



**Robin Carnahan**  
Secretary of State

**Administrative Rules Division  
Rulemaking Transmittal Receipt**

**FILED<sup>4</sup>**

**JUN 16 2006**

**Missouri Public  
Service Commission**

Rule ID: 4577  
Date Printed: 6/15/2006  
Rule Number: 4 CSR 240-20.090  
Rulemaking Type: Proposed Rule  
Date Submitted to Administrative Rules Division: 6/15/2006  
Date Submitted to Joint Committee on Administrative Rules: 6/15/2006

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Name of Person to Contact with questions concerning this rule:

Content: Cully Dale	Phone: 573-751-4255	Email: <a href="mailto:cully.dale@psc.mo.gov">cully.dale@psc.mo.gov</a>	Fax: 573-526-6010
RuleDataEntry: Cully Dale	Phone: 573-751-4255	Email: <a href="mailto:cully.dale@psc.mo.gov">cully.dale@psc.mo.gov</a>	Fax: 573-526-6010

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Included with Rulemaking:

Cover Letter	6/15/2006
Forms included	6/15/2006
Affidavit for public cost	6/15/2006

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## MEMORANDUM

**TO:** Colleen M. Dale, Secretary

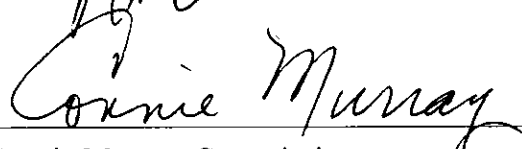
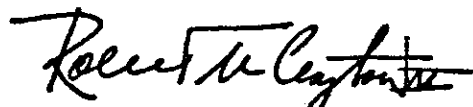
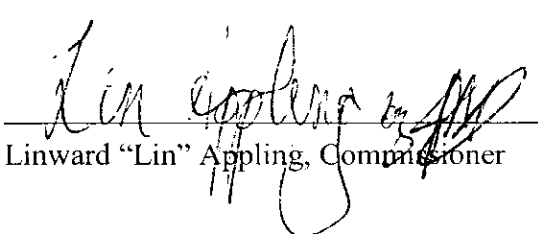
**DATE:** June 15, 2006

**RE:** Authorization to File Proposed Rulemaking with the Office of Secretary of State

**CASE NO:** EX-2006-0472

The undersigned Commissioners hereby find necessity to propose the rules as attached and authorize the Secretary of the Missouri Public Service Commission to file the following Proposed Rulemaking with the Office of the Secretary of State:

### Amendment to 4 CSR 240-20.090 - Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms

  
\_\_\_\_\_  
Jeff Davis, Chairman  
\_\_\_\_\_  
Connie Murray, Commissioner  
\_\_\_\_\_  
Steve Gaw, Commissioner  
\_\_\_\_\_  
Robert M. Clayton III, Commissioner  
\_\_\_\_\_  
Linward "Lin" Appling, Commissioner

# Robin Carnahan

Secretary of State  
Administrative Rules Division  
RULE TRANSMITTAL

Administrative Rules Stamp

RECEIVED

JUN 15 2006

SECRETARY OF STATE  
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-20.090  
Diskette File Name SB179 Rule 20.090  
Name of person to call with questions about this rule:  
Content Cully Dale Phone 573-751-4255 FAX 573-526-6010  
E-mail address cully.dale@psc.mo.gov  
Data entry same as above Phone \_\_\_\_\_ FAX \_\_\_\_\_  
E-mail address \_\_\_\_\_  
Interagency mailing address GOB, 200 Madison St, 9<sup>th</sup> Floor, Jefferson City, MO  
Statutory Authority 386.250, 393.140, 386.266 Current RSMo date 2000  
Date filed with the Joint Committee on Administrative Rules June 15, 2006

B. CHECKLIST guide for rule packets:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> This transmittal completed      | <input type="checkbox"/> Forms, number of pages                                |
| <input checked="" type="checkbox"/> Cover letter                    | <input checked="" type="checkbox"/> Authority section with history of the rule |
| <input checked="" type="checkbox"/> Affidavit                       | <input checked="" type="checkbox"/> Public cost statement                      |
| <input checked="" type="checkbox"/> Small business impact statement | <input checked="" type="checkbox"/> Private cost statement                     |
| <input checked="" type="checkbox"/> Fiscal notes                    | <input checked="" type="checkbox"/> Hearing dates (see attached)               |

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

**MUST** include effective date \_\_\_\_\_

☒ Proposed Rulemaking (choose one) ☒ rule, ☐ amendment, or ☐ rescission

☐ Order of Rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

**MUST** complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency)

☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff \_\_\_\_\_

Small Business Regulatory  
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON

JUN 15 2006

ADMINISTRATIVE RULES

**RULE TRANSMITTAL (PAGE 2)**

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E. ORDER OF RULEMAKING: Rule Number \_\_\_\_\_

1a. Effective Date for the Order

☐ Statutory 30 days

Specific date \_\_\_\_\_

1b. Does the Order of Rulemaking contain changes to the rule text?

