AARP Missouri

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AARP Missouri's Informal Comments on the Draft Electric Fuel and Purchased Power Adjustment Clause/Interim Energy Clause Rule

AARP Missouri has reviewed the draft rules (dated April 10, 2006 and compiled by the Public Service Commission Staff) designed to implement the fuel and purchased power surcharge portion of SB 179 (2005). AARP Missouri has participated in all of the roundtable discussions hosted by the Commission on this topic and is grateful for the opportunity to offer some general, informal comments at this stage of the process.

Even though this current draft reflects a lot of hard work on behalf of the Staff with regard to the technical procedures that could be used to implement a Fuel Adjustment Clause (FAC) or Interim Energy Clause (IEC), this draft is completely missing the consumer protections that were promised by the Missouri Legislature when such rules were authorized last year. If proposed as written, these rules would constitute an unbalanced shift in Commission policy, granting electric utilities enormous single-issue benefits 1) without any preservation of the current incentive to aggressively control costs by pursuing the most efficient fuel purchasing practices, 2) without any check on the possibility that a FAC could be used to overearn by charging rates that are unfair based on the utility's overall

cost of service, and 3) without any provision requiring significant mitigation of rate volatility.

When utility lobbyists were aggressively pushing SB 179 through last year's state legislature, they described the proposed FAC as simply a tool that the Commission could use (or not use), based upon whether the Commission found that it could be implemented in a way that was balanced and fair to consumers as well as to regulated monopoly utilities. It was repeatedly stated that no utility would be authorized to use a FAC unless the Commission first promulgated rules that added protections for consumers. The sponsors of this legislation in both the Senate and the House stated at hearings in March 2005 that the Commission would be able to add consumer protections to a FAC rule in order to ensure that such a mechanism was fair. These statements reflect the legislative intent that consumers be protected from unfair surcharges through the promulgation of strong consumer protections. The current draft contains none.

Section 386.266.9 RSMo. grants to the Commission the authority to impose whatever restrictions are necessary to "the structure, content and operation" in order to protect utility consumers. In a January 2006 handout, the Missouri Energy Development Association (MEDA) acknowledged this fact, reassuring legislators that the Commission has "complete authority to add whatever other protections it thinks are necessary." Unfortunately, MEDA has taken a different approach in its roundtable negotiations on the FAC rule, rejecting every single meaningful consumer protection proposed by the various consumer representatives. As a result of this stance on behalf of the utilities, the

Staff, in its role as a neutral facilitator in this process, has not been able to draft a rule which contains any of the consumer protections which would make the FAC mechanism fair to electric ratepayers.

Dramatically changing decades of balanced and effective regulation in Missouri, a FAC would remove the current incentives to efficiently procure fuel and purchased power inherent to rate of return regulation (except for the outside threat that flagrant mismanagement could lead to litigation regarding prudence disallowances). A few years ago, even the CEO of AmerenUE acknowledged that it was the *absence* of a FAC is Missouri which had encouraged efficiencies at his company and which drove it to excel with regard to low fuel prices. (Ameren's 1998 Report to Shareholders).

A FAC would shift fuel-cost risk currently borne by electric utilities onto consumers. Given their relative size, utilities have many means with which to manage this risk; consumers do not. There must be some limit to this shift if the FAC rule promulgated is to be fair. If 100% of this risk is shifted, can we really expect the same effort on behalf of utilities at driving down costs? As it has been said during roundtable discussions, the utility should still have a little "skin in the game".

If the Commission must implement a FAC rule, one of most fair ways to treat these fuel and purchased power costs is on an even-handed 50/50 basis. Fifty percent of these costs can be imbedded in base rates during a rate case (where 100% of expected costs are now recognized), while fifty percent of such

costs can be recognized through an ongoing FAC surcharge. At least in this manner, half of the currently effective incentive is still preserved, and hopefully that would be enough to encourage efficient behavior. This methodology would have many benefits. It is simple enough for everyone, including the public, to understand. It is preferable over more complicated incentive mechanisms, less likely to be the subject of interpretational disputes regarding technical language and less likely to avoid the controversies regarding the allegations of manipulation that have occurred with the complicated adjustment mechanisms employed in other states. This simple approach would also have the added benefit of mitigating volatility, naturally smoothing by 50% the spikes that may occur (either up or down) in fuel costs.

The second greatest danger that should be addressed by any rule regarding a FAC is the very real possibility that a FAC mechanism could be used by an electric utility to exceed its revenue requirement. A FAC mechanism is a single-issue surcharge, and thus could potentially allow rate increases even during times that a utility's *overall* costs are dropping. Such a result is unfair enough, but the prospect that these single-issue rate increases would actually be allowed during a time period that a utility is *overearning* is outrageous. This scenario is not hypothetical; it has previously occurred through the operation of the single-issue Infrastructure System Replacement Surcharge (ISRS).

AARP Missouri urges the Commission to send its Staff a strong signal that the current draft of the FAC rules must now be revised to include meaningful consumer protections that are consistent with the comments of the various

consumer stakeholders—before a proposed rule is sent to the Secretary of State's office. Such protections should 1) include within the rule a mechanism that preserves the current incentive to efficiently procure fuel and purchased power by keeping a percentage of these costs in the base rates, 2) eliminate the ability of a utility to increase a FAC charge at times when it is already overearning, and 3) mitigate or smooth the volatility of rate changes without penalizing consumers.

Respectfully submitted,

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