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Rulemaking Hearing
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Jefferson City, Missouri
Volume 1

In The Matter Of A Proposed)
Amendment To The Commission's) File No. EX-2016-0294
Fuel Adjustment Clause Rules)

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
COMMISSIONER

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P R O C E E D I N G S

JUDGE DIPPELL: Good morning. Let's go ahead and go on the record. This is Case No. EX-2016-0294, In the Matter of a Proposed Amendment to the Commission's Fuel Adjustment Clause Rules. My name is Nancy Dippell. I'm the Regulatory Law Judge assigned to this case, and we've set this time today for a public comment hearing in this rulemaking.

We have proposed rescission of 4 CSR 240-3.161 and proposed amendments to 4 CSR 240-20.090. Those are the Commission's current fuel adjustment clause rules. And we have several people who have filed -- industry folks who have filed comments, as well as staff and Office of Public Counsel. And we have several of those people here today.

I'm assuming they're wanting to put their additional comments on the record, including Ameren filed some written comments yesterday in lieu of verbally putting those in the record today. And we will accept those into this comment hearing as official comments.

I'm going to have the staff go last after everyone else has had an opportunity to give their comments. And would public counsel prefer to go first or would you prefer to wait until just before staff?

1 MR. SMITH: We'd prefer to wait until just
2 before staff.

3 JUDGE DIPPELL: We can do that. We'll start
4 with the industry folks. And I didn't send around a
5 sign-up sheet or anything like that. So I will just
6 open it up. The rulemaking comment hearing is more
7 informal than our other hearings. So I will just ask
8 that if you're going to give comments in response that
9 you be sure and speak into a microphone and that you
10 identify who you are for the court reporter. And we can
11 try speaking one at a time.

12 Mr. Lowery, would you like to lead us off?

13 MR. LOWERY: That would be fine, Your Honor.
14 The Commission's practice generally has been when
15 additional comments were prepared in lieu of presenting
16 testimony is to mark that as an exhibit and go ahead and
17 make it a hearing exhibit. Would that be okay? I did
18 bring copies for everybody and for the court reporter.

19 JUDGE DIPPELL: Great. That would be perfect.
20 We can mark that as Hearing Exhibit No. 1.

21 MR. LOWERY: I'll leave you a copy for all the
22 Commissioners.

23 JUDGE DIPPELL: I have a copy, the
24 Commissioner. I think we've got them electronically.
25 Appreciate it.

1 MR. LOWERY: I'll recycle.

2 JUDGE DIPPELL: Thank you.

3 MR. LOWERY: All right. I'll try to save more
4 trees next time.

5 JUDGE DIPPELL: We appreciate you coming with
6 copies. That's better than not.

7 MR. LOWERY: So good morning. My name is Jim
8 Lowery, and I'm appearing today on behalf of Ameren
9 Missouri. What I'd like to do is provide an overview of
10 the comments that the company filed on the proposed
11 amendments to the FAC rules. We very much appreciate
12 the opportunity to be here today, and we have endeavored
13 in our written comments and will endeavor today to be as
14 helpful to the Commission as we can as it considers its
15 decisions on the proposed rules.

16 I'd like to introduce four individuals that
17 are with me today from Ameren who are subject matter
18 experts in these areas. There certainly could be a
19 question that the Commission has that I can't answer or
20 can't answer adequately, and I hope that they'll be able
21 to.

22 So first I have with me, maybe you can just
23 raise your hand when I call your name, Mr. Andrew Meyer.
24 Mr. Meyer is the company's Senior Director of Energy
25 Management and Training. He's essentially in charge of

1 procuring the fuel and energy needed to power the
2 generators, serve our load and also make the significant
3 off-system sales that are included in the FAC.

4 Also with me is Ms. Marci Althoff who is the
5 Manager of Power and Fuels Accounting for Ameren and one
6 of her direct reports, Mr. Neil Graser, who is the
7 Supervisor of Power Accounting. They deal with the FAC
8 adjustment filings. They deal with the monthly reports,
9 and so on, and have for quite some time. And finally I
10 have Mr. Mark Peters here who's the Manager of Asset and
11 Trading Optimization. Mr. Peters has experience in the
12 RT0 markets that we operate where we make our sales and
13 purchases of energy. He also runs the production cost
14 model that as I think you know is important in terms of
15 setting the net base energy cost that gets set in each
16 rate case. If there's a question I can't answer, I
17 think they probably will be able to.

18 I want to step back in a little bit of
19 background. The company has been engaged in the process
20 that led to this rulemaking since I think about 2012,
21 when the Commission started reviewing its FAC rules. We
22 worked with the staff to provide very specific
23 suggestions on two or three different iterations of
24 draft rules that the staff prepared in the workshop
25 process that took place in 2015 and '16.

1 And as our August 6 comments indicate, the
2 proposed rules that are under consideration are very
3 similar to that last staff draft. We appreciate the
4 fact that we see a good many of the specific suggestions
5 that we made at that time. We were heartened to see
6 that. For that reason, the company generally supports
7 the rules as proposed.

8 We have a few concerns, and we outlined those
9 in our August 6 comments. I'm going to give an overview
10 of those in a minute. In addition, as the Judge
11 indicated, we submitted some additional comments in lieu
12 of taking up a significant amount of hearing time today
13 yesterday that have been marked as Exhibit 1.

14 The Office of Public Counsel had about 83
15 separate comments on the rule as proposed, and the staff
16 had a fairly significant number of comments, but I would
17 characterize the staff's comments as clarifications,
18 drafting, they weren't substantive, and I don't think we
19 had -- with one minor exception, I don't think we had
20 any issue at all with any of the things that staff
21 indicated, but we did provide where appropriate specific
22 edits or specific responses so that when the Commission
23 sorts out what is a pretty long and complicated rule and
24 tries to put a final rule together, we hope that will be
25 helpful.

1 Before hitting the highlights of our comments,
2 the five or six issues that we did have, I want to step
3 back and assess what we think the proposed amendment
4 should and should not be doing. First, the rules under
5 which we've all operated for the past 11 plus years we
6 think have worked pretty well. A lot of hard work went
7 into developing those rules, and there was a very
8 extensive workshop process in which we were heavily
9 engaged. It was led by former commission utility
10 operations division director Warren Wood, and Ms. Mantle
11 was involved in that as well. She worked for Mr. Wood
12 at the time.

13 And we had I don't know how many workshop
14 meetings but it was a lot. Can the current rules be
15 improved? Sure, they can be. We support most of the
16 proposed changes. The starting point for our evaluation
17 that led to the comments that we've made was to ask a
18 couple of questions. Is there a need for a change and
19 what is it if there is a need; and if so, does the
20 change fairly and in a balanced way address that need.

21 The second guiding principle that we followed
22 was to make sure that the proposed changes do not one
23 way or the other support or advance a particular policy
24 point of view on issues that I think have been issues in
25 the past and will probably be substantive issues in the

1 future. We thought that was the main problem with most
2 of the many suggestions that OPC made and we thought
3 that those primarily violated that principle that we
4 think is important.

5 We think the rules should provide a clear
6 orderly process for considering FAC requests, dealing
7 with prudence reviews, for FAC rate adjustments,
8 true-ups and also should require appropriate reporting
9 so the Commission can monitor the operation of the FAC
10 but they shouldn't be wading into advancing or creating
11 opportunities to try to advance particular policy or
12 points of view.

13 So let me get then to -- We have six issues.
14 I guess I could call them all substantive but only a
15 couple of them are really all that substantive. Let me
16 just give you a brief overview of those as outlined in
17 our comments.

18 The first one is the definition of
19 fuel-related revenues or costs. We made one simple
20 suggestion here. And I'll give you an example. For
21 example, under the definition as written in a
22 corresponding provision that appears right before it, if
23 emission allowance revenues are to be included in FAC,
24 and they are included in I believe all of our FACs and
25 have been for some time, then emission allowance costs

1 should also be included in the FAC, but you don't want
2 to double count them. So we just clarified that there
3 wouldn't be any double counting. If the revenues are
4 in, the costs ought to be in too. It would be
5 unbalanced and unfair and inappropriate to take the
6 costs but not include the revenues. That was a fairly
7 minor edit but we thought it was an important one.

8 I also want to take this opportunity to
9 address something that we overlooked in our initial
10 comments in that definition. The definition of
11 fuel-related revenues provides that they are revenues
12 related to the generation, sale, or purchase of energy.
13 I think that you want to add to the sale or purchase of
14 energy or capacity. Capacity and related revenues are
15 in the FAC now. I think even parties with whom we don't
16 typically agree on FAC issues would want all of those
17 revenues to be in there. If you take it as literally
18 revenues related to capacity are not going to be
19 governed because it says related to energy, the sale or
20 purchase of generation of energy. As you know, those
21 are not the same things, energy capacity.

22 The second issue I think is only marginally
23 substantive, but we thought it required a little bit of
24 explanation. Ever since the FAC rules were adopted, we
25 have been required to provide a sample notice when we

1 file the rate case asking to continue or begin an FAC,
2 the notice we're going to give the customers about the
3 case and about the FAC. We've always done that, really
4 has been no controversy about it.