☐ YES

☐ NO

1c. If the answer is YES, please complete section F.

If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

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

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

**NOTICE OF FINDING OF NECESSITY**

Issue Date: June 15, 2006

In its 2005 Session, the General Assembly passed SB 179, which was duly signed and made effective on January 1, 2006.

In that new law, the Commission was granted the authority to promulgate rules to implement its provisions. The Commission finds that it is necessary to propose rules 4 CSR 240-3.161 and 4 CSR 240-20.090 at this time to establish an Electric Utility Fuel and Purchased Power Cost Recovery Mechanism and implement such mechanism.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Dated at Jefferson City, Missouri,  
on this 15th day of June, 2006.

Dale, Chief Regulatory Law Judge



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**STEVE GAW**

**ROBERT M. CLAYTON III**

**LINWARD "LIN" APPLING**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

**WESS A. HENDERSON**  
Executive Director

**DANA K. JOYCE**  
Director, Administration

**ROBERT SCHALLENBERG**  
Director, Utility Services

**WARREN WOOD**  
Director, Utility Operations

**COLLEEN M. DALE**  
Secretary/Chief Regulatory Law Judge

**KEVIN A. THOMPSON**  
General Counsel

June 15, 2006

Honorable Robin Carnahan  
Secretary of State  
Administrative Rules Division  
600 West Main Street  
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

**Re: Proposed Amendment to 4 CSR 240-3.161, Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements**

**CERTIFICATION OF ADMINISTRATIVE RULE**

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission for filing on this 15<sup>th</sup> day of June, 2006.

Statutory Authority: Sections 386.250, 393.140 RSMo 2000, and section 386.266(RSMo 2005 Cum. Supp.).

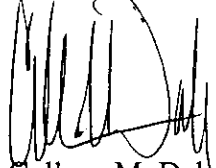
Section 536.300 RSMo Supp. 2005 requires state agencies to "determine whether the proposed rulemaking affects small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rule." A small business is defined to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees." A proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule affects small businesses by causing a "direct economic impact on small businesses of five hundred dollars (\$500) or more in the aggregate." Senate Bill No. 718 requires a similar analysis. This provision does not apply "where the rule substantially codifies existing federal or state law."

The proposed rule will not cause direct and significant economic burden on a small business, nor is it directly related to the formation, operation, or expansion of a small business. However, these rules would permit both indirect costs and benefits to be passed along more quickly than they would otherwise be. Such costs and benefits are speculative and unquantifiable. Moreover, any increased fuel and purchased power costs that are prudently incurred by an electric utility would be recovered in rates at some point in the future, and there is opportunity for reflecting a decrease in fuel and purchase power costs earlier than would otherwise be the case. These rules establish forms and procedures for use of a fuel adjustment mechanism as established by the legislature in SB 179 (2005 Session), and any such impact as may exist is the result of that newly promulgated law.

The Missouri Public Service Commission also certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017 RSMo 2000 and that this proposed rule does not constitute a taking of real property under relevant state and federal law.

If there are any questions, please contact: Colleen M. Dale, Secretary  
Missouri Public Service Commission  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-4255

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale  
Secretary

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

**PROPOSED RULE**

**4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms**

*PURPOSE: This rule sets forth the definitions, structure, operation, and procedures relevant to the filing and processing of applications to reflect prudently incurred fuel and purchased power costs through an interim energy charge or a fuel adjustment clause which allows periodic rate adjustments outside general rate proceedings.*

(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) Fuel and purchased power costs means prudently incurred and used fuel and purchased power costs, including transportation costs. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs including any net cash payments or receipts associated with hedging instruments tied to specific volumes of fuel and associated transportation costs.

1. If off-system sales revenues are not reflected in the rate adjustment mechanism (RAM), fuel and purchased power cost only reflect the prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers.

