

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

In the Matter of Proposed Rules 4 CSR240-3.162)
and 4 CSR 240-20.091, Environmental Cost) Case No. EX-2009-0252
Recovery Mechanisms)

**PUBLIC COUNSEL COMMENTS ON PROPOSED CHANGES TO
4 CSR 240-3.162 AND 4 CSR 240-20.091**

The Office of the Public Counsel (OPC) believes the proposed rules as filed with the Secretary of State do not contain adequate consumer protections, effectively authorize an electric utility to achieve excess earnings above its authorized rate of return, and the proposed rules do not provide adequate assurance that utilities will act in a prudent manner with respect to expenditures related to environmental costs as defined by the rules. Senate Bill 179 authorized Rate Adjustment Mechanisms (RAM) which include Environmental Cost Recovery Mechanisms (ECRM). ECRMs provide electric utilities with the ability to seek Commission approval of an ECRM that would reflect some or all of the net increases or decreases in an electric utility's incurred environmental costs and potentially defer the recognition of expenditures for environmental regulation compliance costs between general rate cases. It is reasonable to assume the Legislature would not grant this protection for utilities without believing the Missouri Public Service Commission (MPSC or Commission) would enact rules implementing SB 179 that have corresponding protections for ratepayers. The following cites support this assumption.

The Act establishing the Public Service Commission is indicative of a policy to protect the public. The protection given the utility is incidental.
State ex rel. Dail v. Public Service Com., 240 Mo. App. 250 (Mo. Ct. App. 1947)

[T]he guiding star of the public service commission law and the dominating purpose to be accomplished by such regulation is the promotion and conservation of the interests and convenience of the public.

State ex rel. Crown Coach Co. v. Public Service Com., 238 Mo. App. 287, 298 (Mo. Ct. App. 1944)

The Commission's principal interest is to serve and protect ratepayers

State ex rel. Capital City Water Co. v. Missouri Pub. Servs. Comm'n, 850 S.W.2d 903, 911 (Mo. Ct. App. 1993)

Despite the hard work by the Commission's staff and comments by all the parties provided in the public workshops that preceded Case No. EX-2008-0105, this proposed rule does not provide adequate ratepayer protections.

Public Counsel believes these protections must take several forms. First, regulatory procedures must address the needs of both ratepayers and utilities (safe and adequate service at just and reasonable rates that provide a utility an opportunity to earn a fair rate of return). The proposed rule should also provide the utility with proper incentives to make the necessary investments in facilities to comply with environmental rules in the most economic manner and to operate those facilities reasonably. Regulatory procedures should be put in place to ensure the ratepayers are protected. Finally, timelines should be set out in the proposed rule to ensure ratepayers are not adversely impacted by large rate increases.

Attached to these comments are a ~~strikeout~~/underline deletion/insertion of recommended changes to the proposed rules to implement an ECRM under the authority of SB 179 that Public Counsel believes will better balance the interests of ratepayers and utility investors.

There can be no dispute that an Environmental Cost Recovery Mechanism shifts the risk of changes in costs associated with compliance with environmental rules from the utility to its customers. As a direct result, this shift of risk removes most of the incentives for utilities to exercise due diligence and make prudent decisions regarding environmental compliance strategies and decisions related to the ongoing implementation of those strategies. This is a

major change in the regulatory paradigm in Missouri that has fostered some of the lowest rates in the nation while maintaining reasonable returns for investors. Public Counsel believes that adequate consumer protections must be added to the proposed rules to compensate ratepayers for the additional risk they are assuming under the proposed rule and properly balance the interests of consumers and shareholders. In fact, in order for the Commission to perform its statutory obligation to ensure electric rates are just and reasonable, adequate consumer protections must exist.

SB 179 does not make the authorization of an ECRM by the Commission mandatory (RSMo. 386.266 (4)), however the proposed rules do not provide any guidance for making this determination of whether an ECRM is appropriate for a utility that requests one. A basic consumer protection should be included in the proposed rule that addresses this inadequacy. A “threshold test” based on the utility’s need to have an ECRM in order to have an opportunity to earn its authorized rate of return is fundamental to this determination and is consistent with the Commission’s obligation to ensure ratepayers have just and reasonable rates. Such a test would include an assessment of whether an ECRM could allow a utility to earn in excess of its authorized rate of return. In order for non-utility parties to evaluate a proposed ECRM and make recommendations to the Commission, the utility must be required to submit adequate financial data (that only the utility processes) as part of its application.

Public Counsel has proposed several changes in the attached rule to address the threshold concern of whether or not a utility even requires an ECRM. Specifically, the attached rules contain a specific changes in language to add the word “necessary” in 4 CSR 240-20.091 (2)(a) and the phrase “but not in excess of a fair return on equity” in 4 CSR 240.3.162 (2)(E) and (4)(C). Public Counsel has also recommends that additional information be filed by the utility in

order to perform the required analysis, 4 CSR 240-03.162 (2)(new P and Q) and 4 CSR 240-03.162. (3)(new P).

Earnings in excess of its authorized rate of return also relate to the consumer protection referred to as an “earnings test.” Any ECRM that would allow increases in environmental compliance cost to be passed through to ratepayers during a time of excess earnings would cause the Commission to abrogate its obligation to ratepayers. This clearly cannot be the intent of the Legislature which passed SB 179 and the Governor who signed the bill into law. It should be noted that proposed 4 CSR 240-20.091 (2) (A) requires the Commission to find that an ECRM provides the utility the opportunity to earn a fair rate of return on equity if the Commission determines to continue or modify an ECRM when the utility has requested to discontinue the ECRM. While it is clear that a review of the effect of an ECRM on earnings of a utility is appropriate to determine if an ECRM should be continued or modified, it is just as clear that this determination is necessary when determining whether or not to implement an ECRM in the first place. Absent such, an inconsistency exists between the legal basis for ratepayers or other parties to challenge the Commission decision to implement an ECRM versus the legal basis for consumers to challenge a Commission decision to modify or continue an ECRM.