5 The proposed amendments specifically indicate
6 that we should explain the impact of rebasing the net
7 energy costs on customers. We agree with that that we
8 should do that. We don't have any issue with that. I
9 think we redrafted it a little bit I think to make it a
10 little bit clearer, but we didn't have an issue with
11 that.

12 The proposed rule also had this language about
13 predicting what future FAC rate, you know, estimating
14 what future FAC rate adjustments might be over the
15 period when that mechanism might be in place. And
16 frankly we think it would be a disservice to customers
17 to do that because we don't really have any idea of how
18 to predict such a thing with any kind of accuracy.

19 Sales can vary. A lot of things happen in the
20 marketplace and in just what your kilowatt hour sales
21 are that could have big impacts on those predictions and
22 we're concerned that customers would -- they see these
23 predictions in a notice in a rate case and then when the
24 charges come through they're vastly different. Could be
25 higher, could be lower than what the estimate was. And

1 we're just concerned that that's a place that the
2 Commission really doesn't want to go. We would
3 certainly prefer not to go there.

4 CHAIRMAN HALL: Excuse me for a second. Where
5 are you in the proposed amendment?

6 MR. LOWERY: I probably should have put
7 references next to my comments, Commissioner. That
8 would be (2)(A)1. Thank you, Ryan. Yeah, it's (2)(A)1,
9 Commissioner. What we did in our Exhibit A to our
10 comments, I don't know if you have that, but in our
11 Exhibit A are the comments we literally pasted the clean
12 rule as proposed from the Missouri Register and then we
13 included our comments. If you look at page 7 of our
14 Exhibit A in (A)1 you'll see the edits that we made to
15 this notice provision.

16 CHAIRMAN HALL: Thank you.

17 MR. LOWERY: That's the provision I'm talking
18 about. The third issue, and it deals with
19 20.090(2)(A)9, and that would appear on page 8,
20 Commissioner, of our Exhibit A. It is clearly the most
21 substantive issue that we have. Others they may have
22 some substantive characteristics, but this is the most
23 important one from our perspective.

24 It would be a new FAC minimum filing
25 requirement. We believe that it clearly had its origin

1 in suggestions that OPC has been pushing for over the
2 last few years both in the workshop that ultimately led
3 to the proposed rule and in recent cases. And we are
4 concerned that the requirement would likely be misused
5 by OPC and perhaps others to attempt to advance policy
6 arguments that they have been making in the one instance
7 where they were litigated where those arguments were
8 rejected. We think there's several fundamental problems
9 with imposing this new requirement.

10 First, it presupposes and it presupposes
11 incorrectly that the Commission must as a matter of law
12 make specific determinations regarding magnitude,
13 volatility, control, et cetera. I expect the Commission
14 is going to look at those factors. The Commission has
15 in the past. I expect they will in the future.

16 There's no requirement that the Commission do
17 so, and there's no particular requirement the degree to
18 which, or the manner in which, or what evidence the
19 Commission has or does or does not consider. The
20 Commission has discretion in this area. And the statute
21 gives the Commission broad discretion and authority in
22 considering FAC requests. We believe that when you
23 start delving into these kinds of things what you're
24 doing is you're sort of tying your hands, you're setting
25 up a situation where if somebody doesn't like the way

1 that you resolve these issues or someone says well, your
2 rule says this was supposed to happen but you didn't
3 quite require the utility to tow the line in the way we
4 think they should that then you're going to see
5 applications for rehearings and appeals claiming that
6 you've made a mistake based on your own rule when you
7 don't need the rule to say any of this anyway.

8 You can decide -- You can consider the factors
9 and issues that you think you need to consider.

10 Frankly, Rule 20.090(2)(C), which has always been in the
11 rule, which says the Commission may consider volatility,
12 magnitude, et cetera, frankly it probably never should
13 have been in the rule. We didn't make a specific
14 suggestion to take it out, although we thought about it,
15 because the reason we have issues with it is it sort of
16 violates that second principle I talked about and that
17 is don't put in place a rule that folks can at least
18 argue advances their particular substantive policy
19 position on a fuel adjustment clause. You don't need
20 that. You have the power to decide these issues and to
21 make an issue of things that you think ought to be an
22 issue in the case.

23 That's our main -- That's really our main
24 concern. No one is precluded from making any argument
25 they want to make. No one is precluded from asking for

1 all the data that they want to ask for and running any
2 analyses that they want to run on these issues, but the
3 utility shouldn't be essentially prescribed and told
4 exactly how it has to present its case on these points.
5 We're concerned we're going to get drug into a
6 line-by-line examination of 30 or 40 different
7 components of what the fuel adjustment clause is about
8 and that's fuel. It's about purchased power to an
9 off-system sales. We're concerned that the provision
10 could be misused. So we think it should be stricken for
11 those reasons.

12 Our fourth issue I almost hesitate to bring it
13 up even because it's -- Let me just step back. It deals
14 with 20.090(2)(A)14 and 15. Let me just say that staff
15 in its comments said 14 should not be adopted. So we're
16 really left with 15. What it deals with is explanations
17 and information about the rate design of how net energy
18 costs are allocated in base rates and then information
19 about how net energy costs are allocated in the rate
20 adjustments that take place periodically as the FAC
21 operates.

22 Our problem with this is we don't see any
23 value in it. We can do it. But it's sort of a
24 meaningless exercise or it's going to be meaningless we
25 think in most cases. The drivers of changes in FAC

1 rates often are, probably most of the time are,
2 different than what drove changes in net energy costs --
3 net based energy costs.

4 We just don't see the value. We think staff's
5 comments they filed on August 6 sort of alluded to the
6 fact that they see sort of the same issue but they got
7 rid of 14 but they're saying keep 15. Well, you keep
8 15, you're still calling for the same comparison that we
9 don't think really has much meaning.

10 I think one of the things the Commission has
11 been trying to do in the last couple of years in
12 accordance with the governor's executive order is try to
13 streamline and simplify its rules, and we can do it but
14 it's an administrative burden that frankly we don't
15 think adds much value. We would urge you to also delete
16 15 from the proposed rule.

17 Next to last issue that we had deals with
18 another new provision, and Commissioner, I apologize I
19 did not put a cite next to my comment, but I think I can
20 find it here. It's on page 9 of Exhibit A to our
21 comments and it's item 17. It's another new minimum
22 filing requirement. What it says is, it says the
23 company has got to provide a detailed explanation of any
24 risk to each electric utility's retail customer classes
25 resulting from implementation of the FAC. We don't have

1 any idea how we would quantify such a risk. We also
2 don't even agree that such a risk exists. This
3 suggestion I recall I'm pretty sure also came from OPC
4 back in the rulemaking workshops. If somebody wants to
5 argue that adopting an FAC imposes some kind of risk on
6 customers, they're free to make that argument. If they
7 want to quantify it in some way, they're free to
8 quantify it. We don't really know how to comply with
9 this provision and we don't think that it's a provision
10 that ought to be in the rule because it arguably might
11 suggest that sort of take a point of view on -- I
12 realize it does say any risk and so maybe it doesn't
13 take a point of view but I think it can be argued that
14 it might. We really don't even know how to comply with
15 it. We don't have any idea how to quantify a risk that
16 we don't think exists in the first place.

17 Finally, and this really isn't a dispute but I
18 want to talk a moment about 20.090(8)(F). This is the
19 provision that originated in Ameren Missouri's FAC
20 tariff in 2012. Now it's been in our tariff since then
21 and it's been in all the other utilities' tariffs for
22 awhile. What it basically says is --

23 CHAIRMAN HALL: What page are you on now?

24 MR. LOWERY: I am on -- it's quite a ways back
25 there, Commissioner. It's on page 22 of Exhibit A item

1 (F). Carries on over to page 23. What it essentially
2 says is if an RTO implements a new market settlement
3 type or schedule, which RTOs do from time to time and
4 when they do that they typically do one of two things.
5 They either have decided that they want to have greater
6 transparency or they've changed their market operation
7 in a way that there's a new cost or revenue related to
8 fuel -- purchased power or off-system sales I think in
9 the case of the market. So they come up with this
10 settlement type and it comes through on the settlement
11 statement under a particular type or they use schedules
12 typically for transmission related issues. They call
13 them schedules but they operate in the same way. Or,
14 and I think this maybe has been at least as common, they
15 take a slice of a cost of revenue that's already been
16 under a market settlement type or schedule and they move
17 it into a different one. Again, I think it's just a way
18 managerially for them in the market to bring greater
19 transparency, sort of slice and dice the cost
20 differently.

21 What the provision says, and it's worked very
22 well, what the provision basically says is before a
23 utility can include a new market settlement type
24 representative cost or revenue in an FAC rate
25 adjustment, it has to give notice, it has to explain why

1 that is the same as or similar to. It's in the nature
2 of a purchased power or off-system sale of cost or
3 revenue that's already in the FAC. There's a process
4 for people to object. If the Commission were to uphold
5 the objection, then any cost that was included comes out
6 with interest and it deals with revenues and costs.

