

(5) The EICF must be collected as a part of the customer charge on customers' bills.

(A) Revenues collected must be recorded by the small utility and placed into a commission-approved account specifically segregated from all other utility accounts, for the explicit purpose of regulatory review and tracking.

(B) Funds held in the EICF account shall only be disbursed to pay for projects approved during the rate case as noted in section (4) above.

(C) Disbursements from the EICF account shall only be made after notice to staff and public counsel.

1. The notice must be sent to staff and public counsel at least thirty (30) days prior to a disbursement.

2. If any party objects to the proposed disbursement, detailed objections must be filed in the official case file in which the EICF was approved no later than ten (10) days after receiving the disbursement notice. The commission may then determine whether or not to approve the requested disbursement of the funds.

3. If no timely objection is raised or staff and public counsel notify the small utility they agree to the disbursement, the small utility may make the disbursement described in its notice no later than the date specified in that notice.

4. The commission will resolve any dispute regarding the proposed disbursements prior to the specified disbursement date.

(6) Every quarter after receiving commission approval of an EICF, the small utility shall submit documentation to staff and public counsel reporting—

- (A) Monthly EICF funds received from customers;
- (B) Monthly EICF deposits to the escrow account;
- (C) Monthly EICF expenditures; and
- (D) End-of-month balance of the EICF account.

(7) After an EICF is established, the small utility shall file a subsequent rate request no later than five (5) years after the effective date of the EICF, during which—

(A) Any monies expended from the fund shall be treated as contributions-in-aid-of-construction for purposes of setting rates for the small utility. The EICF will be trued-up and will be reviewed to determine if it should—

- 1. Remain in effect at the current rate; or
- 2. Remain in effect at a different rate; or
- 3. Be terminated.

(8) Staff or the public counsel may, at their discretion, bring before the commission a complaint against the small utility seeking both civil penalties and direction from the commission to promptly stop all collection of an EICF if, upon review of documentation described in section (6) above, staff, public counsel, or another regulatory authority has indication that the small utility has used EICF funds for any purpose other than as approved by the commission. Nothing in this rule shall prohibit civil or criminal action by any state or federal authority against the small utility for misuse of customer funds.

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

**AUTHORITY:** sections 386.040, 386.250, 393.140, and 393.270, RSMo 2016. Original rule filed May 30, 2018.

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

**PRIVATE COST:** This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COM-**

**MENTS:** Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received at the commission's offices on or before August 1, 2018, and should include a reference to Commission Case No. AX-2018-0241. 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>. A public hearing is scheduled for August 7, 2018 at 2:00 p.m., in Room 305 of the Governor Office Building, 200 Madison St., 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.

**SPECIAL NEEDS:** 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.

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

#### PROPOSED AMENDMENT

**4 CSR 240-20.090 [Electric Utility] Fuel and Purchased Power [Cost Recovery] Rate Adjustment Mechanisms.** The commission is amending and revising all sections of this rule to consolidate the filing requirements for applications for fuel adjustment clauses to be established, continued, or modified.

**PURPOSE:** This proposed amendment modifies the definitions, structure, operation, and procedures relevant to the filing and processing of applications to allow fuel and purchased power costs and fuel-related revenues in an interim energy charge or a fuel adjustment clause. The interim energy charge is established in a general rate proceeding, while the fuel adjustment clause allows periodic rate adjustments outside general rate proceedings.

(1) [Definitions. As used in this rule, the following terms mean as follows:] The following subsections define various terms as used in this rule:

(A) Accumulation period means the time period set by the commission in the general rate proceeding over which historical fuel and purchased power costs and fuel-related revenues are accumulated for purposes of determining the actual net energy costs (ANEC). An accumulation period may be a time period between three (3) and twelve (12) months with the timing and number of accumulation periods to be determined in the general rate proceeding establishing, continuing, or modifying the FAC;

(B) Actual net energy costs (ANEC) means prudently incurred fuel and purchased power costs minus fuel-related revenues of a rate adjustment mechanism (RAM) during the accumulation period;

(C) Base energy costs means the fuel and purchased power costs net of fuel-related revenues determined by the commission to be included in a RAM that are also included in the revenue requirement used to set base rates in a general rate case;

(D) Base factor (BF) means the base energy costs per kilowatt hour (kWh) measured at the regional transmission organization's applicable price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization, at the generator. The base factor(s) shall be established in a general rate proceeding and may vary by season of the year;

(E) **Base rates** means the tariffed rates that do not change between general rate proceedings;

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

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

(H) **FAC charge** means the positive or negative dollar amount on each utility customer's bill, which in the aggregate is to recover from or return to customers the fuel and purchased power adjustment (FPA) amount;

(I) **Fuel adjustment clause (FAC)** means a mechanism established in a general rate proceeding which is designed to recover from or return to customers the fuel and purchased power adjustment (FPA) amounts through periodic changes to the fuel adjustment rates made outside a general rate proceeding;

(J) **Fuel adjustment rate (FAR)** means the rate used to determine the FAC charge on each utility customer's bill during a recovery period of a FAC. The FAR shall be designed to recover from or return to customers the recovery period FPA. The FAR may be positive or negative;

(K) **Fuel and purchased power adjustment (FPA)** means the dollar amount intended to be recovered from or returned to customers during a given recovery period of a FAC. The FPA may be positive or negative. It includes:

1. The difference between the ANEC and NBEC during the corresponding accumulation period taking into account any incentive ordered by the commission;

2. True-up amount(s) ordered by the commission prior to or on the same day as commission approval of the FAR adjustment;

3. Interest on the FPA, true-up amount, and any prudence adjustment;

4. Prudence adjustment(s) ordered by the commission since the last FAR adjustment; and

5. Any other adjustment ordered by the commission;

[(B)](L) **Fuel and purchased power costs** means prudently incurred and used fuel and purchased power costs, including transportation costs. Prudently incurred costs do not include any increased costs resulting from negligent or wrongful acts or omissions by the utility. If not inconsistent with a commission approved incentive plan, fuel and purchased power costs also include prudently incurred actual costs of 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 costs shall 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 offsystem 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;]

