

# EXHIBIT

OPC Exhibit No. 313  
Date 9/24/18 Reporter SM  
File No. ER-2018-0145 + 0148

Exhibit No.:

Issue(s):

Simplify the Definition of  
Fuel Costs in the FAC/  
Other FAC Recommendations/  
Regulatory Treatment of the  
Federal Reduced Tax Rate/  
Accumulated Deferred Income Taxes

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

Riley/Direct

Public Counsel

ER-2018-0145

and ER-2018-0146

## DIRECT TESTIMONY

OF

**JOHN S. RILEY**

Submitted on Behalf of  
the Office of the Public Counsel

**KANSAS CITY POWER & LIGHT COMPANY**  
and  
**KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Case No. ER-2018-0145 and ER-2018-0146**

June 19, 2018

FILED  
October 23, 2018  
Data Center  
Missouri Public  
Service Commission



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**DIRECT TESTIMONY**  
**OF**  
**JOHN S. RILEY**  
**KANSAS CITY POWER AND LIGHT COMPANY**  
**KCP&L - GREATER MISSOURI OPERATIONS COMPANY**  
**CASE Nos. ER-2018-0145 and ER-2018-0146**

1 **INTRODUCTION**

2 **Q. What is your name and what is your business address.**

3 **A. John S. Riley, PO Box 2230, Jefferson City, Missouri 65102**

4 **Q. By whom are you employed and in what capacity?**

5 **A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Public Utility**  
6 **Accountant III.**

7 **Q. What is your educational background?**

8 **A. I earned a B.S. in Business Administration with a major in Accounting from Missouri State**  
9 **University.**

10 **Q. What is your professional work experience?**

11 **A. I was employed by the OPC from 1987 to 1990 as a Public Utility Accountant. In this**  
12 **capacity I participated in rate cases and other regulatory proceedings before the Public**  
13 **Service Commission (“Commission”). From 1994 to 2000 I was employed as an auditor**  
14 **with the Missouri Department of Revenue. I was employed as an Accounting Specialist**  
15 **with the Office of the State Court Administrator until 2013. In 2013, I accepted a position**  
16 **as the Court Administrator for the 19<sup>th</sup> Judicial Circuit until April, 2016 when I joined the**  
17 **OPC.**

18 **Q. Are you a Certified Public Accountant (“CPA”) licensed in the State of Missouri?**

1 A. Yes. I am also a member of the Institute of Internal Auditors (“IIA”)

2 **Q. Have you previously filed testimony before the Missouri Public Service Commission**  
3 **(“Commission” or “PSC”)?**

4 A. Yes I have. A listing of my Case filings is attached as JSR-D-1

5 **Q. What is the purpose of your direct testimony?**

6 A. First, I recommend the Commission adopt the Federal Energy Regulatory Commission’s  
7 (“FERC”) definition of fuel costs to be included in fuel adjustment clauses for FERC  
8 purposes be included in the FACs of Kansas City Power & Light Company (“KCPL”) and  
9 KCP&L Greater Missouri Operations Company (“GMO”). The adoption of this definition  
10 would streamline the costs included so that the reviews required by the Commission rules  
11 and regulations, and that are undertaken by Staff and OPC, are able to track and verify the  
12 components of KCPL’s and GMO’s FACs. I also propose language be added to KCPL’s  
13 and GMO’s FAC tariff sheets so that KCPL’s and GMO’s (“Companies”) tariffs will meet  
14 the requirements of Section 386.266.4(3) RSMo., and I recommend the Commission order  
15 KCPL and GMO to continue to provide, in their monthly FAC reports submissions, their  
16 FAC costs and revenues by account and subaccount for the month and twelve months  
17 ending with that month and also have the Companies continue filing reports in accordance  
18 with FERC order 668.