Public Counsel has proposed several changes in the attached rule to reduce the utility’s ability to manage its earnings to earn in excess of its authorized return on equity. Specifically the attached rules contain new sections which set out the standard to determine whether deferred costs can be included in either an ECRM or rate case proceeding, 4 CSR 240.20-091 (4)(C)(4).

Risk provides the opportunity for financial gain or loss and thus provides a powerful incentive to a utility to plan and operate its system in the most prudent manner. The opportunity for financial gain, (increase in earnings) provides an immediate and tangible result from

operational decisions and processes that are effective. The operational decisions and processes must be done in real time. In contrast, regulatory oversight required under an ECRM provides for an after-the-fact review in which the regulatory analyst and ultimately the Commission must often recreate the situation and put themselves in the position of a “reasonable person” to determine if what the utility did two or more years prior was in fact reasonable. It must be pointed out that the majority of the information and data necessary to make this evaluation is under the control of the utility and thus not always available to the analyst or MPSC.

The Commission recognized the shortcomings of after-the-fact prudence reviews in the portion of its Report and Order in Case No. ER-2007-0004 where it addressed Aquila’s request for approval of a Fuel Adjustment Mechanism (FAC). At page 53 of that order, the Commission stated:

While the Commission believes Aquila should be given the opportunity to recover its prudently incurred fuel costs, it also agrees with Mr. Johnstone and Ms. Brockway that: 1) after-the-fact prudence reviews alone are insufficient to assure Aquila will continue to take reasonable steps to keep its fuel and purchased power costs down; and 2) the easiest way to ensure a utility retains the incentive to keep fuel and purchased power costs down is to allow less than 100% pass through of those costs. Accordingly, it is not appropriate to allow Aquila to pass 100% of its fuel and purchased power costs, above those included in its base rates, through its fuel adjustment clause. [Footnote omitted]

SB 179 provides for incentive mechanisms as part of the regulatory process, RSMo 386.266 (8). Public Counsel believes that maintaining a financial incentive (gains or losses) as part of an ECRM is a critical consumer protection. The ability to pass through 100 percent of the cost eliminates any financial incentive absent regulatory review and resulting disallowances which could take up to 2 years. Absent the protection afforded by keeping some of the utility’s “skin in the game,” a utility has significantly diminished incentive to manage the annual cost associated with environmental rules compliance in a prudent manner and to implement

environmental compliance strategies that minimize long-run costs. The regulatory analyst and the Commission do not have the ability to review all transactions in real time, know all options available to control costs or find viable alternative sources, or analyze all the other information available to the utility on a 24 by 7 basis.

All the utility would have to do in order to justify recovery of environmental compliance costs is present its case well enough in a prudence review that would occur several years subsequent to the actions supported by information available during the period in question. Such information may not even be available at the time of the regulatory review for a variety of reasons. A regulatory model should not be developed in a piece-meal fashion. The electric industry is a complex field with its different components and constituencies being inter-related and inter-dependent. A “fix” in one area has implications that can cascade through the rest of the system. A regulatory model that does not recognize this fact is doomed to provide inferior outcomes for consumers.

Public Counsel has proposed several changes in the attached rule to address this proper incentive concern. For example, Public Counsel has included the phrase “some or all” in several sections to explicitly recognize the Commission’s discretion to approve an ECRM that permits only a portion of the changes in costs allowable to be included and recovered in the ECRM. In addition, Public Counsel has inserted a new section entitled “Incentive Mechanism or Performance-Based Program”. This section is consistent with 4 CSR 240-20.090 (11).

In Case No ER-2007-0004, the Commission adopted three criteria to be used to evaluate whether certain utility costs should be recovered through a cost adjustment mechanism:

1. They represent a significant portion of a utility’s costs;
 2. they fluctuate significantly; and
 3. the costs are outside the utility’s control.
- (Report and Order, Case No. ER-2007-0004, page 34).

As drafted, the Commission's proposed rule did not adequately address the question of volatility. Public Counsel proposes an addition to 4 CSR 240-20.091(2)(C) to include volatility as a criteria in the evaluation of whether a particular cost should be included in an ECRM.

Unless the Commission enacts rules to implement SB 179 which include adequate consumer protections, the only way consumer interests can be protected under the new paradigm of electric regulations created by this proposed rule is the filing of a complaint – a protection that already exists. There are many shortcomings of this protection as a remedy for the changes brought about by the passage of SB 179. The financial short-coming of the complaint process from the ratepayer's perspective is that the utility will keep all excess earnings created by an ECRM until such time as the complaint is fully processed. It is also critical to realize that there is not a statutory time limit on the Commission to decide a complaint case. Utilities have a real financial incentive to take advantage of this fact and delay the final decision in a complaint by whatever means available to it. For utilities with an ECRM in place, customers would bear not only the risk of increasing and volatile environmental compliance costs but also receive no consideration for providing other revenues which resulted in excess earnings for the utility in addition to the ECRM revenues.

A significant legal short-coming of the complaint process is that the field of potential complainants is limited by statute. A practical short-coming is that complainants face a hugely resource-intensive undertaking and must begin that process with minimal information to determine whether or not the efforts will be justified. In fact, the only single entity in the state that realistically has current resources to mount a full-fledged earnings complaint against a major electric utility is the Commission's staff. And as events over the last few years have highlighted, workload considerations can effectively prevent or substantially delay the staff from filing an

earnings complaint and limit its ability to even pursue the investigation necessary to make an initial assessment of utility earnings. The surveillance provisions in the proposed rule will help interested entities determine when a complaint may be justified, but they will not provide the data necessary to support a complaint, or the resources necessary to get the complaint filed or timely prosecuted to a final result.

Public Counsel believes that the legislative enactment of SB 179 that permitted the Commission to develop and implement rules prior to considering the utilization of single issue cost recovery mechanisms in Missouri clearly contemplated that the Commission would fulfill its obligation to protect consumers if SB 179-related rules are promulgated. Public Counsel finds that SB 179 provides for regulatory mechanisms that enhance a utility's ability to increase revenues and thus provide a significantly greater probability that the utility will earn its authorized rate of return. SB 179 does not eliminate or even change the underlying concept of Rate of Return Regulation. Therefore Public Counsel believes that the rules implementing SB 179 must contain provisions that protect ratepayers from the excess earnings that may result from the use of SB 179 provisions to adjust rates.