2. **Fuel and purchased power costs** do not include environmental costs as defined in 4 CSR 240-20.091(1) or renewable energy standard compliance costs as defined in 4 CSR 240-

20.100(1);

(M) **Fuel-related revenues** means those revenues related to the generation, sale, or purchase of energy. Fuel-related revenues may include, but are not limited to, off-system sales, emission allowance sales, and renewable energy credits or certificates whenever such renewable energy credits or certificates are not included in a Renewable Energy Standard Rate Adjustment Mechanism (RESRAM) in compliance with 4 CSR 240-20.100;

[(D)](N) **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** means the rules first adopted by the commission to implement Senate Bill 179 of the Laws of Missouri 2005;]

(O) **Interest** means monthly interest at the utility's short term borrowing rate to accurately and appropriately remedy any over- or under-billing during a recovery period, true-up, or any commission ordered refund of imprudently incurred costs;

[(F)](P) **Interim energy charge (IEC)** means *[a refundable fixed charge,]* a mechanism that includes a refundable fixed amount billed through an interim energy rate (IER) 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 the fuel and purchased power costs included in its base rates. *[An IEC may or may not include offsystem 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;]* **Base energy cost** in the base rates is the floor of the IEC. The base energy cost plus the fuel and purchased power costs billed through the IER is the ceiling of the IEC. An IEC may or may not include fuel-related revenues and costs related to those revenues;

(Q) **Megawatt hour (mWh)** is one (1) million watt hours or one thousand (1,000) kilowatt hours (kWh);

(R) **MCF** is one thousand (1,000) cubic feet of natural gas;

(S) **MMBtu** is equal to one (1) million Btus;

(T) **Net base energy costs (NBEC)** means the product of the utility's base factor (BF) times the kWh measured at the regional transmission organization's price node for the electric utility's load or, if the electric utility is not a participant in a regional transmission organization at the generator, for the accumulation period;

(U) **Other parties** means any party to the applicant's most recent general rate proceeding in which the RAM at issue was established, continued, or modified;

[(G)](V) **Rate adjustment mechanism (RAM)** refers to either a commission-approved fuel adjustment clause (FAC) or a commission-approved interim energy charge (IEC);

(W) **Rebase base energy costs** means the resetting of the base energy cost in each general rate proceeding in which the FAC is continued or modified;

(X) **Recovery period** means the period over which the FAR is applied to retail customer usage on a per kilowatt-hour (kWh) basis in an effort to recover the FPA. A recovery period is determined in a general rate case and shall not be longer than twelve (12) billing months;

[(H)](Y) **Staff** means the staff of the Public Service Commission; and

[(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 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.]

**(Z) True-up amount means—**

1. For a FAC, the true-up amount shall be the difference between the FPA and the utility's aggregate FAC charges billed for a recovery period. If the aggregate FAC charges billed for recovery period are more than the FPA, the true-up amount will be negative. If the aggregate FAC charges billed for a recovery period are less than the FPA, the true-up amount will be positive.

A. The electric utility may request in its general rate case to use the final Regional Transmission Organization (RTO) determinants to update the FPA for its true-up if the electric utility belongs to an RTO where the RTO may, after the beginning of the recovery period, finalize the determinants used to calculate the FPA for the recovery period.

2. For an IEC, the true-up amount shall be determined as follows for each consecutive twelve- (12-) month period—

A. If the actual fuel and purchased power cost is greater than the IEC ceiling, the true-up amount shall be zero;

B. If the actual fuel and purchased power cost is less than the IEC ceiling and greater than the IEC floor, the true-up amount shall be the difference between the actual fuel and purchased power cost and the combined IEC billed plus the base energy cost. The customers will be credited/refunded this amount; or

C. If the actual fuel and purchased power cost is less than the IEC floor, the true-up amount shall be the aggregate IEC billed. The customers will be credited/refunded this amount.

(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, only] Establishment, Continuance, or Modification of a RAM. [a]An electric utility may only file a request with the commission to establish, continue, or modify a RAM in a general rate proceeding [may file an application with the commission to establish, continue or modify a RAM by filing tariff schedules]. Any party in a general rate proceeding [in which a RAM is effective or proposed] may seek to continue, modify, or oppose the RAM. The commission shall approve, modify, or reject such [applications to establish a RAM] request 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. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs may be recovered in a RAM and what portion shall be recovered in*

*base rates.*

*(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.]*

(A) The electric utility shall file the following supporting information, in electronic format where available (with formulas intact), as part of, or in addition to, its direct testimony:

1. An example of the notice to be provided to customers to be approved by the commission. The notice shall include a description of how its proposed RAM shall be applied to monthly bills, the electric utility's estimate of the amount of the proposed change in rates arising from changes in the base energy costs, and the estimated impact on a typical residential customer's bill resulting from the proposed change to the base energy costs;

2. An example customer bill showing how the proposed RAM shall be separately identified on affected customers' bills in accordance with section (12);

3. Proposed RAM tariff sheets;

4. A detailed description of the design and intended operation of the proposed RAM;

5. A detailed explanation of how the proposed RAM is reasonably designed to provide the electric utility a sufficient opportunity to earn a fair return on equity;

6. A detailed explanation of how the proposed FAC shall be true-up for over-and under-billing, or how and when the refundable portion of the proposed IEC shall be true-up;

7. A detailed description of how the electric utility's monthly short-term interest rate will be defined and how it will be applied, during the accumulation period and the recovery period, to true-up amounts and prudence disallowances;

8. A detailed description of how the proposed RAM is compatible with the requirement for prudence reviews;

9. In order for the commission to make the determination in subsection (C), a detailed explanation of each fuel and purchased power cost type and fuel-related revenue type that is to be recovered under the proposed RAM including, but not limited to—

A. Why the cost or revenue type should be included in the RAM;

B. The cost incurred or revenue received by the electric utility's proposed test year;

C. The annual expected magnitude of the cost or revenue for the next four (4) years;

D. A measure of volatility and the reason for the volatility of the cost or revenue type;

E. The uncertainty surrounding the cost or revenue type and the reason for the uncertainty;

F. An explanation of how the electric utility manages the cost or revenue type; and

G. The specific account or any other designation ordered by the commission where the cost or revenue type will be recorded on the electric utility's books and records;