19 In the second part of my testimony, I provide OPC’s recommendation with respect to the  
20 Tax Cuts and Jobs Act of 2017 (“TCJA”). The full effect of the TCJA should be  
21 implemented in these cases, as well as a regulatory liability established for the excess tax  
22 expense from January 1 through the operational date of this case. When the liability has  
23 been accurately established, then the total should be used to offset any regulatory assets

1 KCPL and GMO may be carrying on their financial statements.  
2

3 **SIMPLIFY THE DEFINITION OF FUEL COSTS IN THE FAC**

4 **Q. Would you summarize OPC's recommendation concerning the definition of fuel**  
5 **costs to include in KCPL's and GMO's FACs?**

6 A. OPC recommends that the Commission revise their FACs to include only fossil fuel costs  
7 that are listed in Account 151 of the Commission's Uniform System of Accounts for  
8 Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account  
9 518, and the cost of natural gas shown in account 547 Only those costs booked in FERC  
10 USOA Account 151 that are within the FERC's definition of fuel for fuel adjustment  
11 clause purposes set out in 18 C.F.R. 35.14(a)(6). (Attached as JSR-D-2)

12 **Q. How does the FERC define of fuel costs for the FERC FAC?**

13 A. The FERC FAC rule that defines fuel costs included in its FAC defines them as "no items  
14 other than those listed in Account 151 of the [FERC]'s Uniform System of Accounts."<sup>1</sup>  
15 Account 151 provides:

16 This account shall include the book cost of fuel on hand.

17 *Items*

18 1. Invoice price of fuel less any cash or other discounts.

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<sup>1</sup> 1992 version of the USOA Electric Chart of Accounts, definition listed for account 151

- 1           2. Freight, switching, demurrage and other transportation charges, not  
2           including, however, any charges for unloading from the shipping medium.
- 3           3. Excise taxes, purchasing agents' commissions. Insurance and other  
4           expenses directly assignable to the cost of fuel.
- 5           4. Operating, maintenance and depreciation expenses and ad valorem taxes on  
6           utility- owned transportation equipment used to transport fuel from the point  
7           of acquisition to the unloading point.
- 8           5. Lease or rental costs of transportation equipment used to transport fuel from  
9           the point of acquisition to the unloading point. (Emphasis added)

10           What these five bullet points clarify is that "fuel" is the actual cost of the coal or natural  
11           gas or nuclear fuel which the utility consume in the generation plant and that includes the  
12           transportation costs to get that fuel to the plant.

13   **Q.    How does this definition of fuel costs for FERC FACs differ from the definition in**  
14   **KCPL's and GMO's current FAC tariffs?**

15   A.    KCPL and GMO's answer to OPC data request 1301 indicates that KCPL and GMO also  
16   include as fuel costs expenses that are incurred *after* the fuel is consumed. These items  
17   are recorded in account 501400. These expenses are related to the removal of slag, fly  
18   ash and FDG byproducts and do not meet the definition of fuel *consumed* in the utility's  
19   generating plants.

20   **Q.    Why is OPC recommending that the Commission revise the definition of fuel costs**  
21   **used in KCPL's and GMO's FAC?**

1 A. This proposed definition will eliminate confusion, reduce the possibility of inclusion of  
2 improper costs, and simplify the calculations.

3 **Q. Do any of the electric utilities this Commission regulates use this definition in their**  
4 **FAC tariff?**

5 A. Yes. Ameren Missouri has language in its Rider FAC tariff that is very close to the  
6 FERC definition. In fact, Ameren Missouri refers to account 151 in its definition of fuel  
7 component ("FC"). Ameren Missouri's definition of FC in its FAC follows:

8  
9 
$$FAR_{RP} = [(ANEC - B) \times 95\% \pm I \pm P \pm T] / S_{RP}$$

10  
11 \* ANEC = FC + PP + E ± R - OSSR

12 \* FC = Fuel costs and revenues associated with the Company's generating  
13 plants that are listed in Federal Energy Regulatory Commission  
14 ("FERC") Account  
15 151 and recorded in FERC Accounts 501 or 547, and all costs and  
16 revenues that are recorded in FERC Account 518. These include  
17 the following:

18 1. For fossil fuel plants:

19 \*A. the following costs and revenues (including applicable  
20 taxes) arising from steam plant operations: coal  
21 commodity, gas, alternative fuels, Btu adjustments  
22 assessed by coal suppliers, quality adjustments related to  
23 the sulfur content of coal assessed by coal suppliers,  
24 railroad transportation, switching and demurrage charges,  
25 railcar repair and inspection costs, railcar depreciation,  
26 railcar lease costs, similar costs associated with other  
27 applicable modes of transportation, fuel hedging costs,  
28 fuel oil adjustments included in commodity and  
29 transportation costs, fuel additive costs included in  
30 commodity or transportation costs, oil costs, and expenses  
31 resulting from fuel and transportation portfolio  
32 optimization activities; and

