Exhibit No.:	_____
Issue(s):	Fuel Adjustment Clause
Witness/Type of Exhibit:	Mantle/Surrebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2014-0258

SURREBUTTAL TESTIMONY

OF

LENA M. MANTLE

Submitted on Behalf of the Office of the Public Counsel

UNION ELECTRIC
D/B/A
AMEREN MISSOURI

CASE NO. ER-2014-0258

** **

Denotes Highly Confidential Information that has been redacted

February 6, 2015

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service	)))))	Case No. ER-2014-0258

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 Mantle
Senior Analyst

Subscribed and sworn to me this 6th day of February 2015.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

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

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

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SURREBUTTAL TESTIMONY

OF

LENA MANTLE

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI

CASE NO. ER-2014-0258

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Lena M. Mantle and my business address is P.O. Box 2230, Jefferson City, Missouri 65102. I am a Senior Analyst for the Office of the Public Counsel ("OPC").

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. There are two parts to this surrebuttal testimony.

The first part provides OPC's response to the rate design proposal of Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") regarding the provision of electric service to the New Madrid smelter of Noranda Aluminum, Inc. ("Noranda") as outlined in the rebuttal testimony of Matt Michels.

In the second part of my surrebuttal testimony, I provide OPC's response to Ameren Missouri's rebuttal testimony regarding the fuel adjustment clause provided by Jesse Francis, Jaime Haro, and Lynn M. Barnes.

AMEREN MISSOURI'S RATE DESIGN PROPOSAL REGARDING PROVIDING SERVICE TO NORANDA

OPC'S RECOMMENDATION AND SUMMARY OF AMEREN MISSOURI'S PROPOSAL

Q. Would you summarize OPC's recommendation regarding Ameren Missouri's proposal to serve Noranda?

A. OPC recommends the Commission not approve Ameren Missouri's proposal for the following reasons:

1. Cancelation of the Certificate of Convenience and Necessity ("CCN") granted for Ameren Missouri to serve Noranda is detrimental to the public interest;

2. The revenues that Ameren Missouri would receive from Noranda under this proposal would not cover its cost of providing service to Noranda;

3. Ameren Missouri's proposal would result in unnecessarily higher bills for its other customers;

4. Ameren Missouri's customers were not provided notice regarding the effect of this proposal on their rates;

6. There is no assurance that Noranda's New Madrid smelter could continue operation under this proposal;

7. The Fuel Adjustment Clause was not created to operate in the manner contemplated by Ameren Missouri's proposal; and

8. Removing Noranda as a retail customer does not make Noranda a wholesale customer.

Q. Would you summarize Ameren Missouri's proposal regarding the provision of service to Noranda?

A. It is my understanding from the rebuttal testimony of Ameren Missouri witness Matt Michels that Ameren Missouri is proposing what it characterizes as an "alternative pricing proposal" for Noranda. It is Ameren Missouri's proposal that Ameren Missouri and Noranda should end their current contract by mutual agreement, with the intended result

that Noranda no longer be an Ameren Missouri retail customer. Ameren Missouri and Noranda would enter into a five-year agreement for Ameren Missouri to provide service to Noranda – the terms of which Ameren Missouri did not reveal in its testimony, but for which Ameren Missouri would seek a prudence determination up front. Moreover, Ameren Missouri does not contemplate the parties that would be paying for its new agreement with Noranda - Ameren's other ratepayers - participating in the negotiation of the new contract. Importantly, Ameren Missouri stated that the revenues that it would receive in this contract would be less than Ameren Missouri's cost to provide service to Noranda. To effectuate this proposal, Ameren Missouri suggests the CCN to serve Noranda would need to be revoked. Ameren Missouri's proposal is to treat this "Noranda Contract" as it currently treats its wholesale customers.

Q. How does Ameren Missouri's proposal differ from what Noranda is requesting in this case?

A. Noranda is not requesting that its CCN be cancelled, which would mean that the Ameren Missouri's obligation to provide electrical service to Noranda would remain under Noranda's proposal. Noranda requests a certain rate and a certain escalation of that rate over the next seven years. Ameren Missouri does not specify the rate that it would charge Noranda, or how the rate would change over the five years of the contract. Ameren Missouri simply states that it would work out a deal with Noranda for a wholesale rate lower than what Noranda is asking for based upon the market price expected over the life of the contract. Noranda proposes taking retail service, Ameren proposes denominating the new contract as wholesale

CANCELING THE CCN WOULD BE A DETRIMENT TO THE PUBLIC INTEREST

Q. What would be the result of the CCN being cancelled?

A. The immediate impact would be that no electric utility would be required to provide service to the 345 acres of land that encompasses the aluminum smelting facility owned by Noranda in Southeast Missouri. This would result in long-term uncertainty for Noranda regarding provision of electric service to its New Madrid smelter. Cancellation of the Noranda CCN would also mean removing the requirement to provide service for any future owner of this 345 acres in Southeast Missouri.

Q. How is canceling the Noranda CCN is detrimental to Ameren Missouri's ratepayers and the general public?

A. One of the factors in granting the CCN in 2005 was that Noranda would be providing more revenue than the cost to provide service to it. The most important detriment to Ameren Missouri's ratepayers of Ameren Missouri's proposal in this case, Case No. ER-2014-0258, is that the ratepayers' bills would increase, since it is certain under the proposal that the revenues that Ameren Missouri would receive from Noranda would be less than the cost to provide it service.

In addition, a key part of finding the CCN in the public interest was that Noranda would contribute to increases in Ameren Missouri's fixed costs – particularly environmental compliance costs - for fifteen years. Therefore cancelling the CCN and removing Noranda's contribution to pay for increases in Ameren Missouri's fixed cost over

the last five years of the fifteen year contract denies the general public of the benefit of the bargain reached under the *Unanimous Stipulation and Agreement* in the CCN case.

Q. Are there additional detriments to the ratepayers of Ameren Missouri?

A. Yes, there are. There were two conditions that Ameren Missouri required as a part of its request for a CCN to serve Noranda. One was the approval of the acquisition by Ameren Missouri of several combustion turbines in Illinois that were built and owned by Ameren Energy Generating Company ("AEG"), an affiliate of Ameren Missouri after the Illinois electric industry was restructured. Ameren Missouri asserted the combustion turbines were needed to retain sufficient capacity to maintain reliability if it added Noranda to Ameren Missouri's system. Ameren Missouri customers currently are paying for those combustion turbines and would continue to pay for these turbines under Ameren Missouri's proposal. Off-system capacity sales could not be made by Ameren Missouri to recover the costs of these turbines because Ameren Missouri would still be providing service to Noranda under its proposal and the capacity would be required for this service. Under Ameren Missouri's proposal, customers will pay for turbines which were added to facilitate Noranda's entry into service under Ameren Missouri, and also will pay a subsidy in order to permit Ameren Missouri to provide that service to Noranda at below cost. Continuing to pay for this capacity without a contribution to this fixed cost, among other, from Noranda would be a particular detriment to the ratepayers of Ameren Missouri.

Also included as a condition of the CCN was the transfer of Ameren Missouri's Illinois retail operations (known as Metro East) to AmerenCIPS, Ameren Missouri's Illinois affiliate. Metro East consisted mainly of industrial customers with a combined

peak demand similar to Noranda's demand. However, the swap of Metro East for Noranda resulted in increased risk to Ameren Missouri. All of the customers in the Metro East territory would have to close to approximate the closure of Noranda. The closure of even one of these industrial customers would have impacted Ameren Missouri to some degree, but it is unlikely that all of the industrial customers would leave the Ameren Missouri system at the same time, having an impact like Noranda leaving Ameren Missouri's system would. The weight of this risk was off-set by the amount of energy that would be required by Noranda. While the demand of the Metro East territory was similar to that of Noranda, the energy usage was considerably less. The longevity of the Ameren Missouri contract with Noranda and increase in energy, which would result in the recovery of more fixed cost over fifteen years was a key factor in agreeing to both the transfer of the Illinois retail operations and approval of the Noranda CCN.

Finally, the uncertainty regarding the provision of electric service to the property covered by this CCN would be a detriment to the general public. Reliable electric service is key to an aluminum smelter. It is also key to any industrial customer that may move onto the site in the future if Noranda closed its New Madrid smelter. The lack of the requirement for electrical service to this property would greatly hinder efforts to bring any other industry to the area. If Noranda does close, the canceling of the CCN would hamper Southeast Missouri's efforts to find a new industry for this site. Therefore, canceling the CCN would impede any future development at the site which is a detriment to the general public.

SUMMARY OF NORANDA CCN CASE

Q. Did you work on the Noranda CCN Case?

A. Yes. Although I did not file testimony for Staff regarding Ameren Missouri's request for a CCN, Case No. EA-2005-0180 ("Noranda CCN case"), I was present for the discussions regarding the impact of Ameren Missouri serving Noranda, assisted Staff witness Dr. Michael Proctor in the analysis he conducted for his testimony for Staff in that case and was present for the negotiations that resulted in the *Unanimous Stipulation and Agreement* in the case. To the best of my recollection, I have worked on every electric case and rulemaking involving Noranda or to which Noranda was a party before the Commission.

Q. Who filed the CCN case that resulted in Noranda becoming a retail customer of Ameren Missouri?

A. Ameren Missouri filed for the CCN with the support of Noranda. Before filing the CCN case, Ameren Missouri and Noranda had agreed to the terms and conditions by which Ameren Missouri would be Noranda's regulated supplier of electricity.

Q. Was Ameren Missouri aware of the risks of taking on a large customer such as Noranda?

A. Yes, it was. In filing for this CCN, Ameren Missouri was, in fact, saying that it was willing to take on the risks associated with serving such a large customer.

Q. Would you provide a brief summary of the Noranda CCN case?

A. Ameren Missouri requested the Commission grant a CCN to serve Noranda on December 20, 2004. Because of the size of Noranda's energy requirements and despite the expedited schedule of the case, the parties spent considerable time determining whether or not the

deal between Ameren Missouri and Noranda would be in the best interest of Ameren Missouri and its then-current ratepayers. Of particular interest was the impact on Ameren Missouri's resource plan since Noranda's load was different from Ameren Missouri's Metro East territory, of which the transfer to AmerenCIPS was a condition of the deal. Further, there were questions regarding whether or not the revenues Ameren Missouri would receive from Noranda would cover the cost to serve Noranda. Additionally, parties harbored concern regarding the impact on Ameren Missouri's ratepayers if Noranda left Ameren Missouri's system. Finally, the parties considered how providing service to Noranda would impact Ameren Missouri's off-system sales revenues.

Q. What was the result of the analysis?

A. If the condition of the transfer of Ameren Missouri's Illinois operation was met, the cost per MWh to Ameren Missouri would be less through serving Noranda because some of Ameren Missouri's fixed cost would be allocated to Noranda. The incremental cost to serve Noranda was found to be lower than the incremental revenues Ameren Missouri would receive at least through 2006. Incremental increases in revenues after 2006 from Noranda would be necessary for this relationship between incremental costs and revenues to continue.

There was a risk that Ameren Missouri's other customers would be faced with higher costs, primarily the cost of incremental capacity required to serve Noranda, if Noranda were to leave Ameren Missouri's system. However, this risk was found to be mitigated by Ameren Missouri's opportunity to sell excess capacity in the market.

At the time of the original Noranda deal, Ameren Missouri estimated that it would be investing in excess of $1 billion in environmental upgrades over the time of Noranda contract. Therefore, the parties anticipated a benefit to the ratepayers of having Noranda as a retail customer to support a portion of this expected future cost through its "fair share" of any future rate increases.

Q. How was the case resolved?

A. After extensive negotiations, the parties to the case, including OPC, filed a *Unanimous Stipulation and Agreement*[1] in this CCN case asking the Commission to grant the requested CCN. The Commission approved the *Unanimous Stipulation and Agreement* on March 10, 2005,[2] and the Commission approved tariff sheets allowing Ameren Missouri to provide service to Noranda effective June 1, 2005.[3]

Q. Were the conditions of the transfer of Ameren Missouri's Metro East operations and the transfer of the combustion turbine generators from Ameren Energy Generating Company to Ameren Missouri met?

A. Yes.

DISCUSSION OF AMEREN MISSOURI'S PROPOSAL

Q. If the Commission approved of Ameren Missouri's Noranda proposal, what would be the impact on the bills of Ameren Missouri's other customers?

[1] EFIS item 72.
[2] EFIS item 85.
[3] EFIS item 89.

A. Ameren Missouri did not provide this information along with its proposal. However, it is indisputable that this shift in costs to Ameren Missouri's other customers would be material. Matt Michels stated on page 32 in his rebuttal testimony that the revenue that Ameren would receive from the contract would be less than the cost to serve Noranda. Ameren Missouri's proposal to treat the cost to serve Noranda and the revenues in the same manner as the current wholesale customers inevitably would result in Ameren Missouri's customers subsidizing Noranda in order for Ameren Missouri to be made whole. In other words, Ameren Missouri would be able to recover from its customers the costs to provide service from Noranda above the revenues it would receive. And again, despite this material shift in costs, Ameren Missouri does not suggest the other customers will play any role in negotiating the contract for which they will pay.

Q. Was Ameren Missouri's proposal included in its direct case?

A. No, it was not.

Q. Was Ameren Missouri's proposed treatment of Noranda included in the notice provided to Ameren Missouri's customers regarding its rate increase request?

A. No, it was not. Ameren Missouri first provided its proposal in its rebuttal testimony in response to Noranda's rate design request. No notice of its proposal or the potential impact on its customers' bills has been provided to its customers.

Q. Is Ameren Missouri's response to Noranda's rate design testimony a rate design proposal?

A. No, it is not. Ameren Missouri's proposal is much broader in scope than any rate design proposal. In addition to pre-approving a contract for prudence, flowing retail service

through a purportedly wholesale contract, and stretching the use of the FAC, among other issues, this proposal would result in the termination of the current contract between Ameren Missouri and Noranda and the cancellation or suspension of a CCN granted by the Commission.

Q. Is the filing of this proposal in rebuttal testimony problematic for OPC and other parties in the case?

A. Yes, it is. If even appropriate for this case, a proposal of this magnitude should have been proposed in direct testimony, which would allow the parties a full and fair opportunity for discovery and analysis.

Q. If the Commission agreed to Ameren Missouri's proposal, what would be the effect on Ameren Missouri?

A. As described below in this testimony, the cost to provide service to Noranda and the revenue received from this contract would be included in the revenue requirement that is allocated to all Ameren Missouri customer classes. Because the fuel costs to serve Noranda would be included in the FAC, Ameren Missouri would absorb/retain 5% of any increases/decreases in that part of its fuel cost which is needed to provide Noranda energy and nothing more. All other costs associated with the proposal would be shifted to Ameren Missouri's other customers.

Q. If the Commission agreed to Ameren Missouri's proposal, what would be the effect on Ameren Missouri's ratepayers?

A. The bills for all Ameren Missouri's retail ratepayers would increase. Noranda's energy requirement is 11.4% of Ameren Missouri's total normalized, annualized energy in the test

year for this case. [4] In Ameren Missouri's proposal, the cost to serve Noranda is greater than the revenues Ameren Missouri contemplates Noranda would provide. Since Noranda requires so much energy, the impact to Ameren Missouri's other ratepayers would be material for all customers and substantial for some customers. In addition, the ratepayers would have to pay 95% of any increases in the fuel costs to provide Noranda service since Ameren Missouri is proposing that the cost of fuel to serve Noranda would be included in the FAC that Noranda would not have to pay but all of Ameren Missouri's customers would.

Q. If the proposal is implemented as Ameren Missouri suggests, what would be the effect on Noranda after the contract ends?

A. Noranda, if it is still operational, may try to enter into a new contract with Ameren Missouri, try to receive electric service from another provider, or it may purchase power on the market. Without a CCN there would be no utility required to provide the smelter with service.

Q. If the proposal is implemented as Ameren Missouri proposes, what would be the effect on Ameren Missouri after the contract ends?

A. Ameren Missouri will have the energy and capacity used to continue provide service to Noranda or it may sell additional capacity and energy in the MISO market.

Q. If the proposal is implemented as Ameren Missouri proposes, what would be the effect on Ameren Missouri's customers after the contract ends?

[4] Ameren Missouri's response to Staff data request 171.

A. Ameren Missouri's customers would still be paying the costs of the additional turbines. They would still be paying for all of Ameren Missouri's fixed costs.

Q. How is that different from what would happen if Noranda continued to receive service under its current contract with Ameren Missouri?

A. The current contract between Ameren Missouri and Noranda ends in May 2020. Even after expiration of the contract, Ameren Missouri is required to provide service to the territory described in the Noranda CCN. If the smelter is operating at that time, or if another customer moved onto the territory that the Noranda CCN covers, Ameren Missouri would be required to provide them service and that customer would continue to provide a contribution to meet Ameren Missouri's revenue requirement bearing some relation to the cost to provide the customer service.

