Exhibit No.:	________________
Issue(s):	Fuel Adjustment Clause
Witness/Type of Exhibit:	Mantle/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2016-0285

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Submitted on Behalf of the Office of the Public Counsel

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2016-0285

January 27, 2017

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service	))))	Case No. ER-2016-0285

AFFIDAVIT OF LENA MANTLE

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Lena Mantle, of lawful age and being first duly sworn, deposes and states:

1. My name is Lena Mantle. I am a Senior Analyst for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Lena M Mantle

Lena M. Mantle
Senior Analyst

Subscribed and sworn to me this 27th day of January 2017.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2017
Cole County
Commission #13754037

Jerene A. Buckman

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

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SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2016-0285

Q. Please state your name.

A. My name is Lena M. Mantle.

Q. Are you the same Lena M. Mantle that filed direct and rebuttal testimony in this case?

A. Yes, I am.

<u>PURPOSE OF TESTIMONY</u>

Q. What is the purpose of your surrebuttal testimony?

A. There has been a plethora of rebuttal testimony filed in response to the Office of Public Counsel's ("OPC") recommendations to the Commission regarding a Fuel Adjustment Clause ("FAC"). The purpose of this testimony is to respond and remind the Commission of the essence of what an FAC is and how the FAC recommendations of OPC meet the requirements of Section 386.266 RSMo and the Commission's initial intent for the FAC.

Q. After reading through Kansas City Power & Light Company's ("KCPL") FAC rebuttal testimony, what is OPC's greatest concern?

A. OPC is greatly alarmed that KCPL views the FAC, not as a cost recovery mechanism, but as a determinant in how it meets its customers' energy needs and as a policy statement of costs the Commission deems "important." When a utility views the FAC as anything other than cost recovery of prudently incurred fuel and purchased power costs and changes its fuel procurement practices, not to improve efficiencies and cost-effectives but based on recovering the most money from its customers, the Commission should seriously consider whether or not the utility is deserving of the privilege of an FAC.

Rate adjustment mechanisms such as the FAC allow the utility to charge its customers more, without consideration of all costs and savings, between rate cases. Nowhere in Section 386.266 RSMo does it say the FAC is to be used as a fuel management tool or to dictate procurement practices. In fact, the statute makes it clear that an electric utility with an FAC is expected to continue to manage its fuel prudently and the Commission may include features designed to provide incentives to *improve* the efficiencies and cost-effectiveness of its fuel and purchased-power procurement activities. In light of the statute allowing incentives to improve efficiencies and cost effectiveness, threats by KCPL to minimize or discontinue fuel procurement activities if the costs of these activities are not included in the FAC are very alarming.[1]

Q. Are there other OPC witnesses providing surrebuttal testimony regarding the FAC?

A. Yes. Charles Hyneman provides surrebuttal testimony regarding some policy statements made in the rebuttal testimony regarding the FAC. John S. Riley provides additional clarification regarding the Federal Energy Regulatory Commission ("FERC") policy for FACs for wholesale customers and John A. Robinett provides a clarification regarding the inclusion of unit train depreciation as an FAC cost.

Q. Should the fact that you or one of the OPC's witnesses do not address any particular issue in surrebuttal testimony be interpreted as an approval by

OPC of any position taken by KCPL or any other party in this case with respect to the FAC?

A. No, it should not. As I previously stated, there was voluminous rebuttal to OPC's recommendations regarding an FAC for KCPL. Failure to address any particular FAC issue should not be interpreted as approval or agreement with any position taken by other parties in this case.

Commission's Initial Intent Regarding FACs

Q. What was the Commission's intent regarding FAC's?

A. To determine the Commission's initial intent regarding the FAC, I reviewed the Commission's *Report And Order* in File ER-2007-0004, which is the first rate case in which the Commission allowed an FAC under Section 386.266 RSMo. In this *Report And Order,* the Commission found that an FAC should not be authorized for the mere "convenience" of an electric utility.[2] In addition it stated:

> [A] reasonable fuel adjustment clause should be straightforward and simple to administer, retain some incentive for company efficiency, and be readily auditable and verifiable through expedited regulatory review.

Q. How does this compare with the KCPL's proposed FAC?

A. As evidenced by the sheer volume of direct and rebuttal testimony provided by KCPL witnesses Tim R. Rush, Wm. Edward Blunk**,** and Don A. Frerking, and Ameren Missouri's witnesses, KCPL's FAC is confusing. The generic descriptions provided in its exemplar tariff sheets and direct testimony[3] make it difficult, if not impossible, to audit and verify KCPL's FAC. It takes 11 tariff

[1] See KCPL's response to OPC Data Request 8015 attached as Schedule LM-R-1 to my rebuttal testimony in this case.
[2] Pages 33 and 37
[3] Direct testimony of Tim R. Rush

sheets to effectuate KCPL's proposed FAC which also demonstrates that KCPL's proposed FAC is neither straightforward nor simple.

Surrebuttal to KCPL Witness Tim R. Rush

Q. Mr. Rush seems to place the blame for the complexity of the FAC tariff sheet on you.[4] Do you agree with Mr. Rush?

A. I agree with Mr. Rush that I was integral in requesting the amount of information that is currently included on the electric utilities' tariff sheets. However, the complexity or length of the tariff sheets is not the problem. The problem is FACs in Missouri have become unnecessarily complicated and complex.

Q. Would you please explain?

A. Only four tariff sheets were approved by the Commission for the first FAC under Section 386.266 RSMo.[5] However, it soon became evident, through FAC rate change cases and prudence audits that there was not enough detail in Commission orders and tariff sheets for Staff and other parties to understand what exactly the electric utilities were including in their FACs.

Therefore, as rate cases were filed modifying FACs, Staff, at that time under my direction, worked diligently to get the exact costs and revenues the Commission was approving described in the FAC tariff sheets. After I came to work for OPC, I had the opportunity commit additional time into reviewing the utilities' FACs only to discover the utilities were not providing complete lists of costs they were including in their FACs let alone the "complete explanations" required by Commission rule 4 CSR 240-3.161(3)(H) and (I). As I discovered costs that were not on the FAC tariff sheets and requested better identification of these costs in rate cases and tariff sheets, the utilities insisted on including

[4] Rebuttal testimony, page 42
[5] ER-2007-0004, *Order Granting Expedited Treatment and Approving Tariff Sheets*, effective July 5, 2007

language that allowed, upon notification to the Commission, changes in the name of the cost which increased the length of the tariff sheets. The number of tariff sheets it takes to properly describe an electric utility's FAC is a reflection of how complicated and complex FACs are in Missouri.

Q. Mr. Rush asserts on page 36 of his rebuttal testimony that you complain about the length of the FAC tariff sheets. Is he correct?

A. No, he is not.

Q. Is OPC recommending limiting the costs and revenues in KCPL's FAC in order to reduce the number of tariff sheets as Mr. Rush opines on page 36 of his rebuttal testimony?

A. Absolutely not. I am very aware of the importance of correctly identifying all of the elements of an FAC in tariff sheets. The FAC tariff sheets need to be as long as necessary to provide information, not only to Staff and other parties that review FAC filings, but also to the public. Short tariff sheets that do not contain an accurate and detailed description have caused disputes in FAC rate change and prudence audits in the past. Descriptive, complete tariff sheets are necessary to avoid future disputes.

Q. Is the FAC recommended by OPC simpler and easier to understand?

A. Yes, it is. Limiting the number of costs and revenues included in the FAC would meet the Commission's objective for the first FAC under Section 386.266 RSMo by making KCPL's FAC straightforward, simpler to understand, and readily auditable and verifiable. A side benefit to a simpler and easier to understand FAC would be fewer FAC tariff sheets.

Q. What is OPC's recommendation for costs and revenues to be included in KCPL's FAC?

A. OPC is recommending only the following prudently incurred costs be included in KCPL's FAC:

1. Delivered fuel commodity costs including:
   a. Inventory adjustments to the commodities;
   b. Adjustments to cost due to quality of the commodity; and
   c. Taxes on fuel commodities;
2. The cost of transporting the commodity to the generation plants;
3. The cost of power purchased to meet its native load; and
4. Transmission cost directly incurred by KCPL for purchased power and off-system sales.

These costs would be offset by:

1. Off-system sales revenue net of the cost of generation or purchased power to make those sales; and
2. Net insurance recoveries, subrogation recoveries and settlement proceeds related to costs and revenues included in the FAC.

Q. Do you need to make a clarification regarding any of the costs OPC is recommending be included in KCPL's FAC?

A. Yes. On page 6 of my direct testimony I stated OPC's recommended FAC would limit purchased power costs included in KCPL's FAC to the cost of energy from long-term bilateral contracts, capacity charges from bilateral contracts that change annually or more frequently, and energy purchased on the SPP integrated market to meet native load or to make off-system sales. I inadvertently left out that the energy costs from short-term bilateral contracts should also be included in KCPL's FAC.

Q. What support do you have for OPC's definition of fuel and purchased power including transportation?

A. OPC's definition of fuel is the same as the definition that FERC uses to define fuel for KCPL's FERC FAC for wholesale customers. FERC has a very concise definition of fuel costs. 18 CFR Part 35.14 (a)(2)(i), attached as Schedule LM-S-1 states:

> 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.

It further defines fuel in (a)(6) as

> 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.

Q. What does this mean?

A. According to Opinion No. 327 of FERC in its Docket No. FA86-70-001 attached to this testimony as Schedule LM-S-2, this means:

> The Commission's fuel clause regulation permits utilities to flow through those fossil fuel costs which reflect the cost of fuel consumed and which include no items other than those listed in Account 151.

Q. What items are listed in Account 151?

A. Uniform System of Accounts describes the list of items in Account 151 as:

> 151 Fuel stock (Major only). This account shall include the book cost of fuel on hand.
>
> Items:
>
> 1. Invoice price of fuel less any cash or other discounts.
>
> 2. Freight, switching, demurrage and other transportation charges, not including, however, any charges for unloading from the shipping medium.
>
> 3. Excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel.

> 4. Operating, maintenance and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.
>
> 5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.

This is consistent with OPC's recommendation regarding the fuel costs that should be included in KCPL's FAC.

Q. Does FERCs FAC require non-uranium fuel costs to first be recorded in Account 151?

A. No. FERC's requirement is the cost is included in the list of items allowed in 151. FERC states in its footnote 15 of its opinion attached as Schedule LM-S-2:

> The criterion for fuel adjustment clause recovery is that fuel costs can include no items other than those items *listed* in ***Account 151***. It does not require that such costs be *recorded* in ***Account 151*** for accounting purposes. That is, while for accounting purposes the amounts recorded in ***Account 151*** will reflect the cost of fuel physically on hand, for fuel adjustment clause purposes the list of items in ***Account 151*** merely defines those categories of costs appropriately recovered through the fuel clause.

