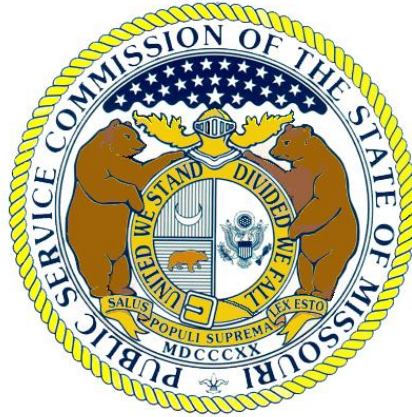


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the First True-Up Filing)
Under the Commission-Approved Fuel)
Adjustment Clause of Union Electric Company)
d/b/a Ameren Missouri)

File No. ER-2010-0274

REPORT AND ORDER

Issue Date: June 29, 2011

Effective Date: July 9, 2011

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. In making this decision, the Commission has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On December 1, 2010, Union Electric Company, d/b/a Ameren Missouri, submitted an application containing its first fuel adjustment clause true-up. In that application, Ameren Missouri contended that during the first Recovery Period¹ it under-collected \$482,239. Upon receiving that application, the Commission issued a notice that informed various persons and entities of the filing of the application and established January 3, 2011 as the date for interested parties to file an application to intervene.

By Commission Rule 4 CSR 240-3.161(10)(A), all parties to the rate case in which Ameren Missouri's fuel adjustment clause was implemented are automatically parties to this true-up case. No other parties applied to intervene and other than the Commission's Staff, no other party has been actively involved in this case.

Commission Rule 4 CSR 240-20.090(5)(D) requires the Commission's Staff to review Ameren Missouri's true-up filing and to file a recommendation regarding that filing within 30 days. In its recommendation, filed on December 30, 2010, Staff disagreed with

¹ The Recovery Period in question ran from March 1, 2009 through May 31, 2009.

Ameren Missouri's proposed true-up adjustment and instead contended that the company should credit its customers \$121,636 to correct an over-collection from those customers.

Under Commission Rule 4 CSR 240-20.090(5)(D), the Commission must either issue an order resolving the true-up within 60 days of the company's filing of its application, or suspend the timeline of the true-up to take further evidence and conduct a hearing. On January 24, 2011, following a prehearing conference, the Commission suspended the true-up timeline until May 29. Subsequently, with the consent of the parties, the Commission further suspended the true-up timeline until July 14.

Ameren Missouri and Staff, the only parties who have participated in this case, have agreed that the Commission can resolve this case on stipulated facts, which they filed on March 3. The Commission accepted that Stipulation of Facts on March 10, and established a briefing schedule for the parties to submit argument about those facts. Because the parties have stipulated to the facts, there has been no evidentiary hearing. Ameren Missouri filed its initial brief on March 22, Staff filed its responsive brief on April 21, and Ameren Missouri filed its reply brief on June 3.

Findings of Fact

The Stipulation of Facts that the parties filed on March 3 is attached to this order as Appendix A. The Commission has adopted those facts and incorporates them into this order as its findings of fact. For the benefit of those persons reading this report and order, the Commission offers this summary of the stipulated facts.

The Ameren Missouri tariff that establishes the company's fuel adjustment clause (FAC) for purposes of this recovery period resulted from an approved stipulation and agreement in a previous Ameren Missouri rate case, ER-2008-0318. That FAC tariff

established a formula by which the Fuel and Purchased Power Adjustment (FPA_C) rate was to be calculated. That formula includes several inputs, one of which is Net Base Fuel Costs (NBFC).

The tariff's definition of NBFC requires that sales used to determine NBFC rates be "at the generation level," meaning they would include associated transmission and distribution losses. However, in calculating normalized summer and winter kilowatt-hour (kWh) sales, one of the elements used to determine NBFC, both Ameren Missouri and Staff mistakenly used sales figures that included distribution losses, but not transmission losses. As a result, the sales figures used in the formula were not "at the generation level" as required by the tariff.