RESPONSE TO AMEREN MISSOURI TESTIMONY REGARDING WHAT IS NECESSARY TO IMPLEMENT AMEREN MISSOURI'S PROPOSAL

Q. Beginning on page 36 of his testimony, Mr. Michels lays out what is necessary to effectuate Ameren Missouri's proposal. Would you summarize this portion of his rebuttal testimony?

A. Yes. Mr. Michels gives the following conditions as a part of Ameren Missouri's proposal:

- Noranda and Ameren Missouri – but not the customers who would pay for the arrangement - would have to agree to a contract for Ameren Missouri to provide service to Noranda;
- Noranda and Ameren Missouri would have to agree to terminate the current contract;

- The Commission would have to cancel or suspend the Noranda CCN;
- The Commission would have to approve the agreement between Noranda and Ameren Missouri;
- The Commission would have to find the decision to enter into the agreement prudent; and
- The Commission would have to approve treating Noranda as it currently treats Ameren Missouri's wholesale customers.

Q. Would you comment on these steps?

A. I have already provided testimony regarding Mr. Michels third bullet point – the cancelation or suspension of the Noranda CCN by the Commission. If the Commission can cancel or suspend Noranda's CCN, it should not because it is detrimental to Ameren Missouri's ratepayers and the general public.

Q. Assuming that the Noranda CCN could be canceled, which step would you like to discuss next?

A. I would like to discuss Mr. Michels' first bullet point which states that Ameren Missouri and Noranda would have to agree to the price and terms of a contract.

Mr. Michels states on page 3 in his rebuttal testimony that wholesale deals are priced based on the market price expected over the life of the contract at the time of the contract's inception. However, what Mr. Michels fails to explain is that Ameren Missouri's proposal minimizes the risk of it providing service to Noranda if its estimate on market price expected over the life of the contract too low. Ameren Missouri's proposal shifts price risk to its ratepayers through the FAC by seeking to include the contract in

Ameren Missouri's FAC. If permitted, there would be every incentive for Ameren Missouri to estimate low market prices in the contract over the next five years and no incentive, since Ameren Missouri is moving the risk to the ratepayers, for Ameren Missouri to estimate high market prices. So while Ameren Missouri and Noranda would negotiate a contract and the price Noranda pays, the remaining ratepayers would both pay the increased price of the contract and assume the risk of future market price increases.

Q. Mr. Michels' next bullet point is that Noranda and Ameren Missouri would have to agree to terminate the current contract. Would you comment on this requirement?

A. Whether the current contract can be terminated or not is a legal question. I will observe that the current contract was integral to the agreement by the Commission Staff ("Staff"), OPC, Missouri Industrial Energy Consumers, and Missouri Energy Group regarding the Noranda CCN. These parties, based their agreement in good faith on the fifteen-year current contract between Noranda and Ameren Missouri. Among other factors, the parties weighed the benefit of Noranda as a retail customer contributing to the increased fixed costs incurred by Ameren Missouri in the next fifteen years against the detriment of off-system sales that Ameren Missouri would not be able to make given the massive amounts of energy that Noranda would consume and the additional need for additional capacity due to Noranda's large load. In the end, the parties came to an agreement that balanced, for the next fifteen years, their interests. Ending the contract after ten years upsets that balance.

Q. Would you comment on Mr. Michel's condition that the Commission would have to approve the agreement between Noranda and Ameren Missouri?

A. This condition is integral to Mr. Michels' additional condition to have the Commission specifically find that Ameren Missouri's decision to enter into the agreement was a prudent one up front.

Q. To your knowledge has the Commission ever approved an electric utility's contract with a wholesale customer?

A. No.

Q. Why does Ameren Missouri want a Commission finding that it is prudent for Ameren Missouri to enter into a wholesale contract with Noranda?

A. A finding of prudence and an approval of the contract would cement the transfer of risk to Ameren Missouri's ratepayers. In future rate cases and FAC prudence reviews, the contract could not be found imprudent. The costs to serve Noranda would be guaranteed to be in the retail customers' revenue requirement, and any increase to fuel costs to serve Noranda would be recovered in permanent and FAC rates.

Q. The final condition described by Mr. Michels is that the Commission would have to find that the contract would be treated as its current wholesale customers are treated as off-system sales subject to inclusion in Ameren Missouri's FAC. Does OPC agree with this treatment?

A. No. The treatment of Ameren Missouri's current wholesale customers is based on their size and other characteristics. Noranda is very different from Ameren Missouri's current wholesale customers.

Q. What does "inclusion in Ameren Missouri's FAC" mean?

A. It means that the cost to provide service to Noranda would be included in the total company revenue requirement and this revenue requirement would be allocated to all the rate classes. In other words, all other customers would be required to pay the cost to provide service to Noranda in addition to the cost to provide them their own service. A portion of the cost to serve Noranda will be included in the FAC net base energy cost, and changes to these costs will be recovered or returned to the ratepayers.

Q. How would the revenues from the contract be handled?

A. The revenues from the contract would be included in the total company revenue requirement as an offset to the costs. However, these revenues would not cover the costs. The revenue would be included in the calculation of the FAC net base energy cost and changes to that revenue would change the FAC amounts collected/returned to Ameren Missouri's ratepayers.

Q. Is this a correct use of the FAC?

A. No. According to Section 386.266, the FAC is to reflect increase and decreases in prudently incurred fuel and purchased power costs, including transportation.

Q. Who are Ameren Missouri's current wholesale contracts with?

A. According to Ameren Missouri's response to Staff data request 171, Ameren Missouri has two wholesale customers – the City of Perry and the City of Linneus.

Q. How do these customers compare to Noranda?

A. There are several significant differences between these customers and Noranda.

- The revenues generated from the two current wholesale customers are greater than the costs to serve them. Based on Ameren Missouri's proposal, the cost to serve Noranda would be greater than the revenue that would be generated from its contract with Noranda and over the next five years this differential is expected to grow;
- Noranda's energy usage is almost 350 times[5] greater than the energy usage of Ameren Missouri's current two wholesale customers combined; and
- Ameren Missouri's current wholesale customers resell the energy that they buy to the residents of their cities. They are not the ultimate customers. Noranda is the ultimate user of the power that it receives from Ameren Missouri;

Q. Do the costs and revenues from the current wholesale contracts flow through the FAC?

A. Not all of the costs. The non-fuel cost to serve the current wholesale customers is included in the total revenue requirement that is allocated to the customer classes for recovery. Fuel costs and revenues from the wholesale customers are included permanent rates and are included in the calculation of the Net Base Energy Cost ("NBEC"). Changes in the fuel costs to serve them and any increase in revenues are included in the Actual Net Energy Cost ("ANEC") used to calculate the fuel adjustment rates.

Q. Have the costs and revenues to serve the wholesale customers always been included in the revenue requirement for retail customers?

[5] Ameren Missouri's response to Staff data request 171.

A. No, they have not. This began on August 17, 2011 - the effective date of Case No. ER-2011-0028.

Q. How were wholesale customer costs and revenues treated prior to August 17, 2011?

A. The treatment of Ameren Missouri's wholesale customers was the same as the current treatment of the wholesale customers of the Empire District Electric Company and KCPL – Greater Missouri Operation Company. Retail jurisdiction and the wholesale jurisdiction are allocated both rate base and expense costs. The utility's total amount of investments and expenses (i.e., cost to serve the combined retail and wholesale customers), is calculated. Allocation factors are applied to different costs depending on the cost causation similar to how costs are currently allocated to the customer classes in class cost-of-service studies. The retail cost of service is then compared to the retail revenues to determine the additional revenue and incremental rate increases for retail customers. The revenues from the wholesale contracts are not included in the retail revenue calculation.

Q. Why was a change made to how wholesale customers were treated?

A. When Case No. ER-2011-0028 was filed in September, 2010, Ameren Missouri's wholesale load was approximately 1% of its total load. In Ameren Missouri's 2011 Resource Plan[6] filed during its general rate case, Case No. ER-2011-0028, Ameren Missouri projected that it would have no wholesale customers in 2014. Ameren Missouri proposed that, since the wholesale load was so small and was projected to be zero in 2014, that a jurisdictional allocation of costs no longer be done for Ameren Missouri. Instead, the revenues that Ameren Missouri would receive from its wholesale customers and the costs

to serve the wholesale customers would be included in the revenue requirement. Staff performed an analysis that showed that the revenues generated by Ameren Missouri's wholesale customers was greater than the cost that would have been allocated to them so Staff agreed to the change. In Ameren Missouri's next rate case, Case No. ER-2012-0166, Staff agreed to continue this treatment but it did state in its *Cost-of-Service Report*[7] that it would continue to analyze this treatment on a case-by-case basis going forward in all future Ameren Missouri rate cases. OPC did not oppose the change when it was made in Case Nos. ER-2011-0028 and ER-2012-0166.

Q. Did Staff perform a calculation in this case that showed that the revenues from the wholesale customers were greater than the allocated cost to serve them?

A. According to my conversation with Staff, it analyzed the current wholesale customer costs and revenues in the test year in this case and found that the revenue Ameren Missouri was receiving was still greater than the cost to serve them.[8]

Q. Does OPC still agree with the current treatment of wholesale customers?

A. Yes. OPC agrees with the treatment because the revenue that the wholesale customers generate is greater than the cost to serve them and the wholesale load is a very small percent of Ameren Missouri's total load. These customers move no risk to Ameren Missouri's retail ratepayers and actually reduce the revenue requirement for the retail ratepayers.

[6] Case No. EO-2011-0271, EFIS item 3.
[7] Case No. ER-2012-0166, EFIS item 87, page 66.
[8] Conversation with John Cassidy on January 30, 2015.

Q. Does OPC agree with Ameren Missouri's proposal that the contract with Noranda be treated the way that Ameren Missouri's current wholesale customers are treated?

A. No. Ameren Missouri's proposed contract with Noranda, as described in Matt Michels rebuttal testimony does not fit either of the criteria – revenue greater than cost to serve and small size – which have historically been considered determining how to treat wholesale contracts. OPC recommends a return to the traditional method of allocating costs to jurisdictions if Ameren Missouri provides service to Noranda as a non-retail customer.

Q. Would you describe how Noranda's load is different from the load of Ameren Missouri's current wholesale customers?

A. The load of Ameren Missouri's current wholesale customers is miniscule as compared to Noranda's load. Noranda's load (** ** MWh in the test year) is much greater than the normalized/annualized combined load of Ameren Missouri's two wholesale customers (** ** MWh in the test year).[9] In addition to the difference in the magnitude of the load, the type of load is completely different. Noranda has a flat load, i.e., its energy requirement is nearly the same for every hour of the year. The wholesale customers' load varies according to the time of the day, the time of the year and the weather, because they resell the energy to the residential, commercial and industrial properties in their towns.

Q. Will the revenue that Ameren Missouri receives from Noranda cover the cost to serve Noranda?

[9] Ameren Missouri response to Staff Data Request 171.

NP

A. No, it would not. Although Mr. Michels does not give the prices or conditions that Ameren Missouri would agree to in a contract with Noranda, he makes it clear that the price that he believes would be offered Noranda would be lower than the embedded cost to serve Noranda. Mr. Michels actually states on page 36 of his rebuttal testimony that "Ameren Missouri's proposed alternative is the only proposal in this case that provides a means to allow Noranda to obtain a rate that is materially lower than the cost to serve them at retail …"

Q. Does the cost to serve Noranda change if it is no longer a retail customer?

A. The cost to serve Noranda will not change. While I do not know the proposed contract conditions and terms, I do know that Noranda will still require a reliable, constant source of a large amount of energy every hour of the year.

Q. If Noranda would not be covering the cost to provide it service, who would?

A. With Ameren Missouri's proposal, its remaining customers would pay the difference between what Noranda would pay and the cost to serve Noranda.

Q. Please summarize your surrebuttal testimony with respect to Ameren Missouri's proposed alternative to Noranda's rate design request.

A. The Commission should deny Ameren Missouri's proposal. The cancelation of the Noranda CCN would be detrimental to the public interest resulting in increased bills for Ameren Missouri's customers and a hindrance to provision of electricity at the smelter site in the future.

Ameren Missouri's conditions for approval of its proposal should be denied. These conditions shift cost and risk to Ameren Missouri's ratepayers and remove the incentive for Ameren Missouri to negotiate a contract with Noranda that would cover all of the costs to serve Noranda.

Ameren Missouri's request to treat Noranda as a wholesale customer should be denied. The FAC is not a tool for reducing the risk of losing a customer. The FAC's purpose is the recovery of fuel and purchased power costs, including transportation. Noranda is vastly different from Ameren Missouri's current wholesale customers. The current treatment of Ameren Missouri's wholesale customers is based on their size. Noranda is extremely different from Ameren Missouri's wholesale customers in size and load characteristics. Noranda would not be providing revenue greater than the costs to provide it service where the current wholesale customers provide revenue greater than the cost to serve them.

RESPONSE TO AMEREN MISSOURI'S FUEL ADJUSTMENT CLAUSE REBUTTAL TESTIMONY

SUMMARY

Q. Before continuing with your surrebuttal testimony, would you summarize OPC's positions and recommendations with respect to the FAC?

A. Yes. OPC makes the following recommendations in my direct testimony:

1. The Commission should discontinue Ameren Missouri's Fuel Adjustment Clause ("FAC") tariff sheets that allow it to collect between rate cases the changes in its net fuel and purchased power costs for the following reasons:

A. Ameren Missouri's direct filing in this case did not provide the detail needed for the Commission to make an informed decision regarding Ameren Missouri's request for continuance of its FAC;

B. Ameren Missouri's fuel and purchased power costs are not significantly increasing;

C. The costs and revenues in Ameren Missouri's FAC that are changing are not the costs specified in SB 179; and

D. Ameren Missouri customers strongly oppose the FAC;

2. If the Commission does allow Ameren Missouri to collect changes in its net fuel and purchased power costs between rate cases:

a. The costs and revenues that it would include in its FAC should be limited to a few major costs and revenues that are clearly and defined distinctly by the Commission and that should not change until the next general rate increase case;

b. The Commission should change the incentive mechanism from 95%/5% to 90%/10%; and

c. The "Adjustment for Reduction of Service Classification 12(M) Billing Determinants" in the FAC tariff should be removed. If the Commission should decide to keep this section in the tariff, the tariff sheets should be changed to allow the maximum off-system sales revenue excluded from the FAC to be no more than the fixed costs allocated to the 12(M) class in this rate case when there is a reduction in the 12(M) billing determinants of 40,000 MWh or greater.

OPC made the following additional recommendations in my rebuttal testimony:

1. If the Commission decides to grant Ameren Missouri an FAC, it is OPC's recommendation that fuel commodity costs, purchased power costs, the cost of transporting the fuel commodity, purchased power transmission costs, off-system sales and the revenues from capacity sales be the only costs and revenues included;

2. If the Commission decides to grant Ameren Missouri an FAC and decides to allow costs other than the costs and revenues in OPC's first recommendation, OPC recommends that no cost or revenue type that had an annual amount of less than $390,000 in the test year be included in Ameren Missouri's FAC; and

3. It is OPC's recommendation that ** ** not be flowed through the FAC.

RESPONSE TO AMEREN MISSOURI WITNESS JESSE FRANCIS

Q. Would you summarize Mr. Francis' rebuttal testimony?

A. Mr. Francis attempts to show that the FAC minimum filing requirement information has been provided to OPC.

Q. Why is that important?

A. The Commission's rules require that certain information be filed by the electric utility for the Commission's consideration when the electric utility is requesting the continuance or modification of an FAC. But providing the information to OPC, Staff or other parties does not meet the rule requirement to file the information with the Commission, nor does providing the information after the utility's initial filing comport with the rule's requirement of requiring the information in direct testimony.

Q. What is the purpose of minimum filing requirements?

A. To get a better understanding of the purpose of the FAC minimum filing requirements, I reviewed the Commission's order of rulemaking for 4 CSR 240-3.161 in Case No. EX-2006-0472. I have attached a copy of the order of rulemaking to this testimony as Schedule LM-S-1. The Commission's response to Ameren Missouri's request to change the word "complete" in the minimum filing requirement rules provides insight into the Commission's purpose for minimum filing requirements. The Commission's response to Ameren Missouri's request follows:

> The commission agrees that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. However, the commission disagrees that "complete" means "perfect." By using "complete" the Commission means that which includes **every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision.** "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the Staff to review and for the Commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. The commission finds that "complete" is the most appropriate word to use to convey the amount of information or documentation that is required for review. Therefore, no change will be made.[10] (Emphasis added)

The purpose of the minimum filing requirements of the FAC is to provide every explanation necessary and the detail necessary to allow Commissioners and the parties to the case to evaluate the request for a continuance of an FAC fully and on its face, without

[10] Order of Rulemaking, Mo. Reg., Vol.31, No.23, p.2006 (Dec.1, 2006)

forcing the Commission and the parties to the case to resort to asking for additional explanations, clarification or documentation to reach a decision.