7 In the case of Ameren Missouri, and there's no
8 guarantee about what's going to happen in the future,
9 but in the case of Ameren Missouri this provision has
10 been utilized a handful of times in the last five or six
11 years and we've actually passed about 2.3 million of
12 revenues back that customers would not have gotten had
13 this provision not been there.

14 I don't think anybody is disputing the
15 provision, but we felt like the attempt to take that
16 tariff language from various utilities' tariffs and turn
17 it into a codified process there was some lack of
18 clarity, there was some duplication, there was some
19 terminology issues where they were being called charge
20 types. They're not really all charges. They're
21 sometimes revenues. We changed the terminology to
22 market settlement types. We added schedules because
23 it's the same thing. It operates the same way. But it
24 literally wasn't under the market settlement types. We
25 just clarified the process in a way that we thought was

1 constructive and more clear.

2 Staff actually had a couple tweaks in their
3 comments I think that took care of one of our issues and
4 otherwise I think can conform with our issues. So I
5 don't think there's a dispute about this provision but
6 we want to make sure that it's clear and that it worked
7 well to head off disputes about its operation.

8 With that, I'll wrap up my remarks. I'd like
9 to again thank you on behalf of Ameren Missouri for
10 allowing us to participate here in considering our
11 comments. I'd be happy to answer any questions or
12 attempt to answer any questions. If I can't, as I said,
13 hopefully my colleagues can do so. Thank you very much.

14 JUDGE DIPPELL: Thank you. Did you have
15 specific questions, Commissioner?

16 CHAIRMAN HALL: Yes.

17 JUDGE DIPPELL: Go ahead.

18 CHAIRMAN HALL: Could you articulate for me
19 your understanding of the Commission's rulings both with
20 regards to Ameren and KCP&L as to how we handle
21 off-system sales, and I'm speaking specifically with the
22 distinction between off-system sales outside the
23 footprint versus off-system sales that run through the
24 RT0 and come back to serve their native load?

25 MR. LOWERY: When you say the Commission's

1 decisions, I'm not sure at least in Ameren Missouri's
2 case there's really been any controversy about this in
3 the past. We had the one issue, I believe it was before
4 you were on the Commission, Commissioner, but there were
5 these later issues about the Noranda AAO and the ice
6 storm; but whether we make -- whether we sell energy or
7 capacity, you know, to PJM outside the footprint or
8 within the footprint, those costs are recorded in
9 account 447. They are included as an offset in our FAC.
10 They always have been.

11 CHAIRMAN HALL: Maybe I'll save that question
12 for Mr. Rogers or KCP&L.

13 MR. LOWERY: Okay. I'm not really sure.

14 CHAIRMAN HALL: Okay.

15 JUDGE DIPPELL: I believe that's all the
16 questions for you at this time, Mr. Lowery.

17 MR. LOWERY: Thank you.

18 JUDGE DIPPELL: We have some other industry
19 folks here.

20 MR. FISCHER: I can take a shot, Judge. It's
21 James Fischer on behalf of Kansas City Power & Light
22 Company and KCP&L Greater Missouri Operations Company.
23 I also have a couple of subject matter experts with me,
24 Lisa Starkebaum and Shelley Jordan. These ladies work
25 daily with the administration of the fuel adjustment

1 clause, as well as other riders on the administration
2 side and the accounting side and they may be able to
3 help me with questions or answers to questions from the
4 bench.

5 We filed joint comments with Ameren, and I
6 have heard Mr. Lowery give a very thorough explanation
7 of those. I don't think I'll go through those.

8 We, too, agree that the fuel clause has worked
9 very well over the years and we were a little bit later
10 coming to the party after our regulatory plan had come
11 to a conclusion. Some of the rate cases we've had
12 though have had some contentious issues related mostly
13 to the FAC tariffs themselves. And I guess from our
14 perspective we don't want to encourage litigation over
15 those issues as part of the changes in the rules. We
16 believe the rules should be, if they're going to be
17 changed, should be changed to clarify but not encourage
18 litigation in rate cases on these FAC issues.

19 I don't think I'll go through the specific
20 comments, but I did read Mr. Lowery's reply comments and
21 I think he handled the various issues we might have with
22 OPC as well. I won't go through those either.

23 As far as I guess the rules themselves
24 shouldn't make it more difficult or time consuming for
25 us to qualify for the fuel clause in each rate case. We

1 think the Commission's ruled on this issue many times
2 and we don't think the rule should be changed to make it
3 more difficult in each rate case to comply with
4 provisions that would indicate we should continue to
5 have the fuel clause. Regarding periodic heat rates
6 testing, that occurs now and we don't see a real need to
7 change the rules in that regard. It's done routinely
8 and it's on schedule and that's transparent to the
9 parties what the results are and when they're going to
10 be tested.

11 We don't think we need to change the legal
12 standard either in the rule itself. That's been part of
13 the process all along and people can brief the legal
14 standard if they have a concern about that. We don't
15 think it needs to be further developed in the rule
16 itself.

17 CHAIRMAN HALL: Excuse me. Where is that in
18 the rule?

19 MR. FISCHER: I think that's proposed by
20 public counsel to put reasonable person basically as a
21 part of the standard itself it's my understanding.

22 MR. LOWERY: We specifically address this
23 issue in Exhibit 1.

24 CHAIRMAN HALL: Thank you.

25 MR. FISCHER: The other thing that I think we

1 don't see a real need to do is something public counsel
2 seemed to be suggesting was tying the fuel clause to the
3 resource planning process. We filed triennial updates
4 on our plan. If we change our preferred plan, we go
5 through that process and then, of course, we file a
6 complete full blown IRP every three years. We don't
7 think the rules need to -- the fuel clause rules don't
8 need to address the IRP process in any further detail or
9 get more filing requirements related to that. With that
10 I guess I would conclude and try to take any questions
11 that you might have.

12 JUDGE DIPPELL: Mr. Chairman, did you have
13 additional?

14 CHAIRMAN HALL: No questions.

15 JUDGE DIPPELL: Did Empire want to make
16 comments as well?

17 MS. CARTER: Good morning. This is Diana
18 Carter for the Empire District Electric Company. I
19 don't have anything to add to the comments that Empire
20 submitted on August 6. Empire concurs with Ameren,
21 KCP&L and GMO's initial comments and also Ameren's
22 comments that were filed yesterday evening and were
23 marked Exhibit 1.

24 The separate initial comments that Empire
25 filed were not technically necessary I would say for

1 this rulemaking. They weren't advocating an additional
2 rule change. I just felt it was appropriate to put the
3 information out there at the earliest opportunity
4 regarding the need for the rule as Mr. Lowery discussed
5 not to become overly prescriptive in terms of deciding a
6 policy issue in advance and making it possible under the
7 rule still for all fuel related revenues including
8 transportation and fuel and purchased power costs
9 including transportation to flow through a utility's
10 FAC. And Aaron Dole from Empire intended to be here
11 today if there were any questions for him. He had a
12 back issue and didn't make it past Mount Vernon this
13 morning. He apologizes for not being here today. Thank
14 you.

15 JUDGE DIPPELL: Mr. Chairman, did you have any
16 questions for Ms. Carter specifically?

17 CHAIRMAN HALL: No, thank you.

18 JUDGE DIPPELL: Were there any other
19 individuals or company representatives that wish to give
20 comments before I open it up to public counsel and
21 staff? All right. I'm not seeing any. Public counsel,
22 would you like to make comments?

23 MR. SMITH: Yes, Judge. Thank you. Morning.
24 Morning, Chairman. Ryan Smith on behalf of public
25 counsel. I'm here today with Lena Mantle. She has

1 extensive experience with the fuel adjustment clause.
2 She is public counsel's expert witness on this subject.
3 She was involved in the creation of the rule, the
4 workshopping of the amendments to the rule and she too
5 has also been involved in this matter, EX-2016-0294.

6 Public counsel provided various comments at a
7 high level. We wanted to prioritize five comments and
8 those are first, the minimum criteria provided in the
9 rule for the Commission to consider when evaluating
10 whether to establish, continue, modify or discontinue an
11 FAC. That appears at 090(2)(C) and our comments go into
12 why our recommendation should be adopted.

13 The second is the need for periodic heat rate
14 testing. That's something we believe the current rule
15 contemplates under (2)(A)18 of the proposed rule. It's
16 unclear to public counsel whether heat rate testing
17 would continue to be periodic. So we have made some
18 suggestions to make sure that heat rate testing
19 continues to be periodically done, that is to say within
20 24 months of a general rate case.

21 Our third comment relates to adding language
22 at (11). That's 090(11). And that relates to the
23 timing of a prudence review and the legal standard for a
24 prudence review. Several of the other parties have
25 commented that they would prefer not to codify the law

1 in the rule. And it is public counsel's preference to
2 codify that law to add clarity.