Q. What does FERC have to say about including indirect fuel costs in an FAC?

A. In 18 CFR Part 35.14(a) FERC states its position that fuel adjustment clauses not in conformity with its principles are not in the public interest. The United States Court of Appeals upheld FERC's narrow definition when it stated:[6]

> The FERC has previously and consistently construed the "other expenses directly assignable" language in a restrictive manner. The FERC denied FAC treatment for limestone (a pollution control agent used in the process of high sulfur coal), operating and maintenance expenses, depreciation and property taxes on oil storage tanks, finance charges, exploration and development costs, and deferred fuel expenses. As the Commission points out, all these expenses, while related to fuel and properly recoverable

[6] Minnesota Power and Light v. FERC 852 F.2d 1070 ¶ 9 (8th Cir. 1988)

> through the rate making process if prudently incurred, are not mentioned in Account 151 and therefore not properly assigned to that account according to Sec. 35.14(a)(6). (footnotes omitted)

Q. Is KCPL requesting indirect fuel costs be included in its FAC?

A. Yes. Costs Mr. Rush characterizes as "non-internal labor costs," fuel procurement, fuel handling, and emission costs are examples of indirect fuel costs. It is KCPL's proposal that all costs other than KCPL employee labor costs recorded in FERC accounts 501 and 547, whether direct or indirect fuel costs, be included in its FAC. It is OPC's recommendation that only costs listed in FERC account 151 be included in KCPL's FAC.

Q. Mr. Rush criticizes OPC in his rebuttal testimony[7] regarding OPC's recommended FAC's because it does not conform with FERC's Uniform System of Accounts ("USoA"). Is this a concern the Commission should take seriously?

A. No. The FAC recommended by OPC is consistent with FERC's FAC which is based on the definition of fuel in the USoA. It has worked for FERC for decades[8] and it can work for fuel costs for Missouri electric utilities' FACs also.

Q. What support do you have for OPC's definition of purchased power?

A. OPC's definition of purchase power is the same as the Commission's definition of purchased power. It is the power purchased to meet the requirements of KCPL's customers above the amount of its own generation in every hour. OPC's recommendation that no indirect purchased-power costs be included in KCPL's FAC is also consistent with the FERC's policy that only costs be included in its FAC.

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[7] Pages 24, 35, 36, and 38
[8] The attached FERC opinion was issued in 1989

Q. KCPL[9] seems to be confused regarding the OPC's off-system sales revenue recommendation for the FAC. Would you please clarify this?

A. Yes. OPC is recommending the inclusion of off-system sales net the cost to make the sales. This is also sometimes referred to the off-system sales margin. OPC is not recommending other Southwest Power Pool ("SPP") revenues be included in KCPL's FAC. These revenues are indirect off-system sales revenues and are reflected in the revenue requirement of KCPL but should not be included in the FAC.

Q. Regarding OPC's recommendation regarding the inclusion of transmission costs, how is OPC's recommendation consistent with prior Commission orders and FERC's FAC?

A. First of all, the Commission has stated in *Report and Orders* for each of the electric utilities granting or modifying an FAC, only transmission costs associated with off-system sales and "true purchased power" be included in the electric utilities' FACs. OPC agrees with this. However, OPC does not agree with how this has been applied. A percentage of all non-administrative regional transmission organization ("RTO") costs have been included in the FAC calculated as the normalized "true" purchased power divided by the load requirements of the utility's customers. This includes a percentage of costs that are not directly associated with "true" purchased power and off-system sales. It is OPC's recommendation that only transmission costs directly associated with off-system sales and "true" purchased power be included in KCPL's FAC. Charges to KCPL from SPP based on KCPL's load are not direct purchased power and off-system sales costs. This is consistent with FERC's directive that only direct costs be included in an FAC.

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[9] Page 26

Q. Do you agree with Mr. Rush that reducing the number of costs and revenues in the FAC would needlessly complicate the process of preparing and reviewing the FAC?[10]

A. Fewer costs and revenues may make the preparation of FAC reports initially more difficult for KCPL but once a process is set up for creating these reports, it should not be any more difficult than with the costs and revenues KCPL is requesting be included.

That said, being allowed to just include everything in a certain FERC account into an FAC, regardless of the type of cost in an FAC, could make preparing FAC reports easier for KCPL. However this would create a number of difficulties for the Commission and the parties that review the FAC filings and conduct prudence audits because no one would know what exactly was included in the FAC. In addition, it would lessen the incentive for KCPL to effectively manage costs recorded in these accounts.

Just as an FAC should not be designed solely to make the FAC tariff sheets shorter, an FAC should not be designed solely to make it easier for the utility to prepare reports. There are a number of customer protections in Section 386.266 RSMo including limiting the costs in an FAC, allowance for incentive mechanisms, prudence audits, and FAC rate change reviews that also need to be considered. KCPL's proposed FAC which would include all non-KCPL-labor costs in accounts 501 and 547 weakens these customer protections.

Q. This leads to Mr. Rush's contention that OPC's simplified FAC would increase the difficulties of a prudence audit.[11] Does this make sense to you?

A. No it does not. Mr. Rush seems to be saying the audit would be more difficult because auditors would only be able to look at the cost and revenues in the FAC.

[10] Page 39
[11] Pages 40 and 41

Q. Is it your understanding that in an FAC prudence audit only the FAC costs and revenues can be reviewed?

A. No. It is my understanding Staff and OPC have no audit scope restrictions in an FAC prudence review. They can, and should, look at not only the costs and revenues included in the FAC but also review the prudence of the actions that influence the costs even if the cost of those actions are not included in the FAC. There are many actions, some short-term, such as purchasing energy on the SPP integrated market, and some long-term, such as resource planning, that impact fuel costs. A comprehensive prudence audit should entail a review of not only the costs, but the activities related to fuel procurement.

Q. Has KCPL presented a response it is considering if the Commission does not include some of the indirect costs it is requesting be included in the FAC?

A. As I stated in my direct testimony, KCPL has stated that it may not continue some of its activities if all the costs it is requesting are not included in the FAC with the explanation that, without these costs being included in the FAC, KCPL is not assured that it will recover the costs of these activities.

Q. Is it true that KCPL would not recover these costs if they are not included in the FAC?

A. No. These costs are included in KCPL's revenue requirement. If the costs are not included in the FAC for these activities and KCPL determines it will not continue the activities, this would either be imprudent or the activities were not necessary in the first place and should not be included in KCPL's revenue requirement.

Q. What is OPC's response to Mr. Rush's claim that all SPP costs should be included in the FAC because they are associated with savings that are achieved by participating in the SPP integrated market?[12]

A. Many of these costs are indirect costs and the statute does not provide for indirect costs to be included in the FAC. Section 386.266 RSMo does recognize the cost of purchased power, which may be purchased from the SPP integrated market. However, even though, as it pointed out by Mr. Rush in his rebuttal testimony, spinning reserve and other ancillary services were required when the statute was written, the statute does not mention spinning reserve costs although it does would allow the cost of fuel used to providing the service. It does not mention ancillary services. It does not mention transmission project costs.

I agree that absent SPP KCPL would be providing these services. Much of the cost associated with these services is not associated with fuel. However, the costs that would qualify for the FAC, absent SPP, just as with SPP, should be only the fuel costs associated with the services. The fact that KCPL is saving money by paying others to provide this service does not make these costs eligible for the FAC.

Q. Does KCPL have other areas of confusion regarding OPC's FAC recommendation?

A. Yes. Much of the confusion in the rebuttal testimony filed regarding OPC's FAC recommendation has to do with the definition of fuel and purchased power costs, including transportation. KCPL seems to understand OPC's recommendation with the exception of off-system sales revenues but then goes on in its testimonies interchanging its definition of fuel and purchased power costs, which include many indirect costs, with OPC's definition of fuel and purchased power costs.

[12] Pages 33 through 34

This creates confusion such as KCPL's contention that OPC's FAC would not reduce risk to KCPL but would actually increase the risk to KCPL. OPC's FAC does reduce the risk of cost recovery of fuel and purchased power costs from what it would absent an FAC. KCPL[13] is measuring it against the reduction in risk to the current FAC which includes many indirect costs. OPC would ask the Commission to consider which definition of fuel and purchased power cost is being used as it reads FAC rebuttal testimony. OPC's definition is fuel and purchased power and the direct costs associated with them. KCPL's definition includes items like cell phone costs, airline baggage fees and entertainment.

Q. Does Mr. Rush make any statements in his testimony that are confusing to you?

A. Yes. Mr. Rush states on page 27 of his rebuttal testimony that the Commission has consistently rejected the claim that including costs in the FAC removes the incentive to take action to decrease those costs.

Q. You have been involved with FACs for all of the electric utilities in Missouri. Are you aware of any time the Commission made such a statement?

A. No. To the contrary - the Commission, when initially setting the incentive mechanism for FACs, has stated after-the-fact prudence reviews alone are insufficient to assure the utilities keep fuel and purchased power costs down.[14] I do not recall any time the Commission rejected the claim that the FAC or any other rate making mechanism that moves the risk to the customer from the utility does not remove the incentive for the utility to take action to decrease costs.

Q. Are there other confusing statements made by Mr. Rush?

[13] Page 23

[14] ER-2007-0004 *Report and Order*, page 54; ER-2008-0093 *Report and Order*, page 44; ER-2008-0318 *Report and Order*, page 72

A. Mr. Rush's statement[15] that the statute does not list energy or capacity in the FAC statute as justification for including indirect fuel costs in the FAC is confusing. Purchased power is the purchase of energy, capacity or both. Indirect costs such as fuel adders, fuel handling, contractor costs, spinning reserve costs and start up costs are not fuel costs, purchased power costs, or the cost of transportation of fuel or purchased power. Recording these costs in FERC USoA accounts that include fuel, purchased power or transmission in the title of the account does not make them fuel, purchased power or transmission costs anymore than putting a bike in the garage makes it a car.

In addition, Mr. Rush states the Commission administers FACs that have included indirect costs and this demonstrates purchased power is more than capacity and energy.[16] I am confused by what Mr. Rush means by administering because that typically infers management.[17] Although the Commission does have the authority to determine what is in the FAC and issue orders regarding the FAC, I would not characterize this as managing an FAC. Also, the utilities have not been forthright with the Commission regarding the costs they were including in the FACs nor have they provided testimony regarding why each cost was a fuel purchased power or transportation of fuel or purchased power cost. These details are only beginning to be provided to the Commission by the electric utilities, often in rebuttal or surrebuttal testimony. So I find Mr. Rush's statement that, because KCPL has been including these indirect costs in its FAC they are purchased power, confusing.