2. If off-system sales revenues are reflected in the RAM, fuel and purchased power costs reflect both:

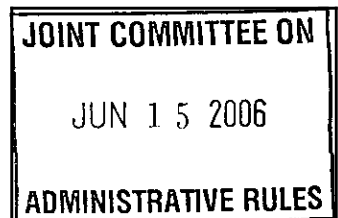
A. The prudently incurred fuel and purchased power costs necessary to serve the electric utility's Missouri retail customers; and

B. The prudently incurred fuel and purchased power costs associated with the electric utility's off-system sales.

(C) Fuel adjustment clause (FAC) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect increases and decreases in an electric utility's prudently incurred fuel and purchased power costs. The FAC may or may not include off-system sales revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in a FAC in the general rate proceeding that establishes, continues or modifies the FAC.

(D) 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.

(E) Initial RAM rules mean the rules first adopted by the commission to implement Senate Bill 179 of the Laws of Missouri 2005.





(F) Interim energy charge (IEC) means a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine whether or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC.

(G) Rate adjustment mechanism (RAM) refers to either a fuel adjustment clause or interim energy charge.

(H) Staff means the staff of the public service commission.

(I) 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 a RAM 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 (12th) calendar month following the effective date of the commission order establishing the RAM. 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.

(2) Applications to establish, continue or modify a RAM. Pursuant to the provisions of this rule, 4 CSR 240-2.060 and section 386.266, RSMo, any electric utility in a general rate proceeding may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules. The commission shall approve, modify or reject such applications to establish a RAM 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 a RAM and associated rate schedules provided that it finds that the RAM it approves is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the rate schedules that implement the RAM conform to the RAM approved by the commission.

(B) The commission may take into account any change in business risk to the utility resulting from establishment, continuation or modification of the RAM 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 cost components to include in a RAM, 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 component and the incentive provided to the utility as a result of the inclusion or exclusion of the cost component.

(D) 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 RAM requested shall be applied to monthly bills.

(E) Any party to the general rate proceeding may oppose the establishment, continuation or modification of a RAM and/or may propose alternative RAMs for the commission's consideration including but not limited to modifications to the electric

utility's proposed RAM. Where a utility proposes to establish a RAM and an alternative base rate recovery mechanism, versus proposing continuance or modification of a RAM, if the commission modifies the electric utility's proposed RAM in a manner unacceptable to the electric utility, the utility may withdraw its request for a RAM and the components that would have been treated in the RAM will be included in base rate recovery mechanism if the commission authorizes the utility to do so.

(F) The RAM shall be based on historical fuel and purchased power costs.

(G) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(2) in conjunction with an application to establish a RAM and 4 CSR 240-3.161(3) in conjunction with an application to continue or modify a RAM.

(3) Application for discontinuation of a RAM. The commission shall allow or require the rate schedules that define and implement a RAM 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.

(A) Any party to the general rate proceeding may oppose the discontinuation of a RAM on the grounds that the utility is opportunistically discontinuing the RAM due to declining fuel or purchased power costs and/or increasing off-system sales revenues. If the commission finds that the utility is opportunistically seeking to discontinue the RAM for any of these reasons, the commission shall not allow the RAM to be discontinued, and shall order its continuation or modification. To continue or modify the RAM 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 and the rate schedules filed to implement the RAM must conform to the RAM approved by the commission. Any RAM shall be based on historical fuel and purchased power costs.

(B) The commission may take into account any change in business risk to the corporation resulting from discontinuance of the RAM 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 RAM should be discontinued.

(D) Section (2)(A) through (C), (F) and (G) shall apply to any proposal for continuation or modification.

(E) The electric utility shall meet the filing requirements in 4 CSR 240-3.161(4).

(4) Periodic adjustments of FACs. If an electric utility files proposed rate schedules to adjust its FAC rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.161 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the FAC is in accordance with the provisions of this rule, section 386.266, RSMo and the FAC mechanism 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 FAC rates. If the FAC rate adjustment is in accordance with

the provisions of this rule, section 386.266 RSMo, and the FAC mechanism established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the FAC rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the FAC rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the FAC rate adjustment is not in accordance with the provisions of this rule, section 386.266 RSMo, or the FAC mechanism established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) An electric utility with a FAC shall file one (1) mandatory adjustment to its FAC in each true-up year coinciding with the true-up of its FAC. It may also file one (1) to three (3) additional adjustments to its FAC within a true-up year with the timing and number of such additional filings to be determined in the general rate proceeding establishing the FAC and in general rate proceedings thereafter.

