BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Rule Regarding	)	
Electric Utility Fuel and Purchased Power	)	**Case No. EX-2006-0472**
Cost Recovery Mechanisms	)	

DISSENTING OPINION OF COMMISSIONER STEVE GAW

I dissent from the majority's final order of rulemaking relating to two newly enacted surcharges. These rules allow Missouri utilities to apply for fuel and purchased power cost recovery through adjustment surcharges outside of general rate case proceedings. The rules expand the Rate Adjustment Mechanisms (RAM) under which a utility can apply for Fuel Adjustment Clauses (FAC) and Interim Energy Charges (IEC). FACs allow utilities to shift the volatility of fuel and purchase power costs to consumers, without the extra protections the rate case process provides. Protections absent from the final order of rulemaking include future mandatory review of a utility's financials for over-earnings after application for an FAC; language requiring the netting of off-system sales and fuel and purchase power costs; adequate mechanisms to guard against removing utility incentives to invest in infrastructure, run efficient and economical operations, and, procure purchased power at a reasonable price.

The rules enacted by the majority of the Commission will place additional risks on Missouri residents. The costs of fuel and purchase power volatility of the fuel market are placed on the shoulders of consumers but it is the utility that makes the decision as to when and what to purchase and at what price. A prudence review long after consumers have paid for the utility's choices is the only protection against less than optimal decisions by the utility. Historically in gas cases such protection has been next to nothing. The strong current and financial incentive

which exists in traditional ratemaking helps to ensure that the company will make prudent decisions to the best of its ability.

In a traditional rate case off-system sales are usually netted against purchased fuel and power. This matching principal helps ensure that incentives exist to protect against game playing. A fuel adjustment clause that excludes off-system sales allows a company opportunities to increase share holder profits from off-system sales while shifting costs for fuel and purchase power to ratepayers. This rule does not prohibit this result.

The rule lessens the incentive to build and run efficient plants by allowing the risk for inefficiency to be transferred to ratepayers and away from the company which is in control of decisions that impact efficiency. The traditional approach provides clear financial consequences for running efficient plants. It also encourages building the generation that matches load type. Nothing in the rule helps to continue this incentive in a FAC. The same problem exists with purchase power. The financial incentives for a company to meet or beat its rate case margins may be replaced by a straight pass through of costs.

The rulemaking does not prohibit utilities that are over-earning from increasing costs to consumers through a fuel adjustment. In a traditional rate proceeding, the Commission sets rates only after a full review of the utility's entire business, including off-system sales. However, in the FAC proceeding the Commission only will be required to review the utility's expenditures on fuel, purchased power and transportation. Noticeably absent from 4 CSR 240-20.090(1) (C) is language requiring the FAC filing to include information related to its earnings. Without looking at all income and expenses consumers could easily pay increasing costs under the FAC even though the company was over-earning at the time. Other decreases in expenses or increases in revenues are not considered.

The only protection from increases in fuel adjustment costs if a utility is over-earning is an earnings complaint. But this protection in itself is inadequate. Gathering evidence as to whether a company is over-earning is not an easy task. Once a complaint is initiated there is no time within which the complaint must be decided. During this time period, the utility will be able to keep its excess earnings, while continuing to charge the same unjust and unreasonable rates.

In fact, there is a strong indication that it was the Legislature's intent to have earnings examined as a part of SB 179. Language in earlier legislation that adopted the Infrastructure Replacement Surcharge included language prohibiting earnings reviews. No similar language was contained in SB 179. The majority chose to ignore the legislature's deliberate silence, by precluding Commission review of over-earnings in fuel adjustment cases. As such, ratepayers lost another protection against overpayment for their utility services.

The Missouri utilities have generally been in good health in this state. The Missouri economy and consumers have benefited from lower than average rates while utilities have earned a sufficient return. Against this backdrop of success and economic growth, this rulemaking seeks a change which places more risk on the consumer and lessens the incentive of utilities to hold down fuel and purchase power costs and increase off-system sales. For these reasons, I must dissent.

Respectfully submitted,

Steve Gaw, Commissioner

Dated at Jefferson City, Missouri,
on this 17th day of September, 2007.