow if the Commission were to grant MIEC's and OPC's requests. Furthermore, a response from them that such guidance would be AmerenUE's responsibility to propose to the Commission does not help the Commission or Staff.

12. Finally, Staff would note Case No. EO-2009-0349, an Empire District Electric Company ("Empire") FAC case, in which some industrial intervenors filed a motion to reject Empire FAC tariffs on the basis that Empire ratepayers should not pay increased fuel or purchased power costs due to the alleged imprudence of Kansas City Power & Light Company at the Iatan 1 generating unit. The facts of Case No. EO-2009-0349 and File No. ER-2011-0018 are not identical, but Staff believes Case No. EO-2009-0349 is worthy of reference to the Commission. Ultimately, in that case the Commission determined that the motions to reject the tariffs were untimely.

**WHEREFORE**, for its response in compliance with Commission's September 10, 2010, *Order Directing Staff Filing*, Staff recommends that the Commission issue an order denying the MIEC's *Motion to Reject Tariff or in the Alternative Motion to Suspend and Request for Hearing*; and further, recommends that the Commission issue an order denying the OPC's *Motion to Reject Tariff, or in the Alternative, Motion to Suspend and Request for Hearing*.

Respectfully submitted,

/s/ Sarah Kliethermes  
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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 14<sup>th</sup> day of September, 2010.

/s/ Sarah Kliethermes