Ameren Missouri's approved FAC tariff contained a specified NBFC rate, expressed in cents per kWh, which was then plugged into the formula specified in the tariff to determine the FPA_C rate.² The FPA_C rate was then applied to a customer's usage of electricity to determine the customer's monthly bill.

Under the formula used to determine the FPA_C rate, the NBFC is multiplied by another calculated number, supplied kWh from the accumulation period (S_{AP}). The tariff provides that S_{AP} is also to be "at the generation level." Unlike the NBFC, the S_{AP} was correctly calculated to include both distribution and transmission losses. However, because S_{AP} was correctly calculated and the NBFC rate was not, a mismatch resulted. Because of that mismatch, the formula understated net fuel costs meaning Ameren Missouri collected \$579,709 less from its customers during the first collection period than it would have if the NBFC rate had been properly calculated.

² For the period in question, the summer NBFC rate was 1.001 cents per kWh and the winter NBFC rate was 0.690 cents per kWh.

The first recovery period is the only period before the Commission in this case. However, the same error will affect the next four recovery periods as well. Because of that error, Ameren Missouri will have under recovered for those additional recovery periods in the following amounts.

Recovery Period 2: ³	\$1,619,423
Recovery Period 3:	\$ 982,216
Recovery Period 4:	\$1,554,742
Recovery Period 5:	\$ 496,675

The NBFC rates were correctly calculated in the tariff sheets that were implemented following Ameren Missouri's next rate case, ER-2010-0036, and as a result, the mismatch problem will not apply starting with the true-up filing for Recovery Period 6.

Conclusions of Law

Ameren Missouri is an electrical corporation and a public utility, as those terms are defined by Section 386.020(15) and (43), RSMo Supp. 2010. As such, the Commission has jurisdiction over Ameren Missouri pursuant to Sections 386.250(1), RSMo 2000, and 393.140, RSMo 2000.

Ameren Missouri asks the Commission to correct the incorrectly calculated NBFC rate that was specified in the FAC tariff to make it correspond to the written description of the NBFC rate that is also contained in the FAC tariff. Staff contends that when the Commission approved the FAC tariff,⁴ all aspects of that FAC tariff, including the incorrectly calculated NBFC rate, became final and conclusive. Thus, according to Staff, the

³ An adjustment for the second recovery period is pending before the Commission in File Number ER-2011-0321.

⁴ The Commission approved Ameren Missouri's FAC tariff in its Order Approving Compliance Tariff Sheets issued on February 19, 2009 in File Number ER-2008-0318.

Commission cannot change any aspect of the FAC tariff outside the confines of a general rate case without running afoul of the filed rate doctrine and the prohibition against retroactive ratemaking. Furthermore, Staff asserts that Ameren Missouri's effort to correct the erroneous NBFC rate is an improper collateral attack on the tariff and the Commission's order that approved the tariff.

The filed rate doctrine precludes a utility from collecting any rate other than the rate properly established in the tariff filed with this Commission. That doctrine is found in Missouri's statutes⁵ and has been recognized by reviewing courts.⁶ Similarly, the prohibition against retroactive ratemaking precludes the Commission from setting utility rates to allow the utility to recover past losses or to require the utility to refund past excess profits.⁷

The section of Ameren Missouri's FAC tariff in question explicitly requires that the NBFC input into the calculation of the Fuel and Purchased Power Adjustment rate be based on sales as calculated "at the generation level." All parties agree that the NBFC was not correctly calculated and that the summer and winter NBFC rates set forth in that tariff are therefore incorrect. In other words, the number does not match the tariff's written description of what that number should be. Ameren Missouri asks the Commission to correct the number to match the description so that it can collect the amount it would have collected if the error had not been made.

⁵ "No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedules filed and in effect at the time." Section 393.140(11), RSMo 2000.

⁶ *State ex rel. AG Processing v. Pub. Serv. Comm'n*, 311 S.W.3d 361, 365 (Mo. App. W.D. 2010).