3 Our fourth comment relates to tying the
4 detailed resource planning to fuel costs, purchased
5 power costs, and fuel-related revenue included in the
6 FAC. That appears in the proposed rule at (2)(A)19.

7 And our final sort of high level
8 recommendation is that we would propose to change the
9 timeline for data requests related to reviewing true-up
10 filings and related to reviewing FAR filings. That
11 appears at (8)(H).

12 The issue with that is that public counsel
13 generally has 40 days from the time of the filing or in
14 staff's case 30 days from the time of these filings to
15 make a review, to set the timeline for data requests at
16 20 days. It is a challenge and we were encouraged to
17 see in Ameren Missouri's additional comments that they
18 seemed open to the idea of shortening the timeline.

19 In addition to the recommendations we made and
20 have filed is our public comments. We also have
21 responsive comments to the various filings of different
22 parties. I think it's important when viewing each of
23 the parties' comments to remember what we're doing here.

24 The Commission has met customers at local
25 public hearings who pay their electricity bills. They

1 know the faces of families, college students, retirees,
2 business members, all of whom pay utility bills. We
3 know electricity is vital to a customer's well-being.
4 But electricity is unfortunately not free for customers.
5 In fact, utilities vigorously advocate for a profit over
6 and above their cost. So when the Commission crafts
7 their rules the Commission should always be focused on
8 the customer. This rulemaking is no different.

9 This rule concerns the fuel adjustment clause,
10 and the purpose of this clause in part would push
11 additional fuel risks away from the utility and on to
12 the customer. In exchange for the privilege --

13 CHAIRMAN HALL: Let me stop you there. When
14 you say putting risks on the customer, how are you
15 defining risk?

16 MR. SMITH: Well, I mean the risk related to
17 business decisions a utility would make in the
18 procurement of fuel or the purchase of energy and
19 capacity. So through this mechanism they are -- the
20 utilities are able to recover the variations in those
21 costs more readily through a fuel adjustment clause
22 rather than through a general rate case. In other
23 words, there's quicker recovery time. And as a result
24 of that, there's less risk for the utility.

25 CHAIRMAN HALL: I guess I understand that from

1 a philosophical perspective.

2 MR. SMITH: Sure.

3 CHAIRMAN HALL: What I don't understand is how
4 that could ever be quantified in an application.

5 MR. SMITH: And I think you may be referring
6 to one of the comments that Ameren made about having to
7 quantify that risk on a utility's bill. Public counsel
8 is open to removing trying to quantify that risk because
9 we agree that trying to quantify that risk could be a
10 difficult task.

11 CHAIRMAN HALL: Okay. Thank you.

12 MR. SMITH: Sure. I would say that in some --
13 this isn't related to quantifying risk in terms of a
14 utility bill but some commissions I would think would
15 quantify that risk in the form of a reduced rate of
16 return or return on equity is how it's quantified
17 sometimes.

18 Of course, we heard today that Ameren Missouri
19 believes that there is no risk shifted to its customers.
20 And we want to emphasize that Ameren, KCPL, GMO, Empire,
21 the FAC isn't an entitlement. Utilities should not be
22 entitled to pass risk to customers without good reason
23 and adequate protections. So it's concerning then that
24 utilities' comments would make opaqueness instead of
25 transparency the default starting point. Similar to how

1 the Commission has expressed concerns about the lack of
2 detail in black box settlements, this Commission should
3 be concerned about a black box FAC filing.

4 With this frame of reference, public counsel
5 is particularly concerned with, for example, paragraph 9
6 of page 4 of the joint comments. Paragraph 9 would make
7 opaqueness at least for part of the filing the starting
8 point. The utilities seek to exclude certain
9 information but they do not seek to exclude the
10 information because it is too burdensome. They don't
11 seek to exclude that information because it's not
12 relevant. They don't seek to exclude it because it's
13 objectionable.

14 In fact, the utilities plainly concede they
15 would give this information over to any party that would
16 request it by admitting that the stricken language would
17 not remove a tool from the tool box of any party to an
18 FAC proceeding. Instead of arguing the burden or
19 relevance of this information, although it may be
20 developing new arguments as I provide my comments, the
21 utilities rely on fear tactics conflating a reasonable
22 consumer protection with a dangerous sword that could be
23 unjustly used to strip away the clause they feel
24 entitled to keep.

25 They argue that these fears justify excluding

1 this information from their filing at least until the
2 time that another party expends the resources to request
3 it in discovery and then and only then would they feel
4 the need to provide it.

5 To better explain why this comment is
6 concerning to public counsel, I would like to introduce
7 several items. Ameren Missouri and KCPL-GMO referenced
8 ER-2016-0285 in their filing and they introduced
9 testimony from their experts. We would also like to
10 provide a fuller accounting of the record by introducing
11 several of Ms. Mantle's filings in that case at this
12 time.

13 JUDGE DIPPELL: These are in addition to items
14 that you previously provided in your written comments,
15 correct?

16 MR. SMITH: They are, Judge. What I've handed
17 the court reporter is Surrebuttal Testimony of Lena
18 Mantle from ER-2016-0285, the Direct Testimony of Lena
19 Mantle from ER-2016-0285 and finally the Direct
20 Testimony of Lena Mantle from ER-2016-0179.

21 JUDGE DIPPELL: I can mark those as exhibits.
22 I'm just trying to decide if I should mark them as one
23 exhibit or as three. Does it matter?

24 MR. SMITH: I guess our preference would be
25 three.

1 JUDGE DIPPELL: All right. I'll mark the
2 first Surrebuttal Testimony Exhibit No. 2, the Direct,
3 first Direct Testimony as Exhibit No. 3 and the second
4 Direct Testimony as Exhibit No. 4.

5 MR. SMITH: So as explained, I would like to
6 present, if I may, a publish visual to understand why
7 public counsel is concerned about the level of detail in
8 these filings. And I would like to permit Ms. Mantle to
9 speak directly to the exhibit I would publish if that's
10 acceptable.

11 JUDGE DIPPELL: Certainly. I can mark that as
12 Exhibit No. 5. Can you give me a title of what that is?
13 So this is also from ER-2014-0370 from Ms. Mantle's
14 Direct Testimony in that?

15 MR. SMITH: That is correct, Judge. I have
16 two other exhibits. And maybe for efficiency I'll
17 identify those while I'm at my seat. The other exhibit
18 is Direct Testimony of Tim Rush. It's a portion of his
19 testimony at ER-2016-0285. It's from that same case.
20 Again, that would be the Direct Testimony of Tim Rush.

21 JUDGE DIPPELL: We can mark that as Exhibit
22 No. 6.

23 MR. SMITH: And then I also have the Direct
24 Testimony -- a portion of the Direct Testimony of Lena
25 Mantle from that same Case No. ER-2016-0285 which has

1 already been identified but we're trying to focus on a
2 portion to illustrate public counsel's concern.

3 JUDGE DIPPELL: All right. I'll go ahead and
4 -- You've got that as a separate document then?

5 MR. SMITH: I do.

6 JUDGE DIPPELL: I'll go ahead and mark that as
7 Exhibit No. 7.

8 MR. LOWERY: Your Honor, what was Exhibit 6?

9 JUDGE DIPPELL: Exhibit 6 was this -- it's
10 actually Schedule LMM-2 from Ms. Mantle's Direct
11 Testimony in ER-2014-0370 that --

12 MR. LOWERY: I thought -- maybe I misheard
13 you. I thought that was 5.

14 JUDGE DIPPELL: I'm sorry. You're right.
15 That is 5. Exhibit 6 was ER-2016-0285, a portion of
16 Mr. Rush's Direct Testimony.

17 MR. LOWERY: Thank you.

18 MR. SMITH: All right. I would ask Ms. Mantle
19 to explain kind of what it is we're looking at.

20 MS. MANTLE: What we are looking at is
21 attached to my Direct Testimony in Case ER-2014-0370.
22 In that case, that is the first case that KCPL requested
23 an FAC. In that case Mr. Rush provided testimony on
24 what was to be included in -- what they were requesting
25 to be included in the FAC. This first column in this

1 table that is showing up up here is what KCPL provided
2 as a complete explanation of the cost that it was
3 requesting to be included in the FAC. So this is -- The
4 current rule asks for complete explanations, and this is
5 what Mr. Rush provided as KCPL's complete explanation
6 and this goes -- the page, you have it before you, has
7 three sets of columns and this would be the first one.
8 The one over to the right, the far right and, Ryan, I
9 don't know if you want to over -- even further. This
10 was also in Mr. Rush's testimony as part of the exemplar
11 tariff sheets. So you have it all in front of you and
12 you can see that there's a difference between the first
13 sets of columns and the third sets of columns.

14 And because of this -- the incomplete list
15 that I was given and how it differed with the tariff
16 sheets, I asked a DR and then obviously staff did too
17 for a list of the costs to be included also with
18 accounts, sub accounts and resource codes. That is the
19 third column, the third set of columns there. And you
20 can see that that's different than either of the other
21 sets of descriptions of costs that KCPL was asking to be
22 included in its FAC none of which I would say are
23 complete definitions, but this is what we are -- When we
24 get the testimony, this is an example of what we get.