In stark contrast to the lack of consumer protections in the proposed rule, the proposed rule provides the utility with the ability to protect and even enhance its interests by deferring costs during a period of over-earnings until a subsequent period when rates would be adjusted to recover those deferred costs. Absent any recognition of what the overall earnings of the utility's regulated operations were, the proposed rules as written would allow utilities to manipulate their earnings to the detriment of the public. The utility controls the timing of rate cases, the timing of filings under SB179, the timing of investments being placed in service, and how and when many of its other costs are incurred. This control provides the utility with ample opportunity to

“manage” its earnings. SB 179 did not eliminate the basic method of regulation in this state which is Rate of Return Regulation. The proposed rules’ failure to fully reflect that fact and failure to incorporate safeguards into the process will result in a detriment to the public and a transfer of wealth from ratepayers to utilities without any cost of service justification.

Ratepayers still have a right to just and reasonable rates. Therefore Public Counsel has proposed four new subsections to provide the Commission with necessary tools to incorporate deferred costs into an ECRM or general rate case proceeding consistent with this goal and past Commission precedents in general ratemaking proceedings. These sections are 4 CSR 240.20.091 (4)(C)(new 5,6,7, and 8). The next few paragraphs contain an explanation of how the 2 ½% cap and deferral mechanism work together with the four new subsections to protect consumers from paying excessive rates that lead to excess earnings during the periods from which costs have been deferred.

This explanation begins with a description of how the 2 ½% cap and the deferral mechanism can lead to amounts being booked into a regulatory asset account. The proposed rules set out the following procedure:

- When a utility requests an ECRM in a general rate proceeding, the Commission determines the environmental revenue requirement (equal to environmental compliance costs) that will be included in the base rates coming out of that general rate case.
- Once or twice each year after the general rate proceeding in which an ECRM is authorized, a revised level of environmental cost compliance will be determined. The environmental revenue requirement originally determined in the rate case is subtracted from this revised environmental revenue requirement to determine if an ECRM periodic adjustment is required.

- If so, the next step is to determine how that adjustment compares to the 2 ½ % cap. If the revenue difference is less than 2½% of the overall revenue requirement determined in the rate case, then the entire adjustment is recovered from ratepayers through a surcharge. If the revenue difference is greater than 2½%, then 2½% is recovered from ratepayers through a surcharge and the rest is deferred as a debit to a regulatory asset account and a credit to a revenue account.

This deferral is strictly related to revenues, creates a regulatory asset, and allows the deferred revenues to flow through the income statement thereby enhancing earnings during the period the ECRM tariff is in effect. There is absolutely no deferral of any costs (either expense or capital costs) of environmental compliance including any new environmental investments. The environmental investments would be recorded as plant-in-service on the utility's financial records and included in the investment levels on which earnings are calculated. The environmental compliance expenses incurred would likewise be recorded in the appropriate expense account for the year in which they occurred.

Public Counsel's proposed earnings test applies only to the deferral and not to the ECRM periodic adjustment itself. If the ECRM adjustment is less than the 2½% cap there would be no subsequent earnings test for that period. The earnings test would only apply when the utility defers revenues and thus increases earnings in a period. Application of the earnings test would determine whether, absent the deferral of revenue, earnings would have been adequate during the period when revenues were deferred. The analysis would be performed only once during a 4-year ECRM plan period, in the required rate case at the end. To do otherwise would increase the workload on all parties and is unnecessary because the utility is protected by a carrying charge on any deferrals which are found to be appropriate for recovery.

Public Counsel would point out that if a deferral occurs in years one, two, or three of an ECRM plan period and that the existence of a deferral does not preclude an ECRM adjustment in a subsequent year to reflect a change in environmental revenue requirement. The ECRM calculation would be made in subsequent years just as it was made in the initial year an ECRM adjustment was requested. As previously discussed, environmental compliance expenses and capital investments will be recorded on the financial statements of the utility as they occur whether or not a deferral of revenue is appropriate. It is costs, not revenues, that determine the overall cost of service. This distinction is critical to understanding and explaining how an ECRM adjustment and a deferral should be implemented.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 4th day of March 2009:

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OPC Comments on Proposed Rule
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**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RULE

**4 CSR 240-3.162 Electric Utility Environmental Cost Recovery Mechanisms
Filing and Submission Requirements**

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

(A) EFIS means the electronic filing and information system of the commission;

(B) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(C) Environmental compliance plan means a twenty (20)-year forecast of environmental compliance investments and a detailed four (4)-year plan for complying with federal, state, and local environmental laws, regulations and rules. The four (4)-year plan will include plans to use emission allowances for compliance, plans for emission allowance transactions and, on a generation unit basis, plans for investments in emission control equipment. The environmental compliance plan shall be consistent with the implementation plan of the most recent resource plan filing except as otherwise explained by the electric utility. Approval of an Environmental Cost Recovery Mechanism (ECRM) does not imply approval or predetermination of prudence of the environmental compliance plan;

(D) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in an electric utility's environmental revenue requirement, plus additional environmental costs incurred since the prior general rate proceeding.

(E) Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any federal, state, or local environmental law, regulation or rule.

1. Environmental costs do not include fuel and purchased power costs as defined in 4 CSR 240-3.161(1)(A).

2. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility;

(F) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The required return on costs of any major capital projects 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 projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment and flue gas desulfurization equipment. The costs of such capital projects shall be those identified 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.

(G) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission; and

(H) Rate class is a customer class defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class.

(2) When an electric utility files to establish an ECRM as described in 4 CSR 240-20.091(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

(B) An example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity but not in excess of a fair return on equity;

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

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law,

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regulation or rule that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records;

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs, that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) The electric utility's environmental compliance plan including a complete description of—

1. The electric utility's long-term environmental compliance planning process;

2. The analysis performed to develop the electric utility's environmental compliance plan; and

3. If the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist; and

(O) Authorization for the commission staff to release the previous five (5) years of historical surveillance reports submitted to the commission staff by the electric utility to all parties to the case.