10. A detailed explanation of the fuel-related revenues that are to be considered in determining the amount to be recovered under the proposed RAM with identification of the specific account and any other designation ordered by the commission where that revenue will be recorded on the electric utility's books and records;

11. A detailed explanation of any incentive feature in the proposed RAM with the expected benefit and cost each feature is intended to produce for both the electric utility and its Missouri retail customers;

12. A detailed explanation of any rate volatility mitigation feature in the proposed RAM;

13. A detailed explanation of any feature of the proposed RAM and any existing electric utility policy, procedure, or practice that ensures only prudent fuel and purchased power costs and fuel-related revenue shall be recovered through the proposed

RAM, including, but not limited to, competitive bidding practices;

14. If the proposed RAM includes incorporating fuel and purchased power costs and fuel-related revenue in the electric utility's base rates, a detailed explanation of the methodology used to allocate fuel and purchased power costs and fuel-related revenue to specific customer classes in the base rates and in any subsequent rate adjustments during the term of the proposed RAM;

15. A detailed explanation of the rate design of the RAM for each customer class, including at a minimum the electric utility's justification for the methodology chosen for determining the rate design and how that methodology is consistent with the methodology used to allocate fuel costs, purchased power costs, and fuel-related revenue in base rates;

16. A detailed explanation of any change to the electric utility's business risk resulting from implementation of the proposed RAM, in addition to any other changes in business risk the electric utility may experience;

17. A detailed explanation of any risk to each of the electric utility's Missouri retail customer classes resulting from implementation of the proposed RAM, including the electric utility's estimated quantification of any risk and how the electric utility will manage that risk;

18. A copy of the results of heat rate tests and/or efficiency tests that were conducted on each of the electric utility's steam generators, including nuclear steam generators, heat recovery steam generators, steam turbines, and combustion turbines for the electric utility's general rate proceeding proposing to establish, continue, or modify the RAM. The electric utility may, in lieu of filing the foregoing results with the commission, provide the results to staff, Office of the Public Counsel (OPC), and other parties as part of the workpapers it provides in connection with its direct case filing. If the electric utility submits the heat rate tests and/or efficiency tests in workpapers, it will provide a statement in its testimony as to where the results can be found in workpapers;

19. Information that shows that the electric utility has in place a long-term resource planning process;

20. If the electric utility proposes to include emissions allowances costs or sales revenue in the proposed FAC and not in an environmental cost recovery mechanism, a detailed explanation of its emissions management policy, and its forecasted environmental investments, emissions allowances purchases, and emissions allowances sales;

21. For each power generating unit the electric utility owns or controls, in whole or in part, the electric utility shall file graphs, accompanied by the data supporting the graphs, for each month over the immediately preceding five (5) years, showing the monthly equivalent availability factor, the monthly equivalent forced outage rate, and the length and timing of each planned outage of that unit; and

22. Authorization for the staff to release to all parties to the general rate proceeding in which the establishment of a RAM is requested, the previous five (5) years of historical surveillance monitoring reports the electric utility submitted in EFIS.

(B) An electric utility filing for modification or continuance of a RAM in which the information required in subsection (2)(A) has been previously filed with the commission as part of a general rate proceeding and has not changed, may certify that the information has not changed, in lieu of providing copies of information, and provide to all parties the general rate case number and location in EFIS, including the EFIS item and page number where the information can be found. An electric utility filing to continue or modify a RAM must also provide to all parties any additional information the commission ordered the electric utility to provide when seeking to continue or modify its RAM.

(C) The commission may approve the establishment, continua-

tion, or modification of a RAM and associated tariff sheets provided that it finds that the RAM is reasonably designed to provide the electric utility with a sufficient opportunity to earn a fair return on equity and so long as the tariff sheets that implement the RAM conform to the RAM approved by the commission. The commission may consider, but is not limited to, considering—

1. Fuel and purchased power costs, fuel-related revenues that would flow through the RAM, or other factors it deems appropriate;

2. Any change in business risk of the utility resulting from establishment, continuation, or modification of the RAM in setting the electric utility's allowed return on equity in any general rate proceeding, in addition to any other changes in business risk experienced by the electric utility; and

3. In determining which fuel and purchased power cost types and fuel-related revenue types to include in a RAM, the commission may consider the magnitude of each cost or revenue type, the ability of the utility to manage each cost or revenue type, the volatility of each cost or revenue type and the incentive provided to the utility as a result of the inclusion or exclusion of each cost or revenue type. The commission may, in its discretion, determine what portion of prudently incurred fuel and purchased power costs and fuel-related revenues may be recovered in a RAM and what portion shall be recovered in base rates.

[(E)](D) Any party to the general rate proceeding may oppose *[the establishment, continuation or modification of a]* any 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]*.

[(F)](E) The RAM, and *[periodic adjustments thereto]* any adjustments to the FARs if a FAC is approved, shall be based on historical fuel and purchased power costs and fuel-related revenues.

[(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.*

(F) For an electric utility with a FAC, the utility shall include in its proposed tariff sheets provisions which shall accurately and appropriately remedy any true-up amount as part of the electric utility's determination of its FPA for a change to its FARs. The proposed tariff sheets shall include, at a minimum:

1. When the electric utility will file for a true-up;

2. How the true-up amount will be determined including, but not limited to, any recalculation of the FPA; and

3. How and when the true-up amount will be recovered.

For an electric utility with an IEC mechanism, a true-up must be filed within sixteen (16) months of the operation of law date of the IEC and be filed annually thereafter.

[(H)](G) Any party to the general rate proceeding may propose a cap on the *[change in the FAC, reasonably designed]* periodic changes to the fuel adjustment rate (FAR), to mitigate volatility in rates, provided it proposes a method for the utility to recover all of the costs it would be entitled to recover in the FAC, together with interest thereon.