(B) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) in order for the commission to process the electric utility's requested FAC adjustment increasing rates.

(C) If the staff, Office of the Public Counsel (OPC) or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes that the information required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM 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 FAC 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 240-3.161, 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 timeline for the adjustment to increase FAC 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 timeline for the adjustment to increase FAC rates. For good cause shown the commission may further suspend this timeline. Any delay in providing sufficient information in compliance with 4 CSR 240-3.161 in a request to decrease FAC rates shall not impact the processing timeline.

(5) True-ups of RAMs. An electric utility that files for a RAM 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.

(B) The true-up adjustment shall be the difference between the historical fuel and purchased power costs intended for collection during the true-up period and billed revenues associated with the RAM during the true-up period.

(C) The electric utility must be current on its submission of its Surveillance Monitoring Reports as required in section (10) and its monthly reporting requirements as required by 4 CSR 240-3.161(5) at the time that it files its application for a true-up of its RAM 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 240-3.161 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 RAM 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 timeline 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 FAC rate adjustments shall take effect by operation of law sixty (60) days after the utility's filing.

1. If the staff, OPC or other party which receives, pursuant to a protective order, the information that the electric utility is required to submit in 4 CSR 240-3.161 and as ordered by the commission in a previous proceeding, believes the information that is required to be submitted pursuant to 4 CSR 240-3.161 and the commission order establishing the RAM 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 timeline for the adjustment to the FAC 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 timeline. For good cause shown the commission may further suspend this timeline.

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

(6) Duration of RAMs and requirement for general rate case. Once a RAM 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 RAM in a general rate proceeding, although an electric utility may submit

proposed rate schedules to implement periodic adjustments to its FAC rates between general rate proceedings.

(A) If the commission approves a RAM 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 RAM, assuming the maximum statutory suspension of the rates so filed.

1. 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 adjustment mechanism must be fully refunded. In the event a court determines that the adjustment mechanism 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 refunded as used in this section does not include amounts refunded as a result of reductions in fuel or purchased power costs or prudence adjustments.

(7) Prudence reviews respecting RAMs. A prudence review of the costs subject to the RAM 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.

(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 RAM shall be established in the general rate proceeding in which the RAM 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 RAM believes that insufficient information has been supplied to make a recommendation regarding the prudence of the electric utility's RAM, 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 timeline 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 timeline. For good cause shown the commission may further suspend this timeline.

A. If the timeline 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 plus one percent (1%).

(8) Disclosure on customers' bills. Any amounts charged under a RAM 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.

(9) Rate design of the RAM. The design of the RAM rates may reflect differences in losses incurred in the delivery of electricity at different voltage levels for the electric utility's different rate classes. Therefore, the electric utility shall conduct a Missouri jurisdictional system loss study within twenty-four (24) months prior to the general rate proceeding in which it requests its initial RAM. The electric utility shall conduct a Missouri jurisdictional loss study no less often than every four (4) years thereafter, on a schedule that permits the study to be used in the general rate proceeding necessary for the electric utility to continue to utilize a RAM.

(10) Submission of Surveillance Monitoring Reports. Each electric utility with an approved RAM 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 240-3.161(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 RAM.

(B) If the electric utility also has an approved environmental cost recovery mechanism, the electric utility must submit a single Surveillance Monitoring Report for both the environmental cost recovery mechanism and the RAM.

(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 240-3.161(6), after notice and an opportunity for a hearing, the Commission may suspend a fuel adjustment mechanism or order other appropriate remedies as provided by law.

(11) Incentive mechanism or performance based program. During a general rate proceeding in which an electric utility has proposed establishment, modification or discontinuation of a RAM, or in which a RAM 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 fuel and purchased power procurement activities.

(A) The incentive mechanisms or performance based programs may or may not include some or all components of fuel and purchased power costs, designed to provide the electric utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement 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 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.

(12) 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.

(13) 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 existences of its RAM 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 timeline no later than sixty (60) days from the date the complaint is filed.

(14) Rule review. The commission shall review the effectiveness of this rule by no later than December 31, 2010, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

(15) 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.

(16) Transitional period respecting initial RAM rules proposed and adopted. If the electric utility files a general rate proceeding thirty (30) days or more after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the provisions of this subsection shall apply to electric utilities which have made application in a general rate proceeding, by filing, with the commission, rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (9) and associated application, if any, seeking commission approval of a RAM, prior to the adoption of the initial final rules that implement the application process for a RAM.