(P) A five (5) year annual history in electronic spreadsheet format of the rate base, capitalization, income statement, jurisdictional allocations and out of period adjustment items in a format consistent with the Surveillance Monitoring Report set out in section (6) of this report;

(Q) A forecast of the annual jurisdictional revenue requirements and supporting workpapers including capital budget data. The forecast period shall be of a length to fully include four years of operation of the proposed ECRM. The forecast shall quantify any rate increases necessary to preserve the rate of return requested by the utility, under each of the following alternative assumptions:

1. ECRM as proposed by the utility

2. No ECRM

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described by 4 CSR 240-20.091(2) in which it requests that its ECRM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(2)(E);

(B) If the electric utility proposes to change the identification of the ECRM on the customer's bill, an example customer bill showing how the proposed ECRM shall be separately identified on affected customers' bills, including the proposed language, in accordance with 4 CSR 240-20.091(8);

(C) Proposed ECRM rate schedules;

(D) A general description of the design and intended operation of the proposed ECRM;

(E) A complete explanation of how the proposed ECRM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity but not in excess of a fair return on equity;

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

(G) A complete description of how the proposed ECRM is compatible with the requirement for prudence reviews;

(H) A complete explanation of all the costs that shall be considered for recovery under the proposed ECRM and the specific account used for each cost item on the electric utility's books and records;

(I) A complete explanation of all of the costs, both capital and expense, incurred to comply with any current federal, state, or local environmental law, regulation or rule that the electric utility is proposing be included in base rates and the specific account used for each cost item on the electric utility's books and records;

(J) A complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed ECRM and the specific account where each such revenue item is recorded on the electric utility's books and records;

(K) A complete explanation of any feature designed into the proposed ECRM or any existing electric utility policy, procedure, or practice that can be relied upon to ensure that only prudent costs shall be eligible for recovery under the proposed ECRM;

(L) For each of the major categories of costs, that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate

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class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(M) A complete explanation of any change in business risk to the electric utility resulting from implementation of the proposed ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility;

(N) A description of how responses to subsections (3)(B) through (M) differ from responses to subsections (3)(B) through (M) for the currently approved ECRM;

(O) The electric utility's environmental compliance plan including a complete description of—

1. The electric utility's long-term environmental compliance planning process;

2. The analysis performed to develop the electric utility's environmental compliance plan; and

3. If the environmental compliance plan is inconsistent with the electric utility's most recent resource plan filing, a detailed explanation of why such inconsistencies exist; and

(P) A five (5) year annual history in electronic spreadsheet format of the rate base, capitalization, income statement, jurisdictional allocations and out of period adjustment items in a format consistent with the Surveillance Monitoring Report set out in section (6) of this report;

(Q) A forecast of the annual jurisdictional revenue requirements and supporting workpapers including capital budget data. The forecast period shall be of a length to fully include four years of operation of the proposed ECRM. The forecast shall quantify any rate increases necessary to preserve the rate of return requested by the utility, under each of the following alternative assumptions:

1. ECRM as proposed by the utility

2. No ECRM

and

(Q~~P~~) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described in 4 CSR 240-20.091(3) in which it requests that its ECRM be discontinued, the electric utility shall file with the commission and serve parties as provided in sections (9) through (11) in

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this rule, the following supporting information as part of, or in addition to, its direct testimony:

(A) An example of the notice to be provided to customers as required by 4 CSR 240-20.091(3)(B);

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

(C) A complete explanation of why the ECRM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity but not in excess of a fair return on equity;

(D) A complete explanation of any change in business risk to the electric utility resulting from discontinuation of the ECRM in setting the electric utility's allowed return, in addition to any other changes in business risk experienced by the electric utility; and

(E) Any additional information that may have been ordered by the commission in the prior general rate proceeding to be provided.

(5) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the manager of the auditing department of the commission, the Office of the Public Counsel (OPC) and others, as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS. The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of each month when the ECRM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the ECRM goes into effect. It shall contain, at a minimum:

(A) The revenues billed pursuant to the ECRM by rate class and voltage level, as applicable;

(B) The revenues billed through the electric utility's base rate allowance by rate class and voltage level;

(C) All significant factors that have affected the level of ECRM revenues along with workpapers documenting these significant factors;

(D) The difference, by rate class and voltage level, as applicable, between the total billed ECRM revenues and the projected ECRM revenues;

(E) Any additional information ordered by the commission to be provided; and

(F) To the extent any of the requested information outlined above is provided in response to another section, the information only needs to be provided once.

(6) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, a Surveillance Monitoring Report, which shall be

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treated as highly confidential, as required in 4 CSR 240-20.091(9), to the manager of the auditing department of the commission, OPC and others as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

(A) There are five (5) parts to the electric utility Surveillance Monitoring Report. Each part, except Part one, Rate Base Quantifications, shall contain information for the last twelve (12)- month period and the last quarter data for total company electric operations and Missouri jurisdictional operations. Page one, Rate Base Quantifications shall contain only information for the ending date of the period being reported. The form of the Surveillance Monitoring Report form is included herein.

1. Rate Base Quantifications Report. The quantification of rate base items on Page one shall be consistent with the methods or procedures used in the most recent rate proceeding unless otherwise specified. The report shall consist of specific rate base quantifications of:

- A. Plant in service;
- B. Reserve for depreciation;
- C. Materials and supplies;
- D. Cash working capital;
- E. Fuel inventory;
- F. Prepayments;
- G. Other regulatory assets;
- H. Customer advances;
- I. Customer deposits;
- J. Accumulated deferred income taxes;
- K. Any other item included in the utility's rate base in the most recent rate proceeding;
- L. Net Operating Income from Page three; and
- M. Calculation of the overall return on rate base.

2. Capitalization Quantifications Report. Page two shall consist of specific capitalization quantifications of:

- A. Common stock equity (net);
- B. Preferred stock (par or stated value outstanding);
- C. Long-term debt (including current maturities);
- D. Short-term debt; and
- E. Weighted cost of capital including component costs.