25 Now, this was KCPL's first filing but the same

1 people that filed for GMO for FACs since 2007, 2008. So
2 this isn't their very first time ever filing for an FAC,
3 meeting these filing requirements. So this is a
4 demonstration of what the utility, what KCPL believes is
5 the complete explanation of the cost it's asking the
6 Commission to allow in the FAC.

7 Now, the Exhibit 6 is the first case in which
8 KCPL asked that its FAC be modified, continued and
9 modified. Typically they'll continued with some
10 modifications. We've only included two pages of this
11 testimony, and you can -- what is up here now is the top
12 of the third page of your schedule. And I would direct
13 you to, let's see, the sixth line that says subaccount
14 501500, 502, 503. This is KCPL's attempt to provide a
15 complete explanation of a cost that it is including in
16 these accounts. There are nine accounts here. And the
17 complete description is non-internal-labor costs
18 associated with fuel handling. So they have nine
19 subaccounts to handle this but the only definition, the
20 complete definition that they give to meet your rule,
21 the current rule, is non-internal-labor costs associated
22 with fuel handling. So I asked DRs trying to get more
23 information on what exactly that was because that did
24 not provide me much information.

25 I provided that information to the Commission

1 in my direct testimony in that case. And as you can see
2 here, 501500 starts about the seventh line down and by I
3 believe KCPL has resource codes, Ameren has activity
4 codes. I could have those backwards. This is by the
5 code, the four-digit codes. We give a little better
6 information of what's in 50500 including consultant
7 fees, legal fees down here in the right or the left
8 bottom, airfare and airline baggage fees. This is what
9 -- and I mean we get all kinds of things, travel,
10 software, and this is small print. It covers one in --
11 the 501 covers most of this -- 501500 covers most of
12 this first page and about half of what's on the next
13 page. So what KCPL provided is its complete explanation
14 was non-internal-labor-costs associated with fuel
15 handling when, in fact, they had, and even this probably
16 isn't a real good description, this is just what that
17 resource code, the title of it is.

18 Absent -- I mean, there's cell phones on here,
19 cell phone cost. There are some that may or may not be
20 considered fuel costs. One is Maillard sulfur. I don't
21 know exactly what that was. And that's the entire
22 definition we got for that cost. So by -- and I will
23 say that in this case then these costs were not included
24 in the FAC. KCPL I believe -- it went to hearing and it
25 was determined that these costs should not be included,

1 but it was only because the parties staff also
2 recommended these not be included went -- had to go
3 search for this extra information and had to ask for it.
4 This is -- well, I wouldn't say this is a complete
5 definition. I'm sure Mr. Lowery would say I'm asking
6 for way too much information. It is hard to know
7 exactly what is complete. But this is much more
8 complete than what Mr. Rush was asking the Commission to
9 -- the definition that he was telling the Commission of
10 the costs that would be included in their FAC that they
11 were proposing in that case.

12 So this is the reason why OPC is asking that
13 the Commission be a little more definitive on what type
14 of information is provided. What happens is there's
15 filing in the case. Then we have to look at it, see
16 what's there. We have to issue a DR. May or may not
17 get complete information. We issue another DR. And
18 this is all information that the Commission should have
19 before it when determining whether or not costs should
20 be included in the FAC. I would say the same type of
21 thing for revenues. And in this case it was just costs.

22 MR. SMITH: Moving past that point, public
23 counsel wanted to address some of the other points
24 contained in the joint comments of Ameren, KCPL and
25 KCPL-GMO. In the joint comments, there's mention that

1 they describe the history of the FAC without significant
2 concerns or problems. I think public counsel has just
3 raised some concerns. And I think if you even look at
4 Ameren's comments, I would think they would consider
5 their comments to be significant concerns. But you can
6 also look at the case law. There's E0-2010-0255,
7 E0-2012-0074. That was the case where Noranda went
8 down, Ameren had some excess energy, contracted to sell
9 to several parties, and they tried to keep those
10 revenues. So millions of dollars of concern.

11 Public counsel would consider it to be a
12 serious concern. So we just take issue with the framing
13 of history of the FAC as one without any significant
14 concern or any sort of problem whatsoever. I think
15 paragraph 7 Mr. Lowery discussed today through his
16 verbal comments. Paragraph 7 is the paragraph in the
17 written comments that talks about well, if we have
18 emission, emissions that are allowed, basically he was
19 talking how he wanted to match revenues with costs for
20 emissions.

21 Public counsel would just point out that as we
22 read the proposed rule, emission allowance revenues
23 would not be mandatory, but I think we would generally
24 be okay with having the matching of costs with respect
25 to emission allowance that you match those costs with

1 the revenues.

2 Paragraph 10 of the company's joint comments.
3 The way public counsel interprets that is that they
4 would like the Commission's discretion to whether to
5 include or to exclude costs from the FAC to be
6 restricted by the accounting designations by the
7 utility. And public counsel can't support that comment
8 for that reason.

9 At paragraph 11, that's the section where Mr.
10 Lowery mentioned that staff has asked to remove (2)(A)14
11 but not (2)(A)15. The idea with (2)(A)14 and (2)(A)15,
12 there's kind of a divergence of opinion about whether
13 the rule should codify rate design or not. If rate
14 design is codified and it's not actually determined in a
15 rate case, and that is the direction the Commission
16 goes, then public counsel does agree with staff's
17 comments on this. But our position is that you do not
18 codify the rate design and that it be determined in the
19 general rate proceeding. Therefore, we believe (2)(A)14
20 and (2)(A)15 should still be required.

21 I would also point out that we think we have a
22 difference of opinion with Ameren's interpretation of
23 (2)(A)14 and (2)(A)15. I think there's mention in the
24 comments at page 8 it would be an unnecessary
25 complication to try to track class allocations from a

1 base rate proceeding through to a dynamic and
2 potentially volatile FAC calculation. Public counsel
3 does agree with that. That's not the intent of this.
4 The intent is simply to identify how costs were
5 allocated in the rate case and then to explain how the
6 utility proposes to allocate the fuel purchased power
7 adjustment in this proceeding. So that's all that's
8 trying to be accomplished through that.

9 Paragraph 12 of the joint comments is talking
10 about (2)(A)17. I think we addressed this with the
11 Chairman about the quantification of risk. This is the
12 one where public counsel would agree we could possibly
13 strike that portion of 17 that requires, quote, electric
14 utilities estimated quantification of any risk and also
15 perhaps add or modify that portion of 17 to state how
16 the electric utility will help customers manage that
17 risk rather than how the electric utility would manage
18 that risk given that it wouldn't be the electric utility
19 who would actually be managing that risk. That's what
20 public counsel would offer as listening to Ameren
21 Missouri and KCPL's comments and trying to come up with
22 a workable resolution.

23 Paragraph 13 of the joint comments it
24 references (8)(F). I don't think we particularly have a
25 problem with this. We think the proposed rule -- Let me

1 pull it up. We think it's structured a little strangely
2 though and we wanted to point out something that wasn't
3 in our initial comments but we thought there was a way
4 we could restructure (8) that would make more sense just
5 structurally. I'm trying to find that.

6 Yes, so at (8) that last sentence of the first
7 paragraph of (8) says when an electric utility files
8 with the commission tariff schedules to change its fuel
9 adjustment rates and serves it upon parties, the filed
10 tariff schedules shall be accompanied by, and then it
11 includes a list. Talks about prefilled testimony, talks
12 about information in (B) how that's going to be filed
13 and information in (C) talking about workpapers. We
14 think those (A), (B) and (C), that's probably the
15 information that the electric utility would file and
16 provide.

17 Now, if you look at (D), that (8)(D) says
18 electric utility shall initiate a new case with an ER
19 designation. That's really not something the electric
20 utility would file or provide necessarily. We believe
21 that should be its own kind of stand-alone provision and
22 then the same as to (E), (F), and so forth. So that
23 might have been as clear as mud. I'm not sure.

24 JUDGE DIPPELL: Mr. Smith, just to make it a
25 little more clear. So you're looking at 090(8)(F) and

1 then under 1, sub 1?

2 MS. MANTLE: It's section (8). It starts out
3 with Periodic Changes to Fuel Adjustment Rates.

4 MR. LOWERY: I apologize. Just for clarity.
5 It doesn't have anything to do with (8)(F) on paragraph
6 13 of our comments. That's what you referenced,
7 Mr. Smith, but I was also lost in terms of --

8 MR. SMITH: Yeah. That's my apologies. It's
9 related to (8), but I don't think we have a specific
10 problem necessarily with Ameren's (8)(F), KCPL's (8)(F)
11 proposal.

12 MR. LOWERY: Thank you.

13 JUDGE DIPPELL: Okay. So then the
14 restructuring that you're referring to is which section?

15 MS. MANTLE: In my mind, if you'd start (A)
16 with when an electric utility files with the Commission,
17 that sentence becomes subsection (A) and those
18 requirements that are currently in (A), (B) and (C)
19 would be under (A).