(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] Discontinuation of a RAM. The tariff sheets that define and implement a RAM shall only be discontinued and withdrawn after the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that affect ratepayers, the cost or overall rates, and charges of the petitioning electric utility.*

(A) When an electric utility files a general rate proceeding in which it requests that its RAM be discontinued, the electric utility shall file with the commission, and serve on the parties, the following supporting information, in electronic format where

available (with formulas intact), as part of, or in addition to, its direct testimony:

1. An example of the notice to be provided to customers regarding the general rate case to be approved by the commission, and a description of why it believes the RAM should be discontinued;

2. A detailed explanation of how the electric utility proposes to discontinue its RAM.

A. If requesting to discontinue its FAC, the electric utility shall include the following in its explanation:

(I) The ending date of the last FAC accumulation period;

(II) The beginning and ending dates of the recovery period for that accumulation period; and

(III) The procedure for the true-up associated with the recovery period for that accumulation period.

B. If requesting to discontinue its IEC, the electric utility shall include a detailed explanation of how any over-billing will be returned to the electric utility's retail customers;

3. A detailed explanation of why the RAM is no longer necessary to provide the electric utility a sufficient opportunity to earn a fair return on equity;

4. A detailed explanation of any impact on setting the electric utility's allowed return on equity in any rate proceeding as a result of the change to the electric utility's business risk resulting from discontinuation of its RAM, in addition to any other changes in business risk experienced by the electric utility;

5. Any additional information that the commission ordered the electric utility to provide when seeking to discontinue its RAM.

*[(A)](B)* 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]* fuel-related 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. **In addition to other remedies provided by law, the commission may reject the utility's request for discontinuance of a RAM if it finds that the utility has not complied with this rule in its request to discontinue its RAM.** 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]* tariff sheets filed to implement the RAM must conform to the RAM approved by the commission. Any RAM and periodic adjustments *[thereto]* to the **FAR** shall be based on historical fuel and purchased power costs.

*[(B)](C)* The commission may take into account any change in business risk *[to the corporation]* of the electric utility resulting from discontinuance of the RAM in setting the electric utility's allowed return on equity in any general rate proceeding<sup>[(4)]</sup> in addition to any other changes in the electric utility's 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)]* Subsections (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 sixty (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 up 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 alter the processing timeline.]

**(4) Requirements for Electric Utilities that have a RAM. If the commission grants, modifies, or continues an electric utility's RAM, the electric utility shall—**

(A) Upon thirty (30) days prior written notice to the electric utility, provide for review by staff at its corporate headquarters, or some other place mutually agreed upon by the electric utility and staff, a copy of each and every nuclear fuel, coal, natural gas, and fuel transportation contract (to the extent related to generation of electricity), the utility's hedging policies and the utility's internal policy for participating in a Regional Transmission Organization (RTO) ancillary services market (if applicable), including every amendment and modification to each such contract or policy that was in effect during a RAM for the electric utility; and

(B) Notify the staff through EFIS of every new nuclear fuel, coal, natural gas, and fuel transportation contract and every new amendment and every new modification to currently existing contracts or to the policies referenced in subsection (4)(A) above within thirty (30) days of the effective date of the contract, amendment, or modification. The notification shall include where the contracts, amendments, modifications, and related competitive bidding materials may be reviewed.

(5) Periodic Reports. So long as it has a RAM in effect, each electric utility shall submit a report that covers each period used to accumulate costs and revenues for inclusion in the RAM through EFIS and to staff, OPC, and other parties. Each periodic report shall be verified by the affidavit of an electric utility representative(s) who has knowledge of the subject matter and who attests to both the veracity of the information and his/her knowledge of it. The information identified in this section shall be provided in electronic format where available (with formulas intact), and shall be submitted no later than the utility's filing for an adjustment to its RAM based on that accumulation period. Each periodic report shall contain the following information by month:

(A) The billing month actual energy usage in kWhs by rate class and voltage level;

(B) Net base energy costs billed in base rates by rate class and voltage level along with workpapers (with formulas intact) detailing the calculation;

(C) FARs by voltage level along with workpapers (with formulas intact) detailing the calculation;

(D) The fuel and purchased power costs and fuel related revenues for each month, year-to-date, and prior calendar year by account and any other designation ordered. If accounts, sub-accounts, and other designations are not comparable to costs and revenues listed in the electric utility's FAC tariff sheets, the electric utility shall also include the costs as listed in the tariff sheets;

(E) Off-System Sales.

1. If sold within an RTO market—

A. Revenue net of the cost of any energy purchases in the RTO market;

B. MWh's net of the MWh's for any energy purchases in the RTO market.

2. If sold outside of an RTO market (physical bilateral transactions)—

A. Total MWh's;

B. Total revenues;

(F) Capacity Sales.

1. If sold within an RTO market—

A. MW capacity sold net of MW capacity purchased;

B. Revenue received net of the cost of capacity purchased.

2. If sold outside on an RTO market (third party bilateral transactions)—

A. MW capacity sold;

B. Total revenue;

(G) Energy Purchases.

1. If purchased within an RTO market—

A. Cost net of the revenue of any energy sales from the RTO market;

B. MWh's net of the MWh's for any energy sales from the

RTO market.

2. If purchased outside of an RTO market (physical bilateral transactions)—

A. Total MWh's.

B. Total revenues;

(H) Capacity Purchases.