33 \*B. the following costs and revenues (including applicable



1 taxes) arising from non-steam plant operations: natural  
2 gas generation costs related to commodity, oil,  
3 transportation, storage, capacity reservation, fuel  
4 losses, hedging, and revenues and expenses resulting from  
5 fuel and transportation portfolio optimization activities,  
6 but excluding fuel costs related to the Company's landfill  
7 gas generating plant known as Maryland Heights Energy  
8 Center; and

9 \*2. The following costs and revenues (including applicable taxes)  
10 arising from nuclear plant operations: nuclear fuel commodity  
11 expense, waste disposal expense, and nuclear fuel hedging  
12 costs.  
13

14 **Q. Should fuel additives be included in the cost of fuel in KCPL's and GMO's FACs?**

15 **A.** Yes. Additives, such as lime and ammonia that are consumed in the production of energy  
16 should be considered fuel costs. The costs of these additives are recorded in account  
17 501300, but are included in the definition set out in 151 by way of bullet point 3 in the  
18 quote above - an expense directly assignable to the cost of fuel. These additives are  
19 necessary for pollution control, and are burned with the coal or natural gas.

20 **Q. Would you please summarize OPC's position on the fuel costs that should be used in**  
21 **KCPL's and GMO's FACs?**

22 **A.** The costs that should be included in fuel costs for FAC calculations should be the cost of  
23 the materials consumed to generate electricity and the transportation costs (bullet points  
24 2,3,4&5) to transport them to the plant, but no expenses beyond the unloading point.  
25 This would include necessary additives but no labor, hired contractors, meals, flights, cell  
26 phones or other expenses that are not included in the definition of in the FERC 151  
27 account. This really narrows the cost of fuel to the materials listed in account 501000,  
28 the additives that are included in account 501300, the natural gas booked in account  
29 547000 and transportation costs booked in account 547300.

1 I should point out that my position is an argument concerning only the definition of fuel  
2 within the FAC calculation. Ms. Lena Mantle will testify on Off System Sales and  
3 Purchase Power.

4 **OTHER FAC RECOMMENDATIONS**

5 **Q. Do you have any other recommendations regarding KPCL's and GMO's FACs?**

6 A. Yes. OPC has two additional recommendations. First, in the last KCPL rate case<sup>2</sup>, the  
7 Commission ordered "KCPL's monthly FAC report shall include the FAC costs and  
8 revenues by subaccount for that month and the twelve months ending that month;"<sup>3</sup> The  
9 Commission also directed the Companies to report "Purchased power costs and off-  
10 system sales revenues provided in all FAC filings and report submissions shall be in  
11 accordance with FERC order 668 and the Commission's definition of purchased power  
12 costs and off-system sales revenue."<sup>4</sup> This information has been helpful in tracking  
13 KCPL's FAC costs and revenues. OPC is recommending that the Commission in this  
14 case order the both KCPL and GMO to continue to provide the same information.

15 **Q. Does OPC have other recommendations regarding KCPL's and GMO's FACs?**

16 A. Yes. It has come to OPC's attention that the statute enabling the use of FACs requires,  
17 that to authorize a FAC, the Commission is to find that the FAC set forth in the schedules  
18 "includes a provision requiring that the utility file a general rate case with the effective  
19 date of new rates to be no later than four years after the effective date of the commission

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<sup>2</sup> The last GMO case was settle with a stipulation and agreement.

<sup>3</sup> Report & Order, ER-2016-0285 page 32

<sup>4</sup> Id. Page 32

1 order implementing the adjustment mechanism.”<sup>5</sup> Neither KCPL’s nor GMO’s current  
2 FAC tariff sheets include such a provision. Therefore, OPC recommends that, if the  
3 Commission approves FAC tariff sheets for KCPL or GMO in these cases, such a  
4 provision be included in their tariff sheets before the Commission approves them.