(A) RAM filing by utility respecting initial proposed RAM rules. The electric utility shall file its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, for a RAM in accordance with the proposed initial RAM rules as transmitted to the Secretary of State, as the commission's proposed order of rulemaking, if the commission has not

adopted initial final rules at the time of the electric utility's filing. If the electric utility files a general rate proceeding before the commission issues a notice of proposed rulemaking respecting initial RAM rules or if the electric utility files a general rate proceeding less than thirty (30) days after the commission issues a notice of proposed rulemaking respecting initial RAM rules, the electric utility shall request a RAM as part of its general rate proceeding filing.

(B) Final RAM rules different from proposed RAM rules. If the RAM rules adopted by the commission's final order of rulemaking are different from the commission's proposed rules, the electric utility shall:

1. Amend its filing to seek to bring the filing into compliance with the adopted RAM rules;
2. Seek waiver for good cause shown; or
3. Provide an adequate explanation why good cause exists not to require that the electric utility amend its filing or file a request for waiver.

(C) Procedure for utility unamended RAM filing when proposed RAM rules are not altered by final RAM rules and procedure for amendments to utility's RAM filing to address portions of proposed RAM rules altered by final RAM rules. The electric utility may amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and application, if any, to conform them to the adopted rules within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding. Thereafter, and within ten (10) days of service of the electric utility's timely filing of amendments, other parties may file responsive pleadings respecting:

1. Whether the unamended portions of the electric utility's initial filing are in compliance with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 that were not altered by the final order of rulemaking;
2. Whether the timely-filed amendments bring its filing into compliance with the commission's final order of rulemaking; and
3. Whether the timely-filed amendments provide the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

(D) Commission determination whether to approve electric utility RAM filings when electric utility unamended filing and amended filing are in compliance with final RAM rules and sufficient time is available. The commission shall determine whether to approve the electric utility's proposed RAM if the following conditions are met.

1. The electric utility's unamended initial filing complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed order of rulemaking that were not subsequently changed by the final order of rulemaking of the commission;
2. The timely-filed amendments comply with the commission's final order of rulemaking; and



3. The timely-filed amendments provide the parties to the general rate proceeding sufficient time, under the existing procedural schedule or a modified procedural schedule, for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. The commission may modify the procedural schedule for making the determination whether to approve the electric utility's proposed RAM in order to provide parties sufficient time for the opportunity for a fair hearing, but still make the determination in the general rate proceeding.

(E) Procedure when electric utility's unamended initial filing or amended filing are not in compliance with final RAM rules. If the commission determines that the electric utility's unamended initial filing does not comply with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161 contained in the proposed order of rulemaking that were not subsequently changed by the final order of rulemaking, or the timely-filed amendments do not bring the utility's filing into compliance with the commission's final order of rulemaking, then the commission may authorize the electric utility, on a procedural schedule set by the commission, to amend its rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, relating to the requested initial RAM, to the extent necessary to conform to the rules adopted by the commission. If the commission determines that there is a procedural schedule available that will provide the parties to the general rate proceeding the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

1. If the commission authorizes the electric utility to refile, other parties may file responsive pleadings within ten (10) days of service of the electric utility's timely refiling.

2. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(F) Waiver procedure in lieu of amendment of RAM filing by electric utility.

1. Rather than file an amendment to seek to bring its filing into compliance with the final RAM rules adopted by the commission, the electric utility may choose to file a request for waiver from specific provisions of the rules, but must do so within fifteen (15) days after the commission issues an order adopting final rules and in no event later than one hundred sixty-five (165) days after the electric utility files the rate schedules, testimony, other information required by 4 CSR 240-3.161(2) and 4 CSR 240-20.090(2) and (8) and associated application, if any, that initiates the general rate proceeding.

2. Waiver requests shall reference the specific requirements of the adopted rules from which waiver is sought and shall show and explain fully why good cause

exists, and as a consequence why it is reasonable and appropriate, that waiver should be granted by the commission.

3. Within ten (10) days of the electric utility's filing of a request for waiver, other parties may file responsive pleadings respecting whether the timely-filed request for waiver is in compliance with the instant rule; and whether the timely-filed request for waiver provides the parties to the general rate proceeding sufficient time for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of a relevant factors and may be just, reasonable and not unduly discriminatory or preferential.