1. If purchased within an RTO market—

A. MW capacity purchased net of MW capacity sold;

B. Cost net of the revenue received for capacity sold.

2. If purchased outside on an RTO market (third party bilateral transactions)—

A. MW capacity purchased;

B. Cost;

(I) Reason for the purchase of capacity in the RTO markets;

(J) The following information for the period, by generation facility, by fuel type, and by total for the electric utility:

1. Quantity of fuel burned, with the designation of the units in which the quantity is reported (e.g., tons, MCF, MMBtu);

2. Million British Thermal Units (MMBtu) of fuel burned;

3. Average cost of fuel per MMBtu, by fuel type;

4. Aggregate megawatt hours (mWhs) of net energy generated by the generating facility at each generation station, where net energy generated is the gross generation net of the station use;

5. Average cost of fuel per mWh; and

6. The cost of fuel purchased by fuel type and, for coal, a breakdown between the cost of the coal commodity and the cost of coal transportation;

(K) A detailed description of the accounts or other designations ordered by the commission, where each fuel and purchased power cost or fuel-related revenue is recorded. The report shall identify any changes since the last periodic report to accounts or other designations of costs and revenue types ordered to be included by the commission in the last general rate proceeding;

(L) Each revision to the electric utility's internal policy for participating in—

1. RTO ancillary services market, if the RTO in which the electric utility participates has such a market;

2. RTO energy markets by RTO;

3. RTO capacity markets by RTO;

4. Financial swaps or other financial-only transactions (if such financial transactions are included in the electric utility's RAM);

(M) Any additional information that the commission has ordered the electric utility to provide in its periodic reports.

(6) Surveillance Monitoring Reports. So long as it has a RAM in effect, each electric utility shall submit in EFIS and submit to staff, OPC, and other parties, a surveillance monitoring report, within fifteen (15) days after each of the electric utility's United States Securities and Exchange Commission (SEC) 10-Q and 10-K filings are due. The surveillance monitoring report shall be verified by the affidavit of an electric utility representative(s) who has knowledge of the subject matter and who attests to both the veracity of the information and his/her knowledge of it. These surveillance monitoring reports are confidential.

(A) There are six (6) parts to the electric utility surveillance monitoring report. Each part, except Part I—Rate Base Quantifications, shall contain information for the last twelve-(12-) month period and the last quarter based on total company electric operations data and on Missouri jurisdictional operations data. Part I—Rate Base Quantifications, shall contain only information as of the ending date of the period being reported. The content of the surveillance monitoring report follows:

1. Part I—Rate Base Quantifications. The quantification of rate base items in Part I shall be consistent with the methods and procedures used in the electric utility's most recent rate proceeding before the commission, unless otherwise specified. Part I

shall consist of specific quantifications of the following rate base items:

- 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. All other items included in the electric utility's rate base from its most recent general rate proceeding before the commission;

- L. Net Operating Income from Part III; and
- M. Calculation of the overall return on rate base;

2. Part II—Capitalization Quantifications. Part II shall consist of specific quantifications of the following capitalization-related items:

- 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. Part III—Income Statement. Part III shall consist of an income statement containing specific quantifications of—

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

B. Operating and maintenance expenses in fuel expense, production expense, purchased power energy, and purchased power capacity;

- C. Transmission expense;
- D. Distribution expense;
- E. Customer accounts expense;
- F. Customer service and information expense;
- G. Sales expense;
- H. Administrative and general expense;
- 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, both actual and normal;

4. Part IV—Jurisdictional Allocation Factors. Part IV shall consist of a list of the jurisdictional allocation factors used for determining the electric utility's rate base, capitalization quantification, and income statement;

5. Part V—Financial Data Notes. Part V shall consist of notes to the reported 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. Specific identification and quantification of material variances between current twelve- (12-) month period and prior twelve- (12-) month period revenue;
- D. The expense levels of each item the commission has ordered be tracked in the RAM;

- E. Budgeted capital projects; and
- F. Events that materially affect debt or equity surveillance components;

6. Part VI—Missouri Energy Efficiency and Investment Act (MEEIA). An electric utility with approved MEEIA demand-side management programs and/or an approved demand-side programs investment mechanism shall include all quarterly filing requirements of 4 CSR 240-20.093(9);

(B) Each surveillance monitoring report shall include any addi-

tional information the commission has ordered be provided.

(7) Budget Report. Annually the electric utility shall submit in EFIS and provide to staff, OPC, and other parties, its approved budget for the upcoming budget year, in electronic format (with formulas intact) and in a layout similar to its surveillance monitoring report. The budget submission shall provide a quarterly and annual quantification of the electric utility's income statement. The budget report shall be submitted within thirty (30) days of when the electric utility's budget is approved 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 designated "highly confidential" and treated accordingly.

(8) Periodic Changes to Fuel Adjustment Rates. An electric utility that has a FAC shall file proposed tariff sheet(s) to adjust its FARs following each accumulation period. The FARs shall be designed to bill the electric utility's customers, in the aggregate, the FPA if the FPA is positive, or return the FPA to the utility's customers if the FPA is negative. When an electric utility files with the commission tariff schedule(s) to change its fuel adjustment rates and serves it upon parties, the filed tariff schedule(s) shall be accompanied by—

(A) Prefiled testimony that shall include:

1. The proposed FARs;

2. The change in the FARs;

3. The impact of the proposed FARs on the monthly bill of the electric utility's typical residential customer, together with the definition of typical residential customer used to determine that impact;

(B) The following information in electronic format where available (with formulas intact):

1. For the period of historical costs which are being used to propose the fuel adjustment rates—

A. The billing month and calendar month actual energy sales in kilowatt-hours, by rate class and voltage level;

B. The actual fuel costs of the types of fuel costs designated in the FAC, listed by generating station and fuel type;

C. The actual purchased power costs of the types of purchased power costs designated in the electric utility's FAC, differentiated by—

(I) Purchased power;

(II) Demand costs and energy costs, separately stated; and

(III) The actual fuel transportation costs of the types of fuel costs designated in the FAC;

D. The megawatt-hours and costs of purchased power of the type included in the electric utility's FAC;

E. Revenues, gross and net of off-system sales;

F. Fuel-related revenues other than off-system sales revenues separated by type of fuel-related revenue;

G. Net base energy costs collected in permanent rates—

(I) Any additional requirements the commission ordered;

(II) Calculation of each of the proposed fuel adjustment rates; and

(III) Calculations of the voltage differentiation in the proposed FAC rates, if any, to account for differences in line losses by service voltage level; and

H. 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;

2. The electric utility's monthly short-term debt interest rate, along with—

A. An explanation of how that rate was determined;

B. The calculation of the short-term debt interest rate;

C. Identification of any changes in the basis(es) used for

determining the short-term debt interest rate since the last FAC rate adjustment; and