Q. Mr. Rush states on page 44 of his rebuttal testimony that OPC's recommendation to exclude SPP integrated market charges are contrary to

[15] Page 27
[16] Page 28
[17] Black's Law Dictionary 5th edition definition of administer is "to manage or conduct".

the Commission's FAC rules and the intent of the legislature. Are SPP integrated market charges referenced in the Commission's FAC rules?

A. No.

Q. Are SPP integrated market charges referenced in Section 386.266 RSMo?

A. No.

Q. Is it your opinion that it was the intent of the legislature to include SPP integrated market costs?

A. No. I find it hard to believe that the legislature, in 2005, intended costs that could not be applied until nine years later in March 2014 to be included in the FAC. Mr. Rush seems to project his intent of trying to include as many KCPL costs as possible in the FAC as the intent of the legislature. I do not find that intent in its reading of Section 386.266 RSMo and the Commission's FAC rules.

Q. Similarly on page 36, Mr. Rush makes the assertion that the FAC statute contemplates the recovery of expenses related to the procurement of fuel and purchased power. Is this correct?

A. No. Section 386.266 RSMo allows the Commission to include in the FAC features designed to improve the efficiency and cost-effectiveness of the utility's fuel and purchased power procurement activities.

Q. Could the Commission include fuel procurement activities in the FAC as an incentive to improve the efficiency and cost-effectiveness of the utility's fuel and purchased power procurement activities?

A. It could but OPC is uncertain how you determine this would improve the efficiency and cost-effectiveness of the utility's fuel and purchased power procurement activities. In addition, the Commission should carefully look at the types of costs KCPL includes in fuel and purchased power procurement.

Customer's bills should not be increased due to the costs of travel and entertainment booked to fuel procurement activities.

If the Commission wants to an incentive to increase the efficiency and cost effectiveness of KCPL's fuel and purchased power procurement activities, it should increase the amount of savings that KCPL gets to keep. OPC's recommended sharing mechanism would increase the savings KCPL retains from five percent of savings to ten percent of cost savings.

Q. On page 33, Mr. Rush asserts certain SPP costs tied to KCPL's load should be included in the FAC because the amount KCPL pays SPP is tied to KCPL's load. Is that a good enough reason for SPP costs to be included in the FAC?

A. No, it is not. In addition to not being direct fuel or purchased power costs, there is an important distinction that the costs of many of these activities are not directly influenced or caused by KCPL's load. They are costs of SPP activities that are allocated to the SPP members for recovery. The portion billed KCPL is based on KCPL's load. While the cost to KCPL may be based on KCPL's load, the cost of the activity is not. A cost being tied to KCPL's load is an inadequate justification for why a charge should be included in the FAC.

Q. What is Mr. Rush's response to OPC's request for the Commission to order KCPL to provide FAC costs and revenues at FERC Account and subaccount detail?

A. While he does not specifically refuse to provide this information in his discussions on this request on pages 35 and 45 of his rebuttal testimony, he does opine that KCPL has provided sufficient information. He also states that when KCPL provides more information, OPC uses the information to argue the definitions are not clear, the costs are not identified, and the information is not comprehensive.

Q. Is OPC's review of the data and pointing out to the Commission problems with information provided a valid reason to not provide information?

A. No. A valid reason to not provide information would be that the information was never reviewed or used by the other parties. Use of information is the reason for providing the information.

Q. Do you agree with Mr. Rush that the amount of information provided by KCPL is sufficient?

A. No. The monthly reporting requirements do not provide detail regarding each of the costs and revenues KCPL is including in the FAC. This information would be important if the Commission approves the FAC recommended by OPC. However it is even more critical if the Commission adopts KCPL's proposed FAC or continues its current FAC. If the Commission adopts KCPL's proposed FAC or slightly modifies its current FAC, any number of costs can be included in the FAC and should be clearly identified in the monthly FAC reports.

Q. Mr. Rush states on page 45 of his rebuttal testimony OPC's requested provision of costs and revenues by subaccount would provide another layer of complexity to KCPL's reporting. Is that an acceptable reason to not provide the information?

A. Not any more acceptable than his other complaint that KCPL should not have to provide information because OPC will use it.

Q. Do other electric utilities provide this information in their FAC monthly reports?

A. Yes. Ameren Missouri and the Empire District Electric Company provide this information with their monthly FAC report submissions.

Surrebuttal to KCPL Witness Wm. Edward Blunk

Q. Is an FAC necessary to incentivize utilities to efficiently provide service to their customers?

A. No. As Mr. Blunk acknowledges, there is a "very clear incentive to manage all costs retained in fixed rates."[18] He then goes on in his rebuttal testimony describing what he views as the various disincentives of OPC's recommended FAC and the positive incentives of KCPL's FAC.

Q. Should the FAC be viewed as an incentive or a disincentive in how a utility procures energy for its customers?

A. No, it should not. It should be viewed as a mechanism to, between rate cases where all costs and revenues are considered, recover prudently incurred increases and return decreases in costs identified by the Commission.

Q. What is your response to Mr. Blunk's rebuttal testimony on page 15 regarding the chemistry and operations of your example of how OPC's recommended FAC would limit disincentives?

A. His response is a distraction from the real issue. A disincentive for efficiencies is created for each item included in the FAC, regardless of chemistry and operations. The FAC creates at least two disincentives. The one Mr. Blunk is responding to is that, if there is a less expensive alternative that is not included in the FAC to a cost included in the FAC, there is an incentive to not implement the lower cost alternative. This is because the cost of the item not included in the FAC will not

[18] Page 16

flow through the FAC while the savings from not incurring the cost of the item that is included in the FAC passes through to the ratepayer.

For example, $100 for item A is included in the FAC. Six months after the Commission approves the inclusion of item A in the FAC, the utility discovers item B would achieve the same end as item A but at a cost of $80. However, there is no incentive for the utility to implement item B because it would result in the FAC rate collecting $100 less (because the cost of item A was not incurred) through its FAC,[19] while requiring the utility to absorb the $80 cost of item B because it was not included in the FAC.

The only way to completely remove this disincentive is to allow the utility to determine what is included in its FAC as it goes along which is KCPL's FAC proposal.[20] However, KCPL's solution to remove this disincentive creates another one. Once a cost is included in the FAC, there is little incentive for the utility to implement efficiencies for that cost. It stays whole regardless of whether the item costs $100 or $80.

Q. Is there a solution to this situation?

A. The fewer the costs and revenues included in the FAC, the less likely either of these disincentives would exist.

Q. Is this why OPC is recommending limiting the number of costs and revenues in KCPL's FAC?

A. No, it is not. However, it is a benefit of OPC's recommendation.

Q. On page 16 of his Mr. Blunk characterizes OPC's recommendation as "cherry picking." Do you agree with Mr. Blunk that OPC is "cherry

[19] This example assumes 100% of the savings would flow through to the customers. With the 90/10 incentive mechanism proposed by OPC, the utility would get to retain $10 of the savings.
[20] However, the Commission stated in ER-2014-0370, the rate case in which it granted KCPL an FAC, that it is the Commission that determines the costs and revenues to be included in the FAC, not the utility.

picking" the costs and revenues it is recommending be included in KCPL's FAC?

A. No, it is not. OPC's recommendation is consistent with Section 386.266 RSMO and FERC's definition of fuel cost. However, even with this limited definition of FAC costs and revenues, the Commission will need to be vigilant regarding what costs KCPL claims are included in the description of FERC account 151. Attached as Schedule LM-S-3 is a FERC opinion regarding KCPL's inclusion of costs regarding a coal contract termination through its FERC FAC as an Account 151 cost. In this Opinion FERC found KCPL had incorrectly accounted for the coal contract termination costs and required KCPL to provide a refund to its wholesale customers.

Q. Mr. Blunk accuses you of proposing the Commission micro-manage how KCPL runs its plants and provides service to its customers on page 17 of his rebuttal. Is OPC requesting the Commission micro-manage KCPL?

A. No. If anything, the FAC proposed by OPC will result in more management discretion because fewer costs and revenues will flow through the FAC. KCPL's proposal may result in a lackadaisical approach to managing its fuel costs because most of the costs will be recovered from its customers.

Q. Mr. Blunk opines on page 17 of his rebuttal testimony you do not understand the complexity of providing electricity to customers. Do you realize there are complex trade-offs KCPL must make to provide electricity to its customers?

A. Yes. I've been working in the regulatory area since 1983. I have worked in the areas of consumer complaints, safety, fuel expense modeling, revenue annualization, weather normalization and emergency response to name a few. Providing electricity is more complex now than it was when I started at the Commission and is much broader than the fuel area that Mr. Blunk is an expert in.

Q. Do all costs need to be included in an FAC to have the flexibility to manage all components of fuel as Mr. Blunk infers on page 17?

A. No they do not. Prudent fuel decisions should not be determined by which costs are included in the FAC and which ones are not. The FAC is an after-the-fact cost recovery mechanism. It is a privilege for an electric utility to be able to bill its customers any increase in costs between rate cases.

Q. Would OPC's FAC recommendation put the Commission in the position of guessing which costs will be prudent over the next four years as Mr. Blunk asserts on page 18?

A. No. That was already determined by the legislature when it stated "fuel and purchased power costs, including transportation" were allowed in an FAC.

<u>Surrebuttal of KCPL Witness Don A. Frerking</u>

Q. Would you summarize Mr. Frerking's surrebuttal testimony?

A. It is Mr. Frerking's FAC testimony that RTO administration charges, FERC assessments, and SPP Base Plan Project costs should be included in the FAC because they are RTO costs and KCPL must pay these costs to make off-system sales and purchase power from SPP.

Q. Does that make these costs fuel, purchased power, or transportation costs?

A. No. The Commission was correct in its Report and Order in file ER-2014-0370 when it found the SPP administrative costs and FERC assessments "administrative in nature and not directly linked to fuel and purchased power costs. These fees support the operation of SPP and are not needed for KCPL to buy and sell energy to meet the needs of its customers." For this reason, these costs along with many other indirect fuel and purchased power costs should not be included in KCPL's FAC.

Q. Did Mr. Frerking's testimony change your opinion regarding including the funding of SPP Base Plan projects in KCPL's FAC?