3. Income Statement. Page three shall consist of an income statement containing specific quantification of:

- A. Operating revenues to include sales to industrial, commercial and residential customers, sales for resale and other components of total operating revenues;

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B. Operating and maintenance expenses for fuel expense, production expenses, purchased power energy and capacity;
C. Transmission expenses;
D. Distribution expenses;
E. Customer accounts expenses;
F. Customer service and information expenses;
G. Sales expenses;
H. Administrative and general expenses;
I. Depreciation, amortization and decommissioning expense;
J. Taxes other than income taxes;
K. Income taxes; and
L. Quantification of heating degree and cooling degree days, actual and normal.

4. Jurisdictional Allocation Factor Report. Page four shall consist of a listing of jurisdictional allocation factors for the rate base, capitalization quantification reports and income statement.

5. Financial Data Notes. Page five shall consist of notes to financial data including, but not limited to:

A. Out-of-period adjustments;
B. Specific quantification of material variances between actual and budget financial performance;
C. Material variances between current twelve (12)-month period and prior twelve (12)-month period revenue;
D. Expense level of items ordered by the commission to be tracked pursuant to the order establishing the ECRM;
E. Budgeted capital projects;
F. Events that materially affect debt or equity surveillance components; and
G. All settlements in regards to environmental compliance causing the electric utility to incur expenses or make investments in excess of one hundred thousand dollars (\$100,000) or fines against the electric utility in regards to environmental compliance greater than one hundred thousand dollars (\$100,000).

(B) The Surveillance Monitoring Report shall contain any additional information ordered by the commission to be provided.

(C) The electric utility shall annually submit its approved budget, in electronic form, based upon its budget year in a format similar to the Surveillance Monitoring Report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget shall be submitted within thirty (30) days of its approval by the electric utility's management or within sixty (60) days of the beginning of the electric utility's fiscal year, whichever is earliest. The budget submission shall be treated as highly confidential pursuant to 4 CSR 240-2.135.

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(D) If the electric utility has a rate adjustment mechanism as defined in 4 CSR 240-20.090(1)(G), the surveillance report submitted by the electric utility as required by 4 CSR 240-3.161(6) along with information submitted in response to (6)(A)5.G. of this subsection shall meet the surveillance reporting required by this section.

(7) When an electric utility files tariff schedules to adjust an ECRM rate as described in 4 CSR 240-20.091(4) with the commission, and serves upon parties as provided in sections (9) through (11) in this rule, the tariff schedules must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

1. For the period from which historical costs are used to adjust the ECRM rate:

A. Emission allowance costs differentiated by purchases, swaps and loans;

B. Net revenues from emission allowance sales, swaps and loans;

C. Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation or for any other reason;

D. Base rate component of environmental compliance costs and revenues;

E. Identification of capital projects placed in service that were not anticipated in the previous general rate proceeding; and

F. Any additional requirements ordered by the commission in the prior general rate proceeding;

2. The levels of environmental capital costs and expenses in the base rate revenue requirement from the prior general rate proceeding;

3. The levels of environmental capital cost in the base rate revenue requirement from the prior general rate proceeding as adjusted for the proposed date of the periodic adjustment;

4. The capital structure as determined in the prior general rate proceeding;

5. The cost rates for the electric utility's debt and preferred stock as determined in the prior general rate proceeding;

6. The electric utility's cost of common equity as determined in the prior general rate proceeding;

7. Calculation of the proposed ECRM collection rates; and

8. Calculations underlying any seasonal variation in the ECRM collection rates; and

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(B) Workpapers supporting all items in subsection (7)(A) shall be submitted to the manager of the auditing department, and served upon parties as provided in sections (9) through (11) in this rule. The workpapers may be submitted to the manager of the auditing department through EFIS.

(8) When an electric utility that has an ECRM files its application containing its annual true-up with the commission, as described in 4 CSR 240-20.091(5), any rate schedule filing must be accompanied by supporting testimony, and the electric utility shall:

(A) File the following information with the commission and serve upon parties as provided in sections (9) through (11) in this rule:

1. Amount of costs that it has over-collected or under-collected through the ECRM by rate class and voltage level, as applicable;
2. Proposed adjustments or refunds by rate class and voltage level as applicable;
3. Electric utility's short-term borrowing rate; and
4. Any additional information ordered by the commission;

(B) Submit the following information to the manager of the auditing department and serve upon the parties as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS.

1. Workpapers detailing how the determination of the over-collection or under-collection of costs through the ECRM was made including any model inputs and outputs and the derivation of any model inputs.
2. Workpapers detailing the proposed adjustments or refunds.
3. Basis for the electric utility's short-term borrowing rate.
4. Any additional information ordered by the commission to be provided.

(9) Providing to other parties items required to be filed or submitted in preceding sections (3) through (8). Information required to be filed with the commission or submitted to the manager of the auditing department of the commission and to OPC in sections (3) through (8) shall also be, in the same format, served on or submitted to any party to the related general rate proceeding in which the ECRM was approved by the commission, periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same ECRM, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

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

(A) A person or entity granted intervention in a general rate proceeding in which an ECRM is approved by the commission, shall be a party to any subsequent related periodic adjustment proceeding, annual true-up or prudence review, without the necessity of applying to the commission for intervention. In any subsequent general rate proceeding, such person or entity must seek and be granted status as an intervenor to be a party to that case. Affidavits, testimony, information, reports, and workpapers to be filed or submitted in connection with a subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same ECRM shall be served on or submitted to all parties from the prior related general rate proceeding and on all parties from any subsequent related periodic adjustment proceeding, annual true-up, prudence review, or general rate case to modify, extend or discontinue the same ECRM, concurrently with filing the same with the commission or submitting the same to the manager of the auditing department of the commission and OPC, pursuant to the procedures in 4 CSR 240-2.135 for handling confidential information, including any commission order issued thereunder.