D. If there is a change in the basis(es) used for determining the short-term debt interest rate, a copy(ies) of the changed basis(es) or identification of where it/they may be reviewed;

(C) Workpapers, in electronic format where available (with formulas intact), supporting all items in subsections (A) and (B) that are not provided in the electric utility's section (5) submission shall be submitted through EFIS and provided to staff, OPC, and other parties;

(D) The electric utility shall initiate a new case with an ER designation for each periodic adjustment of its FARs;

(E) An electric utility with a FAC shall file an adjustment to its FARs within two (2) months of the end of each accumulation period after the effective date of the FAC;

(F) The tariff sheets reflecting the RAM define the costs and revenues that can be included in the RAM, subject to the following:

1. If an RTO implements a new market settlement type that the electric utility or another party believes possesses the characteristics of, and is of the nature of, an RTO revenue or cost type approved by the commission for inclusion in the electric utility's FAC in the previous general rate increase, the electric utility shall include the new market settlement type subject to the following requirements:

A. The party proposing the inclusion of a new market settlement type shall make a filing before the commission.

(I) If the electric utility is proposing the inclusion of a new market settlement type, it will make a filing with the commission giving notice of the new cost or revenue type no later than sixty (60) days prior to the electric utility including the new settlement type in the ANEC.

(II) If a party other than the electric utility is proposing the inclusion of a new market settlement type, the filing shall be made sixty (60) days prior to the electric utility's next periodic adjustment filing;

B. The filing shall include, but is not be limited to:

(I) Identification of the account affected by the change;

(II) A description of the new settlement type demonstrating that it possesses the characteristics of, and is of the nature of a cost or revenue type allowed in the electric utility's FAC by the commission in the preceding general rate case; and

(III) Identification of the preexisting schedule, or market settlement type which the new settlement type replaces or supplements; and

C. To challenge the inclusion of a new market settlement type, a party shall make a filing before the commission including the reasons why it believes the electric utility did not show that the new market settlement type possesses the characteristics of a cost or revenue type allowed by the commission.

(I) The filing shall be made within thirty (30) days of the electric utility's filing.

(II) The party requesting the inclusion of the new market settlement type shall bear the burden of proof to show that the new market settlement type possesses the characteristics of, and is of the nature of a cost or revenue type allowed in the electric utility's FAC by the commission in the preceding general rate case.

(III) If a party challenges the inclusion of the market settlement type, the challenge will not delay the FAR filing schedule.

(IV) If the challenge is upheld by the commission, the costs will be refunded or revenues returned along with interest in the next periodic adjustment;

(G) The electric utility must be current on its submission of its surveillance monitoring reports;

(H) Staff shall review the information filed and submitted by the electric utility in accordance with this rule and additional

information obtained through discovery, if any, to determine if the proposed adjustment to the FARs is in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established, continued, or modified in the utility's most recent general rate proceeding. Within thirty (30) days after the electric utility files its testimony and tariff sheets to adjust its FARs, the staff shall submit a recommendation regarding its examination and analysis to the commission;

(I) OPC and other parties may file a response to the electric utility's proposed FAR adjustment within forty (40) days after the electric utility files its testimony and tariff sheet(s) to adjust its FARs;

(J) Within sixty (60) days after the electric utility files its testimony and tariff sheet(s) to adjust its FARs, the commission shall either—

1. Issue an interim rate adjustment order approving the tariff sheets and the adjustments to the FARs;

2. Allow the tariff sheets and the adjustments to the FARs to take effect without commission order; or

3. If it determines the adjustment to the FARs is not in accordance with the provisions of this rule, section 386.266, RSMo, and the FAC mechanism established in the electric utility's most recent general rate proceeding, reject the proposed rate schedules, suspend the timeline of the FAR adjustment filing, set a prehearing date, and order the parties to propose a procedural schedule. The commission may order the electric utility to file tariff sheet(s) to implement interim adjusted FARs to reflect any part of the proposed adjustment that is not in question;

(K) If the staff, OPC, or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit and as ordered by the commission in a previous proceeding, believes the information is insufficient to make a recommendation regarding the electric utility's proposed FAR, it shall notify the electric utility within ten (10) business days of the electric utility's filing of tariff sheets to adjust the FARs and identify the information required and not submitted in compliance with that rule or order. 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 this rule and the commission's most recent order establishing, continuing, or modifying the FAC, within ten (10) business 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.

1. While the commission is considering the motion to compel, the processing timeline for the adjustment to increase the FARs 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 the FARs. If the commission issues an order compelling discovery, interest will not be accrued by the utility from the time the commission receives a motion to compel until the time that the utility provides the requested information. For good cause shown the commission may further suspend this timeline.

2. Except as provided herein, any delay in providing sufficient information in compliance with this rule and the commission's most recent order establishing, continuing, or modifying the FAC in a request to decrease the FARs shall not alter the processing timeline.

*[(5)](9) 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.] The purpose of a*

true-up case is to accurately and appropriately remedy any over-billing or under-billing during a recovery period, including the interest accrued at the utility's short-term interest rate.

*[(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.]*

(A) When an electric utility files with the commission to true-up its RAM the filing shall be accompanied by—

1. Pre-filed testimony that includes a discussion detailing the material factors which contributed to the true-up amount;

2. The following information in electronic format where available (with formulas intact):

A. Any revision to the calculation of the net base energy cost for the accumulation period;

B. The calculation of the monthly amount that was over-billed or under-billed through its RAM;

C. The electric utility's monthly short-term debt interest rate along with—

(I) An explanation of how that rate was determined;

(II) The calculation of the short-term debt interest rate;

(III) Identification of any changes in the basis(es) used for determining the short-term debt interest rate since the last RAM rate adjustment; and

(IV) If there is a change in the basis(es) used for determining the short-term debt interest rate, a copy(ies) of the changed basis(es) or identification of where it/they may be reviewed;

D. Any additional information that the commission has ordered the electric utility to include in its RAM true-up filing;

3. Workpapers, in electronic format where available (with formulas intact), supporting all items in this subsection, shall be submitted in EFIS and provided to staff, OPC, and other parties.

