AARP's Initial Comments on the Proposed Electric Utility Environmental Cost Recovery Mechanism (ECRM) Rules

MoPSC Case No. EX-2008-0105
January 2, 2008

AARP submits the following initial comments in Missouri Public Service Commission (MoPSC) Case No. EX-2008-0105, relating to the proposed Electric Utility Environmental Cost Recovery Mechanism (ECRM) rules. AARP is a nonprofit, nonpartisan membership organization with more than 800,000 members in Missouri. AARP is dedicated to making life better for people 50 and over. We provide information and resources and engage in legislative, regulatory and legal advocacy. AARP has been active in advocating on behalf of our members who are concerned about rising energy and telecommunications bills.

AARP has grave concerns that the currently proposed ECRM ("Environmental Surcharge") rules do not contain sufficient consumer protections as promised when Section 386.266 RSMo was enacted in 2005 [SB 179]. Without significant revision, these rules would allow enormous, unfair cumulative 2.5% rate increases to occur annually without a full rate case audit, and would not limit the level of costs *over and above that* 2.5% level which could be deferred and given extraordinary treatment in future rate cases. AARP respectfully asks the MoPSC to consider revisions to the proposed rule that would include: 1) preventing the ECRM from being used by a utility to earn in excess of its rate of return, 2) limiting the application of the ECRM mechanism to

only new environmental rules, and 3) placing reasonable restrictions on the ability to recover hundreds of millions of dollars through an extraordinary deferral that is over and above the 2.5% annual cap.

When proponents succeeded in securing passage of SB 179 in the Missouri State Legislature, they frequently described the ECRM as simply a tool which the MoPSC could use (or not use), based upon whether the MoPSC found that it could be implemented in a way that was as fair to consumers as it was to regulated monopoly utilities. Proponents repeatedly stated that no utility would be authorized to use a surcharge such as the ECRM unless the MoPSC first promulgated rules that contained additional protections for consumers. The sponsors of this legislation in both the Senate and the House stated at hearings during March of 2005 that the MoPSC would be able to add consumer protections through the rulemaking process that would ensure that such a mechanism was fair. These statements reflect the legislative intent that consumers be protected from unfair surcharges through the promulgation of strong consumer protections.

Unfortunately, the rules as proposed would create an unbalanced shift in MoPSC policy, granting electric utilities an unprecedented single-issue ratemaking boon. The current incentive to aggressively control costs is inherent to a ratemaking process that, as a general principle, allows rate increases to occur only after a full rate case audit of all revenues, investments and expenses. Adoption of the proposed rules would dramatically weaken this incentive. In fact, the proposed rules place no check on the possibility that a utility could use

an ECRM to *overearn* beyond its allowed rate of return by adding this surcharge to its consumers' bills in a year when that utility's *overall* cost of service is declining. The potential for an ECRM surcharge to increase rates outside a rate case and without a full audit is bad enough, but the potential for such a rate increase during a time period that a utility is actually *overearning* is outrageous. This scenario is not hypothetical; it has previously occurred in Missouri through the operation of the single-issue Infrastructure System Replacement Surcharge (ISRS).

Indeed, in his concurring opinion regarding these proposed rules Chairman Davis states that the ECRM is "a tool for this commission to consider using in determining a rate case (sic) to ensure that the utilities actually have an opportunity to earn their allowed return on equity." AARP interprets this comment to mean the intent of an ECRM to address those situations where expenditures to comply new environmental regulations could threaten the financial integrity of the utility. Thus, to be consistent and equally as fair to ratepayers, every care must be taken to ensure the rule does not have the opposite effect of unjustly enriching the utility.

In order to address this deficiency, AARP urges the MoPSC to revise the rule to require the utility to prove that it is not overearning before it may increase an ECRM. In the alternative, the MoPSC should at least require that any revenues collected through an ECRM during a year in which overearnings were found to occur be refunded to consumers at the conclusion of that utility's next general rate proceeding.

The proposed rules also do little to circumscribe the costs in question in a manner that would ensure that the ECRM is limited to only those costs that could not be addressed in a general rate case proceeding. "Environmental costs", as defined in subpart 4 CSR 240-3.162 (E) of the proposed rule should be further limited to clarify that qualifying costs should be those costs that could not be anticipated during the utility's last rate case. The language of this definition could be revised as follows:

"Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any new federal, state, or local environmental law, regulation, or rule that were not in effect at the conclusion of the utility's previous general rate proceeding."

Surely, the intent of the law was not to permit recovery for costs that could have been taken into account during the rate case. Otherwise, an electric utility could describe almost any environmental expense that it is already now incurring as qualifying for the ECRM each and every year.

The proposed rules also lack any mention of the last provision within 386.266.2 which addresses the possibility that a utility may request deferral of "any costs not recovered as a result of the annual two and one-half percent limitation on rate adjustments" for recovery in the utility's next general rate proceeding. This would be an extraordinary request since the general rule is that only the costs contained within the historical test year are allowed to be considered, and it opens up the possibility that a utility would request much more than one year's worth of such costs in the rates designed to cover its costs on an annual basis. AARP recommends that the MoPSC place some limitation on such

an open-ended opportunity for special treatment, either by placing a cap on such deferrals or by requiring that an extreme hardship be proven to allow extra recovery for such costs. At a minimum, such deferrals should be amortized over the life of the assets to which the costs are related. The rule should be amended to clarify how such deferrals will be treated.

The MoPSC has great latitude to design these rules to ensure a fair process. In fact, Section 386.266.9 of the underlying law grants to the MoPSC the authority to impose whatever restrictions are necessary to "the structure, content and operation" of this surcharge mechanism in order to protect utility consumers. In a January 2006 handout, the Missouri Energy Development Association (MEDA) acknowledged this fact, reassuring legislators that the MoPSC has "complete authority to add whatever other protections it thinks are necessary." AARP respectfully urges the MoPSC to consider the suggestions of AARP and other consumer advocates and place meaningful restrictions on the ability of a utility to use the ECRM to raise rates unfairly.

AARP appreciates the opportunity to present these comments and looks forward to participating at the hearing on January 17, 2008 where it may present reply comments to the initial comments of other parties.

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