5 **REGULATORY TREATMENT OF THE FEDERAL REDUCED TAX RATE**

6 **Q. The Tax Cut and Jobs Act of 2017 (“TCJA”) has lowered corporate federal income**  
7 **tax rates from 35 % to 21 %. Does OPC have a position on regulatory treatment of**  
8 **the excess income tax expense that KCPL and GMO have and will collect since**  
9 **January 1, 2018, through the date of new rates in their pending general electric rate**  
10 **cases due to the change in tax rates?**

11 **A.** This income tax difference does represent a material amount of overearning. The tax rate  
12 change was a 40% reduction from the federal corporate income tax rate when rates were  
13 set for both Companies. The Commission should order both KCPL and GMO to establish  
14 a regulatory liability account for the excess income tax each collected from January 1,  
15 2018, through the effective date of the new rates in their pending rate cases. When this  
16 excess tax amount is calculated then the total of the liability account, should be used to  
17 offset the regulatory asset account balances that the Companies have on their general  
18 ledgers.

19 **Q. Would you explain the accumulation of funds within the regulatory liability**  
20 **accounts?**

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<sup>5</sup> Section 386.266.4(3) RSMo.

1 A. In KCPL's and GMO's last general rate cases, the Companies had federal income tax  
2 expense calculated on their net income at 35%. The TCJA of 2017 changed federal  
3 corporate income tax rates effective January 1 of this year. The federal income tax rate  
4 starting on January 1 is 21%. Using \$100,000 net income as an example, taxes for the  
5 last rate cases were calculated at a combined federal and state tax rate of over 38%. So  
6 the annual income tax expense in this example was approximately \$38,000. Rates were  
7 set in the Companies last rate cases to collect this expense. Since January, the utilities  
8 have been exposed to a combined tax rate of 25.45%. In this example, the tax expense  
9 incurred was only \$25,450. The difference between what was included in their revenue  
10 requirements and their last rate cases and what they actually incurred (\$38,000 less  
11 \$25,450 in this example) should be tracked and accumulated, and then the Commission  
12 should order the balance to offset Company regulatory assets.

13 **Q. Why should the Commission order this regulatory liability tracking?**

14 A. Due to the tax law change, the Commission had recently opened a multi-case docket to  
15 listen to oral arguments regarding the issuance of AAOs to address the effect of the  
16 federal tax cuts. However, a recent bill enacted by the Missouri legislature and signed by  
17 the Governor,<sup>6</sup> allows the Commission to defer the financial impact of the tax rate change  
18 for the period of January 1 through the operational law date of new rates. "The amount  
19 deferred under this subsection shall be included in the revenue requirement used to set the  
20 electrical corporation's rates in its subsequent general rate proceeding through an

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<sup>6</sup> Senate Bill No. 564.

1 amortization over a period determined by the commission.”<sup>7</sup> The bill’s language  
2 specifically addressed utilities that were not in general rate proceedings.

3 **Q. Should the Commission treat KCPL and GMO any different than what the**  
4 **legislature established for the utilities that are not in a general rate case?**

5 A. No. OPC sees this intentional exclusion as a legislative effort to allow the Commission  
6 to exercise its judgment in active cases. The Commission can exercise its authority to  
7 create a regulatory liability account and include the amount in this general rate case.

8 The common sense approach to the amortization is to immediately offset the Company’s  
9 regulatory assets. This method would simplify the process and tracking and amortization  
10 would be a one-and-done event to adjust revenue requirement.

11 **Q. Do you have dollar values calculated for the proposed deferrals for KCPL and**  
12 **GMO?**

13 A. I do not have a complete calculation at this time. By the time new rates are in effect, I  
14 estimate that KCPL will have over collected income tax expense by approximately \$19  
15 million. I estimate that GMO will have over collected by approximately \$12 million. I  
16 am still gathering information from the prior rate cases and should have more accurate  
17 deferral totals for each by the time I file surrebuttal testimony in these cases.

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<sup>7</sup> Section 393.137.3, RSMo. (S.B No. 564).