(B) The electric utility shall initiate a new file in EFIS designated as an "electric other" (EO) file number for each true-up of its RAM.

(C) The electric utility must be current on its submission of its *[S]urveillance [M]onitoring [R]eports [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]* under-billing.

(D) The staff shall examine and analyze the information filed and submitted 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.]* utility pursuant to this rule and additional information obtained through discovery and as ordered by the commission, to determine whether the true-up amount 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]* for a true-up amount.

*[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.*

*2. 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.]*

(E) OPC and other parties may file a response to the proposed true-up amount within forty (40) days of the electric utility true-up filing.

(F) Within sixty (60) days of the electric utility's true-up filing the commission shall issue an order—

1. Allowing the tariff sheet(s) reflecting the true-up amount to take effect without commission order; or

2. If it determines that the true-up amount reflected in the tariff sheet(s) is incorrect, rejecting the proposed tariff sheet(s) containing the true-up amount, suspending the timeline of the true-up filing, setting a prehearing date, and ordering the parties to propose a procedural schedule. The commission shall allow the electric utility to file tariff sheet(s) to implement interim FARs reflecting any part of the true-up amount that is not in question, and questions about the correctness of the true-up amount will not delay adjustments to FAR rates unrelated to the true-up.

(G) If the staff, OPC or other party which receives, pursuant to 4 CSR 240-2.135, the information that the electric utility is required to submit and as ordered by the commission in a previous proceeding, believes the information 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.

1. While the commission is considering the motion to compel, the processing timeline for the determination of the true-up amount 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. If the commission issues an order compelling discovery, interest will not be accrued by the utility from the time

the commission receives a motion to compel until the time that the utility provides the requested information. For good cause shown the commission may further suspend this timeline.

2. If the party requesting the information can demonstrate to the commission that the true-up amount shall result in a reduction in the FAR, the processing timeline shall continue with the best information available. When the electric utility provides the necessary information, the FAR shall be adjusted again, if necessary, to reflect the additional information provided by the electric utility.

[(6)](10) 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] RAM, or any period for which charges collected under the [adjustment mechanism] RAM must be fully refunded. In the event a court determines that the [adjustment mechanism] RAM is unlawful and all [moneys/monies] collected are fully refunded as a result of such a decision, the electric utility shall be relieved of any obligation to file a general 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 minus fuel-related revenues or prudence adjustments.

[(7)](11) 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 file notice within ten (10) days of starting its prudence review and shall submit a recommendation regarding its examination and analysis to the commission not later than one hundred eighty (180) days after [the staff initiates] initiating its prudence [audit] review. [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.] Parties to the prudence review proceeding shall have ten (10) days after the staff files its recommendation to request a hearing. The commission shall issue an order not later than thirty (30) days after the staff files its recommendation if no party requests 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.

2. 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.

[(8)](12) Disclosure on Customers' Bills. Any amounts charged under a [RAM approved by the] commission-approved RAM 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 in the general rate proceeding establishing, modifying, or continuing the RAM.

[(9)](13) Rate Design of the RAM. The design of the RAM rates shall 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) as determined through the periodic conduct of Missouri jurisdictional system loss studies. When the electric utility initially seeks authority to use a RAM, the end of the twelve- (12-) month period of actual data collected that is used in its 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.] immediately preceding the date the utility files its general rate case requesting a RAM. When the electric utility seeks to continue or modify its RAM, the end of the twelve- (12-) month period of actual data collected that is used in its Missouri jurisdictional system loss study must be no earlier than two (2) years before the beginning of the twelve- (12-) month period the utility uses for developing the general rates it proposes the commission approve in that general rate proceeding.

[(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)](14) Incentive Mechanism or Performance-Based Program. During a general rate proceeding in which an electric utility has proposed establishment or modification 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 and/or off-system sales activities.

(A) The incentive mechanisms or performance-based programs may or may not include some or all components of *[fuel and purchased power costs]* base energy costs, designed to provide the electric utility with incentives to improve the efficiency and cost-effectiveness of its fuel and purchased power procurement activities and/or off-system sales.

(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,]* **Customer rates shall include** 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)](15)* 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)](16)* 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,]* an electric utility is acting in violation of its approved RAM tariff sheets or on the grounds that its rates have become unjust and unreasonable, 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.]*

(17) Party status and party rights in RAM proceedings subsequent to the last general rate case where the commission establishes, continues, or modifies the electric utility's RAM.

(A) Each party to the most recent general rate proceeding in which the commission established, continued, or modified the electric utility's RAM shall be a party to each subsequent related RAM rate adjustment proceeding, RAM true-up proceeding, and RAM prudence review proceeding, without applying to the commission for intervention, and shall be provided the periodic reports and surveillance monitoring reports required by this rule during the period of time when they are entitled to be a party to such proceedings without applying 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 and to consequently be a party, without seeking and being granted status as an intervenor to RAM-related proceedings initiated after that case.

(B) Anyone may seek to intervene, pursuant to 4 CSR 240-2.075, in any RAM rate adjustment proceeding, RAM true-up proceeding, RAM prudence review proceeding, or general rate proceeding to modify, continue, or discontinue a RAM. If no party objects to the intervention request within ten (10) days of when it is filed, then the applicant for intervention shall be deemed to have been granted intervention without a specific commission order, 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.

(18) Discovery. Each discovery response that a party obtains in general rate proceedings where the commission approves, modifies, rejects, continues, or discontinues a RAM and in related subsequent RAM rate adjustment proceedings, RAM true-up proceedings, and RAM prudence review proceedings may be offered as evidence in any subsequent RAM rate adjustment proceeding, RAM true-up proceeding, RAM prudence review proceeding, or general rate proceeding to modify, continue, or discontinue its RAM as if the response were made to a discovery request in that proceeding without requiring the party who made the request to resubmit the same discovery request (data request, interrogatory, request for production, request for admission, or deposition), subject to commission ruling on any evidentiary objection(s). Unless the commission orders otherwise, *sua sponte* or on a party's motion, the discovery response shall have the same protection it was last afforded, by rule or by commission order.