(B) A person or entity not a party to the general rate proceeding in which an ECRM is approved by the commission may timely apply to the commission for intervention, pursuant to 4 CSR 240-2.075(2) through (4) of the commission's rule on intervention, respecting any related subsequent periodic adjustment proceeding, annual true-up, or prudence review, or, pursuant to 4 CSR 240-2.075(1) through (5), respecting any subsequent general rate case to modify, extend or discontinue the same ECRM. If no party to a subsequent periodic adjustment proceeding, annual true-up, or prudence review, objects within ten (10) days of the filing of an application for intervention, the applicant shall be deemed as having been granted intervention without a specific commission order granting intervention, unless within the above-referenced ten (10)-day period the commission denies the application for intervention on its own motion. If an objection to the application for intervention is filed on or before the end of the above-referenced ten (10)-day period, the commission shall rule on the application and the objection within ten (10) days of the filing of the objection.

(11) Discovery. The results of discovery from a general rate proceeding where the commission may approve, modify, reject extend or discontinue an ECRM, or from any subsequent periodic adjustment proceeding, annual true-up, or prudence review relating to the same ECRM, may be used without a party resubmitting the same discovery requests (data requests, interrogatories, requests for production, requests for admission, or depositions) in the subsequent proceeding to parties that produced the discovery in the prior proceeding, subject to a ruling by the commission concerning any evidentiary objection made in the subsequent proceeding.

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(12) Supplementing and updating data requests in subsequent related proceedings. If a party which submitted data requests relating to a proposed ECRM in the general rate proceeding where the ECRM was established or in the general rate proceeding where the same ECRM was modified or extended, or in any subsequent related periodic adjustment proceeding, annual true-up, or prudence review wants the responding party to whom the prior data requests were submitted to supplement or update that responding party's prior responses for possible use in a subsequent related periodic adjustment proceeding, annual true-up, prudence review or general rate case to modify, extend or discontinue the same ECRM, the party which previously submitted the data requests shall submit an additional data request to the responding party to whom the data requests were previously submitted which clearly identifies the particular data requests to be supplemented or updated and the particular period to be covered by the updated response. A responding party to a request to supplement or update shall supplement or update a data request response from: a related general rate proceeding where a ECRM was established; a general rate case where the same ECRM was modified or extended; or a related periodic adjustment proceeding, annual true-up, or prudence review, which the responding party has learned or subsequently learns is in some material respect incomplete or incorrect.

(13) Separate cases for each general rate proceeding involving an ECRM and for each mutually exclusive twelve (12)-month annual true-up period of an ECRM. Each general rate proceeding where the commission may approve, modify, or reject an ECRM; each general rate case where the commission may authorize the modification, extension, or discontinuance of an ECRM; and each mutually exclusive twelve (12)-month period of an ECRM that encompasses an annual true-up, prudence review, and possible periodic adjustments shall comprise a separate case. The same procedures for handling confidential information shall apply, pursuant to 4 CSR 240-2.135, as in the immediately preceding ECRM case for the particular electric utility, unless otherwise directed by the commission on its own motion or as requested by a party and directed by the commission.

(14) New ECRM. For the purposes of this rule, an ECRM, if continued, modified or extended in a general rate case, even in substantially the form approved in the prior general rate proceeding, shall be considered to be a new distinct ECRM after each general rate proceeding required by section 386.266.4(3), RSMo.

(15) Right to Discovery Unaffected. In addressing certain discovery matters and the provision of certain information by electric utilities, this rule is not intended to restrict the discovery rights of any party.

(16) Waivers. Provisions of this rule may be waived by the commission for good cause shown.

(17) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

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

PROPOSED RULE

4 CSR 240-20.091 Electric Utility Environmental Cost Recovery Mechanisms

PURPOSE: This rule allows the establishment of an Environmental Cost Recovery Mechanism, which allows periodic rate adjustments to reflect net increases or decreases in an electric utility's prudently incurred costs directly related to compliance with any federal, state, or local environmental law, regulation or rule.

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

(A) Electric utility means electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapters 386 and 393, RSMo;

(B) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the some or all of the net increases or decreases in an electric utility's incurred environmental costs;

(C) Environmental costs means prudently incurred costs, both capital and expense, directly related to compliance with any federal, state, or local environmental law, regulation or rule.

1. Environmental costs do not include fuel and purchased power costs as defined in 4 CSR 240-20.090(1)(B).

2. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility;

(D) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The required return on costs of any major capital projects 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 projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment and flue gas desulfurization equipment. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of

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the test year, as updated, utilized in the general rate proceeding in which the ECRM is established.

(E) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission;

(F) Rate class is a customer class as defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class;

(G) Staff means the staff of the Public Service Commission; and

(H) True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving an ECRM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the ECRM. Subsequent true-up years shall be the succeeding twelve (12)-month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months. If the commission approves both a fuel adjustment clause mechanism and an ECRM for the electric utility, the true-up year will be the same for both.

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

(A) The commission may approve the establishment, continuation or modification of an ECRM and rate schedules implementing an ECRM provided that it finds that the ECRM it approves is necessary and reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity but no greater than a fair return

on equity. Any rate schedule approved to implement a ECRM must conform to the ECRM approved by the Commission.-

(B) The commission ~~may~~ shall take into account any change in business risk to the utility resulting from establishment, continuation or modification of the ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) In determining which environmental cost components to include in an ECRM, the commission will consider, but is not limited to only considering, the magnitude of the costs, the ability of the utility to manage the costs, the volatility of the cost, the incentive provided to the utility as a result of the inclusion or exclusion of the cost, and ~~the extent to which~~ whether the cost is directly related to environmental compliance.

(D) The commission may, in its discretion, determine what portion of prudently incurred environmental costs may be recovered in an ECRM and what portion shall be recovered in base rates.

(E) Any party to the general rate proceeding may oppose the establishment, continuation or modification of an ECRM and/or may propose alternative ECRMs for the commission's consideration including but not limited to modifications to the electric utility's proposed ECRM.

(F) The ECRM shall be based on known and measurable environmental costs that have been incurred by the electric utility.

(G) If an ECRM is approved, the commission shall determine the base environmental revenue requirement.