1 **ACCUMULATED DEFERRED INCOME TAXES**

2 **Q. How should the Commission handle the excess accumulated deferred income tax**  
3 **balances?**

4 A. The Internal Revenue Service (“IRS”) has indicated that “protected” excess deferred  
5 income tax will need to be reversed using the average rate assumption method  
6 (“ARAM”). The IRS further indicates unprotected excess deferred income tax can be  
7 returned to the ratepayers by a method determined by the Commission.

8 **Q. Have KCPL and GMO provided spreadsheets and workpapers that accurately**  
9 **delineate the protected and unprotected portions of the excess accumulated deferred**  
10 **income tax balances?**

11 A. KCPL and GMO have answered data requests and provided spreadsheets where excess  
12 accumulated deferred income taxes (“ADIT”) are broken out with a designation of  
13 protected and unprotected balances. OPC is still in the process of discovery to determine  
14 the accuracy of these balances.

15 **Q. Are there any specific concerns that OPC has with information presented?**

16 A. Yes. In response to Staff data request 0239, the Companies provided an Excel  
17 spreadsheet that listed separate calculations for both KCPL and GMO. OPC’s concern is  
18 that there is a lack of documentation to properly classify the net operating loss (“NOL”)  
19 amounts for each company. OPC is still trying to determine if the NOL should be  
20 included in the calculations, but even if they ultimately are included, the lack of  
21 documentation would cause concern in classifying any part of the NOL as “protected.”

1 **Q. What documentation is needed?**

2 A. Both Companies merely added NOL totals on the spreadsheets, leaving no indication  
3 how much of the losses are for regulated and unregulated companies and how much of  
4 the losses are from accelerated depreciation (protected) or other expenses. It is my  
5 understanding that GMO, before it was acquired by Great Plains Energy, was quite  
6 aggressive with its unregulated businesses, so there is a large gap in the needed  
7 information. OPC will continue to research the protected and unprotected balances  
8 presented by the Companies and hope to have adjustments in later testimony.

9 **Q. What is OPC's general recommendation for the treatment of excess accumulated**  
10 **deferred income tax?**

11 A. Concerning protected ADIT, the TCJA requires the use of ARAM which necessitates  
12 amortization of the excess tax reserve over the remaining regulatory lives of the property  
13 at a rate that follows reversal of the deferred taxes. As far as the unprotected portion of  
14 the deferral, OPC proposes a 10-year amortization, as it did in both the recent Spire and  
15 Liberty Gas general rate cases.

16 **Q. Does this conclude your direct testimony?**

17 A. Yes it does.

**John S. Riley, CPA**  
**Summary of Case Participation**

ST LOUIS COUNTY WATER COMPANY	CASE NO. WR-88-5
SOUTHWESTERN BELL TELEPHONE COMPANY	CASE NO. TC-89-21
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. ER-2016-0023
KCP&L GREATER MISSOURI OPERATIONS COMPANY	CASE NO. ER-2016-0156
KANSAS CITY POWER & LIGHT COMPANY	CASE NO. ER-2016-0285
AMEREN MISSOURI	CASE NO. ER-2016-0179
EMPIRE DISTRICT ELECTRIC PRUDENCE REVIEW	CASE NO. EO-2017-0065
LACLEDE GAS COMPANY	CASE NO. GR-2017-0215
MISSOURI AMERICAN WATER COMPANY	CASE NO. WU-2017-0351
EMPIRE DISTRICT ELECTRIC COMPANY	CASE NO. EO-2018-0092
LIBERTY (MIDSTATE NATURAL GAS)	CASE NO. GR-2018-0013



§35.14

18 CFR Ch. I (4-1-18 Edition)

explanation of why the program adopted is prudent and consistent with a least-cost energy supply program.

(Federal Power Act, 16 U.S.C. 791-823c; Dept. of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267, 3 CFR 142 (1978); Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[Order 91, 45 FR 46363, July 10, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §35.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**Subpart C—Other Filing Requirements**

**§35.14 Fuel cost and purchased economic power adjustment clauses.**

(a) Fuel adjustment clauses (fuel clause) which are not in conformity with the principles set out below are not in the public interest. These regulations contemplate that the filing of proposed rate schedules, tariffs or service agreements which embody fuel clauses failing to conform to the following principles may result in suspension of those parts of such rate schedules, tariffs, or service agreements:

(1) The fuel clause shall be of the form that provides for periodic adjustments per kWh of sales equal to the difference between the fuel and purchased economic power costs per kWh of sales in the base period and in the current period:

Adjustment Factor =  $F_m/S_m - F_b/S_b$

Where:  $F$  is the expense of fossil and nuclear fuel and purchased economic power in the base ( $b$ ) and current ( $m$ ) periods; and  $S$  is the kWh sales in the base and current periods, all as defined below.