4. If the commission determines that the timely-filed request for waiver should be granted and the electric utility's filing is otherwise in compliance with 4 CSR 240-20.090 and 4 CSR 240-3.161, the commission shall proceed to determine whether to approve the electric utility's proposed RAM.

5. If the request for waiver is not granted, in whole or in part, because the commission finds that good cause does not exist, and as a consequence it is not reasonable or appropriate, that waiver should be granted by the commission, then the commission shall determine whether there is a procedural schedule available whereby the electric utility may amend its filing to conform to the final rules adopted by the commission, and provide sufficient time to the parties to the general rate proceeding for the opportunity for a fair hearing respecting the issues presented (including the request for a RAM) in the general rate proceeding so that the rates and charges resulting from the general rate proceeding may be based on a consideration of all relevant factors and may be just, reasonable and not unduly discriminatory or preferential. Should the commission permit the electric utility to refile, then within ten (10) days of service of the electric utility's timely refiling, other parties may file responsive pleadings. If the commission determines that the electric utility's refiling complies with the provisions of this rule, 4 CSR 240-20.090, and 4 CSR 240-3.161, as adopted by the commission, the commission shall determine whether to approve the electric utility's proposed RAM as part of its determination of the issues in the general rate proceeding.

(G) Procedure for addressing nonsubstantive and nonmaterial changes to proposed RAM rules. If portions of the proposed RAM rules are altered in a nonsubstantive manner or to a nonmaterial degree by the final rules adopted by the commission, the electric utility, rather than file amendments or request waivers, may file explanations that show good cause why the commission should not require the electric utility to either amend its filing or request waivers for these items. These explanations shall be processed by the commission according to the same procedures as amendments and requests for waivers are processed pursuant to 4 CSR 240-20.090(16).

(H) Transition period applicable only to initial RAM rules. This section on procedures during a transitional period only applies to the initial rules adopted by the commission to implement S.B. No. 179, L. 2005, codified as section 386.266, RSMo.

*AUTHORITY: sections 386.250 and 393.140, RSMo 2000, and section 386.266, SB179, effective January 1, 2006.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed rule may or may not cost private entities more than \$500 in the aggregate. Please see the attached fiscal note.*

*NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before September 7, 2006, and should include a reference to Commission Case No. EX-2006-0472. If comments are submitted via a paper filing, a single copy is required. Comments may also be submitted via a filing using the Commission's electronic filing and information system at <<http://www.psc.mo.gov/efis.asp>>. Public hearings regarding this proposed rule are scheduled for August 22, 2006, 11-3p.m., Kansas City Missouri Library, Helzberg Auditorium, 14 W. 10<sup>th</sup> Street, Kansas City, Missouri; August 23, 2006, 12-3p.m., Eric P. Newman Education Center, Seminar Room A, 660 S. Euclid Ave, St. Louis, Missouri; August 23, 2006, 6:30-10 p.m., St. Louis County Library, 8400 Delport Dr., Overland, Missouri; August 29, 2006, Southeast Missouri University, 6:30-10:00p.m., John Glenn Auditorium, Dempster Hall, Corner of Henderson and New Madrid, Cape Girardeau, Missouri; September 6, 2006, 6:30-10p.m., Missouri Southern State University, Webster Hall, 3950 E. Newman Road, Joplin, Missouri; and for September 7, 2006, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.*

## FISCAL NOTE

### PRIVATE COST

#### I. RULE NUMBER

Rule Number and Name	4 CSR 240-20.090
Type of Rulemaking:	Procedures for Electric Companies who choose to implement a fuel adjustment clause

#### II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Regulated Electric Companies	\$453,000/year ; or \$0 (net)*, or \$0 as use of rule is voluntary
Customers of Investor Owned Electric Companies	Electric Ratepayers	\$0 (net)

#### III. WORKSHEET

The companies who responded estimated that the cost of compliance with chapter 20 fuel adjustment clause provisions, if all four utilities chose to seek this regulatory treatment of fuel and purchased power cost, would be approximately \$453,000/year. However, as AmerenUE noted (and two of the remaining three companies concurred), "AmerenUE believes that these costs will be more than offset by the benefits provided by the FAC rules, including the fact that workable FAC rules will make rate cases less frequent than they would otherwise be." Finally §536.205 requires that a fiscal note be attached when "the adoption, amendment or rescission of the rule would **require** an expenditure of money." Nothing in this proposed rule requires the companies to incur any expense or forgo any income, as participation in the program established by this rule is entirely voluntary for the companies.