(H) If costs are requested to be recovered through the ECRM and the revenue to be collected in the ECRM rate schedules exceeds two and one-half percent (2.5%) of the electric utility's Missouri annual gross jurisdictional revenues, the electric utility cannot subsequently request that any cost identified as an environment's cost be recovered through a fuel rate adjustment mechanism.

(I) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of how the costs passed through the proposed ECRM requested shall be applied to monthly bills.

(J) The electric utility shall meet the filing requirements in 4 CSR 240-3.162(2) in conjunction with an application to establish an ECRM and 4 CSR 240-3.162(3) in conjunction with an application to continue or modify an ECRM.

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

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(A) Any party to the general rate proceeding may oppose the discontinuation of an ECRM on the grounds that the electric utility is currently, or in the next four (4) years, is likely to experience declining costs or on any other grounds that would result in a detriment to the public interest. If the commission finds that the electric utility is seeking to discontinue the ECRM under these circumstances, the commission shall not permit the ECRM to be discontinued, and shall order its continuation or modification. To continue or modify the ECRM under such circumstances, the commission must find that it provides the electric utility with a sufficient opportunity to earn a fair rate of return on equity.

(B) The commission ~~may~~shall take into account any change in business risk to the corporation resulting from discontinuance of the ECRM in setting the electric utility's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the electric utility.

(C) The electric utility shall include in its initial notice to customers regarding the general rate case, a commission approved description of why it believes the ECRM should be discontinued.

(D) Subsections (2)(C) through (H) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.162(4).

(4) Periodic Adjustments of ECRMs. If an electric utility files proposed rate schedules to adjust its ECRM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.162 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the ECRM is in accordance with the provisions of this rule, section 386.266, RSMo and the ECRM established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its ECRM rates. If the ECRM rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the ECRM rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the ECRM rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the ECRM rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the ECRM established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of

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the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) The periodic adjustments shall be limited to the expense items and the capital projects that are used to determine the environmental revenue requirement in the previous general rate proceeding and those investments or expenses necessary to comply with the electric utility's Environmental Compliance Plan for the period the ECRM is in effect.

1. The costs for capital projects will be eligible for recovery via a periodic adjustment so long as the capital cost of the item when it is placed into service is greater than or equal to the original cost (as of the time that such least costly capital item was placed into service) of the least costly capital item that was included in the environmental revenue requirement (to be determined as provided in 4 CSR 240-20.091(1)(D)); and

2. Waivers from the limitations in this section 20.091(4)(A) may be sought for capital projects placed into service that could not have been anticipated in the previous general rate proceeding or that do not meet the threshold provided for in the immediately preceding sentence;

(B) The periodic adjustment shall reflect a comprehensive measurement of both increases and decreases to the environmental revenue requirement established in the prior general rate proceeding plus some or all of the additional environmental costs incurred since the prior rate proceeding.

(C) Any periodic adjustment made to ECRM rate schedules shall not generate an annual amount of general revenue that exceeds two and one-half percent (2.5%) of the electric utility's Missouri gross jurisdictional revenues established in the electric utility's most recent general rate proceeding.

1. Missouri gross jurisdictional revenues shall be the amount established in the electric utility's most recent general rate proceeding and exclude gross receipts tax, sales tax and other similar passthrough taxes not included in tariffed rates for regulated services;

2. The electric utility 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 (2.5%) rate adjustment cap; and

3. Any environmental costs, to the extent addressed by the ECRM, not recovered as a result of the two and one-half percent (2.5%) limitation on rate adjustments may be deferred, at a carrying cost each month equal to the utility's net of tax cost of capital, for recovery in a subsequent year or in the utility's next general rate proceeding.

4. The recovery of any deferred costs and related carrying costs shall be limited to those deferrals that, absent deferral would have

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resulted in the utility earning less than its authorized return on equity during the periods from which the costs were deferred.

5. The recovery period for which deferred costs are eligible for recovery shall be equal to the life of the asset if the cost would have been a capital cost or related to a capital cost in the period incurred absent its deferral.

6. The recovery period for which deferred costs are eligible for recovery shall be not less than five years but not greater than ten years if the cost would have been an expense in the period incurred absent its deferral.

7. The recovery period shall be determined by the Commission at the time the recovery of the deferred costs begins.

8. Deferred costs that are eligible for recovery shall not be considered part of Rate Base in subsequent general rate proceedings.

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

(E) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its monthly reporting requirements as required by 4 CSR 240-3.162(5) in order for the commission to process the electric utility's requested ECRM adjustment increasing rates.

(F) If the staff, Office of the Public Counsel (OPC) or other party who receives the information that the electric utility is required to submit in 4 CSR 240-3.162 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.162 and the commission order establishing the ECRM has not been submitted in compliance with that rule, it shall notify the electric utility within ten (10) days of the electric utility's filing of an application or tariff schedules to adjust the ECRM rates and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was in compliance with the requirements of 4 CSR 240-3.162, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel, the processing time line for the adjustment to increase ECRM rates shall be suspended. If the commission then

issues an order requiring the information be provided, the time necessary for the information to be provided shall further extend the processing time line for the adjustment to increase ECRM rates. For good cause shown the commission may further suspend this time line. Any delay in providing sufficient information in compliance with 4 CSR 240-3.162 in a request to decrease ECRM rates shall not alter the processing time line.

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

(A) The subsequent true-up rate adjustments or refunds shall include interest at the electric utility's short-term borrowing rate. The interest rate on accumulated ECRM under-collections or overcollections shall be calculated on a monthly basis for each month the ECRM rate is in effect, equal to the weighted average interest rate paid by the electric utility on short-term debt for that calendar month. This rate shall then be applied to a simple average of the same month's beginning and ending cumulative ECRM over-collection or under-collection balance. Each month's accumulated interest shall be included in the ECRM over-collection or under-collection balances on an ongoing basis.

(B) The true-up adjustment shall be the difference between the revenue collected and the revenue authorized for collection during the true-up period and billed revenues associated with the ECRM during the true-up period.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (9) and its monthly reporting requirements as required by 4 CSR 240-3.162(5) at the time that it files its application for a true-up of its ECRM in order for the commission to process the electric utility's requested annual true-up of any under-collection.