(2) Fuel and purchased economic power costs ( $F$ ) shall be the cost of:

(i) Fossil and nuclear fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants.

(ii) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than identified in paragraph (a)(2)(iii) of this section.

(iii) The total cost of the purchase of economic power, as defined in para-

graph (a)(11) of this section, if the reserve capacity of the buyer is adequate independent of all other purchases where non-fuel charges are included in either  $F_b$  or  $F_m$ ;

(iv) Energy charges for any purchase if the total amount of energy charges incurred for the purchase is less than the buyer's total avoided variable cost;

(v) And less the cost of fossil and nuclear fuel recovered through all inter-system sales.

(3) Sales ( $S$ ) must be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of: (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) of this section, less (vi) total system losses.

(4) The adjustment factor developed according to this procedure shall be modified to properly allow for losses (estimated if necessary) associated only with wholesale sales for resale.

(5) The adjustment factor developed according to this procedure may be further modified to allow the recovery of gross receipts and other similar revenue based tax charges occasioned by the fuel adjustment revenues.

(6) The cost of fossil fuel shall include no items other than those listed in Account 151 of the Commission's Uniform System of Accounts for Public Utilities and Licensees. The cost of nuclear fuel shall be that as shown in Account 518, except that if Account 518 also contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from this account. (Paragraph C of Account 518 includes the cost of other fuels used for ancillary steam facilities.)

(7) Where the cost of fuel includes fuel from company-owned or controlled<sup>1</sup> sources, that fact shall be noted and described as part of any filing. Where the utility purchases fuel from a company-owned or controlled

<sup>1</sup>As defined in the Commission's Uniform System of Accounts 18 CFR part 101, Definitions 5B.

source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause. If the current price, however, is in litigation and is being collected subject to refund, the utility shall so advise the Commission and shall keep a separate account of such amounts paid which are subject to refund, and shall advise the Commission of the final disposition of such matter by the regulatory body having jurisdiction. With respect to the price of fuel purchases from company-owned or controlled sources pursuant to contracts which are not subject to regulatory authority, the utility company shall file such contracts and amendments thereto with the Commission for its acceptance at the time it files its fuel clause or modification thereof. Any subsequent amendment to such contracts shall likewise be filed with the Commission as a rate schedule change and may be subject to suspension under section 205 of the Federal Power Act. Fuel charges by affiliated companies which do not appear to be reasonable may result in the suspension of the fuel adjustment clause or cause an investigation thereof to be made by the Commission on its own motion under section 206 of the Federal Power Act.

(8) All rate filings which contain a proposed new fuel clause or a change in an existing fuel clause shall conform such clauses with the regulations. Within one year of the effectiveness of this rulemaking, all public utilities with rate schedules that contain a fuel clause should conform such clauses with the regulations. Recognizing that individual public utilities may have special operating characteristics that may warrant granting temporary delays in the implementation of the regulations, the Commission may, upon showing of good cause, waive the requirements of this section of the regulations for an additional one-year period so as to permit the public utilities sufficient time to adjust to the requirements.

(9) All rate filings containing a proposed new fuel clause or change in an existing fuel clause shall include:

(i) A description of the fuel clause with detailed cost support for the base cost of fuel and purchased economic power or energy.

(ii) Full cost of service data unless the utility has had the rate approved by the Commission within a year, provided that such cost of service may not be required when an existing fuel cost adjustment clause is being modified to conform to the Commission's regulations.

(10) Whenever particular circumstances prevent the use of the standards provided for herein, or the use thereof would result in an undue burden, the Commission may, upon application under §385.207 of this chapter and for good cause shown, permit deviation from these regulations.

(11) For the purpose of paragraph (a)(2)(iii) of this section, the following definitions apply:

(i) *Economic power* is power or energy purchased over a period of twelve months or less where the total cost of the purchase is less than the buyer's total avoided variable cost.