20 JUDGE DIPPELL: We're still talking about
21 section (8)?

22 MS. MANTLE: Yes, because (A), (B) and (C) are
23 things to be either filed or provided with the filing.
24 What's on here now as (D), that is not part of the
25 filing. That is completely separate. So that should be

1 subsection (B), (C), and so forth. It's when we read
2 the comments of Ameren we realized that the flow wasn't
3 probably as intended.

4 JUDGE DIPPELL: Okay.

5 MR. SMITH: Finally turning now to Empire's
6 proposed comments.

7 Public counsel would be against the concept of
8 including all of the RT0 cost or original transmission
9 organization cost in the fuel adjustment clause and all
10 of the revenues. I believe that's the way that Empire
11 has styled their comments currently.

12 I guess just in closing public counsel
13 appreciates the hard work of this Commission, the
14 stakeholders, the attention to this issue. We do
15 believe -- We agree with the parties. We believe this
16 current draft of the proposed rule represents an
17 improvement over the existing rules today. We hope that
18 the Commission considers our comments. Thank you.

19 JUDGE DIPPELL: Thank you. Mr. Chairman, did
20 you have any additional questions for public counsel?

21 CHAIRMAN HALL: The last issue that you just
22 raised was actually the exact issue I was trying to
23 address with Mr. Lowery and maybe didn't articulate it
24 very well. But is it your understanding that the
25 current draft amendment is consistent, and I'm looking

1 at Empire's comments, is consistent with the
2 Commission's decisions in that Ameren case and that, I
3 think that's an Ameren case, that KCP&L case, and then I
4 don't know if there's an Empire case as well.

5 MS. MANTLE: So is the question does OPC
6 believe the Commission's orders are consistent with what
7 they've said? I want to make sure I got the question.

8 CHAIRMAN HALL: I know what our decisions
9 were. I'm wondering if the proposed rule is consistent
10 with those decisions.

11 MS. MANTLE: Yes, I believe it is.

12 CHAIRMAN HALL: And your interpretation, and I
13 can always ask Ms. Carter as well, your understanding is
14 that Empire is taking issue with that aspect of the
15 proposed rule and is wanting all of the transportation
16 costs being covered and not just those that this
17 Commission included in those two or three rate cases?

18 MS. MANTLE: My reading of Empire's comments
19 is that they would like the Commission to include all,
20 all of the costs and revenues. However, I don't
21 remember seeing language that they proposed, and I do
22 not -- I believe the current rule is not prescriptive in
23 one way or the other. It would allow what they are
24 arguing and it is completely consistent with what the
25 Commission has currently ordered.

1 CHAIRMAN HALL: Okay. So the proposed rule
2 doesn't change the existing rule on that issue?

3 MS. MANTLE: No.

4 CHAIRMAN HALL: Okay. Thank you.

5 JUDGE DIPPELL: Thank you. Are there any
6 other questions before we move on to staff? All right.
7 Then staff comments.

8 MR. IRVING: Judge Dippell, Chairman Hall. My
9 name is Ron Irving with staff. Staff basically, we
10 agree with the proposed rules in general. We agree with
11 most of the proposed rules. We don't think that there
12 should be any sweeping changes to these proposed rules.

13 The one comment we do have is concerning the
14 elimination of section -- or paragraph 15. We believe
15 that that should be included; but outside of that, we
16 don't have any -- we don't have a lot of changes to the
17 proposed rules.

18 JUDGE DIPPELL: Mr. Chairman, did you have
19 specific questions for staff?

20 CHAIRMAN HALL: Would it be possible for staff
21 to go through the six issues raised by Ameren and give
22 your perspective on those?

23 MR. IRVING: Actually, Judge Dippell, I would
24 ask whether it would be possible for John Rogers who is
25 more familiar with the specific rules to make comments

1 at this point, if possible.

2 JUDGE DIPPELL: Yes, go ahead.

3 MR. IRVING: I'll allow John Rogers to make
4 comments about that.

5 MR. ROGERS: Chairman, these would be the
6 comments that Ameren filed last night.

7 CHAIRMAN HALL: It would be -- I think they're
8 probably consistent with what Ameren filed last night,
9 but it was what Mr. Lowery went through and I believe it
10 was six specific issues.

11 MR. LOWERY: Mr. Chairman, I now understand
12 the question you were asking earlier and actually agree
13 with Ms. Mantle that the proposed rule is -- your ruling
14 is consistent but the proposed rule doesn't change
15 anything. The Commission has its discretion on that.
16 We actually agree with OPC on something once in awhile.

17 MR. ROGERS: I'm looking at the joint utility
18 filing and the comments to 20.090(1)(L)2 have to do with
19 including the cost as well as the revenue for the RES
20 compliance cost. In other words, if they're included in
21 the FAC, include both the cost and the revenues. I
22 think OPC has already expressed their agreement and
23 staff is in agreement with that as well. 090(2)(A)1 has
24 to do with providing notice, and staff agrees with
25 Ameren on that. I think it would be very difficult to

1 express what the impact of the FAC will be going forward
2 due just to the dynamic nature of the energy market.

3 CHAIRMAN HALL: What's OPC's position on that
4 one?

5 MR. SMITH: We're not sure we read the rule
6 the same way Ameren does. We don't think the rule is
7 suggesting that Ameren or another electric utility has
8 to make some sort of prediction into the future. So
9 that's our take.

10 CHAIRMAN HALL: How do you read estimate then?

11 MR. SMITH: Yeah, I believe that would be
12 about -- so this would be something that would be done
13 at the start of a proceeding, I believe; is that right?
14 So the proposed change would be the estimate, I believe,
15 in that proceeding, not in some future proceeding. Let
16 me go to the rule real quick.

17 JUDGE DIPPELL: Mr. Lowery, you wanted to add
18 something?

19 MR. LOWERY: Well, Commissioner, I agree with
20 you, I mean, what it says as written before our changes
21 it's the electric utility's estimates of the proposed
22 change in rates arising from changes in the base energy
23 cost. Well, that's -- I read it it has to be an
24 estimate of -- when we have actual costs that come in
25 different than base, what are we estimating that's going

1 to do? We don't think we can do that with any accuracy.

2 We can tell you what the net energy cost
3 component of base rates in that rate case is and how
4 much that is causing -- I'll just make up a number.
5 Rate increase is 50 million. We can tell you if 20
6 million of that is net energy cost. We can tell you
7 that and we have done that.

8 Maybe the rule can be read a different way.
9 If it's read the way I'm reading it, and I think it can
10 be read that way, that was the concern we had.

11 CHAIRMAN HALL: So if it was to be read the
12 way that OPC is interpreting it, does it still cause you
13 concern?

14 MR. LOWERY: Well, it causes me concern that
15 it can apparently be read two different ways.

16 CHAIRMAN HALL: Right. But I mean we can
17 magically change those words on that page.

18 MR. LOWERY: Sure. But I think the changes
19 that we've made would be consistent with the way OPC is
20 reading it so it doesn't seem like we need to do
21 anything other than adopt our language.

22 CHAIRMAN HALL: And the response to that?

23 MR. SMITH: I think we're trying to verify
24 that their language is, in fact, consistent with the way
25 we think we're interpreting it.

1 MR. LOWERY: Page 7 of Exhibit A, Mr. Smith,
2 to our initial comments.

3 CHAIRMAN HALL: So Ameren is comfortable with
4 the application including -- to include the estimated
5 impact on a typical residential customer's bill.

6 MR. LOWERY: We've always done that.

7 CHAIRMAN HALL: That seems eminently
8 reasonable to me.

9 MR. SMITH: And we're okay with the red lines
10 as proposed by Ameren.

11 MR. ROGERS: Okay. So we're to paragraph 9 in
12 the joint utility filing, 20.090(2)(A)9. And I believe
13 staff is okay with this. The changes require that there
14 be detailed descriptions of the costs and revenues that
15 are included in the accounting records of the utility.

16 Some of the language that's deleted, and it
17 was all deleted, but some of it looking at it now would
18 be very difficult to do, you know, to identify the
19 expected magnitude of the costs over the next four years
20 again would -- the dynamic nature of the electric
21 utility marketplace, it's an exercise that you could do
22 but of what value I'm not sure.

23 MS. MANTLE: May I comment to that a minute?

24 JUDGE DIPPELL: Yes, go ahead, Ms. Mantle.

25 MS. MANTLE: The customer has no way to

1 estimate how his bill is going to change into the
2 future. The companies have many experts that should
3 have an idea one way or the other of what's going to be
4 happening to that cost. Ameren brought four witnesses
5 today to talk.