(19) Supplementing and updating discovery responses in subsequent related proceedings. A party who provided a discovery response in a prior case as described in section (18) shall be under no obligation to supplement or update that response in a subsequent proceeding, unless the requesting party issues a discovery request in the subsequent case which clearly identifies the particular discovery requests to be supplemented or updated and the particular period to be covered by the updated response. A party responding to a request to supplement or update a prior proceeding discovery response shall supplement or update the discovery response where the responding party has learned or subsequently learns its response is in some material respect insufficiently detailed or incorrect.

(20) The commission shall establish a new case for each general rate proceeding, RAM rate adjustment proceeding, RAM true-up proceeding, and RAM prudence review proceeding.

(21) 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.

*[(15)](22)* 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.

*AUTHORITY: sections 386.250, 386.266, and 393.140, [RSMo 2000 and 386.266,] RSMo [Supp. 2005] 2016. Original rule filed June 15, 2006, effective Jan. 30, 2007. Amended: Filed May 24, 2018.*

**PUBLIC COST:** *This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

**PRIVATE COST:** *This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

**NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS:** *Anyone may file a statement in support of or in opposition to the proposed amendment with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received at the commission's offices on or before August 6, 2018, and should include a reference to Commission Case No. EX-2016-0294. 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>. A public hearing is scheduled for August 13, 2018 at 10:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., 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 amendment, and may be asked to respond to commission questions.*

**SPECIAL NEEDS:** *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.*

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 70—Soil and Water Districts Commission  
Chapter 2—Referendums**

**PROPOSED AMENDMENT**

**10 CSR 70-2.010 Conduct of Referendums.** The commission is amending sections (1), (2), (4), (6), and (7); deleting section (5) and renumbering sections (6) and (7). Proposed amendments will delete or update obsolete rule language in sections (1) and (7); delete language that is duplicative with state statutes in sections (1) and (2); delete applicable rule requirements and procedures in sections (4), (5), and (7) and move to commission policy (District Operations Manual) and delete and replace restrictive words in sections (1), (2), (4), (5), and (7).

**PURPOSE:** *This rule is being amended because it has not been revised since 1955 and is not current with state statutes or commission policy. The proposed amendments to 10 CSR 70-2.010 were identified during the Red Tape Reduction review pursuant to Executive Order 17-03.*

(1) The **process for the** local committee and election judges *[shall] is—*

(A) Publish successive notices of the referendum *[and selection of supervisors]* in one (1) or more newspapers in the county where the referendum is being held **during** each of the two (2) weeks immediately preceding the referendum;

(B) *[Provide sealed ballot boxes and o]*Open polls promptly at the time advertised;

(C) Furnish official ballots to each polling place; and

(D) Close the polls promptly at the closing hour designated but allow those who have entered the polling place before this time to complete their ballots.

(2) *[Three (3) official election judges are required for each polling place. They must be residents and landowners within*

*the proposed district.]* If any elected judge is not present at the polls on the date and time of the referendum, *[those] the* judges present may select any citizen *[of] in* the *[proposed]* district to serve in *[his/her] their* place and *[give him/her] provide* the necessary instructions. *[All instructions to judges must make clear that any person designated to conduct a referendum or assist in a referendum and who thereby gains knowledge as to how any land representative voted and reveals knowledge to any other person shall be guilty of a misdemeanor.]*

(3) Only one (1) vote is allowed per farm *[either]* by the owner or *[his/her] their* legal representative. A tract of land must be operated as an independent farm enterprise to entitle its land representative to a single vote. Two (2) or more tracts of land that are operated by one (1) management **entity** as an independent farm enterprise will be entitled to one (1) vote. *[The size of each farm must be at least three (3) acres or more.]*

(4) Each farm owner may personally cast as many votes in the soil district referendum *[and election of supervisors]* as *[s/he] they* own/s independently operated farms. If *[it is impossible for]* the landowner is **unable** to personally cast *[his/her] their* eligible vote(s) *[because of absentee landownership, sickness or for any other reason over which s/he has no control, the soil districts law provides that s/he], they* may give a power of attorney to a taxpayer residing within the county to represent *[him/her] them* in *[this] the* referendum *[and election of supervisors]*. *It is the policy of the commission to require that this taxpayer not be a legal land representative for more than one (1) landowner, unless legal representation has been established previously by reason of professional or paid farm managership].*

*[(5) Immediately after closing the polls, the judges shall open the ballot boxes and carefully count the ballots cast. They shall tally on the tally sheet provided for the referendum, the number of "Yes" votes and the number of "No" votes and on the tally sheet provided for the election of supervisors write plainly the names of the nominees in the proper spaces and tally the votes each receives on the lines just below the name. The nominee who receives the largest number of votes will be declared elected a supervisor provided the State Soil and Water Districts Commission finds that the vote constituted a substantial expression of opinion.]*

*[(6)](5) All blanks on the **["L]ist of [V]oters["]** and all **["R]eferendum["]** and **["E]lection["]** tally sheets must be correctly filled in.*

*[(7)](6) [After the ballots have been counted, they shall be sealed in a package by the judges at the polls and shall not be inspected except in the case of a contested election and then only on order of the proper court. Arrangements should be made to return ballot boxes, "Listing" sheets, "Referendum["] and ["E]lection["] tally sheets and all supplies should be returned to the clerk of the county court within twenty-four (24) hours after polls are closed, where they shall be safely preserved for twelve (12) months. In case arrangements cannot be made with the county clerk, all these materials shall be sent to the chair/man] of the [State] Soil and Water Districts Commission. The chair/man] of the local committee and the clerk of the county court shall certify the total referendum vote by area/s] and polling place/s and the total election votes by areas for each nominee] and report the[ir] results to the [director] chair of the Soil and Water Districts Commission.*

**AUTHORITY:** *section 278.080, RSMo [1986] 2016. This version of rule filed Dec. 7, 1955, effective Dec. 17, 1955. Amended: Filed May 23, 2018.*