Q. Did Ameren Missouri provide every explanation necessary and the detail necessary to allow the Commissioners and the parties to the case to evaluate Ameren Missouri's request for continuance of its FAC?

A. No, it did not. Ameren Missouri did not provide complete explanations of the costs and revenues that it is requesting be included in its FAC as required in 4 CSR 240-3.161(3). In reviewing a request for continuance of an FAC, the Commission is required to consider the magnitude of each cost and revenue it allows in an FAC. Ameren Missouri did not provide this information. The Commission also is required to consider the volatility, uncertainty and the ability of the electric utility to manage the cost in determining what costs to allow in an FAC. Ameren Missouri did not provide information on uncertainty or volatility, nor information on Ameren Missouri's ability to manage each cost or revenue.

Q. The Commission's response quoted above from the 4 CSR 240-3.161 rulemaking case shows that the Commission expected enough information to be provided in the electric utility's initial case that parties would not have to ask for additional information. Were you required to resort to asking for additional explanations in this case, Case No. ER-2014-0258?

A. Yes.

Q. Were you provided that information?

A. No, I was not. Attached to my rebuttal testimony as Schedule LM-R-1 are two of OPC's requests for an explanation of all of the costs and revenues that Ameren Missouri is

proposing be included in the FAC it is requesting in this case. The response from Ameren Missouri directed OPC to incomplete explanations in the direct testimony of Ameren Missouri witness Lynn M. Barnes and to the FAC monthly reports.

Q. Mr. Francis asserts in his rebuttal testimony that Ameren Missouri's FAC reports are sufficient to meet the filing requirements. Are the reports provided to the Commission?

A. No, they are not. They are submitted to Staff, OPC and other parties on a monthly, quarterly and annually; they are not filed with the Commission.

Q. Do the reports described by Mr. Francis in his rebuttal testimony provide the information that is required by the rule?

A. No, they do not. The reports referred to by Mr. Francis provide cost and revenue information regarding Ameren Missouri's current FAC. The reports do not detail what Ameren Missouri is proposing for its FAC in this case, Case No. ER-2014-0258.

In addition, these reports do not contain a complete explanation of every cost and revenue that Ameren Missouri is requesting flow through its FAC as required by the Commission's rules. For one example, there is a cost labeled as PJM "RTO Regulation & Frequency Res." This description fails to provide sufficient information on its face to understand what the cost is, and of course, an understanding of the cost is required in order to examine meaningfully whether the requested FAC should be authorized and for which costs.

Q. Is the magnitude of the costs and revenues provided in the monthly reports?

A. Somewhat. The monthly reports contain information on the costs incurred and the revenues collected in that month. However, to understand the annual magnitude would require opening and collecting information from twelve different files, each consisting of approximately 65 pages in pdf form or a 38 sheet Excel file. This type of onerous procedure, which is itself of limited value, is not what the minimum filing requirements rule requires; in fact, the rule mandates the opposite.

In addition, I found in reviewing the monthly reports, that not every monthly report contains every cost or revenue type Ameren Missouri is flowing through its current FAC. For example, Ameren Missouri, according to the twelve monthly FAC reports for the test year, incurred PJM Interconnection, LLC ("PJM") "RTO Regulation & Frequency Res" costs only two months of the year. In addition to bringing up a question with respect to the magnitude and true volatility of this cost, if the Commission had access to the monthly reports, it would have to review several monthly reports to be sure that it understood all the costs and revenues that Ameren Missouri is including in its FAC.

Q. Do the reports contain information on the uncertainty and manageability of the FAC costs?

A. No. The reports contain no information on the uncertainty and manageability of the FAC costs. It is true that a sense of <u>past</u> volatility of the various cost and revenue types can be obtained by comparing information provided in the monthly reports. However, the reports provide no information on the <u>expected</u> future volatility of the costs and revenues that Ameren Missouri is proposing flow through the FAC.

Q. Is it the purpose of these reports to substantiate requests for continuation or modification of FACs?

A. No. Regardless of whether the monthly reports can be used to decipher some of the prerequisites to an FAC, the purpose of these reports is not to substantiate future requests to continue an FAC - their purpose is to provide information on the current FAC.

Q. On pages 6 through 10 of Mr. Francis' rebuttal testimony, he describes how Ameren Missouri came to provide the detailed information that is currently in Ameren Missouri's monthly reports. Why was this detail necessary?

A. Additional information was necessary because it became apparent to the parties in the second rate case in which Ameren Missouri requested continuation of its FAC, Case No. ER-2011-0028, that the parties did not understand what costs and revenues were included in Ameren Missouri's FAC. The information provided in Ameren Missouri's testimony in that case was not sufficient enough for the parties to determine exactly what costs and revenues Ameren Missouri was flowing through its FAC.

Q. On page 12 of his rebuttal testimony, Mr. Francis describes the purpose of the minor accounts (or subaccounts) and activity codes used by Ameren Missouri. Are these minor (or subaccounts) and activity codes important in understanding the costs and revenues Ameren Missouri is proposing to include in its FAC?

A. Definitely. At this point in time, these designations are the best descriptions available of exactly what costs and revenues are flowing through Ameren Missouri's FAC. Mr. Francis states that the minor accounts and activity coding "simply provides the Company with the ability to appropriately analyze its business." These minor accounts and activity codes also

are important to provide the Commission, and the parties to the case, the ability to identify and analyze the costs and revenues included in Ameren Missouri's FAC.

Q. Does any other Ameren Missouri witness provide an explanation for the use of minor accounts and activity codes?

A. Ameren Missouri witness Lynn M. Barnes states on page 41 of her rebuttal testimony that minor codes are created for managerial reporting purposes, and activity codes are developed to make sure that costs and revenues are recorded in the right FERC account. These are valid reasons for why costs and revenues need to be identified and provided completely to the Commission, and provide no reason for it not to be provided.

RESPONSE TO AMEREN MISSOURI WITNESS JAIME HARO

Q. Mr. Haro states on page 17 that the current transmission costs have been included in the FAC since the inception of the FAC. Is that correct?

A. No, it is not. Not all of the transmission costs assessed by the Midwest Independent System Operator ("MISO") were charged to Ameren Missouri since the inception of the FAC. For example, charges for multi-valued transmission projects did not exist at the inception of the FAC, and, therefore, the multi-million dollar charges for building new transmission lines were not included at the inception of the FAC. These costs have been added since the inception of the FAC.

Q. After it began incurring new MISO costs, did Ameren Missouri ask in its next rate case that these new MISO costs be included in its FAC?

A. No. Ameren Missouri did not explain the new MISO schedules or provide explanations regarding the expected uncertainty and volatility of the new MISO schedules. The new costs have been covered with a generic statement in a schedule attached to the FAC witnesses' testimony regarding "cost of purchase power[11]" or "Sums billed by MISO or another seller of power." [12]

Q. After it began receiving new MISO revenues, did Ameren Missouri ask in its next rate case that these new MISO revenues be included in its FAC?

A. No. FAC testimony prior to this case only included a mention of revenues from off-system sales that was recorded in account 447.[13] Due to the inclusion of RTO revenues late in the last rate case, Case No. ER-2012-0166, Ameren Missouri witness Ms. Barnes, in her direct testimony in this case, Case No. ER-2014-0258, broadened the explanation of revenues that flow through account 447 to included revenues for capacity, energy, ancillary services, make-whole payments, and hedging. She also included "Transmission Revenues" in account 456 with a description that includes "revenues for system control and dispatch and reactive supply and voltage control, among others."

Q. Did Mr. Haro provide any rebuttal testimony on MISO costs?

A. Beginning on page 19 of his rebuttal testimony, Mr. Haro provided information regarding only one MISO cost – MISO Schedule 26A. He did not provide any information regarding other MISO costs that Ameren Missouri is requesting be included in its FAC.

[11] Case No. ER-2008-0318, EFIS item 7, Direct testimony of Martin J. Lyons, Jr., Schedule MLJ-E4-6.
[12] Case No. ER-2014-0258, EFIS item 12, Direct testimony of Lynn M. Barnes, Schedule LMB-1-7.

Q. What are MISO Schedule 26A charges for?

A. The charge is to recover the cost of transmission projects under construction by MISO.

Q. Did Mr. Haro provide testimony on the myriad of other MISO and RTO costs and revenues that Ameren Missouri is requesting flow through its proposed FAC?

A. No, he did not.

Q. In an attempt to show uncertainty and volatility, Mr. Haro provides graphs on page 32 of his rebuttal testimony showing 2015 Forward prices for electricity, natural gas and coal. Would you explain these graphs?

A. These graphs show the price a party was willing to lock in for the relevant commodity and the price that another party was willing to sell that commodity. The buying party believes that the price is likely to be higher, so it locks into the given price. The selling party believes that the price is likely to be lower, so it locks in a price at which to sell.

Q. How do these 2015 forward prices impact Ameren Missouri's fuel and purchased power costs?

A. I assume that Mr. Haro is including these graphs to show volatility in forward prices. However, these graphs are not relevant at Mr. Haro's own admission. Mr. Haro states that market energy and fuel prices, not forward prices, impact the dispatch of Ameren Missouri's generation.

[13] Case No. ER-2008-0318, EFIS item 7, Direct testimony of Martin J. Lyons, Jr., Schedule MLJ-E4-7; Case No. ER-2010-0036, EFIS item 7, Direct testimony of Lynn M. Barnes, Schedule LMB-E1-7; Case No. ER-2011-0028, EFIS item 13, Direct testimony of Lynn M. Barnes, Schedule LMB-E1-7; and Case No. ER-2012-0166, EFIS item 12, Direct testimony of Lynn M. Barnes, Schedule LMB-E1-7.

Q. Does Mr. Haro provide Ameren Missouri's expectation of market, natural gas or coal prices?

A. No, he does not.

Q. Mr. Haro states on page 33 that the market price of coal is important because MISO dispatches generation plants based on the market price of coal. How do you respond to this statement?

A. Ameren Missouri's coal costs are fixed due to its long-term contracts for both coal commodity and transportation. Mr. Haro states on page 10 of his rebuttal testimony that "the vast majority of the time, due to the relatively low cost of these specific Ameren Missouri coal-fired generators, these units would clear in the day-ahead market …" This statement indicates that regardless of the coal spot market prices, Ameren Missouri's coal fired generators will be bid into the MISO market and be chosen to generate electricity.

Q. Assuming Mr. Haro had included this information in his direct testimony as required by Commission rule, does the information Mr. Haro provides in his rebuttal testimony demonstrate that Ameren Missouri faces uncertainty or volatility in its fuel prices?

A. No, it does not.

RESPONSE TO AMEREN MISSOURI WITNESS LYNN M. BARNES REGARDING MINIMUM FILING REQUIREMENTS

Q. Is OPC recommending that Ameren Missouri's FAC should be discontinued because it did not provide complete explanations as required by Commission rule?

A. Yes.

Q. On page 5 of her rebuttal testimony, Ms. Barnes discusses a case in which the Commission ruled that the limited description provided met the Commission's minimum filing requirements. Would you respond to this statement?

A. It is interesting that the only case in which the Commission addressed the issue of minimum filing requirements was in the very first case in which any Missouri electric utility was granted an FAC pursuant to SB 179.[14] The Commission's FAC rules were not even in effect when this case, Case No. ER-2007-0004, was filed by Aquila, Inc. ("Aquila"). The issue of whether or not there was a sufficient enough explanation of the costs to be included in the FAC was not brought before the Commission until reply briefs were filed. Because this was the first FAC granted, there was no information available that Aquila was not providing complete explanations.

FACs in Missouri have been evolving since that first FAC was granted. Ms. Barnes herself stated on page 31 of her rebuttal testimony that she agrees that FACs are still being worked out in Missouri. Ameren Missouri's FAC in this case is vastly different from the FAC that was approved in Aquila's Case No. ER-2007-0004.

Much has been learned regarding the design and implementation of an FAC in Missouri since that rate case. There have been numerous rate cases, FAC rate adjustment cases, FAC prudence cases and FAC true-up cases filed by three electric utilities in Missouri. With each case, lessons have been learned and improvements have been made. While the Commission did make the statement that Aquila met its minimum filing requirements, there was little information in the case for the Commission to make any other determination and at the time Aquila filed there was no minimum filing requirements.

The present case is different from prior cases because OPC has now presented information to the Commission that shows that the limited information Ameren Missouri has provided does not meet the Commission's minimum filing requirements and is not sufficient for the Commission to make an informed decision regarding an FAC.

Q. Ms. Barnes also quotes from the Staff report in Case No. ER-2010-0036 to support her claim that Ameren Missouri met its minimum filing requirements in this case. Would you comment on that quote?

A. Staff witness John Rogers was referring only to the minimum filing requirement requiring Ameren Missouri to provide notice regarding its requested FAC to its customers. Ms. Barnes was quoting from the portion of the Staff report in Case No. ER-2010-0036 written by Staff witness John A. Rogers. However, Ms. Barnes does not provide the entire sentence. I have extracted the entire sentence from that report for the Commission.

> Staff has reviewed the minimum filing requirements documents AmerenUE provided in Schedule LMB-E1-1 attached to the prefiled direct testimony of AmerenUE witness Lynn M. Barnes and believes that with these documents AmerenUE has complied with the minimum filing requirements contained in 4 CSR 240-3.161(3) **to inform the public** of AmerenUE's requested changes to its FAC in this case. (Emphasis added)

Q. Why is it important for the Commission to see the entire quote?

A. It is important to note that it was Mr. Rogers' belief that AmerenUE met the requirement to inform <u>the public</u> of its requested changes to the FAC. He did not state that it was his belief that AmerenUE had met all of the minimum filing requirements.

[14] Section 386.266

Q. Is there a filing requirement in 4 CSR 240-3.161(3) to inform the public of the electric utility's changes to its FAC?

A. Yes, there is. Rule 4 CSR 240-3.161(3)(A) requires "An example notice to be provided to customers as required by 4 CSR 240-20.090(2)(D)."

Q. Why are you certain that Mr. Rogers was referring to this requirement?

A. The schedule referenced by Mr. Rogers, LMB-E1-1 is a one page schedule that includes nothing more than the notice to be sent to customers.

Q. Is there any evidence, either in this case, or in subsequent cases, that shows that the amount of information supplied in Ameren Missouri's testimony was not sufficient for the parties to determine what was flowing through the FAC?

A. Yes, the increasing amount of detail in the FAC tariff sheets from case to case tends to show that the parties believed that additional information was necessary. As described in pages 6 through 10 in the rebuttal testimony of Ameren Missouri witness Jesse Francis, it became apparent in Case No. ER-2011-0028 that additional information was necessary for parties to understand the full extent of the costs and revenues Ameren Missouri was flowing through the FAC. The confusion regarding the inclusion of MISO costs and revenues in the last case, Case No. ER-2012-0166, as described on page 12 in my direct testimony also points to a lack of understanding of the parties regarding the costs and revenues flowing through the FAC. In the Staff report in this case, Case No. ER-2014-0258, Staff requests a list of additional requirements to aid it in review of FAC filings.

Q. in the last rate case, Case No. ER-2012-0166, did the commission recognize that there was confusion regarding what transmission costs were included in the FAC?

A. Yes, it did. The Commission, in its *Order Denying Motion to Strike, But Offering Opportunity To Respond*,[15] stated that "[c]ertainly, this has been a confused issue that was not properly joined at least until the filing of surrebuttal testimony. Indeed, it appears that even in their surrebuttal and sur-surrebuttal testimony the witnesses may be talking past each other." This statement shows that the Commission realized there was confusion regarding MISO costs and whether or not they should be included in the FAC.

Q. Could OPC or other parties ask discovery questions to develop positions on different costs and revenues to avoid such confusion as Ms. Barnes suggests on page 19?

A. Yes and as previously stated, OPC did ask for additional information. Ameren Missouri did not provide any additional information as a result of those requests.

Q. Previously you provided the Commission's response in the *Order of Rulemaking* for 4 CSR 240-3.161 regarding the provision of information. Did the Commission expect that parties would have to ask discovery questions to obtain the information that they would need to develop positions?

A. No, it did not. The Commission explicitly expressed in its *Order of Rulemaking* in Case No. EX-2006-0476, attached as Schedule LM-S-1, that parties should not have "to resort to asking for addition explanations, clarification or documentation to reach a decision." Contrary to Ms. Barnes' suggestion, OPC and other parties should not have to undertake onerous and time-consuming examination of monthly reports – reports which are of limited

value for this purpose – to know what Ameren Missouri is including in its FAC. The burden of bringing up what costs and revenues are in FACs for the Commission's determination is not placed on OPC or any other party by the rules, and should not be placed on OPC or any other party in practice. It is, and should always be, the responsibility of the electric utility that is requesting an FAC, in this case Ameren Missouri, to demonstrate that the Commission should carve out a narrow exception to general rate making in order to ensure the utility's fuel and transportation costs. Only if the eligible costs are shown to be so large, unmanageable and volatile that the utility is likely to be deprived of a meaningful opportunity to earn its return on investment, should the Commission even consider granting an FAC under the law for recovery of that cost.