6 The customer, your basic customer, has no idea
7 how fuel -- what's going to happen to fuel cost in the
8 future. This isn't something -- It's estimated. So
9 it's not like you can hold anybody's feet to the fire
10 that these didn't change the way it was required. But
11 this is just to give the customers and to give the
12 Commission some idea of where these costs are going. Is
13 the natural gas price, what does the future market say.
14 Does it say they're going to be steady over the next
15 four years. Do they predict that something is going to
16 be happening in the Middle East and this is what could
17 happen with natural gas prices. Do they have coal
18 contracts that have been entered into for five years
19 that have an escalation rate of 2 or 3 percent.
20 This is information that the company has that the
21 customer there's no way they can know it.

22 So while nobody has a clear crystal ball as to
23 what's going to be happening in the future with these
24 prices, the company with all of its experts, as it
25 should have experts in these fields, should be able to

1 give the customers, the parties to this case and the
2 Commission some idea of what the magnitude and the
3 volatility of these costs are going to be.

4 JUDGE DIPPELL: Thank you.

5 MR. LOWERY: Can I jump in here --

6 JUDGE DIPPELL: Yes, Mr. Lowery.

7 MR. LOWERY: -- since you gave OPC an
8 opportunity. I want to address a couple things about
9 this provision. Mr. Rogers is exactly right. We did
10 strike the language that was proposed. We also put very
11 specific language in in terms of what we have to
12 provide. If I may.

13 And I don't have copies of this with me, but
14 we submit these every month. If you'll look at Appendix
15 C, pages 1 through several pages to every monthly report
16 we file, and if you look at the minimum filing
17 requirements that we file in rate cases you're going to
18 see a tremendous amount of detail that we submit and I
19 think the rule as written would require us to submit
20 detail. You have to switch this over, don't you?

21 JUDGE DIPPELL: You want me to try this again
22 after my debacle last time. Let me give it a try,
23 Mr. Lowery. I think I can do it this time.

24 MR. LOWERY: I didn't realize you had trouble
25 before.

1 JUDGE DIPPELL: Go ahead and put it on the
2 Elmo.

3 MR. LOWERY: Give you practice, Judge.

4 JUDGE DIPPELL: I'm apparently rusty on the
5 technical. There we go. Our fabulous IT staff
6 corrected me.

7 MR. LOWERY: The point is, I completely
8 acknowledge that OPC had a big dispute with KCPL in the
9 last rate case about the information KCPL provided, and
10 I'm not going to get in the middle of that dispute. The
11 things that we objected to, all of this analyses about
12 magnitude and volatility and codifying the degree to
13 which you're going to look at that or have to look at it
14 and presupposing that it's a requirement, that's our
15 objection. Our objection is not providing information
16 about what costs and revenues are in the FAC. We do
17 that in great detail. And that's not really the issue
18 here, although OPC in its comments made it sound like
19 that was the issue. They essentially revisited a
20 dispute they had in the rate case with KCPL to make it
21 sound like there's some fatal flaw in the rule. I would
22 contend that that's just simply not the case.

23 And Ms. Mantle focused in on one thing that
24 Mr. Rogers said. Well, they ought to have the
25 information about the expected magnitude of the cost or

1 revenue. There's a couple problems with that. We don't
2 necessarily budget four years out for these items. We
3 look at fuel, we look at purchased power, we look at
4 off-system sales. That's what a fuel adjustment clause
5 deals with.

6 As I said a minute ago in the notice, okay, we
7 can come up with these estimates and OPC saying we're
8 doing it for the customers. The customers have no idea.
9 We want customers to have an idea. We're probably going
10 to give them flawed information. We're probably going
11 to mislead them into thinking that our predictions are
12 better than they are.

13 Load changes. All kinds of things, as
14 Mr. Rogers said, change in the market as we move through
15 time. We don't think that we should be required to put
16 out this information that we frankly think is
17 speculative. If OPC wants -- if they want to ask for
18 our coal contracts and look at the escalators and they
19 want to ask for whatever available budget information we
20 have and if they want to then file testimony or go to a
21 local public hearing and say here's the math on that
22 customer, they can do that. That doesn't mean that
23 utilities ought to have to prepare all of these analysis
24 up front in a rate case everytime they ask for an FAC.

25 CHAIRMAN HALL: So is this to be included in

1 the notice provided customers or is it simply in the
2 direct testimony?

3 MR. LOWERY: No. It would just be in the
4 significant minimum filing requirements that we already
5 submit. It would be -- In our case we always prepare an
6 exhibit to the FAC witness's testimony. It's usually 20
7 or 30 pages long and it point by point goes through all
8 of these minimum filing requirements. So that's where
9 it would show up. Customer could get it on EFIS if they
10 wanted to go look at testimony but it wouldn't be in a
11 notice.

12 CHAIRMAN HALL: Ms. Mantle, is that your
13 understanding as well what we're talking about is
14 information to be submitted in the application?

15 MS. MANTLE: Yes, it's to be filed with the
16 testimony so it is testimony.

17 CHAIRMAN HALL: So why is it so important that
18 this additional information be included? I mean, I
19 understand that the utility would have better access to
20 it than customers but --

21 MS. MANTLE: I will say what Ameren and the
22 KCPL and GMO proposed is striking out all of the
23 requirements A, B, C, D, E and F, and they are
24 specifically honing in on C, D and E as that is
25 difficult for them to provide. I do agree Ameren does

1 do a good job of supplying detailed information.
2 Unfortunately these rules aren't just written for
3 Ameren. We have to write them for all the utilities.
4 And they are all getting better. I will say Empire
5 District Electric Company has worked with OPC at getting
6 better definitions of the cost. But, you know, A, B and
7 F are not looking out into the future trying to give
8 answers to things that cannot be seen in the future.
9 They are just trying to get the information such as what
10 I presented in the exhibits here but just to get some
11 information for OPC, for the other parties, for
12 customers who may, and there are some that actually do
13 go out there and read the testimony.

14 CHAIRMAN HALL: So Mr. Lowery, you are focused
15 on C, D and E here, correct?

16 MR. LOWERY: I am. The other problem that we
17 have, and I'm not saying that this is intentional, but I
18 think there was a mischaracterization of some of our
19 other comments that were made around this point in terms
20 of what information is being provided.

21 What we said in our comments, and I wish I
22 could find it here, I think maybe I did find it, in
23 connection with (2)(A)10 which is related to this. It's
24 related to the information we provided. What we said is
25 if the accounting that we use is sufficient, there

1 shouldn't be any further Commission order designations,
2 but these rules as written and as edited by us in our
3 comments, if the Commission were to determine, you know,
4 your accounting is not sufficient, the accounting that
5 you use that I showed you on the Elmo a minute ago,
6 that's not sufficient. We don't understand what the
7 costs and revenues are so we need you to provide us a
8 better description, better granularity, then the
9 Commission could order that under these rules.

10 What OPC is doing is sort of -- it's sort of a
11 presupposition of exactly, sort of a prescriptive
12 presupposition one size fits all dictate of what you're
13 supposed to provide. And I think really at this point
14 it comes down to maybe dissatisfaction with one of the
15 electric utilities in this area when I don't even think
16 there's dissatisfaction with our company on this.

17 You know, we've learned some things as we've
18 gone through and we've worked with OPC as well. We've
19 learned some things. What the rule shouldn't do is sort
20 of dictate and prescribe things in a vague way and in a
21 way that, again, C, D and E in particular I will admit,
22 again sort of presuppose some legal standard. We also
23 get concerned that OPC in the past has gone to -- they
24 don't want to look at it as fuel purchased power and
25 off-system sales. They want to look at every component

1 has to be volatile and every component has to be large.
2 That's a big problem. We're concerned that the way this
3 was written they would try to run with that and use that
4 to their advantage.

5 CHAIRMAN HALL: Response from staff to that
6 back and forth?

7 MR. ROGERS: Well, I think I would agree with
8 Ameren overall on that.

9 CHAIRMAN HALL: That you would strike A
10 through G?

11 MR. ROGERS: Striking A through G is okay with
12 staff.

13 CHAIRMAN HALL: Okay.

14 MR. FISCHER: Mr. Chairman, I might jump in
15 too since KCPL and GMO have been referenced here. I
16 think another aspect we need to remember is the FAC
17 tariff itself is out there and, of course, the tariffs
18 differ from company to company, but we've had extensive
19 effort to identify and the Commission has approved an
20 FAC tariff for all of the companies that identify
21 specifically what costs are involved and there has been
22 contention -- contentious issues in some of the rate
23 cases, but I think that's an issue that has largely been
24 resolved. In the future, things may change. There may
25 be differences of opinion about what should be included

1 or what should not, but it does need to be in the rule,
2 the FAC tariff itself. Those decisions are being made
3 along the way.

4 MR. ROGERS: Okay. I guess we're to paragraph
5 10 in the joint utility filing. This has to do with the
6 revenues. So the discussion and the issues at hand here
7 are very similar to the ones in paragraph (2)(A)9,
8 (2)(A)10 should be handled consistently. On the next
9 one that was subparagraphs (2)(A)14 and (2)(A)15, staff
10 had recommended that (2)(A)14 be deleted. And my
11 counsel and I miscommunicated. I don't have a problem
12 if you delete 14, I think you should delete 15 as well.

