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Missouri Public
Service Commission

Ms. Colleen Dale
Secretary and Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: EX- 2006-0472

Dear Ms. Dale:

Accompanying this letter for filing are the comments of the Missouri Attorney General with respect to proposed rule 4 CSR 240-20.090 and 4 CSR 240-3.161.

Thank you for your assistance with this filing. If you have any questions please do not hesitate to contact me.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

Douglas E. Micheel
Assistant Attorney General

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In re proposed rule 4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements.	))))	**Case No. EX-2006-0472**

Comments of the Missouri Attorney General

Comes now Missouri Attorney General Jeremiah W. (Jay) Nixon and pursuant to the notice of proposed rules published in the Missouri Register on July 17, 2006 provides the following comments for the Commission's consideration regarding the proposed rule 4 CSR 240-3.161 Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms Filing and Submission Requirements:

4 CSR 240-3.161 (1)(A): This section of the proposed rule provides the definition of fuel and purchased power costs. According to the draft rule these costs are "prudently incurred and used fuel and purchased power costs, including transportation costs." The Attorney General believes that this definition is too broad and could allow increased fuel costs caused by inappropriate acts or omissions of the electric utlitiy to be included in the rate adjustment mechanism. For example, an electric utility could construct a combined cycle gas plant and place it on line without having obtained the appropriate zoning authority from the county in which the plant was constructed or the needed certificate from the Commission to operate the plant. The plant could be idled because the electric utility lacked the appropriate authority to operate the plant and the utility would have to purchase power to replace the capacity taken off line. In such a situation, it would be

prudent for the utility to purchase power to replace the idled capacity. The Commission's proposed rule would allow the electric utility to include the increased purchased power costs in the RAM even though those costs were the direct result of the utility managements failure to comply with the law.

Of course, this situation is not an abstract example. As the Commission is aware Aquila operated its South Harper plant under just such circumstances. The Attorney General is aware of at least three other situations with other electric utilities where management actions or inactions may have resulted in increased purchase power costs: Union Electric's Taum Sauk dam failure; the explosion, fire and disabling of the former St. Joseph Light &n Power Company's Lake Road 3 generator and the explosion and disabling of one of the generators at KCP&L's Hawthorn power plant.

Although nowhere delineated in its proposed rules, the Attorney General assumes that the Commission will be applying the long standing prudence standard set out in *In re Union Electric,* 27 Mo. PSC (N.S.) 183, 194 (1985):

> "[T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company."

The proposed rules would allow an electric utility to meet the Commission's long standing prudence standard not withstanding the fact that it was the electric utility's actions or inactions that caused the increased fuel or purchased power costs.

To close this loophole the Attorney General recommends that the following sentence be added to the definition of fuel and purchased power costs: "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any rate adjustment mechanism authorized by Section 386.266." If this loophole is not closed the electric utility will be allowed to foist increased fuel and purchase power costs upon consumers caused by its inappropriate, perhaps unlawful actions or inactions.

4 CSR 240-3.161 2.A: For all of the reasons contained in the comment to subsection (1)(A) above, the Attorney General recommends that the following sentence be inserted between the first and second sentence of proposed subsection (1)(C): "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any FAC authorized by the Commission pursuant to Section 386.266."

4 CSR 240-3.161(C): This portion of the proposed rule sets out the definition of "General rate proceeding." The Attorney General recommends that the phrase "initiated by the file and suspend method" be inserted into the definition of general rate proceeding so that the definition reads: " General rate proceeding means a general rate increase proceeding *initiated by the file and suspend method* or complaint proceeding..." This definition accurately describes the two methods authorized by statute by which a general rate case proceeding can be initiated. See: *State ex rel. Jackson County v. Public Service*

Commission, 532 S.W.2d 20, 28-29 (Mo banc 1975) *cert. denied*, 429 U.S. 822, 97 S. Ct. 73, 50 L. Ed.2d 84 (1976).

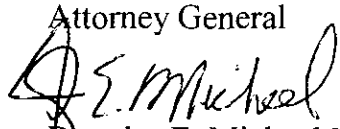
4 CSR 240-3.161(D): For all of the reasons contained in the comment to subsection (1)(A) above, the Attorney General recommends that the following sentence be inserted between the first and second sentence of proposed subsection (1)(F): "Any and all increased fuel and purchased power costs caused by an electric utility's failure to appropriately operate its generating facilities shall not be included in any IEC authorized by the Commission pursuant to Section 386.266."

4 CSR 240-3.161 (2)(B): This part of the proposed rule delineates that the electric utility must file an example of how the proposed RAM will be identified on the customers bill. The Attorney General recommends that the following sentence be added at the end of the first sentence: "If the electric utility is operating under an incentive RAM the electric utility shall also show how it will separately identify the incentive portion of the RAM on the customers bill." This proposal will allow the consumer to understand what portion of the surcharge is for fuel and purchased power and what portion of the surcharge is going to be returned to the electric utility as profit.

4 CSR 240-3.161 (3)(B): The Attorney General recommends that the language proposed in subsection (2) (B) above also be inserted into this subsection of the proposed rules.

Respectfully Submitted

JEREMIAH W. (JAY) NIXON
Attorney General



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