RESPONSE TO AMEREN MISSOURI WITNESS MS. BARNES REGARDING CHANGES TO THE COMMISSION'S FAC RULES

Q. Ms. Barnes states on page 8 of her rebuttal testimony that OPC is asking that Ameren Missouri be required to do far more than the Commission's rules require. Is this a correct representation of what OPC is asking?

A. No, it is not. OPC is asking that Ameren Missouri be required to meet the Commission's minimum filing requirements, nothing more or less. OPC has not added or suggested any additional requirements to the Commission's rules. The Commission's rule 4 CSR 240-3.161(3) requires a "complete explanation" of the costs and revenues that the electric utility is requesting be included in its FAC. It is OPC's contention, consistent with the rule, that Ameren Missouri should provide more data, information and analysis as a part of the

[15] Case No. ER-2012-0166, EFIS item 285.

utilities' direct rate case filing than what it filed in this case. It is OPC's recommendation that the Commission require Ameren Missouri to follow the FAC rules.

Ameren Missouri is the party that is asking that the Commission not follow its own rules, allow a "summary" to substitute for a complete description, and to be absolved of the requirement to provide any information on the magnitude of individual costs and revenues types it is proposing be included in its FAC. Ameren Missouri wants the mere mention of uncertainty and volatility to be sufficient evidence to continue an FAC. Ameren Missouri proposes, instead of a meaningful inquiry to determine whether an FAC is appropriate, that if the electric utility says that it is "status quo" (meaning no material changes as the utility defines material changes), then the electric utility should be allowed to forego compliance with the Commission's rules.

RESPONSE TO AMEREN MISSOURI WITNESS MS. BARNES REGARDING INFORMATION REQUIRED FOR THE COMMISSION TO MAKE A DETERMINATION ON COSTS AND REVENUES TO BE INCLUDED IN ITS FAC

Q. On pages 13 and 16 of her rebuttal testimony, Ms. Barnes states that OPC has all the information that it needs to analyze the various costs and revenues in the FAC and how uncertain/volatile they are. What is your response to this statement?

A. First, it is not the responsibility of the OPC to provide this information to the Commission. If an electric utility wants an FAC, the utility is required to provide the analysis and information required by the Commission's rules. As previously provided in this testimony, the Commission in its Order of Rulemaking in Case No. EX-2006-0472 states:

> By using "complete" the Commission means that which includes **every explanation and detail to allow a decision-maker to evaluate the**

> **response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision.** "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the Staff to review and for the Commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. (Emphasis added)

It is clear from this statement by the Commission that it is the electric utility's responsibility to provide information required for the Commission to make its determination. Neither OPC nor any other party bears the burden to provide the information that the Commission needs. Complete information was intended to be provided by the electric utility every time it files for a continuation or modification of its FAC.

In addition, as I stated previously in response to Ameren witness Jesse Francis' rebuttal, the information in the monthly reports to which Ameren Missouri has referred does not state what Ameren Missouri is proposing be included in its FAC in this case, Case No. ER-2014-0258. The monthly reports contain information regarding the current FAC and do not even provide a complete explanation of those costs. In addition, the reports do not provide any information on the future magnitude, uncertainty, volatility or manageability of the costs and revenues, only information on the past.

Q. What comment engendered the Commission's response provided above?

A. The Commission's order of rulemaking provides the following:

> COMMENT: AmerenUE opposes the use of the word "complete" in subsections (1), (2) and (3), which contain the filing requirements of the

> rule, for example, a requirement to provide a "complete explanation" or a "complete description." AmerenUE seeks to change "complete" as it appears throughout the rule to "reasonable." AmerenUE asserts that "complete" means "perfect," and that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. PSC Staff disagrees, and asserts that the rule should require a "complete" explanation of the data provided.[16]

Accordingly, despite the Commission rejecting Ameren Missouri's attempt to weaken the rules, Ameren Missouri interprets the rules in a manner that does just what it wanted the Commission to say originally.

Q. Ms. Barnes states that the data and analysis mentioned in the rules do not have to be filed in an initial rate case filing. Do you agree?

A. Assuming that by "initial case filing" she means direct testimony, no, I do not agree. The Commission's rules 4 CSR 240-20.090(2)(G) and 4 CSR 240-3.161(2) are clear that the minimum filing requirements are to be <u>filed</u> when an electric utility files for the establishment of an FAC. It is also clear in both 4 CSR 240- 20.090(2)(G) and 4 CSR 240-3.161(3) that the electric utility is required to <u>file</u> the information specified in 4 CSR 240-3.161(3) as a part of or in addition to its direct testimony when the electric utility seeks to continue or modify its FAC.

Q. Is that a significant amount of information?

A. Yes, it is. An FAC is a significant deviation from the statutory prohibition against single issue ratemaking. It is not a "right" for the electric utilities – it is approved or rejected at the Commission's discretion. The exercise of discretion requires comprehensive scrutiny by the Commission since the result of granting an FAC is that the risk of changes in fuel

[16] Order of Rulemaking, Mo. Reg., Vol.31, No.23, p.2006 (Dec.1, 2006)

and purchased power costs moves from the electric utility to its customers. Regardless of how long the electric utility has had an FAC, it should always provide the detail necessary for the Commission to make an informed decision in each rate case regarding how much of the risk is moved to the ratepayers. Anything less trivializes the impact of an FAC on the ratepayers.

Q. But if nothing has changed, why require the information?

A. There will never be a case where "nothing has changed." Costs change in magnitude. Market forces shift. Some costs become more certain. Some costs become less certain. There are some costs that the utility does not incur any more. In this case, Case No. ER-2014-0258, there are MISO costs that have been added since the last rate case, Case No. ER-2012-0166. There are MISO revenues that have been added. Fracking has brought natural gas prices down. Corrections such as the one that Ms. Barnes proposes in her footnote 35 need to be made. With all of the costs and revenues that Ameren Missouri includes in its FAC, there will be changes every rate case.

Q. Has this Commission heard arguments on the volatility, magnitude and control and, if so, do those argument support an FAC in this case?

A. No, the last time the Commission heard these arguments regarding fuel and purchased power cost magnitude, volatility, and the ability for Ameren Missouri to manage these costs was five years ago in February, 2010. Only one of the Commissioners that decided that case, Case No. ER-2010-0036, remains on the Commission – Chairman Robert Kenny. Only two Commissioners remain from the last case, Case No. ER-2012-0166, when the determination was made to allow transmission costs to remain in the FAC. Yet all five of

the current Commissioners are responsible for determining whether an FAC should be continued or modified in this case, Case No. ER-2014-0258. If the information is not provided to the current Commissioners, regardless of the amount of change since the last case, the Commissioners are making decisions based on incomplete information.

Q. Ms. Barnes states on page 14 that nothing has changed materially since Ameren Missouri's FAC was first established. Is that true?

A. No, it is not. As discussed in my rebuttal testimony, Ameren Missouri had ** ** losses of ** ** in the test year. In no rate case prior to this one had ** **. When the FAC was established, many MISO schedules did not exist, including MISO schedule 26A which Ameren witness Jaime Haro, on page 19 of his rebuttal testimony, states are approximately $30 million annually. These are just two examples of material changes.

In addition, later on page 30 of her rebuttal testimony, Ms. Barnes lists two "arguably material changes" to the costs and revenues in the FAC since its inception. Ameren Missouri requested one – consumable costs related to air quality control systems – after the Empire District Electric Company was allowed to include the costs in its FAC. The other – transmission revenues – was included by Ameren Missouri after parties in the last case took the position that if transmission costs were to be included, transmission revenues should also be included.

RESPONSE TO AMEREN MISSOURI WITNESS MS. BARNES REGARDING THE INCLUSION OF NEW COSTS AND REVENUES BETWEEN RATE CASES

Q. On page 12 of her rebuttal testimony, Ms. Barnes states that Ameren Missouri does not decide what costs and revenues are included in the FAC. She states that the tariff defines what can and cannot be included. What is your response to this statement?

A. I agree that the tariff has defined what can and cannot be included. However, the tariff sheets in the past have been very vague which allowed Ameren Missouri to decide what costs to include. For example, the tariff sheets included costs recorded in account 565. This is the Federal Energy Regulatory Commission ("FERC") account where MISO costs are recorded. Therefore, anytime there was a new MISO cost that was recorded in account 565, Ameren Missouri could put that cost in the FAC irrespective of whether the cost was associated with fuel or transportation. Attached to this testimony as Schedule LM-S-2 is Ameren Missouri's response to OPC's data request asking when various MISO charges began flowing through the FAC.[17] The column with the heading of "3" is the date that the MISO cost or revenue began flowing through the FAC. Of particular interest is MISO schedule 26A – the MISO schedule that Mr. Haro stated had the largest cost. One of the schedule 26A costs began in June, 2014. That would be a change since the last rate case. There is no explanation in this case, Case No. ER-2014-0258, as to what this charge is, what the magnitude is expected to be or whether the cost will be uncertain or volatile. The other MISO schedule 26A cost began flowing through the FAC in January 2012. Case No. ER-2012-0166 was filed on February 3, 2012. There was no explanation of this cost, which is described as a "large" cost in Ameren Missouri's direct testimony in Case No. ER-2012-0166. The magnitude of these costs did not appear in testimony until sur-surrebuttal

was filed in September, 2012. If Staff had not made the recommendation that the transmission costs that flowed through the FAC be clarified, there may have been no testimony at all on the cost that Mr. Haro characterizes in his testimony in this case, Case ER-2014-0258, as "large."

The tariff sheets in the last case were changed to allow Ameren Missouri to include new costs and revenues in its FAC if it showed in the FAC monthly report that the costs were similar to or had the nature of another cost or revenue in the FAC tariff sheets. Ameren Missouri, according to page 34 of Ms. Barnes rebuttal testimony, has added five new charge MISO types since the last revision of the FAC tariff sheet took effect.

Q. Does the fact that the tariff sheets allow this to take place mean that Ameren Missouri does not decide what costs and revenues to add since the last rate case?

A. No, it does not. It just means that Ameren Missouri followed the overly-broad latitude afforded it by its tariff when deciding what costs and revenues to include.

Q. Did Ameren Missouri discuss the addition of these new costs and revenue in its direct testimony in this case, Case No. ER-2014-0258?

A. No, it did not.

Q. Has Ameren Missouri proposed changes to its FAC tariff sheets to include these costs and revenues?

A. No, it has not.

[17] Page 3 of this Schedule is modified from what was provided so that all the information could be seen on one page. Also the spreadsheet column that contained the description in the data request has been hidden. The description that Ameren Missouri provided for each MISO schedule is shown instead.

RESPONSE TO AMEREN MISSOURI WITNESS MS. BARNES COMPARING THE FAC TO OTHER REGULATORY MECHANISMS

Q. On page 15 of her rebuttal testimony, Ms. Barnes brings up other regulatory mechanisms that do not require testimony each case if nothing changes significantly. Why is the FAC different from these areas?

A. The Commission has rules that specify minimum filing requirements for continuation or modification of the FAC. Ms. Barnes mentions just two mechanisms – Pension/OPEB tracker and certain unspecified tariffs. There are no minimum filing requirements for the Pension/OPEB tracker. I do not know what tariff sheets she is referring to, and with no further clarification, I can only assume that there are no minimum filing requirements for these tariff sheets either.

RESPONSE TO AMEREN WITNESS MS. BARNES REGARDING VOLATILITY OF FAC COSTS

Q. Ms. Barnes discusses volatility of coal costs beginning on page 23 of her rebuttal testimony. Is rebuttal testimony the proper place to begin this discussion?

A. No, it is not. The appropriate place for such discussion to begin was in her direct testimony.

Q. Did she provide information on coal costs in her direct testimony?

A. Yes. As I stated in my direct testimony, Ms. Barnes stated in her direct testimony on page 7 that Ameren Missouri has in place long-term contracts for coal and coal transportation. Now, after OPC's testimony has been filed on its understanding of what her testimony

means, Ms. Barnes explains in her rebuttal testimony that there is still volatility even though the prices of coal and coal transportation are known through 2017.

Q. Ms. Barnes states that the chart on page 21 of her rebuttal testimony of the difference between actual fuel costs and net base energy costs shows volatility and uncertainty. Do you agree?

A. No, I do not. As I stated in my rebuttal testimony, I believe that the large differences are due to an improper setting of the net base energy costs.

RESPONSE TO AMEREN WITNESS MS. BARNES REGARDING THE COSTS TO BE IN AMEREN MISSOURI'S FAC

Q. Ms. Barnes states on page 30 that specified MISO administrative costs are not allowed in the FAC. Are there some MISO administrative costs that are in the FAC?

A. From the limited descriptions provided in Ameren Missouri's monthly FAC reports, there was ** ** of ** ** costs included in Account 447.

Q. Should this be included in the FAC?

A. No. Based on the limited description, OPC recommends that since it is an administrative cost, it be removed from the FAC.

Q. Ms. Barnes characterizes your recommendation on costs and revenues that should be included in the FAC, if the Commission authorizes an FAC, as "vague." Why did OPC recommend that only fuel, the transportation of the fuel commodity and

purchased power costs including the transmission cost of the purchased power and off-system sales be allowed in the FAC?

A. OPC makes this recommendation for two reasons. First, Ameren Missouri's testimony did not, and still does not, have a complete explanation of every cost and revenue type that Ameren Missouri is requesting be included in the FAC. Second, Ameren Missouri did not show the magnitude, volatility, uncertainty or controllability of any of the costs and revenues that it proposes be included in its FAC. Given these deficiencies, OPC recommends the costs to be included in the FAC should be limited to those mentioned specifically in the statute that authorizes an FAC, Section 386.266 RSMo. OPC included off-system sales revenues so that fuel costs would not have to be split between costs to serve native load and costs for off-system sales.

Specifically, it is OPC's recommendation that if an FAC is authorized only the following costs be included in the FAC:

	Major Acct	Minor Accts	Activity Codes
Coal	501	1, 2, 3, 8, 9, 12, 13, 110	
Nuclear	518	2	
Natural Gas	547	3, 13	GCVC, GCFC
Oil	547	2, 12	ISFO, FBFO
Purchased Power	555	Minor acct by utility purchased from	PPBL, PPIS
Off-system sales	447	Minor acct by utility sold to	ENER

This is based on information contained in the FAC monthly reports. Despite Mr. Francis' and Ms. Barnes' repeated assurances to the Commission that all the costs are fully defined in the monthly FAC reports, I could not determine if there is an additional major account, minor account and activity code for transmission costs for purchased power. If there is, then OPC would add that to its list of costs to be included in the FAC.

RESPONSE TO AMEREN WITNESS MS. BARNES REGARDING THE FAC SHARING MECHANISM

Q. Would OPC's proposed change to the sharing percentage result in an under-recovery of $76 million as asserted by Ms. Barnes on page 46?

A. No. If the net base energy cost was set correctly, the under-recovery would have been lower. If Ameren Missouri's share of the risks was higher, different decisions may have been made – perhaps fewer or no ** **, and the under-recovery amount would have been lower.

In addition, while Ameren Missouri may not have been recovering all of its FAC costs, its surveillance reports show that this has not prevented it from been earning more that its allowed return on equity. Page 21 of my direct testimony shows that Ameren Missouri has been earning above its allowed return since the 12 months ending September, 2014.

Q. Ms. Barnes opines that once a Commission has issued an order regarding an FAC, then the issue should not be brought up again. Should arguments that have been made in the past never be brought up again?

NP

A. No. If arguments lost in prior cases were not brought up, Ameren Missouri would not have an FAC since the Commission rejected Ameren Missouri's first request for an FAC. Ameren Missouri, in its direct testimony, continues to describe why there should be no sharing mechanism.

Q. Does OPC agree with Ms. Barnes that prudence reviews are an incentive for a utility to manage its costs?

A. Yes.

Q. Ms. Barnes states on page 55 that sharing percentage changes should not be based upon past surveillance report results. Does OPC agree?

A. To some degree. The sharing percentage should not be based entirely upon past surveillance reports. However, these reports should be included in a review of the appropriateness of a sharing mechanism. Consistent over-earning shows that the balance of the risks between the customers and Ameren Missouri has tilted too much against the customers. This in turn shows that the sharing mechanism needs to be adjusted to provide more balance between Ameren Missouri and its customers.

RESPONSE TO AMEREN WITNESS MS. BARNES' REGARDING THE FAC TARIFF SHEETS

Q. After reviewing Ms. Barnes testimony beginning on page 55 with regard to the provision in the FAC tariff sheets regarding a significant load reduction in the LTS class, do you still believe that Ameren Missouri would recover all of its costs to serve the LTS class if there was a significant load reduction in the LTS class?