A. No, it did not. While I may not understand all aspects of SPP Base Plan projects even after reading his testimony, he did not show that these projects were directly linked to fuel and purchased power costs. They are costs KCPL incurs as a member of SPP and membership in SPP is necessary to purchase power and make off-system sales in SPP. However, the total cost of these projects does not change according to KCPL's native load. The portion of the cost allocated to KCPL changes with changes in KCPL's native load. This does not make the SPP Base Plan projects a fuel or purchased power cost.

Q. Mr. Frerking provided a lot of testimony regarding SPP Base Plan projects, NITS, and PtP. Does the fact that much of these costs are intertwined mean that the Commission should include all the costs or a percentage of all the costs as it currently does?

A. No. I am confident that, if the Commission only allows the SPP costs directly tied to off-system sales and purchased power, KCPL will be able to make a determination regarding which costs are directly tied. However KCPL has shown that its definition can be different from other parties and the Commission. Therefore KCPL should be required to make a filing showing how the SPP costs are directly tied to fuel, purchased power or off-system sales before the costs can be included in the FAC. There should also be an opportunity for other parties to review KCPL's filing and bring any disagreements to the Commission.

Surrebuttal to Ameren Missouri Witnesses

Q. Do you have any surrebuttal testimony responsive to Ameren Missouri witnesses Lynn M. Barnes and Andrew Meyer?

A. Much of the testimony provided by Ms. Barnes and Mr. Meyer is duplicative of the FAC testimony provided by KCPL. To that end, I have already responded in my surrebuttal to Mr. Rush, Mr. Blunk, and Mr. Frerking and will not repeat it here. I will respond to testimony specific to Ameren Missouri in my surrebuttal in its rate case currently before the Commission, ER-2016-0179.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

The filing utility shall describe generally its program for providing reliable and economic power for the period beginning with the date of the filing and ending with the tenth year after the test period. The statement shall include an assessment of the relative costs of adopting alternative strategies including an analysis of alternative production plant, *e.g.*, cogeneration, small power production, heightened load management and conservation efforts, additions to transmission plant or increased purchases of power, and an explanation of why the program adopted is prudent and consistent with a least-cost energy supply program.

(Federal Power Act, 16 U.S.C. 791–828c; 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 on GPO Access.

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 $=Fm/Sm-Fb/Sb$

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 paragraph (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

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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[1] sources, that fact shall be noted and described as part of any filing. Where the utility purchases fuel from a company-owned or controlled 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

[1] As defined in the Commission's Uniform System of Accounts 18 CFR part 101, Definitions 5B.

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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:

(i) 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.

(ii) 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.

(iii) 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 55436, 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 63886, 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

48 F.E.R.C. P61,011; 1989 FERC LEXIS 1694

Federal Energy Regulatory Commission - Commission

July 07, 1989

Docket No. FA86-70-001

Reporter

48 F.E.R.C. P61,011 *; 1989 FERC LEXIS 1694 **

Missouri Public Service Company, A Division of Utilicorp United, Inc.

Core Terms

fuel, tonnage, coal, staff, northern, supplier, consume, slip opinion, customer, minimum payment, wholesale, accounting purposes, ratepayer, automatic, buy-down, buy-out, fossil, ton

Action

[1]**

Opinion No. 327; Opinion and Order on Accounting Adjustment

Counsel

Appearances

Donald K. Dankner and *Leonard W. Belter,* on behalf of Missouri Public Service Company

Lawrence W. Brown, Laura K. Sheppeard and *C. Stephen Angle,* on behalf of the Trial Staff of the Federal Energy Regulatory Commission

Panel: Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Opinion

[*61074]

[Opinion No. 327 Text]

I. Procedural History

In a letter order issued July 29, 1987, the Commission, after the Division of Audit's examination of the books and records of Missouri Public Service Company (Missouri) for the period of January 1, 1982 through December 31, 1985, directed that various adjustments be made in order to comply with the Commission's accounting and related regulations. [1] The letter order noted that Missouri had agreed to take the corrective actions recommended on all

[1] *Missouri Public Service Company, 40 FERC P61,121 (1987).*

matters except its treatment of payments made to a coal supplier when coal was not taken under a coal supply contract. [2]

[2]**

On August 27, 1987, Missouri notified the Commission that it consented to a review of the contested matter by the Commission pursuant to shortened briefing procedures set forth in section 41.3 of the Commission's regulations. *18 C.F.R. § 41.3 (1988)*. Notice of the shortened briefing procedure was published in the *Federal Register.* [3]

On January 27, 1988, Missouri and trial staff each filed a memorandum of facts and arguments in support of their respective positions. [4] On February 18, 1988, Missouri and staff each filed a reply memorandum. [5]

[3]**

II. Background

Missouri is one of four owners [6] of Jeffrey, a coal-fired station with three generating units. In 1973, KP&L entered into a coal supply agreement with AMAX Coal Co. (AMAX), a subsidiary of American Metal Climax, Inc., on behalf of the Jeffrey owners. Under the terms of the original agreement, KP&L was required to purchase, and AMAX to deliver, specified amounts -- a "Base Quantity" -- of coal each year. [7]

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Subsequently, the Jeffrey owners saw that they could not meet the Base Quantity requirements specified in the contract due to delays in the construction of the generating units and lower than anticipated demand. In 1980, the contract was amended in order **[**4]** to reduce the required annual deliveries of coal in the early years of the contract while increasing the total lifetime contract amounts. The price per ton for the coal was also changed. In addition, the provision requiring KP&L to purchase the Base Quantity each year was eliminated. Instead, the parties added a deficient tonnage payment provision, a mechanism for calculating KP&L's liability if it failed to take the quantity of coal agreed to in the contract. Between 1982 and 1984, Missouri incurred deficient tonnage payments under the amended contract, recorded them in ***Account 151***, and recovered them through the fuel adjustment clause. The issues before us are whether the payments should have been recorded in ***Account 151*** and whether the payments should have been recovered through the fuel clause.

A fuel adjustment clause allows a utility to automatically pass through to its customers increases or decreases in the cost of fuel without filing formal rate changes each time the cost fluctuates. The decision to adopt a fuel adjustment clause is made by the utility in the first instance, but all fuel adjustment clauses filed with the Commission must, absent Commission waiver, **[**5]** adhere to the requirements of section 35.14 of the Commission's regulations. *18 C.F.R. § 35.14 (1988)*.

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2 40 at p. 61,333.

3 ***52 Fed. Reg. 39,985 (1987).***

4 On November 6, 1987, staff filed a motion to institute an investigation of the fuel procurement practices of the owners of the coal-fired Jeffrey Energy Center (Jeffrey) -- which is partially owned by Missouri. On December 14, 1987, Missouri filed an answer in opposition to staff's request for an investigation. On January 7, 1988, staff withdrew its request for an investigation.

5 On April 8, 1988, staff filed a motion requesting permission to supplement its reply memorandum. On April 25, 1988, Missouri filed an answer in opposition to the motion. On April 29, 1988, staff filed a motion to strike a portion of Missouri's April 25, 1988 filing. On May 16, 1988, Missouri filed an answer in opposition to the staff's April 29, 1988 motion to strike.

6 The owners of Jeffrey, and their respective ownership interests, are: Kansas Power and Light Company (KP&L)(64%), Kansas Gas & Electric Company (20%), Centel Telephone & Utilities Corporation (8%), and Missouri (8%). KP&L is responsible for Jeffrey's operation. Missouri and the other co-owners pay KP&L their respective shares of the costs incurred by KP&L on their behalf.

7 KP&L could reduce the Base Quantity by a certain small percentage but only upon prior written notice.

The Commission's fuel adjustment clause regulation restricts recovery of fuel costs to the cost of "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." 18 C.F.R. § 35.14(a)(2)(i) (1988). The regulation further provides that "[t]he cost of fossil fuel shall include no items other than those listed in ***Account 151*** of the Commission's Uniform System of Accounts." 18 C.F.R. § 35.14(a)(6) (1988). [8] Missouri concluded that deficient tonnage payments were properly recorded in ***Account 151***(1) as part of the "invoice price of fuel" or in ***Account 151***(3) as "other expenses directly assignable to cost of fuel. " [9] 18 C.F.R. Part 101, ***Account 151*** (1988). The company, relying upon these provisions, recorded the deficient tonnage payments in ***Account 151*** and recovered the deficient tonnage payments through its fuel adjustment clause. [10]

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The Commission's accounting staff determined, however, that the expenses for deficient tonnage payments should not have been recorded in ***Account 151*** and recovered through the fuel adjustment clause. [11] The staff found that Missouri should have recorded those payments either in Account 501, Fuel, if the costs were prudently incurred, or in Account 426.5, Other (Below the Line) Deductions, if they were not prudently incurred. The staff recommended that Missouri revise its accounting procedures to insure that future deficient tonnage payments be properly accounted for and that Missouri refund to its wholesale customers, with interest, the portion of the deficient tonnage payments recovered through its wholesale fuel adjustment clause.

III. Positions of the Participants

A. Missouri

Missouri argues that deficient tonnage payments are properly recorded in ***Account 151***, and are recoverable through the fuel adjustment clause.

In support of its position that the deficient tonnage payments are properly charged to ***Account 151***, Missouri cites *Kansas Municipal and Cooperative Electric Systems, 16 FERC P61,227 (1981).* **[**7]** There, the Commission held that land reclamation expenses incurred by a coal supplier which a utility reimbursed well after the coal had been supplied constituted a cost directly assignable to the cost of fuel. Missouri interprets *Kansas* as establishing that:

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[8] General Instruction 2E provides that only those amounts which are just and reasonable may be properly included in ***Account 151***. 18 C.F.R. Part 101, General Instruction 2E (1988); *accord, Public Service Co. of New Hampshire, 6 FERC P61,299, at p. 61,710, reh'g denied, 9 FERC P61,202 (1979).*

[9] ***Account 151*** provides:

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

[10] Between 1982 and 1984, Missouri recorded its share of the deficient tonnage payments in ***Account 151***, Fuel Stock. From June 1982 through December 1984, Missouri made thirty-one payments, totaling $ 1,189,160, to KP&L. Missouri also established an additional estimated liability for other payments in the amount of $ 764,700, by a charge to ***Account 151*** and a credit to Account 232, Accounts Payable. In December 1984, Missouri expensed $ 1,462,660 of the amounts previously recorded in ***Account 151*** by a charge to Account 501, Fuel. In March 1985, Missouri decreased its previously recorded estimate of deficient tonnage payments by $ 4,986 and charged the remaining $ 486,214 that were recorded in ***Account 151*** to Account 501. Missouri initially excluded the expensed amount from the computation of fuel cost in the December 1984 fuel adjustment clause billings to wholesale customers. In March 1985, however, Missouri included both the $ 1,462,660 expensed in December 1984 and the March 1985 charge of $ 486,214 in the fuel adjustment clause for its wholesale customers.