As to consumers, including large industrial users and individual residences, these rules may increase or decrease electric rates. These rules may permit both indirect costs and benefits to be passed along more quickly than they would otherwise be. Such costs and benefits are speculative and unquantifiable. Moreover, any increased fuel and purchased power costs that are prudently incurred by an electric utility would be recovered in rates at some point in the future, and there is opportunity for reflecting a decrease in fuel and purchase power costs earlier than would otherwise be the case.

#### **IV. ASSUMPTIONS**

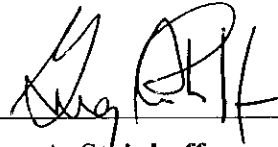
The process is voluntary for the electric companies. It is assumed that they would not incur the cost of compliance with the rule without a reasonable expectation that the monetary benefits will exceed the costs.

The rules implement changes made by the legislature to the statute, which was amended to allow fuel adjustment mechanisms. This rule does not appear to alter the rate charges by more than \$500 in the aggregate.

# AFFIDAVIT

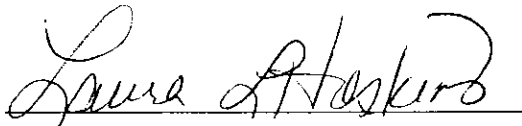
STATE OF MISSOURI     )  
                                      )  
COUNTY OF COLE        )

I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn on my oath state that it is my opinion that it is my opinion that the cost of the Proposed Rule 4 CSR 240-20.090 is less than five hundred dollars in the aggregate to this agency, and any other agency of state government or any political subdivision thereof.



**Gregory A. Steinhoff**  
**Director**  
**Department of Economic Development**

Subscribed and sworn to before me this 14<sup>th</sup> day of June, 2006,  
I am commissioned as a notary public within the County of Cole  
State of Missouri, and my commission expires on February 1, 2008.



**NOTARY PUBLIC**

Laura L. Hoskins  
Notary Public   Notary Seal  
State of Missouri  
County of Cole  
My Commission Expires 02/01/08



Commissioners

JEFF DAVIS  
Chairman

CONNIE MURRAY

STEVE GAW

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

**Missouri Public Service Commission**

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JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

WESS A. HENDERSON  
Executive Director

DANA K. JOYCE  
Director, Administration

ROBERT SCHALLENBERG  
Director, Utility Services

WARREN WOOD  
Director, Utility Operations

COLLEEN M. DALE  
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON  
General Counsel

June 15, 2006

Cindy Kadlec  
Director  
Joint Committee on Administrative Rules  
State Capitol, Room B-8  
Jefferson City, Missouri 65101

**JOINT COMMITTEE ON**

**JUN 15 2006**

**ADMINISTRATIVE RULES**

**Re: Proposed Rules 4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements and 4 CSR 240-20.090 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms**

Dear Ms. Kadlec:

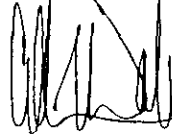
Executive Order 03-15, Section 2, requires, among other things, that state agencies determine whether a proposed rule or rules affect small businesses. If the Public Service Commission determines that its proposed rule affects small businesses by causing a "direct economic impact on small businesses of five hundred dollars (\$500) or more in the aggregate." Senate Bill No. 718 requires a similar analysis. This provision does not apply "where the rule substantially codifies existing federal or state law."

In consultation with the staff of the Public Service Commission, I have undertaken an analysis of whether the proposed rule affects small businesses. I have determined that the proposed rule will not cause direct and significant economic burden on a small business, nor is it directly related to the formation, operation, or expansion of a small business. However, these rules would permit both indirect costs and benefits to be passed along more quickly than they would otherwise be. Such costs and benefits are speculative and unquantifiable. Moreover, any increased fuel and purchased power costs that are prudently incurred by an electric utility would be recovered in rates at some point in the future, and there is opportunity for reflecting a decrease in fuel and purchase power costs earlier than would otherwise be the case. These rules establish forms and procedures for use of a fuel adjustment

mechanism as established by the legislature in SB 179 (2005 Session), and any such impact as may exist is the result of that newly promulgated law.

Please let me know if you have any questions based upon the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

---

Colleen M. Dale  
Secretary  
(573) 751-4255 Telephone  
cully.dale@psc.mo.gov