(D) The staff shall examine and analyze the information filed by the electric utility pursuant to 4 CSR 240-3.162 and additional information obtained through discovery, to determine whether the true-up is in accordance with the provisions of this rule, section 386.266, RSMo and the ECRM established in the electric utility's most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules for a true-up. The commission shall either issue an order deciding the true-up within sixty (60) days of the electric utility's filing, suspend the time line of the true-up in order to receive additional evidence and hold a hearing if needed or, if no such order is issued, the tariff schedules and the ECRM rate adjustments shall take effect by operation of law sixty (60) days after the electric utility's filing.

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1. If the staff, OPC or other party who receives the information that the electric utility is required to submit in 4 CSR 240-3.162 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240- 3.162 and the commission order establishing the ECRM has not been submitted or is insufficient to make a recommendation regarding the electric utility's true-up filing, it shall notify the electric utility within ten (10) days of the electric utility's filing and identify the information required. The electric utility shall supply the information identified by the party, or shall notify the party that it believes the information provided was responsive to the requirements, within ten (10) days of the request. If the electric utility does not timely supply the information, the party asserting the failure to provide the required information must timely file a motion to compel with the commission. While the commission is considering the motion to compel the processing time line for the adjustment to the ECRM rates shall be suspended. If the commission then issues an order requiring the information to be provided, the time necessary for the information to be provided shall further extend the processing time line. For good cause shown the commission may further suspend this time line.

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

(6) Duration of ECRMs and Requirement for General Rate Case. Once an ECRM is approved by the commission, it shall remain in effect for a term of not more than four (4) years unless the commission earlier authorizes the modification, extension, or discontinuance of the ECRM in a general rate proceeding, although an electric utility may submit proposed rate schedules to implement periodic adjustments to its ECRM rates between general rate proceedings.

(A) If the commission approves an ECRM for an electric utility, the electric utility must file a general rate case with the effective date of new rates to be no later than four (4) years after the effective date of the commission order implementing the ECRM, assuming the maximum statutory suspension of the rates so filed.

(B) The four (4)-year period shall not include any periods in which the electric utility is prohibited from collecting any charges under the adjustment mechanism, or any period for which charges collected under the ECRM must be fully refunded. In the event a court determines that the ECRM is unlawful and all moneys collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a rate case. The term fully

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refunded as used in this section does not include amounts refunded as a result of reductions in net environmental compliance costs or prudence adjustments.

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

(A) All amounts ordered refunded by the commission shall include interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as described in subsection (5)(A).

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

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

2. If the time line is extended due to an electric utility's failure to timely provide sufficient responses to discovery and a refund is due to the customers, the electric utility shall refund all imprudently incurred costs plus interest at the electric utility's short-term borrowing rate. The interest shall be calculated on a monthly basis in the same manner as described in subsection (5)(A).

(8) Disclosure on Customers' Bills. Any amounts charged under an ECRM approved by the commission shall be separately disclosed on each customer's bill. Proposed language regarding this disclosure shall be submitted to the commission for the commission's approval.

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(9) Submission of Surveillance Monitoring Reports. Each electric utility with an approved ECRM shall submit to staff, OPC and parties approved by the commission a Surveillance Monitoring Report in the form and having the content provided for by 4 CSR 240-3.162(6).

(A) The Surveillance Monitoring Report shall be submitted within fifteen (15) days of the electric utility's next scheduled United States Securities and Exchange Commission (SEC) 10-Q or 10-K filing with the initial submission within fifteen (15) days of the electric utility's next scheduled SEC 10-Q or 10-K filing following the effective date of the commission order establishing the ECRM.

(B) If the electric utility also has an approved fuel rate adjustment mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the ECRM and the fuel rate adjustment mechanism. However, for the Surveillance Monitoring Report to be complete for the ECRM, it must include a list of all settlements in regards to environmental compliance causing the electric utility to incur expenses or make investments in excess of one hundred thousand dollars (\$100,000) or fines against the electric utility in regards to environmental compliance greater than one hundred thousand dollars (\$100,000) as required in 4 CSR 240-3.162(6)(A)5.G.

(C) Upon a finding that a utility has knowingly or recklessly provided materially false or inaccurate information to the commission regarding the surveillance data prescribed in 4 CSR 240-3.162(6), after notice and an opportunity for a hearing, the commission may suspend an ECRM or order other appropriate remedies as provided by law.

(10) Pre-Existing Adjustment Mechanisms, Tariffs and Regulatory Plans. The provisions of this rule shall not affect:

(A) Any adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism that was approved by the commission and in effect prior to the effective date of this rule; and

(B) Any experimental regulatory plan that was approved by the commission and in effect prior to the effective date of this rule.

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

(A) The incentive mechanisms or performance-based programs may or may not include some or all components of environmental costs, designed to provide the electric utility with incentives to improve the efficiency and

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cost-effectiveness of its environmental compliance planning and implementation activities.

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

(C) If the commission approves an incentive mechanism or performance-based program, such incentive mechanism or performance-based program shall be binding on the commission for the entire term of the incentive mechanism or performance-based program. If the commission approves an incentive mechanism or performance-based program, such incentive mechanism or performance based program shall be binding on the electric utility for the entire term of the incentive mechanism or performance-based program unless otherwise ordered or conditioned by the commission.

(41~~12~~) Nothing in this rule shall preclude a complaint case from being filed, as provided by law, on the grounds that a utility is earning more than a fair return on equity, nor shall an electric utility be permitted to use the existence of its ECRM as a defense to a complaint case based upon an allegation that it is earning more than a fair return on equity. If a complaint is filed on the grounds that a utility is earning more than a fair return on equity, the commission shall issue a procedural schedule that includes a clear delineation of the case time line no later than sixty (60) days from the date the complaint is filed.

(42~~13~~) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

(43~~14~~) Waiver of Provisions of this Rule. Provisions of this rule may be waived by the commission for good cause shown after an opportunity for a hearing.