Missouri used the deficient tonnage payment amounts to offset a fuel transportation rate refund that it credited to the wholesale fuel adjustment clause in that month. The inclusion of the deficient tonnage payments in the wholesale fuel adjustment clause calculations resulted in increased fuel adjustment billings to wholesale customers by approximately $ 96,000.

[11] 40 at pp. 61,335-36.

(1) costs other than original invoice prices submitted for coal on hand may, nevertheless, be properly recorded in ***Account 151*** where the costs are "directly assignable" to the cost of fuel; and (2) in determining whether a cost is directly assignable to the cost of fuel on hand, it is significant that (a) the cost at issue is incurred by a coal supplier; (b) the cost is billed and collected by a coal supplier; and (c) the cost could have been added to the original price of coal. Missouri argues that the deficient tonnage payments in this instance are calculated and billed under a coal supply contract and, thus, qualify either as part of the "invoice price of fuel" or as a cost directly "assignable to [the] cost of fuel" under the Uniform System of Accounts. 18 C.F.R. Part 101, ***Account 151***(1), (3) (1988).

Missouri attempts to distinguish deficient tonnage payments from take-or-pay liabilities or buy-out costs. Missouri **[**8]** characterizes deficient tonnage payments as a means of compensating AMAX for its fixed costs associated with the coal actually provided under the contract when the tons of coal taken by Missouri are fewer than those originally agreed upon by the parties. It argues that, in this way, deficient tonnage payments are more analogous to fixed cost minimum commodity bill payments which a gas pipeline company may recover through its purchased-gas adjustment clause.

In the event the Commission finds that deficient tonnage payments are not properly recorded in ***Account 151***, Missouri maintains that the Commission should, nonetheless, approve Missouri's treatment of the deficient tonnage payments. In support of its position, Missouri argues that in order to insure uniformity in accounting practices among utilities, Missouri should be accorded the same treatment that KP&L, **[*61077]** the lead owner of Jeffrey, was accorded when accounting for its share of the deficient tonnage payments made to AMAX. Missouri maintains that a past audit of KP&L authorized KP&L's similar treatment of deficient tonnage payments and that a settlement accepted in Docket No. ER83-418 allowed KP&L to recover **[**9]** its share of the deficient tonnage payments through the fuel adjustment clause. Missouri argues that it is inequitable to deny Missouri recovery of the payments at issue when KP&L has been allowed to recover its share of the very same charges. Missouri also argues that it would have been acting in violation of the Federal Power Act, which requires this Commission to insure the uniformity of accounting and ratemaking treatment of similarly situated utilities, if it had failed to record the deficient tonnage payments in ***Account 151***.

Finally, Missouri argues that it is difficult to estimate deficient tonnage payments, which would be necessary in order for a utility to recover this expense in base rates, and that trial staff's suggestion that Missouri should have sought a waiver prior to recovering the deficient tonnage payments through the fuel adjustment clause is a backhand concession that fuel adjustment clause treatment is appropriate in this instance.

B. *Commission Trial Staff*

Trial staff argues that deficient tonnage payments are not properly recorded in ***Account 151*** and are not recoverable through the fuel adjustment clause.

The staff argues that deficient tonnage **[**10]** payments, rather than being related to "fuel stock" on hand, reflect a failure to take fuel. The staff further argues that deficient tonnage payments do not qualify as "other expenses directly assignable to [the] cost of fuel" because the actual amounts used in computing the deficient tonnage payments are not based on the cost of AMAX's coal production and are not added to, or collected, as a unit cost of coal.

The staff also takes issue with Missouri's reliance on the fact that deficient tonnage payments are made to a fuel supplier under a fuel contract. The staff notes that not all costs arising out of a fuel contract are properly recordable in ***Account 151***. The staff also argues that deficient tonnage payments are based upon estimated costs and anticipated profits, making them inappropriate for fuel clause recovery since charges properly recovered through the fuel adjustment clause must accurately reflect actual costs.

The staff maintains that the Commission has indicated in the past that its fuel adjustment clause regulation must be strictly construed. The staff argues that retroactive approval of Missouri's recovery of deficient tonnage payments through the fuel adjustment **[**11]** clause would be improper and that refunds of the improperly collected amounts are necessary to insure compliance with the Commission's ***fuel clause regulation***.

The staff states that Missouri's assertion that similar accounting treatment of deficient tonnage payments has been approved in prior proceedings is not supportable. The staff argues that the Commission has never addressed the proper accounting for the deficient tonnage payments related to the AMAX contract and that the trial staff has never agreed to KP&L's treatment of deficient tonnage payments in any settlement. Finally, the staff argues that, contrary to Missouri's claims, deficient tonnage payments are not similar to fixed cost minimum commodity bill payments. **[*61078]**

IV. Discussion

We will deny the staff's April 8, 1988 motion requesting permission to supplement their reply memorandum; we do not believe that the supplement presents any new facts or arguments that would allow the Commission to gain a better understanding of the issues. Consequently, the staff's subsequent April 29, 1988 motion will be dismissed as moot.

The fuel adjustment clause is intended to keep utilities whole with respect to changes **[**12]** in the cost of their fuel. It allows utilities to pass through to their ratepayers increases or decreases in the cost of their fuel, without having to make separate rate filings to reflect each change in fuel cost, and without having to obtain Commission review of each change in fuel cost. [12] The Commission's ***fuel clause regulation*** permits utilities to flow through those fossil fuel costs which reflect the cost of fuel consumed and which include no items other than those listed in ***Account 151***. For the following reasons, we find that the deficient tonnage payments at issue here are a component of the cost of fuel consumed and are among those costs listed in ***Account 151***, making them appropriate for fuel adjustment clause recovery. [13] We also find, however, that deficient tonnage payments are not properly recorded in ***Account 151*** for accounting purposes.

[13]**

Utility fuel procurement decisions are not made in isolation. A reasonable utility will schedule fuel deliveries from each of its vendors in the combination that will yield an adequate supply at the lowest cost, taking into account the different features of each contract. A decision not to schedule fuel from a particular vendor and so incur a deficient tonnage payment is a decision made on the basis of the overall energy requirements of the utility as well as the cost of the fuel. This is true whether the decision to incur deficient tonnage payments arises for economic reasons (because less expensive fuel is available from other vendors) , or for reliability reasons (because the

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[12] *Fuel Adjustment Clauses in* *Wholesale Rate Schedules, 52 FPC 1304, 1305-06 (1974);* *see also* Public Service Co. of New Hampshire v. FERC, 600 F.2d 944, 947, 952 (D.C. Cir.), *cert. denied,* ***444 U.S. 990 (1979).***

[13] We find Missouri's attempt to distinguish deficient tonnage payments from minimum take payments unpersuasive. Deficient tonnage payments, like minimum take payments, are payments made to a coal supplier under the contract with that supplier when the utility fails to take the coal it would otherwise be required by the contract to take.

As we have explained in *Northern States Power Company, 47 FERC P61,012 (1989),* such costs are to be distinguished from buy-out and buy-down costs. The latter must meet the ongoing benefits test established in *Kentucky Utilities Company et al., 45 FERC P61,409 (1988),* in order to qualify for fuel adjustment clause recovery. In this instance, however, as we have just noted, the deficient tonnage payments at issue here are neither buy-out nor buy-down costs but rather are the same as minimum take payments. With respect to the other changes in the AMAX contract, which we described *supra,* including the change in the price per ton for the coal, such changes are not at issue in this proceeding. Therefore, we make no determination whether any such changes, including the change in the price per ton for the coal, may constitute buy-down costs.

As we also explained in *Northern States,* such costs are likewise to be distinguished from payments for fuel ultimately made up. The latter are initially recorded in Account 165 and are then transferred to ***Account 151*** at the time the fuel is taken. Subsequently, they are transferred to Account 501 and recovered through the fuel adjustment clause at the time the fuel is burned.

utility's long-term contracts -- negotiated to ensure that fuel would be available when needed -- currently provide for deliveries in excess of the utility's needs). In Missouri's case, the deficient tonnage payment was incurred because the coal was in excess of its needs.

The first of the two criteria for fuel clause recovery is that the fuel costs reflect the cost of fuel consumed. Because of the nature of a utility's ongoing fuel procurement under its existing contracts, and the fact that deficient **[**14]** tonnage payments are made by **[*61079]** the utility under the terms of its existing contracts in order to obtain fuel, we conclude that such costs are part of the utility's cost of fuel consumed even though they are not billed per unit of fuel delivered. Thus, the first of the two criteria for fuel clause recovery is met.

The second of the two criteria for fuel clause recovery is that the fuel costs be among those listed in ***Account 151***. Because deficient tonnage payments made by a utility under its existing contracts are billed by the supplier under the contract as amounts due the supplier pursuant to the contract, we also find that deficient tonnage payments are part of the "[i]nvoice price of fuel" listed in ***Account 151***. Thus, the second of the two criteria for fuel clause recovery is met.

Because we find deficient tonnage payments to be costs of fossil fuel consumed in a utility's own plants and among those items listed in ***Account 151***, Missouri's recovery of deficient tonnage payments through its fuel adjustment clause was proper. [14]

[15]**

While we find that deficient tonnage payments are among the cost items listed in ***Account 151***, and are therefore appropriately included for fuel adjustment clause purposes, we do not find that such payments are properly recorded in ***Account 151*** for accounting purposes. [15] ***Account 151***, Fuel Stock, is an inventory account that is used to accumulate the cost of fuel that is physically on hand. Account 501, Fuel, on the other hand, is used to record the cost of fuel as it is taken out of inventory and burned, as well as other fuel costs that are directly chargeable to expense during the given accounting period. Deficient tonnage payments, as described above, are part of the cost of fuel consumed and should be recorded, not as ***Account 151*** costs, but rather as Account 501 costs. The rate and accounting treatment we specify here for deficient tonnage payments is thus consistent with the rate and accounting treatment we allow for natural gas costs. Like deficient tonnage payments, the invoice price of natural gas is a cost item listed in ***Account 151*** and is, therefore, eligible for fuel adjustment clause recovery although it is not recorded in ***Account 151*** for accounting purposes since **[**16]** the gas is burned as soon as it is delivered and is not placed in inventory. Accordingly, we will direct Missouri to revise its accounting for deficient tonnage payments to reflect the Commission's determination here. [16]

[17]**

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[14] Our determination that deficient tonnage payments are properly recovered through the fuel adjustment clause should not be construed as a determination that the company has behaved or will behave prudently in making any particular deficient tonnage payment. We expressly reserve our right to determine whether the company has acted prudently or not.