A. Yes, I do.

Q. What is OPC's recommendation regarding the inclusion of a provision in the FAC tariff sheets regarding the LTS class?

A. It is still OPC's recommendation that the provision be removed. Ameren Missouri requested to be able to provide service to the LTS class taking on the risk of the impact on it if the LTS class load was significantly reduced. This provision moves that risk to the customers. However, OPC no longer recommends changes to the tariff sheets if the provision remains.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

rule, such as would justify the need for a specific sanctions provision. AT&T Missouri also points out that the commission already has a rule, 4 CSR 240-2.090(1), that allows the commission to impose appropriate sanctions for abuse of the discovery process.
RESPONSE AND EXPLANATION OF CHANGE: The commission will accept the suggestion. The provisions found elsewhere in the commission's regulations and in the controlling statutes regarding sanctions for abuse of the discovery process and disobedience of a commission order are sufficient and there is no need to include such a provision in this rule. Section (21) will be modified accordingly.

No other comments were received.

4 CSR 240-2.135 Confidential Information

(1) The commission recognizes two (2) levels of protection for information that should not be made public.

(A) Proprietary information is information concerning trade secrets, as well as confidential or private technical, financial, and business information.

(B) Highly confidential information is information concerning:

1. Material or documents that contain information relating directly to specific customers;

2. Employee-sensitive personnel information;

3. Marketing analysis or other market-specific information relating to services offered in competition with others;

4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a company in providing services to customers;

5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;

6. Strategies employed, to be employed, or under consideration in contract negotiations; and

7. Information relating to the security of a company's facilities.

(3) Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as proprietary.

(4) Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(E) Subject to subsection (4)(B), the party disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(F) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as highly confidential.

(16) All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than preparation for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using highly confidential or proprietary information obtained under this rule as the basis for additional investigations or complaints against any utility company.

(21) A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005, the commission adopts a rule as follows:

4 CSR 240-3.161 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1063–1075). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Public hearings on this proposed rule and proposed rule 4 CSR 240-20.090 were held on August 22, 2006 in Kansas City; August 22, 2006, in Grandview; August 23, 2006, in St. Louis; August 23, 2006, in Overland; August 29, 2006, in Cape Girardeau; September 6, 2006, in Joplin; and September 7, 2006, in Jefferson City; the public comment period ended September 7, 2006. Timely filed written comments were received from seven (7) individuals and fourteen (14) groups or companies. A total of twenty (20) persons commented at the local hearings. Ten (10) parties represented by counsel, providing either comments or the testimony of witnesses, participated in the hearing in Jefferson City. Written comments were received from Missouri Association for Social Welfare (MASW), Missouri Industrial Energy Consumers, Praxair, Inc., AG Processing Inc., Sedalia Industrial Energy Users Association (SIEUA), Noranda Aluminum, Inc., MO PSC Staff, Office of the Public Counsel, AARP, Missouri Attorney General's Office, Union Electric Company d/b/a AmerenUE, Older Women`s League-Gateway St. Louis Chapter (OWL), William Hinckley on behalf of BioKyowa Inc., The Empire District Electric Company, Victor Grobelny, Kenneth and Jan Inman, Capt. Frank Hollifield on behalf of the U.S. Air Force, Terry Schoenberger, and Joan M. Berger. Persons commenting at the local hearings were: Melanie Shouse, John Moyle, Dennis Anderson, Angela Steele, Scott Apell, Joan Bray, Alberta C. Slavin, Eddie Hasan, Bob William, Curtis Royston on behalf of the Human Development Corp., Yaphett El-Amin, Fran Sisson, John Cross, Jamilah Nasheed, Becky Mansfield, Marvin Sands, Jean Wulser, Ann Johnson, Franklin C. Walker, William T. Hinckley, Tom Wigginton, Kevin Priestler, and Bill Pate. Counsel appearing in Jefferson City were Steven Dottheim on behalf of the PSC Staff, with witness Warren Wood, Lewis Mills, the Public Counsel with witnesses Russ Trippensee and Ryan Kind, John Coffman on behalf of the AARP and the Consumers Council of Missouri, Douglas Micheel on behalf of the Attorney General of Missouri, Diana Vuylsteke on behalf of the Missouri Industrial Energy Consumers (MIEC) with witness Maurice Brubaker, Jim Lowery on behalf of AmerenUE with witness Martin Lyons, Stu Conrad on behalf of Noranda with witness George Swogger, Stu Conrad on behalf of the SIEUA, Praxair and AG Processing, Dennis Williams on behalf of Aquila and Jim Fischer on behalf of Kansas City Power and Light. Comments from laypeople were generally against the rules, because they believed a rate adjustment mechanism (RAM) would result in higher rates, would make rates more volatile, would remove incentives for efficiency and unjustly enrich utilities. Several lay commenters suggested that fifty percent (50%) of fuel

costs be passed on to consumers and that fifty percent (50%) be paid for by the utility and its shareholders. Industry commenters supported or opposed a cap on the RAM, supported or opposed the utility "veto" provision, supported or opposed apportioning fuel costs between base rates and a RAM, and generally opposed the transition provisions. Both industry and lay commenters opposed or supported the rule in its entirety, some asserting that it was unnecessary and within the commission's discretion to not adopt the rule and others asserting that the commission was required to adopt rules in response to a legislative mandate. Comments are available for review in their entirety at www.psc.mo.gov, choose EFIS, Agree to Terms, Resources, highlight Case No., and type in EX-2006-0472. No comments were made concerning the proposed forms, which are adopted without change.

COMMENT: Some commenters assert that rules that more simply set out the application process should be adopted instead of the detailed proposed rules, that the current level of complexity could cause potential delays in rate adjustments, and that the extensive monthly and quarterly reporting requirements in these rules are unduly burdensome and of limited benefit. PSC staff asserts that the requirements for detailed information are narrowly drafted and that only certain portions of the rules apply to certain types of filings, so some provisions are repeated in different sections, but it is much more convenient for the reader to have the rule sectionalized in this manner.
RESPONSE: The commission finds that the complexity of the proposed rule is necessary in light of the fact that it establishes a procedure that has not been used by the commission in rate cases in the past. The commission expects that it will be necessary in the future to amend these rules both to remove requirements that serve no purpose and to add provisions the need for which it cannot now anticipate. After the lengthy, collaborative process that has been used to develop this rule, the proposed rule represents this commission's best estimate of what will be necessary, useful information and what will not. Therefore, the rule will continue to contain its present level of detail until experience with it dictates change.

COMMENT: Some commenters believe these rules should not include a requirement that the rules be reviewed in the future. The proposed rules include a December 31, 2010, review requirement that does not mandate a new rulemaking, but only requires that the rules be reviewed for effectiveness. PSC staff believes this as a reasonable requirement, given their content and complexity.
RESPONSE AND EXPLANATION OF CHANGE: In light of the response to the preceding comment, the commission finds it appropriate to leave in the date certain by which the rules will be reviewed. Therefore, the recommended new (17) will be included to clarify that the rules in this chapter are subject to the same review time frame as those set forth in Chapter 20.

COMMENT: AmerenUE opposes the use of the word "complete" in sections (1), (2) and (3), which contain the filing requirements of the rule, for example, a requirement to provide a "complete explanation" or a "complete description." AmerenUE seeks to change "complete" as it appears throughout the rule to "reasonable." AmerenUE asserts that "complete" means "perfect," and that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. PSC staff disagrees, and asserts that the rule should require a "complete" explanation of the data provided.
RESPONSE: The commission agrees that perfection is neither an appropriate standard to include in a rule nor the intent of the drafters. However, the commission disagrees that "complete" means "perfect." By using "complete" the commission means that which includes every explanation and detail to allow a decision-maker to evaluate the response fully and on its face, without forcing it to resort to asking for additional explanations, clarification or documentation to reach a decision. "Complete" means "not lacking in any material respect," which is a reasonable standard for filings. Moreover, the purpose of the rule is to alert requesting parties of the documentation and information necessary for the staff to review and for the commission to approve a rate adjustment mechanism (RAM) within the allotted time for a general rate case. If incomplete information is provided, the entities reviewing the documentation would be required to request further detail in order to evaluate the proposed RAM. The commission finds that "complete" is the most appropriate word to convey the amount of information or documentation that is required for review. Therefore, no change will be made.

COMMENT: The attorney general asserts that the definition of fuel and purchased power costs as "prudently incurred and used fuel and purchased power costs, including transportation costs" in (1)(A) is too broad and could allow increased fuel costs caused by inappropriate or negligent acts or omissions of the electric utility to be included in the RAM, and that the single standard of "prudence" would not preclude such inclusion. The attorney general recommends the following inclusion "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any rate adjustment mechanism authorized by Section 386.266." The attorney general suggests similar changes where the phrase "prudently incurred costs" appears.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the prudence standard alone is insufficient and that increased costs resulting from negligent or wrongful acts should not be included in a RAM, as set forth below. The commission believes the single addition of language in (1)(A) will be sufficient.

COMMENT: Some commenters want more specificity and definitions about what costs can be included in a RAM. PSC staff notes that certain inclusions or exclusions should be clearly stated, but feels that the rule should be flexible as to what costs the utility may seek to recover in a RAM, consistent with section 386.266, as parties may wish to consider different costs and revenues when dealing with different electric utilities.
RESPONSE: The commission finds that the present level of specificity is sufficient; no further specificity, beyond the exclusion discussed in the preceding comment, is warranted. Therefore, no change will be made.

COMMENT: PSC staff suggests that (1)(E) be clarified that a RAM can be either a fuel adjustment clause or interim energy charge.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds it reasonable to make such clarification, as set forth below.

COMMENT: The attorney general recommends that the phrase "initiated by the file and suspend method" be inserted into the definition of general rate proceeding.
RESPONSE: While the attorney general is correct about the technical description of the ways to initiate a general rate proceeding, the insertion of the language is not necessary to clarify the sort of proceeding in which a RAM may be sought. Therefore, no change will be made.

COMMENT: In subsections (2)(B) and (3)(B), which require an example bill showing the RAM, the attorney general recommends that the following sentence be added at the end of the first sentence: "If the electric utility is operating under an incentive RAM the electric utility shall also show how it will separately identify the incentive portion of the RAM on the customers bill." This proposal will allow the consumer to understand what portion of the surcharge is for fuel and purchased power and what portion of the surcharge is going to be returned to the electric utility as profit.
RESPONSE: The commission finds this suggestion to be unworkable in that it will be difficult to discern what portion, if any, is not attributable to fuel costs or constitutes "profit" in the context of a RAM

and whether adding another line item to customer bills will be less confusing or more confusing. Therefore, no change will be made.

COMMENT: PSC staff suggests that (2)(F) and (3)(F) be clarified that an IEC only has a refundable portion to be trued-up, which is different from the FAC, although they are both types of RAMs.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will clarify the language in (2)(F) and (3)(F) as set forth below.

COMMENT: PSC staff suggests that in (3)(O) grammatical changes be made to make the plurals consistent and remove an extraneous "and."
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will correct the language in (3)(O) as set forth below.

COMMENT: PSC staff suggests that (4)(B) be clarified that an IEC only has over-collections to be refunded, which is different from the FAC, although they are both types of RAMs.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will clarify the language in (4)(B) as set forth below.

COMMENT: PSC staff suggests that (4) be corrected to refer to 4 CSR 240-20.090(2) rather than 4 CSR 240-20.090(3) and that (4)(A) be corrected to refer to 4 CSR 240-20.090(3)(C) rather than 4 CSR 240- 20.090(3)(D);
RESPONSE AND EXPLANATION OF CHANGE: The commission finds this suggestion reasonable and will correct the references in (4) and (4)(A) as set forth below.

COMMENT: AmerenUE suggests that the surveillance reporting required in (5) be compiled and reported monthly but submitted quarterly, not monthly, as monthly submission is unduly burdensome and of limited benefit. More frequent reporting creates unnecessary costs, which increases rates. The PSC staff asserts that the monthly and quarterly reporting presently contained in the proposed rule will be of value and will be used by the parties in monitoring RAM operations and RAM credits and charges, true-up account monitoring, prudence audits and monitoring of utility earnings.
RESPONSE: In light of the fact that surveillance reports can be submitted electronically, the commission finds that, as the reports are compiled and maintained on a monthly basis, submitting them monthly rather than quarterly is not unreasonable. Therefore, no change will be made.

COMMENT: AmerenUE suggests that in (6), since surveillance monitoring reports will be available to parties other than staff and OPC, who have statutory confidentiality obligations, it is necessary that such reports be deemed "Highly Confidential."
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the reports should be declared highly confidential, subject to the standard procedure for challenging such classification. The commission is presently in the process of proposing a rule that will allow for classification of information without the issuance of a protective order, but will continue to use its standard protective order until that rule is final. The language in (6) will be modified to treat the surveillance reports as highly confidential as set forth below.

COMMENT: AmerenUE asserts that (6)(C) assumes that each utility budgets in the same manner, and that each utility prepares budgets based upon regulatory accounting principles as opposed to financial (GAAP) accounting principles, because the rule requires the budgeting report to conform to the surveillance report format. The budgeting process should not be driven by these surveillance reports.
RESPONSE: The commission finds that the requirement in (6)(C) does not require utilities to change the way they create their budgets, but simply requires that the budget be submitted in a uniform format for review. Therefore, no change will be made.

COMMENT: AmerenUE asserts that (7)(A)1.F. appears calculated to prevent inclusion of costs in the rate adjustment mechanism even if the utility has not received any insurance proceeds, and even if there has been no prudence disallowance. The true-up and prudence review provisions of SB 179 are designed to make after-the-fact adjustments, with interest, for items such as this. Before-the-fact preclusion of recovery of these costs is inappropriate and contrary to the statute, and is unnecessary to protect ratepayers, who will be fully protected by mandated true-ups and prudence reviews. Also, if additional requirements are to be imposed with regard to a particular FAC, those requirements should be spelled out in the order approving the RAM. The PSC staff asserts that the language in the rule is appropriate in that it requires the utility to identify any costs subject to insured loss or litigation and clarifies to the utility that such costs may not be recoverable as long as they are so subject. The PSC staff believes this serves as an appropriate incentive to the utility to vigorously pursue the funds tied up in litigation.
RESPONSE: The commission finds that the methodology put forth by the PSC staff creates a greater incentive to expeditiously resolve such matters than the required interest payments noted by AmerenUE. Therefore, no change will be made.

COMMENT: AmerenUE notes that (9)–(14) contain provisions that make those parties who participated in the case in which a RAM is created parties to any subsequent proceedings concerning that RAM and subsequent rate cases. AmerenUE does not object to discovery from those proceedings to be used in those subsequent proceedings, with updated responses. The principal change AmerenUE seeks is that in subsequent general rate proceedings, those desiring to be parties to that case need to become intervenors in that proceeding according to established commission rules. This is practical, fair and consistent with the proposed rule, in particular, (14), which contemplates that each general rate proceeding produces a new rate adjustment mechanism.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that in subsequent general rate proceedings, those seeking to participate must seek and be granted intervention to become parties in the subsequent rate case, since carrying over intervenor status from previous cases is administratively burdensome for both the utility and the commission. Therefore, (10)(A) will be amended accordingly, as fully set forth below.

4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements

(1) As used in this rule, the following terms mean:

(A) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales;

(E) Rate adjustment mechanism (RAM) means either a fuel adjustment clause (FAC) or an interim energy charge (IEC);

(G) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months.

(2) When an electric utility files to establish a RAM as described in 4 CSR 240-20.090(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(F) A complete explanation of how the proposed FAC shall be trued-up to reflect over- or under-collections, or the refundable portion of the proposed IEC shall be trued-up, on at least an annual basis;

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described by 4 CSR 240-20.090(2) in which it requests that its RAM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule the following supporting information as part of, or in addition to, its direct testimony:

(F) A complete explanation of how the proposed FAC shall be trued-up to reflect over- or under-collections, or the refundable portion of the proposed IEC shall be trued-up, on at least an annual basis;

(O) A description of how responses to subsections (B) through (N) differ from responses to subsections (B) through (N) for the currently approved RAM;

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its RAM as described in 4 CSR 240-20.090(2) in which it requests that its RAM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.090(3)(C);

(B) A complete explanation of how the over-collection or under-collections of the FAC or the over-collections of the IEC that the electric utility is proposing to discontinue shall be handled;

(6) Each electric utility with a RAM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report, which shall be treated as highly confidential, as required in 4 CSR 240-20.090(10) to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The submittal to the commission may be made through EFIS.

(10) Party status and providing to other parties affidavits, testimony, information, reports and workpapers in related proceedings subsequent to general rate proceeding establishing RAM.

(A) A person or entity granted intervention in a general rate proceeding in which a RAM is approved by the commission, shall be a party to any subsequent related periodic rate adjustment proceeding, annual true-up or prudence review, without the necessity of applying to the commission for intervention. In any subsequent general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that case. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic rate adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same RAM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the provisions of a commission protective order, unless the commission's protective order specifically provides otherwise relating to these materials.