⁷ *Id.*

The prohibition against retroactive ratemaking would prevent the Commission from setting rates to correct other errors that may have led to the establishment of an incorrect rate. For example, a rate that was set based on an assumption that an electric utility will pay \$1 million per year for coal cannot be retroactively adjusted later to allow the utility to collect an extra million dollars if the actual cost of coal was \$2 million per year. For the same reason, a rate cannot be reset to require a utility to refund money if the error went the other way and the utility paid less for coal than it was allowed to recover from ratepayers in an established rate. In general then, the filed rate doctrine and the prohibition against retroactive ratemaking require a utility and its ratepayers to abide by any established rate, even if that rate was established as a result of a mistake.

So why do the filed rate doctrine and the prohibition against retroactive ratemaking not apply to Ameren Missouri's rate in this case? The answer is that the rate in question is a fuel adjustment charge rate that Ameren Missouri is using to make prospective adjustments to the interim rate charged to customers under the FAC.

The FPA_C rate that is charged to customers under the FAC is calculated after the fact based upon a retrospective examination of the net fuel costs actually incurred in an accumulation period compared to an assumed based. When the FPA_C rate is charged to customers it is not expected to be final. Rather, it is by definition an interim rate. Therefore, it is expected that an adjustment based on what actually happened in the past will be made when the true-up is completed.

The use of a fuel adjustment clause has been upheld by the Court of Appeals and as a result, the Commission does not engage in retroactive ratemaking when it adjusts Ameren Missouri's forward-looking rates to reflect costs the company incurred during a

prior period in which the FAC was in effect.⁸ Essentially, the correction of the acknowledged error in the calculation of the summer and winter NBFC rates is no different from any other appropriate adjustment made in the course of the true-up and prudence reviews of the FAC rates. Therefore, the Commission has the legal authority to make the adjustment proposed by Ameren Missouri.

Staff also argues that in asking the Commission to correct the erroneously calculated summer and winter NBFC rates, Ameren Missouri has engaged in an illegal collateral attack on its own FAC tariff and upon the Commission order that approved that tariff. Staff contends that such an attack would violate Section 386.550, RSMo 2000, which provides that final Commission orders are conclusive in all collateral actions or proceedings. However, Ameren Missouri has not attacked either the FAC tariff or the Commission's order that approved that tariff. Instead, Ameren Missouri has merely asked the Commission to correct a calculation error to make a calculated number in the tariff match the description of that number set forth in that tariff.

Finally, Staff urges the Commission to deny Ameren Missouri's request to correct the miscalculated input number in the tariff formula as a matter of fairness to the company's ratepayers. Staff's concern is misplaced. There is nothing unfair about expecting ratepayers to pay rates that are correctly calculated by the terms of the company's tariff. To the contrary, Staff's position that would set the erroneous calculation in stone would unfairly deprive Ameren Missouri of revenue to which it is entitled under the terms of its tariff. In addition, that position might be unfair to ratepayers in a future case in which the erroneously calculated input number worked to the benefit of the utility.

⁸ *State ex rel. AG Processing v. Pub. Serv. Comm'n*, - S.W.3d -, 2011 WL 690570 (Mo. App. W.D. 2011).

Decision

Based on its findings of fact and conclusions of law, the Commission finds that the mistaken calculation of the summer and winter NBFC rates shall be corrected as proposed by Ameren Missouri. Furthermore, the Commission finds that the erroneous calculation of the summer and winter NBFC rates shall be corrected in the remaining true-up filings in which the mistake will have an impact.

THE COMMISSION ORDERS THAT:

1. The Application of Union Electric Company, d/b/a Ameren Missouri Containing its First Fuel Adjustment Clause True-Up is approved.
2. Union Electric Company, d/b/a Ameren Missouri is authorized to include the under-collection amount arising from its First Recovery Period as calculated by Ameren Missouri in its next FPA rate filing.
3. Union Electric Company, d/b/a Ameren Missouri shall correct the erroneous calculation of the summer and Winter NBFC rates as identified in this Report and Order in all remaining true-up filings in which that erroneous calculation will have an impact.
4. This report and order shall become effective on July 9, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Clayton, Davis,
Jarrett, and Kenney, CC., concur
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 29th day of June, 2011.