[15] The criterion for fuel adjustment clause recovery is that fuel cost can include no items other than those items *listed* in ***Account 151***. It does not require that such costs be *recorded* in ***Account 151*** for accounting purposes. That is, while for accounting purposes the amounts recorded in ***Account 151*** will reflect the cost of fuel physically on hand, for fuel adjustment clause purposes the list of items in ***Account 151*** merely defines those categories of costs appropriately recovered through the fuel clause. Consequently, as with natural gas costs, and as we find here with respect to deficient tonnage payments, a cost can be recovered through the fuel adjustment clause without having to be recorded in ***Account 151*** for accounting purposes.

[16] Not only must the deficient tonnage payments be recorded in the proper accounts, they also must be charged to ratepayers in the proper period. Here, however, Missouri charged the deficient tonnage payments to ratepayers in a later period and so ratepayers benefitted from lower rates during the period in which they would have been charged these payments. It does not, however, appear that ratepayers have suffered any detriment from Missouri's delay in charging the deficient tonnage payments, and consequently we see no need to proceed further here as to the timing of the charge to ratepayers. We will insist though that future deficient tonnage payments be charged to expense in the period incurred.

The Commission orders:

(A) Trial staff's April 8, 1988 motion is denied and its April 29, 1988 motion is dismissed as moot. **[*61080]**

(B) Missouri's recovery of deficient tonnage payments through its fuel adjustment clause was proper as described in the body of this order.

(C) Missouri's accounting for deficient tonnage payments by recording them in ***Account 151*** was improper, and should be revised to reflect the Commission's determination here.

Commissioner Stalon *concurring* with a separate statement to be issued later.

Commissioner Trabandt *concurring* with a separate statement attached.

Concur By: TRABANDT

Concur:

Charles A. TRABANDT, Commissioner, concurring:

In these companion cases [Northern States Power Company (Wisconsin), Docket No. EL88-39-000 and Northern States Power Company (Minnesota), Docket No. EL88-9-000], we further expand the opportunities utilities enjoy to charge their customers for expenses without the Commission having reviewed those costs beforehand. The utilities in both the *Northern States Power Company* (*Northern States*) cases and *Missouri Public Service Company* (*Missouri*) case paid for a guaranteed minimum supply of **[**18]** coal, even though they bought less than that. More to the point, the companies added these amounts to their rates without obtaining specific approval from the Commission. Today the Commission holds that they acted properly.

We will now allow electric utilities to recoup minimum coal payments through their fuel adjustment clauses unconditionally and as a matter of course. Companies will simply include these costs in the line marked "fuel" on the bills they send out every month. I join in the disposition of these cases. However, I concur with a separate opinion because as today's actions have the distinct potential of taking us one more step along a road of avoiding full Federal Power Act review of rates, I believe I should set forth the standards by which I conclude that I can go along with the orders.

1. *Where I Would Draw The Line*

My other concurring colleague, Commissioner Stalon, correctly pointed out at the Commission meeting that the question we face here concerns not whether Northern States and Missouri may recover minimum coal payments from their customers, rather, how they recover those sums. Normally, a rate case would constitute the proper vehicle, just **[**19]** as we require for other costs, even those that do not form a predictable pattern. For example, in a case we decided the same day as these, we did not permit companies automatically to recover litigation expenses (even when customers derive a benefit from the law suit), *see, e.g., Indianapolis Power and Light Company, 48 FERC P61,040 (1989).*

Costs related to fuel purchases, however, bring with them an additional consideration, but one that should lead us to tread with caution. By that I mean we must consider the Commission's fuel adjustment clause regulations, which allow "automatic [rate] recovery [of the price utilities pay for fuel] , subject to later, but not automatic scrutiny." *Kentucky Utilities Company et al.,* (*Kentucky Utilities) 45 FERC P61,409, at p. 61,294 (1988)* (Trabandt, Commissioner, concurring).

However, as I stated in *Kentucky Utilities, id.,* we should not lightly allow utilities to invoke these regulations because:

Regulatory commissions established fuel adjustment . . . clauses only because the costs involved a large amount of money and represented a major portion of **[*61081]** utilities' rates. In addition, **[**20]** the commissions determined that proceeding through the usual rate case mechanism presented difficulties.

I also noted, *id.,* citing n. 16 of the order, that "fuel clauses should recover actual costs of fuel 'on hand,' not payments to forego future purchases." As the orders in the cases before us more accurately describe it, the utility must tie the costs to "fuel consumed. " *Northern States,* slip op. at 8; *Missouri,* slip op. at 9.

The majority finds that as the minimum payments represent costs "to obtain fuel, " the utilities have satisfied the "fuel consumed" requirement. *Northern States,* slip op. at 8; *Missouri,* slip op. at 9. I think not. To me, the cases we deal with here involve "payments to forego future purchases." In *Northern States,* the utility suffered the minimum payment to its coal supplier in order to purchase cheaper fuel elsewhere. *Missouri* concerns a situation in which "the [minimum] payment were [sic] incurred because coal was in excess of [the utility's] needs." Slip op. at 9. The utilities made the payments not to obtain coal, rather to avoid having to buy.

The Staff argued the analogy to a "cost of service" arrangement **[**21]** for which we have permitted fuel cost recovery. Under that kind of a scheme, the supplier apportions a flat amount representing total fuel payment to the units the utility buys. If the utility buys less, the bill per unit rises; the unit rate falls if the utility does more business with the particular supplier. According to that view, the only difference between the permissible arrangement and the minimum payments here lies in the fact that the Northern States and Missouri suppliers did not bill on a per unit basis.

I think this "only" difference makes a big difference. If the coal vendor can tie the amount it wishes to collect to a unit price of coal, then the transaction has satisfied the "fuel consumed" requirement. The utility paid a rate for the fuel it burned, however the seller determined that rate. Here we have no per unit billing for the minimum payments. I realize this represents a close call but I would draw the line there.

That does not mean, however, that I would disallow the minimum payments in both cases. In *Kentucky Utilities* we examined not only the particular contract under which the utility made the buy-out or buy-down payments (to cancel the agreement **[**22]** in whole or in part) but on the total fuel picture. We viewed the payments to get out of buying the coal as part of the cost of the substitute fuel the utility actually bought. Therefore, we allowed the companies to recover under a waiver of the fuel clause regulations, if they could show that the customers of the electricity saved money overall.

That result I would apply in *Northern States.* If Northern States can show that its fuel purchase pattern brought less expensive fuel to its customers I would waive the fuel clause regulations. In *Missouri,* from the standpoint of applying our fuel clause regulations, I would come out on the side of no automatic recovery. However, as I explain in the next section, I vote for fuel clause treatment because of countervailing considerations.

2. *Why I Join Today's Result*

For a number of reasons, I agree with the outcome we reach here, even though I would prefer to place the limit on unconstrained fuel clause recovery a few inches closer. First, as the orders imply, *Northern States,* slip op. at 9; *Missouri,* slip op. at n. 13, the utilities made the minimum payments at issue here under their existing **[*61082]** **[**23]** contracts, or stated differently, in the ordinary course of their dealings with their coal suppliers.

Therefore, unlike under other sets of facts, particularly some I can envision occurring in the gas industry, the situation here represents the normal operation of the coal market. By that I mean that even though the utilities cannot tie the minimum coal payments to a price per ton, the payments represented an accepted practice in the industry. Because of the routine nature of these payments in the context of coal contracts, I can accept fuel clause recovery. This Commission has used the fuel clause mechanism to allow quicker recovery for fuel costs the utilities routinely made. Minimum coal payments fall within that concept.

Moreover, the orders also point out, *Northern States,* slip op. at 9 and n. 16; *Missouri,* slip op. at n. 13, we have limited unconditional fuel clause recovery to a narrow category of cases -- minimum payments under existing contracts, where no makeup period obtains. We exclude buy-out and buy-down costs such as those in *Kentucky Utilities,* and payments under contracts (that abound in the gas industry) allowing the buyer to mitigate minimum **[**24]** payments through extra purchases in later years. Indeed, in *Missouri,* slip op. at n. 16, we strongly insist on the company recovering the payments at the proper time. This confirms my view that these orders deal with routine payments utilities make in the orderly operation of the coal market. Therefore, while I may have, as an original matter, come to a different conclusion, I accept the majority's disposition as reasonable under the facts of these cases.

For these reasons I concur.

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51 F.E.R.C. P61,285; 1990 FERC LEXIS 1272

Federal Energy Regulatory Commission - Commission

June 07, 1990

Docket No. FA87-37-000

Reporter
51 F.E.R.C. P61,285 *; 1990 FERC LEXIS 1272 **

Kansas City Power & Light Company

Core Terms

fuel, coal, staff, terminate, estimate, reclamation, settlement, refund, related costs, municipal, buy-out, closing costs, audit staff, inventory, burn, supplier, unit cost, contractual, retroactive, wholesale, saving, reh'g

Action

[1]** Opinion No. 348; Opinion and Order on Accounting Adjustment

Counsel

Appearances

Mark G. English and Jeanie Sell Latz on behalf of Kansas City Power & Light Company

Michael R. Postar and C. Stephen Angle on behalf of the Trial Staff of the Federal Energy Regulatory Commission

Panel: Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Opinion

[*61894]

[Opinion No. 348 Text]

I. Procedural History

Following the Division of Audits' examination of Kansas City Power & Light Company's (Kansas City Power or the company) books and records for the period of January 1, 1983 through December 31, 1986, the Chief Accountant, by letter order issued January 25, 1989, directed that various adjustments be made so as to comply with the Commission's accounting and related regulations. [1] The letter order noted that Kansas City Power had agreed to take the corrective actions recommended on all matters except its treatment of payments for final reclamation, mine closing and related costs made by Kansas City Power after terminating a coal supply contract with Peabody Coal Company (Peabody). The letter order concluded that Kansas **[**2]** City Power improperly included such

[1] *Kansas City Power and Light Company, 46 FERC P62,207 (1989).*

payments in ***Account 151***, Fuel stock, and incorrectly recovered the amounts through its wholesale fuel adjustment clause billings. [2]

On February 22, 1989, Kansas City Power notified the Commission that it disputed the audit staff's recommendations concerning the payments associated with the coal contract termination. Kansas City Power consented to Commission review of the contested matter pursuant to the shortened briefing procedures set forth in section 41.3 of the Commission's regulations. *18 C.F.R. § 41.3 (1989)*. Notice of the shortened briefing procedure was published in the Federal Register. [3]

On April 20, 1989, Kansas City Power and trial staff filed memoranda of facts and arguments in support of their respective positions. On May 10, 1989, Kansas City Power and trial staff filed reply memoranda. **[*61895]**

II. Background [4]

[3]**

On December 10, 1979, Kansas City Power and Peabody executed a coal supply contract. Under the terms of the contract, titled the Rogers County Mine Coal Supply Agreement (Rogers County Agreement), Peabody supplied coal to Kansas City Power's Hawthorn and Montrose stations from its Rogers County, Oklahoma mine. The Rogers County Agreement extended from 1980 through 1996. The contract provided for coal to be supplied at the rate of 1,250,000 tons annually from 1980 through 1989 and at 1,100,000 tons annually thereafter until termination of the contract on December 31, 1996.