(17) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000 and 386.266, RSMo Supp. 2005, the commission adopts a rule as follows:

4 CSR 240-20.090 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 17, 2006 (31 MoReg 1076–1082). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Public hearings on this proposed rule and proposed rule 4 CSR 240-3.161 were held on August 22, 2006 in Kansas City; August 22, 2006, in Grandview; August 23, 2006, in St. Louis; August 23, 2006, in Overland; August 29, 2006, in Cape Girardeau; September 6, 2006, in Joplin; and September 7, 2006, in Jefferson City; the public comment period ended September 7, 2006. Timely filed written comments were received from seven (7) individuals and fourteen (14) groups or companies. A total of twenty (20) persons commented at the local hearings. Ten (10) parties represented by counsel, providing either comments or the testimony of witnesses, participated in the hearing in Jefferson City. Written comments were received from Missouri Association for Social Welfare (MASW), Missouri Industrial Energy Consumers, Praxair, Inc., AG Processing Inc., Sedalia Industrial Energy Users Association (SIEUA), Noranda Aluminum, Inc., MO PSC Staff, Office of the Public Counsel, AARP, Missouri Attorney General's Office, Union Electric Company d/b/a AmerenUE, Older Women`s League-Gateway St. Louis Chapter (OWL), William Hinckley on behalf of BioKyowa Inc., The Empire District Electric Company, Victor Grobelny, Kenneth and Jan Inman, Capt. Frank Hollifield on behalf of the U.S. Air Force, Terry Schoenberger, and Joan M. Berger. Persons commenting at the local hearings were: Melanie Shouse, John Moyle, Dennis Anderson, Angela Steele, Scott Apell, Joan Bray, Alberta C. Slavin, Eddie Hasan, Bob William, Curtis Royston on behalf of the Human Development Corp., Yaphett El-Amin, Fran Sisson, John Cross, Jamilah Nasheed, Becky Mansfield, Marvin Sands, Jean Wulser, Ann Johnson, Franklin C. Walker, William T. Hinckley, Tom Wigginton, Kevin Priestler, and Bill Pate. Counsel appearing in Jefferson City were Steven Dottheim on behalf of the PSC staff, with witness Warren Wood, Lewis Mills, the public counsel with witnesses Russ Trippensee and Ryan Kind, John

Coffman on behalf of the AARP and the Consumers Council of Missouri, Douglas Micheel on behalf of the Attorney General of Missouri, Diana Vuylsteke on behalf of the Missouri Industrial Energy Consumers (MIEC) with witness Maurice Brubaker, Jim Lowery on behalf of AmerenUE with witness Martin Lyons, Stu Conrad on behalf of Noranda with witness George Swogger, Stu Conrad on behalf of the SIEUA, Praxair and AG Processing, Dennis Williams on behalf of Aquila and Jim Fischer on behalf of Kansas City Power and Light. Comments from laypeople were generally against the rules, because they believed a rate adjustment mechanism (RAM) would result in higher rates, would make rates more volatile, would remove incentives for efficiency and unjustly enrich utilities. Several lay commenters suggested that fifty percent (50%) of fuel costs be passed on to consumers and that fifty percent (50%) be paid for by the utility and its shareholders. Industry commenters supported or opposed a cap on the RAM, supported or opposed the utility "veto" provision, supported or opposed apportioning fuel costs between base rates and a RAM, and generally opposed the transition provisions. Both industry and lay commenters opposed or supported the rule in its entirety, some asserting that it was unnecessary and within the commission's discretion to not adopt the rule and others asserting that the commission was required to adopt rules in response to a legislative mandate. Comments are available for review in their entirety at www.psc.mo.gov, choose EFIS, Agree to Terms, Resources, highlight Case No., and type in EX-2006-0472.

COMMENT: The attorney general believes that use of a fuel adjustment clause or any other rate adjustment mechanism is inappropriate and unfairly tilts the playing field in favor of the electric utilities. The attorney general opposes adoption of the rules.

OWL asserts that during lobbying for passage of SB 179, the rate adjustment mechanism (RAM) was referred to as a tool the commission might use to devise a fair and balanced means of protecting consumers, as well as the regulated monopoly utilities. Sponsors gave assurances that the commission would devise the rules in a way to expressly include consumer protections.

AARP asserts that though the current draft reflects hard work by the PSC staff, it is devoid of the consumer protections promised by the legislature when the rules were authorized. These rules create an unbalanced shift in commission policy, granting utilities single-issue benefits without incentives to control costs, without safeguards against overearning and without mitigation of rate volatility. When lobbyists were aggressively pushing SB 179, they described the proposed RAM as simply a tool that the commission could use (or not use), based upon whether the commission could implement it in a balanced and fair way to both consumers and utilities. It was repeatedly stated that no utility would be authorized to use a RAM unless the commission first promulgated rules that added strong protections for consumers. The current draft contains none. In a January 2006 handout, the Missouri Energy Development Association (MEDA) reassured legislators that the commission has "complete authority to add whatever other protections it thinks are necessary." Unfortunately, MEDA took a different approach in its negotiations on the rule, rejecting every meaningful consumer protection proposed by various consumer representatives. The PSC staff, as a neutral facilitator, has not been able to draft a rule that contains necessary protections to make the mechanism fair.

The MIEC asserts that section 386.322 gives the commission discretion to allow fuel adjustment mechanisms and gives the commission discretion to promulgate rules governing them. However, it does not encourage or require the commission to do so. The legislature provided authority to the commission to determine whether or not fuel adjustment mechanisms are appropriate and under what conditions. SB 179 should not be viewed as a legislative endorsement of or mandate for fuel adjustment mechanisms.

The MASW asserts that the rule should not be adopted because the PSC lacks adequate resources to implement it. The Fiscal Note for SB 179 appears to state that the PSC should be authorized additional staff to implement its provisions. However, the staffing level, which was two hundred eleven (211) for Fiscal Year 2005, was reduced to one hundred ninety-nine (199) for FY06 and further reduced to one hundred ninety-three (193) FY07. It is fair to say the staff that carries out the day-to-day auditing, economic and engineering analysis has been reduced by at least twenty-five (25) over the last few years, during which time they have been given the additional duties associated with infrastructure surcharges and a substantial number of general rate cases. The agency's expense and equipment budget has been slashed by nearly one-third since FY05, reducing the funding needed for equipment, training, and outside experts. For these reasons, the MASW opposes adoption of the proposed rule.

On the other hand, AmerenUE asserts that when one hundred seventy-nine (179) out of one hundred eighty-six (186) legislators adopted SB 179, they expected Missouri's electric utilities to have available to them a fair, workable, and effective mechanism that would allow electric rates to be adjusted between general rate proceedings in a timely manner to reflect increases and decreases in prudently incurred fuel and purchased power costs. They included numerous features to balance consumer needs with the needs of the industry to recover, on a timely basis, these volatile and, to a large extent, uncontrollable costs. AmerenUE also noted that, of the twenty-nine (29) states in which utilities are traditionally (rate-of-return) regulated, only two (2) others, Utah and Vermont, do not allow for RAMs. AmerenUE supports adoption of the rule.

Although the PSC staff did not take a position on SB 179, section 386.266 is the law and staff is committed to making this law work, in keeping with staff's understanding of it and the rest of the laws of Missouri. Staff believes these rules are well structured to address the issues that face the commission associated with implementation of the electric utility fuel and purchased power costs recovery portions of 386.266.

RESPONSE: The commission agrees that the rules being adopted are discretionary, in that SB 179 does not expressly state that the commission must adopt rules implementing the law. However, the law does state that companies may request a RAM before rules are in place, but may not receive a RAM from the commission until the rules are in place. Failing to adopt rules would prevent any RAM from being granted by the commission. The rules are proposed to give guidance to utilities, the PSC staff and other interested parties as to what is expected in a rate case in which a RAM is considered, and defines the parameters under which a RAM would be administered once put in place. The commission believes that the proposed rule, as amended herein, constitutes the best balance it can make at this time. As following discussions will show, the commission is committed to continually refining the rule until the optimal balance is reached.

COMMENT: Several lay commenters opposed the rules on the basis that the use of a RAM would raise rates. OWL noted that most older women live on fixed incomes and tight budgets. Any increase resulting from a FAC will impose deep hardships on older women. Mr. and Mrs. Inman also noted that they vigorously oppose rules for utilities to increase their rates without commission review, which would place public utilities on a path of non-control, allowing a utility to raise rates because of a perceived increase in supply. The MASW asserts that the rule as proposed offers no protection to those ratepayers who are in economic distress. The additional burden of passed-through increases in the cost of their electric provider's fuel, creates a greater hardship on the economically disadvantaged. It further asserts that the commission should, in approving a RAM, include relief for economically distressed ratepayers from rate increases produced by the RAM. The PSC staff responds that, if approved by the commission, any RAM charges, or credits, must be identified as a line item on the customer's bill. If the RAM is in the form of a fuel adjustment clause (FAC), rates will be able to go up or down with actual changes in fuel and purchased power costs and possibly go up or down based on changes in off-system sales revenues. If the rate adjustment mechanism is in the form of an interim energy charge, then only refunds

will be possible. Under section 386.266, a RAM cannot be in effect for longer than four (4) years without an earnings review and modification or extension by the commission. While a RAM is in effect, the utility is required to comply with monthly and quarterly reporting requirements to the parties of the rate proceeding in which the RAM was established, continued or modified. Prudence audits will be conducted no less often than every eighteen (18) months. Current proposed rules anticipate annual changes to the RAM in order to true-up over- or under-collections. The RAM charge, or credit, will be permitted to change up to four (4) times each year.

RESPONSE: The RAM is created to allow a pass-through of certain costs more directly to ratepayers. At the present time, all of those costs are included in the base rate charged by the utility. Under these rules, a portion or all of the utility's fuel and purchased power costs can be removed from base rates and separately recovered in a RAM charge. In theory, the total of the base rate plus the RAM charge will be approximately the same as the base rate prior to the RAM. In times of rising fuel costs, RAM charges will increase with greater frequency than base rates would. However, in times of falling fuel costs, RAM charges will decrease with greater frequency than base rates would. The commission believes that, consistent with the statute, the safeguards established in this rule will prevent the runaway fuel bills some parties fear.

COMMENT: Several lay commenters verbally suggested that it would only be fair for utilities to pass through only fifty percent (50%) of fuel costs and that the utility and its shareholders be required to pay the other fifty percent (50%).

RESPONSE: These commenters may be confusing the proposal by other commenters that no more than fifty percent (50%) of fuel and purchased power costs be recovered in a RAM and that fifty percent (50%) remain in base rates, a proposal to be discussed more fully below. If not, then the commission must disagree with this comment in that it would not allow for the setting of just and reasonable rates that allow the utility a reasonable return.

COMMENT: Several commenters have raised the issue of rate volatility, which can be broken down into three (3) sets of comments. The first has to do with the needs of residential ratepayers on fixed or limited incomes. Several comments were received concerning the very tight budgeting used by such households and the havoc wreaked to those budgets when rates can fluctuate significantly every quarter.

RESPONSE: The commission requires all electric utilities to offer "budget billing," which allows residential consumers to be billed the same rate every month, with estimates based on historical usage. The commission will require that any RAM used by a utility be incorporated into the budget billing amount consistent with the way base rates are budget billed, pursuant to the utility's tariff.

COMMENT: The attorney general asserts that, as presently written, these rules shift one hundred percent (100%) of the risk of fuel price changes from the utility to the consumers. To better balance the consumer and electric utility interests the commission should insert the following consumer protections into the proposed rules: Earnings Review: "After the Commission has authorized any of the rate adjustment mechanisms authorized by this rule, the electric utility shall provide the Staff, Public Counsel and other authorized parties access to the surveillance reports that detail the electric utility's earnings. If after hearing the Commission determines that an electric utility's earnings exceed its authorized rate of return the Commission shall adjust the RAM surcharge to prevent windfall profits." The attorney general's proposed language would allow the commission to determine the appropriate balance of fuel and purchased power costs that would be subject to the RAM. By allowing all or some of fuel and purchased power costs to remain in base rates the commission can ensure that the electric utility keeps its fuel and purchased power costs as low as possible.

AARP suggests an additional sentence be included in the definition of a "FAC" [4 CSR 240-20.090(1)(C)] : (C) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. A FAC shall not include more than fifty percent (50%) of the fuel and purchased power costs that are recognized in an electric utility's rates. The FAC may or may not include off-system sales revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC; if the commission must implement a FAC rule, one of the most fair ways to treat these fuel and purchased power costs is on an even-handed 50/50 basis. Fifty percent (50%) of these costs can be imbedded in base rates during a rate case (where one hundred percent (100%) of expected costs are now recognized), while fifty percent (50%) of such costs can be recognized through an ongoing FAC surcharge.

Industrial users also favor retention of a portion in base rates, accommodating a sharing by the utility and ratepayers of a significant portion of the cost and risk, thereby aligning the utility interest with the interests of customers in low and stable rates. An important consequence of interest alignment is that less staff time will be used in after-the-fact reviews. If well designed, and coupled with robust surveillance, the system could be virtually self-policing. Rates will be lower in the first place, and administrative efficiency will be enhanced both for staff and the utilities.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that a clear statement that it may apportion fuel costs between base rates and a RAM is appropriate, as more fully set forth below. The commission will not establish a fixed level of apportionment, as the inherent differences in the operation of the utilities, particularly the difference in their fuel mixes for base-load generation would render a fixed amount unreasonable in some instances. The commission believes such authority is inherent in SB 179, but will add the language to clarify that it has such authority.

COMMENT: The final mitigation strategy discussed is the imposition of a cap on the amount that may be recovered through a RAM. Such a mechanism is especially important to the large, industrial users. Noranda asserts that a rate cap offers a simple approach that will limit rate volatility. Two (2) types of rate caps have been discussed. First, there is a "hard" cap that establishes a finite "not to exceed" limit. Any excess over the level of the cap is simply lost to the utility and may not be recovered. Second, a "soft" cap, really a deferral mechanism, smoothes a "spike" increase over a longer period of time. A soft cap permits the utility to defer costs above the cap, spreading them to a later period while accruing carrying charges. Noranda recommends a "soft" cap to be applied on the same percentage basis to all customers with any allowed fuel cost amounts in excess of the cap to be deferred for later collection. Appropriate interest provisions will protect the utility. Historically, the commission has used a phase-in of large rate increases. These rate phase-ins (a series of "rate caps") mitigate extraordinary increases and any disruptive rate volatility. For large industrial users, a sharp or extraordinary rate increase might be so severe as to result in a shutdown. The nature of Noranda's operations are such that, were it to shut down its smelter, the capital costs associated with resuming production could be prohibitive. Noranda's suggestion is that the final rule authorize a party to propose a rate volatility mitigation mechanism in a rate case in which a FAC is being considered. That will permit the issue to be addressed in a manner that can accommodate the size differences between utilities. In this case, one (1) size does not fit all.

While the MIEC does not find much value in a rate cap, it recognizes that some customers do. The commission may want to have the latitude to cap the level of recoveries in order to reduce rate volatility and to moderate rate impact on customers.

BioKyowa agrees the option of a "soft" cap should be added to the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds it reasonable to allow a party to the general rate proceeding in which a RAM is considered to propose a "soft" rate cap, in sufficient detail to allow a meaningful discussion of such a cap and the terms thereof. The commission will add language to (2)(H) as fully set forth below.

COMMENT: Virtually all industry commenters, both utilities and end users, assert the importance of recognition of line losses. This is simply in recognition of the fact that the physics of the electric system mean that line losses do differ at different voltage levels. At present, the rule uses the word "may." The commenters assert that "may" should be changed to "shall." As commenters explain, each transformer and all of the transmission and distribution lines consume some portion of the electrical energy in order to perform their respective functions. The electricity consumed in the transformations up and down among the various voltage levels and in the movement of the electricity over the transmission and distribution lines is termed "losses." In a technical sense, the energy is not "lost," but rather is a necessary component of and is consumed in the transportation/transmission process from the many generators to the many loads. It may be dissipated as radiant heat energy, overcoming the resistance and impedance of the transmission wires and the coils in the transformer. It is only "lost" in the sense that a portion of the energy generated is necessarily consumed by a utility's electrical system in the process of transformation, transmission and distribution, but it is, therefore not available for service to customers. These are physical principles and are not optional.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the mandatory recognition of line losses shall be recognized in the establishment of a RAM as they are in setting base rates. Therefore "may" in (9) is changed to "shall."

COMMENT: Some commenters believe these rules must be written so that the utility continues to have its own financial interests at stake, in order to ensure some level of prudence in utility practices with a RAM and that these incentives should be structured to align the interest of shareholders and ratepayers. Some commenters believe the proposed rules go beyond the strict construction of section 386.266.1 and allow the commission to impose a broad array of incentive and performance based programs.