(ii) *Total cost of the purchase* is all charges incurred in buying economic power and having such power delivered to the buyer's system. The total cost includes, but is not limited to, capacity or reservation charges, energy charges, adders, and any transmission or wheeling charges associated with the purchase.

(iii) *Total avoided variable cost* is all identified and documented variable costs that would have been incurred by the buyer had a particular purchase not been made. Such costs include, but are not limited to, those associated with fuel, start-up, shut-down or any purchases that would have been made in lieu of the purchase made.

(12) For the purpose of paragraph (a)(2)(iii) of this section, the following procedures and instructions apply:

(1) A utility proposing to include purchase charges other than those for fuel or energy in fuel and purchased economic power costs (*F*) under paragraph (a)(2)(iii) of this section shall amend its fuel cost adjustment clause so that it is consistent with paragraphs (a)(1) and

(a)(2)(iii) of this section. Such amendment shall state the system reserve capacity criteria by which the system operator decides whether a reliability purchase is required. Where the utility filing the statement is required by a State or local regulatory body (including a plant site licensing board) to file a capacity criteria statement with that body, the system reserve capacity criteria in the statement filed with the Commission shall be identical to those contained in the statement filed with the State or local regulatory body. Any utility that changes its reserve capacity criteria shall, within 45 days of such change, file an amended fuel cost and purchased economic power adjustment clause to incorporate the new criteria.

(i) Reserve capacity shall be deemed adequate if, at the time a purchase was initiated, the buyer's system reserve capacity criteria were projected to be satisfied for the duration of the purchase without the purchase at issue.

(ii) The total cost of the purchase must be projected to be less than total avoided variable cost, at the time a purchase was initiated, before any non-fuel purchase charge may be included in  $F_m$ .

(iv) The purchasing utility shall make a credit to  $F_m$  after a purchase terminates if the total cost of the purchase exceeds the total avoided variable cost. The amount of the credit shall be the difference between the total cost of the purchase and the total avoided variable cost. This credit shall be made in the first adjustment period after the end of the purchase. If a utility fails to make the credit in the first adjustment period after the end of the purchase, it shall, when making the credit, also include in  $F_m$  interest on the amount of the credit. Interest shall be calculated at the rate required by §35.19a(a)(2)(iii) of this chapter, and shall accrue from the date the credit should have been made under this paragraph until the date the credit is made.

(v) If a purchase is made of more capacity than is needed to satisfy the buyer's system reserve capacity criteria because the total costs of the extra capacity and associated energy are less than the buyer's total avoided variable costs for the duration of the

purchase, the charges associated with the non-reliability portion of the purchase may be included in  $F$ .

(Approved by the Office of Management and Budget under control number 1902-0096)

(Federal Power Act, 16 U.S.C. 824d, 824e and 825h (1976 & Supp. IV 1980); Department of Energy Organization Act, 42 U.S.C. 7171, 7172 and 7173(c) (Supp. IV 1980); E.O. 12009, 3 CFR part 142 (1978); 5 U.S.C. 553 (1976))

[Order 271, 28 FR 10573, Oct. 2, 1963, as amended by Order 421, 36 FR 3047, Feb. 17, 1971; 39 FR 40583, Nov. 19, 1974; Order 225, 47 FR 19056, May 3, 1982; Order 352, 48 FR 55136, Dec. 13, 1983; 49 FR 5073, Feb. 10, 1984; Order 529, 55 FR 47321, Nov. 13, 1990; Order 600, 63 FR 53809, Oct. 7, 1998; Order 714, 73 FR 57532, Oct. 3, 2008; 73 FR 63686, Oct. 28, 2008]

#### §35.15 Notices of cancellation or termination.

(a) *General rule.* When a rate schedule, tariff or service agreement or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule, tariff or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff or service agreement or part thereof at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice, each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purchasers to whom the notice has been provided. For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.

(b) *Applicability.* (1) The provisions of paragraph (a) of this section shall apply to all contracts for unbundled transmission service and all power sale contracts:

- (i) Executed prior to July 9, 1996; or
- (ii) If unexecuted, filed with the Commission prior to July 9, 1996.