13 CHAIRMAN HALL: And OPC's response to that?

14 MR. SMITH: I guess our response would be it
15 would depend on what the Commission decides to do
16 elsewhere in the rule. So as we read 14 and 15, it sort
17 of presupposes that rate design would not occur in a
18 rate case. So if that is the direction that the
19 Commission would go, then yeah, I think we would agree
20 to delete those, although I don't believe that's the
21 direction Ameren had recommended in its additional
22 comments.

23 MR. LOWERY: I think we agreed with OPC that
24 the rules didn't have to prescribe the rate design
25 consistent with our general view that the rules

1 should n' t be prescriptive on those kinds of variables
2 that the Commission can decide on a case-by-case basis.

3 CHAIRMAN HALL: Staff is now comfortable with
4 that position as well?

5 MR. ROGERS: Yes.

6 CHAIRMAN HALL: And the other utilities are as
7 well. Okay. Thank you.

8 MR. ROGERS: Paragraph 12 has to do with
9 20.090(2)(A)17 which the joint utilities -- it has to do
10 with risk to retail customers.

11 CHAIRMAN HALL: I'm sorry. Where are you,
12 Mr. Rogers?

13 MR. ROGERS: In there, paragraph 12 in the
14 joint comments.

15 JUDGE DIPPELL: That was (2)(A)17, is that
16 what you said?

17 MR. ROGERS: Yes. And the utilities have
18 deleted that entire subsection. It has to do with
19 explaining what the risk is to customers as a result of
20 the RAM. It's a very difficult thing to do, especially
21 given the uncertainty of the electric marketplace.

22 CHAIRMAN HALL: And it sounds like everyone is
23 in agreement there, correct? No?

24 MR. SMITH: We had some modified language. We
25 wouldn't strike the entire section or subsection (A)17,

1 but we would agree that the quantification of that risk
2 that makes some sense that that could be a difficult
3 thing to try to assign a quantification to the risk and
4 explain that to customers.

5 MR. LOWERY: We're still not in agreement with
6 having the provision at all in this language that they
7 agree was something like how it will help customers
8 manage the risk. We don't agree with that. I think if
9 this provision is in the rule what you're probably going
10 to expect to see from at least my client is if the rule
11 says any risk, we're going to say there isn't a risk,
12 we're not imposing risks on customers because we have an
13 FAC. We don't agree with that premise at all.

14 As Mr. Smith had actually said, he said it
15 sort of made me think why is this provision even being
16 discussed. There's a separate provision that's been in
17 the rule from the beginning that says essentially that
18 the utility has to explain any effect on its business
19 risk from having an FAC, the idea being oh, you have an
20 FAC, maybe you ought to have lower ROE, and so on, and
21 so forth. Of course, our position is our other 99 or
22 100 peers have FACs that's already been taken into
23 account. It's in the ROE. There's been plenty of
24 debate about that issue and that's what we always
25 explain. I took it from that comment that he made that

1 he thought this issue really is already taken care of by
2 that particular issue. So I again question why are we
3 adding a second one.

4 So we agree on the quantification. I think we
5 all agree on the quantification point, but I don't think
6 we agree that the provision should be there at all.

7 CHAIRMAN HALL: Staff agrees with Ameren on
8 that issue?

9 MR. ROGERS: Yes.

10 CHAIRMAN HALL: Is OPC's modification to that
11 provision somewhere in the record?

12 MR. SMITH: Just my spoken comment.

13 CHAIRMAN HALL: Okay.

14 MR. SMITH: I can provide it again if you'd
15 like.

16 CHAIRMAN HALL: It's in the record.

17 MR. SMITH: Okay. Thank you.

18 MR. ROGERS: And the last area in the joint
19 comments has to do with 20.090(8)(F). And that's a
20 refinement that utilities have made to the rule. And
21 there's a lot of changes here. I've looked through
22 them. I don't have a problem with what's being proposed
23 so staff could agree to it.

24 CHAIRMAN HALL: Is OPC okay with those
25 modifications?

1 MS. MANTLE: Yes. They generally follow
2 what's in the tariff sheets. By putting it in the rule,
3 I see we could make the tariff sheets a whole lot
4 shorter.

5 MR. LOWERY: Agreed.

6 CHAIRMAN HALL: So let me go back to an issue
7 I've raised a couple of times and that has to do with
8 the transmission costs and regarding purchased power
9 only, only allowing transmission cost for the true
10 purchased power which was an issue that's been litigated
11 in a couple of cases.

12 Are there -- and I understand that there's
13 nothing in the proposed rule nor was there anything in
14 the existing rule that dictated that result, but my
15 question is is there anything in the proposed rule that
16 would aid staff, other parties and the Commission in
17 determining those amounts?

18 MR. ROGERS: No, I don't believe there is. I
19 think it leaves it up to the discretion of the
20 Commission --

21 CHAIRMAN HALL: I'm sorry. I understand that
22 the rule doesn't dictate the decision. I mean just the
23 data, the actual dollar amounts for those various
24 transmission costs. Is there anything in the proposed
25 rule that would aid staff, the parties and the

1 Commission in that determination?

2 MS. MANTLE: Chairman, I believe that would be
3 in the information that we are asking to be provided
4 with respect to cost and revenues that the utility is
5 proposing to be in the rule.

6 CHAIRMAN HALL: Where is that? I'm sorry to
7 backtrack.

8 MS. MANTLE: It is (2)(A)9 when it says a
9 detailed explanation and then it would be why the
10 revenue should be included in the FAC that revenue
11 received during the test year. And C, D and E talk
12 about expected magnitude, measure of volatility and
13 uncertainty and F would require an explanation of how
14 the utility manages the revenue type.

15 So that's the type of information that we
16 would expect to see from what the utilities are
17 requesting and staff are requesting be removed from the
18 proposed rule.

19 MR. LOWERY: Mr. Chairman, I don't think
20 (2)(A)9 has anything to do with this. I think what
21 you're asking is do you have the mathematical data so
22 you can in our case, for example, it was 1.7 percent
23 last rate case. It was 3.85 percent. I think that's
24 what you're asking, will the mathematical data be --
25 does the rule dictate that you have the data so you can

1 do that calculation. I think that's what you're asking.

2 CHAIRMAN HALL: It's related to that. I was
3 just wondering in the application or in the direct
4 testimony, is there a requirement that would -- so that
5 the utility would itemize those transmission costs in
6 that manner?

7 MR. LOWERY: Itemize?

8 CHAIRMAN HALL: And maybe it's dollars, maybe
9 it's percentage. I don't know.

10 MR. LOWERY: The way that it works in
11 accordance with the decisions that you've made is you
12 just figure out a ratio of, you know, the utility, and
13 I'll probably mess this up, and maybe Ms. Althoff can
14 clear me up, you figure out what the gross purchases
15 were and then you figure out what the net is because
16 under the FERC netting net every hour and you come up
17 with a percentage. In our case it's 1.7 percent of
18 dollars. It's a percentage of dollars. And then that
19 slice, that percentage of dollars, 1.7 percent of all
20 the transmission charges and all the transmission
21 revenues then flow through. We don't parse the
22 transmission charges.

23 CHAIRMAN HALL: Are excluded?

24 MR. LOWERY: 1.7 percent are included and 98.3
25 percent are excluded.

1 CHAIRMAN HALL: Okay.

2 MR. LOWERY: But we don't track transmission
3 charges to a particular dollar megawatt hour. We don't
4 even know how to do that honestly. It's just a ratio
5 that gets applied. I honestly can't answer the question
6 about whether these rules proposed or before give you
7 the data to do that math. I mean, it's not -- it's
8 certainly available. I mean, certainly that calculation
9 can be done in a rate case without any question. We've
10 done it. All of us have done it.

11 MS. MANTLE: Those revenues and charge types,
12 actually Ameren is the only one that provides
13 transmission revenues through its FAC, but those charge
14 types and revenue types that those are applied to are
15 currently listed in the tariffs or the tariffs point you
16 to an agreement that lists out those types of SPP or
17 MISO charges or PJM charges as it may be that those
18 apply to. I don't believe that's every one of the MISO
19 costs or revenues but they're the ones associated with
20 the provision or the selling of power. I'm sure
21 Mr. Lowery can correct me if I'm wrong.

22 MR. LOWERY: No, I don't think I disagree with
23 that. I think I would analogize this calculation,
24 Mr. Chairman, to sort of like you decide a rate case and
25 you say the revenue requirement is going to be X dollars

1 and then we've got to calculate the rates and staff and
2 everybody verifies that we did it right or wrong. This
3 is really what this calculation is as well.

4 CHAIRMAN HALL: Thank you.

5 JUDGE DIPPELL: Did anyone else have any
6 additional comments that they wanted to make? I don't
7 see any additional comments. I appreciate all of the
8 work everyone put into reviewing these rules and making
9 your comments and then explaining them here today. That
10 will hopefully be helpful in the Commission deciding how
11 the final version of this rule should look. I
12 appreciate everyone being here, and we can conclude this
13 hearing and go off the record.

14 (Off the record.)
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