Staff agrees that the rules that implement this portion of SB 179 should include provisions for incentive and performance based programs. Section (11), consistent with section 386.266, provides that the commission may implement incentive mechanisms and performance based programs to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities. Proposed (11)(B) specifies important objectives and criteria for establishment of incentive plans such as "aligning the interests of the electric utility's customers and shareholders" and "the overall anticipated benefits of the electric utility's customers from the incentive or performance based program shall exceed the anticipated costs of the mechanism or program to the electric utility's customers."

AmerenUE does not object to (11), except that the words "or discontinuation" should be deleted, as RAM incentive plans are not contemplated when the RAM is being discontinued. In addition, references to "performance based programs" relating to a RAM are misplaced. The issues addressed in (11) are "incentives to improve the efficiency and cost effectiveness of fuel and purchased power procurement activities," section 386.266.1, RSMo. Those are the kinds of incentives that relate to RAMs. The only mention of "performance based programs" in SB 179 appears elsewhere in SB 179 in a separate, stand-alone provision pertaining to incentive or performance based regulation generally, not incentives related to fuel and purchased power procurement, or RAMs respecting fuel and purchased power procurement.

Other commenters support the inclusion of (11) and are especially supportive that the stated concept of alignment of interest between utility and ratepayer should be preserved and enhanced. Many comments about incentives have been discussed in the volatility mitigation section concerning flexibility to determine what percentage of fuel and purchased power cost are to be recovered in base rates and what percentage could be recovered in a RAM, because that financially connects obtaining fuel and purchased power at a lower cost to earning a higher return. However, commenters generally were not supportive of limiting, at this time, the kinds of incentive mechanisms that could be used or restraining the PSC staff or any party from proposing any incentive plan that would maintain the alignment of financial interests between the utility and ratepayers. Industrial users recommended strengthening the provisions to enhance the likelihood of symmetrical sharing incentive provisions.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the provisions for incentive mechanisms are sufficiently broad to encompass a wide range of programs, that the interests of both utilities and ratepayers are sufficiently safeguarded and that the rule does not exceed the scope of the authority for such programs in the statute. Therefore, no change will be made, except the grammatical change removing "or discontinuance."

COMMENT: The industrial users recommend that (11)(B) be clarified to allow symmetrical cost sharing in incentive mechanisms or performance based programs, as the present language requires the anticipated benefits to the utility's customers from the incentive or performance based program to exceed the anticipated costs of the mechanisms or programs to the utility's customers. The staff concurred in this comment, asserting that equal sharing was reasonable.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that it is reasonable that the benefits of such programs may either be equal or less than their costs. The commission will clarify the language in (11)(B) as set forth below.

COMMENT: The attorney general asserts that the definition of fuel and purchased power costs as "prudently incurred and used fuel and purchased power costs, including transportation costs" in (1)(B) is too broad and could allow increased fuel costs caused by inappropriate or negligent acts or omissions of the electric utility to be included in the RAM, and that the single standard of "prudence" would not preclude such inclusion. The attorney general recommends the following inclusion "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any rate adjustment mechanism authorized by Section 386.266." The attorney general suggests similar changes where the phrase "prudently incurred costs" appears.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that the prudence standard alone is insufficient and that increased costs resulting from negligent or wrongful acts should not be included in a RAM, as set forth below. The commission believes the single addition of language in (1)(B) will be sufficient.

COMMENT: Staff would correct (4)(A), second sentence, as the current language would appear to require two (2) filings where the intent was that only one filing is mandatory and up to three (3) more are permitted.

RESPONSE AND EXPLANATION OF CHANGE: The staff's point is taken and the change will be made.

COMMENT: Almost universally, the ratepayer commenters opposed the transitional provisions set out in (16), which provided "If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this section shall apply. . ." This proposed section of the rule states that even though the rule is only proposed, any electric utility that files a general rate proceeding

thirty (30) days or more after the commission issued its notice of proposed rulemaking in this matter must follow the proposed requirements of section (16).
RESPONSE AND EXPLANATION OF CHANGE: Without delving deeply into the comments against this section of the rule, the commission agrees that it is questionable whether such transitional provisions are permissible under Missouri's rulemaking provisions and agrees that there is little practical advantage to having such transitional rules in place. Therefore (16) will be deleted in its entirety.

COMMENT: The attorney general recommends that the phrase "initiated by the file and suspend method" be inserted into the definition of general rate proceeding.
RESPONSE: While the attorney general is correct about the technical description of the ways to initiate a general rate proceeding, the insertion of the language is not necessary to clarify in what sort of proceeding a RAM may be sought. Therefore, no change will be made.

COMMENT: Some commenters believe these rules should not include a requirement that the rules be reviewed in the future. The proposed rules include a December 31, 2010, review requirement that does not require a new rulemaking, but only requires that the rules be reviewed for effectiveness. PSC staff believes this as a reasonable requirement, given their content and complexity.
RESPONSE: In light of the fact that these rules are highly complex, establish an entirely new procedure and are likely to contain provisions that will need to be altered, added or deleted, the commission finds it appropriate to leave in the date certain by which the rules will be reviewed. Therefore, no change will be made to the rule.

COMMENT: In section (8), which requires customer bills to identify the RAM, the attorney general recommends that if the electric utility is operating under an incentive RAM, the electric utility shall also separately identify the incentive portion of the RAM on the customer's bill. This proposal will allow the consumer to understand what portion of the surcharge is for fuel and purchased power and what portion of the surcharge is going to be returned to the electric utility as profit.
RESPONSE: The commission finds this suggestion would be misleading to consumers. Fuel and purchased power costs that are passed through in a surcharge will only reflect expenses of the utility. If off-system sales are passed through as part of a RAM, the proposed rule states that benefits to consumers must equal or exceed benefits to the utilities.

COMMENT: The attorney general notes that (2)(E) refers to "an alternative base rate recovery mechanism." Nowhere in the proposed rule is the term defined and the attorney general does not know what the commission means when it uses that term.
RESPONSE: The attorney general is correct; however, that phrase was included in the deletion of an entire sentence, so the concern is rendered moot.

COMMENT: Several commenters noted that the proposed rule appears to give the electric utility unilateral veto power over the commission's determination as to what RAM is appropriate for use by the electric utility. The proposed rule provides in pertinent part: ". . . if the commission modifies the electric utility's RAM in a manner unacceptable to the electric utility, the utility may withdraw its request for a RAM and the components that would have been treated in the RAM will be included in base rate recovery mechanism if the commission authorizes the utility to do so."

The attorney general asserts that this provision in the proposed rule will cause both practical and legal problems for the commission. If this section is not deleted, the staff, public counsel and other interveners will be required to file both a case with respect to the electric utility's proposed RAM and a case for placing the components that would have been included in the proposed RAM in the "base rate recovery" mechanism, whatever that mechanism may be. This will result in unneeded duplication of work and unnecessary complication of general rate case proceedings.

The PSC staff notes that the language permits a utility to withdraw its rate adjustment mechanism, if it chooses to do so. AmerenUE asserts that the electric utilities need to protect themselves from a RAM the commission might adopt the first time for an electric utility. The staff believes that AmerenUE's concern about an unreasonable RAM, which is the basis for AmerenUE's belief that the electric utilities require a veto power, is not well taken. The PSC staff offers the following compromise: to change proposed rule language so that utilities can request a rate adjustment mechanism or base rate recovery in establishment of a RAM but can only choose to receive recovery in base rates versus recovery through a RAM if the commission authorizes the utility to select this option in its order.

Multiple industrial commenters question the purpose of parties proposing alternatives to the commission through experts, exhibits and other evidence of record if the commission decision can simply be set aside by the utility. They believe that the commission is empowered by the legislature to regulate public utilities in this state and to make decisions, with the force of law (provided they are lawful and supported by competent and substantial evidence on the whole record) as to what constitutes reasonable terms and conditions for the offering of public utility services. SB 179 did not repeal public utility law in this state. Indeed, SB 179 states that "Chapter 386, RSMo, is amended by adding thereto one new section. . . ." Section 10 of SB 179 states: "Nothing contained in this section shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect." Moreover, Section 5 of SB 179 provides: "Once such an adjustment mechanism is approved by the commission under this section it shall remain in effect until such time as the commission authorizes the modification, extension, or discontinuance of the mechanism in a general rate case or complaint proceeding." The proposed rule provision directly contradicts the provisions of SB 179 and must therefore not be retained.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the veto provision would create an undue burden on the rate case process and appears to be inconsistent with both SB 179 and the remainder of Chapter 386. Therefore, it will be deleted.

COMMENT: AmerenUE notes that (7)(B)2. purports to award interest at the utility's short-term borrowing rate plus one percent (1%). AmerenUE further asserts that this is unlawful as SB 179 specifically provides that any sums refunded under a RAM are to include interest at the utility's short-term borrowing rate—not more, not less. The commission has no authority, absent specific statutory authority, to require monetary relief and consequently has no authority to require a higher rate of interest than specified by SB 179.
RESPONSE AND EXPLANATION OF CHANGE: Refunds under a RAM shall include interest at the utility's short-term borrowing rate, as more fully set forth below.

COMMENT: The industrial users, particularly Noranda, seek to have included in a final rule rate design language that clarifies that the RAM will be designed so that the allocation among the different classes of customers reflects an allocation method or methods for costs based on the principle of cost causation and shall not be designed in a manner that will allocate costs or revenues among customers or customer classes in a manner that is inconsistent with the principle of cost causation. Moreover, some of the costs for purchased power may well include a demand component. As such it may become necessary to develop a rate design that separately addresses demand and energy charges. In the absence of an appropriate allocation of any demand related costs, the remedy must be to exclude the demand-related costs from recovery as a part of any fuel rate adjustment mechanism.

RESPONSE: At the present time the commission cannot guarantee that rates will be designed in alignment with the goals of cost causation. While the commission always keeps that goal in mind as it sets rates, it cannot overcome the commission's overarching duty to set just and reasonable rates for all classes of consumers. A slavish devotion to one method of rate design will not help the commission do its duty to all classes of ratepayers. Therefore, no change will be made.

COMMENT: Several commenters raised the concern that the existence of a RAM could allow utilities to earn a return above the commission-authorized rate of return. BioKyowa suggested that language be added to provide for adjustments when RAMs cause the utility to earn above its authorized return on equity. If the commission finds it likely that the RAM may allow the utility to overearn it may include in the fuel adjustment clause a mechanism designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of charges under the RAM. The attorney general agrees that the legislature did not intend that the adjustment clauses authorized by section 386.266 would allow an electric utility to earn in excess of its authorized return. AARP also expressed concern about the very real possibility of overearning. A FAC mechanism is a single-issue surcharge, and could allow rate increases even when overall costs are dropping. AARP urges the commission to revise the rules to include meaningful consumer protections that are consistent with the comments of the various consumer stakeholders before a proposed rule is sent to the secretary of state's office. MIEC also raises concerns that absent some mechanism for adjusting rates, there is a strong potential that utilities will over-earn and that rates will be too high. Section 386.266 requires that an adjustment mechanism be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." The commission's statutory obligation pursuant to 393.130, RSMo is to establish just and reasonable rates. Rates that exceed the return on equity established by the commission are not just and reasonable. Consistent with other statutes governing the commission, section 386.266 requires that the adjustment allow the utility a sufficient opportunity to achieve a fair, not excessive, return on equity. To address this situation and to comply with subsection 4(1) of 386.266 and 393.130, MIEC proposes to add the following language to the fuel and purchased power adjustment rule: In establishing, continuing or modifying the FAC, the commission shall consider whether the presence of the FAC is likely to allow the utility to earn in excess of its authorized return on equity. If the commission finds this to be the case, it may include in the fuel adjustment clause a mechanism designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of charges under the FAC to the extent necessary to prevent the utility from earning in excess of its authorized return on equity as a result of revenues received through the FAC. The PSC staff is of the opinion that the safeguards present in the rule, in conjunction with its general review authority, will be sufficient to guard against overearnings. PSC staff notes that the RAM relies on historical, not projected costs and requires a utility using a RAM to come in for a rate case at least every four (4) years. That requirement does not now exist, permitting utilities whose costs are declining to overearn for years under present rate-of-return regulation. The PSC staff is of the opinion that sufficient safeguards exist to prevent significant overearning.

RESPONSE: The commission notes that the rule includes the following: "(13) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existences of its RAM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed." The commission finds that the safeguards established in the rule appear to be sufficient at this time. Therefore, no change will be made. As we have previously noted, we will watch carefully to determine whether additional safeguards need to be included in the rule.

COMMENT: The attorney general asserts that there is an apparent conflict between (11)(C) and (13) of the proposed rule. What will the commission do if as a result of an incentive RAM mechanism an electric utility is earning more than a fair rate of return? This is simply one (1) more example of how Senate Bill 179 and these proposed rules further tilt the playing field in favor of the electric utility. On the other hand, AmerenUE believes the complaint process set out in the rule is an unreasonable balance in favor of the complainant. It asserts that the commission should not arbitrarily dictate the time within which it must adopt an appropriate schedule in an overearnings complaint case. The complainant is not required to file the minimum filing requirements imposed on an electric utility that desires to initiate a general rate increase case. The complainant may not have filed a useable cost of service or class cost of service study, and the complainant may not have filed testimony supporting the complaint. Other technical problems concerning data, test years and other matters may be at issue. It is therefore not only impractical, but also inappropriate to fix, by rule, an artificial "deadline" by which the commission must set a procedural schedule. The commission should not tie its own hands by adopting a rule of general applicability without considering the individual circumstances that may exist in an individual complaint case alleging overearnings by a utility.

The PSC staff asserts that (13) clearly protects the rights of parties to file a complaint case on the grounds that a utility is earning more than a fair or reasonable return. The rule requires that if such a complaint is filed, the commission will issue a procedural schedule that includes a clear delineation of the case timeline no later than sixty (60) days from the date the complaint is filed. In addition to these provisions, staff notes that these rules include provisions that limit the time a rate adjustment mechanism can be in place without another rate proceeding, require annual true-ups, require prudence audits, require extensive monthly and quarterly reporting, include significant data sharing with other parties, only allow recovery of actually incurred costs versus projected or forecasted costs, and provide for commission-ordered incentive or performance-based programs designed to improve the efficiency and cost-effectiveness of the electric utility's fuel and purchased power procurement activities. In summary, staff believes that these rules provide for sufficient opportunities for the parties to develop reasonable rate adjustment mechanisms, monitor the performance of these mechanisms and revise these mechanisms if necessary.

RESPONSE: As to the attorney general's assertions, it is clear to the commission that (13) takes precedence over (11)(C). Further, it is not unreasonable, as AmerenUE asserts, to expect that a complainant in this new procedure, wherein parties have access to surveillance reports and other documents, will file a well-founded and well-documented complaint that could be expeditiously heard. Therefore, no change will be made.

COMMENT: The attorney general is convinced that the prudence review and surveillance monitoring established in the rule are insufficient. The attorney general believes that the commission should articulate some prudence standard in its proposed rule. The attorney general also asserts that (11)(C) binds the commission to a certain decision even though circumstances can change over time. Noranda asserts that the provisions of the proposed rule regarding surveillance appear to be adequate and should not be diluted or weakened. Ideally, Noranda would prefer that surveillance be sufficiently specific to enable an interested party to readily identify any inappropriate fuel costs and excess earnings. While the proposed surveillance provisions may fall short of this ideal, Noranda is satisfied that the proposed surveillance provisions are reasonable so long as they are not weakened by additional modifications.

RESPONSE: As noted above, the PSC staff is satisfied that the prudence reviews and surveillance procedures are adequate. Moreover,

as we have stated above, we find that the ability to file a complaint in (13) supersedes (11)(C). Therefore, no changes will be made.

COMMENT: Commenters assert that minimum equipment performance standards are needed to encourage efficient operations and maintenance and avoid the automatic pass- through of extraordinary insured or controllable costs (such costs are not caused by fuel price changes in any event). The PSC staff agrees that equipment performance standards should be a part of these rules and has included in the proposed rules requirements to develop generating unit efficiency testing and monitoring procedures. Staff will, as a result of receiving this data, have the ability to monitor each electric utility's power plants in terms of their capability to efficiently convert fuel to electricity. Any observed reductions over time may be an indication of the utility's need to implement programs to improve efficiency. Staff views this as a very important and necessary detail since the efficiency of each electric utility's power plants directly relates to each electric utility's fuel and purchased power costs.
RESPONSE: The commission finds the comment and the staff's resolution to be reasonable, requiring no further action.