The Rogers County Agreement was a cost-plus contract which required Kansas City Power to pay mine production costs as Peabody incurred them. In the event that Kansas City Power terminated the contract and Peabody closed the mine, Kansas City Power was contractually obligated to pay final mine closing costs. [5] Article 7 of the contract permitted Peabody to include final reclamation, mine closing and related costs in the invoice price of coal as reserves for mine closing costs, although Kansas City Power bore no contractual obligation to pay those costs until Peabody actually incurred them. [6] The contract **[**4]** provided that in determining Kansas City Power's portion of final mine closing costs, Kansas City Power would receive a credit for certain land values against the other final termination costs. The amount Kansas City Power would pay for final mine closing costs was not capped under the Rogers County Agreement.

Further, the Rogers County Agreement gave Kansas City Power the right to terminate the agreement before December 31, 1996 if the price for Rogers County coal exceeded **[**5]** the delivered price for the same amount of coal from another source. Due to the rapid rise in costs under the Rogers County Agreement, Kansas City Power authorized a study to review the coal market and to determine whether conditions warranted termination of the Rogers County Agreement. The study found sufficient evidence to justify termination, and on July 2, 1984, Kansas

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[2] Id. at p. 63,313.

[3] ***54 Fed. Reg. 12,675 (1989).***

[4] Neither Kansas City Power nor trial staff dispute the underlying facts recited here. They derive from Kansas City Power's Memorandum of Facts Relied On at 2-8, and from trial staff's Initial Memorandum of Facts and Arguments at 1-6.

[5] Article 10 of the Rogers County Agreement provides as follows:

Mine Closing. Upon termination of this Agreement, if Seller elects in writing, delivered to Buyer within four (4) months thereafter, to close the Rogers County Mine and thereafter Seller does so, then Buyer shall pay to Seller an amount. . . [for mine closing costs calculated as defined in

Articles 10.01(a) and (b)].

[6] Article 7 of the Rogers County Agreement provides, in relevant part, that:

. . . Buyer shall in no event be required to pay . . . reserves for mine closing costs . . . in excess of actual cost, except as approved by Buyer, even if included in Seller's Total Mine Costs as reflected on Seller's Mine Operating Statements.

City Power petitioned the state court for a declaration of its right to terminate the Rogers County Agreement. Without awaiting the court's ruling, Kansas City Power exercised its right to terminate on August 31, 1984, effective as of December 31, 1984. [7]

Peabody contested Kansas City Power's exercise of its right to terminate the Rogers County Agreement. In an effort to resolve the **[**6]** outstanding issues between them, the parties engaged in comprehensive negotiations. On February 14, 1985, Kansas City Power and Peabody signed a settlement agreement which recognized Kansas City Power's termination of the Rogers County Agreement and set a $9.6 million maximum **[*61896]** limit on Kansas City Power's contractual obligation to pay for final reclamation, mine closing and related costs. Also, Kansas City Power agreed to dismiss its lawsuit and to relieve Peabody of the requirement under Article 10 of the Rogers County Agreement that it close the Rogers County Mine before being entitled to mine closing costs. By April 1989, Kansas City Power paid $9.2 million under the terms of the negotiated settlement.

As Peabody incurred costs covered by the settlement agreement, it billed them to Kansas City Power. Kansas City Power paid the invoices, recorded the amounts in ***Account 151***, Fuel stock, [8] and allocated those costs between the current coal inventories at its Hawthorn and Montrose stations, which had burned the Rogers County coal. As coal was burned at the stations, Kansas City Power charged the final reclamation, mine closing and related costs paid to Peabody **[**7]** under the settlement to Account 501, Fuel expense, and collected those amounts through its fuel clause.

Audit staff determined that both Kansas City Power's accounting treatment and means of recovering costs paid under the settlement were inappropriate. [9] According to audit staff, the term "Invoice price of fuel, " as used in the instructions to ***Account 151***, refers to charges related to "fuel delivered and on hand." Audit staff determined that the costs **[**8]** paid by Kansas City Power to terminate the coal contract did not relate to fuel delivered and on hand. In addition, audit staff determined that, contrary to the accrual method of accounting, Kansas City Power did not properly reflect the settlement liability on its books when the liability became known and could reasonably be estimated. [10] Audit staff determined that the costs "were known and capable of a reasonable estimation" not later than February 14, 1985, the date Kansas City Power and Peabody signed the settlement agreement. Accordingly, audit staff recommended that Kansas City Power revise its accounting practices and records to charge the settlement costs to the appropriate expense account or to Account 186, Miscellaneous deferred debits, [11] if rate recovery is probable, and to use the accrual method of accounting. Further, audit staff recommended that Kansas City Power exclude the settlement costs when calculating its wholesale fuel clause bills and refund, with interest, all amounts collected through the fuel clause. [12]

[9]**

III. Positions of the Parties

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[7] Kansas City Power substituted lower-cost, low-sulfur Wyoming coal for the terminated Rogers County coal. Kansas City Power estimates the present value (as of 1989) of the coal and transportation savings it will achieve from 1985 through 1996 (when the Rogers County Agreement was originally scheduled to terminate) at $139.4 million. Kansas City Power states that its actual savings from 1985 through 1988 were $46 million.

[8] ***Account 151*** provides:

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

[9] 46 at p. 63,314.

[10] Under the accrual method, utilities must record "all known transactions of appreciable amounts." 18 C.F.R. Part 101, General Instruction No. 11. A (1989). If bills have not been rendered, then the utility must estimate the liability.

[11] 18 C.F.R. Part 101, Account 186 (1989). Account 186 is an account in which miscellaneous charges that are not specifically provided for in other accounts are classified, including amounts for which the final accounting is uncertain.

[12] 46 at p. 63,314.

A. Kansas City Power

Kansas City Power argues that it properly recorded the costs at issue in ***Account 151*** and properly recovered them through the fuel adjustment clause. Kansas City **[*61897]** Power claims that its accounting is correct because: (1) the Rogers County Agreement required Kansas City Power to pay the final reclamation, mine closing and related costs as part of the price of coal; (2) the costs were actual and not accrued; (3) federal law required Peabody to incur the costs; and (4) the costs directly related to the total cost of coal currently being burned at the Hawthorn and Montrose stations. For these reasons, Kansas City Power asserts that the costs constitute "other expenses directly assignable to the cost of fuel, " as ***Account 151*** requires.

In support of its position, Kansas City Power cites *Kansas Municipal & Cooperative Electric Systems (Kansas Municipal), 16 FERC P61,227,* **[**10]** reh denied, *17 FERC P61,141 (1981).* There, the Commission held that a coal supplier's land reclamation expenses constituted a cost directly assignable to the cost of coal. [13]

Kansas City Power interprets Kansas Municipal to mean that a utility may recover through its fuel clause reclamation costs included in the price of coal, whether or not the reclamation costs directly related to the coal being delivered. Kansas City Power asserts that although Kansas Municipal holds that ". . . insofar as the coal supplier actually collects such charge **[**11]** as a component of the unit cost of fuel, the reclamation costs, in turn, . . . qualify [for fuel clause inclusion]," Kansas Municipal does not state or imply that actual reclamation costs, incurred and billed after the coal is delivered, cannot be recorded in ***Account 151***.

In addition, Kansas City Power disputes audit staff's suggestion that the costs charged under the settlement agreement did not relate to the quantity of fuel delivered and on hand, and instead represent unpaid liabilities assignable to coal delivered in prior periods, a lump sum financial settlement of indistinct contractual disputes, or both. Kansas City Power asserts that the Rogers County Agreement would have required it to pay such amounts whether it terminated the agreement or not, and all that the settlement achieved was to cap, based on reasonable projections, Kansas City Power's preexisting obligation to pay those same costs.

Next, Kansas City Power challenges trial staff's underlying argument that the company could not properly book the costs at issue to ***Account 151*** without assigning the costs to current deliveries of coal. Kansas City Power claims it had a continuing contractual obligation to compensate **[**12]** Peabody for the costs and that the costs are, without question, directly assignable to the cost of fuel Kansas City Power obtained under the contract.

Further, Kansas City Power argues that the costs did not represent additional amounts paid to escape future liability under the Rogers County Agreement. Accordingly, Kansas City Power claims that the costs at issue should not be considered buy-out costs, and that the Commission's decision in *Kentucky Utilities Company et al. (Kentucky Utilities), 45 FERC P61,409 (1988),* should not govern this case. Alternatively, Kansas City Power argues that if the Commission deems the costs at issue to be buy-out costs governed by Kentucky Utilities, then the Commission should grant Kansas City Power a retroactive waiver of the Commission's ***fuel clause regulation*** to condone past fuel clause recoveries of these items, since, according to the company, the **[*61898]** savings it claims to have achieved by terminating and replacing the Rogers County Agreement satisfy Kentucky Utilities' ongoing benefits test.

Also, Kansas City Power challenges trial staff's position that it must use the accrual method to record the costs at issue. **[**13]** Kansas City Power claims that substantial errors result from estimating these types of costs. Finally, Kansas City Power argues that even if the Commission decides that the costs at issue cannot be recovered through the fuel clause, the Commission should not order refunds, given the savings Kansas City Power's customers allegedly realized from the coal contract's termination.

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[13] 16 at p. 61,488. We note that the Commission also held that, to be eligible for fuel clause treatment, the coal supplier must collect such costs as a component of the unit cost of fuel. In addition, the Commission held that where such costs are estimated, rather than actual, the utility must file the estimated charges with the Commission, supported by appropriate cost data, together with a provision to adjust for differences between estimated and actual costs, before the Commission will consider waiving its ***fuel clause regulation*** to permit the utility to collect such estimated costs through its fuel clause.

