

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

In the Matter of Proposed Rules 4 CSR 240-3.162 )	
and 4 CSR 240-20.091, Environmental Cost )	Case No. EX-2008-0105
Recovery Mechanisms )	

**THIRD ROUND OF PREPARED STAFF COMMENTS**

At the hearing on January 17, 2008, questions were directed to the Staff regarding the Staff's position concerning comments of the Office of the Public Counsel (Public Counsel), Missouri Industrial Energy Consumers (MIEC), Noranda Aluminum Company (Noranda), and AARP. The Staff responded that its silence regarding any other entity's comments did not mean that the Staff agreed or disagreed with that other entity's comments, but that new ground was not necessarily being broken and the Staff thought that there was enough information in the record for the Commission to make an informed decision. Counsel for the Staff also stated that the Staff generally did not take issue with those portions of the Prepared Remarks Of AmerenUE Witness Mark C. Birk, which were filed in EFIS on January 16, 2008 and marked and received as Exhibit 3 on January 17, 2008 at the hearing, that did not criticize the Staff's comments or the proposed rules.

Nonetheless, regarding Mr. Birk's January 17, 2008 Prepared Remarks, the Staff would not necessarily have phrased its comments in the same verbiage as AmerenUE, even respecting those matters that the Staff finds itself in agreement with AmerenUE. For example, at page 9 of Mr. Birk's comments he addresses MIEC's comments. The Staff believes that the only "earnings tests" that are contemplated by Senate Bill 179 (S.B. 179) respecting environmental cost recovery mechanisms (or fuel and purchased power rate adjustment mechanisms) occur in general rate proceedings, including general rate proceedings initiated by complaint cases, and

there is no language in Section 386.266 providing for a retroactive or backcasting earnings test for determining whether environmental cost (capital or expense) deferrals should be recovered:

**386.266.4. The commission shall have the power to approve, modify, or reject adjustment mechanisms submitted under subsections 1 to 3 of this section only after providing the opportunity for a full hearing in a general rate proceeding, including a general rate proceeding initiated by complaint. The commission may approve such rate schedules after considering all relevant factors which may affect the costs or overall rates and charges of the corporation, provided that it finds that the adjustment mechanism set forth in the schedules:**

- (1) Is reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity;**

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**386.266.2 Subject to the requirements of this section, any electrical, gas, or water corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Any rate adjustment made under such rate schedules shall not exceed an annual amount equal to two and one-half percent of the electrical, gas, or water corporation's Missouri gross jurisdictional revenues, excluding gross receipts tax, sales tax and other similar pass-through taxes not included in tariffed rates, for regulated services as established in the utility's most recent general rate case or complaint proceeding. In addition to the rate adjustment, the electrical, gas, or water corporation shall be permitted to collect any applicable gross receipts tax, sales tax, or other similar pass-through taxes, and such taxes shall not be counted against the two and one-half percent rate adjustment cap. Any costs not recovered as a result of the annual two and one-half percent limitation on rate adjustments may be deferred, at a carrying cost each month equal to the utilities net of tax cost of capital, for recovery in a subsequent year or in the corporation's next general rate case or complaint proceeding.**

There was a question from a Commissioner respecting who may bring an earnings complaint. Section 386.390.1 and Section 393.260.1 provide as follows:

**386.390. 1. Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by**

petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; provided, that **no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.**

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393.260. 1. Upon the complaint in writing of the mayor or the president or chairman of the board of aldermen, or a majority of the council, commission or other legislative body of any city, town, village or county within which the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers of such gas, electricity, water or sewer<sup>1</sup>, as to the illuminating power, purity, pressure or price of gas, the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered in such municipality, or the purity, pressure or price of water or the adequacy, sanitation or price of sewer service, the commission shall investigate as to the cause of such complaint.

The Staff also would note pages 9-10 of Mr. Birk's Prepared Remarks for the January 17, 2008 hearing, where he offers what AmerenUE believes is a "workable alternative" to the environmental rate base and non-environmental rate base concept and procedures of the present proposed rules. AmerenUE did not make note of its "workable alternative" during its presentation on January 17, 2008. Mr. Birk states at page 10 of his Prepared Remarks that if the Commission determines that the concept in the present proposed rules should be adopted by the Commission, AmerenUE proposes modifying the definition of "environmental revenue requirement" in the proposed rules at 4 CSR 240-20.091(1)(D) as follows:

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<sup>1</sup> Apparently the word "service" was inadvertently omitted from original rolls.

The environmental revenue requirement shall be comprised of the following: (i) all environmental costs that are expensed, rather than capitalized, included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established, plus (ii) the costs of any major capital items whose primary purpose is to permit the electric utility to comply with any federal, state or local environmental law, regulation or rule. Representative examples of such capital items to be included (as of January, 2008) are electrostatic precipitators, NOx emissions control equipment and flue gas desulfurization equipment. The costs of such capital items shall be those reflected on the electric utility's books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECRM is established.

The Staff believes that the definition of "environmental revenue requirement" in the presently proposed 4 CSR 240-20.091(1)(D) is appropriate: "Environmental revenue requirement means the environmental costs identified in the general rate proceeding which forms the base for future periodic adjustments of the ECRM." The "environmental rate base" will differ among the electric utilities regulated by the Commission and will change over time, not only as the electric utilities comply with federal, state, or local environmental laws, regulations, or rules that may affect each of the electric utilities differently, but also as technologies change or develop. Therefore, an effort to fashion a more specific definition for the term "environmental revenue requirement" should be left to the particular rate case where an electric utility seeks an ECRM. The Commission could make its intent on this matter clear in its Order Of Rulemaking without adopting the language proposed by AmerenUE and the Missouri Energy Development Association (MEDA).

The Staff also would note the January 17, 2008 prepared comments of Warren Wood of MEDA which were marked as Exhibit 2. Mr. Wood states at page 8 as follows:

. . . If Commission Staff is suggesting that electric utilities could propose in their rate case filing a defined subset of environmental infrastructure for the purpose of calculating depreciation offsets and parties could propose well-defined changes to that infrastructure MEDA believes this option may be workable. This is significantly more burdensome provision than exist in the other states that have ECRM like recovery provisions and while MEDA is not in support of this

modification to the rules this does appear to be workable. A critical aspect to the workability of this option is the delineation of applicable infrastructure – it must be well-defined and reasonably separable from other rate base items. Examples of this type of infrastructure might include an electro-static precipitator, fabric filter, selective catalytic reduction and flue-gas desulphurization.

Respectfully submitted,

**/s/ Steven Dottheim**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 18th day of January, 2008.

**/s/ Steven Dottheim**