COMMENT: Some commenters believe these rules should, and others believe these rules should not, include a requirement that the utility have an approved Chapter 22 resource plan in place prior to approval of any rate adjustment mechanism. The PSC staff believes that these rules should include requirements to report (i) on all supply- and demand-side resources, (ii) the dispatch of supply-side resources, (iii) the efficiency of supply-side resources and (iv) information showing the utility has a functioning resource planning process, important objectives of which are to minimize overall delivered energy costs and provide reliable service. These concerns prompted the drafting of proposed rule 4 CSR 240-3.161(2)(O)–(Q) and (3)(P)–(R). While staff believes the idea of having an "approved" resource plan as a prerequisite to having a rate adjustment mechanism may have some merit, staff does not believe this to be reasonable as the resource planning rules do not contemplate "approval" for these purposes, resource planning is not necessarily tied to current fuel and purchased power procurement prudency, and the resource planning rules will likely be changed as a result of upcoming rulemaking efforts. Also, staff believes the information being requested in the current proposed rules, along with additional discovery if needed, will provide parties with sufficient information to argue that a utility does not have an adequate planning process in place, if the utility does not.
RESPONSE: The commission finds the requirement for resource planning information in the Chapter 3 rules to be sufficient at present. Therefore no change will be made.

COMMENT: In its comments, the attorney general suggests a RAM Threshold Test: "Prior to gaining the ability to utilize any of the RAM mechanisms authorized by Section 386.266 the electric utility shall be required to demonstrate to the Commission and the Commission must find after hearing that without the ability to use the RAM mechanisms authorized by Section 386.266 the electric utility would be unable to have an opportunity to achieve its Commission authorized rate of return." Section 386.266(4)(l) notes that any RAM authorized by the commission must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity." If an electric utility already has a sufficient opportunity to earn a fair return on equity, it does not need a RAM. AmerenUE counters that SB 179 does not contemplate, and in fact prohibits, an earnings test. An earnings test means the utility would effectively never be able to utilize a RAM when fuel costs are rising, unless the utility established, up to four (4) times per year, that it is "under-earning." Implementation would require a full-blown rate review for each adjustment to the RAM. It would not allow the "periodic rate adjustments, outside of general rate proceedings, to reflect increases and decreases in prudently incurred fuel and purchased power costs" contemplated by SB 179.
RESPONSE: The commission finds that an earnings threshold for eligibility to use a RAM is contrary to the intent of the legislature, as articulated in SB 179. Therefore, no such eligibility criteria will be included in the rule.

COMMENT: AmerenUE notes that only an electric utility may "make an application to the commission" for a RAM, section 386.266.1, RSMo. The rules should be clarified, consistent with the statute, to provide that other parties to the general rate proceeding where a RAM is established or is to be continued can propose alternatives, but only if the electric utility proposes to establish or continue the RAM in the first place. (2)(F) and (3)(A) should be changed to clarify that the RAM and each periodic adjustment is to be based upon historical fuel and purchased power costs. The PSC staff believes that the current provisions of section 386.266 and these rules allow only electric utilities to propose establishment of a RAM. After the electric utility has a RAM in place, future rate proceeding filings to extend, modify or discontinue the rate adjustment mechanism will be subject to alternative proposals of other parties and the commission's power to approve, modify or reject any of these proposals.
RESPONSE AND EXPLANATION OF CHANGE: The rule is clarified that only an electric utility may seek a RAM, and that periodic adjustments to a RAM are based on historical costs, as more fully set forth below.

4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

(1) Definitions. As used in this rule, the following terms mean as follows:

(B) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power costs only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales;

(2) Applications to Establish, Continue or Modify a RAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060 and section 386.266, RSMo, only an electric utility in a general rate proceeding may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules. Any party in a general rate proceeding in which a RAM is effective or proposed may seek to continue, modify or oppose the RAM. The commission shall approve, modify or reject such applications to establish a RAM only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that may affect the costs or overall rates and charges of the petitioning electric utility.

(C) In determining which cost components to include in a RAM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs may be recovered in a RAM and what portion shall be recovered in base rates.

(E) Any party to the general rate proceeding may oppose the establishment, continuation or modification of a RAM and/or may propose alternative RAMs for the commission's consideration including

but not limited to modifications to the electric utility's proposed RAM.

(F) The RAM and periodic adjustments thereto shall be based on historical fuel and purchased power costs.

(H) Any party to the general rate proceeding may propose a cap on the change in the FAC, reasonably designed to mitigate volatility in rates, provided it proposes a method for the utility to recover all of the costs it would be entitled to recover in the FAC, together with interest thereon.

(3) Application for Discontinuation of a RAM. The commission shall allow or require the rate schedules that define and implement a RAM to be discontinued and withdrawn only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect the cost or overall rates and charges of the petitioning electric utility.

(A) Any party to the general rate proceeding may oppose the discontinuation of a RAM on the grounds that the utility is opportunistically discontinuing the RAM due to declining fuel or purchased power costs and/or increasing off-system sales revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not allow the RAM to be discontinued, and shall order its continuation or modification. To continue or modify the RAM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity and the rate schedules filed to implement the RAM must conform to the RAM approved by the commission. Any RAM and periodic adjustments thereto shall be based on historical fuel and purchased power costs.

(4) Periodic Adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its FAC rates. If the FAC rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) An electric utility with a FAC shall file one (1) mandatory adjustment to its FAC in each true-up year coinciding with the true-up of its FAC. It may also file up to three (3) additional adjustments to its FAC within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the FAC and in general rate proceedings thereafter.

(5) True-Ups of RAMs. An electric utility that files for a RAM shall include in its tariff schedules and application, if filed in addition to tariff schedules, provision for true-ups on at least an annual basis which shall accurately and appropriately remedy any over-collection or under-collection through subsequent rate adjustments or refunds.

(D) The staff shall examine and analyze the information filed by the electric utility pursuant to 4 CSR 240-3.161 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo and the RAM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the electric utility's filing, suspend the timeline of the true-up in order to receive additional evidence and hold a hearing if needed or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect by operation of law sixty (60) days after the utility's filing.

1. If the staff, OPC or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline for the adjustment to the FAC rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

2. If the party requesting the information can demonstrate to the commission that the adjustment shall result in a reduction in the FAC rates, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the RAM shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

(7) Prudence Reviews Respecting RAMs. A prudence review of the costs subject to the RAM shall be conducted no less frequently than at eighteen (18)-month intervals.

(B) The staff shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after the staff initiates its prudence audit. The timing and frequency of prudence audits for each RAM shall be established in the general rate proceeding in which the RAM is established. The staff shall file notice within ten (10) days of starting its prudence audit. The commission shall issue an order not later than two hundred ten (210) days after the staff commences its prudence audit if no party to the proceeding in which the prudence audit is occurring files, within one hundred ninety (190) days of the staff's commencement of its prudence audit, a request for a hearing.

1. If the staff, OPC or other party auditing the RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, it may utilize discovery to obtain the information it seeks. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing timeline shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing timeline. For good cause shown the commission may further suspend this timeline.

2. If the timeline is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate.

(9) Rate Design of the RAM. The design of the RAM rates shall reflect differences in losses incurred in the delivery of electricity at different voltage levels for the electric utility's different rate classes. Therefore, the electric utility shall conduct a Missouri jurisdictional system loss study within twenty-four (24) months prior to the general rate proceeding in which it requests its initial RAM. The electric utility shall conduct a Missouri jurisdictional loss study no less often than every four (4) years thereafter, on a schedule that permits the study to be used in the general rate proceeding necessary for the electric utility to continue to utilize a RAM.

(11) Incentive Mechanism or Performance-Based Program. During a general rate proceeding in which an electric utility has proposed establishment or modification of a RAM, or in which a RAM may be allowed to continue in effect, any party may propose for the commission's consideration incentive mechanisms or performance-based programs to improve the efficiency and cost effectiveness of the electric utility's fuel and purchased power procurement activities.

(B) Any incentive mechanism or performance-based program shall be structured to align the interests of the electric utility's customers and shareholders. The anticipated benefits to the electric utility's customers from the incentive or performance-based program shall equal or exceed the anticipated costs of the mechanism or program to the electric utility's customers. For this purpose, the cost of an incentive mechanism or performance-based program shall include any increase in expense or reduction in revenue credit that increases rates to customers in any time period above what they would be without the incentive mechanism or performance-based program.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 261—School Transportation

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 304.060, RSMo 2000, the board amends a rule as follows:

5 CSR 30-261.025 Minimum Requirements for School Bus Chassis and Body **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 3, 2006 (31 MoReg 984–986). Changes have been made in the text of the *2007 Missouri Minimum Standards for School Buses* which is incorporated by reference. No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The State Board of Education received comments from two (2) directors of transportation and one (1) department employee on the proposed amendment.

COMMENT: Both sets of comments opposed the high back seats and barriers standard, stating daily operational problems for the bus driver to include students standing and kneeling in order to communicate with friends, and more opportunity for vandalism, bullying and instances of objects being thrown out of windows due to a decrease in the bus driver's line of vision.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the additional stop arm stating the second stop arm located on the rear of the bus will not prevent accidents and recommending instead rear-mounted warning systems which would flash directly in the line of vision of motorists following the bus.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the front and rear tow hooks being included in the 2007 Minimum Standards. Front and rear tow hooks are fairly standard throughout the state and most large buses are being towed from the rear so the tow companies don't have to disconnect the drive shafts. Tow hooks offer no increased "safety" for students on board the bus.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Both sets of comments opposed the transmission interlock standard based on cost and availability. The transmission interlock is not available as an option from the school bus manufacturers as of this date. Installation of the transmission interlock will add to the cost of the bus with no appreciable increase in safety, but an increase in the cost of maintenance.
RESPONSE AND EXPLANATION OF CHANGE: Pursuant to a vote of the Missouri Minimum Standards Technical Advisory Committee the decision was made to withdraw the proposed change to the transmission interlock that would have mandated the transmission interlock system rather than having it as optional equipment. The transmission interlock is currently not readily available as an option on large school buses so the cost is higher than the committee would like it to be for school buses. The State Board of Education carefully reviewed the comments and has made changes in the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.

COMMENT: One comment was received regarding side skirts extended. Proponents of this change say that the purpose of extending the side skirts is to reduce the chance of a child crawling or being knocked under a bus and being run over by the rear tires. In reality, those children who are run over by their own school bus too often are run over by the front wheels, not the back wheels. The change will not make buses safer, but will only serve to increase maintenance and repair costs.
RESPONSE: The State Board of Education has considered this comment and has decided to make no change in the amendment based on the recommendation of the Minimum Standards for School Buses Technical Advisory Committee.

COMMENT: Language pertaining to the stop arm signal was inadvertently left out of the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.
RESPONSE AND EXPLANATION OF CHANGE: Per the Missouri Minimum Standards Technical Advisory Committee's request, the language pertaining to the Stop Arm Signal has been included in the *2007 Missouri Minimum Standards for School Buses*, which is incorporated by reference.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 1—Organization; General Provisions

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 536.023, RSMo Supp. 2005, the commission amends a rule as follows:

Ameren Missouri
Response to OPC Data Request
MPSC Case No. ER-2014-0258
In the Matter of Union Electric Company d/b/a Ameren Missouri's Tariffs to Increase Its Revenues for Electric Service

Data Request No.: OPC 8023 L Mantle

For each of the following MISO schedules, provide (1) if the cost or revenue flows through the current FAC; (2) when MISO first started charging Ameren Missouri or Ameren Missouri began to receive revenue under each schedule; (3) when the cost or revenue began flowing through the FAC; (4) the rate case in which Ameren Missouri requested the specific schedule be allowed to flow through the FAC along with a cite to the testimony page number and line in which the request was made; and (5) the date in which the Commission authorized the cost/revenue flow through the FAC. For the schedules in which Ameren Missouri received both charges and revenues, provide the information separately for the charges and the revenues.

Schedule	
9	Entergy Related Charge
11	Entergy Wholesale Distribution charges
26	Network Upgrade Charge from MTEP
26A	ARR Pass-Through Associated with MVPs
26A	MVP charges Associated with MVP
33	Black Start Services
37	Network Upgrade Charge from MTEP
38	Network Upgrade Charge from MTEP
41	Entergy Storm Securitization charge
42A	Entergy Accrued and Paid Interest
42B	Entergy Credit Associated with AFUDC
45	Cost Recovery of NERC Recommendation or Essential Action
47	Entergy MISO Transition Recovery

RESPONSE

Prepared By: Jesse Francis
Title: Supervisor, Margin Analysis and Reporting
Date: 1/27/2014

(1) (3): See the attached spreadsheet, which addresses these questions. It is also important to clarify that some of the descriptions used by OPC in the question above do not match MISO's description of the MISO Schedule that is identified. For example, MISO Schedules 9 and 11 are not identified by MISO as Entergy charges because they arise from the entire transmission system under MISO's functional control. MISO Schedules 9 and 11 existed well before Entergy became a MISO member. Since Entergy joined MISO a part of the MISO charges assessed to us under Schedules 9 and 11 arise from Entergy facilities that are now under MISO's functional control because of our load in the Missouri Bootheel, which is not directly connected to our transmission system but is instead connected to Entergy's transmission system. I would also point out that the descriptions used by OPC for Schedules 41, 42A, 42B, 45 and 47, while they generally match MISO's descriptions, are also transmission charges associated with the megawatt-hours we buy from MISO to supply energy to our Boot Heel load.

(4) The FAC tariff approved by the Commission in File No. ER-2008-0318 specifically authorized and required that charges recorded in FERC account 565 be included in the FAC. The Commission's approval of that tariff authorizes/requires that the charges in MISO Schedules 9, 11, 26, 26A and 33 be included in the FAC because all such charges are recorded to account 565. The FAC tariff approved in File No. ER-2012-0166 also specifically authorized/required that charges in account 565 be included in the FAC, and also constitutes continuing authorization regarding charges in Schedules 9, 11, 26, 26A and 33. With respect to revenues under MISO Schedules 26, 37 and 38, see Exhibit H to the *Non-Unanimous Stipulation and Agreement Regarding Class Kilowatt-Hours, Revenues and Billing Determinants, Net Base Energy Costs*, and the Fuel Adjustment Clause Tariff Sheets approved in that case, which reference the Stipulation. That tariff and the Stipulation specifically reflect the inclusion of the Schedule 26, 37 and 38 revenues with respect to charges (or credits to a charge) under MISO Schedules 41, 42A, 42B, 45 and 47, the Company is authorized/required to include charges under those schedules pursuant to the terms of the process outlined on existing FAC tariff sheets approved in File No. ER-2012-0166, pursuant to the notices timely provided in the Company's monthly FAC reports. For the same reason, the Company is authorized/required to include revenues arising from Schedule 26A.

(5) Charges under Schedules 9, 11 and 26 existed prior to approval of the Company's initial FAC which became effective March 1, 2009, and have therefore been included in FAC charges since the first charge took effect in late July, 2009. Charges or revenues under the remaining schedules listed in this DR were reflected for the first time in the FAC adjustments listed in the attachment.

		DR QUESTION NO:				
Schedule	MISO Schedule Description	1	2	3	5	Expenses or Revenues
9	Network Integration Transmission Service	Yes	December 2013[1]	December 2013[1]	From inception	expenses
11	Wholesale Distribution Service	Yes	December 2013[1]	December 2013[1]	From inception	expenses
26	Network Upgrade From Transmission Expansion Plan	Yes	March 2007	March 2009	From inception	expenses
26	Network Upgrade From Transmission Expansion Plan	Yes	June 2011	January 2013	FAR adjustment for Accum. Period 12	revenues
26A	ARR Pass-Through Associated with MVPs (2)	Yes	June 2014	June 2014	FAR Adjustment for Accum. Period 17	revenues
26A	Multi-Value Project Usage Rate	Yes	January 2012	January 2012	FAR Adjustment for Accum. Period 9	expenses
33	Blackstart Service	Yes	July 2013	July 2013	FAR Adjustment for Accum. Period 14	expenses
37	MTEP Project Cost Recovery for ATSI	Yes	June 2011	January 2013	FAR Adjustment for Accum. Period 12	revenues
38	MTEP Project Cost Recovery for DEO and DEK	Yes	January 2012	January 2013	FAR Adjustment for Accum. Period 12	revenues
41	Charge to Recover Costs of Entergy Storm Securitization	Yes	December 2013	December 2013	FAR Adjustment for Accum. Period 15	expenses
42A	Entergy Charge to Recover Interest	Yes	December 2013	December 2013	FAR Adjustment for Accum. Period 15	expenses
42B	Entergy Credit Associated with AFUDC	Yes	December 2013	December 2013	FAR Adjustment for Accum. Period 15	revenues
45	Cost Recovery of NERC Recommendation or Essential Action	Yes	March 2014	March 2014	FAR Adjustment for Accum. Period 16	expenses
47	Entergy Operating Companies MISO Transition Cost Recovery	Yes	June 2014	June 2014	FAR Adjustment for Accum. Period 17	expenses

(1) Date reflects when charges under this schedule started to be based in part on Entergy facilities under MISO's functional control - charges under this schedule have always been charged and included in FAC

(2) This is a charge type in both the MISO Energy and Ancillary markets

(3) These are credits to account 565 charges received after Ameren Missouri and others challenged Entergy's payments under a former power and capacity agreement at FERC, and reflect credits arising from power taken after the FAC was established.