B. Commission Trial Staff

Trial staff argues that the costs at issue are not properly recorded in ***Account 151***, and cannot be collected through the fuel adjustment clause.

Trial staff asserts that Kansas City Power should have sought Commission approval of its recovery methodology before implementing it. *Central Illinois Public Service Company, Opinion No. 309, 44 FERC P61,191, at p. 61,689, n. 15 (1988),* modified on other grounds, *Opinion No. 309-A, 47 FERC P61,043,* reh'g denied, *Opinion No. 309-B, 48 FERC P61,008 (1989),* appeal pending, Nos. 89-1810 et al. (7th Cir. Aug. 1, 1989). Indeed, trial staff contends that Kansas City Power knew it should have sought prior approval, since it sought and received authorization from the Kansas Corporation Commission to recover **[**14]** these costs through the Kansas energy adjustment clause, and the Missouri Public Service Commission authorized it to defer the costs in Account 186 and amortize the amounts to ***Account 151***.

In addition, trial staff challenges Kansas City Power's reliance on Kansas Municipal. Trial staff argues that Kansas City Power was not billed, did not pay and did not accrue the costs at issue as a component of the unit cost of fuel. Thus, trial staff claims that Kansas Municipal provides no authority to record these costs in ***Account 151***.

Further, trial staff argues that if Kansas City Power had properly accrued the costs at issue, the company could have recorded them in ***Account 151*** and recovered them through the fuel clause. However, trial staff points out that although Kansas City Power received no coal under the Rogers County Agreement after December 31, 1984, it did not record the costs in ***Account 151*** until after the February 14, 1985 settlement date. Trial staff asserts that Kansas City Power should have estimated and recorded the costs when the coal was delivered. Since Kansas City Power did not do so, trial staff construes the costs as relating to previous deliveries of coal that **[**15]** already had been removed from inventory, rather than as costs directly assignable to the cost of fuel on hand. Accordingly, trial staff concludes that Kansas City Power should not have included the costs in ***Account 151*** or passed them through its fuel clause.

Finally, trial staff challenges the retroactive fuel clause waiver which Kansas City Power alternatively seeks, should the Commission, contrary to Kansas City Power's own position, deem the costs to be buy-out costs. According to trial staff, the Commission's audit report did not examine the impact of Kansas City Power's decision to switch coal suppliers, and the net ffect of that decision can only be determined in a comprehensive rate proceeding, which this is not. Accordingly, trial staff argues that no determination can be made that the amounts at issue are buy-out costs which provided Kansas City Power's ratepayers an ongoing benefit. Therefore, according to trial staff, no basis exists to grant Kansas City Power's requested waiver or to excuse the company's refund obligation. **[*61899]**

IV. Discussion

At issue here is whether Kansas City Power properly included the Rogers County coal reclamation, mine closing **[**16]** and related costs in ***Account 151*** and collected them through its fuel clause.

The purpose of a fuel adjustment clause is to keep utilities whole with regard to changes in the cost of fuel. [14] It allows utilities to pass through to their ratepayers increases or decreases in the cost of fuel without having to make separate rate filings which reflect each change in fuel cost, and without having to obtain prior Commission review of each change in fuel cost. [15] To recover fuel costs through the fuel clause, the Commission's ***fuel clause regulation*** requires that the fuel costs:

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[14] *Missouri Public Service Company, Opinion No. 327, 48 FERC P61,011 (1989).*

[15] Fuel Adjustment Clauses in *Wholesale Rate Schedules, 52 FPC 1304, 1305-06 (1974);* see also *Public Service Company of New Hampshire v. FERC, 600 F.2d 944, 952* (D.C. Cir.), cert. denied, ***444 U.S. 990 (1979).***

(1) reflect the cost of fuel consumed; and (2) include no items other than those listed in ***Account 151***, unless the Commission grants a waiver of its regulation. *18 C.F.R. § 35.14 (1989)*. For the following reasons, we find that Kansas City Power improperly included the costs at issue in ***Account 151***, and incorrectly recovered them through the fuel clause.

[17]**

To determine the proper accounting and rate recovery for the costs at issue here, we rely on Kansas Municipal. There, the Commission held that a coal supplier's land reclamation expenses were directly assignable to the cost of coal, and were eligible for fuel clause treatment if collected by the coal supplier as a component of the unit cost of fuel. [16] In addition, the Commission held that where such costs are estimated, the utility must file the estimated charges with the Commission, supported by appropriate cost data, together with a provision to adjust for differences between estimated and actual costs, before the Commission will permit the utility to collect such estimated costs through its fuel clause. 16 at p. 61,488.

In this case, Kansas City Power improperly included the costs in ***Account 151*** when paid because the costs were not a component of the fuel in inventory, but were, instead, associated with fuel burned in a prior period, i.e., long before Kansas City Power recorded **[**18]** the costs. ***Account 151*** requires that costs booked represent the "cost of fuel on hand." 18 C.F.R. Part 101, ***Account 151*** (1989). The final reclamation, mine closing and related costs at issue here are all costs which may be includable in ***Account 151*** as costs directly assignable to the cost of fuel, but they are properly included in ***Account 151*** and recovered through the fuel clause only when included in the unit cost of fuel, matched with the fuel in inventory (i.e., the cost of fuel on hand), and recorded as coal is delivered. Contrary to these requirements, however, Kansas City Power included the costs in ***Account 151*** long after the fuel to which they related was burned. As a result, Kansas City Power improperly shifted to future ratepayers the fuel costs used to generate electricity in prior periods.

In administering its ***fuel clause regulation***, the Commission is responsible for ensuring that current ratepayers are charged the cost of providing current service, not the cost of providing service in prior periods. For this reason, in *Florida Power Corporation, 11 FERC P61,083, at p. 61,120 (1980),* the Commission determined that fuel costs in the current period do not **[**19]** include estimated future disposal costs for fuel burned in past periods. Likewise, we determine here that Kansas City Power's fuel **[*61900]** costs in the current period cannot properly include actual reclamation and related costs associated with fuel burned in past periods. Kansas City Power should have added estimates of these costs to the purchase price of the associated coal as it was received in inventory. [17] Had Kansas City Power estimated these costs and filed the estimates with the Commission, with appropriate cost support, together with a provision to adjust for differences between estimated and actual costs, before collecting them through its fuel clause, as Kansas Municipal requires, [18] waiver of the ***fuel clause regulation*** would have been appropriate and, if granted, no corrective action would be required here. However, since Kansas City Power did not do so, it did not comply with Kansas Municipal or the Commission's ***fuel clause regulation***, and corrective action is required.

[20]**

In sum, we find that because Kansas City Power recorded these costs in ***Account 151*** when Peabody billed them (after the February 14, 1985 settlement) , rather than when the associated coal was delivered and included in inventory, these costs were not part of the current cost of fuel in inventory, and were not properly flowed through the fuel clause.

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[16] As the Commission noted, such costs are added directly to the cost of purchased fuel and can be added to the original invoice price of coal. 16 at p. 61,489, n. 6.

[17] We interpret our Uniform System of Accounts to require utilities to accrue estimated costs associated with current coal purchases when such costs are not included in the invoice price but are part of the ultimate cost of coal under the contract. See 18 C.F.R. Part 101, General Instruction No. 11. A (1989).

[18] 16 at pp. 61,488, 61,489, n. 6.

For all of these reasons, we will require Kansas City Power to refund, with interest, all final land reclamation, mine closing and related costs improperly recorded in ***Account 151*** and flowed through Kansas City Power's wholesale fuel adjustment clause.

Furthermore, neither party contends that the costs are in fact buy-out costs. [19] Moreover, the record contains no showing of ongoing benefits, as defined in *Kentucky Utilities Company et al., 45 FERC P61,409 (1988),* [20] that must be shown if these costs were to be allowed fuel clause recovery as buy-out costs; there are no data concerning the buy-out amortization period, the treatment of income tax benefits, carrying charges or deferrals, or the means of verifying the benefits, on a timely and periodic basis. Id. at pp. **[**21]** 62,292-93.

Finally, Kansas City Power contends that the savings it claims to have achieved by terminating the Rogers County Agreement (see note 7, supra) should excuse any refund obligation the Commission might attach to the way in which the company accounted for its coal reclamation, mine closing and related costs. However, the Commission's express policy is to deny retroactive waiver and, in particular, to deny retroactive waiver where the purpose of the waiver is to avoid refunds **[**22]** for fuel clause violations. [21] There is no reason not to follow that policy here. Accordingly, we will deny waiver and order refunds.

[*61901]

The Commission orders:

(A) Kansas City Power's request for a retroactive waiver of the ***fuel clause regulation*** is hereby denied.

(B) Within 45 days of the date of this Opinion, Kansas City Power shall refund to its wholesale customers, with interest determined in accordance with *18 C.F.R. § 35.19a (1989)*, the revenues it improperly collected through its fuel adjustment clause. Within **[**23]** 15 days thereafter, the Company shall file a refund report with the Commission detailing the refunds paid. However, if a request for rehearing is pending, the refunds and refund report shall be made 15 and 30 days, respectively, after the Commission disposes of the request for rehearing.

End of Document

[19] Kansas City Power states that the Rogers County Agreement required the company to pay the final reclamation, mine closing and related costs as part of the price of coal. As a result, Kansas City Power claims it would be required to pay those costs whether or not the company terminated the Rogers County Agreement and Peabody closed the mine. Therefore, according to Kansas City Power, the costs cannot be construed as "buy-out costs."

[20] See also *Wisconsin Public Service Corporation, 50 FERC P61,387, at pp. 62,205-06 (1990),* reh'g pending; *Delmarva Power & Light Company, 49 FERC P61,016, at p. 61,060 (1989),* reh'g dismissed, *51 FERC P61,070 (1990).*

[21] *Montaup Electric Company et al., Opinion No. 343, 50 FERC P61,149, at p. 61,446 (1990); Louisiana Power & Light Company, 49 FERC P61,060, at p. 61,240 (1989),* reh'g pending; *Indianapolis Power & Light Company, Opinion No. 328, 48 FERC P61,040, at pp. 61,200-01 (1989); Central Illinois Public Service Company, Opinion No. 309-A, 47 FERC P61,043, at p. 61,125,* reh'g denied, *Opinion No. 309-B, 48 FERC P61,008 (1989),* appeal pending, No. 89-1810 et al. (7th Cir. Aug. 1, 1989); *Minnesota Power & Light Company, 45 FERC P61,369, at p. 62,158 (1988).*